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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

JASON TRABAKOOLAS, SHEILA STETSON, CHRISTIE WHEELER, JACK MOONEY, and KEVEN TURNER individually and on behalf of all others similarly situated,

Plaintiffs

v.

WATTS WATER TECHNOLOGIES, INC., WATTS REGULATOR CO., WOLVERINE BRASS, INC., AND JOHN DOES 1-100.

Defendants.

Case No. 3:12-cv-01172-WHO-EDL

MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND COMPENSATION TO NAMED PLAINTIFFS

DATE: **July 16, 2014**
TIME: **2:00 PM**
Courtroom: **2, 17th Floor**
Judge: **Hon. William H. Orrick**

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NOTICE

PLEASE TAKE NOTICE that on July 16, 2014, at 2:00 p.m., or as soon as the matter may be heard, in Courtroom 2 on the 17th Floor of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Jason Trabakoolas, Sheila Stetson, Christie Wheeler, Jack Mooney, and Keven Turner, on behalf of themselves and the certified Class defined as all individuals and entities, that own or owned, or lease or leased, a residence or other structure located in the United States containing a toilet connector, will respectfully move this Court for an award of attorneys' fees, reimbursement of expenses and compensation to Class Representatives.

This Motion will be based on this Notice; the accompanying Memorandum of Points and Authorities in Support of Plaintiffs' Motion, Declaration of Simon Bahne Paris, and the supporting evidence filed herewith; the Court's file in this action; and other argument or evidence presented at the hearing on the Motion.

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I. INTRODUCTION

Plaintiffs' Class Counsel ("Class Counsel") respectfully submits this Memorandum in Support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Compensation for the Named Plaintiffs. As set forth below, and stated in the Notice, Class Counsel seeks an award of fees in the amount of $5.75 million and reimbursement of up to $650,000 of reasonable and necessary expenses paid by Class Counsel in support of the litigation. The requested attorneys' fees equal 25% of the $23 million common fund created by the Settlement – the benchmark in the Ninth Circuit. The requested fee is reasonable and should be awarded in light of counsel's efforts and achievement. Indeed, the lodestar cross-check confirms the reasonableness of the requested fee as it represents a modest multiplier of 1.10. Class Counsel expended a total of 10,386.55 hours between February 2010 and April 30, 2014, resulting in a lodestar of $5,219,434.50 at each firm's current billing rates. When combined with the total present out-of-pocket expenses of $641,458.79, Class Counsel invested $5,860,214.71 to date in this high-risk, contingent litigation with no guarantee of reimbursement or compensation whatsoever.

Class Counsel also request that the Court approve compensation for the Class Representatives who assisted in achieving the recovery for the Class. Class Counsel proposes each Class Representative receive either $5,000 or $7,500, depending on whether they opened their home for inspection to Defendants and their experts. The purpose of these awards is to compensate each Class Representative for their efforts on behalf of the Class who will benefit from the Settlement they worked to achieve.

II. STATEMENT OF THE CASE

This hard fought litigation spanned more than two years (not counting pre-filing research and investigation), and consumed more than 10,000 hours of Class Counsel's time. Detail of the extensive work and case highlights are set forth in the Declaration of Simon Bahne Paris ("Paris Decl.") filed in support of this motion. Rather than repeat them here, Class Counsel incorporates the Paris Decl. at paragraphs 4-70 herein by reference.

III. THE STANDARDS GOVERNING ATTORNEY FEE AND EXPENSE AWARDS FROM THIS COMMON FUND SETTLEMENT

"Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method."[1] Because the settlement here is an easily quantifiable common fund, Plaintiffs submit that the percentage-of-recovery method should be employed to calculate the fee with a lodestar cross-check to ensure the reasonableness of the requested fee.

A. Class Counsel are Entitled to Compensation Based upon the Total Benefits Created by the Settlement

A lawyer who recovers a "common fund" is entitled to reasonable attorney fees from that fund as a whole.[2] This common-fund doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense."[3] As such, this doctrine serves to spread the burden of a party's attorneys' fees and expenses incurred during successful litigation among those who are benefited.[4] Application of the common fund doctrine allows the court to award "fair, reasonable and adequate" attorneys' fees and costs thereby allowing the proportionate distribution of this award among each member of the class.[5]

The common fund is determined by the total benefit procured for the class. The Ninth Circuit recognized that the Supreme Court has "concluded that the attorneys for a successful class may recover a fee based on the entire common fund created for the class."[6] "[C]ourts

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[1] *Jones v. GN Netcom, Inc.* (*In re Bluetooth Headset Prods. Liab. Litig.*), 654 F.3d 935, 942 (9th Cir. 2011); *see also In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

[2] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co*., 327 F.3d 938, 967 (9th Cir. 2003).

[3] *Id*.

[4] *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989).

[5] *Staton*, 327 F.3d at 963-64, 967; *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998).

[6] *Williams v. MGM-Pathe Commc'n Co*., 129 F.3d 1026, 1027 (9th Cir. 1997) (*citing Boeing Co*. 444 U.S. at 480-81).

base the fee award on the entire settlement fund as that package is the benefit to the class."[7] Here, the settlement creates a $23 million common fund.[8]

The Supreme Court has repeatedly held in cases involving common fund settlements that it is appropriate to determine the fee award as a percentage-of-the-fund.[9] The Ninth Circuit has expressly approved the percentage-of-recovery approach, and this approach has become the prevailing method for awarding fees in common fund cases in the Ninth Circuit.[10] The percentage method is desirable because it most fairly correlates the compensation of counsel with the benefit conferred upon the class.[11] It aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time.

A lodestar cross-check of the fee awarded pursuant to the percentage–of-the-fund method assures that it is reasonable.[12] It is well-established that a court carrying out a lodestar cross-check can assess the reasonableness of the percentage award using "approximate"

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[7] *Hartless v. Clorox Co*., 273 F.R.D. 630, 645 (S.D. Cal. 2011) aff'd, 473 Fed. Appx. 716 (9th Cir. 2012); *Williams,* 129 F.3d at 1027 ("We conclude that the district court abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or the lodestar.").

[8] Pursuant to the Court's direction during the hearing on preliminary approval, Class Counsel secured a present value analysis to consider the staggered funding of the $23 million over five years. Dr. Fred DeKay, a consulting economist, concluded the present value of the $23 million at the time of final approval to be nominally reduced to $22,802,316.00. Report of C. Frederick DeKay, Ph.D., dated April 4, 2014, attached as Ex. G to the Paris Decl.

[9] *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("Under the common fund doctrine ... a reasonable fee is based on a percentage of the fund bestowed on the class."); *see also Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165-66 (1939; *Central R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Trustees v. Greenough*, 105 U.S. 527, 532 (1882).

[10] *See, e.g., In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d at 942; *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) ("A reasonable fee under the common fund doctrine is calculated as a percentage of the recovery."); Paul, Johnson, 886 F.2d at 272; *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007).

[11] *See Omnivision*, 559 F. Supp. 2d at 1046 (citing authorities that describe the advantages of using the percentage method).

[12] *See Vizcaino*, 290 F.3d at 1050-51.

1 lodestar.[13] Thus, the reasonableness of the attorney fee award under the common fund doctrine
2 is readily confirmed by this lodestar cross-check.

3 **IV. THE REQUESTED FEE OF $5,750,000 IS FAIR AND REASONABLE AS**
4 **A PERCENTAGE-OF-THE-FUND ACHIEVED FOR THE CLASS**

5 Class Counsel requests an award of 25%, or $5.75 million, of the $23 million common
6 fund created by the settlement. A fee award of 25% is the benchmark set by the Ninth Circuit.
7 Indeed, in the Ninth Circuit, "courts typically calculate 25% of the fund as the 'benchmark' for
8 a reasonable fee award."[14]

9 This benchmark "should be adjusted ... when special circumstances indicate that the
10 percentage recovery would be either too small or too large ...."[15] To determine whether
11 deviation from the benchmark is necessary, courts in this Circuit may consider the following
12 factors: (i) the results achieved;[16] (ii) the risks of litigation;[17] (iii) the complexity of the case;[18]
13 (iv) the skill required and quality of work performed by counsel;[19] (v) the length the case has
14 transpired;[20] (vi) the contingent nature of the fee and financial burden carried by Plaintiffs;[21]
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[13] *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 U.S. Dist. LEXIS 123546, at *14 (C.D. Cal. July 21, 2008) (explaining the lodestar cross-check "need not be as exhaustive as a pure lodestar calculation" and "'can be performed with less exhaustive cataloging and review of counsel's hours.'") (quoting *Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2007 U.S. Dist. LEXIS 27269, at *15 (N.D. Cal. Mar. 28, 2007)).

[14] *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d at 942; *see also Six Mexican Workers*, 904 F.2d at 1311; *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); Hanlon, 150 F.3d at 1029; *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

[15] *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942; *Six Mexican Workers*, 904 F.2d at 1311.

[16] *Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1050.

[17] *In re Pacific Enters. Sec. Litig*., 47 F.3d 373, 379 (9th Cir. 1995); *Vizcaino*, 290 F.3d at 1048-49.

[18] *Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific Enters. Sec. Litig.*, 47 F.3d at 379.

[19] *Vizcaino*, 290 F.3d at 1048.

[20] *Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1050.

[21] *Vizcaino*, 290 F.3d at 1050.

1 (vii) awards made in similar cases;[22] (viii) percentages in standard contingency-fee agreements
2 in similar individual cases;[23] (ix) the non-monetary benefits obtained;[24] (x) the reaction of the
3 class to the proposed fee and expense requests;[25] and (xi) a lodestar cross-check.[26]
4 Class Counsel does *not* seek an enhancement to the 25% benchmark, and an application
5 of the factors above – as discussed below – indicates that a reduction from the benchmark is
6 unwarranted. Thus, the 25% benchmark is the appropriate percentage to calculate the attorney
7 fee award.
8 **A. The Results Achieved Support the Requested Award.**
9 This Settlement accomplishes all of the goals set out in the initial complaint filed on
10 March 8, 2012: notification, replacement, and reimbursement. The Settlement (i) provides
11 consumers with notice that a Watts toilet connector may be in their homes as well as the
12 associated risks of not maintaining it; (ii) arms consumers with knowledge on how to identify
13 the Watts connector; (iii) provides a means to replace the old connectors; and (iv) provides a
14 cash payment for consumers who suffered property damage from a failed Coupling Nut.
15 Additionally, the Settlement affords the Class Member's home insurers – who obtain derivative
16 rights of Class Members through subrogation – the opportunity to recover their payment for the
17 property damage claims they paid for losses caused by the connectors.
18 Beyond achieving *all* of the litigation goals, the recovery itself is remarkable. The
19 Watts claims history obtained through discovery demonstrates the significance of this $23
20 million payment. Prior to this Settlement, Watts received around 1,250 claims, averaging
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24 [22] *Id.*
25 [23] *Id.* at 1049.
26 [24] *In re Pacific Enters. Sec. Litig.*, 47 F.3d at 379; *Staton*, 327 F.3d at 946.
27 [25] *Omnivision*, 559 F. Supp. 2d at 1048.
28 [26] *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 945; *Vizcaino*, 290 F.3d at 1050-51.

approximately $34,000 each, during a 7-year period for Coupling Nut failures.[27] In nearly 85% of these claims, neither the consumer nor their property insurance carrier were successful in achieving *any* recovery from Watts.[28] And this figure accounts for only the claims presented to Watts, and necessarily excludes those not pursued due to a variety of factors, including the relatively small size of claim (e.g., Plaintiff Stetson's claim was approximately $2,500 in damages), or where there was concern over the merits (e.g., Plaintiffs Wheeler and Mooney's insurers did not pursue their claims against Watts because of negative expert review).[29] Now, regardless of either or any such concerns, the Settlement will pay up to 25% of any property damage caused by a Coupling Nut failure. Thus, the Settlement affords relief where previously the Class received none.

Importantly, in the approximately 15% of the cases where Watts paid some amount on a Coupling Nut claim to a consumer or their insurer, the historical average payment was approximately 7.5% of the damages.[30] The Settlement will pay more than three times this historical average, up to 25%. Therefore, the Settlement provides a recovery for the Class (and their insurers) that is 300% the average recovery of individual actions. The property damage recovery is exceptional in light of Watts' success in defending these claims over an extended period of time.

While the property damage recovery was important, Plaintiffs negotiated vigorously for the Replacement Remedy, which pays any Class Member $4 per replaced Toilet Connector, regardless of the Toilet Connector's age or years of service.[31] The Replacement Remedy is payable regardless of whether the consumer elects to replace the Watts connector with a

[27] Paris Decl. ¶ 36.

[28] Paris Decl. ¶ 37.

[29] Paris Decl. ¶ 40.

[30] Paris Decl. ¶ 37.

[31] As detailed in the Settlement Agreement, the Replacement Remedy is limited to five Toilet Connectors per Class Member, or $20. ECF No. 273-1 at ¶114.

1 competitor's product. At the time of this filing, more than 200 Class Members have sought the
2 benefit of the Replacement Remedy and replaced Watts' connectors in their home.
3 The Replacement Remedy is designed to *decrease* property damage claims over the
4 five year claims period, and to prevent property damage from Toilet Connectors altogether.
5 The Replacement Remedy is intended to save countless dollars for the Class and their insurers.
6 It will also prevent the additional inconvenience caused by water damage to property, including
7 displacement from a home for weeks (e.g., Plaintiffs Wheeler/Mooney) or months (e.g.,
8 Plaintiff Trabakoolas). In the end, the replacement relief is directed at eliminating the damage,
9 but if it does occur, the Settlement provides a recovery mechanism, without the burdens of
10 litigation, that far exceeds the historical average recovery.
11 Finally, the Settlement calls for a robust Notice program to raise awareness, not only
12 about the Settlement, but also about the risks associated with leaving the Toilet Connector in
13 the home. Although the Coupling Nut designs were discontinued from production in July 2009
14 eliminating the need for injunctive relief, a primary concern to be redressed by the Settlement
15 was notification of the potential failure and corresponding water damage.[32] To this end, the
16 Notice program has been delivered through targeted mailings and concentrated web programs.
17 In a fee award determination, the "most critical factor is the degree of success
18 obtained."[33] The $23 million (i) provides nearly triple the relief that has been historically
19 achieved by the small number of claimants who have been successful against Watts; (ii)
20 reimburses the vast majority of claimants who have submitted claims and received nothing
21 from Watts; and (iii) enables those who previously did not submit claims for a host of reasons
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[32] The Court in its fee decision may consider the settlement's benefits to the entire public. *Fleet Inv. Co. v. Rogers*, 620 F.2d 792, 794 (10th Cir. 1980) (discussing how the "value of an attorney's services is not only measured by the amount of the recovery to plaintiff, but also the non-monetary benefit accruing to others, in this case, the public at large from his successful vindication of a national policy to protect consumers"); *In re Rio Hair Naturalizer Prod. Liab. Litig.*, No. MDL 1055, 1996 U.S. Dist. LEXIS 20440, at *54 (E.D. Mich. Dec. 20, 1996) (recognizing "benefit to society" factor in awarding attorneys' fees in class action litigation and that such compensation is necessary to attract counsel to accept class cases and enforce federal and state consumer protection laws).

[33] *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

1 to get a recovery. In the end, the Settlement provides substantial relief to those who were
2 receiving none, in an amount that is three times the average historical recovery, while
3 delivering a Replacement Remedy aimed at preventing the damage all together. By any metric,
4 this is an excellent Settlement for the Class.

5 **B. The Substantial Risks and Complexity of the Litigation Support the**
6 **Requested Award.**

7 The risk that further litigation might result in the Class not recovering at all is an
8 important factor in determining a fair fee award.[34] Although Class Counsel believes the claims
9 have considerable merit, Class Counsel acknowledges the significant risks and expense
10 necessary to prosecute the claims through trial and subsequent appeals, as well as the inherent
11 difficulties and delays complex litigation such as this case entails. As aptly stated by The
12 Honorable Layn R. Phillips (Ret.) who presided over the lengthy mediation process, there was no
13 more money to be obtained through settlement considering:

14 > Plaintiffs faced substantial risks that a jury would award less [than
15 > $23 million], if it made any award at all. This is particularly so
16 > given the uncertainty regarding whether any class could be
> certified, whether any certified class could be maintained through
17 > trial, and whether Plaintiffs could establish a defect in light of
> Defendants' contention that the failure rate for the produce was far
18 > too low for any sort of "defect" to exist. Defendants further argued
> that any losses suffered by Plaintiffs and the putative class were
19 > the result of user error and product misuse, which would have been
20 > advanced as an intervening cause at trial.[35]

21 The associated risks with this complex litigation presented novel legal issues, many of
22 which would have ultimately been presented to the Ninth Circuit by one or both parties. A more
23 detailed analysis of these issues will be found in brief in support of final approval; a brief
24 summary is set forth below:

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26 [34] *See, e.g., Omnivision*, 559 F. Supp. 2d at 1047; *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299-1301 (9th Cir. 1994); *see also, In re Heritage Bond Litig*., 2005 U.S. Dist. LEXIS
27 13627, at *44 (C.D. Cal. June 10, 2005) ("[T]he risks assumed by Class Counsel, particularly the risk of nonpayment or reimbursement of expenses, is a factor in determining counsel's proper fee award.").

28 [35] Paris Decl., Ex. J (Declaration of Layn R. Phillips ("Phillips Decl.")), ¶ 14.

- ***Arbitration:*** The major homeowner's insurance companies, including the insurers of all Plaintiffs, were parties to an arbitration agreement that required property damage claims under $100,000 to be arbitrated in Arbitration Forums, Inc. Historically, Watts successfully defended the Toilet Connector claims in arbitration well over 90% of the time. Throughout this litigation, Watts maintained that the insurers were required to arbitrate these claims, and that their insureds, through the insurance contract, were obligated to arbitrate Toilet Connector claims. If Watts was successful on this issue, the case would have ended unfavorably for Plaintiffs and the Class.

- ***Class Certification:*** Watts intended to vigorously oppose class certification on each of the Rule 23 prerequisites to certification, including choice of law issues, due process issues, and predominance concerns.

- ***Defect:*** There was significant expert discovery, including seven experts between the parties limited strictly to the Coupling Nut's design. However, Watts' claim history revealed less than 1,250 claims despites selling tens of millions of Toilet Connectors. As a result, Watts maintained that the failure rate of the Coupling Nut was 0.004%, a number too small to warrant a finding by judge or jury that the Coupling Nut was defective. If successful, Watts would have prevented any recovery to the Plaintiffs or Class either at summary judgment or trial.

- ***Affirmative Defenses:*** Watts advanced two primary defenses to liability: (i) misuse through over tightening of the Coupling Nut with a wrench contrary to its instruction; and (ii) the Toilet Connector lasts beyond its useful life of 7-10 years, and therefore cannot be defective. To the extent Watts was successful on either, it could have undermined Plaintiffs' success at trial or the ability to maintain the Class through trial.

Any of these issues could have derailed the litigation and prevented any recovery of attorneys' fees and expenses in this matter. Despite this, and as recounted by Judge Phillips, Class Counsel "was willing to try this case and face the risk of losing with no chance to recover their expenses or for their labor."[36] In sum, the complexities and risk of this litigation are self-evident, yet Class Counsel prosecuted the action on a contingent-fee basis and obtained valuable benefits for the Class to justify the requested fee award.

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[36] Phillips Decl. ¶ 16, attached as Ex. J to Paris Decl.

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C. The Contingent Nature of the Fee and Financial Burden Carried by Plaintiffs Support the Requested Award.

The high-risk nature of this contingent litigation is underscored by the historical lack of success in approximately 85% of claims against Watts relating to the alleged defects with the Coupling Nut. Attorneys are entitled to a larger fee when their compensation is contingent in nature.[37] This fee enhancement stems from the "established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases."[38]

Lead Counsel investigated the claims and alleged defects for nearly two years before filing the initial complaint on March 8, 2012. After filing, as described by Judge Phillips, there were "18 months of accelerated, aggressive, complex litigation."[39] Every step of the litigation was vehemently contested by a well-heeled defendant, with motivated, seasoned defense counsel, who were defending claims they had been winning 85% of the time. The litigation required a full time commitment by Lead Counsel, and their colleagues, to accomplish the work necessary to achieve the Settlement in just 18 months. As just one example, in a single year (July 2012-July 2013), Lead Counsel appeared in Court eleven (11) separate times to argue motions or attend conferences to address discovery disputes. Highlighted below are just a few examples:

- ***Motion practice:*** At the outset, Class Counsel faced three separate motions to dismiss (ECF Nos. 37, 44, 46, 48-52, 62, 67, 68, 71-76, 78-86, 90-91, 93) and a motion to bifurcate discovery (ECF Nos. 64, 68, 70, 77) during the first six months of litigation. The complexities of certain motions, specifically the interpretation of the replacement remedy under the CLRA, its impact on the CLRA notice provision and class certification under Rule 23(b)(2) and/or (b)(3) required extensive research and briefing. Beyond the

[37] *See Vizcaino*, 290 F.3d at 1048-50.

[38] *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299; *see also Omnivision*, 559 F. Supp. 2d. at 1047 ("[T]he importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.") (citation omitted).

[39] Phillips Decl. ¶ 12, attached as Ex. J to Paris Decl.

motions related to the pleadings, there were nearly daily discovery disputes between the parties detailed in extensive joint case management statements filed with the Court for periodic case management conferences and joint letter briefs to resolve discovery disputes before the Court. *See e.g.*, ECF Nos. 105, 107, 109-110, 112-115, 117-119, 121, 123, 128, 131-132, 136, 139-140, 144, 182).

- ***Written discovery:*** Class Counsel served multiple sets of requests for admissions, interrogatories and document requests. After serial meet and confers on the written responses, Watts amended responses to each multiple times. Additionally, numerous inspection notices were served by both parties to inspect Toilet Connectors, properties, production equipment and manufacturing molds at locations throughout the country.

- ***Document discovery:*** Documents were produced by all the named Plaintiffs, Watts and Wolverine, along with several third parties, including but not limited to Arbitration Forums, Inc., multiple insurance carriers, counsel for certain insurance carriers. In the end, an electronic database of these productions was established, and the over 300,000 pages of documents produced were reviewed by Class Counsel. Finally, Watts produced all its Toilet Connector claim files that were primarily maintained in a Massachusetts warehouse in only a hard copy format, a process that took Watts over six months to complete.

- ***Watts' Privilege Log:*** Watts withheld approximately 4,000 documents on the basis of privilege. Over the course of several months, the parties conducted extensive meet and confers pertaining to Watts' assertion of privilege as to a large majority of these documents. Once a final impasse was reached, Plaintiffs filed a motion to compel that required extensive briefing and exhibits that was handled by Magistrate Judge LaPorte. *See* ECF Nos. 135, 137-138, 150-159, 161-181, 194, 210.

- ***Expert discovery:*** The parties engaged in extensive discovery of expert witnesses, designating 13 experts relating to the class certification hearing alone. Plaintiffs designated 5 experts and Watts 8. The experts included multiple engineers opining on the coupling nut design, finite element analysis, hand tightening studies, human factors, survey and statistical analysis. All of Plaintiffs' experts were deposed. Prior to serving rebuttal reports, Plaintiffs sought to strike portions of Watts' engineering experts. *See* ECF Nos. 222-227. The matter was stayed pending mediation days later.

Additionally, since the Settlement received preliminary approval on February 14, 2014, Class Counsel has devoted considerable time investigating, promoting, and monitoring notice

activities and assisting Class Members and other Claimants with understanding the Settlement, and the claims process. This work will likely continue for years to come.

To date, Class Counsel has received no compensation for their work, while investing more than $5 million in time and nearly $650,000 in expenses to obtain the Settlement for the Class. In so doing, Class Counsel has forgone the opportunity to devote time to other cases and generate revenue.[40] The fee award has always been at risk, completely contingent on the result achieved, and this Court's discretion.[41]

D. The Skill Required and Quality of Work Performed by Counsel Support the Requested Award.

Courts recognize that the "prosecution and management of a complex national class action requires unique legal skills and abilities."[42] The reputation, experience and skill of Class Counsel were essential to the successes achieved in this litigation.[43] The quality of opposing counsel is also relevant in evaluating the quality of work done by Class Counsel.[44] Watts was represented by a large, internationally respected law firm (Alston & Bird LLP) with significant resources, who vigorously defended the class-wide claims. As Judge Phillips (Ret.) noted, "the advocacy of both sides was outstanding."[45]

This novel product liability class action blazed a winning trail where the vast majority had previously lost. This accomplishment was the result of designed strategy. Proceeding under Rule 23, Plaintiffs were able to obtain extensive discovery from Watts, thereby requiring

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[40] *See Vizcaino*, 290 F.3d at 1050.

[41] Paris Decl. ¶ 73.

[42] *Knight v. Red Door Salons, Inc*., 2009 U.S. Dist. LEXIS 11149 at *16 (N.D. Cal. Feb. 2, 2009) (citation omitted); *Heritage Bond*, 2005 U.S. Dist. LEXIS 13627, at *39; *see also, Vizcaino*, 290 F.3d at 1048.

[43] *See In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 304 (3d Cir. 2005).

[44] *See, e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) ("[P]laintiffs' attorneys in this class action have been up against established and skillful defense lawyers and should be compensated accordingly."); *In re King Resources Co. Sec. Litig*., 420 F. Supp. 610, 634 (D. Colo. 1976) (litigation was not "against mediocre adversaries").

[45] Phillip Decl. ¶16, attached as Ex. J to Paris Decl.

1 Watts to face an adjudication of the alleged defect on the merits after full discovery. Without
2 the class action device, such an endeavor was not economically feasible for individual damage
3 or subrogation claims that were on average $34,000 each. The end-result provides extensive
4 relief to the Class, while averting years of future litigation with Watts.

5 **E. The Duration of the Case Supports the Requested Award.**

6 This case began for Lead Counsel nearly two years before its filing in March 2012.
7 Now, after two years of aggressive, hard-fought litigation and negotiations, Class Counsel
8 presents the Court with a Settlement. There can be no suggestion that the case was rushed to
9 settlement. As noted above, the parties were deep in the throes of expert discovery and the
10 issues were fully framed for a meaningful mediation session with Judge Phillips. And this led
11 both sides to discussions that ultimately yielded this Settlement.

12 **F. Awards in Similar Cases Support the Requested Award.**

13 As noted above, the Ninth Circuit has repeatedly held that 25% of the common fund is
14 the appropriate fee benchmark.[46] Empirical studies confirm the appropriateness of a 25% award
15 here. Two recent, similar plumbing component defect cases from other circuits awarded fees
16 that were equal to or greater than 25% of the fund created.[47]

17 The most common percentages awarded by all federal courts in 2006 and 2007 using the
18 percentage-of-the-fund method were 25%, 30%, and 33% , with nearly two-thirds of awards
19 between 25% and 35%.[48] Similarly, in the Ninth Circuit alone, the most common percentages
20 utilized to award fees under the percentage-of-the-fund method were 25%, 30%, and 35% with
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23 [46] *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d at 942; *Six Mexican Workers*, 904 F.2d at 1311; *Powers*, 229 F.3d at 1256; *Hanlon*, 150 F.3d at 1029; *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d at 607; *Torrisi*, 8 F.3d at 1376.
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25 [47] *In Re: Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-md-1958, 2013 U.S. Dist. LEXIS 27155 (D. Minn. Feb. 27, 2013) (awarding $8.5 million in fees and expenses on a $20 million settlement); *In Re: Kitec Plumbing Sys. Prods Liab. Litig*., No. 09-md-2098, ECF No. 155, (N.D. Tex. Nov. 17, 2011)(awarding 25% of common fund) (attached
26 to Paris Decl. at Ex. H).
27 [48] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards* ("Empirical Study"), 7 J. Empirical L. Stud. 811, 833-34 (2010)
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the mean and median fee awards both being 25% of the fund.[49] Accordingly, the requested fee of 25% of the fund is supported by awards in similar cases in the Ninth Circuit.

G. Percentages in Standard Contingency-Fee Agreements in Similar Individual Cases Support the Requested Award.

Standard contingency -fee percentages in individual litigations are at least 33%.[50] The requested fee of 25% is not only the established Ninth Circuit benchmark, but also substantially below the 33% rate of standard contingency fees in individual cases. As such, this factor favors an award of 25% of the fund.

H. Then Non-Monetary Benefits Obtained Support the Requested Award.

Because the Coupling Nuts were discontinued from manufacture in July 2009, there was no injunctive relief to be obtained through the Settlement. The principal non-monetary component of the Settlement is the Notice, which in part is intended to prevent future water loss claims from Toilet Connectors that remain in Class Member's homes.

The Notice cost approximately $1.2 million to accomplish and beyond informing Class Members of the Settlement, it raised the national awareness of the potential for catastrophic water damage from a Toilet Connector. Although Class Counsel believes the non-monetary benefit of the Settlement to be substantial, there is no request to enhance the fee award beyond

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[49] Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010). *See also,* Empirical Study at 838; *Vizcaino*, 290 F.3d at 1051-52 (affirming award of 28% of $96 million common fund and including table of percentage-based attorneys' fee awards in common fund cases of $50-200 million from 1996 through 2001); *Omnivision,* 559 F. Supp. 2d at 1047 (28% fee award); *Palmer v. Nigaglioni*, 508 Fed. Appx. 658 (9th Cir. 2013) (affirming award of 28% of the gross common fund recovery); *In re Pacific Enters. Sec. Litig*., 47 F.3d at 379 (fee award of one-third of common fund justified due to complexity of issues and risks involved); *In re TFT-LCD (Flat Panel) Antitrust Litig*., 2013 U.S. Dist. LEXIS 51271 (N.D. Cal. Mar. 29, 2013) (28.5% of common fund awarded as attorneys' fees); *In re Static Random Access Memory (SRAM) Antitrust Litig*. MDL No. 1819 (N.D. Cal. Oct. 14, 2011) (33 1/3% of common fund awarded as attorneys' fees); *Brailsford v. Jackson Hewitt, Inc. et al*. 2007 U.S. Dist. LEXIS 35509 at *14 (N.D. Cal. May 3, 2007) (awarding 30% of common fund as attorneys' fees); *Torrisi*, 8 F.3d at 1376 (reaffirming 25% benchmark); *McPhail v. First Command Fin. Planning, Inc*., No. 05 CV 179, 2009 WL 839841, at *7 (S.D. Cal. Mar. 30, 2009) (30% for first $10 million and 25% for additional $2 million settlement); *Craft v. San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008) (25%).

[50] Lester Brinkman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty-three percent to forty percent of gross recoveries").

1 25% of the $23 million common fund based on the non-monetary benefits of the Settlement.
2 This factor therefore favors the requested award.

3 **I. The Reaction of the Class Supports the Requested Fee.**

4 The Notice program was completed in accordance with the Order Granting Preliminary
5 Approval, but the objections and requests for exclusion are not due until June 29, 2014. As of
6 May 23, 2014, however, the Claims Administrator reports that there have been no purported
7 objections filed, and only 3 purported requests for exclusion.

8 Each of the factors for analyzing the percentage-of-the-fund favors an award of the 25%
9 benchmark and none provide any basis to reduce the percentage. Thus, Class Counsel
10 respectfully requests the Court apply the 25% benchmark to the $23 million common fund to
11 award fees.

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13 **V. THE LODESTAR CROSS-CHECK CONFIRMS THE REQUESTED FEE IS REASONABLE.**

14 Although courts in this Circuit typically apply the percentage approach to determine
15 attorneys' fees in common fund cases, courts should use an abbreviated lodestar analysis to
16 cross-check the reasonableness of the fee being awarded on the percentage-of-the-fund
17 method.[51] It is well-established that a court carrying out a lodestar cross-check can assess the
18 reasonableness of the percentage award using "approximate" lodestar.[52] The lodestar is
19 determined by multiplying the number of hours reasonably expended by a reasonable hourly
20 rate.[53]

21 Here, applying the lodestar method as a cross-check to the $5.75 million requested fee
22 award confirms the award's reasonableness. Class Counsel has submitted to the Court a

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24 [51] *In re Bluetooth Prods. Liab. Litig*., 654 F. 3d at 944-45.

25 [52] *Fernandez v. Victoria Secret Stores*, LLC, No. CV 06-04149 MMM (SHx), 2008 U.S. Dist. LEXIS 123546, at
26 *14 (C.D. Cal. July 21, 2008) (explaining the lodestar cross-check "need not be as exhaustive as a pure lodestar calculation" and "'can be performed with less exhaustive cataloging and review of counsel's hours.'") (quoting
27 *Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2007 U.S. Dist. LEXIS 27269, at *15 (N.D. Cal. Mar. 28, 2007)).

[53] *See Hensley*, 461 U.S. at 433; *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556-57.

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lodestar of $5,219,434.50 derived from 10,386.55 hours expended in connection with this litigation up to April 30, 2014.[54] An award of 25% of the common fund results in a reasonable multiplier of 1.10. Thus, the lodestar cross-check supports the requested fee award.

A. Class Counsel's Hourly Rates Are Reasonable.

Under the lodestar method, reasonable hourly rates are determined by "prevailing market rates in the relevant community," which are the rates a lawyer of comparable skill, experience and reputation could command in the relevant community.[55] The relevant community is that in which the court sits; here the Northern District of California.[56]

An attorney's actual billing rate for similar work is presumptively appropriate. [57] "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate."[58]

Class Counsel, with this filing, submits sworn declarations attesting to their hourly rates and total hours devoted to the case, their experience, and describing their efforts to prosecute this case.[59] The hourly rates submitted by Class Counsel reflect their actual billing rates in contingent

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[54] *See* Paris Decl., Exs. A-E; The exhibits to the declarations of Class Counsel detail the hours expended by category based on contemporaneously kept time records of each firm. *Rite Aid*, 396 F.3d at 307 n.16 (cross-check is "not a full-blown lodestar inquiry" and the court "should be stratified with a summary of the hours expended by all counsel at various stages"). To the extent the Court would like to review the time detail, the specific entries, for Class Counsel, Lead Counsel has collected this information and happy to submit it to the Court for an *in camera* review upon the Court's request.

[55] *Blum*, 465 U.S. at 895.

[56] *Schwartz v. Sec'y of Health & Human Servs*., 73 F.3d 895, 906 (9th Cir. 1995); *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal services).

[57] *See People Who Care v. Rockford Bd. of Educ*., 90 F.3d 1307, 1310 (7th Cir. 1996).

[58] *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990); *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) (finding testimony of attorney as to total hours work sufficient without time records).

[59] *See* Paris Decl., Exs. A-E. These rates are those currently charged by each firm and it is well within the Court's discretion to calculate the lodestar based on these prevailing rates. *Vizcaino*, 290 F.3d at 1051; *Gates v. Deukmejian*, 987 F.2d 1392, 1406 (9th Cir. 1992) (use of current rates appropriate "in order to adjust for inflation and loss of use funds"). Otherwise, the Court must add interest at the prime rate to the historic-rates lodestar, as it is an abuse of discretion to deny either of these two means of adjustment for the delay in receiving payment. *See In re*

or non-contingent work; thus, they are presumptively appropriate. Class Counsel are all highly respected members of their respective bars with extensive experience in prosecuting high-stakes complex litigation, including consumer class actions, antitrust and securities.[60] Given the formidable opposition by a well-heeled defendant, Watts, represented by a highly-respected international law firm during this litigation, Alston & Bird LLP, a high level of experience was required for success. Class Counsel's rates are appropriate for complex, nationwide litigation. These hourly rates are consistent with the rates previously approved in this District,[61] all of which were previously approved by courts in California during 2013.[62] Thus, the rates used to generate the lodestar are reasonable.

B. The Number of Hours that Class Counsel Worked Is Reasonable

Class Counsel has submitted declarations and detailed time reports demonstrating the substantial time and effort expended prosecuting this litigation on behalf of the Class.[63] This task-oriented analysis is more than sufficient to assess whether the time devoted by Class

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Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d at 1305 (district court is "free to use either current rates for attorneys of comparable ability and experience or historical rates coupled with a prime rate enhancement," but denial of both is reversible error because this would "inadequately compensate the firm for the delay in receiving its fees").

[60] *Id.*

[61] *See Faigman v. AT&T Mobility LLC*, No. C06-04622 MHP, 2011 WL 672648, at *5 (N.D. Cal. Feb. 16, 2011) (approving hourly rates ranging up to $735.74 for partner services, $448.86 for associate attorney services, and $175 for paralegal services); *Wren v. RGIS Inventory Specialists*, No. C–06–05778 JCS, 2011 WL 1230826, at *20 (N.D. Cal. Apr. 1, 2011) (approving hourly rates ranging up to $725 for partner services); *Suzuki v. Hitachi*, No. C06-7289, 2010 WL 956896, at *3 (N.D. Cal. Mar. 12, 2010) (finding reasonable attorneys' fees based on rates of $650 for partner services, $500 for associate attorney services, and $150 for paralegal services); *Armstrong v. Brown*, No. C94-2307, 2011 WL 3443922, at *2¬3 (N.D. Cal. Aug. 8, 2011) (approving partner-level rates ranging from $560 to $800, associate-level rates ranging from $285 to $510, and litigation support staff and paralegal clerks ranging from $150 to $240 in the "Bay Area").

[62] *See, In re Apple In-App Purchase Litig.*, No. 11-cv-1758-EJD, ECF No. 127 (N.D. Cal. Oct. 18, 2013) (approving rates of SMBB, Berman DeValerio and Fine Kaplan & Black); *In re Toyota Motor Corp.*, No. 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 94485 (C.D. Cal. June 17, 2013) (approving rates of HBSS and SMBB); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827-SI, 2013 U.S. Dist. LEXIS 51271 (N.D. Cal. Mar. 29, 2013) (approving rates of Gustafson Gluek).

[63] *See* Exs. A-E to Paris Decl.

1 Counsel is reasonable.[64] As of the filing of this Motion, Plaintiffs' Counsel in this proceeding
2 collectively expended over 10,000 hours to obtain this highly favorable result for the Class,
3 knowing that if their efforts were ultimately unsuccessful, they would receive no compensation
4 or reimbursement for their costs.[65]
5 Lead Counsel collected time and expense reports from Class Counsel on a quarterly
6 basis to ensure adequate controls over the litigation. To this end, Lead Counsel oversaw all
7 aspects of the litigation while assigning select tasks to Class Counsel to avoid duplication of
8 efforts and ensure the efficient prosecution of the litigation. The hours expended by Class
9 Counsel breakdown as follows:

FIRM	HOURS	LODESTAR	PRIMARY TASKS
SMBB	4,419.80	$2,370,464.00	Lead Counsel; Case theory origination and development; Responsible for all aspects of litigation; All court appearances; All Experts; Discovery; All Depositions.
HBSS	1,382.90	$766,153.00	Discovery; Watts' Privilege Log; Human Factors Experts; Statistical Experts
GG	1,270.75	$698,787.50	Discovery; Engineering Experts and Witnesses; Settlement;
BD	2,148.90	$954,503.00	Liaison Counsel; Discovery; Experts on Standards; Assisted with all filings and court appearances; Select Plaintiff Depositions;
FKB	1,164.20	$429,657.00	Discovery; Research and Briefing; Watts' Claim File Analysis.

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20 The requested attorneys' fees translate to a multiplier of 1.10. This modest multiplier
21 on the lodestar through April 30, 2014, is reasonable and confirms the reasonableness of the
22 requested $5.75 million fee under the percentage-of-the-fund method.[66] This number does not
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24 [64] *See Ackerman v. W. Elec. Co.*, 643 F. Supp. 836, 863 (N.D. Cal. 1986) ("[T]he Ninth Circuit requires only that the
25 affidavits be sufficient to enable the court to consider all of the factors necessary to determine a reasonable attorney's fee award").

26 [65] *See* Exs. A-E, attached to Paris Decl.

27 [66] *See Vizcaino*, 290 F.3d at 1051 (identifying federal survey of multipliers that show multipliers used by courts range between 1 and 4, and most range between 1.5 and 3); *Hofstetter v. Chase Home Fin., LLC*, No. C 10-01313
28 WHA, 2011 U.S. Dist. LEXIS 131193, at *4 (N.D. Cal. Nov. 14, 2011) (awarding attorneys' fees in the amount of

account for the additional time and expenses that will be incurred through the final approval process, the continued monitoring of the settlement administration, class communications, and any appeals.

C. Plaintiffs' Counsel's Fees Are Reasonable Pursuant to the *Kerr* Factors.

After reviewing the time and labor required to develop and prosecute the action, the Court may adjust the lodestar upwards or downwards on the basis of those factors outlined in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).[67] The *Kerr* factors are as follows: (1) time and labor; (2) novelty and difficulty of questions; (3) competent representation; (4) preclusion of other employment due to case; (5) customary fee (6) whether fee is fixed or contingent; (7) time limitations imposed by client of circumstances; (8) amount at controversy and result; (9) experience, reputation and ability or attorneys; (10) undesirability of the case; (11) nature and length of relationship with the client; and (12) awards in similar cases.[68] Factors subsumed within the initial lodestar calculation include "'novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation, and the results obtained.'"[69] The vast majority of these factors are subsumed in the percentage-of-the-fund analysis completed above.[70]

The analysis set forth above in section IV. addresses in detail each of these factors. A fee award of 25% of the common fund yields $5.75 million which is a small multiplier of 1.10

two times the lodestar); *White v. Experian Info. Solutions, Inc.*, No. SACV 05-1070 DOC, 2011 U.S. Dist. LEXIS 79044, at *15-17 (C.D. Cal. July 15, 2011) (approving the use of a 1.9 multiplier to increase the amount of attorneys' fees); *In re Charles Schwab Corp. Sec. Litig.*, No. C 08-01510 WHA, 2011 U.S. Dist. LEXIS 44547, at *28-29 (N.D. Cal. April 19, 2011) (finding the requested fees were fair and reasonable where the fees included a multiplier of 2.68); *Murillo v. Pac. Gas & Elec. Co.*, No. CIV. 2:08-1974 WBS GGH, 2010 U.S. Dist. LEXIS 73427, at *32-33 (E.D. Cal. July 21, 2010) (approving a multiplier of 1.5 to the lodestar amount).

[67] *See Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001); *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 557.

[68] *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d at 70.

[69] *Clark v. Los Angeles*, 803 F.2d 987, 990-91 & n.3 (9th Cir. 1986) (quoting *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984)).

[70] *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796, at *6 (N.D. Cal. July 18, 2013) (awarding 30% of the common fund and a 1.84 multiplier through the lodestar cross-check).

on the total lodestar of $5,219,434.50. This analysis confirms the reasonableness of using the 25% benchmark in the percentage-of-the-fund method where the lodestar cross-check is so near to a 1.

VI. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED FOR THE CLASS

Class Counsel also request payment of unreimbursed expenses in the aggregate amount of $641,458.79[71] incurred in connection with the prosecution of this action. The Ninth Circuit allows recovery of pre-settlement litigation costs in the context of class action settlement.[72] All expenses that are typically billed by attorneys to paying clients in the marketplace are compensable.[73]

As set forth in the declarations of Class Counsel, over the past two-plus years of litigation, against one of the largest plumbing parts suppliers in the world and represented by well-heeled, aggressive defense counsel, Class Counsel incurred costs in excess of $640,000. Because this case challenged the design of a product – the Coupling Nut, a significant component of these expenses – well over half – were incurred for the experts. Moreover, there were significant expenses for ESI management, transcripts and travel as the depositions and inspections occurred in states across the country. The expenses of Class Counsel are broken down in each firm's declaration.[74] Without these expenditures, there would be no Settlement.

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[71] Lead Counsel will provide a supplemental declaration prior to the July 16, 2014, hearing to include the expenses incurred by Class Counsel after April 30, 2014. This amount, however, will not total more than $650,000, which is the number for expenses included in the Notice to the Class.

[72] *See Staton*, 327 F.3d at 974; *see also* Alba Conte & Herbert Newberg, 4 Newberg on Class Actions, *Class Member Obligations for Litigation Fees and Expenses* (4th ed. 2002), § 14:2 at 510-11; *see also In re Businessland Sec. Litig., No*. 90-20476, 1991 U.S. Dist. LEXIS 8962, at *6-7 (N.D. Cal. June 14, 1991).

[73] *Omnivision*, 559 F. Supp. 2d at 1048 ("[A]ttorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.") (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)).

[74] *See* Exs. A-E, attached to Paris Decl.

Each of these costs was necessarily and reasonably incurred to bring this case to a successful conclusion, and Class Counsel advanced every dollar without any assurance that they would be recouped.

VII. THE SERVICE AWARDS REQUESTED FOR THE CLASS REPRESENTATIVES ARE REASONABLE

Class Counsel respectfully request that the Court approve service awards of $7,500 to each of the Class Representatives who were deposed and had their homes inspected; and $5,000 to the Class Representatives who were deposed, but did not have their homes inspected.[75] The requested Service Awards will not exceed $32,500 in total to compensate the Class Representatives for their effort, service, time, and expenses.[76] "Incentive awards are fairly typical in class action cases."[77] In the Ninth Circuit, service, or "incentive," awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their

[75] The requested Service Awards in this case are reflective of the effort expended by each Plaintiff and consistent with recent incentive awards in similar cases. *See In Re: Zurn Pex Plumbing Prods. Liab. Litig*., No. 08-md-1958, 2013 U.S. Dist. LEXIS 27155 (D. Minn. Feb. 27, 2013)(finding that service awards of $7,500 for class representatives in plumbing product defect litigation who sat for deposition and had their homes inspected by the defendant and $5,000 for those who sat for deposition reasonable). Additionally, the request here is unlike the scenario presented in *Radcliffe v. Experian Info. Solutions, Inc*., 715 F.3d 1157 (9th Cir. 2013). Here, Plaintiffs' support for the Settlement is not conditioned on the receipt of any award, and the requested amount of the award does not "significantly exceed" what the absent Class Member can expect to obtain from the $23 million common fund for property damage claims.

[76] The amounts requested here are comparable to amounts awarded in other cases, and presumptively reasonable in the Northern District of California. *See Hopson v. Hanesbrands, Inc*., No. CV-08-0844, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig*., 263 F.R.D. 226, 245 (E.D. Pa. 2009) (approving incentive awards of $10,500); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 463 (9th Cir. 2000) (approving incentive award of $5,000); *In re Ins. Brokerage Antitrust Litig*., No. 04-5184, 2007 WL 1652303, at *11 (D.N.J. June 5, 2007) (approving incentive award of $10,000); *Cicero v. DirecTV, Inc*., No. 07-1182, 2010 U.S. Dist. LEXIS 86920, at *19-20 (C.D. Cal. July 27, 2010) (approving $7,500 and $5,000 time and expense awards "for their efforts on behalf of the class"); *In re McKesson HBOC, Inc. ERISA Litig*., 391 F. Supp. 2d 844, 851 (N.D. Cal. 2005) (approving $5,000 awards for two named plaintiffs "for their roles in prosecuting the Action on behalf of the Settlement Class"); *see also Fears v. Wilhelmina Model Agency, Inc*., 02 Civ. 4911 (HB), 2005 U.S. Dist. LEXIS 7961, *9-*10 (S.D.N.Y. 2005) (approving time and expense reimbursements of $25,000 and $15,000; noting cases approving awards as low as $336 and as high as $303,000 with most awards being in the $10,000 to $50,000 range).

[77] *Rodriquez v. West Publ'g Corp*., 563 F.3d 948, 958 (9th Cir. 2009).

1 willingness to act as a private attorney general."[78] A court has discretion to approve service
2 awards based on, among other things, the amount of time and effort spent, the duration of the
3 litigation, and the personal benefit (or lack thereof) as a result of the litigation.[79]
4 Here, the requested amounts are based on time that the Class Representatives expended
5 assisting counsel with the prosecution of Class claims against Watts, including gathering
6 documents, assisting counsel with their factual investigation, appearing for deposition, opening
7 the bathrooms of their homes to defense counsel and their experts for inspection, facilitating the
8 exchange of information with their insurance carrier, reviewing the settlement to ensure it was
9 reasonable, and devoting their time to this action for the benefit of the Class. [80]
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26 [78] *Id*. at 958-59.
27 [79] *See Van Kraken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).
28 [80] *See* Ex. I to Paris Decl. (Compendium of five Class Representative Declarations)

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VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court award Class counsel $5.75 million in attorneys' fees and up to $650,000 (presently $641,458.79) in reimbursement of litigation expenses. Additionally, the Court should award the proposed compensation to each Class representative to reward them for their time and effort in this successful action. These requests are reasonable and appropriate.

Dated: May 30, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on May 30, 2014.

/s/ Simon B. Paris
Simon B. Paris