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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF MERCED**

12 LISA HAGGERTY and CHRIS SWEARINGIN,
13 on behalf of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 CONSUMER SAFETY TECHNOLOGY, LLC
18 d/b/a INTOXALOCK and DOES 1 - 10,
19 inclusive,

20 Defendants.

Case No.: 22CV-01414

*Assigned for All Purposes to Hon. Stephanie
L. Jamieson, Courtroom 8*

**NOTICE OF UNOPPOSED MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND EXPENSES,
ADMINISTRATION COSTS, AND CLASS
REPRESENTATIVE SERVICE AWARD;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: March 3, 2025

Hearing Time: 8:15 a.m.

Courtroom: 8

Complaint Filed: May 18, 2022

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 3, 2025 at 8:15 a.m. in Courtroom 8 of the Merced County Superior Court, located at 627 W. 21st Street, Merced, California 95340, pursuant to Code of Civil Procedure § 382, Plaintiff Chris Swearingin (“Plaintiff” or “Class Representative”) will and hereby does move for an order granting final approval of the Settlement Agreement and Release (“Settlement” or “Settlement Agreement”) entered into between Plaintiff and Defendant Consumer Safety Technology, LLC d/b/a Intoxalock (“Defendant”), as well as approval of attorneys’ fees and expenses, settlement administration expenses and Class Representative service award. As part of that approval, Plaintiff will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Mark S. Greenstone, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable;
1. Certify the Class for settlement purposes;
2. Appoint Plaintiff Chris Swearingin as Class Representative for settlement purposes;
3. Appoint Mark S. Greenstone and Benjamin N. Donahue of Greenstone Law APC as Settlement Class Counsel for settlement purposes;
4. Award a class representative service award of \$5,000.00 to Plaintiff Chris Swearingin;
5. Award attorneys’ fees in the amount of \$582,500.00 (one-third of the Gross Settlement Amount) to Greenstone Law APC;
6. Award costs in the amount of \$20,313.23 to Settlement Class Counsel for actual litigation costs and expenses incurred;
7. Award payment of \$82,102.66 to the Claims Administrator, Eisner Advisory Group LLC, for the costs of settlement administration;
8. Order the funding and distribution of the Gross Settlement Amount in the manner set forth in the Settlement;
9. Enter a Judgment approving the Settlement and retaining jurisdiction over the parties to enforce the terms of the judgment.

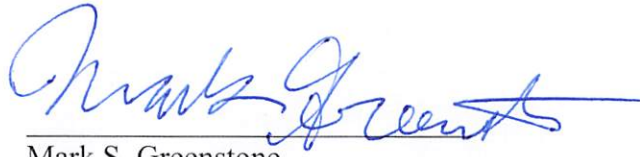
1 This motion is based upon this notice, the attached memorandum of points and authorities,
2 the concurrently filed Declaration of Mark S. Greenstone, Esq., the Declaration of Jordan Turner of
3 Eisner Advisory Group LLC and the Declaration of Chris Swearingin; the pleadings and other records
4 on file with the Court in this matter, and any other further evidence or argument that the Court may
5 properly receive prior to, or during, the hearing on the motion.¹

6 Respectfully submitted,

7 DATED: February 3, 2025

GREENSTONE LAW APC

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10 By:



11 Mark S. Greenstone
12 Benjamin N. Donahue
13 *Attorneys for Plaintiffs*
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27 ¹ The Memorandum of Points and Authorities exceeds fifteen pages in length, which is expressly permitted
28 under the California Rules of Court since the Motion requests, in part, certification of the Class defined in the Agreement. *See* Cal. R. Ct. 3.764(c)(2) (stating that “[a]n opening . . . memorandum filed in support of . . . a motion for class certification must not exceed 20 pages”).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case is an example of an outstanding result that demonstrates the good a class action can
4 do. Plaintiff Chris Swearingin (“Plaintiff” or “Class Representative”) sued Defendant Consumer
5 Safety Technology, LLC d/b/a Intoxalock (“Defendant” or “Intoxalock”) (Plaintiff and Defendant
6 shall collectively be referred to as the “Parties”) for a harm that most or all Class Members were
7 likely not aware they suffered: the alleged secret recording of their telephone calls, in violation of the
8 California Invasion of Privacy Act (“CIPA”), Cal. Pen. C. § 630 *et. seq.* The Parties worked together
9 cooperatively and methodically to understand the strengths and weaknesses of the case, exchange
10 necessary information, and craft a fair resolution over a two-year period. The reaction of the Class to
11 the Settlement speaks to the quality of the result achieved: to date there have been **zero** objections
12 and **zero** opt outs, a rare occurrence. Equally significant, to date approximately **19%** of Class
13 Members have submitted claims, a participation rate that far outstrips the typical consumer class
14 action.¹ After deduction of administration expenses, attorneys’ fees and costs, and service award, the
15 current average expected payout to each claimant is approximately \$216.54, an amount which
16 similarly outstrips the typical CIPA settlement payout.

17 Plaintiff now seeks final approval of the Settlement, as well as approval of attorneys’ fees and
18 expenses, settlement administration expenses and Class Representative service award. On October
19 28, 2024, the Court granted Plaintiff’s motion for preliminary approval and issued an Order (1)
20 granting preliminary approval of the class action settlement; (2) conditionally certifying a settlement
21 class; (3) approving notice plan; and (4) scheduling a final approval hearing (the “Preliminary
22 Approval Order”). Since that time, the overwhelmingly positive response of the Settlement Class
23 Members illustrates that the settlement reached was fair to both the parties who participated in a full
24

25 ¹ The deadline for Settlement Class Members to object or exclude themselves from the Settlement does not
26 expire until February 10, 2025, which is after the February 3, 2025 deadline to file said Motion. Settlement
27 Class Counsel will provide the Court with an update at the March 3, 2025 hearing and will also submit a
28 supplemental declaration from the Claims Administrator detailing the final results of the notice procedure no
later than February 24, 2025. Pursuant to the terms of the Settlement Agreement, this will not affect the timing
of the funding or payments to the Settlement Class. Greenstone Decl. ¶ 37.

1 day of mediation and the rest of the Settlement Class Members affected by the settlement. Indeed, all
2 the factors evidencing a strong presumption that the Settlement is fair and reasonable are present in
3 this case. The outstanding result achieved and positive reaction of the Settlement Class, and the other
4 relevant factors, also support Plaintiff's requested award of attorneys' fees and expenses applying a
5 percentage of the fund or lodestar analysis, as well as Plaintiff's requested service award and
6 administration costs.

7 The proposed Settlement resulted from the Parties' participation in an all-day mediation
8 session before the Honorable Ronald M. Sabraw (Ret.) of JAMS. The Settlement provides for a
9 substantial financial benefit to the Settlement Class Members. The Settlement Class consists of "all
10 natural persons listed in Intoxalock's records that have a California address and/or telephone number
11 bearing a California prefix and who had one or more telephone conversations with an Intoxalock sales
12 representative at any time during the period from and including May 18, 2021 through February 8,
13 2022." The Settlement Class list was comprised of 25,670 individuals.

14 The Settlement terms are outlined as follows:

- 15 • Non-reversionary Gross Settlement Amount: \$1,747,500.00.
- 16 • Requested Class Representative service award: \$5,000.00 to Plaintiff Swearingin.
- 17 • Requested Settlement Class Counsel's Fees and Costs: \$582,500.00 plus actual litigation costs
18 of \$20,313.23.
- 19 • Claims Administration Costs of \$82,102.66.
- 20 • Net Settlement Fund: approximately \$1,057,584.11. The entire Net Settlement Fund shall be
21 distributed and paid to Authorized Claimants. Each approved claim shall be entitled to a pro
22 rata share of the Net Settlement Fund, subject to a per person cap of \$5,000.00. If any funds
23 remain in the Net Settlement Fund after Authorized Claimants have been paid, or from
24 uncashed Settlement Payments by the Payment Void Date, any remaining amount of the Net
25 Settlement Fund shall be used to make a Supplemental Payment to each Authorized Claimant
26 (irrespective of the number of claims made and only subject to the per person cap of
27 \$5,000.00). If any funds remain thereafter, they shall be distributed to *cy pres*.

28 At Preliminary Approval, the Court established a presumption of fairness after extensively

analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the Settlement Class. The lack of objections and higher than typical individual class member recovery in this CIPA case, by 19% of the Settlement Class, is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that the Settlement is a fair, adequate, and reasonable result. Accordingly, Plaintiff respectfully requests the Court grant final approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff² filed the class action complaint (“Complaint”) on May 18, 2022 against Defendant in the Superior Court of California, County of Merced, Case No. 22CV-01414 (the “Action”). In the Complaint, Plaintiff alleged a single cause of action for violation of the CIPA, and in particular, Cal. Pen. C. § 632.7. Plaintiff alleged that he spoke with Defendant on his cellular telephone from approximately August 2021 to February 2022 and that Defendant recorded those calls without advising Plaintiff that the calls were recorded. Complaint at ¶¶ 15-16. Pursuant to Cal. Pen. C. § 632.7, a party may not intentionally record a communication between a cellphone and any other phone without the consent of all parties to the communication. Per Cal. Pen. C. § 637.2, a party that violates Cal. Pen. C. § 632.7 may be sued by an injured party for the greater of \$5,000 per violation or three times the actual amount of damages sustained. *Id.* at ¶ 28. Plaintiff’s claims were brought on behalf of a class of individuals who, like Plaintiff, while residing or located in California, had a telephone conversation with Defendant on a cellular telephone that allegedly was recorded without first having consented to recordation of that call. *Id.* at ¶ 18. Based on those allegations, Plaintiff sought \$5,000 per violation per Settlement Class Member, as well as injunctive relief. *Id.* at 7:8-12. *See* Declaration of Mark S. Greenstone (“Greenstone Decl.”) ¶ 8.

Following the filing of the Action, Plaintiff propounded two sets of extensive formal discovery on Defendant, in response to which Defendant provided written responses and produced

² The Parties agreed to settle the claims of Plaintiff Lisa Haggerty, whose calls with Intoxalock took place outside the Class Period, on an individual basis. A Request for Dismissal of Ms. Haggerty’s individual claims was filed on January 30, 2025. Greenstone Decl. ¶ 8 n. 1.

documents. This included all calls with Plaintiff as well as example customer agreements during the putative Class Period. Thereafter, the Parties met and conferred with respect to a potential resolution of the Action and agreed to exchange additional information necessary to engage in meaningful settlement discussions, and to engage in a private mediation on November 30, 2023 with Hon. Ronald M. Sabraw (Ret.), a well-respected mediator with substantial experience handling complex class action matters. Greenstone Decl. ¶ 9.

In advance of mediation, Defendant provided Plaintiff with critical additional information necessary to evaluate Plaintiff's claims and the potential for a class-wide settlement including written responses to questions posed by Plaintiff regarding: (1) confirmation of the underlying facts; (2) confirmation of the Class Period; (3) the total number of calls at issue over the Class Period; (4) and examples of all written recording disclosures implemented during the Class Period. This information allowed Settlement Class Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. Greenstone Decl. ¶ 10. Notably, this information, coupled with the information received in response to formal discovery, including recordings of all of Plaintiff's phone calls, made clear the contours of the case and its potential limits. Defendant produced over 20 calls with Plaintiff; however, only the first two calls made before Plaintiff established a customer account lacked a recording disclosure. This was consistent with Defendant's position that calls with clients always had a proper disclosure and focused the case on initial sales line calls. The information provided by Defendant further established that Defendant amended its website Privacy Policy in September 2021 (*during* the Class Period) to provide a recording disclosure, and similarly amended its client agreement in 2022. *Id.*

After extensive review of these documents and armed with a damage analysis, on November 30, 2023, the Parties attended a full day mediation with Hon. Ronald M. Sabraw (Ret.). At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. Although the case did not settle during the mediation, Judge Sabraw thereafter made a mediator's proposal on December 4, 2023 outlining the material terms of a class-wide settlement, which the Parties ultimately accepted on December 11, 2023 with the understanding that the

1 settlement would be formally documented in a long-form agreement. Thereafter, the Parties worked
2 diligently to negotiate and memorialize the terms of a long form settlement agreement. On September
3 27, 2024, after extensive discussions and multiple rounds of revisions to the agreement, the Parties
4 entered into a fully executed Settlement Agreement and Release. Greenstone Decl. ¶¶ 11, 14, Ex. 3.
5 On October 28, 2024, the Court issued an order granting Plaintiff’s Motion for Preliminary Approval
6 and ordered that notice be provided to the Settlement Class. Greenstone Decl. ¶ 12, Ex. 2. Now,
7 following the distribution of the Settlement Class Notice to the Settlement Class and the opportunity
8 for Settlement Class Members to submit claims, opt-out of the settlement or object thereto and be
9 heard, Plaintiff moves for final approval of the proposed Settlement. *Id.* at ¶ 13.

10 **III. THE SETTLEMENT TERMS**

11 **A. Class Definition**

12 For purposes of settlement only, the Parties have agreed that the Settlement Class shall be
13 defined as: all natural persons listed in Intoxalock’s records that have a California address and/or
14 telephone number bearing a California prefix and who had one or more telephone conversations with
15 an Intoxalock sales representative at any time during the period from and including May 18, 2021
16 through February 8, 2022. Excluded from the Settlement Class are all attorneys and employees of
17 Settlement Class Counsel, any judicial officer to whom this case is assigned, and persons who validly
18 opt out of the Settlement by following the procedures set forth in the Settlement. Greenstone Decl. ¶
19 15; Agreement ¶ 1(o). The Class Period and release of claims covers the time period from May 18,
20 2021 through February 8, 2022, inclusive (“Class Period”). *See id.* ¶¶ 1(e), 13.1. The Settlement Class
21 list consists of approximately 25,670 Settlement Class Members. Greenstone Decl. ¶ 16, *see*
22 Declaration of Jordan Turner of Eisner Amper (“Admin. Decl.”) ¶ 6.

23 **B. Amount of Settlement**

24 The Parties have agreed to settle the class claims at issue in the Action for a non-reversionary
25 Gross Settlement Amount of \$1,747,500.00. Greenstone Decl. ¶ 17; Agreement ¶¶ 1(k), 3.1.

26 **C. Allocation of the Gross Settlement Amount**

27 The Gross Settlement Amount is a Common Fund and therefore, includes all requested costs,
28

1 fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys’
2 fees in the amount of one-third, i.e. 33 1/3%, of the Gross Settlement Amount, equaling \$582,500.00;
3 (2) litigation costs, not to exceed \$35,000.00; (3) a class representative service award to Plaintiff in
4 the amount of \$5,000.00; and (4) notice and administrative costs, not to exceed \$79,500.00.
5 Greenstone Decl. ¶ 18; *see also* Agreement ¶¶ 3.2-3.4.

6 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
7 entire Net Settlement Fund of approximately \$1,057,584.11 shall be distributed pro rata and paid to
8 Authorized Claimants. Each approved claim shall be entitled to a pro rata share of the Net Settlement
9 Fund, subject to a per person cap of \$5,000.00. At the current 19% claims rate, this would be
10 approximately \$216.54 per Authorized Claimant. Payment will be made within 45 days of the
11 Settlement Effective Date. Greenstone Decl. ¶ 19; Agreement ¶¶ 1(r), 3.4, 3.5. As the Settlement does
12 not include wages, there is no tax allocation of settlement payments to Authorized Claimants.
13 Greenstone Decl. ¶ 20; Agreement ¶ 18.1. The proposed Agreement is a non-reversionary settlement.
14 All money from the Net Settlement Fund will be distributed to Authorized Claimants. No money
15 from the Settlement will revert to Defendant. Greenstone Decl. ¶ 21; Agreement ¶ 3.8.

16 **D. Release of Claims**

17 In exchange for participating in the Settlement, Plaintiff and Settlement Class Members who
18 do not request exclusion will release the Released Parties from all Released Claims. Agreement ¶
19 13.1. The release is narrowly tailored to only release claims based upon the facts alleged in the
20 operative complaint in the Action, for the Class Period. Greenstone Decl. ¶ 22; Agreement ¶ 13.1.

21 **E. Cy Pres Distribution**

22 Authorized Claimants will have 90 calendar days after the Claims Administrator issues
23 Settlement Payments (“Payment Void Date”) to cash their Settlement Payments. If any funds remain
24 in the Net Settlement Fund after Authorized Claimants have been paid, or from uncashed Settlement
25 Payments by the Payment Void Date, any remaining amount of the Net Settlement Fund shall be used
26 to make a Supplemental Payment to each Authorized Claimant (irrespective of the number of claims
27 made). If there are not enough funds to pay each claimant entitled to a Supplemental Payment of at
28 least \$10.00 (or there is still money left in the Net Settlement Fund after the Supplemental Payment

1 is made), then the remaining amount of the Net Settlement Fund shall be paid to Consumer Federation
2 of California (the “Cy Pres Beneficiary”). Agreement ¶ 3.6. The Cy Pres Beneficiary is a nonprofit
3 consumer advocacy organization dedicated to protecting consumer privacy and promoting justice for
4 all Californians in a manner consistent with the underlying purposes of the present litigation, and thus
5 satisfies the requirements of Code of Civil Procedure Section 384.³ Greenstone Decl. ¶ 23.

6 **IV. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

7 Eisner Advisory Group LLC (“Eisner Amper”) was appointed as the Claims Administrator.
8 Eisner Amper specializes in providing administrative services in class action litigation, and has
9 extensive experience in administering consumer protection and privacy class action settlements.
10 Greenstone Decl. ¶ 24.

11 The Settlement was preliminarily approved on October 28, 2024. Thereafter, the Claims
12 Administrator was provided the class member list by Defendant following Preliminary Approval.
13 Agreement ¶ 6.1. The class member list was comprised of 25,670 individuals. Admin. Decl. ¶ 6. The
14 Claims Administrator updated the address information provided by Defendant through the National
15 Change of Address database prior to initial mailing. Agreement ¶ 6.2. For phone numbers lacking full
16 contact details, Eisner Amper attempted reverse phone lookups to identify additional email and/or
17 mailing addresses, where available. *Id.* ¶ 6.3.2. On December 12, 2024, the Claims Administrator sent
18 the Email Notice to all Settlement Class Members on the class member list for whom Defendant
19 possessed an email address, and the Postcard Notice to all individuals on the class member list for
20 whom an address was available in Defendant’s records or could be found by the Claims Administrator.
21 *Id.* at ¶¶ 6.3, 6.3.1, 6.3.2, Exs. B, C; Admin. Decl. ¶ 8. Any Postcard Notice returned to the Claims
22 Administrator with a new forwarding address was remailed to the Settlement Class Member at the
23 new forwarding address. For any Postcard Notice returned as undeliverable, the Claims Administrator
24 performed an additional skip-trace and, if a new mailing address was obtained, re-mailed the Postcard
25 Notice to that updated mailing address. Agreement ¶ 6.3.2. Therefore, in total, the Claims
26

27
28 ³ See <https://consumercal.org>

1 Administrator was able to provide direct notice to approximately 92% of the Settlement Class.
2 Accordingly, the vast majority of the Settlement Class received the Email Notice and/or Postcard
3 Notice. Greenstone Decl. ¶ 25; Admin. Decl. ¶ 16.

4 Settlement Class Members have participated at a robust rate; none have taken issue with the
5 Settlement. To date, no Settlement Class Member has objected to or requested to be excluded from
6 the settlement. To date, there have been a total of 4,884 claims made, which is approximately 19% of
7 the Settlement Class which made claims.⁴ Thus, after administration expenses, fees, costs, and service
8 award, the average expected payout to each claimant is approximately \$216.54. Greenstone Decl. ¶
9 26; Admin. Decl. ¶ 18.

10 A Settlement Website (<https://www.callrecordinglawsuit.com/>) was also created and
11 maintained, and any changes of date or location of the final approval hearing will be given on the
12 Settlement Website. Agreement ¶¶ 1(t); 6.5. Both the Email Notice and Postcard Notice contained a
13 GUID link or QR code that Settlement Class Members can scan to link directly to the Claim Form on
14 the Settlement Website, making the claims process seamless and easy. *Id.* at ¶¶ 6.3.1, 6.3.2. The
15 Settlement Website shall be maintained until at least seven (7) calendar days after the Payment Void
16 Date, which may be up to 142 days after the Settlement Effective Date, depending on when the Claims
17 Administrator issues Settlement Payments to Authorized Claimants. *Id.* at ¶¶ 1(n), 3.5, 6.5. Greenstone
18 Decl. ¶ 27.

19 Following final approval of the Settlement, and within 21 days of the Settlement Effective
20 Date, Defendant shall fund the remainder of the Gross Settlement Amount.⁵ Thereafter, Settlement
21 Payments to Authorized Claimants shall be made within forty-five (45) calendar days of the
22 Settlement Effective Date or forty-five (45) calendar days after the deadline for submission of claims,
23 whichever is later. Agreement ¶ 3.5. Greenstone Decl. ¶ 28.

24
25
26 ⁴ The deadline for Settlement Class Members to submit a claim is March 12, 2025.

27 ⁵ Pursuant to the Agreement, on November 8, 2024, Defendant deposited with the Claims Administrator
28 \$38,985.50 of the Gross Settlement Amount to fund Settlement administration. Agreement ¶ 3.1.

1 **V. STANDARD OF REVIEW FOR FINAL APPROVAL**

2 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48
3 Cal.App.4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable,
4 whether certification of the class was proper, and whether the attorney fee award was proper are
5 matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91
6 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

7 Accordingly, a court’s decision to approve a class action settlement may be reversed only
8 upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
9 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors such as
10 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
11 the risk of maintaining class action status through trial, the amount offered in settlement, the extent
12 of discovery completed, the stage of the proceedings, the experience and views of counsel, the
13 presence of a governmental participant, and the reaction of the class members to the proposed
14 settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free
15 to engage in a balancing and weighing of the factors depending on the circumstances of each case.”
16 *Wershba*, 91 Cal.App.4th at 245 (disapproved on other grounds).

17 In considering the class settlement, the court need not reach any ultimate conclusions on the
18 issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising*
19 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the settlement
20 agreement is the best one that class members could have possibly obtained, but whether the settlement
21 taken as a whole is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 55
22 (2008). A settlement need not obtain 100 percent of the damages sought in order to be fair and
23 reasonable. *Wershba*, 91 Cal.App.4th at 251. Even if the relief afforded by the proposed settlement
24 is substantially narrower than it would be if the lawsuit was to be successfully litigated, that is no bar
25 to a class settlement because the public interest may indeed be served by a voluntary settlement in
26 which each side gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the
27 proponent of the settlement to show that it is fair and reasonable. *Id.* at 245. However, a presumption
28 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)

1 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
2 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *In re*
3 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

4 **VI. LEGAL ARGUMENT**

5 **A. The Settlement is Fair, Reasonable, and Adequate**

6 Because this Court preliminarily approved the Settlement, it necessarily determined that the
7 Settlement appeared to be fair, reasonable, and adequate after reviewing the *Dunk* factors mentioned
8 above, which were explained in detail in Plaintiff's Motion for Preliminary Approval, all of which
9 weigh in favor of the Court granting final approval of the Settlement.

10 **B. The Settlement Meets the Criteria Necessary for Final Approval**

11 The same factors that allowed the Court to preliminarily approve the settlement apply here and
12 are reinforced in these moving papers, including that: (1) the Settlement was reached through arm's-
13 length bargaining; (2) investigation and discovery were sufficient to allow counsel and the court to act
14 intelligently; and (3) class counsel are experienced in similar litigation. Additionally, the reaction of
15 the class members, which was unknown at preliminary approval, also supports the fairness,
16 reasonableness, and adequacy of the Settlement. *See generally*, Greenstone Decl. ¶¶ 29-39.

17 **C. The Settlement Was Reached Through Arm's Length Bargaining**

18 California courts recognize that "a presumption of fairness exists where . . . [a] settlement was
19 reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
20 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). As described above, the Settlement was
21 reached following a full day of mediation with the Honorable Ronald M. Sabraw (Ret.), a mediator
22 with substantial experience involving complex class actions. The mediation occurred only after
23 substantial formal and informal discovery and extensive analysis of the claims at issue. These
24 negotiations were at arm's length, non-collusive, and although conducted in a professional manner,
25 were adversarial. The proposed Settlement was reached at the end of a process that was neither
26 fraudulent nor collusive and was reached only after a full day of mediation which allowed the Parties
27 to reach a compromise of the hotly disputed claims with the help of the mediator. Greenstone Decl.
28 ¶ 29.

1 **1. There Was Sufficient Investigation And Discovery By Experienced**
2 **Counsel**

3 Settlement Class Counsel conducted significant investigation into the claims alleged by
4 Plaintiff before reaching a settlement in this matter. As mentioned above, Defendant provided all call
5 recordings with Plaintiff, as well as exemplars of those policies and customer agreements applicable
6 to all Settlement Class Members, including its Privacy Policies and online disclosures, during the
7 relevant time period from May 18, 2021 through February 8, 2022. This allowed Plaintiff to conduct
8 a comprehensive analysis of potential damages. The Parties extensively briefed the relevant issues,
9 provided their analysis to the mediator, and debated their respective positions. With the mediator's
10 help, the Parties were able to reach an agreement to settle this matter based on their analysis and
11 understanding of the case. Greenstone Decl. ¶ 30.

12 Moreover, the settlement negotiations were conducted by highly capable and experienced
13 counsel. Settlement Class Counsel's experience and the extensive investigation allowed Plaintiff to
14 enter this Settlement aware of the risks associated with the case and permitted Settlement Class
15 Counsel to negotiate an informed, reasonable, and intelligent Settlement. Greenstone Decl. ¶¶ 2-5,
16 31. After substantial discovery and investigation, it is Settlement Class Counsel's opinion that the
17 Settlement is in the best interest of the Settlement Class because it provides for a guaranteed result
18 over a reasonably short period of time as opposed to waiting years for the same, or possibly worse,
19 result. Greenstone Decl. ¶¶ 29-31.

20 **2. There Have Been No Objections To Or Requests To Be Excluded From**
21 **The Settlement**

22 California courts have consistently found that a small number of objectors indicates the class's
23 support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th at 250-51
24 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final
25 approval granted despite 9 objectors). Here, the Claims Administrator was able to provide direct notice
26 to approximately 92% of the Settlement Class. Admin. Decl. ¶ 16. As of the filing of this Motion, no
27 Settlement Class Member has objected to or requested to be excluded from the settlement, and there
28 have been a total of 4,884 claims made, which is approximately 19.0% of the Settlement Class which

made claims. Admin. Decl. ¶ 17. The lack of any objections and strong participation in the Settlement by the Settlement Class further demonstrate that the proposed Settlement is both fair and reasonable. Greenstone Decl. ¶¶ 37-38.

VII. THE ATTORNEYS' FEES REQUESTED SHOULD BE APPROVED

A. The Standard For Attorneys' Fees In A Class Action

Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.*

B. A Percentage of the Entire Fund is Appropriate

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged trial courts to follow class action federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981). The purpose of this equitable doctrine is to spread litigation costs proportionally among all the

1 beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d
2 at 769.

3 Courts have consistently recognized that class litigation is necessary to protect the rights of
4 individuals whose injuries and/or damages are too small to economically justify individual
5 representation. Accordingly, in determining a reasonable common fund fee award, courts award fees
6 to serve as an economic incentive for lawyers to engage in class litigation that will permit increased
7 access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. *See R.*
8 *Pearle, California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

9 Furthermore, a common fund award is not dependent on a determination of the actual amount
10 claimed out of the fund by those entitled—it is the creation of the fund that is the crucial fact. In
11 *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944), the California Supreme Court
12 expressly held that “it is equitable that [the attorney’s] compensation and expenses should come from
13 the entire fund saved for all classes concerned before it is distributed.” Likewise, *Lealao* expressly
14 recognizes that “in a traditional common fund case, [a percentage-based fee] may be calculated on the
15 basis of the total fund made available rather than the actual payments made to the class.” *Lealao*, 82
16 Cal.App.4th at 51; *see also Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980) (“a litigant or a lawyer
17 who recovers a common fund for the benefit of persons other than himself or his client is entitled to a
18 reasonable attorney’ fee from the fund as a whole.”). In *Wershba v. Apple Computer, Inc.*, the Court
19 of Appeal definitively decided the issue in favor of granting attorneys’ fees that are a percentage of
20 the total value of the settlement obtained by the efforts of counsel. In determining reasonable attorneys’
21 fees, the court valued a settlement based on the total value of the settlement made available to class
22 members. *Wershba*, 91 Cal.App.4th at 247 (disapproved on other grounds).

23 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on
24 the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to *Newberg*,
25 “. . . no general rule could be articulated as to what is a reasonable percentage of a common fund.
26 Usually, 50% of the fund is the upper limit on a reasonable fee award . . . though somewhat larger
27 percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement of a substantial
28

1 recovery with modest hours expended should not be penalized but should be rewarded for
2 considerations of time saved by superior services performed. *Id.*

3 The amount of attorneys' fees provided by the Agreement, i.e., 33 1/3% of the Gross
4 Settlement Amount, is clearly reasonable. Settlement Class Counsel risked substantial economic loss
5 when they took this case on a contingency basis, knowing that there would likely be a long battle with
6 an aggressive defense firm including the very real possibility of potential appeals. As a result of
7 Settlement Class Counsel taking on this risk and the efforts of Settlement Class Counsel, Settlement
8 Class Members will now be able to recover for these claims. The requested fee therefore makes sense
9 because (1) it is consistent with the private marketplace where contingent-fee attorneys are customarily
10 compensated on such a basis; (2) it aligns the interests of Settlement Class Counsel and absent class
11 members in achieving the maximum possible resolution of the case; and (3) it encourages the most
12 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement. As
13 such, Settlement Class Counsel has obtained a fair recovery for the Settlement Class which justifies a
14 fee award based on the percentage of the common fund. *See* Greenstone Decl. ¶¶ 40-43.

15 **C. The Fee is Reasonable Based on the *Dunkel* Factors**

16 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991),
17 the court identified twelve factors to be considered in determining whether fee awards are reasonable
18 in a common fund case: (1) the time and labor required, (2) the novelty and difficulty of the questions
19 involved, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other
20 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the
21 fee is fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount
22 involved and results obtained, (9) the experience, reputation and ability of the attorney, (10) the
23 undesirability of the case, (11) the nature and length of the professional relationship with the client,
24 and (12) awards in similar cases. The court in *Camden* noted that, "the analysis in a common fund case
25 focuses not on the plaintiffs' position as 'prevailing parties,' but on a showing that the fund conferring
26 a benefit on the class resulted from their efforts" and thus in common fund cases "the monetary results
27 achieved predominate over all other criteria." *Id.* at 774. Here, each of these factors favors the award
28

of attorneys' fees sought herein; however, Plaintiff will address some of the factors that are particularly relevant here.

1. The Value, Amount, and Results Achieved

The Settlement represents a fair resolution of this case given the risks inherent in litigating the matter through certification proceedings, trial, and possible appeals. Settlement Class Counsel obtained a non-reversionary Gross Settlement Amount of \$1,747,500.00. Although Settlement Class Counsel predicts that Plaintiff would prevail at trial, a number of risks reduced the case's value. For instance, as discussed extensively in Plaintiff's Motion for Preliminary Approval, Defendant asserted multiple defenses applicable generally to CIPA unlawful recording cases that posed an ever-present danger to achieving certification and prevailing at trial, including that the CIPA only applies to California residents and California phone area codes do not inherently indicate someone was a California resident at the time of the call. Defendant also asserted a First Amendment defense to Plaintiff's claims, arguing that it had a constitution/free speech right to engage in one-sided recordings, as such recordings constitute an exercise of speech because they are a form of protected expression, citing to the recent Ninth Circuit decision *Project Veritas v. Schmidt*, 72 F.4th 1043 (9th Cir. 2023). Defendant therefore contended that it could not be prohibited from and penalized for making such recordings by state laws like CIPA or that, at a minimum, determining whether penalizing Defendant would be constitutional requires recording by recording analysis. Defendant further indicated it would challenge and oppose class certification on consent, adequacy, typicality, and predominance grounds. Greenstone Decl. ¶ 34. However, despite these challenges, Defendant agreed to pay a Gross Settlement Amount of \$1,747,500.00, which will provide an average payment of approximately \$216.54 to the Authorized Claimants. *Id.* at ¶ 26; Admin. Decl. ¶ 18. This is an **outstanding** result; this amount is well *above* the range of settlements regularly approved in both state and federal court for CIPA cases; courts in California have approved as little as \$6.98 per class member. *Skuro v. BMW of N. Am., LLC*, 2:10-cv-08672 (C.D. Cal. Aug. 28, 2013) (approximately \$6.98 average gross settlement value per class member). *See also, e.g., Brown v. Def. Sec. Co.*, No. CV1207319CASPJWX, 2014 WL 12586786 (C.D. Cal. Mar. 18, 2014) (approximately \$9.29 average gross settlement value per class member); *Fanning v. HSBC Card Services Inc.*, No. SACV1200885JVSARNBX (C.D. Cal. May 5, 2014).

(approximately \$7.50 average gross settlement value per class member); *McCabe v. Six Continents Hotels, Inc.*, No. 12-CV-04818 NC, 2016 WL 491332 (N.D. Cal. Feb. 8, 2016) (approximately \$16.76 average gross settlement value per class member); *Zaw v. Nelnet Bus. Solutions, Inc.*, 3:13-cv-05788 (N.D. Cal. Dec. 1, 2014) (approximately \$11.41 average gross settlement value per class member); *Granina v. Eddie Bauer LLC*, L.A.S.C. Case No. BC569111 (April 23, 2018) (approximately \$19.29 average gross settlement value per class member); *Macomber v. Dermalogica, LLC*, S.D.S.C. No. 37-2020-0020451 (July 8, 2022) (approximately \$40 average gross settlement value per class member); *Saunders v. Cabelas Inc.*, S.F.S.C. No. CGC-14-537095 (August 8, 2017) (approximately \$26.61 average gross settlement value per class member); *Vaccaro v. Super Care, Inc.*, L.A.S.C. Case No. 20STCV03833 (March 10, 2023) (approximately \$10.07 average gross settlement value per class member); and *Vaccaro v. Delta Drugs II, Inc.*, L.A.S.C. Case No. 20STCV28871 (March 2, 2023) (approximately \$30 average gross settlement value per class member).

2. Time and Labor Required

Settlement Class Counsel have aggressively litigated this case from the initial pleading to the settlement of the Action. Settlement Class Counsel researched defenses raised by Defendant, investigated Defendant's policies, practices, and procedures, and analyzed an extensive document production. Settlement Class Counsel participated in case strategy and analysis and drafted, reviewed, and revised pleadings, including extensive investigation, analysis, and research prior to filing the lawsuit and during litigation and mediation. Even after an agreement was reached in principle, Settlement Class Counsel spent numerous hours drafting and revising the Settlement Agreement, drafting the motion for preliminary approval, and coordinating the notice process with the Claims Administrator. In total, this Action consumed approximately 402.5 hours of Settlement Class Counsel's efforts. *See* Greenstone Decl. ¶¶ 41, 43, 45. However, a settlement was finally achieved, despite all obstacles, because Settlement Class Counsel used their complex litigation experience and skills to obtain the settlement. *Id.*

In addition to Settlement Class Counsel's time, litigating this case also required counsel to incur significant costs. These costs included the costs for court filings and other costs associated with mediation and hearings. In total, approximately \$20,313.23 in costs were necessary to successfully

1 resolve this matter. *See* Greenstone Decl. ¶¶ 68-69, Ex. 8. In light of the time expended and carrying
2 of costs involved, the requested attorneys' fees are reasonable.

3 **3. The Skill Required to Perform Legal Services**

4 In addition to the time and effort required, this matter also required substantial skill to litigate
5 and Settlement Class Counsel were required to overcome numerous barriers in order to reach a
6 settlement. Defendant denied liability, felt very strongly about its ability to prevail both at the class
7 certification stage and on the merits, challenged the theories of Settlement Class Counsel, and mounted
8 several defenses that posed significant problems moving forward. Despite this, Settlement Class
9 Counsel were able to use their substantial experience in complex litigation to convince Defendant to
10 discuss a potential settlement rather than proceed with further litigation. Substantial skill was also
11 required in order to review and analyze Defendant's data, a complex process that took considerable
12 time and energy in order to determine Defendant's underlying practices and evaluate Defendant's
13 potential liability. Greenstone Decl. ¶ 44.

14 **4. Whether the Fee is Fixed or Contingent**

15 Whether the representation was provided on a contingency basis, as it was in this case, is an
16 important factor:

17 A contingent fee must be higher than a fee for the same legal services paid as they are
18 performed [and] [...] compensates the lawyer not only for the legal services he renders
19 but for the loan of those services. A lawyer who both bears the risk of not being paid
20 and provides legal services is not receiving the fair market value of his work if he is
21 paid only for the second of these functions.

22 *Cates v. Chiang*, 213 Cal.App.4th 791, 823 (2013).

23 The fact that this case was litigated on a contingent basis also strongly supports the award of
24 attorneys' fees requested by Plaintiff. If Settlement Class Counsel had been unsuccessful, they would
25 not receive any fee or recover any portion of the substantial expenses spent litigating this matter.
26 Settlement Class Counsel have borne all of the risks and costs of litigation and will not receive any
27 compensation until recovery is obtained in this case. These are the types of risks Settlement Class
28 Counsel faced litigating this matter on a contingent basis and this risk is a relevant factor when
considering the reasonableness of the requested fee. Greenstone Decl. ¶¶ 40, 66.

1 **D. The Fee is Reasonable Under a Lodestar Analysis**

2 While the percentage-of-the-benefit approach is endorsed as the better approximation of the
3 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to
4 “cross-check” the results of the other. This said, courts have cautioned that the primary basis of the fee
5 award in common fund cases remains the percentage of the fund method and have cautioned that class
6 counsel should not necessarily receive a lesser fee for achieving a speedy and timely result for class
7 members in need of immediate relief. *See e.g., Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1
8 (2002). Indeed, courts have noted that “it is widely recognized that the lodestar method creates
9 incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover
10 a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting *Camden I*
11 *Condominium Ass’n*, 946 F.2d at 773–74).

12 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates
13 for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-1132
14 (2001). Settlement Class Counsel is entitled to compensation for every hour reasonably spent on the
15 matter. *Id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply
16 multipliers between 1 and 4 to a party’s requested lodestar amount based on some of the same factors
17 identified above. *See Cates*, 213 Cal.App.4th at 822.

18 Settlement Class Counsel assigned three experienced class action litigators to this matter who
19 invested a total of 402.5 hours, corresponding to a combined lodestar of \$381,000.00. The \$582,500.00
20 requested fee award therefore represents a multiplier of 1.53 based on work performed to date. The
21 final approval hearing has yet to occur, and the claims deadline is not until March 12, 2025. Settlement
22 Class Counsel will expend further time preparing for final approval, responding to Settlement Class
23 Member inquiries and assisting them with the claims process, and overseeing Settlement
24 administration, reducing the current multiplier. The hours expended by Settlement Class Counsel
25 through January 30, 2025 by task are discussed in detail in the accompanying Greenstone Declaration.
26 The below table summarizes those hours by each timekeeper:

	Ben Donahue Admitted 2013 \$850/hour	Sharon Lin Admitted 2008 \$850/hour	Mark Greenstone Admitted 1998 \$1,100/hour
Pleadings	7.5	0	12.8
Legal Research	16.2	18.6	5.4
Law-and-Motion Matters	6.5	66.1	26.4
Discovery and Pre-Filing Investigation	45.4	1.6	29.5
Mediation and Settlement	37	17.1	58.2
Case Management	28	3	23.2
Total Hours	140.6	106.4	155.5
Lodestar	\$119,510.00	\$90,440.00	\$171,050.00

Greenstone Decl. ¶¶ 47-62. As discussed below, the time invested by counsel, counsel's hourly rates and the resulting multiplier are all reasonable and well within the range of what has been approved in the past.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant raised significant defenses and denied liability. Settlement Class Counsel invested significant time and labor into this matter even before the action was filed to investigate Defendant's practices, review publicly available information concerning Defendant, understand Plaintiff's experience and draft the complaint. Settlement Class Counsel undertook formal and informal discovery prior to mediation to further evaluate Defendant's policies, practices, business model and merits-based issues in order to fully understand the strengths and weaknesses of Plaintiff's claim and value the case.. This required a time-consuming combination of factual analysis and legal research. Additionally, long and difficult battles, including complicated and time-consuming research and motion work, would have followed had the case moved forward.

1 After an agreement was reached in principle, Settlement Class Counsel spent significant time
2 negotiating the terms of the final Settlement Agreement over an eight-month period to obtain the best
3 possible outcome for the class. Settlement Class Counsel conservatively worked a total of 402.5 hours
4 on this matter (which does not include any anticipated attorney hours through final approval, including
5 assisting the Claims Administrator and reviewing reports, preparing for and attending the Final
6 Approval Hearing, overseeing the initial settlement award distribution and/or any *cy pres* award of
7 unclaimed funds, and attending any post-accounting hearing). *See* Greenstone Decl. ¶¶ 51-62. This
8 work included, but is not limited to, drafting the initial pleadings, conducting research into claims and
9 defenses presented by Defendant, communicating with Plaintiff, conferences with Defendant's
10 counsel, attending hearings with the Court, reviewing and analyzing records, policies, and
11 memorandum in preparation for settlement discussions, drafting the mediation brief, attending the
12 mediation, negotiating and drafting the Settlement Agreement and related documents over a period of
13 many months, and drafting the Motion for Preliminary Approval as well as the present briefing.
14 Accordingly, Settlement Class Counsel spent a reasonable amount of time on this matter. *Id.*

15 **2. Settlement Class Counsel's Hourly Rate is Reasonable**

16 Both California and federal courts recognize that attorneys should be compensated for
17 providing representation on a contingency basis and for taking on the risks associated with said
18 representation, as well as being provided with financial incentives to enforce important rights and
19 protections like those at issue in the Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
20 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
21 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates
22 for winning contingency cases." *Id.*

23 The proposed hourly rates for Settlement Class Counsel are reasonable. In the case of a lodestar
24 analysis, the reasonable hourly rate is that prevailing in the community for similar work. *Ketchum*, 24
25 Cal. 4th at 1132. As detailed in the concurrently filed Greenstone Declaration, Settlement Class
26 Counsel's rates are consistent with the Laffey Matrix—a widely recognized compilation of attorney-
27 rate data frequently used to compute fee awards—as adjusted for California. *See, e.g., Bond v.*
28 *Ferguson Enters., Inc.*, No. 1:09-CV01662 OWW MJS, 2011 WL 2648879, at *12 (E.D. Cal. June

30, 2011). The lodestar, in turn, may be adjusted up or down based on the number of years the attorneys have been practicing and the subject-matter area in which they focus, among other factors. *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 504 (2016). As explained in the accompanying Greenstone Declaration, the rates of pay are reasonable in the California legal markets for attorneys who handle complex employment-related class actions. Greenstone Decl. ¶¶ 48-51.

3. The Application of a Modest 1.53 Multiplier is Reasonable and Appropriate

The lodestar amount may be increased by applying a multiplier. *See Serrano v. Priest*, 20 Cal.3d 25, 49 (1977). In California, “[m]ultipliers can range from two to four or even higher” and are routinely applied in the range requested by Settlement Class Counsel. *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier); *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of 1-4 are commonly applied). Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other employment; and (4) the contingent nature of the fee award and the associated risk. *See Ketchum*, 24 Cal.4th at 1132. Courts have also noted that benefit obtained for the class and the results obtained are an important factor when considering whether a lodestar should be adjusted or a multiplier applied. *See Lealao*, 82 Cal.App.4th at 46 (finding amount at stake and result obtained by counsel relevant factors justifying enhancement of lodestar fee through use of a multiplier).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to fully compensate counsel for the loan of legal services and encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133. Similarly, in *Greene v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned

1 compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to
2 approximate market-level compensation for such services, which typically includes a premium for the
3 risk of nonpayment or delay in payment of attorney fees.” *Id.*

4 Here, the application of a multiplier of approximately 1.53 is appropriate. This is based on
5 402.5 hours of attorney work, with an attorney lodestar of \$381,000, as indicated above. *See e.g.*,
6 *Barovic v. Ballmer*, 2016 U.S. Dist. LEXIS 6671, 2016 WL 199674, *4 (W.D. Wash. 2016) (multiplier
7 of 2.5); *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 U.S. Dist. LEXIS 121641, *29
8 (N.D. Cal. Aug. 29, 2014) (discussing the range of multipliers awarded in various consumer privacy
9 class action settlements and finding a multiplier of 2.59 appropriate); *Van Vranken v. Atl. Richfield*
10 *Co.*, 901 F.Supp. 294, 298-99 (N.D. Cal. 1995) (holding that a multiplier of 3.6 was “well within the
11 acceptable range for fee awards in complicated class action litigation” and that “[m]ultipliers in the 3-
12 4 range are common”); *Malta v. Freddie Mac & Wells Fargo Home Mortgage*, No. 10-cv-1290, Dkt.
13 Nos. 56-1 and 91 (S.D. Cal. June 16, 2013) (approved a multiplier of 5.157); *Gutierrez, et al. v.*
14 *Barclays Group, et. al.*, No. 3:10-cv-01012, Dkt. No. 57 (S.D. Cal. Mar. 12, 2012) (approved a
15 multiplier of 4.55); *Sherman v. Kaiser Foundation Health Plan*, No. 3:13-cv-00981-JAH-JMA, Dkt.
16 No. 58 (S.D. Cal. May 12, 2015) (approved a multiplier of 4.092).

17 The higher than typical individual class member recovery in this CIPA case further justifies
18 the requested award of attorneys’ fees based on a reasonable multiplier. *See Ketchum, supra*, 24 Cal.
19 4th at 1139 (court can award multiplier for an exceptional quality of representation); *see also Graham*
20 *v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 582 (2003) (enhancement to multiplier justified when
21 exceptional effort produces exceptional benefit). *See e.g.*, *Reed v. 1-800 Contacts, Inc.*, No. 12-cv-
22 02359 JM, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. Jan. 2, 2014) (individual recovery if 100% of the
23 settlement class submitted valid claims in a CIPA action was estimated at \$83.08); *McDonalds v. Bass*
24 *Pro Outdoor Work, LLC*, No. 13- cv889-BAS(DIB), Dkt. No. 55 (S.D. Cal. Dec. 18, 2014) (estimated
25 individual recovery if 100% percent of the class submitted valid claims was \$120.82); *Ridge v. Infinity*
26 *Sales Grp., LLC*, No. CV 12-6985-GW (SHx), 2014 U.S. Dist. LEXIS 206340 (C.D. Cal. July 24,
27 2014) (the estimated individual recovery if all settlement class members submitted a valid claim in a
28 CIPA action was estimated to be \$10.54); *Cohorst v. BRE Properties, Inc.*, No. 10-cv-2666 JM, 2012

1 WL 153754, Docket Nos. 101, 109 (S.D. Cal. 2012) (\$5.5 million settlement for approximately
2 1,170,584 potential class members, or \$4.70 per person); *McCabe v. Six Continents Hotels, Inc.*, No.
3 12-cv04818, 2015 U.S. Dist. LEXIS 85084, at *27-29 (N.D. Cal. June 30, 2015) (collecting cases
4 approving CIPA settlements of \$1-\$7.50 per class member).

5 This matter involved difficult questions and required substantial skill by Settlement Class
6 Counsel in order to obtain a settlement for the class. Settlement Class Counsel were able to utilize
7 their expertise in class litigation in order to overcome complex and difficult issues and obtain a
8 settlement on behalf of the putative class members where other counsel may have been unable to
9 achieve these results. Greenstone Decl. ¶ 65.

10 Finally, Settlement Class Counsel expended significant time and resources on a contingent
11 basis and in the process assumed considerable risk. This risk is particularly relevant here in light of
12 the complex questions related to certification of the proposed claims and substantial hurdles that were
13 required to be overcome. Given the complex nature of these claims many attorneys would have been
14 unprepared to litigate these claims and unable obtain the substantial settlement reached by Settlement
15 Class Counsel. Greenstone Decl. ¶ 66.

16 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
17 multipliers are not awarded to class counsel in the cases that are successfully settled, class counsel will
18 not be fully compensated because the lodestar in and of itself cannot account for contingent risk
19 associated with the litigation. Further, a decision to withhold a multiplier not only fails to compensate
20 attorneys for this associated risk, but actively penalizes counsel who obtain a timely and efficient
21 result. Thus, given the contingent risk incurred by Settlement Class Counsel, the difficulty of the
22 questions involved, the benefit conferred on the Settlement Class, and the skill displayed by Settlement
23 Class Counsel, the application of a multiplier is appropriate. For these reasons, Plaintiff respectfully
24 requests that the Court grant the requested attorneys' fees in the amount of \$582,500.00. Greenstone
25 Decl. ¶ 67.

26 **VIII. THE COSTS REQUESTED ARE FAIR AND REASONABLE**

27 Settlement Class Counsel request the reimbursement of the costs incurred litigating this case
28 in the amount of \$20,313.23. These costs include filing fees, costs for attending hearings with the

1 Court, mediation fees, as well as reasonably anticipated future costs associated with the filing of this
2 motion and the settlement distribution process. These costs are substantially less than the \$35,000
3 permitted under the settlement meaning an additional \$14,686.77 will be distributed to Authorized
4 Claimants. These costs were both reasonable and necessary for the successful resolution of these
5 matters, and should be approved by the Court. *See* Greenstone Decl. ¶¶ 68-69, Ex. 8.

6 **IX. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

7 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
8 compensation “for the expense or risk they have incurred in conferring a benefit on other members of
9 the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). The criteria courts
10 may consider in determining whether to make an incentive award include: (1) the risks faced by the
11 class representative; (2) the notoriety and personal difficulties encountered by the class representative;
12 (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation;
13 and (5) the personal benefit (or lack thereof) to the class representative as a result of the litigation. *See*
14 *Van Vranken*, 901 F.Supp. at 299 (approving \$50,000 enhancement payment); *Gaudin v. Saxon*
15 *Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of
16 \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at * 9
17 (E.D. Cal. Aug. 10, 2015) (approving service award of \$15,000).

18 Here, the requested Class Representative Service Award of \$5,000 to Plaintiff Chris Swearingin
19 is fair and appropriate based on the substantial time and effort Plaintiff invested in bringing the case
20 and assisting counsel with the development of the case. Plaintiff initiated and has stepped forward in
21 the lawsuit on behalf of all Settlement Class Members, who will now benefit from the Settlement.
22 Plaintiff invested his personal time and effort into the Action, including reviewing documents as
23 requested, and multiple discussions with Settlement Class Counsel. *See* Declaration of Chris
24 Swearingin (“Swearingin Decl.”) ¶¶ 6-8. As a result of Plaintiff’s actions, Plaintiff helped recover over
25 one million dollars for his fellow class members including an average payment of approximately
26 \$216.54 to the Authorized Claimants. These services unquestionably merit the requested Class
27 Representative Service Award. Greenstone Decl. ¶¶ 70-71; Swearingin Decl. ¶¶ 3-11.

1 **X. PAYMENT TO THE ADMINISTRATOR**

2 The Settlement Agreement estimates an award of up to \$79,500 to the Claims Administrator,
3 Eisner Advisory Group LLC, for the costs associated with the administration of the settlement. This
4 estimate was based on the typical consumer class action claims rate, which is often in the single digits.
5 The Claims Administrator is a necessary third-party who has and will perform substantial services on
6 behalf of the putative class including sending the notice and administration of future settlement
7 payments. The Claims Administrator's costs associated with the administration of the Action are
8 \$82,102.66 due to the higher than anticipated claim volume. Both parties agree that the Claims
9 Administrator should be fully compensated for the very reasonable amount in excess of the estimated
10 administration costs in light of the claims rate. Accordingly, the payment of \$82,102.66 to the
11 Administrator for its past and future services should be approved by the Court. Greenstone Decl. ¶ 72;
12 Admin. Decl. ¶ 20.

13 **XI. CONCLUSION**

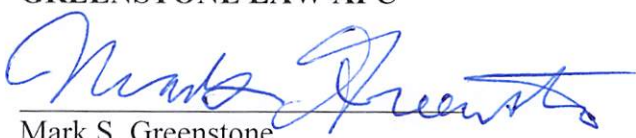
14 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
15 Motion for Final Approval and sign the proposed Final Approval Order, which is submitted herewith.

16
17 Respectfully submitted,

18 DATED: February 3, 2025

GREENSTONE LAW APC

19
20 By:


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