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16 ***Class Counsel***

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18 SUPERIOR COURT OF CALIFORNIA

19 COUNTY OF SAN MATEO

20 **SELENA SCOLA, ERIN ELDER, GABRIEL**  
21 **RAMOS, APRIL HUTCHINS, KONICA**  
22 **RITCHIE, ALLISON TREBACZ, JESSICA**  
23 **SWARNER, and GREGORY SHULMAN,**  
24 individually and on behalf of all others similarly  
25 situated,

26 *Plaintiffs,*

27 v.

28 **FACEBOOK, INC.,**

*Defendant.*

Civil Action No. 18CIV05135

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR ATTORNEYS' FEES,  
REIMBURSEMENT OF COSTS, AND  
SERVICE AWARDS**

Assigned for All Purposes to  
Hon. V. Raymond Swope, Dept. 23

Date: November 20, 2020

Dept.: 23

Time: 9:00 a.m.

Trial Date: None Set

2<sup>nd</sup> Amended Complaint Filed: June 30, 2020

1 **TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:**

2 Please take notice that, on November 20, 2020, at 9:00 a.m., or as soon thereafter as the parties  
3 may be heard, in Department 23 of the Superior Court, County of San Mateo, 400 County Center,  
4 Redwood City, CA 94063, Plaintiffs Selena Scola, Erin Elder, Gabriel Ramos, April Hutchins, Konica  
5 Ritchie, Allison Trebacz, Jessica Swarner, and Gregory Shulman (“Plaintiffs”) will and hereby do move  
6 for entry of an Order awarding Class Counsels’ attorneys’ fees in the amount of \$15,600,000,  
7 reimbursements of their costs and expenses in the amount of \$180,881.06, and service awards to the  
8 named Class representatives in the amount of \$20,000 for Selena Scola, Erin Elder, and Gabriel Ramos  
9 and \$7,500 for April Hutchins, Konica Ritchie, Allison Trebacz, Jessica Swarner, and Gregory  
10 Shulman.

11 This Motion is based on the accompanying Memorandum of Points and Authorities, the  
12 Declarations of Steven N. Williams, Daniel Charest, William Most, Selena Scola, Erin Elder, Gabriel  
13 Ramos, Allison Trebacz, Jessica Swarner, and Gregory Shulman, Elizabeth Enlund, Sonya Norman,  
14 Ph.D., Patricia Watson, Ph.D., the Exhibits thereto, any papers filed in reply, Plaintiffs’ Notice of  
15 Motion and Motion for Final Approval of Class Action Settlement with Facebook, Inc. and its  
16 supporting materials, the argument of counsel, and all papers and records on file in this matter.

17  
18 Dated: October 9, 2020

Respectfully Submitted,

*/s/ Steven N. Williams*

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1 **I. INTRODUCTION**

2 Class Counsel<sup>1</sup> have achieved an unprecedented Settlement<sup>2</sup> with Defendant Facebook, Inc.  
3 (“Facebook”) that creates a \$52 million Settlement and Non-Monetary Consideration including  
4 safeguards to protect current and future Content Moderators. Through their skill, tenacity, and  
5 dedication, Class Counsel obtained a remarkable outcome that benefits the Class. This Settlement  
6 ensures that all Class Members who have been injured through their work as Content Moderators have  
7 a mechanism to receive money they can use for mental health treatment. It also aims to ensure that  
8 content moderation work for Facebook is safer moving forward. In short, this Settlement achieves the  
9 important results that Plaintiffs sought to accomplish at the outset of the litigation and more.

10 Class Counsel respectfully submit this Memorandum of Points and Authorities in support of  
11 their request for attorneys’ fees in the amount of thirty-percent (30%) of the Settlement Fund  
12 (\$15,600,000) and reimbursement of costs in the amount of \$180,881.06. The requested fee is  
13 reasonable, appropriate, and justified. The percentage sought by Class Counsel is lower than attorneys’  
14 fees approved in other complex cases, and a lodestar cross-check confirms that the request is well  
15 within the range that courts find reasonable.

16 This Settlement was far from certain when Class Counsel began the case. Plaintiffs’ claims are  
17 novel, and success was not guaranteed. But Class Counsel were motivated by the importance of this  
18 case, and they dedicated the time and resources necessary to succeed. The Settlement is even more  
19 laudable because it avoids unnecessary delay in providing Class Members with resources to obtain  
20 mental health treatment. Early intervention is crucial in the treatment of psychological injuries as they  
21 develop. (See Declaration of Patricia Watson, Ph.D., in Support of Plaintiffs’ Notice of Motion and  
22 Motion for Attorneys’ Fees, Reimbursement of Costs, and Service Awards [“Watson Decl.”] at ¶ 13.)  
23 After relatively protracted and certainly hard-fought, arms’-length litigation, and during the present  
24 pandemic and economic crisis, this Settlement enables Class Members to seek treatment at the time

25 \_\_\_\_\_  
26 <sup>1</sup> On August 14, 2020, the Court designated the Joseph Saveri Law Firm and Burns Charest LLP as  
27 Class Counsel.

28 <sup>2</sup> The capitalized terms used herein have the same meanings as set forth in the Settlement Agreement  
and Release (“Settlement”).

1 when they need it most. Further, Facebook will implement the workplace interventions without delay,  
2 meaning that current content moderators will not have to wait years for such improvements to take  
3 effect. All of these successes justify the award of attorneys' fees and costs sought here.

4 Class Counsel also request service awards to the Class representatives in the amount of \$20,000  
5 for Selena Scola, Erin Elder, and Gabriel Ramos and \$7,500 for April Hutchins, Konica Ritchie, Allison  
6 Trebacz, Jessica Swarner, and Gregory Shulman. Each of these plaintiffs, and in particular Selena Scola,  
7 Erin Elder and Gabriel Ramos, put themselves at risk by violating the nondisclosure agreements that  
8 they had been required to sign, subjecting them to potential legal liability. Instead, these brave acts  
9 paved the way for others, and ultimately for broad relief for class members from these NDAs.

10 The Class representatives all committed themselves for the benefit of the Class of current and  
11 former Content Moderators as well as the Content Moderators of the future. Facebook took discovery  
12 of Plaintiffs, including depositions of Erin Elder and Gabriel Ramos. Written discovery was exchanged.  
13 The mediation was attended by Class representatives, and input from the Class representatives has  
14 been instrumental in determining what relief to seek in this case and in achieving that goal. The  
15 requested awards are fair, reasonable, and appropriate compensation to the Class representatives for  
16 their efforts on behalf of the Class.

17 **II. FACTUAL BACKGROUND**

18 Plaintiff Selena Scola ("Scola") filed this suit on behalf of Content Moderators living in  
19 California who reviewed Facebook's content, alleging Facebook and its vendors<sup>3</sup> failed to provide the  
20 workplace safety necessary to facilitate the work of content moderation in a healthy and sustainable  
21 manner. The Complaint alleged that Facebook's conduct increased Class Members' risk of serious  
22 mental health injuries, including PTSD. Approximately six months later, Erin Elder ("Elder") and  
23 Gabriel Ramos ("Ramos") joined Scola as plaintiffs in an amended complaint.

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27 \_\_\_\_\_  
28 <sup>3</sup> The original complaint named Pro Unlimited, Inc., a Facebook vendor that employed Scola, as a  
Defendant.



1 Plaintiffs amended the Complaint again to add April Hutchins, Konica Ritchie, Allison Trebacz,  
2 Jessica Swarner, and Gregory Shulman as plaintiffs, creating a putative class that included Content  
3 Moderators in Texas, Arizona, Florida in addition to California.

4 The complaints in this case were based upon extensive research which began in early 2018. (See  
5 Declaration of Steven N. Williams in Support of Plaintiffs' Motion for Attorneys' Fees,  
6 Reimbursement of Costs, and Service Awards ["Williams Decl.,"] at ¶3; Declaration of Daniel Charest  
7 in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs, and Service Awards  
8 ["Charest Decl.,"] at ¶5.) The focus of this work was the conditions being experienced by Content  
9 Moderators reviewing content for Facebook, the symptoms they were experiencing, and identifying  
10 legal theories to remedy the harm that was believed to be occurring. (Williams Decl. at ¶3.) The  
11 primary goals of the action were to improve the workplace safety of Content Moderators working on  
12 behalf of Facebook, and secondly to ensure that psychological treatment would be available for the  
13 Class. By those metrics, and all others, the Settlement is a resounding success. (*Id.*)

14 Over the course of the litigation, the parties engaged in extensive discovery. Class Counsel  
15 drafted and propounded interrogatories and requests for production and fought vigorously to ensure  
16 that Facebook complied with those requests. The parties engaged in Court-ordered in person meet-and-  
17 confer sessions which included Facebook personnel and ESI consultants. This effort eventually resulted  
18 in Facebook producing over 450,000 pages of discovery, which Class Counsel carefully reviewed. Class  
19 Counsel also drafted and served responses to Facebook's written discovery and engaged in a substantial  
20 meet-and-confer process on the responses. Throughout that process, Class Counsel gathered,  
21 reviewed, and produced documents in response to Facebook's discovery requests. In addition, Class  
22 Counsel deposed Facebook Vice President of Operations Ellen Silver. At the time that the parties  
23 entered into a stay to pursue resolution, Plaintiffs had raised and were prepared to pursue discovery  
24 issues with the Court including requests for the depositions of Facebook Executives Mark Zuckerberg  
25 and Sheryl Sandberg. (Williams Decl. at ¶6.)

26 Plaintiffs also provided substantial discovery. (See Declaration of Selena Scola in Support of  
27 Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs, and Service Awards ["Scola Decl.,"]  
28 at ¶9; Declaration of Gabriel Ramos in Support of Plaintiffs' Motion for Attorneys' Fees,

1 Reimbursement of Costs, and Service Awards [“Ramos Decl.”] at ¶5; Declaration of Erin Elder in  
2 Support of Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Costs, and Service Awards  
3 [“Elder Decl.”] at ¶5.) This included full day depositions of Erin Elder and Gabriel Ramos. (Ramos  
4 Decl at ¶5; Elder Decl. at ¶5.)

5 The parties also engaged in extensive motion practice and discovery briefing. Facebook filed a  
6 motion to compel discovery and a motion for judgment on the pleadings. Both motions were fully  
7 briefed and ripe for adjudication. The motion for judgment on the pleadings, if granted, could have  
8 resulted in dismissal of Plaintiffs’ class claims and three of their four causes of action. The parties also  
9 submitted twelve discovery letter briefs that concerned disputes over custodians, search terms, requests  
10 for production of documents and the scope of discovery. Many of these issues were ripe for  
11 adjudication. (Williams Decl. at ¶7.)

12 Just before the hearings on the motions and discovery disputes, the parties agreed to stay the  
13 case and engage in settlement negotiations. Class Counsel engaged in three all-day mediation sessions  
14 over the course of four months in a process that was overseen by the Hon. Rebecca Westerfield (Ret.).  
15 Each mediation session was hard-fought and vigorously advocated, and the parties continued to work  
16 through the framework of a settlement in the period between each mediation session. Class Counsel  
17 worked closely with their retained experts, both preeminent psychologists in the field of trauma-related  
18 psychological injuries, as they developed an allocation and treatment plan that would best serve the  
19 Class. (Williams Decl. at ¶8, see Declaration of Sonya Norman, Ph.D., in Support of Plaintiffs’ Notice  
20 of Motion and Motion for Attorneys’ Fees, Reimbursements of Costs, and Service Awards [Norman  
21 Decl.”] at ¶8; Watson Decl. at ¶3.)

22 On February 7, 2020, at the end of the third full day of mediation, the parties reached an  
23 agreement in principle on the terms of a settlement. Over the weeks that followed, counsel for both  
24 parties engaged in further extensive negotiations before eventually agreeing to the Settlement  
25 Agreement and Plan of Allocation. (Williams Decl. at ¶9) The parties presented the Settlement to the  
26 Court and on August 14, 2020, following a hearing, the Court granted preliminary approval of the  
27 Settlement. Pursuant to that Order, notice of the proposed Settlement has been disseminated to the  
28 Class. To date, no Class Members have objected and only three Class Members have opted out.

1 (Declaration of Elizabeth Enlund in Support of Plaintiffs’ Notice of Motion and Motion for Attorneys’  
2 Fees, Reimbursements of Costs, and Service Awards [“Epiq Decl.”] at ¶¶31–34.) Class Counsel will file  
3 their motion in support of final approval of the Settlement on November 6, 2020.

4 As stated above, Class Counsel seek an attorneys’ fee award of \$15,600,000, which is thirty-  
5 percent (30%) of the \$52,000,000 monetary component of the Settlement Fund. Class Counsel also  
6 seek reimbursement of out-of-pocket expenses of \$180,881.06. Class Counsel have invested a collective  
7 lodestar of \$3,901,860 worth of time over the course of this litigation. (Williams Decl. at ¶13; Charest  
8 Decl. at ¶6; Declaration of William Most in Support of Plaintiffs Plaintiffs’ Motion for Attorneys’ Fees,  
9 Reimbursement of Costs, and Service Awards [“Most Decl.”] at 14.) The requested fee thus  
10 represents a modest multiplier of just less than 4 times the lodestar. The requested fee is fair,  
11 reasonable, and appropriate in light of all relevant factors in particular the extraordinary relief obtained  
12 for class members and the unprecedented nature of the claims. Class Counsel also request Class  
13 representative incentive awards in the following amounts: \$20,000 for Selena Scola, Erin Elder, and  
14 Gabriel Ramos and \$7,500 for April Hutchins, Konica Ritchie, Allison Trebacz, Jessica Swarner, and  
15 Gregory Shulman. (See Scola Decl.; Ramos Decl.; Elder Decl.; Declaration of Class Representaive  
16 Gregory Shulman in Support of Plaintiffs’ Motion for Attorney’s Fees, Reimbursement of Costs, and  
17 Service Awards [“Shulman Decl.”]; Declaration of Class Representaive Jessica Swarner in Support of  
18 Plaintiffs’ Motion for Attorney’s Fees, Reimbursement of Costs, and Service Awards [“Swarner  
19 Decl.”]; Declaration of Class Representaive Allison Trebacz in Support of Plaintiffs’ Motion for  
20 Attorney’s Fees, Reimbursement of Costs, and Service Awards [“Trebacz Decl.”].)<sup>4</sup>

### 21 **III. ARGUMENT**

22 California law has long recognized the “common fund doctrine,” under which the Court has the  
23 equitable power to award attorneys’ fees and costs out of a common fund that has been created for the  
24 benefit of a class. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489; *Serrano v. Priest* (1977)  
25 20 Cal.3d 25, 35.) The Settlement here creates a fund of \$52 million in addition to Non-Monetary  
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27 \_\_\_\_\_  
28 <sup>4</sup> Plaintiffs April Hutchins and Konica Ritchie were involved in this litigation in a similar manner as  
Plaintiffs Shulman, Swarner, and Trebacz.

1 Consideration with a value of approximately \$34,200,000. (Watson Decl. at ¶17.) Class Counsel  
2 request that the Court use its equitable power to award attorneys’ fees, costs, and expenses out of that  
3 common fund.

4 When calculating attorneys’ fees out of the common fund, California courts may employ the  
5 percentage-of-the-recovery method. (*Laffitte, supra*, 1 Cal.5th at p. 489, 503, 506.) In *Laffitte v. Robert*  
6 *Half International Inc.*, the California Supreme Court recognized the percentage-of-the-recovery  
7 method as “a valuable tool” and explicitly approved its use to determine an appropriate fee. (*Id.* at pp.  
8 503, 506.) In this case, the request for attorneys’ fees is reasonable, fair, and appropriate under the  
9 percentage-of-the-recovery method as confirmed by a lodestar cross-check.

10 **A. The Requested Fees Should Be Approved Under The Percentage-of-the-**  
11 **Recovery Method.**

12 The percentage-of-the-recovery method has several advantages for the calculation of attorneys’  
13 fees. Among them are the “relative ease of calculation, alignment of incentives between counsel and the  
14 class, a better approximation of market conditions in a contingency case, and the encouragement it  
15 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.”  
16 (*Laffitte, supra*, 1 Cal.5th at p. 503.) This method encourages diligent and efficient litigation by  
17 “‘allow[ing] courts to award fees from the fund in a manner that rewards counsel for success and  
18 penalizes it for failure.’” (*Id.* at p. 493 [quoting *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005)  
19 396 F.3d 294, 300].) California courts regularly employ this method of calculation, (see, e.g., *In Re:*  
20 *Cipro Cases I and II*, JCCP Nos. 4154 & 4220, slip op. (Super. Ct. San Diego County, Apr. 21, 2017)  
21 [awarding 30%]; *In re CafePress Inc. S’holder Litig.*, No. CIV522744, slip op. (Super. Ct. San Mateo  
22 County, Aug. 11, 2015) [same]; *In re Epicor Software Corp. S’holder Litig.*, No. 30-2011-00465495-CU-  
23 BT-CXC, slip op. (Super Ct. Orange County, Oct. 24, 2014) [same], attached as Appendix A), as do  
24 federal courts in the Ninth Circuit and throughout the country.<sup>5</sup>

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27 <sup>5</sup> See, e.g., *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 942;  
28 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047 (applying Washington law for  
awarding fees and recognizing that Washington uses percentage-of-the-recovery approach).

1           Class Counsel request attorneys' fees for the successful prosecution and resolution of this case  
2 calculated at thirty-percent (30%) of the Settlement Fund. This percentage falls squarely within the  
3 range of appropriate awards. (See *Natural Gas Anti-Trust Cases I, II, III & IV* (Super. Ct. San Diego  
4 County, Dec. 11, 2006, No. 4221) 2006 WL 5377849, at \*3 ["It is customary in percentage-of-the-  
5 benefit cases that attorneys fees are awarded based on 25 percent to 30 percent of the benefit received  
6 by the class."].) Indeed, the California Supreme Court recently affirmed an attorneys' fee award of one-  
7 third of the settlement. (*Laffitte, supra*, 1 Cal.5th at p. 486.) California courts of appeal also routinely  
8 affirm attorneys' fee awards at or above 30% of the common fund. (See *Chavez v. Netflix, Inc.* (2008)  
9 162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show that, regardless whether the percentage  
10 method or the lodestar method is used, fee awards in class actions average around one-third of the  
11 recovery."]; *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 567-68 [affirming trial court award  
12 of attorneys' fees of one-third of recovery]; see also *Lealao v. Beneficial California, Inc.* (2000) 82  
13 Cal.App.4th 19, 31, fn. 5 ["[W]hatever method is used and no matter what billing records are submitted  
14 . . . , the result is an award that almost always hovers around 30% of the fund created by the settlement.  
15 [citation omitted]"]; *In re California Indirect Purchases* (Super. Ct. Alameda County, Oct. 22, 1998, No.  
16 960886) 1998-2 Trade Cases P 72336 [awarding thirty percent attorneys' fees and collecting superior  
17 court cases awarding a higher percentage]; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723  
18 F.Supp. 1373, 1378 ["[I]n class action common fund cases the better practice is to set a percentage fee  
19 and that, absent extraordinary circumstances that suggest reasons to lower or increase the percentage,  
20 the rate should be set at 30%."].) In light of these awards, the fee requested by Class Counsel is  
21 reasonable and appropriate.

22           **B. The Reasonableness of the Fee Request is Supported by the Relevant Factors.**

23           California courts evaluate several factors when assessing the propriety of an attorneys' fee  
24 award: (1) the novelty and difficulty of the questions involved; (2) the interests at stake and the results  
25 obtained on behalf of the class; (3) the experience, reputation, and ability of the attorneys who  
26 performed the services, and the skill they displayed in litigation; (4) the contingent risk presented; and  
27 (5) the extent to which the litigation precluded other employment by the attorneys. (See *Laffitte, supra*,  
28 1 Cal.5th at p. 488; *Serrano, supra*, 20 Cal.3d at p. 49; *In re California Indirect Purchases* (Super. Ct.

1 Alameda County, Oct. 22, 1998, No. 960886) 1998-2 Trade Cases P 72336.) However, the court is not  
2 bound by a rigid formula and has substantial discretion to select and weigh the relevant factors. (*Lealao*,  
3 *supra*, 82 Cal.App.4th at 41; *Natural Gas Anti-Trust Cases I, II, III & IV* (Super. Ct. San Diego County,  
4 Dec. 11, 2006, No. 4221) 2006 WL 5377849, at \*3.) Given the contingent nature of this action, the  
5 uncertainty surrounding the hotly contested legal issues, the excellent result achieved, and the  
6 experience of Class Counsel, an award of thirty-percent (30%) is fair, reasonable, and appropriate.

7 **1. The Novelty And Difficulty of this Case Warrants the Requested Fee Award.**

8 This case is truly groundbreaking. The very idea of content moderation was unknown until  
9 recently, and only one prior lawsuit had ever been brought by content moderators. To the  
10 undersigned's knowledge, no class action lawsuit has ever recovered a medical monitoring program and  
11 treatment for post-traumatic stress disorder ("PTSD") and other psychological injuries caused by an  
12 unsafe work environment. The novelty of the claims and the relief sought required Class Counsel to be  
13 particularly strategic in pleading and prosecuting this case. Prior to filing suit, Class Counsel dedicated  
14 significant time and resources to investigating all viable legal claims, determining the potential risks of  
15 various courses of action, and determining the best strategy going forward. After filing suit, Class  
16 Counsel put their plan into action by aggressively prosecuting the case against very competent counsel  
17 representing a corporation with unprecedented power. The considerable investment of time, effort and  
18 creativity by Class Counsel eventually resulted in the successful outcome presented to the Court  
19 through this Settlement.

20 **2. Class Counsel Obtained a Superb Result for the Class.**

21 One central feature in determining the propriety of attorneys' fees is analyzing "the degree of  
22 success obtained," (See *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 418  
23 [69 Cal.Rptr.3d 750, 761] [in the context of attorneys' fees under 42 U.S.C. § 1988].) The result  
24 achieved in this case is extraordinary and unprecedented by any metric. But to truly appreciate the  
25 success of this Settlement, it is necessary to understand the goals of this lawsuit: 1) to secure a safer and  
26 healthier work environment for content moderators and 2) to obtain screening, diagnosis, and treatment  
27 for psychological injury caused by content moderation work. The Settlement delivers on both of those  
28 goals and more.

1 The Settlement creates immediate improvements in content moderators' workplace  
2 environment. As part of the Settlement, Facebook has agreed to require its vendors to institute  
3 workplace safeguards, including (1) retaining licensed, certified, and experienced clinicians at all sites;  
4 (2) providing access to weekly one-on-one coaching or wellness sessions and monthly group wellness  
5 sessions; and (3) implementing tooling enhancements designed to minimize the traumatic nature of  
6 content moderators' exposure to graphic imagery. (see Watson Decl. at ¶¶8, 10–12, 15.) Because of this  
7 Settlement, all Content Moderators reviewing content for Facebook in the United States will benefit  
8 and have access to support that did not previously exist. (See Watson Decl. at ¶¶9, 11, 13, 16; Norman  
9 Decl. at ¶14.)

10 Through this Settlement, each Class Member will also receive an initial payment of \$1,000  
11 which may be used to obtain a screening or diagnosis of PTSD or another covered diagnosis. (Williams  
12 Decl., Exhibit 1 (“Distribution Plan”) at ¶ 2.) Those Class Members who submit evidence of a covered  
13 diagnosis will then be eligible for an additional payment to cover the cost of treatment. (Distribution  
14 Plan at ¶ 5.) The amount of this additional medical treatment payment was calculated in coordination  
15 with Plaintiffs' experts to reflect the actual cost of treating specific types of qualifying diagnoses. (*Id.*)  
16 Thus, this Settlement achieves its fundamental goal of ensuring that Class Members receive screening,  
17 diagnosis, and treatment.

18 The Settlement is even more exceptional because it authorizes additional payments of up to  
19 \$50,000 for other damages sustained by Class Members with qualifying diagnoses, and offers a  
20 streamlined arbitration procedure for Class Members that believe they have suffered more than \$50,000  
21 in damages. (Distribution Plan at ¶6.) That the Settlement provides relief in the form of other damages  
22 payments is a truly extraordinary, and unprecedented result.

23 Finally, timing is a key consideration in the success of this Settlement. Early intervention  
24 improves the likelihood of successfully treating trauma-related psychological injury. Accordingly, it is  
25 important that Class Members have access to screening, diagnosis, and treatment as early as possible.  
26 By reaching the Settlement within two years of initiating the action, Class Counsel ensured that Class  
27 Members can receive payments for mental health treatment when these resources will be most useful.  
28 In addition, the Covid-19 pandemic has financially and psychologically impacted Class Members, and

1 makes access to medical care all the more important. For all these reasons, this Settlement is an  
2 excellent result for the Class.

3 **3. The Experience, Reputation, and Ability of the Attorneys who Performed the**  
4 **Services, and the Skill They Displayed in Litigation Support the Requested**  
5 **Award.**

6 The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case  
7 all support the requested fee award. This Settlement was achieved by the diligent, resourceful, and  
8 creative efforts of two distinguished law firms and guided by two seasoned lawyers—Steven N.  
9 Williams and Daniel Charest—with decades of experience between them. (See Williams Decl. at ¶¶ 2,  
10 13; Charest Decl. at ¶3, 7.) “The prosecution and management of a complex . . . class action requires  
11 unique legal skills and abilities.” (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d  
12 1036, 1047, citations omitted.) Class Counsel evidenced those unique skills through their effective  
13 prosecution of this case and the tactical litigation decisions and negotiations that led to this Settlement.

14 All parts of this litigation—from the drafting of the original complaint to the crafting of a unique  
15 settlement with multiple levels of payments based on diagnosis—required flexibility, creativity, and  
16 nimbleness. Nearly all aspects of this lawsuit were novel. Class Counsel’s experience and knowledge  
17 allowed them to investigate the case effectively, identify the complex issues involved, and formulate a  
18 successful strategy. And Class Counsel’s dedication and hard work were essential in seeing that strategy  
19 through. The skill and motivation of Class Counsel was a key component in bringing about the excellent  
20 result set forth in the Settlement, and this factor weighs in favor of the requested award.

21 **4. Class Counsel Faced Significant Risk.**

22 The amount of risk faced by counsel is “perhaps the foremost factor” in setting an attorneys’  
23 fee award. (*Goldberger v. Integrated Resources, Inc.* (2d Cir. 2000) 209 F.3d 43, 54.) “[L]itigation is  
24 fraught with uncertainty and even the most scrupulous attorney will ‘win some and lose some,’ as the  
25 saying goes.” (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359,  
26 400 n.11.) This is why a “contingent fee must be higher than a flat fee for the same legal services,” and  
27 it is also the reason courts place such a high emphasis on this factor. (*Ketchum v. Moses* (2001) 24  
28 Cal.4th 1122, 1123.) Class Counsel assumed substantial risk by bringing this novel and unprecedented  
case on a contingency-fee basis and their requested attorneys’ fee award is reasonable.



1           When considering this factor, courts analyze the amount of risk counsel faced at the  
2 commencement of the suit. (*In re California Indirect Purchases* (Super. Ct. Alameda County, Oct. 22,  
3 1998, No. 960886) 1998-2 Trade Cases P 72336.) Class Counsel faced significant risk when they filed  
4 this suit. As explained above, Class Counsel were in uncharted territory and there was no developed  
5 body of law on several of the thorny legal issues raised by their action. Class Counsel are aware of no  
6 case before this one where the plaintiffs sought medical monitoring for psychological disorders based on  
7 exposure to trauma. In addition, Class Counsel were fully aware that had the case been litigated,  
8 Facebook would have argued that the claims were not susceptible to class treatment, or otherwise  
9 subject to any of numerous legal bars. And Class Counsel were correct; Facebook raised these and other  
10 arguments in its motion for judgment on the pleadings. Add to that the fact that Class Counsel brought  
11 this lawsuit against one of the largest and most well-resourced companies in the world with some of the  
12 best attorneys at their disposal. (See *In re Equity Funding Corp. of America Securities Litigation* (C.D. Cal.  
13 1977) 438 F.Supp. 1303, 1337 [recognizing that plaintiffs’ counsel was “up against established and  
14 skillful defense lawyers, and should be compensated accordingly”].) Together, these factors added up  
15 to significant risk.

16           Despite the uncertainty, Class Counsel brought this case on a contingency basis with no  
17 guarantee of a recovery. (Williams Decl. at ¶ 10; Charest Decl. at ¶4.) Believing in the importance of  
18 the cause and the need for reform, Class Counsel invested substantial financial resources to ensure they  
19 delivered the top-rate legal performance the case required. Courts have consistently recognized that  
20 risk of obtaining little or no recovery weighs strongly in favor of a higher attorneys’ fee award. (See  
21 *Ketchum, supra*, 24 Cal.4th at 1138 [noting that lawyers who bring a case on a contingency basis expect  
22 “a premium for the risk of nonpayment or delay in payment of attorney fees”].) Considering the time,  
23 money, and resources that Class Counsel invested in the face of this uncertainty, the contingent-risk  
24 factor weighs strongly in favor of awarding the requested fee.

1                                   **5. Class Counsel Was Precluded From Doing Other Work.**

2           To competently prosecute this case, Class Counsel allocated substantial attorney, staff, and  
3 financial resources. This investment precluded Class Counsel from accepting other profitable legal  
4 work. (Williams Decl. ¶10; Charest Decl. ¶4.) This is a proper factor to consider, (*Serrano, supra*, 20  
5 Cal.3d at p. 49), and supports the requested fee award.

6                                   **6. California’s Public Policy Goals are Served Through Granting this Fee  
7 Request.**

8           This Settlement promotes the California public policy of ensuring that employers maintain a  
9 safe workplace. (See *Franklin v. The Monadnock Co.* (2007) 151 Cal.App.4th 252, 259.) The fundamental  
10 goal of this litigation was to promote the workplace health and safety of Content Moderators who  
11 review Facebook content. By bringing—and succeeding in—this lawsuit, Class Counsel has obtained  
12 relief that aimed at vastly improving the working environment for Content Moderators in California and  
13 throughout the country.

14           Although Class Counsel was motivated by the societal import of this case, they were able to  
15 make their substantial investment because of the possibility of a contingent fee upon resolution. Awards  
16 of common fund fees are essential to furthering the salutary goal of attracting competent counsel to  
17 handle complicated and risky cases like this one. Attorneys “will be more willing to undertake and  
18 diligently prosecute proper litigation for the protection or recovery of the fund if [the attorneys are]  
19 assured that [they] will be promptly and directly compensated should [their] efforts be successful.”  
20 (*Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 273 [quoting *Estate of Stauffer* (1959) 53  
21 Cal.2d 124, 132].) Because Class Counsel assumed the risk of prosecuting this case, Class Members will  
22 have the opportunity to receive psychological treatment they may otherwise not have been able to  
23 afford, Class Members who have developed qualifying psychological disorders as a result of their work  
24 are eligible for additional damage awards, and Content Moderators in the future will benefit from the  
25 injunctive relief aimed at reducing the risk of trauma-related psychological issues arising from their  
26 work.

1           **C. The Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.**

2           In California, Courts are permitted—but not required—to cross-check the percentage-of-the-  
3 recovery method using the lodestar method to ensure that the percentage fee is reasonable. (*Laffitte*,  
4 *supra*, 1 Cal.5th at pp. 504, 506.)<sup>6</sup> The lodestar cross check method is a two-step process. First, the  
5 court calculates the lodestar “by multiplying the number of hours reasonably expended by counsel by a  
6 reasonable hourly rate.” (*Id.* at p. 489.) The court may then apply a multiplier after considering other  
7 factors, including those listed above. (*Id.*) Under this approach, the court may reexamine the percentage  
8 if a comparison between it and the lodestar enhancement “produces an imputed multiplier far outside  
9 the normal range.” (*Id.* at p. 504.)

10           California courts regularly award fees with multipliers ranging from 2 to 4, or even higher.  
11 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [collecting cases], disapproved on  
12 another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) These multipliers play  
13 an important role in contingent cases because they “bring the financial interests for [attorneys ... ] into  
14 line with incentives they have to undertake claims for which they are paid on a fee-for-service basis.”  
15 *Ketchum, supra*, 24 Cal.4th at 1132.) Based on the factors discussed above, a multiplier of 4 is  
16 appropriate and justified.

17           **1. Class Counsel’s lodestar is reasonable and supports the requested award.**

18           Class Counsel’s lodestar is just under \$3,842,000. (Williams Decl. at ¶13; Charest Decl. at ¶6.)  
19 First, Class Counsel’s rates of \$850 to \$1,100 for partners and \$375 to \$700 for associates are within  
20 the range of prevailing rates in the San Francisco Bay Area for attorneys of comparable skill, experience,  
21 and reputation. (Williams Decl. at ¶ 12; Charest Decl. at ¶6; Most Decl. at ¶14, see *PLCM Group v.*  
22 *Drexler* (2000) 22 Cal.4th 1084, 1095 [“The reasonable hourly rate is that prevailing in the community  
23 for similar work.”].) Class Counsel are highly regarded attorneys with extensive experience in complex  
24

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<sup>6</sup> This Court is not required to perform the lodestar cross-check if it is satisfied that the percentage sought here is reasonable. (*Laffitte, supra*, 1 Cal.5th at p. 506 [holding that trial courts may “forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”].)

1 litigation, their rates are squarely in line with prevailing rates in their areas, are the rates their firms  
2 charge to clients billed by the hour, and/or have been approved by numerous other courts.

3 Second, Class Counsel’s total hours are reasonable. Class Counsel dedicated substantial time  
4 and effort to all elements of this litigation, from the initial investigation and strategic visioning, through  
5 discovery and motion practice, and ultimately through settlement negotiations. Each firm has submitted  
6 a declaration summarizing the work they performed by category, attesting that their reported hours are  
7 accurate and were reasonably incurred in connection with the prosecution of the case, and that their  
8 firms maintain daily, contemporaneous time records. Moreover, the resources that Class Counsel  
9 dedicated were necessary to prevail in this action, and they did not waste time or resources where  
10 settlement was far from certain. (*Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88, citations  
11 omitted [recognizing that “lawyers are not likely to spend unnecessary time on contingency fee  
12 cases”].) Each hour logged in this case was spent in furtherance of this successful outcome.

13 **2. The Cross-Check Demonstrates that the Requested Fee Award is Reasonable**  
14 **and Justified.**

15 The lodestar multiplier in this case is just under 4, well within the normal range of multipliers.  
16 “Multipliers can range from 2 to 4 or even higher.” (*Wershba, supra*, 91 Cal.App.4th at p. 255; see also  
17 *Natural Gas Anti-Trust Cases I, II, III & IV* (Super. Ct. San Diego County, Dec. 11, 2006, No. 4221)  
18 2006 WL 5377849, at \*4 [recognizing the application of multipliers “between 4 and 12”]; *Chavez,*  
19 *supra*, 162 Cal.App.4th at 66; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512.)  
20 Thus, the lodestar multiplier requested here is not “far outside the normal range” and is, in fact, well-  
21 within that range. (*Laffitte, supra*, 1 Cal.5th at p. 504 .) And given the excellent work performed by Class  
22 Counsel throughout the litigation, particularly in light of the risks they faced, this multiplier is entirely  
23 appropriate.

24 For that same reason, it would be inappropriate to reduce the multiplier here simply because  
25 this case was resolved within approximately two years. First, this is in line with the guidelines for case  
26 resolution in California courts. Second, one of the recognized shortfalls of the lodestar method is its  
27 propensity to discourage early settlement. (*Laffitte, supra*, 1 Cal.5th at p. 490.) And a relatively early  
28 settlement is particularly beneficial here. Because the Settlement provides payments that may be used

1 for psychological treatment, it is likely that Class Members will benefit from the recovery more now  
2 than if they receive the same amount in several years. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002)  
3 290 F.3d 1043, 1050, fn. 5 [“noting that it may be a relevant circumstance [in calculating the attorney’s  
4 fee] that counsel achieved a timely result for class members in need of immediate relief.”].)

5 **D. Class Counsel’s request for Reimbursement of Costs is Reasonable and Proper.**

6 Class Counsel also seek a total of \$180,881.06 in unreimbursed expenses incurred since  
7 September 2018. (Williams Decl. ¶14; Charest Decl. ¶8; Most ¶16.) “The prevailing view is that  
8 expenses are awarded in addition to the fee percentage,” and these costs are routinely reimbursed in  
9 contingency cases. (*Natural Gas Anti-Trust Cases I, II, III & IV* (Super. Ct. San Diego County, Dec. 11,  
10 2006, No. 4221) 2006 WL 5377849, at \*4.; see also *In re California Indirect Purchases* (Super. Ct.  
11 Alameda County, Oct. 22, 1998, No. 960886) 1998-2 Trade Cases P 72336 [granting fees].) The  
12 expenses incurred by Class Counsel were for, *inter alia*, necessary travel, deposition fees, expert witness  
13 fees and consultation, transcript and docket fees, technology costs, and other costs necessary for  
14 prosecution of the case. The expenses were all necessary and are reasonable.

15 **E. The Service Awards for the Class Representatives are Appropriate and**  
16 **Justified.**

17 Class Counsel request that the Court approve service awards to the eight class representatives  
18 in the following amounts: Selena Scola (\$20,000); Erin Elder (\$20,000); Gabriel Ramos (\$20,000);  
19 April Hutchins (\$7,500); Konica Ritchie (\$7,500); Allison Trebacz (\$7,500); Jessica Swarner (\$7,500);  
20 Gregory Shulman (\$7,500). If awarded, the total deduction from the Settlement Fund is \$97,500, an  
21 amount equal to 0.006% of the Settlement Fund.

22 Service awards are commonly granted to class representatives who have devoted their time and  
23 effort to represent a class of similarly situated victims of alleged wrongdoing. (See *Clark v. American*  
24 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Service awards serve “to compensate  
25 class representatives for work done on behalf of the class, to make up for financial or reputational risk  
26 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private  
27 attorney general.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–1394.) Courts  
28 may look to several factors when determining the propriety of a service award, including “the risk to the

1 class representative in commencing suit, both financial and otherwise” and “the notoriety and personal  
2 difficulties encountered by the class representative.” *Id.*<sup>7</sup>

3 All the Class representatives in this action took a significant risk by filing suit against a  
4 corporation as powerful as Facebook. Each of these plaintiffs, and in particular Selena Scola, Erin Elder  
5 and Gabriel Ramos, put themselves at risk by violating the nondisclosure agreements that they had been  
6 required to sign, subjecting them to potential legal liability. (Scola Decl. at ¶6; Ramos Decl. at ¶4; Elder  
7 Decl. at ¶4; Shulman Decl. at ¶6; Swarner Decl. at ¶7; Trebacz Decl. at ¶7.)

8 In addition, many Class representatives had (and still do have) a desire to pursue a career in  
9 technology. (Scola Decl. at ¶6; Swarner Decl. at ¶7; Shulman Decl. at ¶6; Trebacz Decl. at ¶7.) By  
10 participating in this lawsuit, all the Class representatives exhibited significant courage and faced the risk  
11 that such involvement could adversely affect their future employment in the technology industry. This  
12 lawsuit and the Settlement have both garnered national public attention. All the Class representatives  
13 were aware that this publicity could detrimentally affect them professionally or personally. (Scola Decl.  
14 at ¶6; Swarner Decl. at ¶7; Shulman Decl. at ¶6; Trebacz Decl. at ¶7.) Moreover, to participate as  
15 Class representatives, they had to publicly admit their exposure to graphic material and their resulting  
16 psychological distress and mental health diagnoses despite the stigma that still attaches to such  
17 admissions. More detail about their involvement in this case may be found in their declarations,  
18 attached hereto. (See Scola Decl.; Elder Decl.; Ramos Decl.; Swarner Decl.; Shulman Decl.; Trebacz  
19 Decl.)

20 Class Counsel requests higher awards for Selena Scola, Erin Elder, and Gabriel Ramos because  
21 their involvement in this litigation was particularly substantial. Scola, Elder, and Ramos all responded to  
22 a full set of interrogatories on a wide range of personal topics and produced documents revealing  
23 intimate details of their lives and their experiences as content moderators. (Scola Decl. at ¶9; Ramos  
24 Decl. at ¶5; Elder Decl. at ¶5.) At Facebook’s request, these three Class representatives even had their  
25 cellular phones imaged so that potentially responsive data could be extracted. (E.g., Scola Decl. at ¶9.)

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27 <sup>7</sup> Other factors recognized by *Cellphone, supra*, 186 Cal.App.4th at p. 1394 are “the amount of time and  
28 effort spent by the class representative,” “the duration of the litigation,” and “the personal benefit (or  
lack thereof) enjoyed by the class representative as a result of the litigation.”

1 Elder and Ramos were both deposed in intense all-day sessions that required them to recall and describe  
2 traumatic experiences from their work as content moderators. (Ramos Decl. at ¶5; Elder Decl. at ¶5.)  
3 Scola had prepared for her deposition, but the parties agreed to postpone it days before it was set to take  
4 place in order to pursue settlement negotiations. (Scola Decl. at ¶9.) In sum, these three Class  
5 representatives made significant sacrifices of their time, energy, and comfort so that the Class would  
6 benefit.

7 Scola, Elder and Ramos were also heavily involved in the settlement negotiations, attending  
8 mediation sessions and providing valuable input instrumental in determining what relief to seek and in  
9 achieving that goal. (Scola Decl. at ¶9; Ramos Decl. at ¶5; Elder Decl. at ¶5.) After the Settlement,  
10 Scola, Elder and Ramos remained involved, providing Class Members with information about the  
11 Settlement and contacting Class Counsel with issues and concerns of the Class. (*Id.*)

12 The awards sought for all the Class representatives, including Scola, Elder, and Ramos, are in  
13 line with similar awards granted by courts. (See *Trujillo v. City of Ontario* (C.D. Cal., Aug. 24, 2009,  
14 No. EDCV 04-1015VAPSG LX) 2009 WL 2632723, at \*5 [awarding \$30,000 to class representatives];  
15 *Waldbuesser v. Northrop Grumman Corp.* (C.D. Cal., Oct. 24, 2017, No. CV 06-6213-AB (JCX)) 2017  
16 WL 9614818, at \*8 [applying factors and finding \$25,000 incentive award to be reasonable]; *Board of*  
17 *Trustees of AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A.* (S.D.N.Y., June 7, 2012, No. 09  
18 CIV. 686 SAS) 2012 WL 2064907, at \*3 [awarding \$50,000 contribution award]; *Wright v.*  
19 *Stern* (S.D.N.Y. 2008) 553 F.Supp.2d 337, 342 [awarding \$50,000 service award “as compensation for  
20 the services they provided to the class and the inconvenience, pain, and suffering they suffered as a  
21 consequence of having been a named plaintiff in the case”].) Because of the nature of these claims, the  
22 high profile of this case, the exposure to potential liability, and the influence Facebook carries within the  
23 technology marketplace, all the Class representatives in this case were uniquely emotionally invested  
24 and vulnerable. The requested incentive awards are reasonable and justified.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Class Counsel respectfully request an award of attorneys' fees in the  
3 amount of \$15,600,000, reimbursement of \$180,881.06 in expenses, and incentive awards of \$20,000  
4 for Selena Scola, Erin Elder, and Gabriel Ramos, and \$7,500 for April Hutchins; Konica Ritchie;  
5 Allison Trebacz; Jessica Swarner; Gregory Shulman.

6  
7 Dated: October 9, 2020

Respectfully Submitted,

8 /s/ Steven N. Williams

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# APPENDIX A

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**JUDGE'S COPY**

**RECEIVED**  
 AUG - 4 2015  
 CLERK OF THE SUPERIOR COURT  
 SAN MATEO COUNTY

**FILED**  
 SAN MATEO COUNTY  
 AUG 11 2015  
 Clerk of the Superior Court  
 By *[Signature]*  
 DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN MATEO

In re CAFEPRESS INC. SHAREHOLDER )  
 LITIGATION )  
 \_\_\_\_\_ )  
 This Document Relates To: )  
 ALL ACTIONS. )

Master File No. CIV522744  
CLASS ACTION  
 Assigned for All Purposes to  
 Hon. Marie S. Weiner  
 Dept. 2  
 DATE: August 11, 2015  
 TIME: 9:00 a.m.  
 DATE ACTION FILED: 07/10/13

JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT

FILE BY FAX

1           WHEREAS, the Court is advised that the Settling Parties,<sup>1</sup> through their counsel, have agreed,  
2 subject to Court approval following notice to the Settlement Class and a hearing, to settle this Litigation  
3 upon the terms and conditions set forth in the Stipulation of Settlement dated April 2, 2015 (the  
4 “Stipulation”), which was filed with the Court; and

5           WHEREAS, on May 11, 2015, the Court entered its Order Preliminarily Approving Settlement  
6 and Providing for Notice, which preliminarily approved the settlement, and approved the form and  
7 manner of notice to the Settlement Class of the settlement, and said notice has been made, and the  
8 fairness hearing having been held, and

9           NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings  
10 herein, and it appearing to the Court upon examination that the settlement set forth in the Stipulation is  
11 fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to  
12 the Settlement Class of the settlement to determine if the settlement is fair, reasonable, and adequate  
13 and whether the Judgment should be entered in this Litigation;

14           **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

15           A.     The provisions of the Stipulation, including definitions of the terms used therein, are  
16 hereby incorporated by reference as though fully set forth herein

17           B.     This Court has jurisdiction of the subject matter of this Litigation and over all of the  
18 Settling Parties and all members of the Settlement Class.

19           C.     With respect to the Settlement Class, the Court finds that:

20                   (i)     The members of the Settlement Class are so numerous that their joinder in the  
21 Litigation is impracticable. There were approximately 5.175 million shares of CafePress common stock  
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24 <sup>1</sup> As used herein, the term “Settling Parties” means (i) Plaintiffs Wallace J. Desmarais Jr. and  
25 Hussain Jinnah (collectively, “Plaintiffs”) (on behalf of themselves and each of the Settlement Class  
26 Members), by and through their counsel of record; (ii) the Defendants CafePress Inc. (“CafePress” or  
27 the “Company”), Bob Marino, Monica N. Johnson, Fred E. Durham III, Brad W. Buss, Patrick J  
28 Connolly, Douglas M. Leone and Michael Dearing (collectively, the “CafePress Defendants”); and (iii)  
underwriters of the Company’s March 28, 2012 initial public offering (“IPO”), specifically J.P. Morgan  
Securities LLC, Jefferies & Company, Inc. (currently Jefferies LLC), Cowen and Company, LLC,  
Janney Montgomery Scott LLC and Raymond James & Associates, Inc. (the “Underwriter Defendants,”  
and collectively with the CafePress Defendants, the “Defendants”).

1 offered through the IPO. The Settlement Class is, therefore, sufficiently numerous to render joinder  
2 impracticable;

3 (ii) The Settlement Class is ascertainable because members of the Settlement Class  
4 share common characteristics that are sufficient for persons to determine whether they are members of  
5 the Settlement Class, *i.e.*, whether they purchased or otherwise acquired CafePress common stock  
6 pursuant or traceable to the Registration Statement issued in connection with CafePress' IPO;

7 (iii) There are questions of law and fact common to the Settlement Class. Those  
8 questions include whether the Defendants violated the Securities Act of 1933, whether the Registration  
9 Statement contained misstatements or omissions, whether any misstatements or omissions were  
10 material, and whether any misstatements or omissions caused harm to the members of the Settlement  
11 Class;

12 (iv) The claims of the Plaintiffs are typical of the claims of the Settlement Class  
13 Members. Plaintiffs claim to have purchased or otherwise acquired the common stock pursuant or  
14 traceable to the same Registration Statement as the members of the Settlement Class. Consequently,  
15 Plaintiffs claim that they and the other members of the Settlement Class sustained damages as a result  
16 of the same misconduct by Defendants;

17 (v) Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented and  
18 protected the interests of the Settlement Class Members. Plaintiffs have no interests in conflict with  
19 absent members of the Settlement Class. The Court is satisfied that Plaintiffs' Counsel are qualified,  
20 experienced and have represented the Settlement Class to the best of their abilities;

21 (vi) The questions of law or fact common to the members of the Settlement Class  
22 predominate over any questions affecting only individual members; and

23 (vii) A class action is the superior means of resolving the Litigation.

24 D. The form, content, and method of dissemination of notice given to the Settlement Class  
25 was adequate and reasonable and constituted the best notice practicable under the circumstances,  
26 including individual notice to all Settlement Class Members who could be identified through reasonable  
27 effort.

28

1 E. Notice, as given, complied with the requirements of California law, satisfied the  
2 requirements of due process and constituted due and sufficient notice of the matters set forth herein.

3 F. The settlement set forth in the Stipulation <sup>in the amount of \$8 million</sup> is fair, reasonable, and adequate.

4 (i) The settlement was vigorously negotiated at arm's length by Plaintiffs on behalf  
5 of the Settlement Class and by Defendants, all of whom were represented by highly experienced and  
6 skilled counsel. The case settled only after: (a) a mediation conducted by an experienced mediator who  
7 was thoroughly familiar with this Litigation; (b) the exchange of detailed mediation statements prior to  
8 the mediation which highlighted the factual and legal issues in dispute, (c) Plaintiffs' Counsel's  
9 extensive investigation, which included, among other things, a review of CafePress' press releases,  
10 Securities and Exchange Commission filings, analyst reports, media reports and other publicly disclosed  
11 reports and information about the Defendants; (d) the removal of this Litigation to federal court and a  
12 successful remand motion to state court; (e) the drafting and submission of a detailed Consolidated  
13 Complaint for Violation of §§11 and 15 of the Securities Act of 1933 ("Complaint") that survived  
14 Defendants' demurrer, (f) the review and analysis of non-public documents produced by Defendants  
15 and third parties; (g) the Settling Parties' responses to interrogatories; and (h) extensive briefing on  
16 Plaintiffs' motion for class certification. Accordingly, both the Plaintiffs and Defendants were well-  
17 positioned to evaluate the settlement value of this Litigation. The Stipulation has been entered into in  
18 good faith and is not collusive.

19 (ii) If the settlement had not been achieved, both Plaintiffs and Defendants faced the  
20 expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either  
21 Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the  
22 reasonableness of the settlement.

23 G. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of  
24 the Settlement Class Members in connection with the settlement.

25 H. Plaintiffs, all Settlement Class Members, and Defendants are hereby bound by the terms  
26 of the settlement set forth in the Stipulation.

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1           **IT IS HEREBY ORDERED THAT:**

2           1.       The Settlement Class, defined in the Stipulation as: "all Persons who purchased or  
3 otherwise acquired the common stock of CafePress pursuant or traceable to the Registration Statement  
4 and Prospectus issued in connection with CafePress' March 28, 2012 initial public offering. Excluded  
5 from the Settlement Class are: the Defendants and their respective successors and assigns; past and  
6 current officers and directors of CafePress and the Underwriter Defendants; members of the immediate  
7 families of the Individual Defendants; the legal representatives, heirs, successors or assigns of the  
8 Individual Defendants; any trust or entity in which any of the above excluded Persons have or had a  
9 controlling interest or which is related to or affiliated with any of the Defendants; and any Person who  
10 validly requests exclusion from the Settlement Class," is certified solely for purposes of this Settlement.

11           2.       The settlement on the terms set forth in the Stipulation is finally approved as fair,  
12 reasonable and adequate. The settlement shall be consummated in accordance with the terms and  
13 provisions of the Stipulation. The Settling Parties are to bear their own costs, except as otherwise  
14 provided in the Stipulation.

15           3.       All Released Parties as defined in the Stipulation are released in accordance with, and as  
16 defined in, the Stipulation.

17           4.       Upon the Effective Date, Plaintiffs and each Settlement Class Member shall be deemed  
18 to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished,  
19 and discharged all Released Claims against the Released Parties, whether or not such Settlement Class  
20 Member executes and delivers a Proof of Claim and Release.

21           5.       Upon the Effective Date, each of the Released Parties shall be deemed to have, and by  
22 operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel  
23 and each and all of the Settlement Class Members from all Settled Defendants' Claims.

24           6.       All Settlement Class Members who have not made their objections to the settlement in  
25 the manner provided in the Notice are deemed to have waived any objections by appeal, collateral  
26 attack, or otherwise.

1           7.       All Settlement Class Members who have failed to properly file requests for exclusion  
2 (requests to opt out) from the Settlement Class are bound by the terms and conditions of the Stipulation  
3 and this Final Judgment.

4           8       All other provisions of the Stipulation are incorporated into this Judgment as if fully  
5 rewritten herein. ~~To the extent that the terms of this Judgment conflict with the terms of the Stipulation,~~  
6 ~~the Stipulation shall control.~~

7           9.       Plaintiffs and all Settlement Class Members are hereby barred and enjoined from  
8 instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released  
9 Claims against any of the Released Parties.

10          10.       Neither the Stipulation nor the settlement, nor any act performed or document executed  
11 pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be, or may  
12 be used as, a presumption, concession, or admission of, or evidence of, the validity of any Released  
13 Claim or of any wrongdoing or liability of the Defendants and the Released Parties; or (b) is or may be  
14 deemed to be, or may be used, as a presumption, concession, or admission of, or evidence of, any fault  
15 or omission of any of the Defendants and the Released Parties in any civil, criminal or administrative  
16 proceeding in any court, administrative agency or other tribunal; or (c) is or may be deemed to be an  
17 admission or evidence that any claims asserted by Plaintiffs were not valid in any civil, criminal or  
18 administrative proceeding. Defendants and the Released Parties may file the Stipulation and/or this  
19 Judgment in any action that may be brought against them in order to support a defense or counterclaim  
20 based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or  
21 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or  
22 counterclaim.

23          11.       Pursuant to and in full compliance with California law, this Court hereby finds and  
24 concludes that due and adequate notice was directed to all Persons and entities who are Settlement Class  
25 Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair  
26 opportunity was accorded to all Persons and entities who are Settlement Class Members to be heard  
27 with respect to the Plan of Allocation.



1           12.     The Court hereby finds and concludes that the formula for the calculation of the claims  
2 of Authorized Claimants, which is set forth in the Notice of Proposed Settlement of Class Action (the  
3 “Notice”) sent to Settlement Class Members, provides a fair and reasonable basis upon which to  
4 allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class  
5 Members, with due consideration having been given to administrative convenience and necessity.

6           13.     The Court hereby awards Plaintiffs’ Counsel attorneys’ fees of \$2,400,000, plus  
7 expenses in the amount of \$131,445.81, together with the interest earned thereon for the same time  
8 period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the  
9 amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given  
10 the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved,  
11 and the result obtained for the Settlement Class.

12           14.     The awarded attorneys’ fees and expenses and interest earned thereon shall immediately  
13 be paid to Plaintiffs’ Counsel from the Settlement Fund subject to the terms, conditions, and obligations  
14 of the Stipulation, which terms, conditions and obligations are incorporated herein.


15           15.     Plaintiffs Wallace J. Desmarais Jr. and Hussain Jinnah shall each be awarded \$2,500 for  
16 their time and expenses in this Litigation. Such reimbursement is appropriate considering their active  
17 participation as Plaintiffs in this action, as attested to by the declarations submitted to the Court. Such  
18 reimbursement is to be paid from the Settlement Fund.

19           16.     In the event that the Stipulation is terminated in accordance with its terms. (i) this  
20 Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Litigation  
21 shall proceed as provided in the Stipulation.

1           17.     Without affecting the finality of this Judgment in any way, this Court retains continuing  
2 jurisdiction over. (a) implementation of this settlement and any award or distribution of the Settlement  
3 Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and  
4 determining applications for attorneys' fees, interest and expenses in the Litigation; and (d) all parties  
5 hereto for the purposed of construing, enforcing, and administrating the Stipulation.

6           IT IS SO ORDERED.

7           DATED: 8/11/15

  
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HONORABLE MARIE S. WEINER  
JUDGE OF THE SUPERIOR COURT

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**OCT 24 2014**

ALAN CARLSON, Clerk of the Court



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9 Lead Counsel for Plaintiffs

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12 In re EPICOR SOFTWARE CORPORATION )  
13 SHAREHOLDER LITIGATION )

Case No. 30-2011-00465495-CU-BT-CXC

CLASS ACTION

14 This Document Relates To:  
15

Assigned to: Judge Steven L. Perk

16 ALL ACTIONS.

<sup>TPC</sup>  
[PROPOSED] ORDER AWARDING  
PLAINTIFFS' COUNSEL ATTORNEYS'  
FEES AND EXPENSES

DATE: October 24, 2014

TIME: 10:30 a.m.

CTRM: The Honorable Steven L. Perk

DEPT: CX105

DATE ACTION FILED: 04/08/11

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1 THIS MATTER having come before the Court on October 24, 2014, on the application of  
2 Plaintiffs' Counsel for an award of attorneys' fees and expenses incurred in the litigation; the Court  
3 having considered all papers filed and proceedings conducted herein, and having found the settlement  
4 of this litigation to be fair, reasonable, and adequate and otherwise being fully informed in the premises  
5 and good cause appearing therefore;

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

7 1. All capitalized terms used herein shall have the same meanings as set forth in the  
8 Amended Stipulation of Settlement dated May 6, 2014 (the "Stipulation").

9 2. This Court has jurisdiction over the subject matter of the application and all matters  
10 relating thereto, including all members of the Class.

11 3. The Court hereby awards Plaintiffs' Counsel attorneys' fees of 30% of the Settlement  
12 Fund, together with the interest earned thereon for the same time period and at the same rate as that  
13 earned on the Settlement Fund. The Court also awards Plaintiffs' Counsel \$379,922.89 in expenses,  
14 plus interest on such expenses at the same rate and for the same time period as earned by the Settlement  
15 Fund.


16 4. The awarded attorneys' fees and expenses shall be paid to Robbins Geller Rudman &  
17 Dowd LLP ("Robbins Geller") from the Settlement Fund immediately after the date this Order is  
18 executed subject to the terms and conditions of the Stipulation.

19 5. The awarded attorneys' fees shall be allocated by Robbins Geller among Plaintiffs'  
20 Counsel in a manner which they, in good-faith believe, reflects the contribution of such counsel to the  
21 prosecution and settlement of the litigation. The Court finds that the fees awarded are fair and  
22 reasonable under the percentage-of-recovery method.

1           6.       Plaintiffs Donald Field, Lawrence Frazer, James Kline, Joseph Tola and Norman Watt  
2 are hereby awarded \$1,000.00 each from the Settlement Fund for their time and service in representing  
3 the Class.

4           IT IS SO ORDERED.

5 DATED: 24 October 2014

  
6           HONORABLE THIERRY PATRICK COLAW  
7           JUDGE OF THE SUPERIOR COURT

8 Submitted by:

9 ROBBINS GELLER RUDMAN  
10 & DOWD LLP  
11 RANDALL J. BARON  
12 A. RICK ATWOOD, JR.  
13 DAVID T. WISSBROECKER  
14 DAVID A. KNOTTS  
15 EDWARD M. GERGOSIAN

16                           s/ David A. Knotts  
17                           \_\_\_\_\_  
18                           DAVID A. KNOTTS

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**ELECTRONICALLY RECEIVED**  
Superior Court of California,  
County of San Diego  
**04/14/2017** at 02:43:33 PM  
Clerk of the Superior Court  
By Julie Ledbetter, Deputy Clerk

**FILED**  
Clerk of the Superior Court

APR 21 2017

By: K. Mulligan, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

Coordination Proceeding Special Title  
(Rule 1550(b)):

CIPRO CASES I and II

Judicial Council Coordination Proceeding  
Nos. 4154 and 4220

CLASS ACTION

The Honorable Ronald L. Styn

This Document Relates To:

All Actions

~~[REVISED PROPOSED]~~ ORDER  
GRANTING PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, REIMBURSEMENT  
OF COSTS, AND INCENTIVE AWARDS

Date: April 21, 2017  
Dept.: C-62  
Time: 2:00 p.m.

2<sup>nd</sup> Amended Complaint Filed: April 9, 2003

This matter came before the Court on Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs, and Incentive Awards (the "Motion") in connection with Plaintiffs' Motion for Final Approval of Class Action Settlement. The Court, having considered Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs, and Incentive Awards and the memorandum and declarations in support thereof, and after a duly noticed hearing, hereby finds that:

1           1.       The Motion seeks an award of attorneys' fees of one-third of the \$225,000,000  
2 Settlement Fund, which is comprised of settlement payments from Defendant Barr Laboratories, Inc.  
3 ("Barr"). Plaintiffs' counsel also seek reimbursement of \$284,002.37 in unreimbursed litigation costs  
4 and expenses, and service/incentive awards for the named class representatives in the amount of \$2,500  
5 for each consumer Class representative and \$15,000 for each third-party payor Class representative.

6           2.       The amount of attorneys' fees requested is fair and reasonable under the "percentage-of  
7 the-fund" method. This is confirmed by a lodestar "cross-check," which reveals a fair and reasonable  
8 lodestar multiplier. (See *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503; *Wershba v.*  
9 *Apple Computer* (2001) 91 Cal.App.4th 224, 255; *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74,  
10 76.)

11           3.       The attorneys' fees requested were entirely contingent upon success. Plaintiffs' counsel  
12 risked time and effort and advanced significant expenses with no ultimate guarantee of compensation.  
13 The award of one-third is warranted for reasons set out in Plaintiffs' Counsel's moving papers,  
14 including but not limited to the following: the excellent result obtained for the class – payment by Barr  
15 of \$225 million in cash; the quality and quantity of work performed by all the firms representing  
16 Plaintiffs and the Plaintiff class – including extensive motion practice, discovery, and appellate work,  
17 all involving novel, complex, and difficult issues of fact and law; the risks faced throughout the  
18 litigation, including at the outset; and a reasonable lodestar "cross-check."

19           4.       The concerns raised by the objectors relating to the requested fee award do not merit  
20 denial of Plaintiffs' request. The objectors challenged the requested fee award as excessive and argued  
21 in favor of a downward adjustment. Mr. Helfand asserted that Plaintiffs' Counsel must submit itemized  
22 billing statements. Mr. Helfand also asserted that the requested incentive awards are inappropriate. The  
23 Court has considered each of the objections and concerns and overrules all of them.

24           5.       The expenses sought were incurred in connection with the prosecution of the litigation  
25 for the benefit of the Class and were reasonable and necessary.

26           6.       Therefore, upon consideration of the Motion and the accompanying declarations, and  
27 based upon all matters of record including the pleadings and papers filed in this action and oral  
28 argument given at the hearing on this matter, the Court hereby finds that: (i) the attorneys' fees



1 requested are reasonable and proper; (ii) the expenses requested were necessary, reasonable and proper;  
2 and (iii) the requested service/incentive awards are fair, reasonable, and necessary to award Class  
3 representatives for their willingness to represent the interests of the Class and the general public in the  
4 coordinated actions.

5 7. Accordingly, it is hereby ORDERED and DECREED that:

6 a. Plaintiffs' Co-Lead Class Counsel are awarded attorneys' fees for distribution to  
7 Plaintiffs' counsel in the amount of \$75,000,000, equal to one-third of the Settlement Fund.

8 b. Plaintiffs' Co-Lead Class Counsel and Liaison Counsel are awarded  
9 reimbursement of their unreimbursed costs and expenses in the amount of \$284,002.37.

10 c. The Court also approves the requested service/incentive awards to the named  
11 class representatives in the amount of \$2,500 for each consumer Class representative and \$15,000 for  
12 each third-party payor Class representative for their willingness to represent the interests of the Class  
13 and the general public in these coordinated actions.

14 d. The attorneys' fees, reimbursement of expenses, advance of expenses, and  
15 incentive awards shall be paid from the Settlement Fund.

16 e. The attorneys' fees and expenses shall be allocated amongst Plaintiffs' counsel,  
17 in the first instance, by Co-Lead Class Counsel (the Joseph Saveri Law Firm, Inc.; Zwerling, Schachter  
18 & Zwerling, LLP; and Lieff, Cabraser, Heimann & Bernstein, LLP) in a manner which, in Co-Lead  
19 Class Counsel's good-faith judgment, accurately reflects each of such Plaintiffs' counsel's contributions  
20 to the establishment, prosecution, and resolution of this litigation.

21 f. The Court retains exclusive and continuing jurisdiction to enforce the terms of  
22 this Order, and to resolve any disputes arising from or related to the Settlement, including the allocation  
23 of attorneys' fees.

24 **IT IS SO ORDERED**

25  
26 Dated: April 21, 2017



27 \_\_\_\_\_  
28 Judge of the Superior Court of California  
County of San Diego



