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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

**ELIZABETH PETERSON, AMANDA
CARLTON, REBECCA HIRSCH,
MICHELE O’DELL, and PRASANNA
RAMAKRISHNAN**, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

**BSH HOME APPLIANCES
CORPORATION**,

Defendant.

Case No. 2:23-cv-00543-RAJ

**PLAINTIFFS’ UNOPPOSED
MOTION AND MEMORANDUM
OF LAW IN SUPPORT OF
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

1 Plaintiffs respectfully move, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for
2 preliminary approval of a proposed Settlement with BSH Home Appliances Corporation (“Bosch” or
3 “Defendant”), preliminary certification of the Settlement Class defined in the Settlement Agreement,
4 and approval of the proposed notice plan for the Settlement Class.¹ This Settlement, reached after
5 substantial expert investigation and analysis, active litigation, and lengthy and hard-fought
6 negotiations, will resolve all of Plaintiffs’ and Settlement Class Members’ claims against Defendant
7 in the above-captioned action and the related litigation on a nationwide basis.

8 I. INTRODUCTION

9 Plaintiffs Elizabeth Peterson, Rebecca Hirsch, Prasanna Ramakrishnan, Amanda Carlton, and
10 Michele O’Dell (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others
11 similarly situated, and Defendant have entered into a Class Action Settlement Agreement and Release
12 to resolve Plaintiffs’ claims that certain Bosch microwave and/or combo ovens, including the Bosch
13 800 Series stainless steel microwave/oven combinations, contain an alleged defect that causes the
14 control display to fade, dim, become unreadable, and/or fail altogether as a result of a defect in the
15 design and/or manufacture of the Class Products (“Display Failure”).

16 Specifically, Bosch microwave and/or oven combination products with model numbers
17 HBL5751UC, HBL8751UC, HMC80151UC, HMC80251UC, and HMNC87151UC (the “Class
18 Products” or “Microwave/Ovens”) are equipped with vacuum fluorescent display (“VFD”) control
19 panels (“Control Panels”). Extensive expert investigation conducted on behalf of Plaintiffs over the
20 course of a year supported the eventual allegations that the Control Panels contain an alleged defect
21 in that the display system wherein the voltage of the VFD, instead of the current, is controlled. This
22 causes the display of the Control Panels to burn out in an accelerated manner, leading to the display
23 fading in the Class Products (“the Defect”). Thus, due to improper regulation of the current, the
24

25 ¹ The Settlement Agreement and Proposed Order are attached as Exhibit 1. Capitalized terms not
26 defined in this brief shall have the same definitions and meanings ascribed to them in the Settlement
27 Agreement.

1 displays of the Control Panels burn out in an accelerated manner, leading to the display fading beyond
2 any use. *Id.* ¶ 35. Each Microwave/Oven contained the alleged Defect at the point of sale to Plaintiffs
3 and utilized defective and outdated technology which rendered the Microwave/Ovens unfit for their
4 ordinary purpose for which they are used and were subject to premature failure. *Id.* ¶¶ 38–39.

5 For its part, Defendant categorically denies Plaintiffs’ allegations, denies that it has committed
6 or engaged in any misconduct, wrongdoing, or other actionable conduct, denies that the Class Products
7 are defective, and asserts numerous defenses to Plaintiffs’ allegations.

8 Notwithstanding the Parties’ disagreement regarding the substantive allegations, they have
9 recognized the risks of litigation and have reached a resolution of this action. The final Settlement
10 being presented hereto is the result of hard-fought litigation of more than two years, and lengthy
11 settlement negotiations that actively spanned over a year. Accordingly, Plaintiffs respectfully submit
12 this Unopposed Motion and Memorandum of Law In Support of Preliminary Approval of Class Action
13 Settlement, in support of their request for the entry of an order that will: (1) grant Preliminary Approval
14 of the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule
15 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (3) appoint Plaintiffs Peterson, Carlton,
16 Hirsch, O’Dell, and Ramakrishnan as Class Representatives; (4) approve the Notice Plan set forth in
17 the Agreement and the accompanying declaration of the Settlement Administrator, and approve the
18 form and content of the Notices upon submission; (5) approve and order the opt-out and objection
19 procedures set forth in the Agreement; (6) stay all deadlines in this litigation pending Final Approval
20 of the Settlement; (7) appoint as Class Counsel Plaintiffs’ attorneys, Harper Segui, Rachel Soffin, Erin
21 Ruben and Thomas Pacheco; and (8) schedule a Final Approval Hearing.

22 The Court should respectfully grant preliminary approval because the Settlement provides
23 substantial relief for the Settlement Class, including reimbursement of costs up to \$400.00 and an
24 extended service warranty for Display Failures; the terms of which are well within the range of
25 reasonableness and consistent with applicable case law. Indeed, given the significant risks inherent in
26 continued litigation, the Settlement is an outstanding result for the Settlement Class. The Settlement
27 satisfies all Ninth Circuit criteria for settlement approval. The proposed Settlement is fair, reasonable,

1 adequate, and in the best interests of the Settlement Class Members. As described in detail below, the
2 Settlement provides substantial and immediate benefits to Settlement Class Members, including a
3 settlement fund of up to \$2,000,000.00 to fund claims (“Settlement Fund”) for reimbursement of out-
4 of-pocket costs for Tier 1 Class Members of up to \$400.00 in reimbursement of out-of-pocket costs;
5 Class Representative Service Awards; Notice and Administration; and Attorneys’ Fees and
6 reimbursement of Costs. In addition, the Settlement provides a significant Extended Service Plan of
7 three (3) years relating to Tier 1 and Tier 2 Class Members for Microwave/Oven Display Failures,
8 wherein Bosch will either replace the VFD or provide reimbursement up to \$250.00 for out-of-pocket
9 costs. *The benefits of the Extended Service Plan are in addition to the \$2,000,000.00 Settlement Fund.*

10 As described in further detail below, there are two options for Settlement Class Members to
11 claim benefits if their Class Product suffers from a Display Failure, and an additional benefit for
12 Settlement Class Members who have Class Products that have not yet suffered a Display Failure but
13 whose Class Product experiences a Display Failure after the Notice Date of the Settlement.

14 This proposed Settlement resolves the claims of Plaintiffs and the proposed nationwide
15 Settlement Class. The benefits of this proposed Settlement weigh against the risk that protracted
16 litigation might lead to no recovery, or to a smaller recovery for Plaintiffs and/or proposed Settlement
17 Class Members. Further, Defendant has vehemently denied any liability and mounted a vigorous
18 defense at every stage of this litigation, and Plaintiffs expect that Bosch would have continued to do
19 so through opposition to class certification, motions to exclude Plaintiffs’ experts’ testimony,
20 motion(s) for summary judgment, a trial(s) on the merits, and appeal.

21 In evaluating the terms of the Settlement, Proposed Class Counsel have concluded that the
22 Settlement is in the best interest of Settlement Class Members due to: (1) the substantial relief afforded
23 to the Settlement Class Members; (2) the risks and uncertainties of this complex litigation; (3) the
24 expense and length of time necessary to prosecute this action through class certification, trial, and any
25 subsequent appeals; and (4) the desirability of consummating the Settlement to provide prompt and
26 effective relief to the Settlement Class Members. Considering these factors, as discussed below,
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1 Plaintiffs and Proposed Class Counsel believe that the fair and reasonable Settlement merits
2 preliminary approval.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 **A. Summary of Allegations in the Complaint**

5 As alleged in the Complaint filed in this action, Bosch is one of the largest technology
6 companies in the world. Compl. ¶ 1. Bosch designs, manufactures and sells a variety of products,
7 including premium-priced kitchen appliances such as microwaves and ovens. *Id.* ¶ 1.

8 Bosch's kitchen appliance portfolio includes multiple types of microwaves and ovens,
9 including the Bosch 800 Series stainless steel microwave/oven combinations, which are the subject of
10 this action. *Id.* ¶ 2. The cost of the Microwave/Ovens is more than \$2,000.00, which Bosch has been
11 able to charge because over the course of several decades, Bosch has gained the trust of consumers,
12 who reasonably believe that Bosch products are made with quality materials, and that the Bosch
13 products can be used safely, as intended. *Id.* ¶¶ 2, 4. However, as Plaintiffs contend, the
14 Microwave/Ovens suffer from a uniform Defect at the point of sale and cannot be used for their
15 intended purpose of safely and properly preparing meals at home. *Id.* ¶ 13.

16 Specifically, the Microwave/Ovens are defectively designed and/or manufactured such that,
17 under normal and intended use, the display on the Control Panels dims or fades to the point where it
18 becomes unreadable. *Id.* ¶ 5. The Control Panel is essentially the steering wheel of the
19 Microwave/Ovens, which cannot operate properly or safely without the Control Panel. *Id.* ¶ 6. Thus,
20 the dimming or failure of the Control Panel renders the Microwave/Ovens unusable, as it eliminates
21 vital features, such as the temperature display, cooking modes (i.e., broil, bake, roast or warm), clock,
22 and timer, which allow consumers to monitor and control the Microwave/Ovens. *Id.* Consequently,
23 despite being used as intended, the Microwave/Ovens become unusable because the faded Control
24 Panel makes it impossible to use the product safely or as intended. *Id.* ¶ 12.

25 Each of the Plaintiffs—including Elizabeth Peterson, Rebecca Hirsch, Prasanna
26 Ramakrishnan, Amanda Carlton, and Michele O'Dell—sought to purchase a reliable
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1 Microwave/Oven. *Id.* ¶¶ 59, 69, 83, 103. Each of the Plaintiffs researched and reviewed the
2 Microwave/Ovens in advance of purchasing their Microwave/Ovens, and none expected that the
3 Control Panels would cease to work and render the Microwave/Ovens useless. *Id.* ¶¶ 59–60, 69–70,
4 83–84, 103–104. Each Plaintiff used the Microwave/Ovens as intended and maintained them in a
5 reasonable manner as an owner of the appliance. *Id.* ¶¶ 62–63, 71–72, 85–86, 105–106. Over time,
6 each Plaintiff noticed that the displays on the Microwave/Ovens had faded, which impeded or entirely
7 prevented use of their Microwave/Ovens. *Id.* ¶¶ 64, 73–74, 87–88, 107.

8 The Complaint describes expert testing and analysis conducted on behalf of Plaintiffs that
9 supported the allegations that every Control Panel installed in the Microwave/Ovens was designed and
10 manufactured with a “VFD.” *Id.* ¶ 30-34-. The VFD utilizes filaments to conduct electrical current
11 that causes the display characters to glow, showing time, temperature, and other indicators on the
12 control panel. *Id.* ¶ 32. The voltage for the display is generated by part of the power supply circuit,
13 which then energizes the display filaments and results in a filament current which causes the display
14 to illuminate. *Id.* ¶ 33. The industry standard is such that the current should be controlled. However,
15 as described *supra*, the voltage in the Control Panels, rather than the current, is controlled. *Id.* ¶¶ 34–
16 35. Thus, due to improper regulation of the current, the displays of the Control Panels burn out in an
17 accelerated manner, leading to the display fading beyond any use. *Id.* ¶ 35. Each Microwave/Oven
18 contained the Defect at the point of sale to Plaintiffs and utilized defective and outdated technology
19 which rendered the Microwave/Ovens unfit for their ordinary purpose for which they are used and
20 were subject to premature failure. *Id.* ¶¶ 38–39.

21 Plaintiffs allege that Bosch had knowledge of the Defect due to years of complaints by
22 consumers which would eventually result in Bosch remedying the Defect by removing the VFD and
23 replacing it with a liquid crystal display, which is an industry standard and has been for decades. *Id.*
24 ¶¶ 31, 36–37. Plaintiffs contended that Bosch not only knew about the alleged Defect through
25 consumer complaints, but when consumers would raise the Defect with Bosch, it would actively
26 conceal the existence of the alleged Defect and prevent consumers from discovering it. *Id.* ¶¶ 52, 118–
27 124. Despite knowledge of industry standards and the alleged Defect, Bosch continues to conceal the

1 alleged Defect and fail to notify or warn consumers of the potential for Display Failure. *Id.* ¶¶ 126–
2 128. Likewise, prior to the filing of this litigation, Bosch did not modified the language of written
3 warranties in response to the alleged Defect, or its representations related to quality and durability. *Id.*
4 Accordingly, these allegations formed the basis for Plaintiffs’ Complaints.

5 **B. Relevant Procedural Background**

6 On August 17, 2021, Plaintiffs O’Dell, Hirsch, Carlton, and Ramakrishnan filed the first Class
7 Action Complaint against Bosch alleging that the Microwave/Ovens were designed, manufactured,
8 distributed, marketed, and sold with the Defect in the United States District Court for the Central
9 District of California. *See Hirsch et al. v. BSH Home Appliances Corp.*, No. 8:21-cv-1355 (the “*Hirsch*
10 *Action*”). Exhibit 2, Joint Declaration of Proposed Class Counsel in Support of Plaintiffs’ Unopposed
11 Motion for Preliminary Approval of Class Action Settlement (hereinafter “J. Decl.”), ¶ 11. Bosch filed
12 its Motion to Dismiss on February 3, 2022, which Plaintiffs opposed on March 7, 2022, and Bosch
13 replied on March 28, 2022. (Dkt. Nos. 18, 23, 25.); J. Decl. ¶ 12.

14 Plaintiffs successfully opposed Bosch’s Motion to Dismiss. In the *Hirsch* Complaint, Plaintiffs
15 brought causes of action for breach of implied warranties, breach of express warranty, breach of
16 contract and/or breach of common law warranty in the alternative, unjust enrichment in the alternative,
17 fraudulent concealment, violations of the California Legal Remedies Act, violations of the California
18 Unfair Competition Law, violations of the Illinois Consumer Fraud and Deceptive Trade Practices
19 Act, violations of the Colorado Consumer Protection Act, and violations of the Florida Deceptive and
20 Unfair Trade Practices Act, on behalf of a Nationwide Class, a California Class, an Illinois Class, a
21 Colorado Class, and a Florida Class. Plaintiffs sought monetary and injunctive relief and any other
22 relief either authorized by statute or deemed appropriate by the Court. The Court dismissed without
23 prejudice: (1) Plaintiffs’ request for injunctive relief under the Illinois Consumer Fraud and Deceptive
24 Trade Practices Act, the Colorado Consumer Protection Act, and the Florida Deceptive and Unfair
25 Trade Practices Act; (2) the claims pursuant to violations of the California Legal Remedies Act and
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1 California Unfair Competition Law; and (3) the express warranty claim. The Court dismissed with
2 prejudice Plaintiffs' unjust enrichment claim. All other claims survived the Motion to Dismiss.

3 Subsequently, the Court issued an order granting in part and denying in part Bosch's Motion
4 to Dismiss and provided Plaintiffs until August 15, 2022, to file an amended complaint. (Dkt. No. 35.);
5 J. Decl. ¶ 12. Plaintiffs did not file an amended complaint and instead, the Parties filed a joint Rule
6 26(f) Report on August 5, 2022. (Dkt. Nos. 36 and 37.); J. Decl. ¶ 13.

7 Since the initiation of this matter, the Parties filed one Joint Report in the *Hirsch* Action
8 (August 5, 2022 (Dkt. No. 36)) and five in the present case (July 31, 2023 (Dkt. No. 14), September
9 22, 2023 (Dkt. No. 15), October 20, 2023 (Dkt. No. 16), November 3, 2023 (Dkt. No. 17), and
10 November 17, 2023 (Dkt. No. 18)). The Parties also filed eight stipulations in the *Hirsch* Action
11 (December 28, 2021 (Dkt. No. 17, Stipulation for Extending Time to Answer the Complaint), February
12 9, 2022 (Dkt. No. 20, Stipulation for Extension of Time to File Response), March 28, 2022 (Dkt. No.
13 27, Stipulation to Continue Hearing Date on Motion to Dismiss), August 18, 2022 (Dkt. No. 40, Joint
14 Stipulation for Stay), September 6, 2022 (Dkt. Nos. 43, Stipulation for Protective Order, and 44,
15 Stipulation Extending Time to Answer the Complaint), November 16, 2022 (Dkt. No. 49, Joint
16 Stipulation to Continue Deadlines), and April 3, 2023 (Dkt. No. 51, Joint Stipulation to Dismiss Case))
17 and one in the present case (June 27, 2023 (Dkt. No. 27)). J. Decl. ¶ 20.

18 Following Plaintiffs' extensive expert investigation and testing regarding the alleged Defect,
19 as well as their factual investigation of consumer complaints regarding the alleged Defect, consumer
20 interviews, research on Bosch, its Microwave/Ovens and the warranties, all of which was described in
21 detail in the *Hirsch* and *Peterson* Complaints, the Parties began to discuss resolution of this action.
22 (Dkt. No. 49.) During this time, the Parties continued to engage in discovery, including service of
23 Plaintiffs' First Set of Interrogatories to Defendant BSH Home Appliances Corporation and Plaintiffs'
24 First Set of Requests for Product of Documents to Defendant BSH Home Appliances Corporation in
25 August 2022. J. Decl. ¶ 14.

26 Although the Parties engaged in informal settlement discussions, they agreed to conduct a
27 private mediation after the Court ruled on Bosch's Motion to Dismiss, which would assist the Parties

1 in further evaluating settlement and in reaching a resolution of outstanding issues. *Id.* ¶ 15. The Parties
2 agreed to mediate this action with the Hon. Wayne R. Andersen (Ret.), a highly skilled and
3 experienced class action mediator with JAMS. *Id.* The Parties attended mediation on November 29,
4 2022, during which time they exchanged relevant informal discovery, much of which was subject to
5 Plaintiffs’ formal discovery requests, to assist with structuring a settlement as well as an agreement to
6 a settlement in principle. *Id.* ¶ 17. At the conclusion of mediation, the Parties had reached an agreement
7 on all substantive terms. Thereafter, the Parties spent an additional 12 months negotiating additional
8 details, resulting in the Settlement Agreement that is before the Court for preliminary approval. *Id.* ¶
9 18. Pursuant to the negotiations, the Parties jointly dismissed the *Hirsch* Action on April 3, 2023. (Dkt.
10 No. 51.) In conjunction with dismissing the *Hirsch* Action and pursuant to the negotiations, Plaintiffs
11 filed the present action in the Western District of Washington on April 7, 2023, with Washington
12 resident, Plaintiff Peterson. The Settlement Agreement was finalized on December 6, 2023.

13 Although the Settlement Agreement was finalized for execution on December 6, 2023, the
14 Claim Form (To Be Exhibit 2 of the Settlement Agreement), Publication Notice (To Be Exhibit 3),
15 and Summary Notice (To Be Exhibit 4) are still being drafted by the Claims Administrator. *See*
16 Declaration of J. Green (“Green Decl.”), ¶ 11. The Parties anticipate supplementing those documents
17 to the Court before December 29, 2023. Additionally, although the Settlement Agreement has been
18 substantively approved by Bosch, it has not yet been executed by its representative. The fully executed
19 version will be supplemented to the Court upon receipt of that signature.

20 If the Parties had not negotiated a settlement, the Parties would have continued litigating this
21 matter. J. Decl. ¶ 21. Although Plaintiffs were confident they would succeed in the litigation, the
22 outcome of class certification and additional rulings would be uncertain and would further delay any
23 relief for Plaintiffs as well as risk the loss of some or all of the relief Plaintiffs sought. *Id.* Similarly,
24 the Parties would have had to continue to pay expert witnesses and technical consultants, as well as
25 expend substantial time devoted to briefing Plaintiffs’ motions for class certification, *Daubert*
26 motions, and summary judgment motions, preparing for and conducting trial, post-trial motion
27 practice, and likely appeals. *Id.* ¶ 22. Absent a settlement, the final resolution of this litigation through

1 the trial process would undoubtedly take years of protracted, adversarial litigation and appeals, which
2 would delay relief to tens of thousands of Settlement Class Members and consume significant
3 resources. *Id.* ¶ 23. Even if Plaintiffs prevailed at each of these stages, in the absence of a settlement,
4 the overall procedural process would have taken years. *Id.*

5 **C. Class Counsel’s Investigation**

6 Class Counsel spent more than a year investigating the potential claims of plaintiffs against
7 Bosch before filing the initial Complaint in this litigation. J. Decl. ¶¶ 1–2. Initially, Class Counsel
8 performed research on Bosch, its Microwave/Ovens, the warranties, and consumer complaints. *Id.* ¶
9 2. Additionally, numerous consumers were interviewed and documents collected to gather information
10 about the Microwave/Ovens, the alleged Defect, and Bosch’s actions regarding the alleged Defect and
11 its knowledge of the same. *Id.* ¶¶ 1–3.

12 Further, Class Counsel worked closely with a well-qualified electrical engineering expert who
13 spent approximately 10 months investigating the Microwave/Ovens, including acquiring new and
14 failed circuit boards for testing, research of the products, specifications, industry standards, and
15 alternative feasible designs. *Id.* ¶ 4. As part of the investigation, the expert procured new and failed
16 circuit boards, created testing schematics, tested the Control Panels, took measurements, and
17 performed other visual investigations. *Id.* The engineer also provided ongoing assistance to Class
18 Counsel during litigation, including preparing for discovery and providing insights which assisted with
19 settlement. *Id.*

20 The expert investigation and analysis were essential to Class Counsel’s ability to identify the
21 alleged Defect and analyze the nature of Bosch’s conduct and potential claims and remedies. *See id.* ¶
22 4. Class Counsel thus spent an entire year analyzing information regarding the alleged Defect before
23 they were satisfied that the alleged Defect had been properly identified, was actionable, and was
24 appropriate for class action application. *See id.* ¶ 5. Class Counsel also expended significant resources
25 researching and developing the legal claims at issue. *Id.* Class Counsel is familiar with the claims as
26 they have litigated and resolved cases with similar product defect and false advertising factual and
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1 legal issues. *Id.* ¶ 6. Class Counsel has experience in understanding the remedies and damages at
 2 issue, as well as what information is critical in determining class membership. *Id.*

3 **D. Mediation and Subsequent Settlement Discussions**

4 As referenced *supra*, following the court's ruling on the motion to dismiss in the *Hirsch* action,
 5 the Parties agreed to mediate this action with the Hon. Wayne R. Andersen (Ret.), a highly skilled and
 6 experienced class action mediator with JAMS. J. Decl. ¶ 15.

7 Prior to mediation, the Parties exchanged important documents pursuant to Fed. R. Evid. 408,
 8 as well as provided detailed mediation statements to Judge Andersen. *Id.* ¶ 16. Additionally, the
 9 Plaintiffs made a detailed demand to establish what the framework for settlement would look like and
 10 identify key issues to resolve with the assistance of Judge Andersen. *Id.*

11 As a result of extensive expert investigation, as well as independent investigation of Class
 12 Counsel regarding the alleged Defect, Plaintiffs and Proposed Class Counsel entered these settlement
 13 negotiations with substantial information about the nature and extent of the Defect, and the merits of
 14 the legal claims and factual allegations. *Id.* ¶ 24. In light of this front-end research at the early stages
 15 of the development of this case, in addition proposed Class Counsel's extensive experience with
 16 consumer product defect litigation, substantive discovery, and the *Hirsch* court's ruling on substantive
 17 issues in the motion to dismiss, proposed Class Counsel was able to evaluate with confidence the
 18 strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary
 19 judgment, and trial. *Id.*

20 The Parties attended one full-day mediation session on November 29, 2022, with Judge
 21 Andersen. *Id.* ¶ 25. At the conclusion of mediation, the Parties had reached agreement on the material
 22 terms of the settlement. *Id.* From the time of mediation through December 6, 2023, the Parties have
 23 regularly corresponded, exchanged drafts and redlines of the Settlement Agreement, and participated
 24 in regular Zoom conferences to finalize the terms of the Settlement Agreement. *Id.* ¶ 26. Accordingly,
 25 the terms of the Settlement Agreement were negotiated at arm's length, and always active. *Id.*

26 **III. MATERIAL TERMS OF THE SETTLEMENT AGREEMENT AND NOTICE** 27 **PLAN**

1 **A. The Settlement Fund**

2 As described herein, the Settlement provides multiple benefits for Settlement Class Members,
3 including significant reimbursement for out-of-pocket costs and a 3-Year extended service plan for
4 the Microwave/Ovens. Specifically, the Settlement Agreement provides for the establishment of a
5 Settlement Fund up to \$2,000,000.00 for reimbursement of out-of-pocket costs up to \$400.00 for past
6 Display Failures; Class Representative Service Awards; Notice and Administration; and Attorneys'
7 Fees and reimbursement of Costs. Both Tier 1 and Tier 2 Class Members have the automatic
8 application of a 3-Year Extended Service Plan, in addition to the original warranty period, for Display
9 Failures. Microwave/Ovens where this Extended Service Plan has expired will have 120-days from
10 the Effective Date of the settlement to submit a claim for relief. Accordingly, every class settlement
11 Microwave/Oven that has or may have a Display Failure has been considered. The benefits of the
12 Extended Service Plan for Tier 1 and Tier 2 Class Members, including replacement of any VFD
13 following a display failure or reimbursement of up to \$250.00 for future Display Failures, *are in*
14 *addition to* the \$2,000,000.00 Settlement Fund.

15 **B. The Settlement Class**

16 Plaintiffs seek preliminary approval of the Settlement on behalf of the following Settlement
17 Class:

18 All persons in the United States and its territories who either (a) purchased a new Class
19 Product, or (b) acquired a new Class Product as part of the purchase or remodel of a
20 home, or (c) received as a gift, from a donor meeting those requirements, a new Class
21 Product not used by the donor or by anyone else after the donor purchased the Class
Product and before the donor gave the Class Product to the Settlement Class Member,
during the Class Period.

22 Excluded from this Settlement Class are:

- 23 (i) officers, directors, and employees of Bosch or its parents, subsidiaries, or affiliates,
24 (ii) insurers of Settlement Class Members, (iii) subrogees or all entities claiming to be
25 subrogated to the rights of a Class Product purchaser, a Class Product owner, or a
26 Settlement Class Member, (iv) persons who acquired an other-than-new Class Product,
27 (v) issuers or providers of extended warranties or service contracts for Class Products,
and (vi) persons who timely and validly exercise their right to be removed from the
Settlement class.

1 Plaintiffs and Bosch agree that the Settlement Class includes tens of thousands of members.

2
3 **C. Class Benefits**

4 Settlement Class Members fall into two distinct tiers with significant options for relief. Any
5 Settlement Class Member who provides sufficient documentary Proof of Ownership and Proof of
6 Display Failure are entitled to the following:

7 ***Tier 1:***

- 8 a. Reimbursement of sufficiently documented out-of-pocket costs up to \$400.00 with proof that
9 such out of pocket costs related to the Past Display Failure (a display failure that occurred prior
10 to the Notice Date); and
11 b. An extended service plan benefit of three (3) years from the date of purchase, wherein Bosch
12 will replace any VFD control panel that experiences a Display Failure.

13 ***Tier 2:*** Class Members with a Future Display Failure (a display failure that occurs after the
14 Notice Date) are entitled to an extended service plan benefit of three (3) years from the date of
15 purchase, wherein Bosch will replace any VFD control panel that experiences a Display Failure.

16 The Extended Service Plan for Tier 1(b) and Tier 2 Settlement Class Members may be provided
17 by Bosch through its existing warranty process, which will include either replacement of the VFD
18 control panel by Bosch or the cash value of the replacement parts and labor, not to exceed \$250.00.
19 To be eligible for compensation for a Future Display Failure, a Settlement Class Member must submit
20 a claim within 90 days of the Display Failure.

21 Additionally, the Settlement includes a benefit for consumers with expired extended service
22 plans. For purchases where the extended service plan benefit has expired prior to or on the Effective
23 Date, the Class Member would be entitled to 120-days from the Effective Date to submit an Extended
24 Service Claim.

25 **D. Class Notice**

26 Subject to the Court's approval of the notice program, notice dissemination will be commenced
27 within 42 days after entry of the Preliminary Approval Order. Green Decl. ¶ 24.

1 The notice program will consist of direct email notice to purchasers of the Class Products or
2 by mail if email is not available, and a digital (online) notice program, targeted to potential members
3 of the class. *Id.* ¶¶ 11, 15–20. Direct email notice will be accomplished using email addresses
4 contained in Bosch’s registration records. *Id.* ¶ 11. The digital notice program will include social media
5 advertising, advertising through Google and Bing, and the creation of a case-specific settlement
6 website. *Id.* ¶¶ 16–18, 20. A toll-free support line will be created to provide an additional means of
7 learning about the Settlement. *Id.* ¶ 21. The Settlement Administrator also will provide publication
8 notice through a press release on PR Newswire Nationwide Newswire. *Id.* 19.

9 The Settlement Class Notice will advise Class Members of the general terms of the settlement,
10 including a description of the case, information regarding the identity of the Class members, and what
11 claims will be released. Additionally, exclusion from the Settlement and opt-out procedures will be
12 explained as well as how Class Members may exercise their right to object to the proposed Settlement
13 at the Final Approval Hearing. The Notice will also detail the amount of requested attorneys’ fees as
14 well as the amount of the Settlement Class Representative Service Payments. Lastly, the Notice will
15 include a Claim Form which will be how Class Members demonstrate their eligibility for recovery.

16 As soon as practicable, but no later than 10 days after the Parties file this Agreement with the
17 Court, Bosch shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C.
18 section 1715 through CPT. Green Decl. ¶ 8.

19 **E. Claims Process**

20 The Parties agree that CPT Group will serve as the Settlement and Claims Administrator,
21 subject to the Court’s approval.

22 Settlement Class Members must submit a Valid Claim which includes a claim form in a form
23 to be supplemented to the Court. Green Decl. at ¶ 11. The Settlement Agreement outlines an extensive
24 qualifying process whereby Proof of Ownership of a Class Product must be shown as well as either
25 Proof of Display Failure or Proof of Paid Qualifying Repair or Replacement in order to obtain
26 reimbursement for out-of-pocket costs.

1 The Settlement Administrator will process all claims made by Settlement Class Members who
2 experienced a Display Failure, with the exception of Future Display Failures outside of the Claims
3 Period, including the evaluation of the documentary proof submitted by such Settlement Class
4 Members to substantiate a Qualifying Repair or Replacement subject to relief as set forth in this
5 Agreement.

6 Before denying any claim on the basis of insufficient documentary proof, the Settlement
7 Administrator will send by email if available or first-class United States Mail if email is not available
8 a written notice of deficiency to the Settlement Class Member identifying the insufficient proof that
9 may cause the claim to be denied and giving the Settlement Class Member no more than 30 days to
10 cure the deficiency. Insufficient documentary proof shall be the only claim deficiency for which an
11 opportunity to cure will be provided. Examples of insufficient documentary proof include illegible or
12 incomplete documents. The absence of required documentary proof or incomplete or disqualifying
13 claim form responses are not deficiencies for which an opportunity to cure will be provided. If any
14 fraud is detected or reasonably suspected, the Settlement Administrator can require further information
15 from the Settlement Class Member, and the Settlement Administrator may deny claims.

16 If any Settlement Class Member disputes the Settlement Administrator's denial of a claim for
17 any reason, the Settlement Administrator shall notify counsel for all Parties and send the claim to
18 Bosch for Bosch to determine the claim's validity. The Settlement Administrator shall make all such
19 validity determinations available to the Parties' counsel upon request. Bosch's validity determination
20 shall be final and binding unless Class Counsel, within 30 days of notification of Bosch's
21 determination, contests Bosch's determination by first attempting to resolve the claim in dispute
22 directly with Defendant's counsel and, if those efforts are unsuccessful, by presenting the matter for
23 determination by the Court within 30 days of the completion of Defendant's and Class Counsel's
24 conferral.

25 With the exception of decisions regarding claims adjudication, for which the respective rights
26 and responsibilities of Bosch, Class Counsel, the Settlement Administrator, and the Court are
27 addressed elsewhere in this Agreement, all decisions regarding notice and settlement administration

1 shall be made jointly between Bosch and Class Counsel. Class Counsel and counsel for Bosch shall
2 have the ability to communicate with the Settlement Administrator without the need to include each
3 other in each of those communications. Disputes, if any, shall be resolved by the Court.

4 As mentioned above, Bosch will pay all costs associated with the claims process separate and
5 apart from any relief provided to the Settlement Class.

6 **F. Attorneys' Fees and Costs and Service Awards to Named Plaintiffs**

7 The amount of Class Representative Service Awards, as well as attorney fees and costs to be
8 paid to Class Counsel shall be determined by the Court. After the Court preliminarily approves the
9 Settlement, Class Counsel may submit a Fee Application to the Court. Per the Settlement Agreement,
10 Class Counsel may request up to \$725,000.00 as the reasonable amount of attorney fees and costs, and
11 \$2,500 for each Class Representative as reasonable service awards, to be paid from the Settlement
12 Fund to Class Counsel and Plaintiffs.

13 The enforceability of the Agreement is not contingent on the amount of attorneys' fees or costs
14 or Service Awards to Named Plaintiffs that may be approved by the Court.

15 **IV. LEGAL STANDARD**

16 A class action settlement "is committed to the Court's sound discretion." *Clemans v. New*
17 *Werner Co.*, No. 3:12-cv-5168, 2013 WL 12108739, at *3 (W.D. Wash. Nov. 22, 2013). The Ninth
18 Circuit has long held that there is a "strong judicial policy that favors settlements, particularly where
19 complex class action litigation is concerned." *Stedman v. Progressive Direct Ins. Co.*, 2023 WL
20 5974865, at *2 (W.D. Wash. Sept. 14, 2023) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
21 1276 (9th Cir. 1992)).

22 "Federal Rule of Civil Procedure 23(e) requires court approval of all class action settlements,
23 which may be granted only after a fairness hearing and a determination that the settlement taken as a
24 whole is fair, reasonable, and adequate." *Randall v. Integrated Commc'n Serv., Inc.*, No. 3:20-cv-
25 5438-DGE, 2023 WL 5743133, at *2 (W.D. Wash. Sept. 6, 2023) (citing Fed. R. Civ. P. 23(e)(2)).

1 To approve a class settlement, the Court must first make a preliminary determination that
 2 Plaintiffs satisfy the four prerequisites of Rule 23(a): numerosity, commonality, typicality, and
 3 adequacy of representation. *Hanson*, 2018 WL 3630284, at *2; *see also Tuttle v. Audiophile Music*
 4 *Direct Inc.*, No. C22-1081JLR, 2023 WL 3318699, at *4 (W.D. Wash. May 9, 2023). The Court then
 5 determines whether the class satisfies one of the three criteria of Rule 23(b). *Hanson* 2018 WL
 6 3630284, at *2. Thereafter, the Court addresses whether, on a preliminary basis, the settlement is fair,
 7 reasonable, and adequate. *Id.* “However, at the preliminary approval stage, a full analysis of the
 8 settlement terms is not required or even possible given the lack of a fully developed record before the
 9 Court.” *Randall*, 2023 WL 5743133, at *2 (citation omitted). “At this stage, preliminary approval is
 10 appropriate if ‘the proposed settlement appears to be the product of serious, informed, noncollusive
 11 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class
 12 representatives or segments of the class, and falls within the range of possible approval.’” *Id.* (citation
 13 omitted).

14 **A. THE SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED**

15 **1. The Rule 23(a) Requirements are Satisfied**

16 In order for the Court to certify a class, Rule 23(a) of the Federal Rules of Civil Procedure
 17 requires the following: (1) the class is so numerous that joinder of all members is impracticable; (2)
 18 there are questions of law or fact common to the class; (3) the claims or defenses of the representative
 19 parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly
 20 and adequately protect the interests of the class.²

21
 22
 23 ² Some courts will impose an “ascertainability” requirement for class certification, however the Ninth
 24 Circuit has no such element as a separate requirement. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d
 25 1121, 1123 (9th Cir. 2017) (“[S]eperate administrative feasibility prerequisite to class certification is
 26 not compatible with the language of Rule 23.”); *see also Mansor v. United States Citizenship and*
 27 *Immigration Servs.*, 2023 WL 5509256, at *6 (W.D. Wash. Aug. 25, 2023) (“[T]he Ninth Circuit has
 concluded that Rule 23 does not require an administratively feasible way to identify class members.”)
 (internal quotation marks omitted). Nevertheless, membership in the proposed class is based upon an
 objective criteria: whether the Class Member purchased, acquired, or received the Class Product.

1 **a. The Settlement Class is so numerous that joinder is impracticable.**

2 The Parties agree that there are tens of thousands of consumers across the United States who
3 have purchased the Microwave/Ovens who may be entitled to the relief provided by the Settlement.
4 Decl. at ¶ 22. It is well established that numerosity is satisfied “when the proposed class is greater than
5 forty members.” *Rinky Dink Inc. v. Elec. Merchant Sys., Inc.*, No. C13-1347 JCC, 2015 WL
6 11234156, at *3 (W.D. Wash. Dec. 11, 2015) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47
7 F.3d 473, 483 (2d Cir. 1995)). Many of these customers purchased the Microwave/Ovens from the
8 largest retailers of home goods in the country, including Best Buy, Home Depot, Lowe’s, and Amazon.
9 Bosch has provided sales data demonstrating there were approximately 28,000 Microwave/Ovens
10 distributed to its retailers during the Class Period. Decl. at ¶ 22. Accordingly, numerosity is plainly
11 met in this case.

12 **b. There are questions of law and fact common to the Settlement**
13 **Class.**

14 Commonality is present where resolution of a common question of law or fact is “of such a
15 nature that it is capable of class-wide resolution—which means that determination of its truth or falsity
16 will resolve an issue that is central to the validity of each one of the claims.” *Wal-Mart Stores, Inc. v.*
17 *Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551 (2011). All that is necessary to satisfy commonality
18 is “‘a single [common] question’ capable of generating ‘common answers’ apt to drive resolution of
19 the litigation.” *Rinky Dink Inc.*, 2015 WL 11234156, at *3 (quoting *Wal-Mart Stores, Inc. v. Dukes*,
20 564 U.S. 338, 350, 131 S. Ct. 2541, 2551 (2011)).

21 The Settlement Class undoubtedly meets this low threshold. From the outset, the heart of the
22 litigation centered on one essential question: Whether the Microwave/Ovens contained a defect. Then,
23 there are additional questions common to the Settlement Class, such as whether Bosch knew or should
24 have known about the alleged Defect in the Microwave/Ovens. Additionally, there are legal questions
25 concerning whether Bosch breached either express or implied warranties relating to the
26 Microwave/Ovens. The issues involving the Settlement Class are sufficient to demonstrate
27 commonality.

1 **c. Plaintiffs' claims are typical of the claims of the Settlement Class.**

2 Typicality turns upon whether the class representatives “possess the same interest and suffer
3 the same injury” as compared with the other class members. *Tuttle*, 2023 WL 3318699, at *9 (quoting
4 *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 156–57 (1982)). Generally, typicality is a
5 “permissive standard” and is satisfied if the “representative claims” are “reasonably co-extensive”
6 with those of the class. *Rinky Dink Inc.*, 2015 WL 11234156, at *3 (quoting *Hanon v. Dataproducts*
7 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

8 Here, the typicality requirement is met because Plaintiffs alleged that they suffered the same
9 injury—purchasing a defective product at the time of sale—as the other Settlement Class Members.
10 Each Class Member purchased a Microwave/Oven with the expectation that it would be suitable for
11 its intended use and not contain a defect which would render the Microwave/Oven impossible to use
12 safely or as intended, as alleged by Plaintiffs. *See Burnett v. W. Customer Mgmt. Grp., LLC*, No. CV-
13 10-56-JLQ, 2011 WL 13290339, at *3 (E.D. Wash. Feb. 22, 2011) (explaining that “the named
14 Plaintiff’s claims are typical of those of the class because they derive from a similar factual predicate,
15 and they are based upon the same legal theory”).

16 **d. Plaintiffs will fairly and adequately represent the Settlement**
17 **Class.**

18 The adequacy determination requires resolution of two questions: “(a) do the named plaintiffs
19 and their counsel have any conflicts of interest with other class members; and (b) will the named
20 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Rinky Dink Inc.*,
21 2015 WL 11234156, at *3 (quoting *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970 (9th Cir. 2011)).

22 First, each Plaintiff owns the same allegedly defective Microwave/Oven as the absent
23 Settlement Class Members and have suffered the same injuries. Therefore, their interests are fully
24 aligned with all other Class Members and does not otherwise “implicate a significantly different set
25 of concerns’ than the unnamed plaintiffs’ claims.” *Hunichen v. Atonomi LLC*, No. C19-615-RAJ-
26 SKV, 2021 WL 5854964, at *10 (W.D. Wash. Nov. 12, 2021) (quoting *Gratz v. Bollinger*, 539 U.S.
27 244, 265 (2003)).

1 Second, Class Counsel meet the threshold set by Rule 23(g) as Class Counsel have extensive
2 experience in prosecuting complex product defect cases such as this one, lack any conflict of interest,
3 and have shown their willingness to vigorously prosecute this action on behalf of the Settlement Class.
4 Decl. at ¶¶ 23–25; *see also Hunichen*, 2021 WL 5854964, at *10 (determining adequacy was satisfied
5 because proposed class counsel had “pertinent experience,” no “apparent conflict of interest,” and
6 “demonstrated their willingness to vigorously prosecute” the action “on behalf of the class”).

7 **2. The Requirements of Rule 23(b)(3) are Satisfied**

8 Under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court may certify a class
9 action if the court finds that “questions of law or fact common to class members predominate over any
10 questions affecting only individual members, and that a class action is superior to other available
11 methods for fairly and efficiently adjudicating the controversy.”

12 **a. Common Questions Predominate.**

13 Predominance is met when “analysis of the allegations raised will apply to all or virtually all
14 class members, there are questions common to class members and those common questions and
15 answers predominate over any individualized inquiries.” *Hunichen*, 2021 WL 5854964, at *11. All
16 that is necessary to show predominance is that “common questions present a significant aspect of the
17 case.” *Rinky Dink Inc.*, 2015 WL 11234156, at *3. “[S]uffer[ing] the same injury” has been found to
18 be sufficient to satisfy the predominance requirement. *Tuttle*, 2023 WL 3318699, at *10.

19 For the reasons identified above under the commonality analysis, the Settlement Class satisfies
20 the predominance inquiry. Plaintiffs allege that Defendant perpetrated a common scheme involving
21 manufacturing the defective Microwave/Ovens. Accordingly, Bosch’s alleged conduct was common
22 to all Settlement Class Members, and any claim that Settlement Class Members may bring will be
23 premised upon the alleged Defect. Although the Settlement Class Representatives hail from some, but
24 not all, states in the United States, this does not undermine the predominance analysis because the
25 allegations about defective Microwave/Ovens will underlie any claims brought by Settlement Class
26 Members regardless of the state where they reside.

1 **b. Class Treatment of Plaintiffs’ Claims is Superior.**

2 In order for the superiority requirement to be met, “a class action must be superior to other
3 methods of adjudicating the controversy which requires [the court] to determine ‘whether the
4 objectives of the particular class action procedure will be achieved in the particular case.’” *Rinky Dink*
5 *Inc.*, 2015 WL 11234156, at *4. When certifying a class for settlement purposes only, “a district court
6 need not inquire whether the case, if tried, would present intractable management problems.”
7 *Hunichen*, 2021 WL 5854964, at *11 (quoting *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539,
8 557–58 (9th Cir. 2019)).

9 Class treatment is the superior method here. Nothing suggests that individuals are more likely
10 to file individual actions or settle and recover on individual actions. Compensation resulting from
11 litigation is highly uncertain and may not be received before lengthy, and costly trial and appellate
12 proceedings. The Proposed Settlement removes the overwhelming and redundant costs of individual
13 trials.

14 **3. Class Counsel’s Applications for (i) Attorneys’ Fees and Costs and (ii)**
15 **Service Awards**

16 Class Counsel have not been paid for their extensive efforts or reimbursed for litigation costs
17 and expenses incurred. The Parties negotiated and agreed upon attorneys’ fees and costs only after
18 agreeing on all other material terms of the Settlement. The Parties have agreed that proposed Class
19 Counsel may apply for an award of attorneys’ fees, inclusive of costs and expenses, and Settlement
20 Class Representative Service Payments, not to exceed \$725,000.00 in attorneys’ fees. The Parties have
21 also agreed that proposed Class Counsel will seek Settlement Class Representative Service Payments
22 in an amount not to exceed \$2,500.00 per Class Representative (a total of \$12,500.00).

23 Class Counsel is not seeking an award of attorneys’ fees at this time and, pursuant to the
24 Settlement, will file a motion and supporting memoranda requesting an award of attorneys’ fees,
25 inclusive of costs, expenses, and Settlement Class Representative Service Payments within 105 days
26 of entry of the Preliminary Approval Order. The Court, therefore, need not address attorneys’ fees,
27

1 costs, and service awards at this time. *See Hanson v. MGM Resorts Int'l*, No. 16-cv-1661-RAJ, 2018
2 WL 3630284, at *5 (W.D. Wash. July 31, 2018).

3 **B. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

4 Although the analysis at this stage is necessarily preliminary, Rule 23(e) requires that any class
5 action settlement approved by the Court be “fair, reasonable, and adequate.” *Hanson* 2018 WL
6 3630284, at *4

7 There are a number of factors the court will consider when assessing whether a proposed
8 settlement is “fair, reasonable, and adequate” under Rule 23(e):

9 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
10 duration of further litigation; (3) the risk of maintaining class action status throughout
11 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
12 and the stage of the proceedings; (6) the experience and view of counsel; (7) the
presence of a governmental participant; and (8) the reaction of the class members of
the proposed settlement.

13 *Hanson*, 2018 WL 3630284, at *5 (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
14 944 (9th Cir. 2015)); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).
15 (“Churchill requirements”). However, “[b]ecause the Court can only conduct a full assessment of
16 these factors after the final fairness hearing, “a full fairness analysis is unnecessary” at the preliminary
17 approval stage. *Mannacio v. Sovereign Lending Group, Inc.*, 2023 WL 6389792, at *2 (W.D. Wash.
18 Oct. 2, 2023), citing *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. 157, 169 (N.D. Cal. 2019).
19 Instead, preliminary approval is appropriate if “the proposed settlement appears to be the product of
20 serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant
21 preferential treatment to class representatives or segments of the class, and falls within the range of
22 possible approval.” *Mannacio*, 2023 WL 6389792, at 2, citing *In re Tableware Antitrust Litig.*, 484 F.
23 Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted); *See also*
24 *Randall v. Integrated Commc’n Serv., Inc.*, No. 3:20-cv-5438-DGE, 2023 WL 5743133, at *2 (W.D.
25
26
27

1 Wash. Sept. 6, 2023). “[A]t the preliminary approval stage, a full analysis of the settlement terms is
2 not required” and thus “preliminary approval is appropriate if ‘the proposed settlement appears to be
3 the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not
4 improperly grant preferential treatment to class representatives or segments of the class, and falls
5 within the range of possible approval.” *Randall v. Integrated Commc’n Serv., Inc.*, No. 3:20-cv-5438-
6 DGE, 2023 WL 5743133, at *2 (W.D. Wash. Sept. 6, 2023).

8 As shown below, all of the relevant factors weigh in favor of the proposed Settlement here as
9 the Proposed Settlement is fair, adequate, and reasonable, and falls within the range of possible
10 approval. The Proposed Settlement is the product of nearly two years of litigation, and repeated arm’s-
11 length negotiations, including with the assistance of a well-respected mediator with significant
12 experience in class action litigation, which weighs in favor of preliminary approval. Given the
13 attendant risks of continued litigation without Settlement that at a minimum will cause a delay to any
14 relief for Settlement Class Members, the Settlement is in the best interest of Class Members and this
15 Court should preliminarily approve the Settlement and certify a Settlement Class.

16 **1. The Settlement Was the Result of Serious, Informed, Non-collusive**
17 **Negotiations.**

18 The Settlement in this action is the product of serious, informed, non-collusive negotiations.
19 The Parties were fully aware of the strengths and weaknesses of each other’s positions as well as their
20 own. Decl. at ¶¶ 24, 26. Only after a full day of mediation on November 29, 2022, and by working
21 with Judge Andersen, a highly respected and experienced mediator, were the Parties able to reach a
22 settlement in principle. *See Chetwood v. T-Mobile USA, Inc.*, No. 2:19-cv-458-RSI, 2021 WL
23 2206481, at *2 (W.D. Wash. June 1, 2021) (“The assistance of an experienced mediator in the
24 settlement process supports the Court’s conclusion that the proposed settlement is non-collusive.”).
25 This followed formal discovery by the Parties as well as informal discovery for purposes of the
26 mediation. Nonetheless, it took the Parties over twelve additional months and multiple rounds of
27 exchanged drafts to come to an agreement on the full final language of the Settlement. Decl. at ¶ 13.

1 From the inception of the case, undersigned counsel consulted with an expert to understand
2 the alleged Defect, and the expert's investigation and analysis informed how Plaintiffs approached
3 each stage of the case, from the construction of the complaints, their responses to motions to dismiss,
4 and mediation. Decl. at ¶ 27. Because of the nature of the Defect being one which Bosch remedied in
5 newer models of its products and the Defect was a design which the industry had not used for decades,
6 as well as because of proposed Class Counsel's substantial efforts, proposed Class Counsel could
7 make informed judgments for purposes of Settlement, and additional discovery would provide little
8 value in further assessing the merits of Plaintiffs' claims and defenses. Sufficient discovery occurred
9 leading up to and during mediation such that essential information for purposes of crafting the
10 Settlement were exchanged. *Id.*

11 **2. The Settlement Has No Obvious Deficiencies.**

12 There are no obvious deficiencies with the Settlement. The Settlement benefits are significant
13 and benefit each Settlement Class Member. *Id.* at 28. The damages incurred by Settlement Class
14 Members occurred at the time of purchase because the Microwave/Ovens were manufactured with the
15 Defect. The Settlement provides an extended service plan to Settlement Class Members who have
16 Microwave/Ovens that have already suffered from the Display Fade and that may suffer from a
17 Display Failure in the future. Additionally, it reimburses Settlement Class Members for out-of-pocket
18 costs associated with repairing the Defect.

19 **3. The Settlement Does Not Improperly Grant Preferential Treatment to**
20 **Class Representatives or Segments of the Class.**

21 The Settlement treats Settlement Class Members fairly. Every Settlement Class Member
22 purchased a Microwave/Oven with the Defect. The Parties labored to provide choices to Settlement
23 Class Members with the understanding that some Settlement Class Members have Microwave/Ovens
24 with the Display Failure already manifested, some have paid out-of-pocket costs for repair, and others
25 have not yet had Microwave/Ovens suffer from Display Failure. Settlement Class Members with
26 Microwave/Ovens that suffer from the Display Failure are entitled to an extended service plan for
27

1 three years from the date of purchase. For Settlement Class Members who have not yet experienced a
2 Display Failure but may have a Display Failure in the future, they are eligible for an extended service
3 plan for three years following the date of purchase. Lastly, Settlement Class Members who have come
4 out of pocket to repair the Display Failure receive reimbursements up to \$400.00 for the repair until
5 the fund of \$2,000,000.00 is exhausted, at which point the reimbursements will be reduced *pro rata*.
6 *See Hunichen*, 2021 WL 5854964, at *9 (finding no obvious deficiency or improper preferential
7 treatment when the “settlement is substantial” and class representatives are treated the same as other
8 members of the class). Thus, no Settlement Class Members receive preferential treatment.

9 **4. The Settlement Falls Within the Range of Possible Approval.**

10 In determining whether the Settlement Agreement “falls within the range of possible
11 approval,” the Court must focus on “substantive fairness and adequacy” and “consider [P]laintiffs’
12 expected recovery balanced against the value of the settlement offer.” *Randall*, 2023 WL 5743133, at
13 *4 (citing *Tableware*, 484 F. Supp. 2d at 1080). “[I]t is well-settled law that a proposed settlement
14 may be acceptable even though it amounts only to a fraction of the potential recovery that might be
15 available to class members at trial.” *Randall*, 2023 WL 5743133, at *4, citing *Nat’l Rural Telecomms.*
16 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004). As discussed herein, pursuant to the
17 Settlement, Plaintiffs and Class Members are getting the exact damages they sought through this
18 litigation—reimbursement for out-of-pocket costs relating to a Display Failure and a significant (three-
19 year) extended service plan that will cover the cost of any Display Failures that have not occurred as
20 of the Notice Date. These benefits are substantial, and the Settlement is within the range of settlements
21 worthy of final approval. *See e.g. Randall*, 2023 WL 5743133, at *5 (“The \$2,200,000 negotiated non-
22 reversionary gross settlement amount for off-the-clock claims and for meal and rest break violations
23 represents approximately 65% of Defendants’ substantive exposure, and 30% of Defendants’ total
24 estimated potential exposure of the \$7 million figure... Considering these figures represent a best-
25 case-scenario, and that settlement negotiations necessarily invite compromise, the Court finds the
26 settlement amount falls within the range of possible approval.”). Fundamentally, the Settlement
27

1 resolves the core dispute in the case: that Bosch sold Microwave/Ovens which were defective at the
2 time of purchase, as further explained herein.

3 **5. The Settlement Meets the *Churchill* Requirements, Which Should be**
4 **Deferred for Full Analysis at Final Approval.**

5 As discussed above, the *Churchill* requirements are regularly deferred until final approval
6 because these factors can only be fully assessed at that time. *Mannacio*, 2023 WL 6389792, at *2
7 (W.D. Wash. Oct. 2, 2023). However, at preliminary approval, the court “may consider some or all”
8 of those factors as is within its discretion. *Pierce v. Novastar Mortg., Inc.*, No. C05-5835RJB, 2007
9 WL 1847216, at *2 (W.D. Wash. June 27, 2007). Because the requisite factors at final approval cannot
10 be properly examined until the fairness hearing, “at this preliminary approval stage, the Court conducts
11 a less searching inquiry of each factor and only requires that the proposed settlement be within the
12 range of final approval.” *Rinky Dink Inc. v. Elec. Merchant Sys. Inc.*, No. C13-1347 JCC, 2015 WL
13 11234156, at *4 (W.D. Wash. Dec. 11, 2015). For the reasons discussed below, at the preliminary
14 approval stage, Plaintiffs have met the requirements of these factors.

15 **a. Strength of the case, risk of further litigation and risk of**
16 **maintaining class action status.**

17 The proposed Settlement resolves the claims of Plaintiffs and the proposed nationwide
18 Settlement Class, and the strength of Plaintiffs’ case is reflected in the significant benefits achieved
19 for Settlement Class Members. The benefits of this proposed Settlement must be considered in the
20 context of the risk that protracted litigation might lead to no recovery, or to a smaller recovery for
21 Plaintiffs and/or proposed Settlement Class Members. Further, Defendants have vehemently denied
22 any liability and mounted a vigorous defense at every stage of this litigation, and Plaintiffs expect that
23 Bosch would have continued to do so through opposition to class certification, motions to exclude
24 Plaintiffs’ experts’ testimony, motion(s) for summary judgment, a trial(s) on the merits, and appeal.
25 Decl. at ¶¶ 15–17.

26 Although the litigation has lasted for over two years and Plaintiffs firmly believe in the strength
27 of their case, significant risk and uncertainty remain for Plaintiffs, both in terms of the required

1 expenditure of resources to progress through expert discovery (and likely *Daubert* motions), and class
2 certification, summary judgment, trial, and appeal, each of which represent major hurdles for
3 Plaintiffs. *Id.* The mere fact that Plaintiffs survived dismissal of most of their claims is not an
4 indication of how those claims would fare later in litigation. Even if Plaintiffs were successful at each
5 step of the litigation, that success would come with years-long delay in benefits to Settlement Class
6 Members. Given the attendant risks of continued litigation without Settlement, the Settlement is an
7 outstanding result for the Settlement Class. *Hanson*, 2018 WL 3630284, at *4 (finding these factors
8 weighed in favor of settlement approval where “Plaintiff recognize[d] that further litigation presents
9 risk as to class certification, findings of liability, and the difficulty of proving actual damages.”).

10 **b. Amount Offered in Settlement.**

11 The Settlement confers significant benefits onto the Settlement Class. Based upon the
12 discovery received, Plaintiffs believe that virtually all out-of-pocket costs paid by Settlement Class
13 Members will be reimbursed as a result of the Settlement. And, based upon the same discovery,
14 Plaintiffs believe that the Settlement Fund will be sufficient to cover the out-of-pocket expenses by
15 Settlement Class Members based upon Bosch’s internal records. In addition, although Plaintiffs have
16 not included a monetary value on the extended service plans, they are a significant *additional* benefit
17 to the class, including either Bosch’s repair of the Defect or payment to Settlement Class Members of
18 up to \$250 for reimbursement of parts and labor to repair the Defect, which confers further value onto
19 Settlement Class Members. The Settlement provides these benefits without the uncertainty of
20 litigation.

21 **c. Extent of Discovery Completed and the Stage of the Proceedings.**

22 Plaintiffs had sufficient discovery to make an informed and reasonable judgment regarding
23 settlement. *Id.* at ¶ 27. Plaintiffs investigated the case for a year prior to filing, which included expert
24 consultation prior to and throughout the litigation to develop the case and fully understand the Defect,
25 which is at the heart of the dispute. Plaintiffs had also served discovery on Bosch, and with mediation,
26 key factual information relating to the sales of the Microwave/Ovens, scope of the Settlement Class,
27 and the out-of-pocket costs associated with the Display Failure were provided to Plaintiffs. *See*

1 *Hanson*, 2018 WL 3630284, at *5 (granting preliminary approval when the parties had only briefed a
2 motion to dismiss and had not yet engaged in formal discovery because “the parties had enough
3 information to make an informed decision about settlement”). Further discovery was not necessary in
4 this case for Plaintiffs to structure and/or assess the value of the Settlement.

5 **d. Experience and View of Counsel.**

6 Proposed Class Counsel have years of class action litigation experience. Specifically, proposed
7 Class Counsel have extensive experience handling product defect class action lawsuits, with successful
8 results and recoveries to class members across the country. *Id.* at ¶¶ 23–25. Proposed Class Counsel
9 worked extensively with a consulting expert for months prior to filing the case as well as during the
10 litigation in order to understand the case’s merits and shortfalls. Proposed Class Counsel appreciated
11 the value of the case as well as the attendant risks of further litigation, weighed them, and based upon
12 their experience, believed that the Settlement would fall within the range of possible approval. *See*
13 *Rinky Dink Inc.*, 2015 WL 11234156, at *5 (“The recommendation of Plaintiffs’ counsel should be
14 given a presumption of reasonableness.” (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
15 1045 (N.D. Cal. 2008))). The Settlement “will avoid substantial costs, delay, and risks” which are
16 significant enough to potentially preclude Settlement Class Members from recovering any benefit
17 whatsoever. *See Chetwood v. T-Mobile USA, Inc.*, No. 2:19-cv-458-RSI, 2021 WL 2206481, at *2
18 (W.D. Wash. June 1, 2021).

19 **e. Presence of a Governmental Participant and Reaction of the Class
20 Members to the Proposed Settlement.**

21 There is currently no governmental participant and the reaction of Settlement Class Members
22 cannot be evaluated until final approval. *Hanson*, 2018 WL 3630284, at *5. (“As there is no
23 governmental participant and potential class members have not yet been informed of the proposed
24 settlement, factors seven and eight will not be considered for the purposes of preliminary approval of
25 this proposed settlement.”). Therefore, this factor is not relevant at the present stage.
26
27

1 **6. The Proposed Notice Program Is Adequate.**

2 Rule 23(e) of the Federal Rules of Civil Procedure requires that Settlement Class Members are
 3 provided the “best notice that is practicable under the circumstances.” The Settlement Agreement
 4 accounts for each requirement under the Rules. Under the Settlement Agreement, the Settlement Class
 5 Notice will be disseminated within 42 days of the date of the Preliminary Approval Order. Purchasers
 6 of the Microwave/Ovens will be emailed utilizing Bosch’s records of purchasers and email addresses
 7 provided to the Claims Administrator by Bosch’s authorized retailers. An online notice program will
 8 also be created. The Settlement Class Notice will contain the nature of the action; the definition of the
 9 class certified; the claims; information pertaining to all the rights afforded to the Settlement Class
 10 Members; information pertaining to all obligations of the Settlement Class Members; and information
 11 pertaining to all possible relief available. This will afford Settlement Class Members “satisfactory”
 12 notice because it “alert[s] those with adverse viewpoints to investigate and to come forward and be
 13 heard.” *Rinky Dink Inc.*, 2015 WL 11234156, at *7; *Mannacio*, 2023 WL 6389792, at *4 (“Notice is
 14 satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with
 15 adverse viewpoints to investigate and to come forward and be heard.”), quoting *Churchill Village,*
 16 *L.L.C.*, 361 F.3d 566, 575. The means by which the Parties intend to disseminate notice is with the
 17 intent of providing the most comprehensive notice in as concise and plain language possible.

18 **V. THE COURT SHOULD ADOPT THE FOLLOWING SCHEDULE FOR**
 19 **SUBSEQUENT CLASS-RELATED EVENTS**

20 An order preliminarily certifying the Settlement Class and preliminarily approving the
 21 proposed Settlement Agreement would trigger a series of events designed to inform absent Class
 22 Members about the Order. In the Settlement Agreement, the Parties agreed to a schedule for those
 23 events. For the Court’s convenience, the Plaintiffs recite the agreed-upon schedule as follows and ask
 24 the Court to include these deadlines in any Order granting the preliminary approval motion.

Event/Action	Days After Preliminary Approval
Preliminary Approval Order (PAO)	0

1	Bosch to meet CAFA notice requirements (V.N.)	Within 10 days after Settlement is Filed with Court
2	Bosch payment of immediate costs (IV.)	Within 30 days of grant of Motion for Preliminary Approval
3		
4	Settlement Administrator to mail and email Summary Notice (VI.B.2.a.)	42 days after entry of Preliminary Approval Order
5	Settlement Administrator to publish the Publication Notice (VI.B.2.b.)	49 days after entry of Preliminary Approval Order
6	Settlement Administrator to file declaration of compliance (VI.B.2.c.)	63 days after entry of Preliminary Approval Order
7		
8	Class Counsel to file Fee Petition (VI.B.2.d.)	70 days after entry of Preliminary Approval Order
9	Objector deadline to file objection (VI.B.2.e., VII.A.)	91 days after entry of Preliminary Approval Order
10	Settlement Class Member deadline to request exclusion (VI.B.2.f.)	91 days after entry of Preliminary Approval Order
11	Deadline for entry of appearance for Fairness Hearing (VI.B.2.g.)	91 days after entry of Preliminary Approval Order
12	Settlement Administrator to file list of exclusions (VI.B.2.h., VII.B.))	7 days after exclusion deadline
13		
14	Class Counsel to file reply in support of Fee Petition (VI.B.2.i.)	105 days after entry of Preliminary Approval Order
15	Class Counsel to file Final Approval Order (VI.B.2.j.)	105 days after entry of Preliminary Approval Order
16	Court to hold Fairness Hearing (VI.B.2.k.)	140 days after entry of Preliminary Approval Order
17	Second fund for initial claims administration fees, attorney fees and costs and service awards (IV)	30 days after entry of Final Approval Order

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There are blanks in the Proposed Preliminary Approval Order to fill in the dates for the actual deadlines corresponding to the time periods set forth in the Settlement Agreement, which are calculated based upon the date the Preliminary Order is signed.

The agreed-upon schedule begins to run from as soon as practical from the date on which this Court enters a Preliminary Approval Order. These dates appear in the master schedule in the Preliminary Approval Order.

Settlement Class Members who wish to object to the Settlement must do so 91 days after entry of an order granting preliminary approval. To be eligible to receive a payment from the Settlement, Settlement Class Members must submit a Valid Claim within 180 days after the Notice Date.

1 Paragraph 17 of the Preliminary Approval Order provides a blank for a date for the Final
2 Fairness Approval Hearing, which the Parties request to be at least 140 days from the date of the
3 Preliminary Approval Order is entered. The Parties will present at the Final Fairness Hearing any
4 further evidence necessary to secure final approval of the Settlement Order.

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court:

- 7 i. Preliminarily approve the Settlement Agreement;
- 8 ii. Certify the Rule 23(b)(3) Settlement Class (defined on page 12 above);
- 9 iii. Appoint Harper Segui, and Rachel Soffin, Erin Ruben, and Thomas Pacheco of
10 Milberg Coleman Bryson Phillips Grossman, LLC as Settlement Class Counsel;
- 11 iv. Appoint CPT as the Claims Administrator; and
- 12 v. Enter the proposed schedule on pages 29 and 30, *supra*, with corresponding
13 dates in Paragraphs 9–12 and 14–17 of the Proposed Order, or another schedule,
14 for notice, opt-out deadlines, objections deadlines, and dates for final approval
15 briefing and hearing.

16
17 DATED: December 8, 2023

Respectfully submitted,

18 **MILBERG COLEMAN BRYSON**
19 **PHILLIPS GROSSMAN, LLC**

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*Admitted *pro hac vice*

** Application for admission *pro hac vice* forthcoming