

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
8

9 PERRY JOHNSON and LAYNE  
10 BUTLER, on behalf of a class of  
11 similarly situated individuals, and  
12 themselves individually,  
13  
14 Plaintiffs,

15 v.

16 ASHLEY FURNITURE  
17 INDUSTRIES, INC., a Wisconsin  
18 Corporation; and Does 1 through  
19 25, inclusive,  
20  
21 Defendants.

Case No.: 13cv2445 BTM(DHB)

**ORDER GRANTING MOTION  
FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND MOTION FOR AWARD OF  
ATTORNEY'S FEES, COSTS,  
AND INCENTIVE AWARD**

22 Plaintiff Perry Johnson has filed a Motion for Final Approval of Class Action  
23 Settlement and a Motion for an Award of Attorney's Fees, Costs, and Incentive  
24 Payment. On March 7, 2016, the Court held a hearing on the motions. For the  
25 reasons discussed below, Plaintiff's motions are **GRANTED**.

26  
27  
28  
**I. PROCEDURAL BACKGROUND**

On October 10, 2013, Plaintiff Perry Johnson, a California resident, and  
Layne Butler, a New York resident, brought this putative class action against  
Ashley Furniture Industries, Inc. ("Ashley"). Their Complaint alleged that Ashley  
violated the Song-Beverly Credit Card Act ("SBCCA"), California Civil Code §

1 1747.08, and New York GBL § 520-a, by requesting customers' personal  
2 identification information from credit card and debit card transactions in California  
3 and New York.

4 In an order dated November 4, 2014, the Court granted a motion to dismiss  
5 claims brought by Ashley. The Court dismissed Plaintiffs' claim under New York  
6 law, Plaintiffs' California claim as to debit cards, and Plaintiffs' claim for injunctive  
7 relief under the SBCCA.

8 After three separate days of an ENE conference and settlement conferences  
9 with Magistrate Judge Bartick, the parties reached a class-wide resolution and  
10 entered into a proposed Settlement Agreement and Release.

11 On August 19, 2015, the Court held a hearing on Plaintiffs' Motion for  
12 Preliminary Approval of the Class Action Settlement. At the hearing, the Court  
13 requested supplemental briefing regarding (1) the types of items that the putative  
14 class members purchased; (2) the average price of the putative class members'  
15 "take with" transactions; (3) the types and number of items priced at \$25.00 or less  
16 available for purchase in California Ashley Furniture HomeStores; and (4) the  
17 usage rates of merchandise vouchers in other SBCCA cases.

18 Ashley filed Supplemental Briefing in response to the Court's inquiries, and  
19 the Court held an additional hearing on November 24, 2015. In an order dated  
20 December 1, 2015, the Court granted preliminary approval of the class action  
21 settlement.

## 22 23 **II. DISCUSSION**

### 24 25 **A. Motion for Final Approval**

#### 26 27 **1. Class Certification**

28 Previously, the Court granted provisional certification of the class, defined

1 as:

2 All Ashley Furniture HomeStore customers who were requested or  
3 required to provide, and did provide and had recorded, their personal  
4 identification information (which includes, but is not limited to, a  
5 customer's address, ZIP code, telephone number, and/or email  
6 address), during a credit card transaction at a Ashley Furniture  
7 HomeStore in California between October 10, 2012 and the  
8 Preliminary Approval Date, and who took all of their purchases with  
9 them at the conclusion of the transaction.<sup>1</sup>

10 To certify a settlement class, the requirements of Rule 23 must generally be  
11 satisfied. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). However,  
12 the Court need not inquire whether the case, if tried, would present management  
13 problems. Amchem Prods., Inc. v. Windsor, 521 U.S. 1, 613 (1997).

14 Rule 23(a) sets forth four prerequisites for class certification: (1) numerosity;  
15 (2) commonality; (3) typicality; and (4) adequacy of representation. The Court finds  
16 that all four of these requirements have been satisfied.

17 The numerosity requirement is satisfied if "the class is so numerous that  
18 joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The proposed  
19 class is numerous, consisting of 23,600 "Known Class Members" and 15,500  
20 "Unknown Class Members."<sup>2</sup>

---

21 <sup>1</sup> Class Members do not include (a) AFI, AHS, Southwestern, Stoneledge, Del Monte Furniture Rental, Inc.,  
22 Empty Heads, Inc., Dobbs TV and Appliance Limited Partnership, MPB Furniture Corporation, Santa Maria Décor,  
23 Inc., River Rock Interiors, Inc., Sang Kim, Corp., Saki Trans, Inc., Visalia Sang Kim, Corp., Fairfield Furniture  
24 Solutions, Inc., Rohnert Park Furniture Solutions, Inc., Fremont Furniture Solutions, Inc., Concord Furniture  
25 Solutions, Inc., and Oakland Furniture Solutions, Inc., and their respective parents, subsidiaries, affiliates, and  
26 control persons, as well as officers, directors, agents, attorneys, employees, and immediate family members of all  
27 such persons, and (b) the Court and its staff. Further, the Settlement Class excludes individuals who would cause  
28 disqualification of the judges assigned to this case. Pursuant to 28 U.S.C. § 455(b)(5)(iii), any judge of the United  
States shall disqualify himself if he or his spouse, or a person within the third degree of relationship to either of  
them, or the spouse of such a person is known by the judge to have an interest that could be substantially affected  
by the outcome of the proceeding.

<sup>2</sup> "Known Class Members" are all Class Members who can be identified from the records of Ashley's  
licensees. "Unknown Class Members" were customers of California Ashley Furniture HomeStores owned and  
operated by Southwestern and Unrelated Licensees during a period of time in 2012-2013 when the point of  
purchased systems utilized by these entities did not distinguish between credit card and non-credit card  
transactions, or between Take-With Transactions and other transactions.(Settlement Agreement, §§ 3.12, 3.18).

1           There are common questions of fact and law concerning Ashley's licensees  
2 requesting personal identification information in connection with credit card  
3 purchases of "Take With" items. Plaintiff's claims are typical because he claims  
4 that in March of 2013, he visited an Ashley Furniture store in San Marcos and was  
5 asked for personal identification information when making his purchase using his  
6 credit card. (Compl. ¶¶ 14-16.)

7           It appears that Plaintiff and his counsel will fairly and adequately protect the  
8 interests of the class. They have diligently prosecuted the case up to this point,  
9 and it does not appear that there are any conflicts of interest.

10           In addition to satisfying the requirements of Rule 23(a), a proposed class  
11 must qualify for certification under one of the categories in Rule 23(b). Plaintiff  
12 seeks certification under Rule 23(b)(3). Certification is proper under Rule 23(b)(3)  
13 if "the court finds that the questions of law or fact common to class members  
14 predominate over any questions affecting only individual members, and that a  
15 class action is superior to other available methods for fairly and efficiently  
16 adjudicating the controversy."

17           The predominance inquiry "tests whether proposed classes are sufficiently  
18 cohesive to warrant adjudication by representation" and "focuses on the  
19 relationship between the common and individual issues." Hanlon, 150 F.3d at  
20 1022 (internal quotation marks and citation omitted). "When common questions  
21 represent a significant aspect of the case and they can be resolved for all members  
22 of the class in a single adjudication, there is a clear justification for handling the  
23 dispute on a representative rather than on an individual basis." 7AA Wright &  
24 Miller, Federal Practice and Procedure § 1778 (3d ed. 2011). When one or more  
25 of the central issues in the action are common to the class and can be deemed to  
26 predominate, certification may be proper under Rule 23(b)(3) even though other  
27 important matters, such as damages or affirmative defenses, will have to be tried  
28 separately. Id.

1 Common issues predominate in this litigation. The central issue in this case  
2 is whether Ashley violated the SBCCA by requesting and recording personal  
3 identification information from customers purchasing “take away” items with credit  
4 cards.

5 In addition, class treatment is the appropriate vehicle to resolve this  
6 controversy. Pursuant to Rule 23(b)(3), the Court should consider four non-  
7 exclusive factors when considering whether class action is a superior method of  
8 adjudication, including: (1) the class members' interest in individual litigation, (2)  
9 other pending litigation, (3) the desirability of concentrating the litigation in one  
10 forum, and (4) difficulties with the management of the class action.

11 Here, the potential monetary relief for each class member would be small.  
12 Under Cal. Civ. Code § 1747.08(e), civil penalties are up to \$250.00 for the first  
13 violation and up to \$1,000.00 for each subsequent violation. Given the small  
14 potential recovery and the number of class members, it is undoubtedly more  
15 efficient to resolve their claims as part of a class action. Furthermore, due to the  
16 common issues in this case, it is desirable to litigate the claims in one forum to  
17 ensure consistency of rulings and findings. There is no indication of any competing  
18 litigation, and the Court need not be concerned regarding any difficulties with  
19 management of the class action due to this settlement.

20 In sum, the requirements of Rule 23(a) have been satisfied and the Court  
21 therefore certifies the Settlement Class under Rule 23(b)(3).

## 22 23 **2. Fairness, Reasonableness, and Adequacy of the Settlement**

### 24 25 a. Terms of the Settlement

26 Under the Settlement, Defendant will automatically distribute to each of the  
27 “Known Class Members” a \$25.00 Merchandise Voucher, which will be available  
28

1 as a store credit. The same \$25 Merchandise Voucher will be made available to  
2 the “Unknown Class Members” upon submission of a timely and valid Claim Form  
3 wherein the Unknown Class Member attests that he/she used a credit card (not a  
4 debit card) to make a purchase of a take-with item (not an item for delivery).

5 Defendant also agrees to no longer request personal identification  
6 information in conjunction with any “Take With” transaction at Ashley Furniture  
7 HomeStores they operate in California.

8 Class Members may request that Ashley not use their personal identification  
9 information for marketing purposes.

10  
11 b. Legal Standard

12 Before approving a class action settlement, the court must determine  
13 whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ.  
14 P. 23(e)(2). In reaching this determination, courts consider a number of factors,  
15 including: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity,  
16 and likely duration of further litigation; (3) the risk of maintaining class action status  
17 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery  
18 completed and the stage of the proceedings; (6) the experience and views of  
19 counsel; (7) the presence of a governmental participant; and (8) the reaction of the  
20 class members to the proposed settlement. Churchill Vill., L.L.C. v. Gen. Elec.,  
21 361 F.3d 566, 575 (9th Cir.2004).

22 When a settlement agreement is negotiated prior to formal class certification,  
23 the court must also scrutinize the settlement for evidence of collusion or other  
24 conflicts of interest. In re Bluetooth Headset Products Liability Lit., 654 F.3d 935,  
25 946-47 (9th Cir. 2011). Signs of collusion include: (1) when counsel receive a  
26 disproportionate distribution of the settlement; (2) when the parties negotiate a  
27 "clear sailing" arrangement that provides for the payment of attorney's fees  
28

1 separate and apart from class funds; and (3) when the parties arrange for fees not  
2 awarded to revert to defendants rather than to be added to the class fund. Id. at  
3 947.

4  
5 c. Strength of Plaintiff's Case and Risk, Complexity, Expense, and  
6 Duration of Litigation

7 Plaintiff would face significant risks in continued litigation. Ashley disputes  
8 that requesting a cardholder's personal identification information violates §  
9 1747.08 if the consumer voluntarily gives the information for marketing purposes.  
10 (Fineman Decl. ¶ 6.) Ashley would also oppose class certification on the ground  
11 that each interaction with a Class Member must be evaluated individually to  
12 address issues such as whether the information was requested away from the  
13 register, in close proximity to a credit card payment, etc. (Id.) Thus, this settlement  
14 avoids the risk and expense of continued litigation.

15  
16 d. Amount Offered in Settlement

17 The Known Class Members who are reachable will automatically receive a  
18 \$25.00 Merchandise Voucher. It appears that the Claims Administrator was able  
19 to reach over 20,000 of the Known Class Members. (Am. Geraci Decl. ¶¶ 6,10-  
20 13.) Accordingly, the monetary value to the Known Class Members is \$500,000  
21 or more. The Claims Administrator was able to provide notice to over 14,000  
22 Unknown Class Members. (Id.) Upon submission of a timely and valid Claim  
23 Form, Unknown Class Members also receive a \$25.00 Merchandise Voucher.  
24 According to the Claims Administrator, 1,056 claims forms have been filed by  
25 Unknown Class Members. (Am. Geraci Decl. ¶ 16.) Some of the forms (174) are  
26 deficient in some manner, and these claimants have been given notice and an  
27 opportunity to correct the deficiency. (Id.) Assuming 1,000 Unknown Class  
28 Members receive a voucher, the monetary value to the Unknown Class Members

1 is \$25,000.

2 The voucher is not a coupon and has actual value. As set forth in Ashley's  
3 Supplemental Brief in support of its Motion for Preliminary Approval [Doc. 38],  
4 there are over two thousand items under \$25 for sale at its stores, including plates,  
5 bowls, glasses, wall art, trays, vases, candleholders, figurines, table decorations,  
6 picture frames, clocks, towels, artificial flowers, pillows, and rugs. Class Members  
7 do not have to buy more expensive items to redeem their vouchers. Furthermore,  
8 a survey of putative class members at stores in California operated by Stoneledge  
9 Furniture LLC indicates that a large percentage of these customers engaged in  
10 two or more purchase transactions during the class period. Therefore, it is likely  
11 that the vouchers will actually be used.

12 In addition, Class Members were provided the option to request that their  
13 information not be used for marketing purposes. It appears that two individuals  
14 have asked to be removed from electronic marketing by Ashley and its licensees.  
15 (Am. Geraci Decl. ¶ 17.)

16  
17 e. Stage of Proceedings & Experience and Views of Counsel

18 This settlement was reached after the completion of all liability and damages  
19 discovery. (Fineman Decl. ¶ 7.) Therefore, the parties had sufficient information  
20 to evaluate the strengths and weaknesses of their respective positions. Settlement  
21 was reached after three days of an ENE conference and settlement conferences.

22 Both Plaintiff's counsel and Defendant's counsel, who are experienced in the  
23 area of class actions and consumer protection litigation, believe that the settlement  
24 is fair, adequate, and reasonable.

25  
26 f. Reaction of Class Members

27  
28 The response from the class members has been positive. No objections



1 have been filed. Only eight individuals have opted out of the settlement. (Geraci  
2 Decl., Ex. E.)

3  
4 g. Lack of Collusion

5 Because this settlement was reached prior to class certification, the Court  
6 examines the Settlement for evidence of collusion. Bluetooth, 654 F.3d at 946-  
7 47. There is no indication of collusion. This is not a situation where the class  
8 receives no monetary distribution but class counsel are “amply rewarded.” Id. at  
9 947 (quoting Hanlon, 150 F.3d at 1021). As discussed above, the settlement  
10 results in real monetary value to the class members. Although Ashley agreed not  
11 to oppose an award of attorney’s fees and costs in the amount of \$140,000, as  
12 discussed below, this amount is completely fair and reasonable.

13 Moreover, the parties reached settlement after motion practice and three  
14 days of conferences. The procedural history of the case as well as the substantial  
15 benefit provided to the Class by the Settlement indicate there has been no  
16 collusion.

17  
18 h. Notice to the Class

19  
20 Rule 23(c)(2)(B) provides that the Court must direct to class members “the  
21 best notice that is practicable under the circumstances, including individual notice  
22 to all members who can be identified through reasonable effort.” It appears that  
23 the best notice practicable has been given. Here, Kurtzman Carson Consultants  
24 LLC (“KCC”) mailed Summary Notice Postcards or emailed Summary Notices to  
25 23,629 Known Class Members and 15,519 Unknown Class Members. (Geraci  
26 Decl. ¶ 6.) KCC also caused a website to be established to provide information  
27 about the settlement and to allow Class Members to download copies of the Long  
28 Form Notice. (Id. at ¶ 7.) As of March 1, 2016, the website has received 4,784

1 unique visits. (Id.) When emails were bounced back or were undeliverable, KCC  
2 sent Summary Notice Postcards. (Id. at ¶ 11.) Notice packets returned by the  
3 U.S. Postal Service with forwarding addresses were re-mailed to the new  
4 addresses. (Id. at ¶ 12.) When notice packets were returned by the U.S. Postal  
5 Service without forwarding addresses, KCC conducted address searches to locate  
6 new addresses and re-mailed the packets when new addresses were found. (Id. at  
7 ¶ 13.)

8  
9 i. Final Approval

10 For the reasons discussed above, the Court finds that the Settlement is fair,  
11 reasonable, and adequate, and grants final approval of the Settlement.  
12

13 **B. Motion for Attorneys' Fees, Costs and Incentive Payment**

14  
15 1. Attorney's Fees

16 Plaintiff seeks attorney's fees and costs (combined) in the amount of  
17 \$140,000.

18 Under CAFA, "the portion of any attorney's fee award to class counsel that  
19 is attributable to the award of the coupons shall be based on the value to class  
20 members of the coupons that are redeemed." 28 U.S.C. § 1712(a). Courts are  
21 required to apply heightened scrutiny to coupon settlements. In re HP Inkjet Printer  
22 Litig., 716 F.3d 1173, 1178 (9th Cir. 2013).

23 The Court finds that this settlement does not constitute a "coupon"  
24 settlement. In In re Online DVD-Rental Antritrust Litig., 779 F.3d 934, 950-51 (9th  
25 Cir. 2015), the Ninth Circuit held that Walmart gift cards in the amount of \$12 did  
26 not constitute "coupons" falling under the umbrella of CAFA. The Ninth Circuit  
27 distinguished the Walmart gift cards from rebates offered in other settlements that  
28

1 resulted in only a small discount on a large purchase:

2           These discounts require class members to hand over more of  
3 their own money before they can take advantage of the coupon, and  
4 they often are only valid for select products or services. The gift cards  
5 in this case are different. Instead of merely offering class members the  
6 chance to receive a percentage discount on a purchase of a specific  
7 item or set of items at Walmart, the settlement gives class members  
8 \$12 to spend on any item carried on the website of a giant, low-cost  
9 retailer. The class member need not spend any of his or her own  
10 money and can choose from a large number of potential items to  
11 purchase. Even if the gift card is only worth \$12, it gives class members  
12 considerably more flexibility than any of the coupon settlements listed  
13 in the Senate report.

14           District courts that have considered the issue have not classified  
15 gift cards as coupon settlements falling under CAFA. See Reibstein v.  
16 Rite Aid Corp., 761 F.Supp.2d 241, 255–56 (E.D.Pa.2011) (holding  
17 that \$20 Rite Aid gift cards with “actual cash value,” that will be mailed  
18 to “(mostly) regular customers, have no expiration date, are freely  
19 transferrable, and can be used for literally thousands of products for  
20 which ordinary consumers ... have need”, are “more like ‘cash’ than  
21 ‘coupons’ ”); Fernandez v. Victoria Secret Stores, LLC, No. CV 06–  
22 04149, 2008 WL 8150856, at \*2, \*4–16 (C.D.Cal. Jul. 21, 2008)  
23 (approving a settlement and attorneys' fees award, outside the  
24 strictures of CAFA, that provides class members with gift cards to  
25 Victoria's Secret); Petersen v. Lowe's HIW, Inc., Nos. C 11–01996 RS,  
26 C 11–03231 RS, C 11–02193 RS (N.D. Cal. Aug. 24, 2012) (approving  
27 a settlement and attorneys' fees award, outside the strictures of CAFA,  
28 that provides class members with \$9 gift cards to Lowe's); see also In  
re Bisphenol–A (BPA) Polycarbonate Plastic Prods. Liab. Litig., MDL  
No. 1967, Master Case No. 08–1967, 2011 WL 1790603, at \*2–4 (W.D.  
Mo.2011) (holding that a settlement that provides class members with  
vouchers to obtain new products was not a coupon settlement because  
the vouchers do not require class members to spend their own money  
and do not require class members to purchase the same or similar  
products as those that gave rise to the litigation). Similar to the gift  
cards in these cases, the Walmart gift cards can be used for any  
products on walmart.com, are freely transferrable (though they cannot  
be resold on a secondary market) and do not expire, and do not require  
consumers to spend their own money.

          Our conclusion that the settlement does not constitute a “coupon  
settlement” within the meaning of CAFA does not conflict with the

1 Seventh Circuit's decision in Synfuel Technologies, Inc., 463 F.3d at  
2 654, as Frank suggests. The pre-paid shipping envelopes in Synfuel  
3 are different than the Walmart gift cards. Unlike a pre-paid shipping  
4 envelope, a gift card to walmart.com does not simply offer class  
5 members one type of complete product. It offers them a set amount of  
6 money to use on their choice of a large number of products from a  
7 large retailer. Like the gift cards to Rite Aid in Reibstein, part of what  
8 separates a Walmart gift card from a coupon is not merely the ability  
9 to purchase an entire product as opposed to simply reducing the  
10 purchase price, but also the ability to purchase one of many different  
11 types of products. That distinction also separates these gift cards from  
12 the e-credits we deemed coupons in In re HP Inkjet Printer Litig., 716  
13 F.3d at 1176 (labeling e-credits, which could be used to obtain  
14 Hewlett–Packard “printers and printer supplies,” coupons).

15 Id. at 950-51.

16 As discussed above, although Ashley stores primarily sell furniture, they also  
17 sell a large variety of products priced under \$25. Therefore, class members have  
18 choices as to what they may purchase with the voucher and may purchase an  
19 entire product as opposed to just reducing the purchase price. Accordingly, this  
20 settlement is not a “coupon” settlement within the meaning of CAFA.

21 Utilization of the “lodestar method” is appropriate in class actions brought  
22 under fee-shifting statutes. In re Bluetooth, 654 F.3d 935, 942 (9th Cir. 2011).  
23 Attorney’s fees may be awarded in this case under Cal. Code Civ. Proc. § 1021.5,  
24 which authorizes a court to award attorney’s fees to a successful party in any action  
25 which has resulted in the enforcement of an important right affecting the public  
26 interest if: “(a) a significant benefit, whether pecuniary or nonpecuniary, has been  
27 conferred on the general public or a large class of persons, (b) the necessity and  
28 financial burden of private enforcement, or of enforcement by one public entity  
against another public entity, are such as to make the award appropriate, and (c)  
such fees should not in the interest of justice be paid out of the recovery, if any.”  
The enforcement of Cal. Civ. Code §1747.08 in this case satisfies the requirements  
of § 1021.5. See Seebrook v. The Children’s Place Retail Stores, Inc., 2013 WL

1 6326487, at \*2 (N.D. Cal. Dec. 4, 2013) (awarding attorney’s fees under Cal. Code  
2 Civ. Proc. § 1021.5 in class action asserting a claim under Cal. Civ. Code §  
3 1747.08).

4 The lodestar is calculated by multiplying the number of hours the prevailing  
5 party reasonably expended on the litigation by a reasonable hourly rate for the  
6 region and for the experience of the attorney. Staton v. Boeing Co., 327 F.3d 938,  
7 965 (9th Cir. 2003). The lodestar figure is “presumptively reasonable” but may be  
8 adjusted upward or downward by application of a positive or negative multiplier  
9 reflecting “reasonableness” factors, “including the quality of representation, the  
10 benefit obtained for the class, the complexity and novelty of the issues presented,  
11 and the risk of nonpayment.” Hanlon, 150 F.3d at 1029.

12 Class Counsel calculated their lodestar using a billing rate of \$600 per hour  
13 for Neil B. Fineman and Phillip R. Poliner for a combined 154.5 hours and \$570  
14 per hour for Lee G. Werner for 72.5 hours, totaling \$135,735. Class counsel  
15 estimates that another 10 hours will be spent completing the case, bringing the  
16 total amount of fees to \$141,735. In addition, a total of \$824.98 in costs has been  
17 incurred in this case.

18 Upon review of the qualifications and experience of Class Counsel, and  
19 based upon the Court’s knowledge of prevailing market rates, the Court finds that  
20 the requested hourly rates are reasonable. Furthermore, the amount of time  
21 expended on this litigation was reasonable given the fine results achieved.

22 The amount of fees and costs requested (\$140,000) is actually less than the  
23 fees and costs that will be incurred by the end of this case. Plaintiff’s request of  
24 attorney’s fees and costs in the amount of \$140,000 is reasonable and is therefore

25 **GRANTED.**

26 //

27 //

28 //

1           2. Incentive Fee Award

2           Plaintiff seeks an incentive award of \$5,000.00 for the Class Representative,  
3 Perry Johnson.

4           The Court may, in its discretion, award incentive or service awards to named  
5 plaintiffs to “compensate class representatives for work done on behalf of the  
6 class, to make up for financial or reputational risk undertaken in bringing the action,  
7 and, sometimes, to recognize their willingness to act as a private attorney general.”

8 Rodriguez v. West Publishing Corp., 563 F.3d 948, 958-59 (9th Cir. 2009). District  
9 courts must carefully scrutinize incentive awards to ensure that they do not  
10 undermine the adequacy of the class representatives. Radcliffe v. Experian  
11 Information Solutions, Inc., 715 F.3d 1157, 1165 (9th Cir. 2013).

12           According to Class Counsel, Perry Johnson has dedicated a substantial  
13 amount of time and effort in representing the Class, including meetings with Class  
14 Counsel, participating in discovery, and attending ENE conferences. (Werner  
15 Decl. ¶ 3.) Mr. Johnson spent numerous hours gathering information in support of  
16 his claims and responding to inquiries from Class Counsel. (Id.) His efforts helped  
17 Class Counsel prepare the Complaint, discovery, settlement negotiations, and the  
18 briefing relating to approval of the settlement. (Id.) In light of the work Plaintiff has  
19 done on behalf of the class, the requested incentive award is reasonable and is  
20 approved.

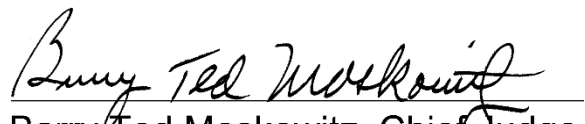
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

1 **III. CONCLUSION**

2 For the reasons set forth above, Plaintiff's motion for final approval of the  
3 class action settlement is **GRANTED**. Plaintiff's Motion for Attorney's Fees, Costs,  
4 and Incentive Payment is also **GRANTED**. The Court grants attorney's fees and  
5 costs in the total amount of \$140,000. The Court also grants an incentive award  
6 to Plaintiff Perry Johnson in the amount of \$5,000. A Final Judgment conforming  
7 with this Order shall be filed separately.

8 **IT IS SO ORDERED.**

9 Dated: March 7, 2016

10   
11 Barry Ted Moskowitz, Chief Judge  
12 United States District Court  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28