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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL GRAVES, KEITH GREN, and MICHAEL WHEALEN, on behalf of themselves, all others similarly situated, and the general public, <p style="text-align: center;">Plaintiffs,</p>) Case No. 2:17-cv-06983-CAS-SKx)) <u>CLASS ACTION</u>)) [PROPOSED] JUDGMENT AND) ORDER (1.) GRANTING FINAL) APPROVAL OF CLASS ACTION) SETTLEMENT, (2.) AWARDING) CLASS COUNSEL FEES AND) EXPENSES, (3.) AWARDING) CLASS REPRESENTATIVES) INCENTIVE AWARDS, AND (4.)) DISMISSING ACTION WITH) PREJUDICE)) [REDACTED]
vs.	
UNITED INDUSTRIES CORPORATION, <p style="text-align: center;">Defendant.</p>	

Plaintiffs Michael Graves, Keith Gren, and Michael Whealen (“Plaintiffs”), individually and on behalf of the Class defined below, move this Court for final approval of the proposed settlement in the above-captioned action. This Court has reviewed and considered Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and supporting materials along with Plaintiffs’ Motion for

1 Attorneys' Fees, Costs, and Incentive Awards ("Fee Motion") and supporting
2 materials. Now, having fully considered the record and the requirements of law, this
3 Court orders that the Motion for Final Approval and Fee Motion is **GRANTED** as
4 set forth below.

5 **IT IS THIS 24TH DAY OF FEBRUARY, 2020, THE COURT**
6 **ORDERED** that the settlement (including all terms of the Settlement Agreement
7 and exhibits thereto) is hereby **GRANTED FINAL APPROVAL**. The Court
8 further finds and orders as follows:

9 **I. BACKGROUND**

10 On September 21, 2017, original plaintiff Gregory Arthur ("Arthur") filed this
11 putative class action alleging violations of consumer protection laws against
12 Defendant and on November 27, 2017, Arthur filed a First Amended Class Action
13 Complaint. (ECF Nos. 1, 16). The First Amended Complaint alleged that the "Makes
14 Up To ___ Gallons" representation on the Spectracide® Concentrate Products is
15 deceptive because UIC fails to disclose that "the Spectracide Concentrates were in
16 fact only capable of making a fraction of the number of gallons represented when
17 diluted to the same strength as 'Ready-to-use' Spectracide according to UIC's own
18 instructions." (*Id.* at ¶ 16).

19 On January 12, 2018, UIC moved to dismiss Arthur's First Amended
20 Complaint (ECF No. 22). Then, on January 15, 2018, Arthur filed a Motion for Class
21 Certification and to appoint class counsel. (ECF No. 23). On March 23, 2018, the
22 Court entered an Order granting in part and denying in part UIC's Motion to Dismiss
23 Arthur's First Amended Complaint. (ECF No. 34). The Court dismissed Arthur's
24 request for injunctive relief, but granted him leave to amend to file a Second
25 Amended Complaint. (ECF No. 34). On April 16, 2018, Arthur filed his Second
26 Amended Complaint (ECF No. 39), which UIC answered on April 30, 2018 (ECF
27 No. 40). On May 17, 2018, the Court entered an Order denying Arthur's Motion for

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1 Class Certification without prejudice, holding that Arthur could not adequately
2 represent the putative class. (ECF No. 47).

3 On June 25, 2018, Arthur and UIC filed a Joint Stipulation to dismiss Arthur
4 from the Litigation, for leave to substitute Michael Graves and Keith Gren as
5 plaintiffs and putative class representatives, and for leave for Graves and Gren to
6 file a Third Amended Complaint. (ECF No. 53). On June 26, 2018, the Court entered
7 an Order substituting Graves and Gren as named plaintiffs and proposed class
8 representatives, dismissing Arthur from the Litigation, and granting Graves and
9 Gren leave to file a Third Amended Complaint. (ECF No. 54). On June 28, 2018,
10 Graves and Gren filed their Third Amended Class Action Complaint against UIC
11 (ECF No. 55), which UIC answered on July 19, 2018. (ECF No. 59).

12 On July 12, 2018, the Court entered an Order staying the Litigation pursuant
13 to a Joint Stipulation filed by Graves, Gren, and UIC seeking time to allow them to
14 engage in settlement discussions (ECF No. 58). On September 7, 2018, Michael
15 Whealen sent UIC a consumer notice and demand letter on behalf of himself and a
16 proposed nationwide class concerning the Products. On May 15, Class Counsel filed
17 a Fourth Amended Complaint adding Whealen as a named Plaintiff in addition to
18 Graves and Gren. (ECF No. 63). The Fourth Amended Complaint also adds a cause
19 of action under the Missouri Merchandising Practices Act, Mo. Rev. Stat.
20 §§ 407.010, *et seq.* in addition to causes of action under California's consumer
21 protection laws. (ECF No. 63 at ¶¶ 52-58).

22 Plaintiffs and UIC have engaged in substantial discovery. On October 26,
23 2017, Arthur served a first set of Interrogatories and a first set of Request for
24 Production of Documents on UIC. In exchange for Arthur's agreement to extend
25 UIC's time to serve written responses and objections, UIC produced several
26 documents that were crucial to Arthur's claims in the litigation including the
27 suggested retail prices for the Products, annual sales of the Products, and Product
28 labels that were in use during the class period. On February 16, 2018, UIC served

1 objections and responses to Arthur’s discovery requests. UIC also produced a second
2 batch of documents relating to Plaintiffs’ claims, including communications with the
3 Environmental Protection Agency (“EPA”) relating to the labels of the Products.
4 Class Counsel sent a meet and confer letter to UIC on March 23, 2018 regarding
5 remaining deficiencies with its written discovery responses. Following extensive
6 meet and confer efforts, the Parties reached an agreement on the scope of Plaintiff’s
7 discovery requests.

8 On January 26, 2018, UIC served a deposition notice on Gregory Arthur that
9 included several document requests. On January 31, 2018, Arthur served objections
10 and responses to UIC’s document requests. On February 2, 2018, UIC then took the
11 deposition of Gregory Arthur. In support of Arthur’s Motion for Class Certification,
12 Class Counsel submitted an expert report from Charlene L. Podlipna, CPA detailing
13 a proposed class wide damages model. On January 26, 2018, UIC served a Notice
14 of Deposition Duces Tecum on Ms. Podlipna that contained several document
15 requests. On February 14, 2018, Class Counsel served objections and responses to
16 the document requests that were served on Ms. Podlipna. On February 16, 2018,
17 UIC took the deposition of Ms. Podlipna on topics relating to her expert opinion and
18 report. After Plaintiffs Graves and Gren filed their Third Amended Complaint, UIC
19 promptly began pursuing discovery from the new named Plaintiffs. Marron Decl., ¶
20 9. On June 29, 2018, UIC served a Notice of Deposition Duces Tecum on Plaintiff
21 Gren that contained several document requests. UIC then took the deposition of
22 Plaintiff Keith Gren on July 12, 2018. Plaintiff Gren’s deposition lasted more than
23 five hours.

24 Following Plaintiff Gren’s deposition, the Parties began engaging in
25 preliminary settlement discussions. During the course of several months the Parties
26 engaged in hard-fought settlement negotiations that resulted in the Settlement
27 Agreement. The several months that it took to work out significant details and
28 vigorous disagreements between the parties demonstrate that this proposed

1 resolution was the product of heavily disputed and arm's length negotiation.

2 On June 3, 2019, Plaintiffs filed an Unopposed Motion for Preliminary
3 Approval of the class action settlement with Defendant. (ECF No. 64-1). On June
4 27, 2019, the Court entered an Order Denying Plaintiffs' Motion for Preliminary
5 Approval Without Prejudice, and ordered Plaintiffs to file an amended motion to
6 address the requirements of Rule 23(e)(3). (ECF No. 65). On August 19, 2019,
7 Plaintiffs filed a Renewed Motion for Preliminary Approval of the class action
8 settlement, which the Court granted on September 18, 2019. (ECF Nos. 71, 77). In
9 its preliminary approval order, the Court conditionally certified the nationwide
10 settlement class noting that the requirement of Federal Rules of Civil Procedure
11 23(a) and 23(b)(3) had been satisfied. (ECF No. 77 at 12-18). The Court also
12 preliminarily approved the settlement noting that the relevant factors weighed in
13 favor of approval. (ECF No. 77 at 4-12).

14 **II. SUMMARY OF SETTLEMENT**

15 Plaintiffs now move for final approval of a Settlement Class defined as
16 follows:

17 All persons residing in the United States who during the Class Period¹
18 purchased in any state, for personal or household use and not for resale
19 or distribution, any of the Products.^{2, 3}

20 The Settlement Agreement provides that UIC will pay \$2,500,000.00 into a
21 settlement fund. Agreement at § 7.4. This fund will be used, among other things, to
22 pay authorized claims to the Settlement Class Members, to pay the costs of

23 ¹ The term "Class Period" means September 21, 2013 to the date on which the
Notice is disseminated to the Settlement Class. Agreement at § 2.7.

24 ² The term "Products" means UIC's herbicide products that are (a) sold under the
25 "Spectracide®" tradename and (b) are sold in a "concentrate" product form (in
26 other words, designed to be manually mixed by consumers with water prior to use
on targeted vegetation). Agreement at § 2.20.

27 ³ The Settlement Class specifically excludes (1) any judicial officer presiding over
28 the Litigation, (2) UIC and Released Parties, and each of their current or former
officers, directors, and employees, (3) legal representatives, successors, or assigns
of any such excluded person, and (4) any person who properly executes and files a
timely Request for Exclusion. Agreement at § 2.26.

1 settlement administration and notice to the Class Members, to pay Class Counsel's
2 fees and expenses, and to pay incentive awards to the named Plaintiffs. Agreement
3 at § 7.6. For Authorized Claimants, UIC will provide \$6.25 in cash from the
4 Settlement Fund for each Claim submitted by a household, with a limit of four (4)
5 Claims per household (total payable per household in no event to exceed \$25, unless
6 distribution is increased pro rata). Agreement at § 7.2.1. The settlement provides for
7 a *pro rata* reduction if the claims exceed the amount in the settlement fund
8 (Agreement at § 7.2.3) or a pro rata increase if the settlement fund is not exhausted.
9 Agreement at § 7.2.3. If after all accepted Claims (plus other authorized fees, costs
10 and expenses) are paid and money remains in the Settlement Fund after pro rata
11 distribution to Authorized Claimants, any remaining settlement funds thereafter will
12 be awarded cy pres to the National Advertising Division of the Better Business
13 Bureau.

14 In addition to monetary relief, UIC agrees to the following injunctive relief:
15 If, with respect to any Product manufactured by UIC after June 1, 2020, UIC elects
16 to state on its Product label that such Product "Makes Up to __ Gallons" of end-use
17 herbicide, Defendant shall include on such labeling, mixing directions that are
18 acceptable to EPA-equivalent agencies of the State(s) in which the Product is
19 registered for sale (such acceptability being deemed by virtue of such agency(ies)
20 registration of such Product). The ultimate timing and content of any label changes
21 shall be at the sole discretion of UIC. Agreement at § 7.3.

22 **III. NOTICE AND CLAIMS PROCESS**

23 The Court finds that the Class has received the best notice practicable and that
24 the notice complies with due process requirements. The Parties' selection and
25 retention of Classaura LLC as the Notice Administrator was reasonable and
26 appropriate. Based on the Declaration of Gajan Retnasaba, the Court hereby finds
27 that the Settlement Notices were published to the Class Members substantially in the
28 form and manner approved by the Court in its Preliminary Approval Order. The

1 Settlement Notices provided fair, effective and the best practicable notice to the
2 Class of the Settlement and the terms thereof. The Notices also informed the Class
3 of Plaintiff's intent to seek attorneys' fees, costs, and incentive payments, and set
4 forth the date, time, and place of the Fairness Hearing and Class Members' rights to
5 object to the Settlement or Fee Motion and to appear at the Fairness Hearing. The
6 Court further finds that the Settlement afforded Class members a reasonable period
7 of time to exercise such rights. *See Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS
8 155472, at *82 (C.D. Cal. Nov. 23, 2011) (class members' deadline to object or opt
9 out must arise after class counsel's fee motion is filed); *In re Mercury Interactive*
10 *Corp. Secs. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (same). The Settlement Notices
11 fully satisfied all notice requirements under the law, including the Federal Rules of
12 Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ.
13 Code § 1781, and all due process rights under the U.S. Constitution and California
14 Constitutions. The Court also finds that Defendant has satisfied all notice
15 requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715,
16 as attested to by the Retnasaba Declaration. The Court has received no objection or
17 response to the Settlement agreement by any federal or state official, including any
18 recipient of the foregoing notices.

19 To date, Classaura has received 84,572 claim forms from prospective class
20 members. Out of the total claim forms received, Classaura has found 16,605 claim
21 forms to be invalid due to being duplicative or not meeting the settlement criteria.
22 Classaura estimates that there will be approximately 67,967 valid claim forms.
23 Settlement Class members are eligible to request payment for up to four purchases
24 per household on their claim forms. The average claim form reported 3.6 purchases.
25 Thus, Classaura estimates that the total number of valid claims that will be paid is
26 248,042. In addition, there have been no requests for exclusion from the settlement
27 and no class members have objected to the settlement.

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1 **IV. APPROVAL OF CLASS ACTION SETTLEMENT**

2 Approval of a proposed class action settlement is governed by Federal Rule
3 of Civil Procedure 23(e). “[T]he 2018 amendment to Rule 23(e) establishes core
4 factors district courts must consider when evaluating a request to approve a proposed
5 settlement.” *Zamora Jordan v. Nationstar Mortg., LLC*, No. 2:14-CV-0175-TOR,
6 2019 WL 1966112, at *2 (E.D. Wash. May 2, 2019).

7 Rule 23(e) now provides that the Court may approve a class action settlement
8 “only after a hearing and only on a finding that it is fair, reasonable, and adequate
9 after considering whether:

10 (A) the class representatives and class counsel have adequately represented
11 the class;

12 (B) the proposal was negotiated at arm's length;

13 (C) the relief provided for the class is adequate, taking into account:

14 (i) the costs, risks, and delay of trial and appeal;

15 (ii) the effectiveness of any proposed method of distributing relief to
16 the class, including the method of processing class-member claims;

17 (iii) the terms of any proposed award of attorney's fees, including
18 timing of payment; and

19 (iv) any agreement required to be identified under Rule 23(e)(3); and

20 (D) the proposal treats class members equitably relative to each other.”

21 Fed. R. Civ. P. 23(e)(2).

22 “Under Rule 23(e), both its prior version and as amended, fairness,
23 reasonableness, and adequacy are the touchstones for approval of a class-action
24 settlement.” *Zamora*, 2019 WL 1966112, at *2. “The purpose of the amendment to
25 Rule 23(e)(2) is establish [sic] a consistent set of approval factors to be applied
26 uniformly in every circuit, without displacing the various lists of additional approval
27 factors the circuit courts have created over the past several decades.” *Id.* Factors that
28 the Ninth Circuit have typically considered include (1) the strength of plaintiffs’

1 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3)
2 the risk of maintaining class action status throughout the trial; (4) the amount offered
3 in settlement; (5) the extent of discovery completed and the stage of the proceedings;
4 and (6) the experience and views of counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d
5 1011, 1026 (9th Cir. 1998); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575
6 (9th Cir. 2004).

7 “While the Ninth Circuit has yet to address the amendment to Rule 23(e)(2) .
8 . . . the factors in amended Rule 23(e)(2) generally encompass the list of relevant
9 factors previously identified by the Ninth Circuit.” *Zamora*, 2019 WL 1966112, at
10 *2 (alteration in original). Indeed, “[t]he goal of this amendment is not to displace
11 any factor, but rather to focus the court and the lawyers on the core concerns of
12 procedure and substance that should guide the decision whether to approve the
13 proposal.” Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment.
14 “Accordingly, the Court applies the framework set forth in Rule 23 with guidance
15 from the Ninth Circuit’s precedent, bearing in mind the Advisory Committee’s
16 instruction not to let ‘[t]he sheer number of factors’ distract the Court and parties
17 from the ‘central concerns’ underlying Rule 23(e)(2).” *In re Extreme Networks, Inc.*
18 *Securities Litigation*, No. 15-CV-04883-BLF, 2019 WL 3290770, at *6 (N.D. Cal.
19 July 22, 2019); *see also Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018
20 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018).

21 **A. ADEQUATE REPRESENTATION**

22 A determination of adequacy of representation requires that “two questions be
23 addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest
24 with other class members and (b) will the named plaintiffs and their counsel
25 prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec.*
26 *Litig.*, 213 F.3d 454, 462 (9th Cir. 2000), *as amended* (June 19, 2000) (citing *Hanlon*,
27 150 F.3d at 1020); *see also Hefler*, 2018 WL 6619983, at *6.

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1 The Court finds that Class Counsel and the Class Representatives have
2 adequately represented the Class. The proposed class representatives in this action
3 have no conflicts of interest with other class members and each have prosecuted this
4 action vigorously on behalf of the Class. Each of the named Plaintiffs have suffered
5 the same injuries as the absent class members because each purchased a
6 Spectracide® Concentrate product, for personal and household use, in reliance on
7 the “Makes Up To ___” gallons statement on the front of the label which they took
8 to mean would, in fact, make up to the advertised amount of gallons when used as
9 directed for general weed control. (*See* Fourth Amended Complaint, ECF No. 63 at
10 ¶¶ 30-32). Each of the named Plaintiffs have been dedicated to vigorously pursuing
11 this action on behalf of the class and each have kept themselves informed about the
12 status of the proceedings.

13 Class Counsel have also vigorously represented the Class and have no
14 conflicts of interest. The Settlement was negotiated by counsel with extensive
15 experience in consumer class action litigation. Through the discovery process, Class
16 Counsel obtained sufficient information and documents to evaluate the strengths and
17 weaknesses of the case. The information reviewed by class counsel includes sales
18 information for the Spectracide® Concentrate products during the class period, the
19 labels for the Spectracide® Concentrate products in use during the class period, and
20 Defendant’s communications with the Environmental Protection Agency (“EPA”)
21 relating to the labels of the Products. Class Counsel have concluded that the
22 Settlement provides exceptional results for the class while sparing the class from the
23 uncertainties of continued and protracted litigation. *See, e.g., In re Omnivision*
24 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (“The recommendations
25 of plaintiffs’ counsel should be given a presumption of reasonableness.”); *Rodriguez*
26 *v. W. Publ’g Corp.*, 563 F.3d 948, 976 (9th Cir. 2009) (Deference to Class Counsel’s
27 evaluation of the Settlement is appropriate because “[p]arties represented by
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1 competent counsel are better positioned than courts to produce a settlement that
2 fairly reflects each party's expected outcome in litigation.”).

3 Accordingly, the Court finds that Class Counsel and the Class Representatives
4 have been diligent in their representation of the class.

5 **B. ARM'S LENGTH NEGOTIATIONS**

6 Regarding the negotiation process, the Court finds that the Settlement
7 Agreement is the result of an adversarial, non-collusive, and arms-length
8 negotiation. The Parties did not begin settlement discussions until after the Court
9 had ruled on Defendant's motion to dismiss (ECF No. 34) and Plaintiff Arthur's
10 motion for class certification (ECF No. 46). Settlement discussions also did not
11 begin until after the Parties had exchanged written discovery and documents, which
12 speaks to the fundamental fairness of the process. *See Nat'l Rural*
13 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)
14 (“A settlement following sufficient discovery and genuine arms-length negotiation
15 is presumed fair.”). The several months that it took to work out significant details
16 and vigorous disagreements between the parties demonstrate that this proposed
17 resolution was the product of heavily disputed and arm's length negotiation. The
18 settlement negotiations were hard-fought, with both Parties and their counsel
19 thoroughly familiar with the applicable facts, legal theories, and defenses on both
20 sides.

21 Accordingly, the Court finds no signs of conflicts of interest, collusion, or bad
22 faith in the parties' settlement negotiation process.

23 **C. ADEQUATE RELIEF**

24 The Court concludes that the relief provided for the Class is adequate. UIC
25 has agreed to settle this matter for a non-reversionary total of \$2,500,000. Agreement
26 at § 7.4. As explained in the Court's Preliminary Approval Order (ECF No. 77), the
27 \$2,500,000 nationwide settlement amount is reasonable considering that damages
28 would be limited to a fraction of total sales if Plaintiffs were to prevail at trial.

1 As previously explained by Plaintiffs' damages expert, Charlene L. Podlipna,
2 CPA, the Spectracide® Concentrate products allegedly are underfilled by 36% to
3 38% based on Plaintiffs' claims that reasonable consumers' intend purpose for the
4 Products is "general weed control." (ECF No. 23-14 [Podlipna Decl., ¶ 13]).
5 Damages for the nationwide class would be based on the Benefit of the Bargain
6 method, which is based on the difference between the amount Plaintiffs reasonably
7 expected to receive and the actual amount received. (ECF No. 23-14 [Podlipna Decl.,
8 ¶ 15]). Accordingly, the projected maximum for nationwide class damages would
9 be approximately \$[Redacted] if Plaintiffs were to prevail at trial. (\$[Redacted]
10 nationwide sales x .38 underfill percentage = \$[Redacted]). The \$2,500,000
11 settlement fund accounts for [Redacted]% of total damages that would be available
12 at trial, which is well within the range of reason. *See, e.g., Stovall-Gusman v. W.W.*
13 *Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17,
14 2015) (granting final approval of a net settlement amount representing 7.3% of the
15 plaintiffs' potential recovery at trial); *Balderas v. Massage Envy Franchising, LLC*,
16 No. 12-cv-06327NC, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (granting
17 preliminary approval of a net settlement amount representing 5% of the projected
18 maximum recovery at trial); *Ma v. Covidien Holding, Inc.*, No. SACV 12-02161-
19 DOC (RNBx), 2014 WL 360196, at *5 (C.D. Cal. Jan. 31, 2014) (finding a
20 settlement worth 9.1% of the total value of the action "within the range of
21 reasonableness"); *Downey Surgical Clinic, Inc. v. Optuminsight, Inc.*, No. CV09-
22 5457PSG (JCx), 2016 WL 5938722 at *5 (C.D. Cal. May 16, 2016) (granting final
23 approval where recovery was as low as 3.21% of potential recovery at trial).

24 The amount of recovery per class member is also adequate considering that
25 Settlement Class Members can claim \$6.25 in cash from the Settlement Fund for
26 each Claim submitted by a household, with a limit of four (4) claims per household
27 (total payable per household in no event to exceed \$25, unless distribution is
28 increased pro rata). Agreement at § 7.2.1. This recovery is significant considering

1 that a 64-ounce bottle of Spectracide® Concentrate, the most expensive bottle size,
2 sells for approximately \$30.00 at retail stores like Home Depot. The \$6.25 recovery
3 per purchase (up to four purchases per household) for each Settlement Class member
4 is an excellent result considering it represents a large fraction of total damages that
5 would be recoverable at trial. Indeed, \$6.25 represents approximately 57.8% of the
6 total potential recovery for purchasers of the 64-ounce bottle size ($\$30.00 \times .36$
7 underfill amount for 64-ounce bottle size = \$10.80). Moreover, the settlement
8 agreement provides for injunctive relief, which further supports the adequacy of
9 relief to the class. Agreement at § 7.3.

10 The amount of recovery per claimant is also adequate considering that
11 Settlement Class Members can claim \$6.25 in cash from the Settlement Fund for
12 each Claim submitted by a household, with a limit of four (4) claims per household
13 (total payable per household in no event to exceed \$25, unless distribution is
14 increased pro rata). Agreement at § 7.2.1. Here, approximately 67,967 valid claim
15 forms were submitted by settlement class members and 248,042 valid claims will be
16 paid by the settlement administrator. Once notice and administration costs along
17 with Plaintiffs' attorneys' fees, costs, and incentive awards are deducted from the
18 \$2,500,000 Settlement Fund, there will be approximately \$1,702,477.37 available
19 for distribution to the Settlement Class. This means that there will be a slight *pro*
20 *rata* increase and \$6.86 will be paid for each valid and timely claim submitted.
21 ($\$1,702,477.37$ in available funds for distribution / 248,042 valid claims = \$6.86 per
22 claim). Because the average valid claim form reported 3.6 purchases, average
23 settlement class members will receive approximately \$24.69. This recovery is
24 significant considering that a 64-ounce bottle of Spectracide® Concentrate, the most
25 expensive bottle size, sells for approximately \$30.00 at retail stores. Accordingly,
26 the Court finds that the amount offered in the settlement is adequate.

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1 ***I. Costs, risks, and delay of trial and appeal***

2 The Court concludes that the costs, risks, and delay of trial and appeal further
3 support final approval. Proceeding in this litigation in the absence of settlement
4 poses various risks such as failing to certify a class, having summary judgment
5 granted against Plaintiffs, or losing at trial. Such considerations have been found to
6 weigh heavily in favor of settlement. *See Rodriguez*, 563 F.3d at 966; *Curtis-Bauer*
7 *v. Morgan Stanley & Co., Inc.*, No. C 06-3903 TEH, 2008 WL 4667090, at *4 (N.D.
8 Cal. Oct. 22, 2008) (“Settlement avoids the complexity, delay, risk and expense of
9 continuing with the litigation and will produce a prompt, certain, and substantial
10 recovery for the Plaintiff class.”). Even if Plaintiffs are able to certify a class, there
11 is also a risk that the Court could later decertify the class action. *See In re Netflix*
12 *Privacy Litig.*, No. 5:11-cv-00379 EJD, 2013 WL 1120801, at *6 (N.D. Cal. Mar.
13 18, 2013) (“The notion that a district court could decertify a class at any time is one
14 that weighs in favor of settlement.”) (internal citations omitted). The Settlement
15 eliminates these risks by ensuring Class Members a recovery that is “certain and
16 immediate, eliminating the risk that class members would be left without any
17 recovery . . . at all.” *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MNC, 2010 U.S.
18 Dist. LEXIS 29042, at *8 (N.D. Cal. Mar. 5, 2010).

19 ***2. Effectiveness of proposed method of distributing relief to the Class***

20 The Court finds that the claims process was straightforward and allows
21 Settlement Class members to make a claim by submitting a valid and timely Claim
22 Form to the Settlement Administrator without complication. *See In re Toyota Motor*
23 *Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No.
24 8:10ML 02151 JVS, 2013 WL 3224585, at *18 (C.D. Cal. June 17, 2013) (“The
25 requirement that class members download a claim form or request in writing a claim
26 form, complete the form, and mail it back to the settlement administrator is not
27 onerous.”).

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1 have allowed in the Ninth Circuit. *Id.* at 942; *see also Vasquez v. Coast Valley*
2 *Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010) (“typical range of acceptable
3 attorneys’ fees in the Ninth Circuit is 20% to 33 1/3 % of total settlement value”);
4 *Hopkins v. Stryker Sales Corp.*, No. 11-2786, 2013 WL 2013 WL 496358, at *1
5 (N.D. Cal. Feb. 6, 2013) (acknowledging same and awarding 30%); *In re Activision*
6 *Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) (“[a] review of recent reported
7 cases discloses that nearly all common fund awards range around 30%”); *Pokorny*
8 *v. Quixtar, Inc.*, No. 07-00201 SC, 2013 WL 3790896, *1 (N.D. Cal. July 18, 2013)
9 (acknowledging same, stating 30% award is “the norm absent extraordinary
10 circumstances that suggest reasons to lower or increase the percentage” and granting
11 fee request of 27.3%); *see also In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379
12 (9th Cir. 1995) (award of 33% of settlement fund as fees affirmed).

13 Class Counsel’s fee request is also reasonable under the lodestar method.
14 Class Counsel’s total lodestar in this action equals \$545,052.50. Accordingly, the
15 \$625,000.00 fee award results in a positive multiplier of 1.146. *See Wershba v. Apple*
16 *Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to
17 4, even higher.”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D.
18 Cal. 1995) (3-4 are in the “range [of] common” multipliers for sophisticated class
19 actions). Moreover, the fee award is justified based on the excellent results obtained,
20 the experience and skill of Counsel, the complexity of issues, the risk of non-
21 payment, and the preclusion of other work.

22 Based on the declaration submitted by Class Counsel in support of the Fee
23 Motion, the Court finds that Class Counsel have incurred out-of-pocket litigation
24 expenses (paid and un-reimbursed) in the amount of \$32,090.63. Accordingly, the
25 Court further awards Class Counsel \$32,090.63 in litigation costs, to be paid at the
26 time and manner provided in the Settlement Agreement.

27 The Court finds that the Class Representatives in this action have actively
28 participated in and assisted Class Counsel with this litigation for the substantial

1 benefit of the Class. Each of the Class Representatives have reviewed material
2 filings; have had continuous communications with Class Counsel throughout the
3 litigation; have reviewed and approved the Settlement Agreement; and were
4 committed to securing substantive relief on behalf of the Class. The Court further
5 finds that the requested incentive awards are presumptively reasonable are in line
6 with Ninth Circuit authority. *See Wren v. RGIS Inventory Specialists*, No. C-06-
7 05778 JCS, 2011 WL 1230826, at *36 (N.D. Cal. Apr. 1, 2011) (“there is ample case
8 law finding \$5,000 to be a reasonable amount for an incentive payment.”).
9 Accordingly, the Court awards incentive payments as follows: (a.) \$3,000 incentive
10 payment to Plaintiff Michael Graves; (b.) \$3,000 incentive payment to Plaintiff
11 Michael Whealen; and (c.) \$5,000 incentive payment to Plaintiff Keith Gren. The
12 Court finds that the incentive payment to Plaintiff Keith Gren is reasonable in light
13 of the fact he sat for a deposition on July 12, 2018 and that he incurred additional
14 time and expense for appearing at the deposition.

15 **4. Agreements required to be identified under Rule 23(e)(3)**

16 The Court has not been advised of any side agreements made in connection
17 with the proposed settlement pursuant to Rule 23(e)(3). Thus, there is nothing for
18 the Court to consider.

19 **D. The Settlement Agreement Treats Class Members Equitably**

20 The Court finds that the apportionment of relief among Class Members treats
21 class members equitably. As discussed above, each valid claim submitted will be
22 paid approximately \$6.86 following a slight *pro rata* increase. Because each class
23 member is treated equally, the Court approves the settlement as fair, reasonable, and
24 adequate.

25 **E. The Absence of Governmental Participation Supports Final**
26 **Approval**

27 Although CAFA does not create an affirmative duty for either state or federal
28 officials to take any action in response to a class-action settlement, CAFA presumes

1 that—once put on notice—state or federal officials will “raise any concerns that they
2 may have during the normal course of the class action settlement procedures.”
3 *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08-1365, 2010 WL 1687832, at
4 *14 (N.D. Cal. Apr. 22, 2010); *see also LaGarde v. Support.com, Inc.*, No. C 12-
5 0609, 2013 WL 1283325, at *7 (N.D. Cal. Mar. 26, 2013) (same); *In re Netflix*
6 *Privacy Litig.*, No. 5:11-cv-00379, 2013 WL 1120801 at *8 (N.D. Cal. Mar. 18,
7 2013) (same). To date, no state or federal official has raised any objection to the
8 settlement.

9 **F. The Reaction of the Class Has Been Favorable**

10 It is well established that “the absence of a large number of objections to a
11 proposed class action settlement raises a strong presumption that the terms of a
12 proposed class settlement action are favorable to the class members.” *Nat’l Rural*
13 *Telecomms. Coop.*, 221 F.R.D. at 529 (collecting cases). Here, the Court finds that
14 the response from Class members has been overwhelmingly positive. There have
15 been no requests for exclusion and no objections have been filed. This positive
16 reaction to the Settlement indicates that this Court ““may appropriately infer that
17 [the] class action settlement is fair, adequate, and reasonable when few class
18 members object to it.”” *Garner*, 2010 WL 1687832, at *14.

19 **V. CERTIFICATION OF THE SETTLEMENT CLASS**

20 When presented with a proposed settlement, a court must first determine
21 whether the proposed settlement class satisfies the requirements for class
22 certification under Rule 23. In assessing those class certification requirements, a
23 court may properly consider that there will be no trial. *Amchem Prods., Inc. v.*
24 *Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only
25 class certification, a district court need not inquire whether the case, if tried, would
26 present intractable management problems . . . for the proposal is that there be no
27 trial.”). For the reasons below, the Court finds that the Settlement Class meets the
28 requirements of Rule 23(a) and (b).

1 **A. Rule 23(a)**

2 **1. Numerosity**

3 Rule 23(a)(1) requires that “the class is so numerous that joinder of all
4 members is impracticable.” *See* Rule 23(a)(1). “As a general matter, courts have
5 found that numerosity is satisfied when class size exceeds 40 members, but not
6 satisfied when membership dips below 21.” *Slaven v. BP Am., Inc.*, 190 F.R.D. 649,
7 654 (C.D. Cal. 2000). Here, the proposed class is comprised of tens of thousands of
8 consumers who purchased the Class Products. To date, the settlement administrator
9 has received 67,967 valid claim forms. Accordingly, the Court finds that the
10 numerosity requirement is satisfied.

11 **2. Commonality**

12 Rule 23(a)(2) requires the existence of “questions of law or fact common to
13 the class.” *See* Rule 23(a)(2). Commonality is established if plaintiffs and class
14 members’ claims “depend on a common contention,” “capable of class-wide
15 resolution . . . [meaning] that determination of its truth or falsity will resolve an issue
16 that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*
17 *Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Because the commonality
18 requirement may be satisfied by a single common issue, it is easily met.

19 The Court finds that there are ample issues of both law and fact here that are
20 common to the members of the Class. All of the Class Members’ claims arise from
21 a common nucleus of facts and are based on the same legal theories. Plaintiffs allege
22 that UIC’s “Makes Up To ___” gallons statement on the Spectracide® Concentrate
23 Product labels is false and misleading because the Products yield only a fraction of
24 the advertised “Makes Up To” amount when mixed for “general weed control”
25 purposes. These alleged misrepresentations were made in a uniform manner to each
26 of the Class Members. Accordingly, commonality is satisfied by the existence of
27 these common factual issues. *See Arnold v. United Artists Theatre Circuit, Inc.*, 158

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1 F.R.D. 439, 448 (N.D. Cal. 1994) (commonality requirement met by “the alleged
2 existence of common discriminatory practices”).

3 Second, Plaintiffs’ claims are brought under legal theories common to the
4 Class as a whole. Alleging a common legal theory alone is enough to establish
5 commonality. *See Hanlon*, 150 F.3d at 1019 (“All questions of fact and law need not
6 be common to satisfy the rule. The existence of shared legal issues with divergent
7 factual predicates is sufficient, as is a common core of salient facts coupled with
8 disparate legal remedies within the class.”). Here, all of the legal theories asserted
9 by Plaintiffs are common to all Class Members. Given that there are virtually no
10 issues of law which affect only individual members of the Class, the Court finds that
11 commonality is satisfied.

12 **3. Typicality**

13 Rule 23(a)(3) requires that the claims of the representative plaintiffs be
14 “typical of the claims . . . of the class.” *See* Rule 23(a)(3). “Under the rule’s
15 permissive standards, representative claims are ‘typical’ if they are reasonably
16 coextensive with those of absent class members; they need not be substantially
17 identical.” *See Hanlon*, 150 F.3d at 1020. In short, to meet the typicality requirement,
18 the representative plaintiffs simply must demonstrate that the members of the
19 settlement class have the same or similar grievances. *Gen. Tel. Co. of the Sw. v.*
20 *Falcon*, 457 U.S. 147, 161 (1982).

21 The Court finds that the claims of the named Plaintiffs are typical of those of
22 the Class. Like those of the Class, their claims arise out of the purchase of
23 Spectracide® Concentrate products for personal or household use after relying on
24 UIC’s allegedly misleading “Makes Up To ___” gallons representations. The named
25 Plaintiffs have precisely the same claims as the Class and must satisfy the same
26 elements of each of their claims, as must other Class Members. Supported by the
27 same legal theories, the named Plaintiffs and all Class Members share claims based
28 on the same alleged course of conduct. The named Plaintiffs and all Class Members

1 have been injured in the same manner by this conduct. Therefore, the typicality
2 requirement is satisfied.

3 **4. Adequacy**

4 The final requirement of Rule 23(a) is set forth in subsection (a)(4) which
5 requires that the representative parties “fairly and adequately protect the interests of
6 the class.” *See* Rule 23(a)(4). As discussed above, the Court finds that Class Counsel
7 and the Class Representatives have adequately represented the Class. Accordingly,
8 the Court hereby appoints Plaintiffs Michael Graves, Keith Gren, and Michael
9 Whealen as Class Representatives for the Settlement Class. The Court also appoints
10 the Law Offices of Ronald A. Marron, APLC as Settlement Class Counsel to Federal
11 Rule of Civil Procedure 23(g).

12 **B. Rule 23(b)(2)**

13 In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also
14 meet one of the three requirements of Rule 23(b) to certify the proposed class. *See*
15 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under
16 Rule 23(b)(3), a class action may be maintained if “the court finds that the questions
17 of law or fact common to the members of the class predominate over any questions
18 affecting only individual members, and that a class action is superior to other
19 available methods for fairly and efficiently adjudicating the controversy.” *See* Rule
20 23(b)(3). Certification under Rule 23(b)(3) is appropriate and encouraged “whenever
21 the actual interests of the parties can be served best by settling their differences in a
22 single action.” *Hanlon*, 150 F.3d at 1022.

23 **1. Predominance**

24 The Court finds that the proposed Class is well-suited for certification under
25 Rule 23(b)(3) because questions common to the Class Members predominate over
26 questions affecting only individual Class Members. Predominance exists “[w]hen
27 common questions present a significant aspect of the case and they can be resolved
28 for all members of the class in a single adjudication.” *Id.* As the U.S. Supreme Court

1 has explained, when addressing the propriety of certification of a settlement class,
2 courts take into account the fact that a trial will be unnecessary and that
3 manageability, therefore, is not an issue. *Amchem*, 521 U.S. at 619-62. In this case,
4 common questions of law and fact exist and predominate over any individual
5 questions, including, in addition to whether this settlement is reasonable (*see*
6 *Hanlon*, 150 F.3d at 1026-27), *inter alia*: (1) whether UIC’s representations
7 regarding its “Makes up to ___” gallons claim were false and misleading or
8 reasonably likely to deceive consumers; (2) whether UIC violated the CLRA, UCL,
9 FAL and the MMPA; (3) whether UIC had defrauded Plaintiff and the Class
10 Members; and (4) whether the Class has been injured by the wrongs complained of,
11 and if so, whether Plaintiffs and the Class are entitled to damages, injunctive and/or
12 other equitable relief, including restitution, and if so, the nature and amount of such
13 relief.

14 There are also no concerns here about certifying a nationwide settlement class
15 under *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012). In *Mazza*,
16 the Ninth Circuit held that, when certifying a nationwide class, the burden is on the
17 defendant to show “that foreign law, rather than California law, should apply to
18 class claims.” *See also In re MDC Holdings Securities Litigation*, 754 F. Supp. 785,
19 803–04, 808 (S.D. Cal. 1990) (the “court presumes that California law controls
20 unless and until defendants show that choice of law problems render the common
21 law claims inappropriate for class treatment.”); *In re Seagate Technologies Sec.*
22 *Litigation*, 115 F.R.D. 264, 269, 274 (N.D. Cal. 1987) (applying California law to
23 nationwide class because “[a]bsent the defendant carrying [its] burden, California
24 law would govern the foreign state plaintiffs' claims” and noting several other
25 decisions reaching this conclusion).

26 The Ninth Circuit recently held that differences in state law do not defeat
27 predominance in the settlement class context. *See In re Hyundai & Kia Fuel Econ.*
28 *Litig.*, 926 F.3d 539, 561 (9th Cir. 2019). This is especially relevant here because

1 UIC is not opposing the certification of a nationwide class involving California and
2 Missouri law. Consequently, UIC is voluntarily subjecting itself to California and
3 Missouri law, including California’s Consumer Legal Remedies Act and Missouri’s
4 Merchandising Practices Act, which provide greater protections to consumers than
5 other jurisdictions. Where, as here, UIC’s products were widely distributed and there
6 are significant contacts with California residents, and where UIC does not oppose
7 California law applying to the nationwide class, the *Mazza* choice of law analysis is
8 easily satisfied because the interests of other states will not be impaired. *In re*
9 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 561. Missouri’s MMPA can also be
10 applied to the nationwide Settlement Class because UIC maintains its principal place
11 of business in Missouri and Missouri has significant contacts with the claims of each
12 class member.

13 Moreover, the considerations driving the rest of the *Mazza* analysis are
14 inapplicable here. In the settlement context, other states’ interests would not be
15 undermined by the application of California and Missouri law because UIC is opting
16 into a regime that protects consumers more vigorously than other states. In *Hanlon*,
17 the Ninth Circuit also held that “the idiosyncratic differences between state
18 consumer protection laws are not sufficiently substantive to predominate over the
19 shared claims.” *Hanlon*, 150 F.3d at 1022–23; *In re Hyundai & Kia Fuel Econ.*
20 *Litig.*, 926 F.3d at 561 (“no party argued that California’s choice-of-law rules should
21 not apply to this class settlement”); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273,
22 301 (3d Cir. 2011) (“variations in the rights and remedies available to injured class
23 members under the various laws of the fifty states [do] not defeat commonality and
24 predominance.”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D.
25 Cal. 2018) (finding that differences between state consumer protection laws do not
26 defeat predominance and certifying nationwide settlement class). Accordingly, the
27 Court finds that common issues predominate.

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1 **2. Superiority**

2 The Court finds that the class mechanism is superior to other available means
3 for the fair and efficient adjudication of the claims of the Class Members. Each
4 individual Class Member may lack the resources to undergo the burden and expense
5 of individual prosecution of the complex and extensive litigation necessary to
6 establish Defendant's liability. Individualized litigation increases the delay and
7 expense to all parties and multiplies the burden on the judicial system. Individualized
8 litigation also presents a potential for inconsistent or contradictory judgments. In
9 contrast, the class action device presents far fewer management difficulties and
10 provides the benefits of single adjudication, economy of scale, and comprehensive
11 supervision by a single court. Accordingly, the Court finds that common questions
12 predominate and a class action is the superior method of adjudicating this
13 controversy and that the requirements of Rule 23(b)(3) are satisfied.

14 Accordingly, the Court hereby **CERTIFIES** the Settlement Class.

15 **VI. MISCELLANEOUS**

16 **Implementation of Settlement.** The Parties are hereby directed to implement
17 the Settlement according to its terms and conditions.

18 **Enforcement of Settlement.** Nothing in this Final Approval Order shall
19 preclude any action to enforce or interpret the terms of the Settlement. Any action
20 to enforce or interpret the terms of the Settlement shall be brought solely in this
21 Court.

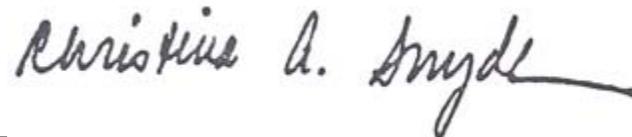
22 **Retention of Jurisdiction.** The Court expressly retains continuing
23 jurisdiction as to all matters relating to the Settlement, and this Final Order, and for
24 any other necessary and appropriate purpose. Without limiting the foregoing, the
25 Court retains continuing jurisdiction over all aspects of this case including but not
26 limited to any modification, interpretation, administration, implementation,
27 effectuation, and enforcement of the Settlement, the administration of the Settlement
28 and Settlement relief, including notices, payments, and benefits thereunder, the

1 Settlement Notice and sufficiency thereof, any objection to the Settlement, any
2 request for exclusion from the certified Class, the adequacy of representation by
3 Class Counsel and/or the Class Representative, the amount of attorneys' fees and
4 litigation expenses to be awarded Class Counsel, the amount of any incentive awards
5 to be paid to the Class Representatives, any claim by any person or entity relating to
6 the representation of the Class by Class Counsel, to enforce the release and
7 injunction provisions of the Settlement and of this Order, any remand after appeal
8 or denial of any appellate challenge, any collateral challenge made regarding any
9 matter related to this litigation or this Settlement or the conduct of any party or
10 counsel relating to this litigation or this Settlement, and all other issues related to
11 this action and Settlement. Further, the Court retains continuing jurisdiction to enter
12 any other necessary or appropriate orders to protect and effectuate the Court's
13 retention of continuing jurisdiction provided that nothing in this paragraph is
14 intended to restrict the ability of the Parties to exercise their rights under the
15 Settlement Agreement.

16 **Dismissal of Action With Prejudice.** The claims against Defendant in this
17 action, including all individual and Class claims resolved in it, shall be dismissed on
18 the merits and with prejudice.

19 **IT IS SO ORDERED.**

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21 DATED: February 24, 2020



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22 HON. CHRISTINA A. SNYDER
23 United States District Judge
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