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16 **UNITED STATES DISTRICT COURT**

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

18 In re:
19 Bluetooth Headset Products Liability
20 Litigation,

CASE NO. 2:07-ML-01822-DSF-E

[Assigned to the Honorable Dale S.
Fischer]

21 **CLASS ACTION**

22 **PLAINTIFFS' NOTICE OF**
23 **MOTION AND MOTION FOR**
24 **FINAL APPROVAL OF CLASS**
25 **SETTLEMENT;**

26 **MEMORANDUM OF POINTS AND**
27 **AUTHORITIES IN SUPPORT**
28 **THEREOF**

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

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 6, 2009 at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 840 of the above-entitled Court, located at 255 East Temple Street, Los Angeles, California 90012, the plaintiffs will, and hereby do, move the Court for final approval of the class action settlement agreement. The parties have complied with Local Rule 7-3 as this Motion is made following multiple conferences by the parties all made more than 20 days before filing of this Motion.

This Motion is made under the authority of Federal Rule of Civil Procedure 23 and is based upon this Notice, the accompanying Memorandum of Points and Authorities, the Class Action Settlement Agreement and Exhibits thereto, the Court's Order Preliminarily Approving Settlement and Providing for Notice, the Declarations of Stephen M. Garcia, Esq., plaintiff Michael Jones, Katherine Kinsella and Scott M. Fenwick, filed and served concurrently with this Notice, the pleadings and records on file and upon such additional evidence or arguments as may be accepted by the Court at or prior to the hearing on this matter.

DATED: June 22, 2009

THE GARCIA LAW FIRM
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By: _____/s/_____
STEPHEN M. GARCIA
Class Counsel for Plaintiffs and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Plaintiffs move the Court for an order granting final approval of the
5 settlement. This litigation focused on a discrete issue, preventing and warning the
6 potential of future hearing loss caused by Bluetooth headsets. These headsets
7 permit the use of a mobile phone without the necessity of holding the phone next to
8 the face without wires connecting the phone to the headset (hereinafter "Bluetooth
9 Headset"). See Class Action Settlement Agreement ("Agreement") at ¶ 3.1, Docket
10 No. 61. This settlement is fair, accurate and reasonable as it provides the exact
11 relief sought by Plaintiffs – written warnings in package materials and internet pages
12 that the use of Defendants' Bluetooth Headsets may cause noise induced hearing
13 loss ("NIHL").

14 The new warnings resulting from this lawsuit adequately inform class
15 members and future buyers of the risks of NIHL from the use of Defendants'
16 Bluetooth Headsets and constitute a substantial benefit that will prevent NIHL. In
17 accordance with the injunctive nature of the relief obtained, the release provided to
18 Defendants Motorola Inc. ("Motorola"), Plantronics Inc. ("Plantronics") or GN
19 Netcom, Inc. d/b/a GN Jabra North America ("GN") (collectively "Defendants") is
20 narrowly tailored and appropriately limited to allow the class to bring claims for
21 personal injuries resulting from the use of Defendants' Bluetooth Headsets.
22 Furthermore, rather than provide a *de minimis* payment to a very large class, the
23 parties have agreed to establish a *cy pres* fund to benefit non-profit organizations
24 dedicated to prevent hearing loss.

25 The response of the class to the Agreement has been overwhelmingly
26 positive. Of the millions of purchasers of Bluetooth Headsets in the United States
27
28

1 since 2002,¹ only twenty-one valid objections were filed.² Declaration of Scott M.
2 Fenwick (“Fenwick Decl.”) at ¶ 13. Combined, the objectors and those seeking
3 exclusion amount to no more than 0.00003% of the class, an infinitesimal
4 percentage. The majority of these objectors erroneously assumed that this case
5 sought retribution for hearing loss. The balance of the objectors have asserted
6 arguments that are devoid of legal and factual merit, and cannot undermine the
7 reasonableness of the Agreement.

8 Every facet of the settlement administration has been conducted by some of
9 the most respected companies and individuals experienced in class action
10 settlements in the United States. Kathleen Kinsella of Kinsella/Novak
11 Communications, Inc. was retained to effectuate the notice program. As she
12 explains in her declaration, the notice program approved by the Court was
13 implemented and a reach of over 80% of the class was accomplished. Declaration
14 of Kathleen Kinsella in Support of Motion for Final Approval (“Kinsella Decl.”) at ¶
15 24. Rust Consulting Inc. (“Rust”) was retained as the settlement administrator. Rust
16 has worked closely with Class Counsel to ensure that all appropriate measure have
17 and will be taken to effectuate the terms of the Agreement and the Court’s
18 Preliminary Approval Order. *See* Fenwick Decl.

19 Furthermore, the \$12,000 in incentive awards to be split between the nine (9)
20 class representatives in this action (i.e. \$1,333.00 per representative) are reasonable
21 and should be approved by the Court. This settlement is a thoughtful and carefully
22 crafted program which is the product of an arm's-length negotiation. Because
23 continued litigation poses risks of dismissal or denial of certification, resolution of
24

25 ¹ Preliminary Approval Order at ¶ 1.

26 ² The Settlement Administrator received 36 objections, 15 of which were invalid as
27 they did comply with paragraph 12(a) of the Court's Preliminary Approval Order.
28 Fenwick Decl. at ¶ 13.

1 this action through compromise is appropriate. As a result, this settlement warrants
2 final approval.

3 **II. FACTUAL BACKGROUND**

4 **A. Brief Summary of Facts and Claims**

5 Twenty-six putative class actions were filed against Defendants in various
6 courts across the country involving the marketing of wireless headsets, commonly
7 known as "Bluetooth Headsets." On February 20, 2007 the Judicial Panel on
8 Multidistrict Litigation coordinated these cases in the Central District of California
9 before this Court, in *In Re Bluetooth Headset Products Liability Litigation*, MDL
10 No. 1822 ("MDL cases"). Additionally, on or about August 26, 2007, a lawsuit
11 raising similar questions of law and fact, entitled *Kirkpatrick v. Motorola, 07-5570*
12 (DSF) (Ex) was filed in the Central District of California and was transferred to this
13 Court.³

14 Plaintiffs filed a Consolidated Class Action Complaint on July 6, 2007.
15 Docket No. 13. As a result of a meet and confer between the parties, Plaintiffs
16 amended the Complaint, filing their First Amended Consolidated Complaint
17 ("FACC") on August 3, 2007. Docket No. 16. Subsequently, the parties again met
18 and conferred in order to resolve any issues with the FACC. Following the meet
19 and confer, Plaintiffs filed a Second Amended Consolidated Complaint ("SACC")
20 on September 25, 2007. Docket No. 19. The SACC is the operative Complaint.

21 Plaintiffs allege that use of Defendants' Bluetooth Headsets put users at risk
22 of hearing loss and that Defendants' marketing of the products is misleading to
23 consumers. Plaintiffs further allege that Defendants marketed their Bluetooth
24 Headsets with affirmative representations concerning audio performance, comfort,
25

26 ³ The twenty-six (26) coordinated cases and the Kirkpatrick case shall be
27 collectively referred to herein as "Actions."
28

1 security and "talk times." Plaintiffs allege that Defendants failed to disclose the
2 purported risk of NIHL associated with their Bluetooth Headsets. Defendants deny
3 all allegations of wrongdoing asserted in the Actions and deny liability under any
4 cause of action asserted therein. Defendants also deny that the actions are amenable
5 to class treatment for merits purposes (as opposed to settlement purposes) pursuant
6 to Federal Rule of Civil Procedure 23.

7 **B. Investigation, Discovery and Mediation**

8 Plaintiffs investigated the science underlying Plaintiffs' claim that Bluetooth
9 Headset users are at an increased risk of harm (*i.e.*, noise induced hearing loss),
10 including researching the levels of noise permitted in different industries and under
11 different standards. Declaration of Stephen M. Garcia in Support of Motion for
12 Final Approval of Class Settlement and Plaintiffs' Request for Attorneys' Fees
13 ("Garcia Decl.") at ¶¶ 3-6. Plaintiffs reviewed studies relied upon by the National
14 Institute for Occupational Safety and Health ("NIOSH") in its criteria document 98-
15 126, as well as other seminal studies, papers and regulations regarding the
16 epidemiology and pathogenesis of noise induced hearing loss, including: the United
17 States Environmental Protection Agency's ("EPA") documents, the Occupation
18 Safety and Health Administration's ("OSHA") Noise Standard 1910.95 and
19 materials on hearing conversation, a-weighted sound measurements, and partnership
20 programs with employers; and the World Health Organization's ("WHO") October
21 28-30, 1997 report "Prevention of Noise-Induced Hearing Loss." *Id.* Plaintiffs also
22 reviewed various documents published by ANSI, the ACGIH, and the United States
23 Department of Defense for industrial hygiene studies and methods regarding noise
24 exposure and evaluating and assessing exposures. Plaintiffs' investigation also
25 included a comprehensive review of the warnings provided for other audio devices.
26 *Id.* at ¶ 5.

27 Plaintiffs retained experts as consultants and potential witnesses to discuss the
28 mechanisms by which sound can cause damage and to discuss how much sound is

1 necessary to cause damage, and spent hundreds of hours working with the experts in
2 evaluating the data produced by Defendants on the output levels of their products
3 using various software models. *Id.* at ¶ 4. Further, Plaintiffs worked with one of the
4 experts to produce a report on his evaluation of the risk of noise induced hearing
5 loss these products posed based on his experience, testing and review of publicly
6 available scientific literature. *Id.*

7 Significant discovery efforts were expended during the course of the
8 litigation, during which the parties voluntarily exchanged discovery. *Id.* at ¶ 6. For
9 example, Defendants produced thousands of pages of documents that included: (1)
10 sales data for each model Bluetooth Headset sold between June 30, 2002 and June
11 30, 2006, and (2) acoustic test results for each model Bluetooth Headset identified in
12 the pleadings sold between June 30, 2002 and June 30, 2006 for all acoustic tests
13 performed before June 30, 2006. *Id.*

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

23 **C. The Agreement**

24 The terms of the proposed Class Settlement are set forth fully in the
25 Agreement. Docket No. 61. The Agreement is entered into on behalf of a
26 "Settlement Class" consisting of all persons in the United States who: between June
27 30, 2002 and February 19, 2009, purchased a Bluetooth Headset manufactured by
28 Motorola, Plantronics or GN. As set forth in detail in the Agreement, the proposed

1 settlement requires Defendants to post warnings containing additional acoustic
2 safety information on their websites and identify those websites in the Class Notice
3 and to include additional acoustic safety information in product manuals for new
4 Bluetooth Headsets. Agreement at ¶ 3.1.

5 These new warnings alert the Settlement Class and consumers who purchase
6 new Bluetooth Headsets from Defendants of the potential danger of loud noises
7 from any source. The warnings, in pertinent part, inform consumers that:

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

14 *See* Exhibit "D" to Agreement.

15 The warnings also describe the steps that consumers can take to prevent
16 hearing loss. Additionally, Defendants shall pay \$100,000 to be divided between
17 the University of Tennessee College of Medicine, Center for Independent Living
18 Research, the National Hearing Conservation Association, the American Speech and
19 Hearing Association and the Greater Los Angeles Agency on Deafness. Agreement
20 at ¶ 3.2.

21 **D. Notice to Class Members**

22 Kinsella/Novak Communications, LLC ("KNC"), a nationally renowned
23 notice expert, developed and implemented the notice program approved by the
24 Court. According to Ms. Kinsella, the Court-approved Notice Program is in
25 compliance with Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P.") and
26 provides reasonable and adequate notice to members of the Settlement Class.
27 Kinsella Decl. at ¶ 26. Initial notice of the settlement was disseminated to the last
28 known address of all potential Class Members who could reasonably be identified.
Kinsella Decl. at ¶ 10 and Fenwick Decl. at ¶¶ 4-7. The notice program included
maintenance of an Internet website with downloadable copies of the Class Notice

1 and Settlement Agreement as well as the publication of a Summary Notice in
2 national publications. Fenwick Decl. at ¶ 12. Information about the Settlement, its
3 terms, conditions, claim forms and opt out procedures were published at
4 www.bluetoothheadsetlitigaion.com. Fenwick Decl. at ¶ 14. This notice program
5 comports with programs approved in other class actions. Kinsella Decl. at ¶ 26. *See*
6 *also Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 58 (2008).

7 **E. Settlement Administration**

8 Administration of the class claims was designed with the expertise of Rust, an
9 experienced claims administrator, familiar with administering classes with millions
10 of members. Fenwick Decl. at ¶ 2. In the administration of the subject settlement,
11 Rust sent initial notice by mail, published the Summary Notice, maintained the
12 Internet website, retained copies of the Class Notice, Settlement Agreement, written
13 objections and requests for exclusion. *Id.* at ¶ 3.

14 **III. ARGUMENT**

15 **A. The Settlement Should be Approved as Fair, Reasonable and**
16 **Adequate**

17 The Ninth Circuit has a "strong judicial policy that favors settlements,
18 particularly where complex class action litigation is concerned." *Class Plaintiffs v.*
19 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Federal Rule of Civil Procedure
20 23(e)(1)(C) dictates that a court should consider the fairness, adequacy, and
21 reasonableness of a settlement by balancing many factors, including: (1) the strength
22 of Plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further
23 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
24 amount offered in settlement; (5) the extent of discovery completed; (6) the
25 experience and views of counsel; (7) the presence of a governmental participant; and
26 (8) the reaction of class members to the proposed settlement. *Churchill Vill., LLC v.*
27 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). This list is not exclusive and
28 different factors may predominate in different factual contexts. *Torrisi v. Tucson*

1 *Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). The relative degree of
2 importance of each of these factors varies according to the circumstances of each
3 case and is dictated by the nature of the claim and the type of relief sought. *See*
4 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011; 1026 (9th Cir. 1998); *Officers for Justice*
5 *v. Civil Serv. Comm'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th
6 Cir. 1982), cert. denied, 459 U.S. 1217(1983).

7 The Court may also consider the absence of collusion in the settlement
8 process. *Churchill, supra* at 575. The Agreement is entitled to a *presumption of*
9 *fairness* because it was negotiated at arm's-length by experienced counsel after
10 significant discovery, a mediation, and conferences. Garcia Decl. at ¶¶ 6-7; *See In*
11 *re Heritage Bond Litig.*, MDL Case No. 02-ML-1475- DT, 2005 U.S. Dist. LEXIS
12 13555, at *11 (C.D. Cal. June 10, 2005) ("[A] presumption of fairness arises where:
13 (1) counsel is experienced in similar litigation; (2) settlement was reached through
14 arm's length negotiations; [and] (3) investigation and discovery are sufficient to
15 allow counsel and the court to act intelligently."); *Linney v. Alaska Cellular P'ship.*,
16 Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ, C-97-0457 DLJ, 1997 WL
17 450064, at 450065 (N.D. Cal. July 18, 1997), *aff'd* 151 F.3d 1234 (9th Cir. 1998);
18 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd* 661 F.2d
19 939 (9th Cir. 1981). A proposed settlement shall not "be judged against a
20 hypothetical or speculative measure of what might have been achieved by the
21 negotiators." *Officers for Justice*, 688 F.2d at 625. The Court must consider the
22 settlement terms "as is" and cannot rewrite terms or conditions drafted by the
23 parties. *Id.* at 630 (the Court is not "empowered to rewrite the settlement agreed
24 upon by the parties" and "may not delete, modify, or substitute certain provisions");
25 *Hanlon*, 150 F.3d at 1026 ("The settlement must stand or fall in its entirety").

26 ///

27 ///

28 ///

1 1. **Absent Settlement, Risky and Lengthy Litigation of Complex**
2 **Issues Will be Required, at Great Expense**

3 If the settlement is not approved, further litigation before this Court would be
4 time consuming, complex and expensive. If litigation continues, Plaintiffs
5 reasonably anticipate Defendants to continue the prosecution of their motion to
6 dismiss. Following this, Plaintiffs anticipate additional litigation regarding a motion
7 for class certification and competing motions for summary judgment. Appeals
8 could potentially follow, thereby causing further expense, delays and the
9 uncertainties which are inherent in litigating an appeal. Accordingly, in light of the
10 risks and strengths of Plaintiff's claims and the expense, complexity and likely
11 duration of future litigation, final approval of the settlement is warranted. *Milstein*
12 *v. Huck*, 600 F.Supp. 254, 267 (E.D.N.Y. 1990). *See also, Bullock v. Admin. of*
13 *Krichur's Estate*, 84 F.R.D. 1, 10 (D.N.J. 1979) ("[t]he expense and litigation often
14 weigh heavily in favor of settlement.")

15 In reaching the settlement, the parties agreed that Defendants' right to oppose
16 a motion for class certification would be preserved if the settlement is not approved.
17 Agreement at ¶ 2.5. In granting preliminary approval of the settlement, the Court
18 explicitly provided that the certification of the class was for settlement purposes
19 only and would not be considered as a factor in connection with any class
20 certification issue(s) if the Agreement terminates or Final Settlement Approval does
21 not occur. Preliminary Approval Order at ¶ 1. No doubt exists that, should the
22 settlement not be approved, any future certification effort will be a vigorously and
23 highly contested battle.

24 In considering the settlement offer, the Court may also look at the difficulties
25 Plaintiffs would face if litigation proceeds. *In re Mego Fin. Cor. Sec. Litig.*, 213 F.
26 3d 454, 459 (9th Cir. 2000). The potential risk Plaintiffs would face if litigation
27 proceeds, as previously discussed, certainly underscores the fairness of the result
28 Plaintiffs achieved in negotiating a settlement that provides notice to Class Members

1 and future purchasers of Defendants' product as well as donations to non-profit
2 organizations. The consideration offered to the Class is adequate, and this factor
3 supports approval of the settlement.

4 **2. The Extent of Discovery and Investigation Completed and**
5 **Stage of Proceedings**

6 As described above, significant discovery was conducted in this action prior
7 to the execution of the settlement agreement Garcia Decl. at ¶ 6. Plaintiffs also
8 conducted extensive, independent factual research as to their claims. *Id.* at ¶¶ 3-5.

9 "There is an overriding public interest in settling and quieting litigation," and
10 this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529
11 F.2d 943, 950 (9th Cir. 1976). Settlement spares the parties the costs of protracted
12 litigation and eases the congestion of judicial calendars. *See id.* at 943. In light of
13 the extensive discovery and independent factual research conducted by Plaintiff, and
14 the public policy favoring resolution of class actions by settlement to avoid
15 protracted litigation, this factors also weighs in support of approval.

16 **3. The Experience and Views of Counsel**

17 Class Counsel have over half a century of combined experience in class
18 actions and complex litigation cases.⁴ Moreover, the settlement is the product of
19 arm's-length negotiations between the parties as represented by counsel experienced
20 in class action litigation. Counsel for both parties believe that the Agreement
21 reflects the relative strengths and weaknesses of the parties' respective claims and
22 defenses, as well as the substantial risks presented in continuing litigation. The
23 settlement was the eventual product of a mediation conducted by a qualified and
24 experienced former judge. The experience and views of counsel, and the mediator,

25 _____
26 ⁴ *See* Garcia Declaration in support of motion for preliminary approval, Docket No.
27 58 at ¶ 10; Declaration of Daniel L. Warshaw in Support of Motion for Preliminary
28 Approval at ¶ 4, Docket No. 59.

1 support approval of the settlement. *Behrens v. Wometco Enters., Inc.*, 118 F.R.D.
2 534, 538-39 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990).

3 **4. The Reaction of Class Members to the Settlement**

4 A low percentage of objectors in comparison to the overall class size weighs
5 heavily in favor of approval of settlement. *See, e.g., Glass v UBS Fin. Servs., Inc.*,
6 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 17, 2007) (approving a settlement with
7 8 objectors in a class of 13,716). Although the exact number of class members is
8 unknown in the instant action, the settlement class is composed of millions of
9 purchasers of Bluetooth Headsets in the United States since 2002.⁵ Of these, 715
10 persons have elected to opt out of the lawsuit and 21 have filed valid written
11 objections⁶. Fenwick Dec. at ¶¶ 12-13. If the class is assumed to be at least
12 1,000,000 individuals (which is conservative), then just .00003% of the class have
13 either requested exclusion or objected. This objection rate is infinitesimal compared
14 with objection rates in other class actions. *See, e.g., Glass*, 2007 WL 221862, at *5.
15 Clearly, the overwhelming majority of the public considers this settlement to be a
16 favorable development for the class, which supports approval by the Court.

17 **5. Absence of Collusion in the Settlement Process**

18 There was no collusion in the settlement of this action. The settlement is the
19 product of lengthy, arms-length negotiations. Garcia Decl. at ¶¶ 6-7. After Class
20 Counsel negotiated the most beneficial settlement possible, they left the matter of
21 attorneys' fees and costs for the Court to resolve. *See* Agreement at ¶ 3.6. As a
22 result, this factor also supports approval of the settlement.

23
24
25 _____
26 ⁵ Preliminary Approval Order at ¶ 1.

27 ⁶ Thirty-six objections were received by Rust yet only 21 were valid. Fenwick Decl.
28 at ¶ 13.

1 **B. The Settlement Class Satisfies the Requirements of Rule 23**

2 In order to grant final certification of a settlement class, the requirements of
3 Rule 23 must generally be satisfied. *See* Fed. R. Civ. P. 23; *Hanlon v. Chrysler*
4 *Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). As the Court found in granting
5 preliminary approval of the Settlement Class,⁷ certification is warranted where, as
6 here, it is demonstrated that the four prerequisites of Rule 23(a) — numerosity,
7 commonality, typicality and adequacy of representation, and one of the three
8 requirements of Rule 23(b), are satisfied. *Id.*

9 As set forth in the proposed Agreement, the parties seek to resolve claims
10 relating to the following national Settlement Class:

11 All persons or entities in the United States who: between June 30, 2002
12 and the date of entry of the Notice Order, purchased a Bluetooth
13 Headset manufactured by Motorola, Plantronics or GN. Excluded from
14 the Class are: (a) the Defendants and their parents, subsidiaries, and
15 affiliates, current and former directors and officers; (b) any entity in
16 which any of the Defendants has a controlling interest; (c) any
17 successor or assign of any of the Defendants; (d) any person who has
18 validly elected to exclude themselves from the Settlement Class
19 pursuant to Paragraph 5.5 herein; and (e) the Judge to whom the
20 Actions are assigned.

21 Agreement at ¶ 1.3.

22 The proposed Settlement Class satisfies the requisite elements of Rule 23.
23 Millions of individuals have purchased the products during the class period, and
24 numerosity is thus satisfied.

25 Further, and especially in this context of settlement, common issues of law or
26 fact “predominate over any questions affecting only individual members” Fed.
27 R. Civ. P. 23(b)(3); *See also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625
28 (1997) (“[p]redominance is a test readily met in certain cases alleging consumer []
fraud or violations of the antitrust laws”). Commonality exists when there is either a

⁷ Preliminary Approval Order at ¶ 1.

1 common legal issue stemming from divergent factual predicates or a common
2 nucleus of facts resulting in disparate legal remedies within the class. *See Hanlon*,
3 150 F.3d at 1019. Here, Defendants’ conduct — failing to warn of a risk of noise
4 induced hearing loss caused by their products — is equally relevant to each class
5 member’s claims. Therefore, commonality is satisfied.

6 The proposed Representative Class Member’s claims are typical of those of
7 the Settlement Class. Fed. R. Civ. P. 23(a)(3). Typicality gauges the similarity
8 between the class representatives’ legal theories and those of the proposed class
9 members. *See Lightbourn v. County of El Paso Texas*, 118 F.3d 421, 426 (5th Cir.
10 1998). Courts have held that a representative plaintiff’s claim is typical if it arises
11 from the same course of conduct that gives rise to other class members’ claims and
12 is based on the same legal theory as the claims of the other class members. *See In re*
13 *United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D.
14 251, 256 (C.D. Cal. 1988 (“*United Energy*”)); *Rosario v. Livaditis*, 963 F.2d 1013,
15 1018 (7th Cir. 1992).

16 Here, the same course of conduct gave rise to the proposed Class
17 Representatives’ and proposed Settlement Class members’ claims. *See*, e.g., SACC
18 at ¶ 54. The claim arises from the same set of circumstances; namely those
19 regarding the failure to warn the Settlement Class about the potential risk of hearing
20 loss associated with the use of Bluetooth Headsets. In this case, Plaintiffs and the
21 Settlement Class allege they have suffered or are likely to suffer the same type of
22 injury as a result of purchasing Bluetooth Headsets manufactured by Defendants
23 without any warning of a purported risk of hearing loss. As the settlement *excludes*
24 personal injury claims, the damages and claims among the Settlement Class
25 Members are typical. Agreement at § 3.9. *Hanlon v. Chrysler Corp.*, 150 F.3d
26 1011, 1020 (9th Cir. 1998) (stating, “[R]epresentative claims are ‘typical’ if they are
27 reasonably co-extensive with those of absent class members; they need not be
28 substantially identical.”).

1 Because a nationwide class is being certified for the purposes of settlement
2 only, the requisites of predominance and superiority of Rule 23(b)(3) can be met and
3 manageability is not an issue. In other words, “[c]onfronted with a request for
4 settlement-only class certification, a district court need not inquire whether the case,
5 if tried, would present intractable management problems . . . for the proposal is that
6 there be no trial” *Amchem*, 521 U.S. at 620; *Warfarin Sodium Litig.*, 391 F.3d 516,
7 529-30 (3d Cir. 2004) (“when dealing with variations in state laws, the same
8 concerns with regards to case manageability that arise with litigation classes are not
9 present with settlement classes, and thus those variations are irrelevant to
10 certification of a settlement class. . . . In certifying a nationwide settlement class,
11 the District Court was well within its discretion in determining that variations
12 between the laws of different states were insufficient to defeat the requirements of
13 Rule 23”).

14 Finally, the plaintiffs’ representatives’ attorneys have “fairly and adequately
15 protect[ed] the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy
16 requirement has two prongs: “(1) that the representative party’s attorney be
17 qualified, experienced and generally able to conduct the litigation; and (2) that the
18 suit not be collusive and plaintiff’s interests not be antagonistic to those of the
19 remainder of the class.” *United Energy*, 122 F.R.D. at 257. Both elements are
20 satisfied here. First, Plaintiffs retained counsel who are qualified and experienced to
21 litigate this action. The law firms representing the proposed Settlement Class have
22 represented plaintiffs in dozens of class actions, and are among the nation’s most
23 respected firms involved in complex litigation. Second, there is no evidence
24 whatsoever that Plaintiffs have interests that are antagonistic to those of other class
25 members, or that Plaintiffs will not continue to fairly and adequately protect the
26 interests of the class.

27 In short, the class action device proposed here “is superior to other available
28 methods for the fair and efficient adjudication of the controversy” and therefore also

1 satisfies the requirements of Fed. R. Civ. P. 23(b)(3). Employing the class device
2 here will conserve the resources of the judicial system and preserve public
3 confidence in the integrity of the system by avoiding the waste and delay of
4 repetitive proceedings and prevent the inconsistent adjudications of similar issues
5 and claims. *See Hanlon*, 150 F.3d at 1023. There is no other mechanism by which
6 all of the Settlement Class Members' claims will be as fairly, adequately, and
7 efficiently resolved as through the final settlement of this class action.

8 **IV. THE OBJECTIONS TO THE SETTLEMENT ARE WITHOUT MERIT**

9 Given that the settlement class is composed of millions of purchasers of
10 Bluetooth headsets in the United States since 2002,⁸ it is not surprising that 21 class
11 members properly objected to the settlement. Nor is it surprising that nine of the
12 individuals that objected also excluded themselves from the lawsuit. Therefore,
13 these nine are no longer members of the class and have no standing to object.⁹ *See*
14 *Trew v. Volvo Cars of N. Am., LLC*, 2007 U.S. Dist. LEXIS 55305, *7 (E.D. Cal.
15 Jul. 30, 2007); *Glass v. UBS Fin. Servs., Inc.*, 2007 U.S. Dist. LEXIS 8476, *25
16 (N.D. Cal. Jan. 26, 2007).

17 Of the 21 valid objections, some do not like the fact that this case was brought
18 because they believe that anyone who needs warnings that Defendants' product
19 could cause hearing loss deserves to be damaged.¹⁰ Some do not like the fact that
20 this lawsuit was brought because they do not believe Defendants' product could
21

22 ⁸ Preliminary Approval Order at ¶ 1.

23 ⁹ Docket Nos. 68, 80, 81, 91, 97, 102, 104, 111 and 116.

24 ¹⁰ *See, e.g.*, Docket No. 90 ("If you are so damn dumb that you need a warning about
25 hearing loss on your headset, then you should not use one."); Docket No. 93 ("Of
26 course damage may occur! Common sense should reveal this!"); Docket No. 95 ("I
27 do not think the companies should be liable if a customer listens to something that is
28 too loud...")

1 cause hearing loss.¹¹ Accordingly, these objectors are people who do not believe
2 they have been damaged. Some objectors just dislike class actions and class action
3 lawyers in general. *See, e.g.*, Docket No. 99, ("Like insatiable leeches, these class
4 action lawyers siphon off the lifeblood of our economy"). Most are opposed to
5 awarding fees and costs to Class Counsel, no matter how much time they put into
6 the case or how much money they expended, and no matter what they achieved with
7 the settlement.¹² Finally, some *approve* of the settlement. *See, e.g.*, Docket No. 85
8 ("A donation of \$100,000 to hearing related charities is a nice gesture and a
9 sufficient slap on the hand for the manufacturers..."); Docket No. 112 ("I want to be
10 a part of this Bluetooth Class Action Lawsuit.")

11 **A. Response to Class Member Objections**

12 The Agreement simply cannot be all things to everyone. Indeed, given
13 enough time to think about it, someone could conceive of a reason to criticize a
14 complete victory at trial that was ultimately upheld on appeal. It is easier still to
15 criticize a settlement agreement that is inherently a product of compromise.
16 However, the abilities to offer imaginative criticism and formulate conceptions of
17 _____

18 ¹¹ *See, e.g.*, Docket No. 105 ("Anyone who has lost their hearing because of their
19 Bluetooth headset already had impaired hearing. The headset had nothing what so
20 ever, to do with hearing impairments"); Docket No. 114 ("I doubt it could possibly
21 cause hearing damage."); Docket No. 94 ("I doubt the Bluetooth can damage my
22 hearing; I believe the iPod can."); *compare* Declaration of Michael Jones
(evidencing significant personal injury caused by Defendant's product); Docket No.
23 109; Docket No. 116; Docket No. 68; Docket No. 113.

24 ¹² *See, e.g.*, Docket No. 89 ("My objection is regarding the payment of up to
25 \$800,000 in attorney's fees to be paid by the defendants."); Docket No. 115; Docket
26 No. 108; Docket No. 119]; Docket No. 67 (erroneously stating that the "supposed
27 injured parties will receive nothing," which does not reflect the actual terms of the
28 Settlement Agreement, and stating "I am disappointed in the defendants' council
[sic.] that they would allow a lawsuit to come to settlement that benefited [sic.] only
the opposing council.")

1 the ideal settlement are not issues that are properly before this Court. *Officers for*
2 *Justice*, 688 F.2d 615, 625 (1982), *cert. denied*, 459 U.S. 1217, 75 L. Ed. 2d 456,
3 103 S. Ct. 1219 (1983). What is properly before the Court is whether, taken as a
4 whole, the settlement is fair, reasonable, and adequate. Fed. R. Civ. Proc.
5 23(e)(1)(c); *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004);
6 *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Put simply,
7 the answer is "Yes." As demonstrated herein, the objections that have been
8 submitted in opposition to final approval are, at best, misguided attempts by
9 laypersons and Theodore M. Frank ("Frank"), an attorney who has personally
10 objected to other class settlements, regardless of the validity of the claims and the
11 benefits they may confer. At worst is a brazen effort by Frank, who solicited class
12 members for his own purposes, to multiply this litigation and to delay its resolution.

13 Additionally, the objectors did not take into account the personal tragedies
14 related to hearing loss. Class Representative Michael Jones suffered hearing loss,
15 reportedly in both ears from Bluetooth Headsets. *See* Declaration of Michael Jones
16 ("Jones Decl.") at ¶¶ 3-7. The Bluetooth Headsets which Mr. Jones purchased and
17 used did not contain warnings relating to hearing loss. *Id.* at ¶ 7. Mr. Jones filed a
18 complaint to protect fellow Bluetooth Headset users by requiring defendants to
19 include significant warnings relating to hearing loss. *Id.* at ¶ 10. Many of the
20 objectors argue that the hearing loss warnings have no value. Frank describes his
21 effort to derail the settlement as "fun." *See* Garcia Decl. at ¶ 9 and Exhibit "B"
22 thereto. Hearing loss is a permanent and life changing event. Jones Decl. at ¶ 9.
23 While it is difficult to monetize the value of preventing NIHL, those who suffer
24 from the condition, would likely pay any price for the return of their hearing.

25 **B. The Extremely Small Number of Objectors Favors Approval of the**
26 **Settlement**

27 A certain number of objections are to be expected in response to the
28 settlement of any class action. *In re Austrian & German Bank Holocaust Litig.*, 80

1 F. Supp. 2d 164, 175 (S.D.N.Y. 2000). A small number of objectors, as is the case
2 here, is a strong indicator that a settlement is fair and adequate. *Id.*; *Francisco v.*
3 *Numismatic Guar. Corp. of Am.*, 2007 U.S. Dist. LEXIS 96618 (S.D. Fla. 2007) ("A
4 low percentage of objections will confirm the reasonableness of a settlement and
5 support its approval."); *see also Stoetzner v. U.S. Steel Corp.*, 897 F. 2d 115, 118-19
6 (3d Cir. 1990) (objections of 29 members of a settlement class of 281 – over 10
7 percent of the class – "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F. 2d
8 954, 957 (6th Cir. 1981) (presence of 7 objectors in a 109-member class should be
9 considered in determining adequacy); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624
10 (N.D. Cal. 1989) (objections from 16 percent of the class constituted a "persuasive"
11 showing that a settlement was adequate).

12 Further, "it is well established that a settlement can be fair notwithstanding a
13 large number of objectors." *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 23 (2d
14 Cir. 1987) (collecting cases). Indeed, "even majority opposition to a settlement
15 cannot serve as an automatic bar to a settlement that a district judge, after weighing
16 all the strengths and weaknesses of a case and the risks of litigation, determines to
17 be manifestly reasonable," as is the case here. *County of Suffolk v. Long Island*
18 *Lighting Co.*, 907 F.2d 1295, 1325 (2d Cir. 1990) (internal quotation marks and
19 citation omitted).

20 In this case, the absence of any significant objections to the settlement
21 supports final approval. Of a class composed of millions, only 21 valid objections
22 were filed. The nature of the objections themselves underscores the propriety of
23 Agreement. Aside from objections to an award of fees to Class Counsel, the balance
24 of the objections are not to the fairness of the settlement, they are complaints about
25 the existence of the lawsuit itself. If these objectors wanted nothing to do with the
26 case, their remedy was to opt out. Given that "[t]he settlement must stand or fall in
27 its entirety[.]" these are not objections that should deprive the rest of the class,
28 charitable organizations and future purchasers of Defendants' products from

1 obtaining the benefits under the settlement agreement. *Hanlon v. Chrysler Corp.*,
2 150 F.3d 1011, 1026 (9th Cir. 1998).

3 **C. Frank's Objection has no Legal Merit**

4 Seven of the objectors in this case are represented by attorney Theodore H.
5 Frank, who has himself objected to class actions in the past. Exhibits "A" and "C"
6 to Garcia Decl. Notwithstanding the fact that these objectors (the "Frank
7 Objectors") are represented by counsel, they still object on grounds that have
8 absolutely no support from the law or the facts. In fact, attorney Frank apparently
9 decided that he wanted to make the same objections in this case that he made in
10 another class action, *In re Grand Theft Auto Video Game Consumer Litig.*, 251
11 F.R.D. 139 (S.D.N.Y. 2008). However, since he is not a class member and has no
12 standing to object, Frank posted an ad on the internet soliciting class members in
13 this case so that he could intervene for his own personal reasons.¹³ In his ad, Frank
14 wrote,

15 In the Grand Theft Auto case, I was a class member, so could file an
16 objection on behalf of myself. I don't own a Bluetooth headset, so I
17 can't do that here. But the fairness hearing is in Los Angeles, I'm a
18 member of the California bar and the District of California bar, and I
19 wouldn't mind having an excuse to be in California on July 6.
20 I'm going to float a trial balloon here (and perhaps get my friends at
21 Kirkland mad at me). If you are [a Class Member]...I may be willing
22 to represent you pro bono to file an objection similar to the one I filed
23 in the Grand Theft Auto case, where I argued that the settlement was
24 evidence that the case was meritless and should be dismissed, and in no
25 event should the attorneys get paid off....There is a chance that the
26 judge will ignore the objection and approve the settlement anyway,
27 though we would have the right to appeal to the Ninth Circuit.

28

13 Further, Frank belittles the seriousness of the legal process by stating, "And
anyone in Los Angeles July 6 who wants to wath the hearing, *please join the fun.*"
(Emphasis added.)

1 Exhibit "A" to Garcia Decl.

2 Unfortunately, this is typical of the conduct exhibited by counsel who
3 regularly object to class settlements. As set forth in *Nonpecuniary Class Action*
4 *Settlements*, 60 CONT. LAW & PROBS. at 126 n. 64:

5 Class action practice in the United States has developed its own cohort
6 of professional objectors: attorneys who enter a case after a settlement
7 is announced, manage not only to object to the settlement but to
8 intervene as counsel on behalf of a class member, and then threaten to
9 disrupt the settlement unless they are given a hefty reward. Their threat
10 is not an idle one....The prospect of delaying a settlement for months or
years by taking an appeal is the realistic threat that objectors hold over
the heads of the settling parties...

11 This is an apt description of Frank's conduct in this case, including his solicitation of
12 class members so that he could intervene and his threat of appealing to the Ninth
13 Circuit. Exhibit "A" to Garcia Decl.

14 As the Ninth Circuit has observed, "the very essence of a settlement is
15 compromise, a yielding of absolutes and an abandoning of highest hopes." *Staton v.*
16 *Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation and internal quotation marks
17 omitted). In this case, absolutes were yielded, but highest hopes were not
18 abandoned. To the contrary, Plaintiffs insisted Defendants provide benefits to the
19 class, including immediate warnings about the possibility of hearing loss from the
20 use of their products on their websites, in the class notice and in all new product
21 manuals, in addition to funds to organizations that research and prevent hearing loss,
22 and assist hearing scientists and those with hearing loss. Agreement ¶¶ 3.1, 3.2.
23 The Frank Objectors do not have valid arguments about the actual terms of the
24 settlement, so instead they make irrelevant complaints about class action suits, class
25 action lawyers, and attorney fee and *cy pres* awards in general. See Frank Objection
26 at ¶¶ 14-16, Docket No. 107.

27 The Frank Objectors' *cy pres* arguments are almost identical to those made by
28 attorney Frank when objecting in the *Grand Theft Auto* case, demonstrating that

1 attorney Frank is just using a boilerplate objection. Exhibit "C" to Garcia Decl. As
2 the authors of a leading treatise on class actions have observed, "canned" objections
3 are another way of distinguishing a professional objector from a valid objector:

4 Valid objections can serve a vital role in protecting the interests of
5 absentees in a class settlement by raising issues that may have been
6 overlooked or disregarded by class counsel. On the other had,
7 objections in "boilerplate" form filed by "professional objectors" often
8 delay and unnecessarily complicate class proceedings by requiring
9 court review of purported issues with no colorable merit. Further,
10 meritless objections tend to delay providing benefits to bona fide and
deserving class members inasmuch as settlements commonly do not
provide for payment of any benefits until the judgment entered
approving a settlement is final and not subject to further appeal.

11 Alba Conte & Herbert B. Newberg, 5 NEWBERG ON CLASS ACTIONS § 15:37
12 (4th ed. 2002).

13 In any event, Frank entirely misconstrues the authority on which he relies for
14 his misguided arguments. Frank cites *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d
15 781, 784 (7th Cir. 2004), for the erroneous proposition that the \$100,000 payment
16 Defendants agreed to pay to fund organizations involved with hearing loss and
17 research "does not benefit the class" and "should not be used to justify the fairness
18 of the settlement or the award of attorneys' fees." Frank Objection at ¶ 7-8, Docket
19 No. 107. The *Mirfasihi* case does not support the Frank Objectors.

20 In *Mirfasihi*, the Court of Appeals reversed a settlement award and remanded
21 not because the settlement was unfair, but because the district court did not discuss
22 "questionable features," such as the reversion of funds to defendant, in its decision.
23 *Mirfasihi*, 356 F.3d at 785-87. After the *Mirfasihi* case was remanded, a settlement
24 was approved by the district court and affirmed by the Court of Appeals where one
25 of the plaintiff classes that alleged its privacy rights had been violated would receive
26 no monetary award and *released* their claims, but defendant would make a \$243,000
27 charitable contribution to a public interest research center specializing in the
28

1 education and protection of privacy rights. *See Mirfasihi v. Fleet Mortg. Corp.*,
2 2007 U.S. Dist. LEXIS 51474, *5-6, 24 (N.D. Ill. July 17, 2007); *see also Mirfasihi*
3 *v. Fleet Mortg. Corp.*, 2007 U.S. Dist. LEXIS 65906 (N.D. Ill. Sept. 6, 2007); *aff'd*
4 *Mirfasihi v. Fleet Mortg. Corp.*, 551 F.3d 682 (7th Cir. Ill. 2008); *cert. denied Perry*
5 *v. Mirfasihi*, 2009 U.S. LEXIS 4246 (U.S. June 8, 2009).

6 The *Mirfasihi* court held that defendant's payment to the research center "is
7 likely to provide a benefit to the members of the class" and the settlement was fair,
8 reasonable and adequate. *Mirfasihi* 2007 U.S. Dist. LEXIS 51474 at *24. The Court
9 of Appeals also left intact the award of \$750,000 in attorneys' fees to class counsel.
10 *Mirfasihi*, 551 F.3d 682.

11 In this case, like in *Mirfasihi*, the settlement provides that Defendants will
12 make charitable donations to research and social services centers that will provide a
13 benefit to the members of the class. Agreement ¶ 3.2. In addition, Defendants will
14 post warnings about possible hearing loss for the benefit of both members of the
15 class as well as future purchasers of Defendants' products. *Id.* at 3.1. Further, the
16 Agreement in this case does not release Class Members' personal injury claims,
17 whereas the *Mirfasihi* class members released all their claims. *See Mirfasihi*, 2007
18 U.S. Dist. LEXIS 65906; Agreement ¶ 3.10.

19 In addition to *Mirfasihi*, attorney Frank cites several other cases in an attempt
20 to support his misguided arguments. The cases Frank relies upon are mainly from
21 non Ninth Circuit jurisdictions, including other federal circuits, district courts from
22 other states and even a state case from Kentucky, none of which are binding
23 authority on this Court. The other cases upon which Frank relies are misconstrued
24 and misapplied. What Frank ultimately fails to do is establish a basis for rejecting
25 the Agreement as a whole. To this end, it is telling that Frank has failed to analyze
26 the settlement pursuant to the eight factors set forth by the Ninth Circuit in *Churchill*
27 *Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)..

28 Instead, Frank misapplies the holding in *Molski v. Gleich*, 318 F. 3d 937 (9th

1 Cir. 1998) and several inapplicable Seventh Circuit cases. *See e.g., Mirfasihi v.*
2 *Fleet Mortg. Corp.*, 356 F.3d 781, 784 (7th Cir. 2004) (overturning a settlement only
3 where it contained, "[n]o retrospective relief, no prospective relief, and no
4 'emotional balm' relief.") These cases are distinguishable and inapplicable. For
5 instance, in *Molski*, the Court of Appeal determined that a primary reason for the
6 trial court's approval of settlement was a mistaken belief regarding which claims the
7 settlement released. *Molski*, 318 F.3d at 953. The *Molski* settlement improperly
8 replaced damages with *cy pres* distributions. Unlike this case, the Court found it
9 "particularly problematic" that there had been only a minimal amount of discovery
10 in the case and the record indicated collusiveness. *Id.* at 954-56. Further, the
11 settlement agreement in *Molski* contained a release of class members' claims for
12 treble damages. *See Id.* at 953.

13 Here, the Court was not mistaken about any provisions of the settlement when
14 it granted preliminary approval, nor does the record indicate inadequate discovery or
15 collusion, as it did in *Molski*. No actual damages were replaced here by *cy pres*
16 awards, rather, Defendants' payments will benefit the class, as will the new,
17 adequate warnings Defendants will provide. Furthermore, the Agreement in this
18 case is narrowly crafted to preserve the personal injury damages of class members.
19 The determination of fairness is a fact-based inquiry that cannot be accomplished by
20 comparing proposed settlement figures to those in other cases, out of context, as
21 Frank attempts.

22 Frank erroneously bases his arguments against awards of attorneys' fees and
23 costs on calculations comparing the terms of the settlement to what might have
24 hypothetically been obtained in negotiations. *See* Frank Objection at pp. 6-7, 12,
25 Docket No. 107. The law is clear that such second-guessing is impermissible in
26 making a fairness determination. A proposed settlement shall not "be judged against
27 a hypothetical or speculative measure of what might have been achieved by the
28 negotiators." *Officers for Justice*, 688 F.2d at 625. Frank also attempts to compare

1 the proposed attorneys' fee award to damages awarded the class, mistakenly
2 applying the common fund doctrine when there is no common fund in this
3 settlement. *See Id.* Plaintiffs are entitled to statutory awards of fees and costs, and
4 this argument of Frank's, like his others, has no merit.

5 As set forth in detail in the Agreement, the proposed settlement requires
6 Defendants to post warnings on their websites that benefit the class by providing
7 additional acoustic safety information. Defendants are also required to include
8 additional acoustic safety information in product manuals for new Bluetooth
9 Headsets. Agreement at ¶ 3.1. These new warnings alert the Settlement Class and
10 consumers who purchase new Bluetooth Headsets from Defendants of the potential
11 danger of loud noises from any source, and they describe the steps that consumers
12 can take to prevent hearing loss. *Id.* The new warnings are adequate and have
13 enhanced previous warnings. Although Attorney Frank misguidedly criticizes these
14 warnings, he actually cites a warnings mandated and adopted by this lawsuit as
15 being adequate. *See* Frank Objection at pp. 10, Docket No. 107 (quoting a BT2040
16 headset warning attorney Frank that was dated 2007, *after* Plaintiffs demanded
17 Defendants change their product manuals to incorporate this warning.)¹⁴ Indeed,
18 each of the class members who responded to Frank's solicitation purchased their
19 Bluetooth Headsets after 2007 and have already benefited from the revised warnings
20 requested by Plaintiffs. *See id.* at pp. 4-5. This settlement is fair, adequate and
21 reasonable and should be finally approved. *See, In re Heritage Bond Litig.*, MDL
22 Case No. 02-ML-1475- DT, 2005 U.S. Dist. LEXIS 13555, at *11 (C.D. Cal. June
23 10, 2005).

24

25

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28

¹⁴ *See*
http://www.jabra.com/sites/Jabra/GNImages/Products/WirelessHeadset/BT2040/Documents/UM/BT2040_UM_EM_UK_1649.pdf

1 **V. THE CLASS REPRESENTATIVES ARE ENTITLED TO**
2 **ENHANCEMENT AWARDS FOR THEIR TIME AND EFFORT**

3 Pursuant to the terms of the Agreement, Defendants have agreed to pay a total
4 of \$12,000 in payments to the representative Plaintiffs. See Agreement at ¶ 3.5,
5 Docket No. 61. Incentive awards are a common place in class actions to
6 compensate the Representative Plaintiffs for their time and effort in the prosecution
7 of the litigation. Splitting the \$12,000 total incentive award among the nine
8 Representative Plaintiffs (as defined in ¶ 1.14 of the Agreement) results in a total
9 award of \$1,333 to each Representative Plaintiff. This is well within the range of
10 reasonableness for awards of this nature.

11
12 **VI. CONCLUSION**

13 An overwhelming majority of Class Members are in support of this
14 settlement. Counsel for all parties spent great time and effort to assure that the
15 settlement terms, notice, and administration meets all requirements of the Federal
16 Rules. For the foregoing reasons, this settlement should be approved.

17
18 DATED: June 22, 2009

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

**PEARSON, SIMON, WARSHAW &
PENNY, LLP**
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24 By: _____/s/_____
25 **STEPHEN M. GARCIA**
26 Class Counsel for Plaintiffs and the Class
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