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24 Plaintiffs and the Putative Class

25 **UNITED STATES DISTRICT COURT**

26 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

27 In re:  
28 Bluetooth Headset Products Liability  
Litigation,

CASE NO. 07-ML-01822 DSF

**CLASS ACTION**

**DECLARATION OF STEPHEN M.  
GARCIA IN SUPPORT OF  
MOTION FOR FINAL APPROVAL  
AND ATTORNEYS' FEES**

Date: July 6, 2009  
Time: 1:30 p.m.  
Crtrm.: 840

1        **DECLARATION OF STEPHEN M. GARCIA IN SUPPORT OF MOTION**  
2                                **FOR FINAL APPROVAL AND ATTORNEYS' FEES**

3  
4                Stephen M. Garcia declares:

5  
6                1.        I am an attorney licensed to practice in the States of California, Texas  
7 and Arizona and am a member in good standing of the State Bars of Texas,  
8 California and Arizona. I am the principle of The Garcia Law Firm and Plaintiffs’  
9 Class Counsel in this action. I submit this Declaration in support of the motion for  
10 final approval of the class settlement and counsel's petition for an award of  
11 attorneys' fees and reimbursement of out-of-pocket expenses. I make this  
12 Declaration from my personal knowledge, and, if called as a witness, I could, and  
13 would, competently testify as to the facts contained herein.

14  
15                2.        The Garcia Law Firm is counsel of record for the plaintiffs in the  
16 above-entitled action.

17  
18                3.        Class Counsel's investigation into the science surrounding plaintiffs’  
19 claim that Bluetooth Headset users were at an increased risk of harm (i.e., noise  
20 induced hearing loss) began with researching the levels of noise acceptable under  
21 various laws and in various industries. Numerous regulations regarding noise have  
22 been proposed around the world based on dozens of scientific studies and articles.  
23 Class Counsel initially focused on the studies relied upon by the National Institute  
24 for Occupational Safety and Health (“NIOSH”) in its criteria document 98-126.  
25 This lead Class Counsel to several seminal studies, papers and regulations regarding  
26 the epidemiology and pathogenesis of noise induced hearing loss, including: the  
27 United States Environmental Protection Agency’s (“EPA”) documents titled “In  
28 Search of Meaningful Measures of Hearing Protector Effectiveness,” “Protective

1 Noise Levels,” “A Basis for Limiting Noise Exposure for Hearing Conservation”  
2 and “Prediction of NIPTS Due to Continues Noise Exposure;” the Occupation  
3 Safety and Health Administration’s (“OSHA”) Noise Standard 1910.95 and  
4 materials on hearing conversation, a-weighted sound measurements, and partnership  
5 programs with employers; and the World Health Organization’s (“WHO”) October  
6 28-30, 1997 report “Prevention of Noise-Induced Hearing Loss.” Class Counsel  
7 also reviewed various documents published by ANSI, the ACGIH, and the United  
8 States Department of Defense for industrial hygiene studies and methods regarding  
9 noise exposure and evaluating and assessing exposures. Plaintiffs’ counsel spent  
10 hundreds of hours reviewing these documents, and those they relied upon and cited.

11  
12 4. Class Counsel contacted over a dozen experts to investigate the issue of  
13 hearing loss caused by consumer products. This resulted in the retention of experts  
14 to potentially proffer opinions regarding the mechanisms by which sound can cause  
15 damage and how much sound is necessary to cause damage. Class Counsel spent  
16 hundreds of hours working with the experts in evaluating the data produced by  
17 defendants on the output levels of their products using various software models.  
18 Further, Class Counsel worked with one of the experts to produce a report on his  
19 evaluation of the risk of noise induced hearing loss these products posed based on  
20 his experience, testing and review of publicly available scientific literature.

21  
22 5. Class Counsel's investigation also included a comprehensive review of  
23 the warnings on other audio devices through internet searches. We spent dozens of  
24 hours reviewing warnings from AT&T, Cown, Apple, Jawbone, Memorex, Sony,  
25 Panasonic, Shure, Samsung, and Blueant to evaluate whether there was an industry  
26 standard on warnings and also to identify the “state of art” regarding consumer  
27 electronics and noise induced hearing loss.

28

1           6.     The parties also voluntarily exchanged discovery. For example,  
2 defendants produced thousands of pages of documents that included: (1) sales data  
3 for each model Bluetooth Headset sold between June 30, 2002 and June 30, 2006,  
4 and (2) acoustic test results for each model Bluetooth Headset identified in the  
5 pleadings sold between June 30, 2002 and June 30, 2006 for all acoustic tests  
6 performed before June 30, 2006. Based upon the documents produced by  
7 defendants and our investigation, we determined that there are potentially millions  
8 of putative class members. After engaging in the formal mediation session on  
9 February 4, 2008 and with the benefit of engaging in multiple meet and confers and  
10 full briefing concerning defendants' Motion to Dismiss, Plaintiffs determined that  
11 the proposed settlement would be fair, adequate and reasonable and in the best  
12 interest of the Settlement Class.

13  
14           7.     On February 4, 2008, the parties participated in a mediation under the  
15 direction of the Honorable Steven J. Stone, Presiding Justice of the California Court  
16 of Appeal (Retired). In advance of the mediation, Class Counsel and counsel for  
17 defendants participated in at least three in-person meetings to discuss the merits of  
18 the litigation and discovery issues.

19  
20           8.     Attached hereto as Exhibit "A" is a true and correct copy of a March  
21 31, 2009 internet posting by objectors' counsel Theodore Frank. Mr. Frank stated  
22 that he personally did not own a Bluetooth headset and therefore needed clients to  
23 object to the settlement. Further, Mr. Frank invited consumers to retain him for the  
24 purposes of objecting to the settlement and filing an appeal with the Ninth Circuit if  
25 the objections are overruled.

26  
27           9.     Attached as Exhibit "B" is a true and correct copy of a June 3, 2009  
28 internet posting by Mr. Frank. In this posting, he announced that he has filed an

1 objection with the court and invites other to do so. Further, Mr. Frank stated; "And  
2 anyone in Los Angeles July 6 who wants to watch the hearing, please *join in the*  
3 *fun.*" (Emphasis added.)

4  
5 10. Attached hereto as Exhibit "C" is a true and correct copy of Theodore  
6 Frank's objection to the settlement in the *in re Grand Theft Auto Video Game*  
7 *Consumer Litig., 251 F.R.D. 139 (S.D.N.Y. 2008).*

8  
9 **ATTORNEYS' FEES AND COSTS**

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11 11. Attached hereto as Exhibit "D" is a true and correct copy of the  
12 summary of hours spent on this litigation by the attorneys at The Garcia Law Firm.  
13 This summary was prepared based on contemporaneous billing records. I believe all  
14 of the tasks performed and the hours spent were reasonable and necessary to the  
15 prosecution of the claims of Plaintiffs and The Class. Exhibit "D" shows a total  
16 lodestar of \$371,142.50, which reflects the actual rates at which the attorneys who  
17 have participated in this action billed for non-contingency services.

18  
19 12. Attached hereto as Exhibit "E" is a true and correct summary of the  
20 \$24,662.82 in litigation expenses incurred by The Garcia Law Firm to prosecute this  
21 case. I believe the litigation expenses incurred here are reasonable and necessary.

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