

1 ERIC KAFKA (*pro hac vice*)  
2 **COHEN MILSTEIN**  
3 **SELLERS & TOLL PLLC**  
4 88 Pine Street, 14th Floor  
5 New York, NY 10005  
6 Telephone: (212) 838-7797  
7 Facsimile: (212) 838-7745  
8 ekafka@cohenmilstein.com

THEODORE LEOPOLD (*pro hac vice*)  
**COHEN MILSTEIN**  
**SELLERS & TOLL PLLC**  
11780 U.S. Highway One, Suite N500  
Palm Beach Gardens, FL 33408  
Telephone: (561) 515-1400  
Facsimile: (561) 515-1401  
tleopold@cohenmilstein.com

6 GEOFFREY GRABER (SBN 211547)  
7 BRIAN JOHNSON (*pro hac vice*)  
8 **COHEN MILSTEIN**  
9 **SELLERS & TOLL PLLC**  
10 1100 New York Ave. NW, Fifth Floor  
11 Washington, DC 20005  
12 Telephone: (202) 408-4600  
13 Facsimile: (202) 408-4699  
14 ggraber@cohenmilstein.com  
15 bejohnson@cohenmilstein.com

16 *Counsel for Plaintiffs and Classes*

17 **UNITED STATES DISTRICT COURT FOR THE**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 STEVEN ROBERT PRESCOTT, DONOVAN  
21 MARSHALL, MARIA CHRISTINE  
22 ANELLO, DARLENE KITTREDGE,  
23 TREAHANNA CLEMMONS, and SUSAN  
24 ELIZABETH GRACIALE,  
25 individually and on behalf of others similarly  
26 situated,

27 Plaintiffs,

28 v.

RECKITT BENCKISER LLC,

Defendant.

Case No.: 5:20-cv-02101-BLF

**PLAINTIFFS' AMENDED MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR AWARD OF  
ATTORNEYS' FEES, LITIGATION  
COSTS, AND SERVICE AWARDS**

Date: March 28, 2024

Time: 9:00 AM

Judge: Hon. Beth L. Freeman

**NOTICE OF MOTION AND MOTION**

1  
2 *Plaintiffs have re-filed this Amended Motion for Final Approval and the Amended*  
3 *Declaration of Eric Kafka pursuant to the Court’s order dated February 29, 2024 (ECF No.*  
4 *195) and the March 11, 2024 letter from defense counsel (ECF No. 196). Plaintiffs have*  
5 *removed the material at issue in Reckitt’s Administrative Motion to Seal (ECF No. 193) but*  
6 *have not otherwise modified the Motion for Final Approval or Declaration of Eric Kafka.*

7 PLEASE TAKE NOTICE THAT on March 28, 2024, at 9:00 a.m., or as soon thereafter as  
8 this matter may be heard, Plaintiffs will appear through counsel before the Honorable Beth Labson  
9 Freeman, Courtroom 3, 5th Floor of the United States District Court for the Northern District of  
10 California, located at 280 South 1st Street, San Jose, CA 95113.

11 Plaintiffs do hereby move the Court for an order certifying the settlement class, granting  
12 final approval of the proposed class action settlement, authorizing the settlement administrator to  
13 administer the settlement benefits to members of the class, and awarding attorneys’ fees in the  
14 amount of \$982,500.00, reimbursement of \$369,499.27 in litigation costs, and service awards  
15 totaling \$60,000.00 to the six named Plaintiffs (\$10,000.00 for each named Plaintiff).

16 This motion is based on the notice of motion and motion for final approval of class  
17 settlement and for an award of attorneys’ fees, costs, and service awards, the following  
18 memorandum of points and authorities, the attached declarations and exhibits, and any other  
19 matters in the record or that properly come before the Court.

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**INTRODUCTION**..... 1

**FACTUAL BACKGROUND**..... 2

I. HISTORY OF THE LITIGATION ..... 2

II. NOTICE PLAN AND REACTION OF THE CLASS ..... 4

III. OVERVIEW OF THE SETTLEMENT..... 5

    A. The Proposed Settlement Classes ..... 5

    B. Benefits to the Settlement Classes ..... 6

    C. The Scope of Class Members’ Release of Claims ..... 6

IV. ATTORNEYS’ FEES, COST REIMBURSEMENTS, AND SERVICE AWARDS..... 7

**ARGUMENT**..... 7

I. THE COURT SHOULD GRANT FINAL SETTLEMENT APPROVAL..... 7

    A. Plaintiffs and their Counsel have Adequately Represented the Classes. .... 8

    B. The Parties Negotiated the Proposed Settlement at Arm’s Length..... 8

    C. The Quality of Relief to the Classes Weighs in Favor of Approval. .... 9

        i. The Settlement Provides Strong Relief for the Classes. .... 10

        ii. Continued Litigation Would Entail Substantial Cost, Risk, and Delay. .... 11

        iii. The Settlement Provides for an Effective Distribution of Proceeds to the Classes..... 12

        iv. The Proposed Award of Attorneys’ Fees Also Supports Approval. .... 12

        v. The Parties Have No Other Agreements Pertaining to the Settlement. .... 12

    D. The Settlement Treats Class Members Equitably Relative to Each Other. .... 12

    E. The Classes Received Best Notice Practicable. .... 13

    F. Reaction of the Classes Also Supports Approval of the Settlement. .... 14

II. CERTIFICATION OF THE SETTLEMENT CLASSES IS WARRANTED ..... 14

III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE GRANTED ..... 15

    A. Fee Request is Supported by Strong Result Achieved for the Classes. .... 16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B. Class Counsel Overcame Significant Risk to Deliver a Strong Result for the Classes..... 17

C. Class Counsel’s Skill in Litigating on Behalf of the Classes Further Supports the Requested Fee Award. .... 17

D. Class Counsel Undertook the Litigation on a Purely Contingent Basis..... 18

E. Attorneys’ Fee Awards of 30% to 50% of the Fund are Frequently Awarded for Common Funds of \$10 Million or Less..... 18

F. Reaction of Classes to the Settlement Supports Counsel’s Requested Fee. .... 19

G. A Lodestar Cross-Check Confirms the Reasonableness of Counsel’s Requested Fee. .... 19

    i. Class Counsel Reasonably Devoted Over Four Thousand Hours to Prosecuting This Litigation Over the Past Three Years..... 20

    ii. Class Counsel’s Rates Fall Within the Range Prevailing in the Community and Have Been Approved By Courts..... 21

    iii. Class Counsel’s Negative Multiplier is Another Factor Supporting Approval of the Fee Request..... 22

IV. CLASS COUNSEL’S REQUEST FOR REIMBURSEMENT OF COSTS IS REASONABLE AND SHOULD BE GRANTED..... 22

V. REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS OF \$10,000 ARE APPROPRIATE AND SHOULD BE GRANTED ..... 23

VI. COURT SHOULD APPROVE THE WORLD WILDLIFE FUND AS THE *CY PRES* RECIPIENT..... 25

**CONCLUSION** ..... 25

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Abadilla v. Precigen, Inc.*,  
2023 WL 7305053 (N.D. Cal. Nov. 6, 2023) (Freeman, J.) ..... *passim*

*Altamirano v. Shaw Indus., Inc.*,  
2015 WL 4512372 (N.D. Cal. July 24, 2015)..... 13

*Alvarez v. Farmers Ins. Exch.*,  
2017 WL 2214585 (N.D. Cal. Jan. 18, 2017)..... 19

*In re Anthem Inc. Data Breach Litig.*,  
327 F.R.D. 299 (N.D. Cal. 2018)..... 9

*In re Anthem, Inc. Data Breach Litig.*,  
2018 WL 3960068 (N.D. Cal. Aug. 17, 2018) ..... 21

*In re Bluetooth Headset Prods. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2011) ..... 9, 15, 19, 20

*Camacho v. Bridgeport Fin., Inc.*,  
523 F.3d 973 (9th Cir. 2008) ..... 21

*In re Capacitors Antitrust Litig.*,  
No. 14-cv-03264, 2018 WL 4790575 (N.D. Cal. Sept. 21, 2018)..... 23

*In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs. & Prods. Liab. Litig.*,  
2019 WL 536661 (N.D. Cal. Feb. 11, 2019) ..... 10

*Cicero v. DirecTV, Inc.*,  
2010 WL 2991486 (C.D. Cal. Jul.27, 2010)..... 19

*Cosby v. KPMG LLP*,  
2022 WL 4129703 (E.D. Tenn. July 12, 2022) ..... 22

*Graham v. DaimlerChrysler Corp.*,  
34 Cal. 4th 553 (Cal. 2004)..... 18

*Harris v. Vector Mktg. Corp.*,  
2012 WL 381202 (N.D. Cal. Feb. 6, 2012) ..... 13

*Hayes v. MagnaChip Semiconductor Corp.*,  
2016 WL 6902856 (N.D. Cal. Nov. 21, 2016) ..... 10

1 *Hesse v. Sprint Corp.*,  
 2 598 F.3d 581 (9th Cir. 2010) .....6

3 *Kulik v. NMCI Med. Clinic Inc.*,  
 4 2023 WL 2503539 (N.D. Cal. Mar. 13, 2023) (Freeman, J.) ..... 14, 24

5 *In re Lenovo Adware Litig.*,  
 6 2019 WL 1791420 .....23

7 *Linney v. Cellular Alaska P’ship*,  
 8 151 F.3d 1234 (9th Cir. 1998) .....11

9 *Mauss v. NuVasive, Inc.*,  
 10 2018 WL 6421623 (S.D. Cal. Dec. 6, 2018).....17

11 *Messineo v. Ocwen Loan Servicing, LLC*,  
 12 2017 WL 733219 (N.D. Cal. Feb. 24, 2017) .....10

13 *In re Nexus 6P Prods. Liab. Litig.*,  
 14 2019 WL 6622842 (N.D. Cal. Nov. 12, 2019) (Freeman, J.) .....16, 17, 22

15 *Nitsch v. DreamWorks Animation SKG, Inc.*,  
 16 No. 14-cv-04062, 2017 WL 2423161 (N.D. Cal. June 5, 2017).....22

17 *PLCM Grp. v. Drexler*,  
 18 22 Cal. 4th 1084 (2000) .....21

19 *Pollard v. Remington Arms Co., LLC*,  
 20 320 F.R.D. 198 (W.D. Mo. 2017), aff’d, 896 F.3d 900 (8th Cir. 2018)..... 14

21 *Quiruz v. Specialty Commodities, Inc.*,  
 22 2020 WL 6562334 (N.D. Cal. Nov. 9, 2020) (Freeman, J.) .....18, 24

23 *Rivas v. BG Retail, LLC*,  
 24 2020 WL 264401 (N.D. Cal. Jan. 16, 2020) (Freeman, J.)..... *passim*

25 *Rodriguez v. W. Publ’g Corp.*,  
 26 563 F.3d 948 (9th Cir. 2009) .....10, 24

27 *Sadowska v. Volkswagen Grp. of Am., Inc.*,  
 28 2013 WL 9600948 (C.D. Cal. Sept. 25, 2013) .....12, 22

*Steiner v. Am. Broad. Co.*,  
 248 F. App’x 780 (9th Cir. 2007) .....12, 22

*Taylor v. Shippers Transp. Express, Inc.*,  
 2015 WL 12658458 (C.D. Cal. May 14, 2015) .....24

1 *Thieriot v. Celtic Ins. Co.*,  
 2 2011 WL 1522385 (N.D. Cal. Apr. 21, 2011) .....17, 19

3 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*,  
 4 895 F.3d 597 (9th Cir. 2018) .....9

5 *Wannemacher v. Carrington Mortg. Servs.*,  
 6 2014 WL 12586117 (C.D. Cal. Dec. 22, 2014) .....9

7 *Weiner v. Tivity Health, Inc.*,  
 8 No. 17-cv-1469, ECF No. 177 (M.D. Tenn. Oct. 7, 2021).....22

9 *In re Wells Fargo & Co. Sec. Litig.*,  
 10 Case No. 1:20-cv-04494-JLR-SN (S.D.N.Y. Sept. 8, 2023) .....22

11 *Wong v. Arlo Techs., Inc.*,  
 12 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021) (Freeman, J.).....22

13 *In re Zoom Video Commc’ns, Inc. Privacy Litig.*,  
 14 2022 WL 1593389 (N.D. Cal. April 21, 2022).....14

15 **Other Authorities**

16 Fed. R. Civ. P. 23 ..... *passim*

17 William B. Rubenstein, *5 Newberg on Class Actions* (5th ed. 2020).....23

18

19

20

21

22

23

24

25

26

27

28

**INTRODUCTION**

1  
2 The parties first presented this proposed settlement to the Court in September 2023. At the  
3 time, Plaintiffs asked the Court to grant preliminary settlement approval by finding that it would  
4 likely be able to (i) approve the settlement, and (ii) certify a settlement class. The Court made those  
5 findings and directed notice to the settlement class. With that notice having been delivered,  
6 Plaintiffs now formally request that the Court grant final approval of their settlement and Class  
7 Counsel request reimbursement of their litigation expenses, attorneys’ fees, and service awards to  
8 the class representatives.

9 The settlement will fully resolve litigation that stems from Defendant Reckitt Benckiser  
10 LLC’s (“Reckitt”) sale of Woolite Gentle Cycle and Darks laundry detergent with labels bearing  
11 the phrases “Color Renew” and/or “revives colors.” To end the litigation, Reckitt will pay \$3.275  
12 million to create a *non-reversionary* cash fund. This is an exceptionally strong result for the class  
13 given that Plaintiffs’ expert estimated that price premium damages for all three classes would total  
14 \$3.7 million. Furthermore, the reaction of the class to the settlement has been overwhelmingly  
15 positive: no class members objected or requested to be excluded from the settlement and there is  
16 an 8.6% claims rate.

17 Class Counsel also request to be compensated for its effort in achieving this result for the  
18 class. Plaintiffs litigated this case for more than three years, devoting over 4,000 hours to  
19 prosecuting the case, while advancing almost \$370,000 in out-of-pocket litigation costs. Class  
20 Counsel request reimbursement of their out-of-pocket expenses as well as an award of attorneys’  
21 fees of \$982,500.00 (30% of the settlement fund). If granted, Class Counsel will receive a  
22 “negative” multiplier of 39% of its incurred lodestar. Given the strong result delivered to the class  
23 and Class Counsel’s negative multiplier, Class Counsel believe the requested fee fairly  
24 compensates them for their efforts and should therefore be approved. In support of its application,  
25 Class Counsel provide a declaration detailing the work Class Counsel performed over the course  
26 of the litigation.



**FACTUAL BACKGROUND**

**I. HISTORY OF THE LITIGATION**

This case arises from Plaintiffs’ and Class Members’ purchase of Woolite Gentle Cycle or Darks laundry detergent with labels bearing the phrases “Color Renew” and/or “revives colors.” Plaintiffs allege that Reckitt’s color revival representation is false and deceptive because Woolite laundry detergent does not renew or revive color in clothing. *See e.g.*, ECF No. 110-2 at 7:1-20. Plaintiffs allege that Reckitt’s color revival representation caused Plaintiffs and Class Members to pay a price premium for Woolite laundry detergent. *See e.g.*, ECF No. 91 ¶ 5.

Since inception, this case has been fiercely contested. The parties submitted briefing on Reckitt’s motion to dismiss, completed extensive fact discovery, submitted briefing on class certification, completed extensive expert discovery (where eight experts submitted reports and were deposed), and submitted briefing on summary judgment. When the parties agreed to settle the case on March 15, 2023, the case was less than five months away from its August 7, 2023 trial date.

This action was initiated by Plaintiff Steven Prescott on March 26, 2020. ECF No. 1. On May 26, 2020, Defendant filed a motion to dismiss Plaintiff Prescott’s amended complaint. ECF No. 26. On December 3, 2020, the Court granted, in part, and denied, in part, Defendant’s motion to dismiss. ECF No. 70. The Court permitted Prescott to proceed with his claims for (1) violation of California’s Unfair Competition Law (“UCL”), (2) violation of California’s Consumer Legal Remedies Act (“CLRA”), and (3) California Quasi-Contract Claim for Restitution.

In March 2021, Plaintiffs filed a Second Amended Complaint, adding seven additional named plaintiffs and two new states. ECF No. 91. After two of the plaintiffs voluntarily dismissed their claims, the case proceeded with six Class Representatives (Steven Prescott, Donovan Marshall, Christine Anello, Darlene Kittredge, Treahanna Clemmons, and Susan Graciale) on behalf of three proposed state classes: California, New York, and Massachusetts.

The parties engaged in, and completed, fulsome fact discovery. To prepare class members’ claims for certification and trial, Plaintiffs’ counsel reviewed more than 18,000 pages of Reckitt’s

1 documents, deposed four Reckitt employees, served three sets of interrogatories, and obtained  
2 documents through two third-party subpoenas. Declaration of Eric Kafka (“Kafka Decl.”) ¶ 12.  
3 The Class Representatives all sat for lengthy depositions and responded to Reckitt’s requests for  
4 production. *Id.* ¶¶ 27-73. During discovery, the parties engaged in many meet-and-confer  
5 discussions. *Id.* ¶ 12. Through those efforts, they were able to resolve a great number of issues, but  
6 ultimately briefed five discovery disputes before Magistrate Judge Virginia K. DeMarchi. ECF  
7 Nos. 54, 55, 72, 101, and 102.

8 The parties also completed extensive expert discovery. Plaintiffs submitted reports from  
9 three experts: a chemist, an economist, and a marketing expert. Kafka Decl. ¶¶ 12, 20. Plaintiffs  
10 relied on this expert evidence in support of class certification and in opposition to summary  
11 judgment. In response, Reckitt submitted expert reports from two chemists, an economist, and two  
12 marketing experts. *Id.* The parties deposed all eight experts, and Plaintiffs’ expert economist was  
13 deposed twice. *Id.*

14 In November 2021, Plaintiffs moved for class certification on behalf of three statewide  
15 classes for California, New York, and Massachusetts. ECF No. 111. In moving for certification  
16 Plaintiffs marshalled the evidence from the extensive factual record, submitting more than 40  
17 exhibits to the Court. After holding a hearing in July 2022, the Court certified Plaintiffs’ three  
18 proposed classes. ECF No. 143 at 22-23. The Court appointed Steven Prescott, Donovan Marshall,  
19 Treahanna Clemmons, Maria Christine Anello, Darlene Kittredge, and Susan Graciale as class  
20 representatives. *Id.* at 23. The Court also appointed Eric Kafka of Cohen Milstein Sellers & Toll  
21 as class counsel for the Classes. *Id.*

22 On January 13, 2023, Defendant filed a motion for summary judgment and to exclude the  
23 opinions of Plaintiffs’ marketing expert. ECF No. 156. In February 2023, the parties completed  
24 briefing on Defendant’s summary judgment motion.

25 In February and March 2023, as they were preparing for the hearing on Defendant’s motion  
26 for summary judgement, the parties engaged in intensified settlement discussions. Kafka Decl. ¶¶  
27 12, 20. The parties’ efforts built off their prior mediation sessions in July 2021 and March 2022  
28

1 with the Honorable Laurel Beeler. *Id.* On March 15, 2023, the parties reached an agreement in  
2 principle to the material terms of a classwide settlement that fully resolves this litigation. ECF No.  
3 170.

4 The parties then prepared a formal settlement agreement, which involved efforts to finalize  
5 the terms of the agreement, develop a notice and distribution plan, and prepare and finalize the  
6 agreement's exhibits and this motion. Plaintiffs also retained the services of an experienced  
7 settlement administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq") after soliciting  
8 competing bids from three potential administrators. Kafka Decl. ¶ 12. With the help of Epiq, the  
9 Plaintiffs developed a notice and funds-distribution plan, which is incorporated into the settlement  
10 agreement and detailed below.

11 In June 2023, Plaintiffs filed a motion requesting the Court preliminarily approve the  
12 settlement and direct notice of the settlement to the classes. ECF No. 178. On September 14, 2023,  
13 the Court held a hearing on Plaintiffs' motion for preliminary approval. At the hearing, the Court  
14 directed the parties to propose a *cy pres* recipient with Plaintiffs' final approval motion. 9/14/23  
15 Hr'g Tr. at 6:14-24. The Court granted Plaintiffs' motion for preliminary approval and directed  
16 Epiq to commence disseminating notice to the class by October 5, 2023. ECF No. 185.

## 17 II. NOTICE PLAN AND REACTION OF THE CLASS

18 On October 5, 2023, Epiq commenced disseminating notice to the Class. Declaration of  
19 Cameron Azari ("Azari Decl.") ¶ 16. Epiq has completed disseminating notice. Azari Decl. ¶ 27.  
20 Using a digital/internet notice plan, Epiq reached approximately 71% of the Settlement Class. *Id.*  
21 ¶ 8. That reach was further enhanced by internet sponsored search listings, an informational  
22 release, a Settlement Website, and newspaper notice, which are not included in the reach  
23 calculation. *Id.* As part of its claims administration duties, Epiq also identified and removed  
24 fraudulent claims. Declaration of Julie Redell ("Redell Decl.") ¶¶ 6-7. For example, Epiq received  
25 dozens, hundreds, or sometimes thousands of claim forms from the same internet location, email  
26 address, and/or mailing address. *Id.* ¶ 7.

1 The response from the Settlement Class to the Settlement has been excellent. 129,003 Class  
 2 Members have submitted valid claims for 324,927 bottles of Woolite. Redell Decl. ¶ 8. This  
 3 represents approximately 8.6% of the Woolite bottles sold to Class Members. Kafka Decl. ¶ 76.  
 4 Based on the claims rate, class members are projected to receive \$4.78 per Woolite bottle validly  
 5 claimed (in the first distribution). *Id.* ¶ 77.<sup>1</sup> Notably, no Class Members have requested to be  
 6 excluded from the Settlement, and no Class Members have objected to the Settlement. Azari Decl.  
 7 ¶ 26.

8 By February 16, Epiq will inform the Court of the amount they request in payment from  
 9 the settlement fund for their services.

### 10 III. OVERVIEW OF THE SETTLEMENT

#### 11 A. The Proposed Settlement Classes

12 The settlement contemplates certification of the following settlement classes:

- 13 (a) California Class: “All residents of California who purchased Woolite laundry detergent  
 14 with a label bearing the phrases “Color Renew” and/or “revives colors” from February  
 15 1, 2017 to May 1, 2023.”
- 16 (b) New York Class: “All residents of New York who purchased Woolite laundry detergent  
 17 with a label bearing the phrases “Color Renew” and/or “revives colors” from February  
 18 22, 2018 to May 1, 2023.”
- 19 (c) Massachusetts Class: “All residents of Massachusetts who purchased Woolite laundry  
 20 detergent with a label bearing the phrases “Color Renew” and/or “revives colors” from  
 21 February 22, 2017 to May 1, 2023.”<sup>2</sup>

---

23 <sup>1</sup> The per-bottle payment may be revised in the coming weeks. Kafka Decl. ¶ 77. On  
 24 February 16, Plaintiffs will inform the Court of the amount that class members will receive per  
 25 Woolite bottle validly claimed in the first distribution. *Id.*

26 <sup>2</sup> Excluded from the Settlement Class are: (a) Reckitt, any entity in which Reckitt has a  
 27 controlling interest, Reckitt’s officers, directors, legal representatives, successors, subsidiaries and  
 28 assigns; (b) any judge, justice or judicial officer presiding over this action or settlement  
 conferences and the members of their immediate families and staff; (c) any person who timely and

1 Kafka Decl., Ex. 2 (“Settlement Agreement”), Section II.V.

2 **B. Benefits to the Settlement Classes**

3 The parties’ proposed settlement will deliver a settlement fund in the amount of  
4 \$3,275,000.00. *Id.*, Section IV.A. The settlement fund is **non-reversionary**. *Id.*, Section IV. Thus,  
5 any residual or unclaimed money in the settlement fund will *not* be returned to Reckitt. *Id.*, Section  
6 IX.L. To distribute that fund among the members of the class, the parties have devised a plan of  
7 allocation that will pay class members on a *pro rata* basis based on the number of eligible Woolite  
8 laundry detergent bottles they purchased. *Id.*, Section IX.J. The settlement fund will also cover all  
9 costs associated with the settlement administration and class notice, attorneys’ fees and litigation-  
10 cost reimbursements, and plaintiff service awards. *Id.*, Section IV.A.1.

11 **C. The Scope of Class Members’ Release of Claims**

12 In exchange for the benefits provided under the settlement, the Plaintiffs and settlement  
13 class members will provide a release of claims against Reckitt and its parents, subsidiaries,  
14 predecessors, successors, suppliers, retailers, and customers. Settlement, Section II.S.

15 The release is limited to claims “relating to the labeling, advertising and marketing of the  
16 Product and allegations that the Product caused fading or that otherwise relates in any way to  
17 Reckitt’s claims that Woolite laundry detergent renews or revives color in clothing, brings the  
18 color back to clothing, used a Color Renew logo, and/or referred to ‘Color Renew.’” Settlement  
19 Agreement, Section II.R.

20 The parties do not seek to release any claims other than those that were (or could have  
21 been) pleaded based on the facts alleged by Plaintiffs during the litigation. Such a release is  
22 appropriate, and typical. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).

23  
24  
25  
26 \_\_\_\_\_  
27 properly excludes himself or herself from the Settlement Class in accordance with Section VII(B)  
28 of this Agreement or as approved by the Court. Settlement, Section II.V.

**IV. ATTORNEYS' FEES, COST REIMBURSEMENTS, AND SERVICE AWARDS**

Class Counsel have litigated the case for over three years and have advanced hundreds of thousands of dollars in litigation expenses, but have yet to be compensated for their efforts. As detailed below, Class Counsel request an attorneys' fees award of \$ 982,500.00 (which is 30% of the fund), reimbursement of \$ 369,499.27 in litigation costs, and service awards totaling \$60,000.00 to the six named Plaintiffs (\$10,000.00 for each named Plaintiff).

**ARGUMENT**

**I. THE COURT SHOULD GRANT FINAL SETTLEMENT APPROVAL**

Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or settlement of a class action. *See* Fed. R. Civ. P. 23(e). A class action settlement should be approved if the court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Rule 23(e)(2), as amended on December 1, 2018, enumerates the factors that the Court should consider when determining whether a proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Rule requires the Court to assess whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Additionally, "[a]dequate notice is critical to court approval of a class settlement under Rule 23(e)." *Rivas v. BG Retail, LLC*, 2020 WL 264401, at \*4 (N.D. Cal. Jan. 16, 2020) (Freeman, J.) (internal citations omitted) As discussed below, the settlement is fair, reasonable, and adequate, and the Rule 23(e)(2) factors weigh in favor of approving it.

1           **A. Plaintiffs and their Counsel have Adequately Represented the Classes.**

2           Under Rule 23(e)(2)(A), the first factor to be considered is the adequacy of representation  
3 by the class representatives and attorneys. As an initial matter, in its order granting class  
4 certification, the Court already found that the class representatives and class counsel were  
5 adequate. ECF No. 143 at 14:24-15:5. The Court appointed the six named Plaintiffs as class  
6 representatives and appointed Eric Kafka of Cohen Milstein Sellers & Toll PLLC as class counsel.  
7 ECF No. 143 at 23.

8           The class representatives continue to be adequate representatives because they have  
9 diligently represented the class. The class representatives all responded to discovery requests,  
10 produced documents, sat for lengthy depositions, and participated in the mediation process. Kafka  
11 Decl. ¶¶ 27-73. Throughout this case, they have remained in contact with Plaintiffs' counsel,  
12 stayed apprised of the litigation, and have acted with the interests of the class in mind. *Id.*

13           Plaintiffs' counsel has also continued to adequately represent the class. Plaintiffs' counsel  
14 vigorously prosecuted this case, briefing successful motions to defeat Reckitt's motion to dismiss  
15 and to certify a litigation class. *Id.* ¶ 12. Plaintiffs' counsel also briefed Reckitt's motion for  
16 summary judgment (which the Court never ruled upon). *Id.* Plaintiffs' counsel completed fact and  
17 expert discovery, conducting 20 depositions, reviewing more than 18,000 pages of documents, and  
18 submitting three expert reports. *Id.* As part of these efforts, Class Counsel have advanced \$  
19 369,499.27 in litigation expenses on behalf of the class, with no assurance that those expenses  
20 would be reimbursed. *Id.* ¶ 21.

21           Finally, Class Counsel have successfully litigated many prior class actions involving  
22 consumer protection claims, successfully resolving many of those in this district, and have brought  
23 that experience and knowledge to bear on behalf of the class. *Id.* ¶ 14.

24           **B. The Parties Negotiated the Proposed Settlement at Arm's Length.**

25           The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was  
26 negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B). As with the preceding factor, this can be  
27 "described as [a] 'procedural' concern[], looking to the conduct of the litigation and of the  
28



1 negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e)(2)(A) and (B) advisory  
2 committee’s note (2018).

3 There are multiple indicia here of the arm’s length nature of the negotiations. First, the  
4 parties did not settle the case until they had completed fact and expert discovery, the Court had  
5 denied Reckitt’s motion to dismiss and certified a class, and the parties were less than five months  
6 from trial. This is indicia of arm’s length negotiations. *See In re Anthem Inc. Data Breach Litig.*,  
7 327 F.R.D. 299, 320 (N.D. Cal. 2018) (finding no signs of collusion where parties reached a  
8 settlement “after all briefing on class certification and *Daubert* motions was complete” and the  
9 “parties had already completed class-certification discovery, fact discovery, and expert  
10 discovery”); *see also Wannemacher v. Carrington Mortg. Servs.*, 2014 WL 12586117, at \*8 (C.D.  
11 Cal. Dec. 22, 2014) (finding no signs of collusion where “significant ... discovery [was]  
12 conducted”; “plaintiffs had already drafted a class certification brief”; and before “exploring  
13 settlement, the parties litigated the case for a year”).

14 Second, the Settlement provides for a non-reversionary fund where unclaimed portions will  
15 never go back to Reckitt. The Ninth Circuit has warned that a “reversion clause can be a tipoff that  
16 class counsel have allowed pursuit of their own self-interests and that of certain class members to  
17 infect the negotiations.” *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*,  
18 895 F.3d 597, 611 (9th Cir. 2018) (internal citations omitted). Here, the Court can be particularly  
19 confident of the arm’s length nature of the parties’ settlement negotiations because the parties  
20 agreed to a non-reversionary fund.

### 21 C. The Quality of Relief to the Classes Weighs in Favor of Approval.

22 The third factor to be considered is whether “the relief provided for the class is adequate,  
23 taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any  
24 proposed method of distributing relief to the class, including the method of processing class-  
25 member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of  
26 payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P.  
27 23(e)(2)(C). Under this factor, the relief “to class members is a central concern.” Fed. R. Civ. P.  
28



1 23(e)(2)(C) and (D) advisory committee’s note (2018); *In re Volkswagen*, 895 F.3d at 611 (the  
2 “factors and warning signs” identified in *Bluetooth* “are just guideposts”; the focus is fairness).

3 **i. The Settlement Provides Strong Relief for the Classes.**

4 The relief to be provided to the settlement class is exceptionally strong. The \$3,275,000  
5 settlement fund is a considerable amount given that Plaintiffs’ expert estimated that price premium  
6 damages for all three classes would total \$3.7 million. Kafka Decl. ¶ 9.

7  
8 Plaintiffs have no reservation in recommending that the Court approve this Settlement on  
9 behalf of the class. In other class cases, courts have recognized that a recovery of 20-40% of what  
10 could be potentially recovered at trial easily justifies compromising the class’s claims through  
11 settlement rather than bearing additional risk and delay through continued litigation. *See, e.g.,*  
12 *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, at \*5 (N.D. Cal. Feb. 24, 2017) (citing  
13 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)) (“it is well-settled law that  
14 a proposed settlement may be acceptable even though it amounts to only a fraction of the potential  
15 recovery that might be available to the class members at trial,” and noting that this District has  
16 approved settlements valued at 14% and 13.6% of the maximum recovery); *Rodriguez v. W. Publ’g*  
17 *Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (upholding class settlement valued at 10 to 30% of total  
18 damages); *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2019  
19 WL 536661, at \*9 (N.D. Cal. Feb. 11, 2019); *Hayes v. MagnaChip Semiconductor Corp.*, 2016  
20 WL 6902856, at \*2 (N.D. Cal. Nov. 21, 2016) (granting final approval of “Settlement Amount  
21 [that] represents 15 percent of Plaintiffs’ likely recovery at trial if they were to prevail”).

22 The relief per Woolite bottle for class members who submit valid claims is also  
23 exceptionally strong. If this motion is approved, class members are projected to receive \$4.78 per  
24 Woolite bottle validly claimed (in the first distribution). Kafka Decl. ¶ 77. For class members who  
25 submit valid claims, their relief will exceed their price premium damages. *Id.* ¶ 78. This is an  
26 exceptionally strong result that merits approval.



1                   **iii. The Settlement Provides for an Effective Distribution of Proceeds to**  
 2                   **the Classes.**

3                   The settlement contains an effective distribution process. The parties have devised a plan  
 4 of allocation that will pay class members on a *pro rata* basis based on the number of eligible  
 5 Woolite laundry detergent bottles they purchased. Settlement Agreement, Section IX.J.

6                   **iv. The Proposed Award of Attorneys' Fees Also Supports Approval.**

7                   The proposed award of attorneys' fees also supports approval. Class Counsel seeks an  
 8 attorneys' fees award of \$ 982,500.00, which is 30% of the settlement fund. Meanwhile, Class  
 9 Counsel has incurred \$2,515,617.50 in lodestar litigating this action for 4,035 hours. Thus, if Class  
 10 Counsel's proposed attorneys' fees are awarded by the Court, Class Counsel will have a "negative"  
 11 multiplier, being compensated for only 39% of their lodestar in this action. Plaintiffs' fee request  
 12 is modest given the strong recovery for the classes and the amount of work done by Plaintiffs'  
 13 counsel. *See Sadowska v. Volkswagen Grp. of Am., Inc.*, 2013 WL 9600948, at \*9 (C.D. Cal. Sept.  
 14 25, 2013) ("Multipliers can range from 2 to 4 or even higher."); *Steiner v. Am. Broad. Co.*, 248 F.  
 15 App'x 780, 783 (9th Cir. 2007) (approving 6.85 multiplier and stating that "still falls well within  
 16 the range of multipliers that courts have allowed").

17                   **v. The Parties Have No Other Agreements Pertaining to the Settlement.**

18                   Courts also must evaluate any agreement made in connection with the proposed settlement.  
 19 See Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the settlement agreement before the Court is the  
 20 only extant agreement. Kafka Decl. ¶ 7.

21                   **D. The Settlement Treats Class Members Equitably Relative to Each**  
 22                   **Other.**

23                   The final Rule 23(e)(2) factor turns on whether the proposed settlement "treats class  
 24 members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could  
 25 include whether the apportionment of relief among class members takes appropriate account of  
 26 differences among their claims, and whether the scope of the release may affect class members in  
 27

1 different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(D) advisory  
2 committee’s note (2018).

3 Here, the settlement treats all class members the same, paying all class members on a *pro*  
4 *rata* basis based on the number of eligible Woolite laundry detergent bottles they purchased *See,*  
5 *e.g., Altamirano v. Shaw Indus., Inc.*, 2015 WL 4512372, at \*8 (N.D. Cal. July 24, 2015) (finding  
6 no preferential treatment because the settlement “compensates class members in a manner  
7 generally proportionate to the harm they suffered on account of [the] alleged misconduct”).

8 Though counsel is requesting additional payment for the class representatives in the form  
9 of service awards, those extra payments are to recognize the work they performed and the risks  
10 they incurred on behalf of the class. “It is well-established in this circuit that named plaintiffs in a  
11 class action are eligible for reasonable incentive payments, also known as service awards. In fact,  
12 the Ninth Circuit recently noted that incentive payments to named plaintiffs have become ‘fairly  
13 typical’ in class actions.” *Harris v. Vector Mktg. Corp.*, 2012 WL 381202, at \*6 (N.D. Cal. Feb.  
14 6, 2012). As is detailed below, the proposed service awards here are commensurate with work  
15 conducted by the class represent in this case. Kafka Decl. ¶ 26.

16 **E. The Classes Received Best Notice Practicable.**

17 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).”  
18 *Rivas*, 2020 WL 264401, at \*4 (internal citations omitted).

19 Here, Epiq provided the best notice practicable. Azari Decl. ¶ 8. Epiq provide notice  
20 through a digital/internet notice program. *Id.* Through the digital/ internet notice program, Epiq  
21 reached approximately 71% of the settlement class. *Id.* That reach was further enhanced by internet  
22 sponsored search listings, an informational release, a Settlement Website, and newspaper notice,  
23 which are not included in the reach calculation. *Id.* Because there is no customer contact  
24 information for purchasers of Woolite laundry detergent, direct notice could not be provided to the  
25 class. Based on Epiq’s experience, the notice plan provided the best notice practicable under the  
26 circumstances of this case. *Id.*

1 The notices also complied with Rule 23(c)(2)(B) in that they “clearly and concisely state  
2 in plain, easily understood language” the nature of the action; the class definition; the class claims,  
3 issues, or defenses; that the class member may appear through counsel; that the court will exclude  
4 from the class any member who requests exclusion; the time and manner for requesting exclusion;  
5 and the binding effect of a class judgment on class members. *See* Kafka Decl., Exs. 2-C & 2-D.  
6 The notice is also consistent with the sample provided by the Federal Judicial Center.

7 **F. Reaction of the Classes Also Supports Approval of the Settlement.**

8 In deciding whether to grant final approval of a settlement, courts also consider the  
9 “reaction of the class members to the proposed settlement.” *Kulik v. NMCI Med. Clinic Inc.*, 2023  
10 WL 2503539, at \*7 (N.D. Cal. Mar. 13, 2023) (Freeman, J.) (internal citations omitted).

11 The overwhelmingly positive reaction of class members also supports final approval. No  
12 class members have requested to be excluded or objected to the settlement. Azari Decl. ¶ 26. The  
13 8.6% claims rate is strong, particularly because no e-mail addresses or direct contact information  
14 were available for class members. Courts have repeatedly accepted settlements with 1% claims  
15 rates. *See e.g., In re Zoom Video Commc’ns, Inc. Privacy Litig.*, 2022 WL 1593389, at \*8 (N.D.  
16 Cal. April 21, 2022) (finding a one percent claims rate was reasonable, particularly because “the  
17 settlement is also non-reversionary, mitigating any risk that the one percent claim participation  
18 rate was intentionally engineered.”); *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 214-  
19 215 (W.D. Mo. 2017), *aff’d*, 896 F.3d 900 (8th Cir. 2018) (collecting cases that approved  
20 settlements with less than one percent claims rates).

21 \*\*\*\*\*

22 For all these reasons, the proposed settlement merits approval.

23 **II. CERTIFICATION OF THE SETTLEMENT CLASSES IS WARRANTED**

24 In July 2022, the Court certified Plaintiffs’ three proposed statewide classes for California,  
25 New York, and Massachusetts. ECF No. 143 at 22-23. As part of the Settlement, the Parties have  
26

1 agreed to three statewide settlement classes that are functionally identical to the classes certified  
2 by the Court in July 2022. *See* Settlement Agreement, Section II.V.

3       Where, as here, a class has already been certified, the Court ordinarily need only consider  
4 whether the proposed settlement “calls for any change in the class certified, or of the claims,  
5 defenses, or issues regarding which certification was granted.” *See* Committee Notes, Subdivision  
6 23(e)(1). Here, the class membership of the certified class and settlement class is identical.  
7 However, there is a minor wording difference between the settlement class definition and certified  
8 class definition. The class period end date for the certified class is “the present,” while the class  
9 period end date for the settlement class is May 1, 2023. The parties believe that using a specific  
10 date (May 1, 2023) rather than “to the present” will be more understandable to potential class  
11 members. In any event, the membership of the certified class and settlement class is co-extensive:  
12 Reckitt did not sell any bottles of Woolite with labels bearing the phrases “color renew” or “revives  
13 colors” after June 2021. Kafka Decl. ¶ 10. Thus, the number of class members is the same  
14 regardless of whether the class period end date is May 1, 2023 or “the present.”

15       Because the settlement classes are functionally identical to the litigation classes certified  
16 by the Court in July 2022, the settlement classes should be certified under Rule 23(a) and (b)(3).

17       **III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND**  
18       **SHOULD BE GRANTED**

19       Class Counsel requests a fee award of \$982,500.00, which is 30% of the non-reversionary  
20 common fund. “[I]n a certified class action, the court may award reasonable attorney’s fees and  
21 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).  
22 Where a settlement produces a common fund for the benefit of the entire class, courts have  
23 discretion to employ either the lodestar method or the percentage-of-recovery method. *In re*  
24 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

25       Under the percentage-of-recovery method, the attorneys are awarded fees in the amount of  
26 a percentage of the common fund recovered for the class. “Courts applying this method ‘typically  
27 calculate 25% of the fund as the benchmark for a reasonable fee award, providing adequate  
28

1 explanation in the record of any special circumstances justifying a departure.” *Abadilla v.*  
2 *Precigen, Inc.*, 2023 WL 7305053, at \*14 (N.D. Cal. Nov. 6, 2023) (Freeman, J.) (quoting *In re*  
3 *Bluetooth*, 654 F.3d at 941).

4 The 25% benchmark can be adjusted based on relevant factors. The “[r]elevant factors to  
5 a determination of the percentage ultimately awarded include (1) the results achieved; (2) the risk  
6 of litigation; (3) the skill required and quality of work; (4) the contingent nature of the fee and the  
7 financial burden carried by the plaintiffs; and (5) awards made in similar cases.” *Abadilla*, 2023  
8 WL 7305053, at \*14 (internal citations omitted).

9 As discussed below, Class Counsel’s request for a fee award of 30% of the non-  
10 reversionary common fund is reasonable and justified by the factors considered in the Ninth  
11 Circuit. Three factors in particular support Class Counsel’s requested fee award. First, Counsel has  
12 achieved an excellent result: for class members who submit valid claims, their relief will exceed  
13 their price premium damages. Kafka Decl. ¶ 78. Second, fee awards of 30% to 50% of the common  
14 fund are frequently awarded in smaller cases, i.e., cases with common funds of \$10 million or less.  
15 *See Rivas*, 2020 WL 264401, at \*7–8. Third, if Class Counsel is awarded \$982,500.00 in attorneys’  
16 fees, Class Counsel will have a “negative” multiplier, being compensated for only 39% of their  
17 lodestar in this action.

18 **A. Fee Request is Supported by Strong Result Achieved for the Classes.**

19 In awarding attorneys’ fees in the Ninth Circuit, “[t]he most critical factor is the results  
20 achieved for the class.” *In re Nexus 6P Prods. Liab. Litig.*, 2019 WL 6622842, at \*12 (N.D. Cal.  
21 Nov. 12, 2019) (Freeman, J.).

22 Class Counsel has achieved a strong result for the class. The \$3,275,000 non-reversionary  
23 settlement fund is a considerable amount given that Plaintiffs’ expert estimated that price premium  
24 damages for all three classes would total \$3.7 million. Kafka Decl. ¶ 9. Furthermore, for class  
25 members who submit valid claims, their relief will exceed their price premium damages. Kafka  
26 Decl. ¶ 78. Class members are projected to receive \$4.78 per Woolite bottle validly claimed (in  
27 the first distribution). *Id.* ¶¶ 77, 78.



1 Courts have found that similarly strong results justified Class Counsel fee awards of 30%  
2 (or more) of the common fund. *See e.g., In re Nexus 6P Prods. Liab. Litig.*, 2019 WL 6622842, at  
3 \*10, 12 (approving attorney fee award of 30% of the common settlement fund where “the  
4 settlement represents 32.5% of recoverable damages”); *Mauss v. NuVasive, Inc.*, 2018 WL  
5 6421623, at \*6 (S.D. Cal. Dec. 6, 2018) (awarding fee of 30 percent of the common fund where  
6 settlement recovery was approximately 23 to 34% of damages); *Thieriot v. Celtic Ins. Co.*, , 2011  
7 WL 1522385, at \*6-7 (N.D. Cal. Apr. 21, 2011) (granting fee award of 33% of the settlement fund  
8 where, like here, the “settlement amount exceeds the amount required to make each class member  
9 whole ... even after deducting the requested attorneys' fees, costs, and incentive award.”).

10 **B. Class Counsel Overcame Significant Risk to Deliver a Strong Result**  
11 **for the Classes.**

12 The second factor in determining the appropriate attorneys’ fee award is the “risk of the  
13 litigation.” *Abadilla*, 2023 WL 7305053, at \*14. Here, there were a multitude of litigation risks  
14 that could have prevented recovery. Plaintiffs have already surmounted many of the risks.  
15 Significantly, Plaintiffs defeated Reckitt’s motion to dismiss, successfully moved for class  
16 certification, and prevailed in opposing Reckitt’s motion to exclude Plaintiffs’ expert chemist. ECF  
17 Nos. 70, 143. As discussed above in the context of settlement approval, Plaintiffs still faced  
18 substantial risks, including Reckitt’s summary judgment motion and the impending trial. *See*  
19 *Supra*, at 11-12. If Reckitt had prevailed at summary judgment or at trial, the class would have  
20 received no relief. In sum, the multitude of litigation risks, both those that were surmounted and  
21 those still present at the time of settlement, augur in favor of the Court granting Class Counsel’s  
22 fee request.

23 **C. Class Counsel’s Skill in Litigating on Behalf of the Classes Further**  
24 **Supports the Requested Fee Award.**

25 The skill required and the quality of the work performed by Class Counsel is another factor  
26 that supports Class Counsel’s fee request. *Abadilla*, 2023 WL 7305053, at \*14.



1 The result achieved here stems in part from the experience and capabilities of Class  
2 Counsel. Cohen Milstein has been recognized as highly skilled in complex litigation, including  
3 consumer class actions. *See* Kafka Decl. Ex. 1. Class Counsel has successfully litigated many prior  
4 class actions involving consumer protection claims and brought that experience and knowledge to  
5 bear on behalf of the class. Kafka Decl. ¶ 2.

6 **D. Class Counsel Undertook the Litigation on a Purely Contingent Basis.**

7 In awarding attorneys' fees in the Ninth Circuit, another factor is the "contingent nature of  
8 the fee." *Abadilla*, 2023 WL 7305053, at \*14. "The contingent fee compensates the lawyer not  
9 only for the legal services he renders but for the loan of those services." *Graham v.*  
10 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (Cal. 2004).

11 For over three years, Class Counsel litigated this case on a purely contingent basis with no  
12 guarantee of compensation for their 4,035 hours of work and hundreds of thousands of dollars in  
13 out-of-pocket costs. Class Counsel has still not been paid for any of its time or expenses incurred  
14 to date. This factor thus weighs in favor of the requested fee. *See Quiruz v. Specialty Commodities,*  
15 *Inc.*, 2020 WL 6562334, at \*10–11 (N.D. Cal. Nov. 9, 2020) (Freeman, J.) (approving attorneys'  
16 fee award of 31% of the gross settlement recovery because, among other reasons, counsel had  
17 litigated the "case completely contingent on outcome.")

18 **E. Attorneys' Fee Awards of 30% to 50% of the Fund are Frequently**  
19 **Awarded for Common Funds of \$10 Million or Less.**

20 The "awards made in similar cases" is another relevant factor in determining the  
21 appropriate attorneys' fee. *Abadilla*, 2023 WL 7305053, at \*14.

22 The pertinent comparators here are settlements with relatively small common funds, i.e.,  
23 common funds of \$10 million or less. Attorneys' fees of 30% to 50% of the common fund are  
24 frequently awarded in such cases. *See Rivas v. BG Retail*, 2020 WL 264401, at \*7–8 (awarding  
25 attorneys' fee of 45% of the total recovery); *see also Thieriot*, 2011 WL 1522385, at \*6 (approving  
26 fee award of 33% of settlement fund in part due to "common practice to award attorneys' fees at a  
27 higher percentage than the 25% benchmark in cases that involve a relatively small—i.e., under  
28

1 \$10 million—settlement fund.”); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at \*6 (C.D. Cal.  
2 Jul.27, 2010) (collecting cases); *Alvarez v. Farmers Ins. Exch.*, 2017 WL 2214585, at \*3 (N.D.  
3 Cal. Jan. 18, 2017) (“Fee award percentages generally are higher in cases where the common fund  
4 is below \$10 million.”). Class Counsel’s fee request of 30% of the common fund is thus further  
5 supported by the fact that the settlement fund is less than \$10 million.

6 **F. Reaction of Classes to the Settlement Supports Counsel’s Requested**  
7 **Fee.**

8 As discussed above, the reaction of the class to the settlement has been overwhelmingly  
9 positive. *Supra* at 14. This also supports Counsel’s fee request.

10 **G. A Lodestar Cross-Check Confirms the Reasonableness of Counsel’s**  
11 **Requested Fee.**

12 In common fund cases, a lodestar calculation may provide a cross-check on the  
13 reasonableness of a percentage award. *Abadilla*, 2023 WL 7305053, at \*14 (citing *Vizcaino v.*  
14 *Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)). “The lodestar cross-check calculation need  
15 entail neither mathematical precision nor bean counting .... [Courts] may rely on summaries  
16 submitted by the attorneys and need not review actual billing records.” *Abadilla*, 2023 WL  
17 7305053, at \*14. The lodestar calculation can be helpful in suggesting a higher percentage when  
18 litigation has been protracted. *Id.* Thus even when the primary basis of the fee award is the  
19 percentage method, “the lodestar may provide a useful perspective on the reasonableness of a given  
20 percentage award.” *Id.*

21 Under the lodestar method, attorneys’ fees are “calculated by multiplying the number of  
22 hours the prevailing party reasonably expended on the litigation (as supported by adequate  
23 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”  
24 *Bluetooth*, 654 F.3d at 941. This amount may be increased or decreased by a multiplier that reflects  
25 factors such as “the quality of representation, the benefit obtained for the class, the complexity and  
26 novelty of the issues presented, and the risk of nonpayment. *Id.* at 942.

1 Below, Plaintiffs discuss the 4,035 hours devoted to the litigation, and counsel's typical  
2 hourly rates, which give rise to a base lodestar of \$2,515,617.50. Kafka Decl. ¶ 17.

3 **i. Class Counsel Reasonably Devoted Over Four Thousand Hours to**  
4 **Prosecuting This Litigation Over the Past Three Years.**

5 To assist the Court in evaluating its lodestar, Class Counsel reviewed its time records and  
6 prepared a declaration with detailed summaries of time spent on various litigation tasks. Kafka  
7 Decl. ¶ 18. As detailed in that declaration, Class Counsel and its professional staff have spent 4,035  
8 hours litigating this case for the benefit of the class. *Id.* ¶ 19.

9 Class Counsel's time in this case included:

- 10 • A rigorous pre-filing investigation, including working with an expert chemist;
- 11 • Drafting three complaints (the initial complaint, Amended Complaint, and Second  
12 Amended Complaint);
- 13 • Drafting the opposition to Reckitt's motion to dismiss;
- 14 • Reviewing more than 18,000 pages of documents produced by Reckitt;
- 15 • Assisting the Plaintiffs in responding to dozens of Requests for Production and  
16 Interrogatories propounded by Reckitt;
- 17 • Briefing 5 discovery disputes;
- 18 • Deposing 9 witnesses – 4 Reckitt employees and 5 experts;
- 19 • Preparing and defending 9 witnesses for their depositions – 6 class representatives  
20 and 3 experts;
- 21 • Working with three experts, a chemist, an economist, and a marketing expert, who  
22 each submitted both class certification and trial expert reports;
- 23 • Drafting Plaintiffs' motion for class certification and reply brief;
- 24 • Drafting an opposition to Reckitt's motion for summary judgment and to exclude  
25 Plaintiffs' marketing expert;
- 26 • Mediating with Magistrate Judge Laurel Beeler in July 2021 and March 2022 and  
27 engaging in intensified settlement discussions in February and March 2023;

- 1 • Preparing a comprehensive settlement agreement, with exhibits including long-
- 2 form and short-form class notices and developing the class notice plan; and
- 3 • Drafting the preliminary approval brief.

4 Kafka Decl. ¶ 12.

5 This litigation, in short, required considerable effort by Class Counsel. These efforts are  
6 likely to continue for least several more months, as Class Counsel continues to work through the  
7 settlement approval process and continues to work with the settlement administrator and class  
8 members on settlement-related issues that arise. *Id.* ¶ 13.

9 **ii. Class Counsel’s Rates Fall Within the Range Prevailing in the**  
10 **Community and Have Been Approved By Courts.**

11 After evaluating the number of hours devoted to the litigation, the next step is to assign a  
12 reasonable hourly billing rate. In assessing the reasonableness of an attorney’s hourly rate, the  
13 Court should consider whether the rate is “in line with those prevailing in the community for  
14 similar services by lawyers of reasonably comparable skill, experience, and reputation.” *See*  
15 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *PLCM Grp. v. Drexler*, 22  
16 Cal. 4th 1084, 1095 (2000) (“The reasonable hourly rate is that prevailing in the community for  
17 similar work.” (citations omitted)).

18 The hourly rates used to calculate counsel’s lodestar range from \$725 to \$1,150 for  
19 partners, \$510 to \$650 for associates, and \$350 for paralegals. Kafka Decl. ¶ 17. The hourly rates  
20 are set by counsel based on their own experience, based on periodic reviews of the rates charged  
21 by other attorneys involved in complex litigation, and fall within the range of rates prevailing in  
22 the relevant legal community. *Id.* ¶ 15.

23 Class Counsel’s hourly rates are also regularly evaluated by courts in California and across  
24 the country and have been consistently approved as reasonable in recent years. Kafka Decl. ¶ 16;  
25 *see e.g., In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at \*17 (N.D. Cal. Aug. 17,  
26 2018) (approving Cohen Milstein’s hourly rates); *Nitsch v. DreamWorks Animation SKG, Inc.*,  
27 No. 14-cv-04062, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017) (approving Cohen Milstein’s

1 hourly rates); *In re Wells Fargo & Co. Sec. Litig.*, Case No. 1:20-cv-04494-JLR-SN (S.D.N.Y.  
 2 Sept. 8, 2023), ECF No. 206 (approving Cohen Milstein’s hourly rates); *Cosby v. KPMG LLP*,  
 3 2022 WL 4129703, at \*2 (E.D. Tenn. July 12, 2022), and *Weiner v. Tivity Health, Inc.*, No. 17-cv-  
 4 1469, ECF No. 177 at 4 (M.D. Tenn. Oct. 7, 2021) (confirming the “reasonableness” of CMST’s  
 5 hourly fees).

6 **iii. Class Counsel’s Negative Multiplier is Another Factor Supporting**  
 7 **Approval of the Fee Request.**

8 Based on Class Counsel’s lodestar of \$2,515,617.50, the requested attorneys’ fee reflects  
 9 a negative multiplier of 39% of Class Counsel’s lodestar. Plaintiffs’ fee request is thus modest  
 10 compared to the amount of work done by Plaintiffs’ counsel. *See Sadowska v. Volkswagen Grp.*  
 11 *of Am., Inc.*, 2013 WL 9600948, at \*9 (C.D. Cal. Sept. 25, 2013) (“Multipliers can range from 2  
 12 to 4 or even higher.”); *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (approving  
 13 6.85 multiplier and stating that “still falls well within the range of multipliers that courts have  
 14 allowed”).

15 Class Counsel’s negative multiplier is another factor supporting approval of Class  
 16 Counsel’s fee request. *See Rivas*, 2020 WL 264401, at \*7–8 (“The Court finds that the negative  
 17 multiplier of 0.49 supports the conclusion that the requested fees are reasonable.”); *Wong v. Arlo*  
 18 *Techs., Inc.*, No. 5:19-CV-00372-BLF, 2021 WL 1531171, at \*11 (N.D. Cal. Apr. 19, 2021)  
 19 (Freeman, J.) (“a multiplier below 1.0 is below the range typically awarded by courts and is  
 20 presumptively reasonable.”); *In re Nexus 6P*, 2019 WL 6622842, at \*13 (finding “negative  
 21 multiplier of 0.76” further “demonstrates that requested 30% fee award is reasonable.”)

22 **IV. CLASS COUNSEL’S REQUEST FOR REIMBURSEMENT OF COSTS IS**  
 23 **REASONABLE AND SHOULD BE GRANTED**

24 In addition to the requested attorneys’ fee, Class Counsel seeks reimbursement for  
 25 \$369,499.27 in out-of-pocket costs incurred during the litigation. Class Counsel is entitled to  
 26 “recover as part of the award of attorney's fees those out-of-pocket expenses that would normally  
 27 be charged to a fee paying client.” *Abadilla*, 2023 WL 7305053, at \*14 (quoting *Harris v.*  
 28

1 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted)); Fed.  
2 R. Civ. P. 23(h) (permitting the court to award nontaxable costs that are authorized by law).

3 The attached declaration of Eric Kafka details Class Counsel’s costs, broken down by  
4 category. Kafka Decl. ¶ 21. These expenditures were necessary to Class Counsel’s prosecution of  
5 the action and are particularly reasonable given that Plaintiffs needed to assemble a team of three  
6 experts to prosecute their case. *Id.* ¶¶ 22, 23. The costs that Class Counsel seek to recover are  
7 regularly billed to clients in hourly fee cases, and routinely awarded in contingency fee cases. *See,*  
8 *e.g., In re Capacitors Antitrust Litig.*, No. 14-cv-03264, 2018 WL 4790575, at \*6 (N.D. Cal. Sept.  
9 21, 2018) (“Reasonable reimbursable litigation expenses include: those for document production,  
10 experts and consultants, depositions, translation services, travel, mail and postage costs.” (citation  
11 omitted)); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at \*9 (reimbursing counsel’s  
12 “professional service fees (experts, investigators, accountants), travel fees, and discovery-related  
13 fees”). The notice informed class members that Class Counsel would seek up to \$400,000 in  
14 litigation expenses. ECF No. 178-2 at 62. Class Counsel thus requests full reimbursement of their  
15 \$ 369,499.27 in out-of-pocket costs.

16 **V. REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS OF**  
17 **\$10,000 ARE APPROPRIATE AND SHOULD BE GRANTED**

18 Plaintiffs seek service awards of \$10,000 for each of the six class representatives, totaling  
19 \$60,000.00.

20 “[A]t the conclusion of a class action, the class representatives are eligible for a special  
21 payment in recognition of their service to the class.” William B. Rubenstein, 5 NEWBERG ON  
22 CLASS ACTIONS § 17:1 (5th ed. 2020). Service awards are common in class actions and  
23 “compensate class representatives for work done on behalf of the class, to make up for financial  
24 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
25 willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-  
26 59 (9th Cir. 2009) (internal citation omitted).

1 “Incentive awards typically range from \$2,000 to \$10,000” and service awards of \$5,000  
2 are presumptively reasonable. *Kulik*, 2023 WL 2503539, at \*10 (internal citations omitted).  
3 District courts in this circuit have repeatedly approved \$10,000.00 (or more) as service awards to  
4 class representatives. *See e.g., Quiruz v. Specialty Commodities, Inc.*, 2020 WL 6562334, at \*11  
5 (Freeman, J.) (approving \$10,000 service award for class representative); *Taylor v. Shippers*  
6 *Transp. Express, Inc.*, 2015 WL 12658458, at \*18 (C.D. Cal. May 14, 2015) (awarding \$15,000  
7 service award to two class representatives).

8 Here, service awards of \$10,000 are warranted because of the substantial time and effort  
9 that the six class representatives expended on behalf of the classes. The attached declaration from  
10 Eric Kafka sets forth the work conducted by the class representatives on behalf of the classes.  
11 Kafka Decl. ¶¶ 27-73. Each class representative spent more than 60 hours pursuing the classes’  
12 claims. *Id.* ¶¶ 27, 35, 42, 50, 58, 66. The class representatives’ work on behalf of the classes  
13 included: reviewing pleadings; responding to dozens of requests for production and  
14 interrogatories; searching for, and producing, documents; testifying at lengthy full day depositions;  
15 participating in the mediation process (and for Mr. Prescott, Mr. Marshall, and Ms. Kittredge,  
16 attending the July 2021 mediation session via Zoom); engaging in preliminary trial preparation  
17 discussions with counsel; and routinely monitoring the action and providing input throughout the  
18 litigation. *Id.* ¶¶ 27-73.

19 The class representatives’ efforts in this litigation are akin to *Quiruz* where this Court  
20 approved a \$10,000 service award for a class representative who was deposed, gathered  
21 documents, and participated in the mediation process. *Quiruz*, 2020 WL 6562334, at \*11. The  
22 class representatives’ intensive discovery work in this action -- including testifying at their  
23 depositions -- also distinguishes this matter from many cases where smaller service awards have  
24 been granted. *See e.g., Kulik*, 2023 WL 2503539, at \*10–11 (service awards of \$3,000 to \$5,000  
25 where only informal discovery occurred and class representatives were not deposed).

26 Finally, aggregate service awards of \$60,000 are less than 1.9% of the common fund and  
27 thus will not diminish the strong recovery for the classes. Kafka Decl. ¶ 26.



1                   **VI. COURT SHOULD APPROVE THE WORLD WILDLIFE FUND AS THE**  
 2                   **CY PRES RECIPIENT**

3                   Plaintiffs also ask that the Court approve the World Wildlife Fund (“WWF”) as the *cy pres*  
 4 recipient. Pursuant to the settlement agreement, checks that are not deposited for 90 days will be  
 5 placed in a residual fund. Settlement Agreement ¶ IX.L. The residual fund will be distributed on a  
 6 *pro rata* basis “until the Residual Fund is exhausted, unless the Parties mutually agree that a  
 7 supplemental distribution is economically unfeasible. Should the Parties mutually agree that a  
 8 supplemental is economically unfeasible, then the parties will meet and confer in good faith to  
 9 reach an agreement on a *cy pres* recipient approved by the Court.” Settlement Agreement ¶ IX.L.  
 10 At the preliminary approval hearing, the Court directed the parties to select a *cy pres* recipient and  
 11 to seek the Court’s approval of that *cy pres* recipient at final approval. 9/14/23 Hr’g Tr. at 6-7.

12                   The World Wildlife Fund is an appropriate *cy pres* recipient for this action. World Wildlife  
 13 Fund Inc. is a non-profit charity under Section 501(c)(3) of the Internal Revenue Code.<sup>3</sup> One of  
 14 the WWF’s projects is to “draw consumer attention to the environmental impact of their current  
 15 laundry practices, change ingrained laundry routines, and broadly encourage more sustainable  
 16 household laundry behaviors.”<sup>4</sup> The WWF thus relates to the issues in this litigation about laundry  
 17 detergent. Class Counsel does not have any connection to the WWF. Kafka Decl. ¶ 79.

18                   **CONCLUSION**

19                   For the foregoing reasons, Plaintiffs ask that the Court grant final approval of the proposed  
 20 settlement, certify the settlement classes, and award the requested fees, costs, and service awards.

21  
 22 DATED: March 13, 2024

Respectfully submitted,

23  
 24 By: /s/ Eric Kafka

25 Eric Kafka (admitted *pro hac vice*)

26 <sup>3</sup> The WWF’s website is <https://www.worldwildlife.org/>

27 <sup>4</sup>[https://files.worldwildlife.org/wwfcmprod/files/Publication/file/8af4cfmkqh\\_WWF\\_Cold\\_Wash\\_Evidence\\_Review\\_220902\\_vF.pdf](https://files.worldwildlife.org/wwfcmprod/files/Publication/file/8af4cfmkqh_WWF_Cold_Wash_Evidence_Review_220902_vF.pdf)



