

1 STEPHEN M. GARCIA (Bar No. 123338)
sgarcia@lawgarcia.com

2 DAVID M. MEDBY (Bar No. 227401)
dmedby@lawgarcia.com

3 **GARCIA LAW FIRM, THE**

4 One World Trade Center
5 Suite 1950
6 Long Beach, CA 90831
7 Telephone: (562) 216-5270
8 Facsimile: (562) 216-5271

9 BRUCE L. SIMON (Bar No. 96241)

10 bsimon@pswplaw.com

11 **PEARSON, SIMON, WARSHAW & PENNY, LLP**

12 44 Montgomery Street, Suite 1430
13 San Francisco, California 94104
14 Telephone: (415) 433-9000
15 Facsimile: (415) 433-9008

16 DANIEL L. WARSHAW (Bar No. 185365)

17 dwarshaw@psswplaw.com

18 **PEARSON, SIMON, WARSHAW & PENNY, LLP**

19 15165 Ventura Boulevard, Suite 400
20 Sherman Oaks, California 91403
21 Telephone: (818) 788-8300
22 Facsimile: (818) 788-8104

23 Co-Lead Counsel for Plaintiffs and the Putative Class

24 **UNITED STATES DISTRICT COURT**

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

26 In re:

27 Bluetooth Headset Products Liability
28 Litigation

CASE NO. 07-ML-01822 DSF

[Assigned to the Honorable Dale S.
Fischer]

CLASS ACTION

**PLAINTIFFS' UNOPPOSED
MOTION FOR ATTORNEYS' FEES
AND COSTS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 6, 2009

Time: 1:30 p.m.

Crtrm: 840

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2

3 PLEASE TAKE NOTICE that on July 6, 2009 at 1:30 p.m., or soon thereafter
4 as the matter may be heard before the Honorable Dale S. Fischer, United States
5 District Judge for the Central District of California located at 312 North Spring
6 Street, Los Angeles, CA 90012, Plaintiffs and Class Representatives will and hereby
7 do move the Court for an award of attorneys' fees and litigation expenses in the
8 above-entitled matter.

9

10 This *unopposed* motion is made on the grounds that: (a) such fees are fair and
11 reasonable in light of class counsels' efforts in obtaining the settlement herein; (b)
12 requested attorneys' fees comport with the applicable case law; and (c) the expenses
13 for which reimbursement is sought were reasonably and necessarily incurred in
14 connection with the prosecution of this action. The parties have complied with
15 Local Rule 7-3 by meeting and conferring in person on several occasions and
16 because defendants do not oppose the instant motion. By this motion, Plaintiffs
17 seek \$800,000 in attorneys' fees, (utilizing a negative multiplier of 0.49) and
18 reimbursement of \$50,000 in litigation expenses, totaling \$850,000.

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1 Plaintiffs' motion is based on this Notice of Motion, the following
2 Memorandum of Points and Authorities, the accompanying declarations and exhibits
3 thereto, the complete file on record in this action and such additional evidence or
4 argument as may be presented at the hearing.

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DATED: June 22, 2009

GARCIA LAW FIRM, THE
STEPHEN M. GARCIA
DAVID M. MEDBY

PEARSON, SIMON, WARSHAW &
PENNY, LLP
BRUCE L. SIMON
DANIEL L. WARSHAW

By: _____/s/_____
STEPHEN M. GARCIA
Attorneys for Co-Lead Counsel for Plaintiffs
and the Putative Class

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

This class action lawsuit arises from Defendants Plantronics, Inc., GN Netcom, Inc. and Motorola, Inc.'s (hereinafter "Defendants") failure to warn consumers regarding the dangers of Noise Induced Hearing Loss ("NIHL") associated with their Bluetooth Headsets. These headsets permit the use of a mobile phone without the necessity of holding the phone next to the face without wires connecting the phone to the headset (hereinafter "Bluetooth Headset"). Plaintiffs allege that Defendants' Bluetooth Headsets sufficient decibel levels to cause NIHL; they did not contain essential warnings informing consumers of this potential danger and the means to avoid it. Plaintiffs further allege that Defendants marketed their Bluetooth Headsets with affirmative representations concerning audio performance, comfort, security and "talk times."

Through this lawsuit, Class Counsel has succeeded in ensuring that Defendants adopt expertly crafted warnings and supplemental written materials that explicitly inform class members of the dangers of NIHL and the safe use of their Bluetooth Headsets. Under the settlement this significant prospective relief will ensure that consumers will be able to safely use Defendants' Bluetooth Headsets, while *expressly preserving the rights of class members pursue their personal injury claims*. Furthermore, the Settlement Agreement requires Defendants to make a significant *cy pres* donation in the amount of \$100,000 to five organizations dedicated to fighting hearing loss. Based on the facts and circumstances of this case, the utilization of this *cy pres* award constitutes the most effective utilization of the settlement funds. *See Tarlecki v. Bebe Stores, Inc.*, 2009 WL 1364340, * 4 (N.D. Cal. May 14, 2009); *In re Vitamins Cases*, 107 Cal. App. 4th 820, 830 (2003).

1 Pursuant to the applicable law, Class Counsel is entitled to recover their
2 reasonable attorneys' fees and costs incurred in the prosecution of this action. In an
3 action brought in diversity under CAFA or other statutory authority, California
4 courts analyze applications for attorneys' fees under the lodestar method, which has
5 a strong presumption in favor of compensating class counsel for all hours incurred
6 during the prosecution of the action. *See Ballen v. City of Redmond*, 466 F.3d 736,
7 745 (9th Cir. 2006). Here, Class Counsel's lodestar calculation of \$1,613,399.50, is
8 justified by counsels' declarations and the significant amount of work performed in
9 obtaining the class-wide settlement in this multi-district litigation. Through
10 protracted settlement negotiations with Defendant, Class Counsel have voluntarily
11 reduced their lodestar by a multiplier of .49 in seeking an attorneys' fees award of
12 \$800,000 from the Court. Further, Class Counsel have agreed to reduce their costs
13 by more than \$48,000. As demonstrated by the Defendants' decision not to oppose
14 the motion, the instant request for attorneys' fees and costs is reasonable and
15 justified under the applicable law. Similarly, the request for reimbursement of costs
16 is reasonable and justified by the detailed declarations and expense reports filed in
17 support of the settlement agreement. Therefore, Plaintiffs respectfully request that
18 the Court grant their motion for attorneys' fees and costs in the amount of \$850,000.

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II. THE WORK PERFORMED BY CLASS COUNSEL

Twenty-six putative class actions were filed against Defendants in various courts across the country involving the marketing and sale of wireless headsets, commonly known as "Bluetooth Headsets." On February 20, 2007 the Judicial Panel on Multidistrict Litigation coordinated these cases in the Central District of California before the Honorable Dale S. Fischer, captioned as In Re Bluetooth Headset Products Liability Litigation, MDL No. 1822 ("MDL cases").

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A. **Class Counsel Coordinated Efforts to Draft the Operative Consolidated Amended Complaint**

On June 18, 2007, Pearson, Simon, Warshaw & Penny, LLP¹ and The Garcia Law Firm were appointed by the Court as Co-Lead Class Counsel. *See* Docket No. 8. The Garcia Law Firm was also appointed as Liaison Counsel. *See id.* Class Counsel thereafter researched, drafted and filed the Consolidated Class Action Complaint on July 6, 2007. *See* Docket No. 13. As a result of a meet and confer between the parties, Plaintiffs amended the Consolidated Class Action Complaint, filing their First Amended Consolidated Complaint (“FACC”) on August 3, 2007 and Second Amended Consolidated Complaint (“SACC”) on September 25, 2007. *See* Docket Nos. 16, 19. The SACC is the operative complaint.

B. **Class Counsel Conducted Extensive Investigation and Discovery in Support of Their Claims**

Class Counsel's investigation into the science surrounding Plaintiffs' claim that Bluetooth Headset users were at an increased risk of harm (*i.e.*, noise induced hearing loss), began with researching the levels of noise acceptable under various laws and in various industries. Numerous regulations regarding noise have been proposed around the world based on dozens of scientific studies and articles. Class Counsel initially focused on the studies relied upon by the National Institute for Occupational Safety and Health (“NIOSH”) in its criteria document 98-126. This led Class Counsel to several seminal studies, papers and regulations regarding the epidemiology and pathogenesis of NIHL, including: the United States Environmental Protection Agency’s documents titled “In Search of Meaningful

¹ Pearson, Simon, Warshaw & Penny, LLP, was formerly known as Pearson, Simon, Soter, Warshaw & Penny, LLP.

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

13
14 Class Counsel's review of these documents and underlying studies led Class
15 Counsel to experts in the fields of audiology and industrial hygiene. Plaintiffs
16 contacted over a dozen experts to find out more information regarding hearing loss
17 caused by consumer products and to gauge whether they would be interested in
18 participating in the lawsuit as a retained expert. *Id.* at ¶ 4. Class Counsel retained
19 experts as consultants and potential witnesses to discuss the mechanisms by which
20 sound can cause damage and to discuss how much sound is necessary to cause
21 damage. *Id.* Class Counsel spent hundreds of hours working with the experts in
22 evaluating the data produced by Defendants on the output levels of their products
23 using various software models. *Id.* Further, Class Counsel worked with one of the
24 experts to produce a report on his evaluation of the risk of noise induced hearing
25 loss these products posed based on his experience, testing and review of publicly
26 available scientific literature. *Id.*

27
28 Class Counsel's investigation also included a comprehensive review of the

1 warnings on other audio devices through internet searches. *Id.* at ¶ 5. Plaintiffs'
2 counsel spent dozens of hours reviewing warnings from AT&T, Cown, Apple,
3 Jawbone, Memorex, Sony, Panasonic, Shure, Samsung, and Blueant to evaluate
4 whether there was an industry standard on warnings and also to identify the “state of
5 art” regarding consumer electronics and noise induced hearing loss. *Id.*

6
7 Class Counsel also obtained and reviewed thousands of pages of discovery
8 relating the merits and allegations of this action. The documents produced obtained
9 from Defendants included: (1) sales data for each model Bluetooth Headset sold
10 between June 30, 2002 and June 30, 2006, and (2) acoustic test results for each
11 model Bluetooth Headset identified in the pleadings sold between June 30, 2002 and
12 June 30, 2006. *Id.* at ¶ 6. The work performed by Class Counsel throughout the
13 course of this litigation allowed them to adequately prepare and represent the
14 interest of the class in settlement negotiations with Defendants.

15
16 **C. Class Counsel Rigorously Opposed Defendants’**
17 **Motion to Dismiss**

18 On May 7, 2008 Defendants filed their Motion to Dismiss the Complaint
19 under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Docket Nos. 33-39.
20 Defendants argued that: (1) Plaintiffs lacked Article III standing because the
21 allegation that Bluetooth Headsets can cause noise-induced hearing loss is nothing
22 more than a hypothetical economic injury; (2) assuming Article III standing exists,
23 Plaintiffs have not alleged the requisite cognizable "injury" or "damages" under
24 California and Illinois law; (3) Plaintiffs failed to identify affirmative misstatements
25 of fact; and (4) the risk of hearing loss theory asserted in the SACC is unjustified.

26
27 Class Counsel coordinated their efforts to rigorously research and draft the
28 opposition to Defendants’ Motion to Dismiss, which details the legal and factual

1 basis for Plaintiffs claims. Docket No. 40. Although the Motion to Dismiss was
2 fully briefed on August 8, 2008, the Court entered a Stipulated Order to continue the
3 hearing on the Motion to Dismiss so that settlement discussions could proceed.
4 Docket No. 49.

5
6 **D. Class Counsel Negotiated a Fair and Adequate**
7 **Settlement on Behalf of the Class**

8 On February 4, 2008 the parties participated in a mediation of the case under
9 the direction of the Honorable Steven J. Stone, Presiding Justice of the California
10 Court of Appeal (Retired). In advance of the mediation, lawyers for Plaintiffs and
11 Defendants participated in at least three in-person meetings to discuss the merits of
12 the litigation and discovery issues. Garcia Decl. at ¶ 7. After engaging in the
13 formal mediation session on February 4, 2008 Plaintiffs determined that the
14 proposed settlement would be fair, adequate and reasonable and in the best interest
15 of the Settlement Class, and that it is desirable that the litigation be settled in the
16 manner upon the terms and conditions set forth in the Settlement Agreement. *Id.* at
17 ¶ 6.

18
19 The terms of the proposed Class settlement are set forth fully in the
20 Settlement Agreement. Docket No. 61. The Settlement Agreement is entered into
21 on behalf of a "Settlement Class" consisting of all persons in the United States who:
22 between June 30, 2002 and the date of entry of the Notice Order, purchased a
23 Bluetooth Headset manufactured by Motorola, Plantronics or GN. The Settlement
24 Agreement provides significant injunctive relief on behalf of class members by
25 requiring that Defendants adopt new warnings alerting consumers of the potential
26 danger of hearing loss associated with Bluetooth Headsets and steps that can be
27 taken to avoid hearing loss. The warnings, in pertinent part, inform consumers that:
28

1 "/!\ **WARNING:** Exposure to loud noises from any source
2 for extended periods of time may temporarily or
3 permanently affect your hearing. The louder the volume
4 sound level, the less time is required before your hearing
5 could be affected. Hearing damage from loud noise is
6 sometimes undetectable at first and can have a cumulative
7 effect."

8 *See* Exhibit "D" to Settlement Agreement.

9 Additionally, Defendants will contribute \$100,000 to be divided between the
10 following organizations as follows: \$31,666.66 to the American Speech and Hearing
11 Association, \$31,666.67 to the National Hearing Conservation Association,
12 \$31,666.67 to The University of Tennessee College of Medicine, Center for
13 Independent Living Research, and \$5,000.00 to the Greater Los Angeles Agency on
14 Deafness. See Settlement Agreement at ¶ 3.2. Furthermore, the release under the
15 settlement agreement is carefully crafted to preserve class members' rights to
16 recover for personal injuries caused by Defendants' Bluetooth Headsets.

17 **E. Class Counsel Have Sought the Approval of the Settlement**

18 Upon finalizing the Settlement Agreement, Plaintiffs have spent additional
19 time in drafting the Motion for Preliminary Approval, attending the Preliminary
20 Approval Hearing, overseeing the notice to the class and responding to class
21 member inquiries. Class Counsel have drafted the parties' Joint Motion for Final
22 Approval and this Motion for Attorneys' Fees. Class Counsel will spend additional
23 time attending the Final Approval and Fairness Hearing and overseeing the
24 administration of this action.

25 **III. THE APPLICABLE LAW SUPPORTS THE ATTORNEYS' FEE SOUGHT BY PLAINTIFFS**

26 Because this is a diversity case, settled on the basis of Plaintiff's state law

1 claims, state law applies to the calculation of attorneys' fees. *See, e.g., Mangold v.*
2 *Calif. Pub. Utils. Comm'n.*, 67 F.3d 1470, 1478-79 (9th Cir. 1995) (finding that state
3 law determines both the right to fees and the method of calculating fees in diversity
4 cases). Under California law, courts utilize the lodestar method which adopts
5 counsel's lodestar as a "touchstone" in determining the reasonableness of attorneys'
6 fees. *Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (1977) (*Serrano III*). A court may then
7 adjust this lodestar figure based on a number of factors, including: "(1) the novelty
8 and difficulty of the questions involved, and the skill displayed in presenting them;
9 (2) the extent to which the nature of the litigation precluded other employment by
10 the attorneys; [and] (3) the contingent nature of the fee award." *Id.*

11
12 **A. Class Counsel's Lodestar is Reasonable**

13 The first step in awarding fees under the lodestar method is to calculate the
14 lodestar amount. In making this determination courts examine whether class
15 counsel's lodestar calculation represents a reasonable number of hours performed at
16 a reasonable hourly rate. *Serrano*, 20 Cal. 3d at 48. The case law analyzing the
17 number of hours worked holds that class counsel is entitled to recover fees for all
18 hours reasonably spent working on the case. *Vo v. Las Virgines Mun. Water Dist.*,
19 79 Cal. App. 4th 440, 446 (2000) ("Under the lodestar method, a party who qualifies
20 for a fee should recover for all hours reasonably spent unless special circumstances
21 would render the award unjust."); *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th
22 1128, 1175 (1998) ("an attorney who takes on [a complex] case can anticipate
23 receiving full compensation for every hour spent litigating a claim against even the
24 most polemic opponent."). Compensable activities under the lodestar method
25 include both pre-litigation activities (e.g., interviewing the client, investigating the
26 facts, researching the law and preparing the initial pleading), and litigation activities
27 (e.g., conducting discovery, conferring with clients, drafting pleadings, making
28

1 court appearances, travel time and settlement negotiations.) *Webb v. Bd. of Educ.*,
2 471 U.S. 234, 85 (1985); *Stokus v. Marsh*, 217 Cal. App. 3d 647 (1990).

3
4 In this case, Plaintiff's lodestar as of June 22, 2009 is \$1,613,399.50. As set
5 forth in detail in the declarations submitted by Class Counsel, this lodestar
6 calculation reflects the following compensable activities: (1) pre-litigation
7 investigation and researching and drafting Plaintiff's class action complaints; (2)
8 working on preliminary pleadings and exchanges; (3) researching and drafting the
9 Consolidated Amended Complaints; (4) opposing Defendant's Motion to Dismiss;
10 (5) conducting discovery, establishing facts in support of class certification; (6)
11 conducting settlement negotiations with defense counsel; (7) seeking preliminary
12 approval of the settlement; and (8) working on issues relating to final approval and
13 Plaintiff's motion for attorneys' fees and costs.

14
15 As set forth, in the attorney declarations submitted to the Court in support of
16 this motion, Class Counsel's lodestar represents a reasonable number of hours spent
17 on a case of this magnitude at a reasonable hourly rate charged by each firm in the
18 provision their of non-contingency services. *See e.g., Crommie v. Public Utils.*
19 *Comm'n*, 840 F. Supp. 719, 725 (N.D. Cal. 1994); *Serrano III*, 20 Cal. 3d at 48-49;
20 *Mandel v. Lackner*, 92 Cal. App. 3d 747, 761 (1979). Perhaps even more
21 significantly, the reasonableness of Plaintiffs' lodestar calculation is not being
22 challenged by either the Defendants nor the objectors in this action.

23
24 **B. The Significantly Reduced Attorneys' Fees**
25 **Requested by Class Counsel are Reasonable and**
26 **Should be Approved by the Court**

27 There is a strong presumption in favor of the reasonableness of Class
28 Counsel's lodestar in an attorneys' fees award. *See Ballen v. City of Redmond*, 466

1 F.3d 736, 745 (9th Cir. 2006) (holding that plaintiff's lodestar calculation is the
2 presumptively accurate measure of reasonableness.) Indeed, numerous cases have
3 multiplied or "enhanced" plaintiffs' lodestar in calculating the reasonableness of an
4 attorneys' fees request. *See e.g., Wing v. Asarco, Inc.*, 114 F.3d 986 (9th Cir. 1997)
5 (affirming application of a 2.0 multiplier to class counsel's lodestar); *Odima v.*
6 *Westin Tucson Hotel*, 53 F.3d 1484 (9th Cir. 1995) (awarding an enhancement to
7 class counsel's lodestar); *Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 61 (2008);
8 *Edgerton v. State Pers. Bd.*, 83 Cal. App. 4th 1350, 1363, 2000 (applying a 1.5
9 multiplier to class counsel's lodestar calculation); *Mangold*, 67 F.3d at 1478-79
10 (applying a 2.0 multiplier to Plaintiffs' lodestar calculation). The examination of the
11 reasonable attorneys' fees is ultimately a factual analysis taking into account
12 judicially enumerated factors justifying adjustment of the fee award. *See PLCM*
13 *Group v. Drecher*, 22 Cal. 4th 1084, 1095 (2000).

14
15 Here, Plaintiffs have incurred a total lodestar of \$1,613,399.50, which is
16 reasonable and justified given the complexity of the litigation. Garcia Decl. at ¶¶ 3-
17 6 and 13. Specifically, in litigating this case Plaintiffs faced significant challenges
18 coordinating a complex consolidated nationwide class action involving multiple
19 Plaintiffs and Defendants from divergent jurisdictions. Plaintiff defended against
20 Defendants' motions to dismiss the Second Consolidated Amended Complaint.
21 Furthermore, Plaintiffs expertly performed an extensive investigation including a
22 review of thousands of documents and consultation with numerous experts to
23 discern the dangers of hearing loss posed by Defendants' Bluetooth Headsets.

24
25 Ultimately, these efforts brought the Defendants to the negotiation table and
26 resulted in a Settlement Agreement that provides both long term and short term
27 relief to the settlement class. Specifically, the class settlement requires the creation
28 of a *cy pres* fund in the amount of \$100,000 that will provide tangible benefits to

1 five charities that are dedicated to battling issues related to hearing loss. To this
2 end, the *cy pres* award serves a greater public benefit than a *de minimis* monetary
3 recovery to the thousands of class members. Perhaps more importantly, the
4 Settlement Agreement requires the adoption of new effective warning labels and
5 literature that will minimize the NIHL injuries arising from the use of Defendants'
6 Bluetooth Headsets. Furthermore, Class Counsel have achieved these results while
7 ensuring class members maintain their right to assert a claim for personal injuries
8 caused by Defendants' products.

9
10 These factors justify entry of an attorneys' fees award in the full amount of
11 Class Counsel's lodestar calculation of \$1,613,399.50. However, Plaintiffs have
12 agreed to seek only \$800,000 in attorneys' fees, which constitutes only 49.58% of
13 their lodestar. The \$800,000 fee requested by Plaintiffs has been derived through
14 extensive arms-length negotiations with Defendants with the assistance of Justice
15 Stone. To this end, the fact that Defendants' do not oppose the fees requested by
16 Plaintiffs is a significant indicator of the reasonableness of Plaintiffs' attorney fee
17 request.

18
19 **C. The Objectors' Challenge to the Attorneys' Fees**
20 **Requested Are Without Merit**

21 The objections to the attorneys' fees requested by Plaintiffs are not supported
22 by the applicable law and are without merit. For the most part, the objections to the
23 attorneys' fees and costs are attacks on the class action mechanism based on
24 conclusory contentions that this lawsuit should not result in an award of attorneys'
25 fees. These objections simply contain no substantive analysis of the merits of this
26 case, no indication of an understanding for the considerable work performed by
27 Class Counsel, and no consideration on the charitable contributions and injunctive
28 relief obtained by the settlement. This small percentage of objections simply are not

1 supported by the applicable law, which provides that Class Counsel are entitled to
2 recover their reasonable attorneys' fees incurred in the prosecution of this case. *See*
3 *Serrano*, 20 Cal. 3d at 48; *Las Virgines Mun. Water Dist.*, 79 Cal. App. 4th at 446;
4 *Weeks*, 63 Cal. App. 4th at 1175.

5

6 While the non-attorney class members may be entitled leeway for their failure to
7 assert a legal basis for their objection, objectors' counsel Theodore L. Frank should
8 not. To this end, Frank's self-serving reliance on and reference to his own article
9 critiquing *cy pres* awards as a basis for awarding attorneys' fees is indicative of the
10 lack of legal support for his position. The fact of the matter is that the applicable
11 law holds that *cy pres* awards and injunctive relief provide tangible benefits to the
12 class and justify an award of attorneys' fees to Class Counsel. *See Six (6) Mexican*
13 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990) (rejecting
14 defendants' claim that *cy pres* awards are improper fluid recovery); *Tarlecki*, 2009
15 WL 1364340, * 4 (recognizing the utility of considering the value of *cy pres* awards
16 in awarding attorneys fees). This is especially true in a case such as this, "[w]hen a
17 class action involves a large number of class members but only a small individual
18 recovery, the cost of separately proving and distributing each class member's
19 damages may so outweigh the potential recovery that the class action becomes
20 unfeasible." *Six (6) Mexican Workers*, 904 F.2d at 1305 (emphasizing the benefits of
21 *cy pres* recovery in a class action); *In re Vitamins Cases*, 107 Cal. App. 4th at 830
22 (approving a distribution of settlement proceeds to charity through a *cy pres* award
23 where individual recovery "would surely be quite small.") Therefore, Plaintiffs'
24 request for fees is reasonable under the lodestar method and should be approved by
25 the Court.

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V. CONCLUSION

For the aforementioned reasons Plaintiffs respectfully request that the Court grant their Motion for Attorneys' Fees in the amount of \$800,000 and costs in the amount of \$50,000.

DATED: June 22, 2009

GARCIA LAW FIRM, THE
STEPHEN M. GARCIA
DAVID M. MEDBY

PEARSON, SIMON, WARSHAW &
PENNY, LLP
BRUCE L. SIMON
DANIEL L. WARSHAW

By: _____/s/_____
STEPHEN M. GARCIA
Attorneys for Co-Lead Counsel for Plaintiffs
and the Putative Class