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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MONICA RAEL and ALYSSA  
HEDRICK, on behalf of themselves and  
all others similarly situated,,  
  
Plaintiffs,  
  
v.  
  
THE CHILDREN’S PLACE, INC., a  
Delaware corporation, and DOES 1-50,  
inclusive,  
  
Defendant.

Case No.: 16-CV-370-GPC-BGS

**ORDER GRANTING IN PART  
RENEWED MOTION FOR  
ATTORNEYS’ FEES, COSTS, AND  
INCENTIVE AWARDS**

**[ECF No. 185]**

Before the Court is a Renewed Motion for Attorneys’ Fees, Costs, and Incentive Awards by Plaintiffs Monica Rael and Alyssa Hedrick, on behalf of themselves and all others similarly situated (“Plaintiffs”). Defendant The Children’s Place, Inc. (“Defendant”) does not oppose, ECF No. 188, but Objector Anna St. John (“Objector St. John”) filed a response in opposition, ECF No. 189. Plaintiffs did not reply. The Court finds the matter appropriate for decision on the papers and hereby VACATES the hearing previously scheduled for May 3, 2024. The Court GRANTS IN PART the motion,

1 awarding Plaintiffs’ Counsel \$246,555.24 in attorneys’ fees and \$50,017 in costs and  
2 granting the Named Plaintiffs \$2,500 incentive awards.

3 **BACKGROUND**

4 Defendant is a brick-and-mortar and online retailer of children’s clothing and  
5 accessories. ECF No. 37-2 at 9.<sup>1</sup> In 2016, Plaintiffs sued Defendant in this class action  
6 for falsely advertising that their items were discounted when they were not. *Id.* at 3-5.  
7 Plaintiffs alleged that Defendant misled consumers by listing a false “original” price with  
8 the “discounted” price when the “discounted” price was the original price of the item. *Id.*  
9 The operative Third Amended Complaint asserted causes of actions for violation of  
10 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, California’s False  
11 Advertising Law, Cal. Bus. & Prof. Code § 17500, and the California Consumers Legal  
12 Remedies Act, Cal. Civ. Code § 1750. *Id.* at 17-23.

13 Following a Motion and Amended Motion for Preliminary Approval of Settlement  
14 and Provisional Class Certification, two hearings, and supplemental briefing, the Court  
15 granted preliminary approval of the settlement on January 28, 2020. ECF No. 142 at 7-8.  
16 The settlement provided class members with vouchers for future purchases at The  
17 Children’s Place. ECF No. 144-1 at 6-7. The vouchers were transferable, valid for only  
18 six months, and came in two forms: “(i) \$6 off a purchase (no minimum purchase) or (ii)  
19 25% off a purchase (of the first \$100).” ECF No. 144-1 at 6. The settlement agreement  
20 authorized up to 800,000 vouchers, *id.*, and granted the class no other relief. Plaintiffs  
21 then filed their first Motion for Attorneys’ Fees on April 30, 2020, requesting \$1,080,000  
22 in fees and costs. ECF No. 73-1 at 8.

23 After briefing on objections by class members, ECF Nos. 65, 78-79, 82, the Court  
24 first declined to grant final approval of the settlement, ECF No. 105 at 29, but following  
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27 <sup>1</sup> Page numbers reflect CM/ECF pagination.

1 multiple hearings, further negotiation by the parties, and supplemental briefing,  
2 eventually it approved the modified class action settlement agreement on March 31,  
3 2021, ECF No. 142 at 9-10. In the same order, the Court held that both versions of the  
4 vouchers were coupons subject to the Class Action Fairness Act (“CAFA”), “and that an  
5 attorney’s fee award based upon the face value of the vouchers will create a windfall for  
6 the Plaintiffs’ attorneys compared to the actual benefits received by the class members.”  
7 *Id.* at 30-31. It therefore bifurcated the issue of attorneys’ fees, denying the motion  
8 without prejudice and ordering that “[o]nce the recovery amount is determined, Plaintiffs  
9 may file a new attorney’s fees motion. *Id.* at 37. On July 28, 2021, the Court granted  
10 final judgment dismissing the action with prejudice. ECF No. 148.

11 In four rounds, the Claims Administrator distributed vouchers to the 120,357 class  
12 members who submitted valid claims. ECF No. 162; ECF No. 185-7 at 2. The parties  
13 notified the Court that the rounds were complete on December 18, 2023. ECF No. 162.  
14 In total, “80,264 Vouchers were redeemed for a total savings to Authorized Claimants of  
15 approximately \$587,036.29.” *Id.* at 3. According to the Class Administrator, the cost of  
16 the distribution, including noticing, claims processing, website and telephone support,  
17 and voucher disbursement, was \$816,890.23 as of December 18, 2023. ECF No. 185-6 at  
18 2.

19 On March 4, 2024, Plaintiffs renewed their Motion for Attorneys’ Fees, Costs, and  
20 Incentive Awards, requesting \$400,000 in attorneys’ fees and costs, ECF No. 185 at 2,  
21 substantially less than the \$1,080,000 they requested in their first motion for attorneys’  
22 fees, ECF No. No. 73-1 at 8. Of that \$400,000 request, \$50,017 is in litigation costs.  
23 ECF No. 185-2 at 3. Defendant does not oppose pursuant to the settlement agreement,  
24 but Objector St. John filed a response in opposition. ECF Nos. 188-89.

1 **DISCUSSION**

2 **I. Attorneys’ Fees**

3 **a. The Court must use the percentage-of-recovery method.**

4 Because the benefit of the settlement agreement consisted only of providing  
5 vouchers for use at The Children’s Place, which the Court previously found were  
6 coupons under CAFA, *see* ECF No. 142 at 30-36, attorneys’ fees are governed by 28  
7 U.S.C. § 1712(a). In full, the provision states:

8 (a) Contingent fees in coupon settlements -- If a proposed settlement in a class  
9 action provides for a recovery of coupons to a class member, the portion  
10 of any attorney’s fee award to class counsel that is attributable to the award  
11 of the coupons *shall be based on the value to class members of the coupons  
that are redeemed.*

12 28 U.S.C. § 1712(a) (emphasis added). The Ninth Circuit has explained that this *requires*  
13 a court to “us[e] the redemption value of the coupons” to calculate attorneys’ fees in a  
14 coupon-only settlement. *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1181-82 (9th Cir.  
15 2013); *see also* S. Rep. 109-14, at 30 (2005), 2005 WL 627977, as reprinted in 2005  
16 U.S.C.C.A.N. 3, 30 (“[I]n class action settlements in which it is proposed that an attorney  
17 fee award be based solely on the purported value of the coupons awarded to class  
18 members, the fee award should be based on the demonstrated value of coupons actually  
19 redeemed by the class members.”). The goal of this section of CAFA is “to put an end to  
20 the ‘inequities’ that arise when class counsel receive attorneys’ fees that are grossly  
21 disproportionate to the actual value of the coupon relief obtained for the class.” *HP  
22 Inkjet*, 716 F.3d at 1179.

23 The Ninth Circuit has interpreted this provision to mean that courts may not  
24 calculate fees using the lodestar method—which awards fees based on hours worked—in  
25 a coupon-only settlement. *HP Inkjet*, 716 F.3d at 1184-85 (“CAFA only permits district  
26 courts to award lodestar fees when those fees are not based on the value of the coupons.  
27 That is, . . . lodestar fees may only be awarded in exchange for obtaining non-coupon  
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1 relief.” (internal quotation marks and citation omitted)). Instead, “CAFA mandates the  
2 use of a percentage-of-value calculation[.]” *See Chambers v. Whirlpool Corp.*, 980 F.3d  
3 645, 658 (9th Cir. 2020). The Court will therefore use the percentage-of-recovery  
4 method, based on the redemption value of the coupons, to calculate the attorneys’ fees.

5 **b. The Court will not consider the costs of settlement administration or the**  
6 **costs of litigation as part of the class recovery amount.**

7 Plaintiffs agree that the percentage-of-recovery method is appropriate but ask the  
8 Court to consider “the costs of Class notice and Settlement administration,” paid by  
9 Defendant, “as well as recoverable litigation expenses,” paid by Plaintiffs, as part of the  
10 class’s recovery. ECF No. 185-1 at 12-13. Here, because the cost of settlement  
11 administration was \$816,890.23 and the value of the redeemed coupons was \$587,036.29,  
12 ECF No. 162 at 3; ECF No. 185-6 at 2, this would substantially increase the amount of  
13 class recovery. Plaintiffs point to non-coupon settlements in which the Ninth Circuit has  
14 held that the “cost of providing notice to the class can reasonably be considered a benefit  
15 to the class.” *Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003); *In re Online DVD-*  
16 *Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015) (“The district court did not err  
17 in calculating the attorneys’ fees award by calculating it as a percentage of the total  
18 settlement fund, including notice and administrative costs, and litigation expenses.”).  
19 Objector St. John contends that section 1712(a) and the Ninth Circuit case law  
20 interpreting it do not permit inclusion of the costs of claims administration in calculating  
21 the class recovery. ECF No. 189 at 8-9.

22 On its face, the language of section 1712(a) indicates that, in a coupon-only  
23 settlement, the Court may include only the value of redeemed coupons in the  
24 recovery of the class. 28 U.S.C. § 1712(a) (“If a proposed settlement in a class  
25 action provides for a recovery of coupons to a class member, . . . any attorney’s fee  
26 award . . . shall be based on the value to class members of the coupons that are  
27 redeemed.) (emphasis added)). While the cost of administering the settlement and  
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1 litigation expenses may be a benefit to the class, *see Staton*, 327 F.3d at 975, they  
2 are not part of “the value to class members of the coupons that are redeemed,” 28  
3 U.S.C. § 1712(a). The Ninth Circuit’s previous interpretations of section 1712  
4 support this reading. “CAFA requires district courts to consider the value of only  
5 those coupons that were actually redeemed when calculating the relief awarded to  
6 a class [because] [d]oing so ensures that class counsel benefit only from coupons  
7 that provide actual relief to the class.” *In re Easysaver Rewards Litig.*, 906 F.3d  
8 747, 755 (9th Cir. 2018). And the statute should be interpreted to avoid “puff[ing]  
9 the perceived value of the settlement so as to enhance” the attorneys’ fee award  
10 such that it is “grossly disproportionate to the actual value of the coupon relief  
11 obtained for the class.” *HP Inkjet*, 716 F.3d at 1179; *Chambers*, 980 F.3d at 659.  
12 At least one district court has previously faced this argument and held that it would  
13 not include the class administration expenses in the class recovery amount, based  
14 on the value of redeemed vouchers, in determining attorneys’ fees for the coupon  
15 portion of a settlement agreement. *Knapp v. Art.com, Inc.*, No. 3:16-CV-00768,  
16 2018 WL 11348432, at \*2 (N.D. Cal. Oct. 24, 2018).

17 Other than providing examples in non-coupon cases, which the Court does  
18 not find persuasive, Plaintiffs have not presented any reason for the Court to  
19 interpret section 1712(a) to allow consideration of class administration costs and  
20 litigation expenses in the recovery amount. ECF No. 185-1 at 13. The Court will  
21 therefore consider only the redemption value of the coupons to the class  
22 members—\$587,036.29—in its calculation of attorneys’ fees.

23 **c. Calculating fees under the percentage-of-recovery method.**

24 The typical benchmark award in a percentage-of-recovery case is 25% of the  
25 class recovery. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th  
26 Cir. 2011). Because class members here redeemed \$587,036.29 worth of  
27 vouchers, this benchmark suggests an award of \$146,759 in attorneys’ fees.  
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1 Nonetheless, “[t]he 25% benchmark rate, although a starting point for analysis,  
2 may be inappropriate in some cases,” and the court must consider “all of the  
3 circumstances of the case.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th  
4 Cir. 2002). Where a court departs from the benchmark it must provide adequate  
5 explanation of the “special circumstances” justifying the departure. *Bluetooth*  
6 *Headset*, 654 F.3d at 942. To assess whether the benchmark is appropriate, courts  
7 consider, inter alia: (1) the results for the class; (2) risk to class counsel; (3) any  
8 secondary benefits to the class; (4) the market rate in the field; (5) burdens on class  
9 counsel; and (6) whether the case was taken on contingency. *In re Optical Disk*  
10 *Drive Prod. Antitrust Litig.*, 959 F.3d 922, 930 (9th Cir. 2020). Here, the Court  
11 finds that 25% of recovery, amounting to an award of \$146,759, would  
12 undercompensate counsel.

13 Counsel took the case on a contingent basis, ECF No. 185-1 at 18, taking on  
14 significant risk that the class would not be certified or be able to show damages.  
15 See ECF No. 142 at 13-14. According to Plaintiffs’ declaration, their lawyers and  
16 staff spent over 2,030 hours on the case, ECF No. 185-2 at 3-7, and nothing in the  
17 record indicates that any of this time has been compensated thus far. As the Court  
18 held in approving the settlement agreement, “[t]he Settlement [was] informed by  
19 Plaintiffs’ thorough investigation. Class Counsel engaged in the multi-district,  
20 ‘years-long’ investigation . . . to assess Plaintiffs’ claims[.]” ECF No. 142 at 18.  
21 The case also involved the difficult issue of how to demonstrate and calculate  
22 damages in an alleged false pricing and discount scheme and counsel achieved a  
23 good result for the class given that the damages to each individual per item  
24 purchased were less than a dollar on average. ECF No. 142 at 13-14.

25 Moreover, that the parties negotiated the attorneys’ fees only after agreeing  
26 to the other material terms of the settlement at least somewhat alleviates the  
27 concerns underlying 28 U.S.C. § 1712: ensuring that class counsel did not sacrifice  
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1 benefit for the class in exchange for higher attorneys' fees. ECF No. 185-1 at 15;  
2 *see Easysaver*, 906 F.3d at 755. Finally, the Court also observes that Plaintiffs'  
3 counsel's current request for \$400,000 in fees and costs is substantially less than  
4 their prior request for \$1,080,000—the highest amount Defendant agreed not to  
5 contest in mediation. ECF No. 185-1 at 15.

6 Due to these circumstances, the Court holds that 25% of the class recovery is  
7 insufficient. Objector St. John suggests a percentage recovery of 34% of the  
8 redeemed coupon value, ECF No. 189 at 10, which would generate a \$199,592 fee  
9 award. But this is still too low. To appropriately compensate counsel for their  
10 time and the results they achieved for the class—as assessed through the value of  
11 the coupons redeemed—but without granting them a fee award that is  
12 disproportionate to the benefit to class members, the Court holds that 42% of  
13 recovery is appropriate. *See Knapp*, 2018 WL 11348432, at \*2 (holding that 50%  
14 of the value of redeemed vouchers was appropriate). This is a significant increase  
15 from the standard benchmark, but taking into account counsel's success,  
16 substantial time and effort, and risk-taking, it is suitable. Given the over 2,000  
17 hours counsel put in, *see* ECF No. 185-2 at 3-7, and that Defendant agreed not to  
18 contest a fee award as high as \$1,080,000 and Plaintiffs previously requested that  
19 amount, ECF No. 73 at 1, this is not a windfall for Plaintiffs' counsel. The Court  
20 therefore awards \$246,555.24 to Plaintiffs' counsel in attorneys' fees, or 42% of  
21 \$587,036.29, the value of the redeemed coupons.

22 **d. The Court cannot conduct a lodestar cross-check.**

23 Plaintiffs suggest using a lodestar cross-check and argue that it would be  
24 permissible because they “are aware of no authority precluding the Court from  
25 using the lodestar method as a cross-check on the reasonableness of a proposed fee  
26 award, even one that is based primarily on the value of the coupons actually  
27 redeemed by the Class.” ECF No. 185-1 at 21. Objector St. John contends that 28



1 U.S.C. § 1712(a) entirely precludes the use of the lodestar method in coupon-only  
2 settlements. ECF No. 189 at 9.

3 The Court agrees. The Ninth Circuit has been explicit that under section  
4 1712, “lodestar fees may only be awarded in exchange for obtaining non-coupon  
5 relief,” *HP Inkjet*, 716 F.3d at 1185, and here there is no non-coupon relief in the  
6 settlement. For such coupon-only settlements, “CAFA mandates the use of a  
7 percentage-of-value calculation[.]” *Chambers*, 980 F.3d at 658. The Court will  
8 therefore not conduct a lodestar cross-check.<sup>2</sup>

## 9 **II. Costs**

10 Plaintiffs also request \$50,017 in litigation expenses, including the cost of  
11 mediation, court fees, electronic research, and the expert report. ECF No. 185-1 at 26;  
12 ECF No. 185-2 at 3. Plaintiffs waive the costs of “scanning, photocopying, printing, and  
13 other office-related costs” as well as travel expenses. ECF No. 185-2 at 3. Neither  
14 Defendant nor any objectors oppose the costs specifically, *see* ECF Nos. 188-89  
15 (absence), though Objector St. John argues for a \$200,000 award inclusive of litigation  
16 expenses, ECF No. 189 at 8.

17 Class counsel is entitled to reasonable costs. Fed. R. Civ. P. 23(h) (“In a certified  
18 class action, the court may award reasonable attorney’s fees and nontaxable costs that are  
19 authorized by law or by the parties’ agreement.”); ECF No. 144-1 at 8 (settlement  
20 agreement provision regarding attorneys’ fees and costs). Because these “out-of-pocket  
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23 <sup>2</sup> The Court observes that, taking Plaintiffs’ hours worked and fees per hour at face value,  
24 the lodestar calculation suggests that attorneys’ fees should be double what the Court has  
25 awarded under the percentage-of-recovery method. *See* ECF No. 185-2 at 7 (indicating a  
26 lodestar calculation of \$639,211). This further indicates that the Court’s award is not  
27 overcompensating Plaintiffs, but rather may be undercompensating them for their time.  
28 Nonetheless, “Plaintiffs attorneys don’t get paid simply for working; they get paid for  
obtaining results.” *HP Inkjet*, 716 F.3d at 1182.

1 expenses . . . would normally be charged to a fee-paying client,” *Harris v. Marhoefer*, 24  
2 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted), the Court  
3 finds them reasonable and grants Plaintiffs’ counsel their entire request for costs,  
4 \$50,017.

### 5 **III. Incentive Awards**

6 Plaintiffs’ request \$2,500 incentive awards for each of the Named Plaintiffs. ECF  
7 No. 185-1 at 27. Awards to named plaintiffs “compensate class representatives for work  
8 done on behalf of the class, to make up for financial or reputational risk undertaken in  
9 bringing the action, and, sometimes, to recognize their willingness to act as a private  
10 attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).  
11 Such awards are typical in class action settlements. *Id.* at 958.

12 The requested \$2,500 awards are reasonable. The Named Plaintiffs have served in  
13 their roles since 2016, and the requested amount is well within the range of incentive  
14 awards normally awarded by courts. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
15 457, 463 (9th Cir. 2000) (affirming \$5,000 incentive awards); *see Dennis v. Kellogg Co.*,  
16 No. 09-CV-1786, 2013 WL 6055326, at \*9 (S.D. Cal. Nov. 14, 2013) (“[T]he amount of  
17 the incentive payments requested, \$5,000, is well within if not below the range awarded  
18 in similar [false advertising] cases.”). The Court grants the Plaintiffs’ request for  
19 incentive awards in full.

### 20 **IV. Unawarded Fees**

21 Both Defendant and Objector St. John request the Court order that the unawarded  
22 attorneys’ fees and costs be distributed as vouchers to class members pursuant to Section  
23 2.8 of the settlement agreement. ECF No. 188 at 2; ECF No. 189 at 10. The settlement  
24 agreement states that “[i]n the event that the Court does not award \$1,080,000 in  
25 attorneys’ fees and costs to Plaintiffs’ Counsel, subject to the restrictions in this  
26 paragraph, the amount of the fee and cost reduction shall be made available to Authorized  
27 Claimants.” ECF No. 144-1 at 9. The relevant restriction is that if “it would be  
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1 economically or administratively infeasible to do a separate distribution of Vouchers . . .  
2 then the attorneys' fees and costs that are not awarded will instead be subject to a *cy pres*  
3 distribution to the National Consumer Law Center." *Id.*

4 As the Court has granted \$246,555.24 in attorneys' fees and \$50,017 in costs, there  
5 will be \$833,444.76 remaining from the \$1,080,000. Because the administrative fees for  
6 a final round will be only around \$25,000 and the Claims Administrator continues to run  
7 the settlement website, phone line, and email, ECF No. 188 at 2-3; ECF No. 185-6 at 2,  
8 the Court finds that it is economically and administratively feasible to conduct another  
9 voucher round. There is therefore no need for a *cy pres* distribution.

10 Defendant requests that there be a single distribution round to the authorized  
11 claimants with each individual voucher amounting to the remaining unawarded fees  
12 divided by the number of authorized claimants. ECF No. 188 at 3. Plaintiffs do not reply  
13 and Objector St. John does not appear to object to this approach. ECF No. 189 (absence).  
14 However, this approach differs somewhat from that laid out in section 2.8 of the  
15 settlement agreement, so the Court instead orders the parties to confer and inform the  
16 Court of a voucher distribution plan which accounts for the unawarded fees.

### 17 CONCLUSION

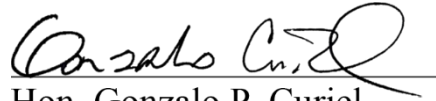
18 The Court GRANTS IN PART Plaintiffs' Renewed Motion for Attorneys' Fees,  
19 Costs, and Incentive Awards, holding that Plaintiffs' counsel are entitled to \$246,555.24  
20 in attorneys' fees and \$50,017 in costs. The Named Plaintiffs are entitled to \$2,500  
21 incentive awards each.

22 Defendant must pay Class Counsel and the Named Plaintiffs no later than ten  
23 calendar days after the Final Settlement Date, as defined in the settlement agreement, and  
24 upon receipt of relevant Form W-9, as set forth in sections 2.6 and 2.7 of the settlement  
25 agreement.

1           The Parties shall confer and file a status report within sixty days of the date of this  
2 order, informing the Court of a voucher distribution plan which accounts for the  
3 reduction in attorneys' fees and costs.

4           **IT IS SO ORDERED.**

5 Dated: April 30, 2024

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7 Hon. Gonzalo P. Curiel  
8 United States District Judge  
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