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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL LIVINGSTON, et al.,
Plaintiffs,
v.
MITAC DIGITAL CORPORATION,
Defendant.

Case No. 18-cv-05993-JST

**ORDER GRANTING RENEWED
MOTION FOR PRELIMINARY
APPROVAL**

Re: ECF No. 62

United States District Court
Northern District of California

Before the Court is Plaintiffs’ unopposed renewed motion for preliminary approval of class action settlement. ECF No. 62. The Court will grant the motion.

I. BACKGROUND

A. The Parties and Claims

This putative class action arises out of Defendant MiTAC Digital Corporation’s marketing and sale of navigator GPS devices. ECF No. 21 at 2-7. In its marketing materials, MiTAC Digital represented that Magellan RoadMate Navigator GPS devices were eligible for “free lifetime map updates.” *Id.* ¶ 2. However, Defendant provided free updates for only the first three years after purchase, and consumers were required to pay for any additional updates. *Id.* ¶¶ 4, 8, 11, 37. Defendant’s marketing materials, owner’s manuals, and product packaging allegedly included no indication that “lifetime” meant three years. *Id.* ¶ 2. In June 2018, Defendant allegedly added a link to its website which routed to the following disclaimer: “lifetime refers to the useful lifetime of the device considered to be 3 (three) years from the date of manufacture.” *Id.* ¶ 6.

Plaintiffs’ operative first amended complaint (“FAC”) asserts six claims. *Id.* ¶¶ 50-111. Plaintiffs allege that Defendant’s concealment and failure to disclose the true nature of the “free lifetime map updates” policy violates (1) the California Consumer Legal Remedies Act, Cal. Civ.

1 Code § 1750, *et seq.*, and (2) California unfair competition law, Cal. Bus. & Prof. Code § 17200,
2 *et seq.* ECF No. 21 ¶¶ 50-78. Plaintiffs further allege that Defendant’s alterations of its “Terms
3 and Conditions” on or around August 2018 and attendant refusal to honor its lifetime map update
4 warranty constitute (3) breach of express warranty under California Commercial Code § 2313 and
5 (4) breach of written warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2303, *et seq.*
6 *Id.* ¶¶ 79-99. Finally, Plaintiffs assert (5) trespass to chattels and (6) unjust enrichment. *Id.*
7 ¶¶ 100-11.

8 **B. Procedural Background**

9 On September 28, 2018, Plaintiffs filed this putative class action in the United States
10 District Court of the Northern District of California. ECF No. 1. Defendant filed a motion to
11 dismiss Plaintiffs’ complaint on November 26, 2018. ECF No. 17. The parties then stipulated to
12 allow Plaintiffs to file an amended complaint. ECF Nos. 19, 20. Plaintiffs filed their first
13 amended complaint on December 17, 2018, which Defendants moved to dismiss shortly thereafter.
14 ECF Nos. 21, 23. Plaintiffs filed their opposition to the motion to dismiss on January 21, 2019,
15 which Defendant followed with its reply brief on January 29, 2019. ECF Nos. 25, 26.

16 On April 24, 2019, this Court issued an order requesting further briefing on Plaintiffs’
17 claim for trespass to chattels. ECF No. 36. On April 29, 2019, the parties notified the Court of a
18 scheduled mediation and stipulated to an enlargement of time to file further briefing on Plaintiffs’
19 trespass to chattels claim. ECF No. 39. The parties attended an all-day mediation before Hon.
20 Jay. C. Gandhi (Ret.) on May 8, 2019 and then notified the Court that they “reached an amicable
21 resolution of this entire matter.” ECF No. 41 at 2. On July 12, 2019, Plaintiffs filed an unopposed
22 motion for preliminary approval of class action settlement. ECF No. 45. The Court denied the
23 motion without prejudice. ECF No. 55. On March 10, 2020, Plaintiffs filed an unopposed
24 renewed motion for preliminary settlement approval. ECF No. 62.

25 **C. Terms of the Settlement**

26 The proposed settlement agreement (“Settlement”) resolves claims between Defendant and
27 the settlement class, defined as follows: “all persons who purchased an Eligible Device in the
28 United States of America at any time within the Class Period.” ECF No. 62-1 ¶ 5. “Eligible

1 Device” is defined as “a Magellan RoadMate Navigator device with Free Lifetime Map updates
2 purchased within the Class Period.” *Id.* ¶ 12. “Class Period” is defined as “the period from
3 September 28, 2014, to June 30, 2019.” *Id.* ¶ 7.

4 Under the Settlement, Defendant agrees to “reimburse each Class Member for verified out-
5 of-pocket costs that they incurred to update their Eligible Devices, plus simple interest at a rate of
6 seven percent per annum.” *Id.* ¶ 29. In order to receive these cash reimbursements, class
7 members must complete a reimbursement form and submit it to the Settlement Administrator
8 within 90 days after the Notice Date. *Id.* “Notice Date” is defined as “the latest date on which the
9 Settlement Administrator emails or mails the Class Notice.” *Id.* ¶ 23. In addition, the Settlement
10 provides that all class members will be eligible to receive free map updates going forward. *Id.*
11 ¶ 29. In order to receive free updates, class members must register their device(s) with Defendant
12 within 90 days after the Notice Date. *Id.* Class members will then be able to receive free updates
13 for their registered devices for three years. *Id.* At the end of this three-year period, class members
14 will “have the opportunity to renew their three-year registration at no charge” and may continue to
15 renew their three-year registrations for as long as they use their Eligible Devices. *Id.*

16 In exchange, class members will release the following claims against Defendant:

17 all claims, rights, demands, liabilities, losses, obligations, damages,
18 penalties, interests, actions, liens, suits, judgments, indebtedness,
19 costs, fees, expenses, restitution, debts, controversies, causes of
20 action and all other legal responsibilities of any form or nature
21 whatsoever which Plaintiffs and Class Members have or may have
arising out of or relating to any allegations made in the Action or any
legal theories that could have been raised based on the allegations in
the Action during the Class Period.

22 *Id.* ¶ 19. In agreeing to this release, Plaintiffs acknowledge “that they are aware that they or other
23 attorneys may hereafter discover claims or facts in addition to or different from those that they
24 now know or believe exist” and assert that they “fully, finally and forever settle and release” all
25 claims “known or unknown, suspected or unsuspected.” *Id.* ¶ 30.

26 Plaintiffs propose the following notice plan to inform class members of the Settlement.
27 Within 20 days after preliminary approval, Defendant will provide the Class List to the Settlement
28 Administrator, CPT Group. ECF No. 62-1 ¶¶ 4, 25. Within 45 days after preliminary approval,

1 “the Settlement Administrator will email the Class Notice to the 373,202 email addresses provided
2 by consumers, who may be Class Members, when they registered their devices with Defendant.”
3 ECF No. 62 at 13; ECF No. 62-1 ¶ 35. The Class Notice will state: “(i) the nature of the Action;
4 (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class
5 member may enter an appearance through an attorney if the member so desires; (v) that the court
6 will exclude from the class any member who requests exclusion; (vi) the time and manner for
7 requesting exclusion; (vii) the binding effect of a class judgment on members under Federal Rule
8 of Civil Procedure 23(c)(3); (viii) a summary of the Settlement’s principal terms and the relief
9 provided; (ix) the time and manner for submitting claims for reimbursement and Notices of
10 Objection; and (x) the claims to be released.” ECF No. 62-1 ¶ 35; *id.* at 26-28.

11 “For Class Members to whom an email is undeliverable and for whom the Settlement
12 Administrator can determine a valid postal address after a reasonable effort, the Settlement
13 Administrator will send by first-class U.S. mail a summary version of the Class Notice, which will
14 include instructions on how to obtain the full version.” *Id.* The Settlement Administrator will also
15 “provide supplemental notice through print and digital advertising to reach other potential Class
16 Members, who never registered their devices with Defendant.” *Id.* Moreover, the Settlement
17 Administrator will establish a Settlement Website which will provide links to the Class Notice,
18 motions for approval, motion for attorney’s fees and costs, and other case documents. *Id.* ¶ 26.

19 Class members will have 60 days from the Notice Date to opt out of the Settlement or
20 object to its terms. *Id.* ¶¶ 13, 23, 37, 39. If any Reimbursement Forms or Requests for Exclusion
21 are defective, those Class Members will be given an opportunity to cure the defects. *Id.* ¶ 36. The
22 Settlement Administrator will email or mail the Class Member a cure letter within 15 days of
23 receiving the defective submission, and the Class Member will then have 15 days to submit a
24 revised Reimbursement Form or Request for Exclusion. *Id.* Class members who fail to submit a
25 valid Request for Exclusion by this date will be bound by the terms of the Settlement. *Id.* ¶ 38.

26 **II. CLASS CERTIFICATION**

27 **A. Legal Standard**

28 Class certification under Rule 23 is a two-step process. First, a plaintiff must demonstrate

1 that the four requirements of Rule 23(a) are met: numerosity, commonality, typicality, and
2 adequacy. “Class certification is proper only if the trial court has concluded, after a ‘rigorous
3 analysis,’ that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538,
4 542-43 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)).

5 Second, a plaintiff must establish that the action meets one of the bases for certification
6 under Rule 23(b). Plaintiffs invoke Rule 23(b)(3). Therefore, Plaintiffs must establish that
7 “questions of law or fact common to class members predominate over any questions affecting only
8 individual members, and that a class action is superior to other available methods for fairly and
9 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

10 When determining whether to certify a class for settlement purposes, a court must pay
11 “heightened” attention to the requirements of Rule 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S.
12 591, 620 (1997). “Such attention is of vital importance, for a court asked to certify a settlement
13 class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the
14 proceedings as they unfold.” *Id.* At the same time, trial “manageability is not a concern in
15 certifying a settlement class where, by definition, there will be no trial.” *In re Hyundai & Kia*
16 *Fuel Econ. Litig.*, 926 F.3d 539, 556-57 (9th Cir. 2019) (en banc).

17 **B. Discussion**

18 For the reasons set forth below, the Court grants Plaintiffs’ request to conditionally certify
19 the settlement class.

20 **1. Rule 23(a)(1): Numerosity**

21 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
22 impracticable.” Fed. R. Civ. P. 23(a)(1). “Plaintiffs need not state an exact number to meet the
23 threshold requirements of Rule 23. Rather, the rule ‘requires examination of the specific facts of
24 each case and imposes no absolute limitations.’” *West v. Cal. Servs. Bureau, Inc.*, 323 F.R.D. 295,
25 303 (N.D. Cal. 2017) (quoting *Gen. Tel. Co. of the Nw. Inc. v. Equal Employment Opportunity*
26 *Comm’n*, 446 U.S. 318, 330, (1980)). “A class or subclass with more than 40 members raises a
27 presumption of impracticability based on numbers alone.” *Hernandez v. Cty. of Monterey*, 305
28 F.R.D. 132, 153 (N.D. Cal. 2015) (internal quotation marks and citation omitted).

1 Here, the proposed settlement class consists of all persons who purchased a Magellan
2 RoadMate Navigator device with Free Lifetime Map updates in the United States during the Class
3 Period. ECF No. 62-1 ¶¶ 5, 7, 12. “[H]undreds of thousands of Magellan RoadMate Navigators
4 with Free Lifetime Map updates were sold and registered to Class Members during the Class
5 Period.” ECF No. 62 ¶ 15. The Court concludes that Plaintiffs have satisfied their burden to show
6 that the number of putative class members is sufficiently numerous that their joinder would be
7 impracticable.

8 2. Rule 23(a)(2): Commonality

9 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”
10 Fed. R. Civ. P. 23(a)(2). A common question is one “capable of classwide resolution – which
11 means that determination of its truth or falsity will resolve an issue that is central to the validity of
12 each one of the claims in one stroke.” *Wal-Mart Stores, Inc.*, 564 U.S. at 350. For the purposes of
13 Rule 23(a)(2), “even a single common question” is sufficient. *Id.* at 359 (quotation marks and
14 internal alterations omitted).

15 Here, all proposed class members suffered the same alleged violations of the California
16 Consumer Legal Remedies Act and California unfair competition law. ECF No. 21 ¶¶ 50-78. The
17 class members also assert the same breach of warranty, trespass to chattels, and unjust enrichment
18 allegations. *Id.* ¶¶ 79-111. Proving these allegations requires resolving common questions of law
19 and fact, such as: (1) whether Defendant failed to disclose material facts concerning its Magellan
20 RoadMate FLM navigation devices, (2) whether Defendant’s conduct was unlawful, unfair and/or
21 deceptive, and (3) whether Defendant knew or reasonably should have known of its deceptive
22 representations and omissions relating to the Magellan RoadMate FLM navigation devices. *Id.*
23 ¶ 47. Accordingly, the proposed class satisfies the commonality requirement.

24 3. Rule 23(a)(3): Typicality

25 In certifying a class, courts must find that “the claims or defenses of the representative
26 parties are typical of the claims or defenses of the class.” Fed R. Civ. P. 23(a)(3). “The purpose
27 of the typicality requirement is to assure that the interest of the named representative aligns with
28 the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “The

1 test of typicality ‘is whether other members have the same or similar injury, whether the action is
 2 based on conduct which is not unique to the named plaintiffs, and whether other class members
 3 have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp*, 108 F.R.D.
 4 279, 282 (C.D. Cal. 1985)).

5 The claims of both the named plaintiffs’ and other class members arise from the same
 6 alleged MiTAC misrepresentations. ECF No. 21 ¶ 46. Like other class members, the named
 7 plaintiffs allege that they “incurred the over-valued costs of purchasing a Magellan RoadMate
 8 FLM for a premium price in reliance on MiTAC’s representations” that the device included free
 9 lifetime map updates. *Id.* ¶ 26; ECF No. 62 at 16. These allegations involve the “same course of
 10 conduct,” which is “not unique to the named plaintiffs.” *See Hanon*, 976 F.2d at 508. Therefore,
 11 the typicality requirement is satisfied.

12 4. Rule 23(a)(4): Adequacy

13 “[T]he adequacy of representation requirement . . . requires that two questions be
 14 addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other
 15 class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously
 16 on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

17 No party has suggested, and the Court has not found, any evidence in the record suggesting
 18 that any of the named plaintiffs has a conflict of interest with the other class members. The named
 19 plaintiffs share common claims and seek the same relief as the other class members. ECF No. 62
 20 at 16-17; *see* ECF No. 21 ¶¶ 47, 48. Moreover, class counsel are experienced in class action
 21 litigation and have vigorously prosecuted this action on behalf of the class members. ECF No. 62
 22 at 17; ECF No. 62-1 ¶¶ 16-21. Counsel have thoroughly investigated the factual and legal issues
 23 in this action and engaged in significant discovery. ECF No. 62-1 ¶¶ 4-8. The Court concludes
 24 that the named plaintiffs and class counsel provide adequate representation for the proposed class.

25 5. Rule 23(b)(3): Predominance and Superiority

26 To certify a Rule 23 damages class, the Court must find that “questions of law or fact
 27 common to class members predominate over any questions affecting only individual members,
 28 and [that] a class action is superior to other available methods for fairly and efficiently

1 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The predominance inquiry “tests whether
2 proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*
3 *Prods., Inc.*, 521 U.S. at 623. “When common questions present a significant aspect of the case
4 and they can be resolved for all members of the class in a single adjudication, there is clear
5 justification for handling the dispute on a representative rather than on an individual basis.”
6 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (citation omitted) *overruled on*
7 *other grounds by Wal-Mart Stores, Inc.*, 564 U.S. 338.

8 The dominant legal issue in this action is whether class members are entitled to relief for
9 their exposure to Defendant’s alleged “free lifetime map updates” misrepresentations. ECF No.
10 62 at 18; *see* ECF No. 21 ¶ 49. Plaintiffs suffered identical injuries – they “incurred the over-
11 valued costs of purchasing a Magellan RoadMate FLM for a premium price in reliance on
12 MiTAC’s representations” that the device included free lifetime map updates. ECF No. 21 ¶ 26;
13 ECF No. 62 at 16, 18. The Court finds that the questions surrounding MiTAC’s uniform
14 misrepresentations predominate over any question that could affect only individual class members.
15 *See In re Hyundai*, 926 F.3d at 559 (9th Cir. 2019) (finding predominance where “class members
16 were exposed to uniform fuel-economy misrepresentations and suffered identical injuries within
17 only a small range of damages”). “A class action is also a superior method for fairly and
18 efficiently adjudicating those questions. Resolving the proposed class members’ disputes in a
19 single class action will be far more efficient than requiring them each to proceed individually.”
20 *Terry v. Hoovestol, Inc.*, No. 16-cv-05183-JST, 2018 WL 6439167, at *3 (N.D Cal. Dec. 7, 2018).
21 Therefore, the Court concludes that the proposed class satisfies the requirements of Rule 23(b)(3).

22 **III. PRELIMINARY SETTLEMENT APPROVAL**

23 **A. Legal Standard**

24 The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of class
25 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Rule 23 requires
26 courts to employ a two-step process in evaluating a class action settlement. First, the parties must
27 show “that the court will likely be able to . . . approve the proposal under Rule 23(e)(2).” Fed. R.
28

1 Civ. P. 23(e)(1)(B). Second, courts must hold a hearing pursuant to Rule 23(e)(2) to make a final
2 determination of whether the settlement is “fair, reasonable, and adequate.” *Id.*

3 The court’s task at the preliminary approval stage is to determine whether the settlement
4 falls “within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
5 1078, 1080 (N.D. Cal. 2007) (citation omitted); *see also* Manual for Complex Litigation, Fourth
6 (“MCL, 4th”) § 21.632 (FJC 2004) (explaining that courts “must make a preliminary
7 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
8 direct the preparation of notice of the certification, proposed settlement, and date of the final
9 fairness hearing”). “The initial decision to approve or reject a settlement proposal is committed to
10 the sound discretion of the trial judge.” *City of Seattle*, 955 F.2d at 1276 (citation omitted).
11 Courts “must be particularly vigilant not only for explicit collusion, but also for more subtle signs
12 that class counsel have allowed pursuit of their own self-interests and that of certain class
13 members to infect the negotiations.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
14 947 (9th Cir. 2011).

15 Within this framework, preliminary approval of a settlement is appropriate if “the proposed
16 settlement appears to be the product of serious, informed, non-collusive negotiations, has no
17 obvious deficiencies, does not improperly grant preferential treatment to class representatives or
18 segments of the class, and falls within the range of possible approval.” *In re Tableware*, 484
19 F. Supp. 2d at 1079 (citation omitted). The proposed settlement need not be ideal, but it must be
20 fair and free of collusion, consistent with counsel’s fiduciary obligations to the class. *Hanlon*, 150
21 F.3d at 1027 (“Settlement is the offspring of compromise; the question we address is not whether
22 the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free
23 from collusion.”). To assess a settlement proposal, courts must balance a number of factors:

24 [T]he strength of the plaintiffs’ case; the risk, expense, complexity,
25 and likely duration of further litigation; the risk of maintaining class
26 action status throughout the trial; the amount offered in settlement;
27 the extent of discovery completed and the stage of the proceedings;
28 the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed
settlement.

1 *Id.* at 1026 (citations omitted).¹ The proposed settlement must be “taken as a whole, rather than
2 the individual component parts,” in the examination for overall fairness. *Id.* Courts do not have
3 the ability to “delete, modify, or substitute certain provisions”; the settlement “must stand or fall in
4 its entirety.” *Id.* (citation omitted).

5 **B. Discussion**

6 Having negotiated a new agreement that they believe addresses the Court’s concerns, the
7 parties again seek preliminary approval of the Settlement. ECF No. 62. In its order on Plaintiffs’
8 first motion for preliminary approval, the Court noted that some factors lent support for a finding
9 that the Settlement falls within the range of possible approval. ECF No. 55 at 7. However, the
10 Court denied the motion for the following reasons: (1) Plaintiffs provided insufficient information
11 regarding the range of recovery in this case, ECF No. 55 at 7-9; (2) the proposed timeline failed to
12 provide an opportunity for class members to object to attorney’s fees, *id.* at 9; (3) the proposed
13 notice plan contained several defects, *id.* at 9-10; (4) the settlement failed to appoint an
14 independent claims administrator, *id.* at 10-11; and (5) the settlement contained a “clear sailing”
15 provision, *id.* at 11-12. The Court concludes that the parties have now corrected these
16 deficiencies.

17 **1. Range of Recovery**

18 The original settlement agreement “provide[d] minimal information as to the value of the
19 class’s claims” and “failed to supply ‘enough information to evaluate the strengths and
20 weaknesses of [Plaintiffs’] case.’” ECF No. 55-56 (quoting *Haralson v. U.S. Aviation Servs.*
21 *Corp.*, 383 F. Supp. 3d 959, 969 (N.D. Cal. 2019)). Thus, Plaintiffs’ “submission [did] not
22 provide the Court with sufficient information to evaluate the reasonableness of the class’s
23 recovery.” ECF No. 55 at 8.

24
25 ¹ These factors are substantially similar to those articulated in the 2018 amendments to Rule 23(e),
26 which were not intended “to displace any factor [developed under existing Circuit precedent], but
27 rather to focus the court and the lawyers on the core concerns of procedure and substance that
28 should guide the decision whether to approve the proposal.” See *Hefler v. Wells Fargo & Co.*,
No. 16-CV-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018) (quoting Fed. R. Civ.
P. 23(e)(2) advisory committee’s note to 2018 amendment).

1 Plaintiffs have cured these deficiencies in their renewed motion by providing a detailed
 2 “estimate of the maximum amount that the putative Class Members could receive in damages if
 3 they had ultimately prevailed at trial, the value of the specific performance they seek, and a
 4 discussion of the strengths and weaknesses of their case.” ECF No. 62 at 7, 22-25. Class
 5 Members purchased approximately 525 updates during the Class Period at an average update price
 6 of \$83.95, for a total of \$44,073.75. ECF No. 62 at 23. Plaintiffs would have sought this amount
 7 at trial; class members who suffered out-of-pocket damages by paying for updates that should
 8 have been free will have those amounts refunded in full. Plaintiffs would also have sought
 9 specific performance at trial – relief which class members will now receive, given that MiTAC
 10 will now provide updates free of charge to any class member who requests them. *Id.* While the
 11 Plaintiffs do not place a specific dollar value on this package of benefits, the Court nonetheless
 12 concludes that the revised agreement falls within the range of possible approval, given that class
 13 members who opt in will essentially be made whole.

14 2. Opportunity to Object to Attorney’s Fees

15 The original settlement agreement failed to provide class members an opportunity to object
 16 to “counsel’s fee request on a date *after* the motion and documents supporting it have been filed.”
 17 ECF No. 55 at 9; *see In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir.
 18 2010) (“The plain text of [Rule 23(h)] requires that any class member be allowed an opportunity to
 19 object to the fee ‘motion’ itself, not merely to the preliminary notice that such a motion will be
 20 filed.”). The amended settlement cures this deficiency by providing that “[t]he motion for
 21 attorneys’ fees and costs will be filed no later than thirty-five (35) calendar days before” the
 22 deadline for class members to file objections. ECF No. 62-1 ¶¶ 23, 45.

23 3. Notice Plan

24 The original settlement agreement contained several defects regarding the timing and
 25 contents included in the proposed notice plan. First, “the class members ha[d] only 45 days to
 26 object or opt out from the time the notice is emailed or mailed, which [would] provide less than 45
 27 days from the time a class member actually receives the notice.” ECF No. 55 at 9; *see Thomas v.*
 28 *Magnachip Semiconductor Inc.*, No. 14- CV-01160-JST, 2016 WL 1394278, at *8 (N.D. Cal. Apr.

1 7, 2016) (“[A]ny period shorter than 60 days is too short a time to allow class members to properly
 2 respond.”); *Tijero v. Aaron Brothers, Inc.*, No. C 10-1-89 SBA, 2014 WL 60464, at *10 (N.D. Cal.
 3 Jan. 2, 2013) (finding that a 45-day window “does not adequately protect the interests of the class,
 4 which includes providing class members sufficient time to make a fully informed decision on
 5 whether to participate in this action and, if so, whether any objection is appropriate.”). Second,
 6 the notice required class members to provide “extraneous information” – telephone numbers and
 7 addresses – to opt out of the settlement. ECF No. 55 at 10; *see* Northern District of California,
 8 Procedural Guidance for Class Action Settlements § 4 (“Northern District Guidance”),
 9 <https://www.cand.uscourts.gov/ClassActionSettlementGuidance>. Third, the settlement required
 10 class members to accompany their objections with legal support, copies various documents upon
 11 which the objection is based, and a statement of whether the objector intends to appear at the Final
 12 Approval Hearing. ECF No. 55 at 10; *see* Northern District Guidance § 5.

13 The amended Settlement and notice plan cure each aforementioned deficiency by
 14 providing that: (1) the time for class members to object or opt out is 60 days, ECF No. 62-1 ¶¶ 13,
 15 23, 37-39; (2) class members do not have to provide telephone numbers and addresses to be
 16 excluded from the class, *id.* at 32; and (3) class members who wish to object need only “state with
 17 specificity the ground for the objection” and “state whether it applies to the objector, to a specific
 18 subset of the Settlement Class, or to the entire Settlement Class,” *id.* ¶¶ 13, 39.

19 4. Settlement Administrator

20 Rather than appointing an independent claims administrator, the original settlement
 21 provided that the Defendant would administer its own settlement agreement. ECF No. 55 at 10-
 22 11. This arrangement raised concerns due to Defendant’s potential “interest in either increasing or
 23 decreasing the class’s recovery.” *Id.* The amended settlement allays the Courts concerns by
 24 providing for the appointment of an independent Settlement Administrator. ECF No. 62-1 ¶ 25.

25 5. “Clear Sailing” Provision

26 The original settlement contained a “clear sailing” provision in which “Defendant agree[d]
 27 not to oppose or impede any application or motion by Class Counsel for Attorneys’ Fees and
 28 Costs.” ECF No. 55 at 11; ECF No. 45-1 ¶ 26. This provision raised concerns of “collusion

1 among the negotiating parties” in reaching the settlement agreement. *In re Bluetooth*, 654 F.3d
 2 935 at 947 (noting that a “‘clear sailing’ arrangement providing for the payment of attorneys’ fees
 3 separate and apart from class funds . . . carries the potential of enabling a defendant to pay class
 4 counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf
 5 of the class.” (internal quotation omitted)). The amended settlement addresses the Court’s
 6 concerns by eliminating the “clear sailing” provision. ECF No. 62 at 8; ECF No. 62-1 ¶¶ 30, 31.

7 **6. Other Deficiencies**

8 In its prior order, the Court identified several other deficiencies which weighed against
 9 preliminary approval. First, Plaintiffs’ prior motion failed to acknowledge the “differences
 10 between the settlement class and the class proposed in the operative complaint” and provide “an
 11 explanation as to why the differences are appropriate in the instant case.” ECF No. 55 at 12;
 12 Northern District Guidance § 1(a). Second, the parties failed to provide “an estimate of the
 13 number and/or percentage of class members who are expected to submit a claim in light of
 14 experience of the selected claims administrator and/or counsel from other recent settlements of
 15 similar cases.” ECF No. 55 at 13; Northern District Guidance § 1(g). Third, Plaintiffs failed to
 16 address whether Class Action Fairness Act of 2005 (“CAFA”) notice is required and, if so, when it
 17 will be given.” ECF No. 55 at 13; Northern District Guidance § 10.

18 Plaintiffs’ renewed motion cures these deficiencies. First, Plaintiffs provide a detailed
 19 explanation and justification for the differences between the settlement class and the class
 20 proposed in the FAC. ECF No. 62 at 10-11. Second, Plaintiffs estimate that between two and five
 21 percent of class members will submit a claim, while also noting the limitations of these estimates
 22 in the context of the unique facts of this case. ECF No. 62 at 27. Third, Plaintiffs confirm that
 23 this action is subject to CAFA notice requirements and that Defendant will provide notice by
 24 March 20, 2020. *See* ECF No. 62 at 29 (“Defendant will provide notice under CAFA within 10
 25 days of the filing of this motion.”). Thus, these deficiencies no longer pose a barrier to
 26 preliminary approval.

27 **CONCLUSION**

28 Because Plaintiffs’ renewed motion for preliminary approval and preliminary certification

United States District Court
Northern District of California

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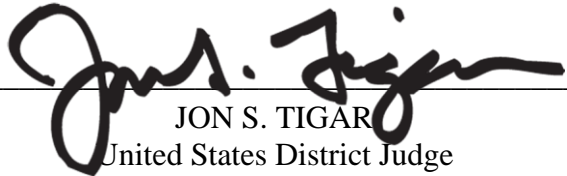
corrects the deficiencies addressed in the Court’s earlier order, the Court GRANTS the motion. The proposed settlement class is hereby preliminarily certified for the purposes of settlement. The Court grants preliminary approval of the settlement and approves of the proposed notice procedure and form. The Court will hold a final approval hearing on November 4, 2020.

The following dates shall govern for purposes of this Settlement.

Date	Event
May 26, 2020	Last day for Defendant to produce the Class List to the Settlement Administrator
June 19, 2020	Last day for the Settlement Administrator to effectuate the proposed notice plan
July 14, 2020	Last day for Plaintiffs to file the Motion for Attorneys’ Fees, Costs, and Class Representative Incentive Awards
August 18, 2020	Last day for Class Members to submit Requests for Exclusion or objections to the Settlement
September 17, 2020	Last day for Class Members to submit claims for reimbursement and to register their Eligible Devices for free map updates
September 30, 2020	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement
November 4, 2020 at 2:00 p.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and Class Representative Incentive Awards

IT IS SO ORDERED.

Dated: April 29, 2020


 JON S. TIGAR
 United States District Judge