Paul B. Maslo (admitted *pro hac vice*)
Andrew Dressel (admitted *pro hac vice*)
NAPOLI SHKOLNIK PLLC
360 Lexington Avenue, 11th Floor
New York, New York 10017
Telephone: (212) 397-1000
Fax: (646) 843-7603
Email: pmaslo@napolilaw.com
adressel@napolilaw.com

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN DULBERG, individually, and on behalf of all others similarly-situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., and RASIER, LLC,

Defendants.

Case No. 3:17-cv-00850-WHA

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Judge: Hon. William Alsup
Date:
Time: 8:00 a.m.
Courtroom: 8

Trial Date: October 29, 2018

NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 27, 2018, or as soon thereafter as the matter may be heard, in Courtroom 8 of the San Francisco Courthouse for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, 94102, Plaintiff Martin Dulberg, individually and on behalf of the class, will move the Court pursuant to Federal Rule of Civil Procedure 23(e) for an order (1) preliminarily approving the settlement agreement between Dulberg and Defendants Uber Technologies, Inc. and Rasier, LLC as fair, reasonable, and adequate; (2) approving the form and content of the proposed notice of class action settlement; (3) appointing Angeion Group as settlement administrator; (4) scheduling a hearing regarding final approval of the proposed settlement, class counsel's request for attorneys' fees and expenses, and Dulberg's request for a service payment; (5) removing all trial-related deadlines from the calendar and entering a stay; and (6) granting such other and further relief as may be appropriate.

This motion is based on the accompanying memorandum of points and authorities, the declaration of Paul B. Maslo and exhibits, all other pleadings and papers filed in this action, and any argument or evidence that may be presented at or prior to the hearing in this matter.

Dated: August 28, 2018

Respectfully submitted,

/s/ Paul B. Maslo

Paul B. Maslo (admitted *pro hac vice*)
Andrew J. Dressel (admitted *pro hac vice*)
NAPOLI SHKOLNIK PLLC
360 Lexington Avenue, 11th Floor
New York, New York 10017
Telephone: (212) 397-1000
Fax: (646) 843-7603
Email: pmaslo@napolilaw.com
adressel@napolilaw.com

Counsel for Plaintiffs

Pursuant to Federal Rule of Civil Procedure 23(e), and consistent with the Court's Notice and Order Re Factors To Be Evaluated For Any Proposed Class Settlement ("Settlement Guidelines," Dkt. No. 81), Plaintiff Martin Dulberg moves for an order preliminarily approving the settlement agreement between him, on behalf of the class, and Defendants Uber Technologies, Inc. and Rasier, LLC (collectively, "Uber"), attached as Exhibit 1 to the declaration of Paul B. Maslo.

PRELIMINARY STATEMENT

The parties have vigorously litigated this case. They engaged in extensive motion practice, both in relation to Uber's motion to dismiss and Dulberg's motion for class certification. They completed fact and expert discovery. They mediated before Magistrate Judge Ryu and engaged in further private, arm's-length negotiations after mediation. Only then did the parties finally come to an agreement, which appropriately balances the risks of continuing to litigate against the likely benefits to the class. On this motion, Dulberg is requesting the Court's preliminary approval of this agreement.

To determine whether to preliminarily approve a settlement, courts typically consider whether it (1) is the product of serious, informed, non-collusive negotiations; (2) has obvious deficiencies; (3) improperly grants preferential treatment to the class representative or segments of the class; and (4) falls within the range of possible approval. These factors are generally consistent with this Court's Settlement Guidelines. Each of these factors weighs in favor of approval.

First, use of an experienced mediator shows that the settlement was serious and not collusive. Engaging in fulsome discovery before settlement supports a finding that negotiations were well-informed.

Second, the settlement agreement has no obvious deficiencies. The release is narrowly tailored and tied to the breach of contract claim pled and litigated in the case. The Court has discretion over whether to award attorneys' fees and expenses and the amount of any award. And notice complies with the requirements of Rule 23 and due process.

Third, the settlement agreement does not discriminate among class members—they're all entitled to a pro rata share of the amount remaining after fees and expenses. Though Dulberg seeks a $5,000 service payment to compensate him for the time and effort that he has put into prosecuting this case,

the payment is subject to Court approval and is an amount that courts in the Northern District consider presumptively reasonable.

Finally, given the expected recovery and risks of litigation, the $345,622 settlement is more than adequate. Specifically, there are several possible outcomes if the parties continue to litigate this case: (1) a finding that Uber did not breach the December 11, 2015 Technology Services Agreement ("TSA"), attached as Exhibit 2 to the Maslo Declaration, which would result in Plaintiffs receiving no damages; (2) a finding that Uber breached the TSA, but that Plaintiffs waived their claims (Uber has asserted several affirmative defenses), which would also result in no damages; (3) a finding that Uber breached the agreement, but that, as Uber's expert contends, class members' UberXL and UberPOOL rides governed by the TSA—not just UberX and UberSELECT rides—must be considered, which would result in damages capped at $345,622 (the amount of the settlement); or (4) a finding that Uber breached the TSA and that only class members' UberX and UberSELECT rides should be considered, which would result in damages capped at $747,555. Assigning an equal 25% weighting to each of these four outcomes results in a fair value of $273,294.25, which is $72,327.75 less than the settlement amount. The settlement amount is well within the zone of fairness even when compared to the best-case-scenario damages: $345,622 is 46.2% of $747,555. Indeed, courts routinely approve settlements that are less than 10% of maximum value.

STATEMENT OF FACTS

I. The pleadings and Uber's motions to dismiss

Dulberg filed a putative class action complaint on February 21, 2017, asserting several claims related to Uber's upfront pricing practices: breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and unjust enrichment. (Dkt. No. 1.)

On May 15, Dulberg amended the complaint in response to Uber's first motion to dismiss. (Dkt. No. 30.) The amended complaint was filed on behalf of the following class: "All natural persons nationwide who have worked or who continue to work as a driver for Uber during the time period it instituted the billing practice described in this complaint and who opted out of arbitration." (*Id.* ¶ 36.) In the amended complaint, Dulberg asserted only a breach-of-contract claim.

Uber moved to dismiss the amended complaint on June 19. (Dkt. No. 38.) The Court denied Uber's motion on July 31. (Dkt. No. 52.) Uber answered the amended complaint on August 14. (Dkt. No. 59.)

II. Fact discovery

The parties engaged in extensive fact discovery. Dulberg was deposed and both parties produced documents and answered interrogatories. Among the documents Uber produced was a spreadsheet containing 15,603,126 lines of data, one row for each ride given by every potential class member during the relevant period. This data included the upfront price and its various components, as well as the amounts paid to drivers. Using this data, it was possible for the parties to calculate purported damages. Notably, as discussed below, contrary to Dulberg's expectations when he filed the case, most drivers made more money being paid based on the fare calculated with actual time and distance than they would have made had their pay been based on the upfront fare.

III. Class certification

On December 21, 2017, Dulberg filed a motion for class certification. (Dkt. No. 67.) Dulberg initially sought to certify the following class: "All natural persons nationwide who (1) worked as a driver for UberX or UberSELECT; (2) opted out of arbitration; and (3) transported a passenger who was charged an upfront fare before they accepted Uber's updated fee addendum, which it issued on May 22, 2017." (*Id.* at 5.) The class was narrower than in the amended complaint because Dulberg drove for only UberX and UberSELECT.

In its opposition brief and accompanying expert report filed on January 11, 2018, Uber showed that approximately 50.3% of drivers in the class, as defined in Dulberg's opening brief, were worse off financially under Dulberg's interpretation of the TSA. (Dkt. No. 71.) Accordingly, Uber argued that Dulberg could not satisfy the predominance requirement because the fact-of-damage element of breach of contract could not be established on a class-wide basis. (*Id.* at 13-17.) Uber also argued that this intra-class conflict regarding damages rendered Dulberg an inadequate class representative. (*Id.* at 17-19.) Finally, Uber argued that the presence of affirmative defenses precluded certification. (*Id.* at 19-21.) Specifically, Uber asserted that Dulberg waived his breach of contract claim because he was aware of

upfront pricing but continued to drive anyway. (*Id.*) Uber also contended that what each driver knew about upfront pricing and when are individualized inquiries that cannot be determined on a class-wide basis. (*Id.*)

In his reply brief filed on January 25, Dulberg addressed Uber's damages-based arguments by further amending the proposed Class definition to "[a]ll natural persons nationwide who (1) drove for UberX or UberSELECT; (2) opted out of arbitration; (3) transported a passenger who was charged an upfront Fare before May 22, 2017, when Uber issued its updated fee addendum; and (4) made less money overall on rides where they transported passengers who were charged an upfront Fare because they were paid on a Fare calculated based on actual time and distance values instead of the upfront Fare calculated based on estimated time and distance values." (Dkt. No. 73 at 4.) The proposed class contains 4,594 members, who suffered, at most, $747,555 in damages. (*Id.* at 6.) Dulberg also argued that Uber's affirmative defenses lacked merit and, in any event, could be addressed on a class-wide basis with common evidence. (*Id.* at 8-14.)

The Court certified the class defined in Dulberg's reply brief. (Dkt. 80.) Angeion Group, the third-party administrator, subsequently distributed notice and ten drivers opted out of the class.

IV. Expert discovery

The parties have completed expert discovery. In Dulberg's opening expert report, attached as Exhibit 3 to the Maslo Declaration, Dr. Brigham R. Frandsen shows that of the 9,265 drivers under consideration, 4,594 (49.6%) experienced a remittance shortfall when considering their UberX and UberSELECT rides and were thus included in the class. Among these, the average shortfall was $162.72, for an aggregate shortfall of $747,555. In Uber's rebuttal expert report, attached as Exhibit 4 to the Maslo Declaration, Dr. Justin McCrary showed that applying Dulberg's interpretation to all class members' rides that are governed by the TSA (*i.e.*, UberX, UberSELECT, UberXL, and UberPOOL) reduces the number of drivers in the class who had hypothetical damages to 2,597 and reduces damages to $345,622. In Dulberg's reply expert report, attached as Exhibit 5 to the Maslo Declaration, Dr. Frandsen confirmed that the numbers calculated by Dr. McCrary were correct and showed that the decrease in damages is largely due to the inclusion of UberPOOL (not UberXL).

V. Dueling contract interpretations

Under the TSA, class members are "entitled to charge a fare for each instance of completed Transportation Services provided to a User [*i.e.*, passenger] that [is] obtained via the Uber Services ('Fare'), where such Fare is calculated based upon a base fare amount plus distance . . . and/or time amounts . . . ('Fare Calculation')." (TSA § 4.1.) The TSA requires Uber "to remit, or cause to be remitted, to [class members] on at least a weekly basis: (a) the Fare less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees." (*Id.*) The Service Fee is paid "on a per Transportation Services transaction basis calculated as a percentage of the Fare determined by the Fare Calculation." (*Id.* § 4.4.)

According to Dulberg, the TSA contemplates only one Fare: the Fare determined by the Fare Calculation. It ties both drivers' payments and Uber's Service Fee to that Fare. Dulberg contends that Uber performed one Fare Calculation based on actual inputs for time/distance at the end of each ride until it implemented upfront pricing. Passengers paid that Fare, Uber calculated its Service Fee based on that Fare, and class members received the remainder of that Fare. When Uber implemented upfront pricing, its practices changed. It began doing two separate Fare Calculations, one upfront to charge passengers (with estimated inputs for time/distance) and another after the ride (with actual inputs for time/distance) to determine class members' compensation. Dulberg claims that practice breached the TSA.

On the other hand, Uber asserts that it "introduced upfront pricing to create more certainty for riders to enable better informed choices that fit their needs—not to undermine driver payments or earnings." (Dkt. No. 71 at 6.) Uber maintains that, regardless of upfront pricing for riders, a driver's Fare Calculation remained constant under the TSA. (*Id.*) Moreover, as discussed above, most drivers benefited financially from Uber's practice.

VI. Uber's affirmative defenses

Uber has asserted various affirmative defenses, including, for example, waiver. According to Uber, "Dulberg admitted in his deposition that he knew by the end of September 2016 that his Fare was not calculated based on the rider's upfront price as a result of participating in discussions on certain

Internet forums." (*Id.* at 8 (quotation marks omitted).) "Yet Plaintiff continued driving with Uber, taking over 350 Trips for which the rider paid an upfront price between October 1, 2016 and May 22, 2017." (*Id.*) Uber also contends that "[o]ther drivers may have learned about upfront pricing at other times and in other ways—for example, from Uber's own website, which clearly stated, 'Providing upfront fares to riders does not impact the driver fare, which remains calculated using the normal base/minimum fare plus time and/or distance scheme.'" (*Id.* at 9.) "They also may have learned of it from communications or emails in which Uber responded to driver inquiries by explaining that their Fare 'for this trip has been calculated accurately based on time taken and distance traveled.'" (*Id.*)

VII. Mediation and settlement

The parties mediated before Magistrate Judge Ryu on March 23, 2018. (Dkt. No. 88.) While that mediation session did not result in a settlement, the parties continued discussions. Ultimately, in May 2018, the parties agreed on a settlement awarding $345,622 to class members, which is 100% of the amount Uber believes is the maximum value at stake in this litigation and approximately 46% of what Dulberg believes is the best-case-scenario full measure of damages. (Settlement Agreement § I.26.)

Consistent with Section 4 of this Court's Settlement Guidelines, the settlement agreement contains a narrow release, covering only those claims related to the breach-of-contract cause of action pled in the amended complaint and litigated in the case:

> "Released Claims" means all causes of action and claims pleaded against Uber in this Action, and all other actions, under any law or theory, that relate to the alleged breach of Paragraph 4.1 of the TSA based on Uber's upfront pricing practices that are alleged in this Action against any of the Released Parties on behalf of the Settlement Class.

(*Id.* § I.17.)

The settlement agreement does not seek to expand the class. Instead, it covers the exact same class that the Court certified. (*Id.* § I.24.)

Although Dulberg is mindful that this Court typically discourages incentive payments, the settlement agreement provides a modest $5,000 service payment allocation to Dulberg for the extensive work that he has put into this case, including, for example, doing background research on the claims, meeting with counsel, producing documents and answering interrogatories, preparing and traveling

from North Carolina to San Francisco for a deposition, and being an active and engaged participant in the litigation. (*Id.* § I.20.) The service payment is subject to Court approval. (*Id.*)

The settlement agreement awards class members a pro-rata share of the settlement fund balance, which is "the remainder of the Settlement Fund after the Settlement Administration Expenses, Attorney's Fees and Expenses, and Service Payment Allocation, if any, are deducted." (*Id.* §§ I.27, II.A(iii).) Specifically, "[t]he Settlement Share for each Settlement Class Member shall be calculated by (1) dividing the Settlement Fund Balance by the maximum recovery that Plaintiff identified in his class certification motion ($747,555.17) to determine the percentage share, and then (2) applying that percentage on a pro rata basis to the individual purported damages amounts for each eligible Settlement Class Member." (*Id.* § II.A(iii).)

The settlement agreement provides ample notice to class members. (*Id.*, Ex. 1.) It also allows them to object to and opt out of the settlement. (*Id.* §§ III.D(1),(2).)

The settlement agreement leaves attorneys' fees and expenses to the Court's discretion, consistent with the Court's Settlement Guidelines. (*Id.* § I.2.)

LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) requires that any compromise of a class action receive court approval. "Approval under [Rule] 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

"A district court may approve a proposed settlement in a class action only if the compromise is fundamentally fair, adequate, and reasonable." *In re Heritage Bond Litig.*, 546 F.3d 667, 674-75 (9th Cir. 2008). To determine whether a proposed settlement meets that standard, courts generally consider whether it "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval[.]" *In re Portal Software, Inc. Sec. Litig.*, No. 03-cv-5138 VRW, 2007 WL 1991529, at *5 (N.D. Cal. June 30, 2007) (quotation marks and citations omitted).

"[T]he Ninth Circuit has a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

ARGUMENT

I. The settlement agreement is the product of serious, informed, non-collusive negotiations.

"The first factor addresses the means by which the parties reached a settlement." *Villegas v. J.P. Morgan Chase & Co.*, No. 09-cv-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012). Use of an experienced mediator and engaging in discovery before settlement support a finding that negotiations were serious, informed, and non-collusive. *See, e.g.*, *id.* ("[T]he Settlement was reached following two sessions with a private mediator experienced in wage and hour class actions. This tends to support the conclusion that the settlement process was not collusive. In addition, those discussions were informed by the discovery obtained by Plaintiff in this action . . . . These facts further support the conclusion that the Plaintiff was appropriately informed in negotiating a settlement.") (citing *Satchell v. Fed. Exp. Corp.*, No. 03-cv-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007)).

Here, the settlement agreement is the result of mediation before Judge Ryu, as well as private negotiation sessions spanning several months. In addition, the parties have completed both fact and expert discovery and have tested the merits of the claims at issue through motion practice. Thus, the settlement is the result of serious, well-informed, non-collusive negotiations.

II. The settlement agreement and class notice have no obvious deficiencies.

The settlement agreement is not deficient in any respect. For example, the release is narrowly tailored to include "causes of action and claims pleaded against Uber in this Action, and all other actions, under any law or theory, that relate to the alleged breach of Paragraph 4.1 of the TSA based on Uber's upfront pricing practices that are alleged in this Action[.]" (Settlement Agreement § I.17.) *See, e.g.*, *Newton v. Am. Debt Services, Inc.*, No. 3:11-cv-03228 EMC, 2016 WL 7743686, at *4 (N.D. Cal. Jan. 15, 2016) ("The 'Released Claims' as defined in the settlement agreement are limited to claims 'that actually were asserted in the litigation on behalf of the Class or that could have been asserted in the

Litigation on behalf of the Class based on the facts alleged in the Second Amended Complaint and in any prior version or iteration of the Complaint in this case.'"); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1334 (N.D. Cal. 2014) ("The Court notes that, while the scope of the release in the proposed settlement is broad, it is acceptable because the claims released are limited to those based upon the facts set forth in the First Amended Complaint."); Settlement Guidelines § 4.

In addition, the Court has discretion over the amount of attorneys' fees and expenses, consistent with the Court's Settlement Guidelines. (Settlement Agreement § I.2.) *See, e.g.*, Settlement Guidelines § 8; *Newton*, 2016 WL 7743686, at *4 (no obvious deficiencies where the amount of attorneys' fees is in the court's discretion) (citing *Nen Thio*, 14 F. Supp. 3d at 1334; *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL 4999953, at *26 (N.D. Cal. Aug. 21, 2015)).

Finally, notice is satisfactory "if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Here, the notice fully explains the claims; class members' rights, including their right to opt out of and object to the settlement; that the Court will determine attorneys' fees and expenses; and that failure to properly opt out will result in class members being bound to the settlement agreement and releasing their claims. (Settlement Agreement, Ex. 1.) *See, e.g.*, *Villegas*, 2012 WL 5878390, at *8 ("As for its content, the Notice provides an explanation of the claims and the terms of the Settlement, the exclusion procedure and associated deadlines, the attorneys' fees to be paid . . . It also states that those who do not opt out will be bound by the Settlement. The Notice is thus sufficient to meet the requirements of Rule 23(c)(2)(B).").

III. The settlement agreement does not improperly grant preferential treatment to the class representative or segments of the class.

The settlement agreement does not discriminate: all class members are subject to the exact same pro rata distribution from the settlement fund after fees and expenses are deducted. (Settlement Agreement § II.A(iii).) Though the agreement contemplates a modest $5,000 service payment to Dulberg to compensate him for his time and effort as class representative, that payment is subject to Court approval and is "presumptively reasonable." (*Id.* § I.20.) *Villegas*, 2012 WL 5878390, at *7 ("In

this District, a $5,000 incentive award is presumptively reasonable."). *See also Newton*, 2016 WL 7743686, at *4 ("Although Plaintiff will apply for a service award of $7,500, the award is subject to the Court's discretion; and the Ninth Circuit has recognized that such awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable."); *Nen Thio*, 14 F. Supp. 3d at 1335 ("While the settlement agreement authorizes class counsel to apply for incentive awards to plaintiffs of $5,000, these incentive awards, should the Court finally approve them, do not render the settlement unfair, since the Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable.") (quotation marks omitted).

IV. The amount of the settlement falls within the range of possible approval.

"To determine whether a settlement falls within the range of possible approval, a court must focus on substantive fairness and adequacy, and consider plaintiffs' expected recovery balanced against the value of the settlement offer." *Villegas*, 2012 WL 5878390, at *7 (quotation marks omitted). Given the risks of further litigation and low best-case-scenario damages ceiling, $345,622 is a fair settlement.

There are several possible outcomes if the parties continue to litigate this case: (1) the Court or a jury may find that Uber did not breach the TSA, in which case Plaintiffs will get nothing; (2) the Court or a jury may find that Plaintiffs have waived their breach of contract claim, *see, e.g.*, *Roling v. E*Trade Sec. LLC*, 860 F. Supp. 2d 1035, 1039-40 (N.D. Cal. 2012) (plaintiff's breach of contract claim may be barred "where [he] has knowledge of the defendant's breach and continues to perform under the contract and/or accept the defendant's performance without notifying the defendant of the breach"), in which case Plaintiffs will also get nothing, even if their interpretation of the TSA is correct; (3) the Court or a jury may find that Uber breached the TSA, but that class members' UberXL and UberPOOL rides governed by the TSA (not just UberX and UberSELECT rides) must be considered, in which case Plaintiffs' damages would be capped at $345,622 (the amount of the settlement); or (4) the Court or a jury may find that Uber breached the TSA and that only class members' UberX and UberSELECT rides should be considered, in which case damages would be capped at $747,555.

Assigning an equal 25% weighting to each of these outcomes results in a fair value of $273,294.25, which is $72,327.75 less than the settlement amount.

Notably, the settlement amount is well within the range of possible approval even if it is just compared to the best-case-scenario damages. Specifically, $345,622 is 46% of $747,555. *See, e.g.*, *In re Toys R Us–Del., Inc.–Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (granting final approval of settlement representing 3% of possible recovery); *Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359 JM, 2014 WL 29011, at *6 (S.D. Cal. Jan. 2, 2014) (granting final approval of settlement representing 1.7% of possible recovery); *Villegas*, 2012 WL 5878390, at *6 (granting preliminary approval where "gross settlement is approximately fifteen percent (15%) of the potential recovery"); *In re LDK Solar Sec. Litig.*, No. 07-cv-5182 WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (Alsup, J.) (granting final approval where settlement was 5% of estimated damages); *Hopson v. Hanesbrands Inc.*, No. 08-cv-0844 EDL, 2009 WL 928133, at *8 (N.D. Cal. Apr. 3, 2009) ("The settlement … represents less than two percent of that amount," but "may be justifiable . . . given . . . significant defenses that increase the risks of litigation.").

CONCLUSION

The Court should preliminarily approve the settlement because it is the product of serious, informed, non-collusive negotiations; has no obvious deficiencies; does not improperly grant preferential treatment to class representatives or segments of the class; and falls within the range of possible approval. A draft order granting preliminary approval is attached as Exhibit 2 to the settlement agreement.

Dated: August 28, 2018

Respectfully submitted,

/s/ Paul B. Maslo

Paul B. Maslo (admitted *pro hac vice*)
Andrew J. Dressel (admitted *pro hac vice*)
NAPOLI SHKOLNIK PLLC
360 Lexington Avenue, 11th Floor
New York, New York 10017
Telephone: (212) 397-1000
Fax: (646) 843-7603
Email: pmaslo@napolilaw.com
adressel@napolilaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on August 28, 2018, he electronically filed a copy of the attached via the CM/ECF filing system, which sent notification of such filing to all Filing Users.

/s/ Paul B. Maslo