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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

14 INES BURGOS and MONGKOL
15 MAHAVONGTRAKUL, individually and
on behalf of other similarly situated
16 individuals,

17 Plaintiffs,

18 v.

19 SUNVALLEYTEK INTERNATIONAL,
INC.,

20 Defendant.

Case No. 4:18-cv-06910-HSG

CLASS ACTION

**SUPPLEMENTAL MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES AND
EXPENSES, AND SERVICE AWARDS**

Judge: Hon. Haywood S. Gilliam, Jr.
Courtroom: 2, 4th Floor
Date: August 20, 2020
Time: 2:00 p.m.

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22
23 Plaintiffs Ines Burgos (“Burgos”) and Mongkol Mahavongtrakul (“Mahavongtrakul”)
24 (collectively, “Plaintiffs”), on behalf of the putative class (the “Class”), submit this supplemental
25 Memorandum of Law in support of their motion for approval of a proposed class action
26 settlement, an award of attorneys’ fees and expenses, and for Plaintiffs’ service awards in the
27 above-captioned action (the “Litigation”).

28 At the August 20, 2020 hearing on Plaintiff’s motion (ECF No. 51), this Court expressed

1 concern regarding the proposed definition of the settlement class as well as the lack of a plan to
2 provide notice to members of the proposed settlement class. The Court ordered the parties to
3 meet and confer regarding these issues and held further orders on the motion in abeyance.
4 Accordingly, the parties have agreed to an amendment to the Settlement Agreement (the
5 “Amendment” is attached as Exhibit 1 to the Supplemental Declaration of D. Greg Blankinship).

6 The Amendment revises the proposed class definition. The new proposed class is
7 comprised of: All consumers who have purchased any of the Covered Products in the United
8 States.¹ Although “[t]he ascertainability requirement does not apply to Rule 23(b)(2) actions,”
9 the revised class definition sufficiently satisfies that requirement. “In this Circuit, it is enough
10 that the class definition describes a set of common characteristics sufficient to allow a prospective
11 plaintiff to identify himself or herself as having a right to recover based on the description.”
12 *McCrary v. Elations Co., LLC*, No. 13–00242, 2014 WL 1779243, at *8 (C.D. Cal. Jan. 13, 2014)
13 (collecting cases). Here, all class members need to know to determine if they are in the proposed
14 settlement class is whether they have purchased a RavPower-branded Power Bank.

15 The Amendment to the Settlement Agreement also includes a proposed notice plan.
16 Reflecting this Court’s comments during the August 20, 2020 hearing, the parties propose to
17 provide notice to the class by means of a prominent posting on Defendant’s website, as well as a
18 prominent posting on Plaintiffs’ counsel’s website. The proposed postings are attached as
19 Exhibits A and B to the Amendment. The parties propose that the notices be posted 60 days
20 before the Court holds a telephonic fairness hearing, and that any written submissions by class
21 members must be sent to the Court 15 days before that hearing.

22 The notice on the Plaintiffs’ counsel’s website informs class members that the Court will
23 hold a telephonic hearing to determine whether to approve the proposed amended settlement,
24 describes the proposed injunctive relief, informs consumers of the Plaintiffs’ request for
25 attorneys’ fees, costs, and service awards and the respective amounts, and informs them of the

26 _____
27 ¹ The Settlement Agreement defines “Covered Products” as any size of any of the Power Banks
28 designed for the primary purpose of use for portable charging of mobile phones, such devices
consisting of a battery cell or cells, enclosed in a casing. *See* Declaration of D. Greg Blankinship
(ECF No. ADD) at 48-1, Exhibit 1 at 4.

1 deadline for the submission of written comments. The notice also provides a link where class
2 members can view important documents, such as the Amended Complaint and the Settlement
3 Agreement. Amendment Exhibit A.

4 The notice on the Defendant’s website informs class members that it is changing the
5 manner in which it labels and advertises Power Banks as part of a resolution of this class action,
6 informs them that the Court will hold a telephonic hearing at which class members can be heard,
7 and provides a link to Plaintiffs’ counsel’s website where they can find more information.
8 Amendment Exhibit B.

9 Given that this is a settlement for injunctive only, this proposed notice plan is reasonable.
10 *See Campbell v. Facebook Inc.*, No. 13-05996, 2017 WL 3581179, at *7 (N.D. Cal. Aug. 18,
11 2017), *aff’d*, 951 F.3d 1106 (9th Cir. 2020) (holding that “notice . . . for a Rule 23(b)(2) class . . .
12 need only be ‘reasonable’ under Rule 23(e) and 23(h) . . . the various forms of notice given --
13 including the extensive publicity that the case received, posting of the settlement documents on
14 class counsel's websites, CAFA notice, et al. -- were reasonable under the circumstances.
15 Individual direct notice would carry substantial costs in light of ascertain ability issues, and,
16 importantly, the court was persuaded that such notice would create serious risks of confusion for
17 the class members.”).

18 Accordingly, Plaintiffs respectfully request that the Court approve the proposed
19 Settlement Agreement as amended, Order that notice be disseminated accordingly, and set a date
20 for a final fairness hearing.

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Respectfully submitted,

**FINKELSTEIN, BLANKINSHIP,
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DATED: September 24, 2020

By: /s/ D. Greg Blankinship
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