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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CALIFORNIA CHIROPRACTIC ASSOCIATION, on behalf of itself and its members,

Plaintiff,

vs.

MEDRISK, LLC; MEDRISK HOLDCO, LLC; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RG19045051

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR UNOPPOSED ATTORNEYS' FEES, COSTS AND SETTLEMENT ADMINISTRATION EXPENSES

Date: August 15, 2023
Time: 3:00 p.m.
Dept.: 23
Judge: Hon. Brad Seligman

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I. INTRODUCTION

Plaintiff California Chiropractic Association ("Plaintiff" or "CCA"), through its counsel, respectfully submits this memorandum in support of Plaintiff's Motion for an Award of Unopposed Attorneys' Fees, Reimbursement of Expenses, and Settlement Administration Expenses in this class action against Defendants MedRisk LLC and MedRisk Holdco, LLC (together, "MedRisk" or the "Defendants"). (Plaintiff and Defendants are together referred to herein as "the Parties"). On May 19, 2023, this Court granted Preliminary Approval of the Stipulation and Agreement of Settlement Agreement ("Settlement") and certified the Settlement Class.[1]

This memorandum is filed pursuant to this Court's Order Granting Motion for Preliminary Approval of Class Action Settlement and in advance of the July 18, 2023 deadline for Settlement Class Members to file an objection to the Settlement. *In re Mercury Interactive Corp. Secs. Litig.*, 618 F. 3d 988, 994 (9th Cir. Cal. 2010) (requiring plaintiff's counsel's request for an award of fees to be filed prior to the deadline for objections).

The Settlement is the product of nearly four years of litigation, including over a year of arm's-length negotiations between the Parties that involved a full-day mediation before the Hon. Louis Meisinger (Ret.), a highly respected and experienced mediator. Under the Settlement, MedRisk has agreed to substantial and comprehensive prospective injunctive relief that directly remedies the unfair and unlawful business practices alleged in this Action on the terms set forth in the Settlement, as described in detail below and in the concurrently filed Declarations of Zev B. Zysman ("Zysman Decl.") and Jordan L. Lurie ("Lurie Decl.") in Support of Plaintiff's Motion for an Award of Attorneys' Fees, Expenses and Settlement Administration Expenses. This action enforces a critical public policy and signals to industry watchers and other cost-containment "middleman" who operate in the grey zone of California's workers' compensation system that the alleged practice of referring injured workers to those of its contracted health care

[1] The memorandum incorporates by reference the definitions in the Stipulation and Agreement of Settlement (the "Stipulation" or "Settlement") filed with the Court on April 26, 2023. All capitalized terms used herein, shall refer to, and have the same meaning, as those used in the Settlement unless otherwise indicated.

professionals who acquiesce to the deepest discounts is prohibited and that compliance with electronic billing requirements will be enforced. This Action does not seek damages or any monetary relief. Separate and independent from the agreed upon business practice adjustments and restrictions, MedRisk has also agreed, pursuant to the Settlement, to file a Licensure Application with the Division of Workers' Compensation of the California Department of Industrial Relations ("DWC") seeking licensure as a Medical Provider Network ("MPN").

Plaintiff now seeks an award of $1,300,000 for attorneys' fees and costs for the efforts of Settlement Class Counsel (also referred to as "Plaintiff's Counsel "Class Counsel"), which is the amount provided for in the Settlement. *See* Stipulation at §D.1-D.2. The requested fees are fair and reasonable and commensurate with the nature of the suit, the amount of effort involved, the skill shown by experienced Settlement Class Counsel, the work involved in prosecuting this matter, and the excellent results obtained for the Settlement Class in the face of legal uncertainty. The requested fees are less than Settlement Class Counsel's actual lodestar and represent a *negative* multiplier. The award of attorneys' fees and costs will not diminish, directly or indirectly, the settlement benefits to the Settlement Class, as such amounts are to be paid separate and apart from the Settlement Class benefits. To date, no Class Member has objected to the amount of requested fees and expenses, which was fully disclosed in the Settlement Class Notices.

By this Motion, Plaintiff also seeks to be reimbursed for the out-of-pocket costs that it expended for settlement notice and administration. *See* Stipulation at §§A.3, A.14.

For all of the reasons set forth below and in the supporting Declarations, Plaintiff's requests for attorneys' fees, costs, and settlement administration expenses are reasonable under California law and should be granted.

II. SUMMARY OF LAW, FACTS, AND PROCEDURAL HISTORY

A. Procedural History

On Oct. 23, 2019, CCA filed a complaint (the "Federal Complaint") against Defendants in the United States District Court for the Southern District of California, commencing the matter

entitled *California Chiropractic Association v. MedRisk Holdco, LCC, et al.*, Case No. 19CV2040 LAB BLM (the "Federal Action"). In the Federal Complaint, Plaintiff asserted that the Defendants violated California Business and Professions Code §§ 17200 *et seq.*, (the "UCL") as well as certain other provisions of the California Business and Professions Code, the Insurance Code, the Labor Code, and the Health and Safety Code, and sought prospective injunctive relief only on behalf of its approximately 1,800 California chiropractor members with regard to such practices.

On November 5, 2019, the District Court issued an Order to Show Cause Re Subject Matter Jurisdiction based on lack of diversity of citizenship. On November 25, 2019, following an exchange of confirmatory information concerning the citizenship of MedRisk, CCA agreed to voluntarily dismiss, without prejudice, the Federal Action and refile in State Court. On November 27, 2019, CCA re-filed its case in the Alameda County Superior Court, asserting a single claim for violation of the UCL based on substantially the same allegations asserted in the Federal Complaint.

On April 27, 2020, Defendants filed a Demurrer as to the original Complaint. Defendants argued that Plaintiff lacked the threshold requirement of organizational and associational standing under the UCL to bring suit primarily as a representative action on behalf of its chiropractor members. In response to the Demurrer, on June 19, 2020, CCA filed an amended complaint ("FAC") in the Action, adding certain allegations establishing organizational/associational standing and asserting the claims as a putative class action. On July 21, 2020, Defendants filed a Demurrer as to the FAC on essentially the same grounds. After full briefing, on September 28, 2020, the Court issued an Order overruling the demurrer to the FAC in its entirety. On October 13, 2020, Defendants answered the FAC, by generally denying the allegations made therein and asserting various affirmative defenses.

B. Claims and Allegations

Plaintiff alleges in the FAC that MedRisk engages in the systemic practice of illegally referring injured workers to those of its contracted chiropractors who acquiesce to the deepest

discounts. Plaintiff alleges that in essence, MedRisk acts as an illegal middleman in the health care industry. FAC, ¶ 34.[2] MedRisk contracts with payors of workers' compensation services and then solicits deep discounts of a specified amount from its contracted chiropractors as an inducement to send them more referrals. ¶ 37. MedRisk's payor clients do not directly pay health care professionals' claims. Rather, MedRisk pays these claims and pockets the difference between what MedRisk is paid by payors and what MedRisk pays these professionals, creating a direct financial incentive to make referrals to the providers who have acquiesced to the deepest discounts. *Id*.

The FAC further alleges that MedRisk is paid by workers' compensation payors, at least in part, based on the number of referrals it makes and the size of the discount it has obtained from the chiropractors it has contracted with to provide treatment services to injured workers. ¶ 66. The larger the discount it has negotiated, the larger the amount it retains from the employer or insurer who ultimately pays for the services provided to injured workers, with MedRisk keeping the "spread" between the contracted rates between MedRisk and the payor on the one hand, and MedRisk and the chiropractor on the other. *Id*. Effectively, the FAC alleges that, MedRisk is operating an illegal referral system whereby MedRisk maximizes the compensation it receives from its payor clients by referring injured workers only to its chiropractors who agree to the lowest rates. ¶ 37. MedRisk handles the referral and initial scheduling of appointments for the vast majority of these injured workers, and otherwise makes it difficult or impossible for the injured workers, their attorneys, or their primary treating physicians to schedule appointments themselves. Thus, MedRisk is benefited by steering injured workers who require chiropractic treatment services directly to those providers who capitulate to its demands. ¶¶ 2, 37, 38, 45. It is alleged that MedRisk's conduct violates a host of California Labor Codes, including, *inter alia*, California Labor Code §§ 139.32(c), 3215, and 3820. ¶¶ 3, 4, 53, 69-71. These laws are specifically designed to protect injured workers. To remedy these violations, the FAC seeks an order that MedRisk cease from the practice of illegally referring patients to

[2] Citations to "¶" are to the FAC.

providers based on lower rates and pocketing the difference, which affects the ability of Plaintiff's members to do business, is injurious to the public, and is an illegal and unfair business practice.

In addition to MedRisk's systemic policy of making illegal referrals, the FAC alleges that MedRisk's claims handling and payment activities further violate the entire system governing the electronic handling and payment of bills for workers' compensation medical treatment. Specifically, MedRisk's failure to (1) accept electronic claims, (2) acknowledge their receipt electronically upon submission, (3) process and pay those claims expeditiously, (4) provide prompt, clear explanations for any claim contest or denial ("Explanation of Review"), and (5) abide by the internal and external billing dispute mechanisms violates California Labor Code §§ 4603.2, 4603.4 and 4603.6 and their implementing regulations, 8 C.C.R. §§ 9792.5.1 *et seq*. ¶¶ 93-100. To remedy these billing violations, the FAC also seeks an order requiring MedRisk to comply with all legal requirements regarding electronic billing.

C. Discovery and Investigation Conducted

Prior to and subsequent to the filing of this Action, Settlement Class Counsel conducted an extensive investigation and independent research regarding the underlying facts. Zysman Decl. at ¶¶7-8. Moreover, Settlement Class Counsel engaged in informal discovery with respect to the facts and law at issue in this Action. Specifically, over a period of more than eight months, Plaintiff's Counsel worked closely with CCA's leadership, including Dawn Benton, Executive Vice President and CEO of CCA and Dr. Wayne Whalen, former President of CCA, and chair and/or co-chair of CCA's workers' compensation committee for more than 20 years. As part of an in-depth investigation, Plaintiff's Counsel interviewed multiple professional chiropractor CCA members who had existing provider contracts with MedRisk to determine if these providers were pressured to lower prices, threatened with termination or reductions in referrals, or actually been terminated or otherwise lost patients and business, all in a manner in contravention with the California laws, including, *inter alia*, California Labor Code §§ 139.32(c), 3215, and § 3820. Based on these communications, Plaintiff's Counsel confirmed

that, over the course of many years, patients have been steered away from their preferred chiropractor providers who are members of CCA during a session of care simply because their clinic is not the lowest cost provider that contracts with MedRisk. In addition, Plaintiff's Counsel confirmed that CCA's members with existing contracts with MedRisk regularly experienced systemic issues involving electronic handling and payment of bills for workers' compensation medical treatment. *Id*.

Moreover, Plaintiff's Counsel carefully reviewed and considered a confidential Survey conducted in 2018 and 2019 of member and non-member providers who had existing contracts with MedRisk. *Id*. The results of the focused Survey showed that MedRisk engaged in a systemic policy of making illegal referrals based on lower rates and assigning injured workers to the providers who acquiesced to the deepest discounts. The Survey also showed a failure on MedRisk's part to comply with all legal requirements of electronic billing. *Id*.

Thereafter, once the Parties opted to explore resolution of this Action, MedRisk and CCA exchanged on an informal basis additional information and documentation, which Settlement Class Counsel used to evaluate and analyze the prospects for settlement. *Id*. As part of the informal discovery process, MedRisk produced approximately 2,000 pages of documents. These documents included, among other things, internal data collected in September 2019 and from January 1, 2020 through October 31, 2020. The data pertained to thousands of California contracted providers and showed MedRisk's billing and referral practices based on pricing during the Class Period. Moreover, Plaintiff's Counsel had the opportunity to engage in a lengthy dialogue directly with MedRisk's personnel on a multitude of issues relative to the allegations and claims in the operative Complaint. *Id*.

In sum, by the time Plaintiff agreed to the Settlement, Settlement Class Counsel had obtained more than sufficient information and documentation concerning the factual predicates underlying the allegations and claims asserted in the Action, including, *inter alia*: (i) MedRisk's practice of soliciting and receiving allegedly improper payments for the referral of healthcare services and managing services provided to injured workers in violation of specific provisions of

the California Business and Professions Code, the Insurance Code, the Labor Code, and the Health and Safety Code; (ii) experiences of CCA members who have been allegedly pressured to lower prices, been threatened with termination or reductions in referrals, or have actually been terminated or otherwise lost patients and business, all in a manner in contravention with the California laws; (iii) complaints of CCA members relating to electronic billing/payment disputes with MedRisk; and (iv) regulatory and legislative efforts, among other measures, to curtail MedRisk's alleged referral practices based on discounted rates.

D. Mediation Before the Hon. Louis Meisinger (Ret.)

On February 28, 2022, the Parties, and each of their principals, including the then CEO of MedRisk, attended an all-day mediation in Los Angeles, with the Hon. Louis Meisinger (Ret.), a highly-respected mediator. The mediation was the result of months of informal settlement negotiations between counsel for the Parties. Settlement Class Counsel provided the mediator with Plaintiff's detailed confidential mediation statement, summarizing the evidence and discovery that counsel had marshalled and synthesized, the state of the applicable law, potential class-wide exposure, and a proposed settlement structure. Defendants submitted their own brief arguing, among other things, that no class could be certified and that they would also prevail on the merits against Plaintiff. While the Parties were unable to reach a settlement at the close of the mediation, significant progress was made with the assistance of Judge Meisinger and, over the ensuing months, the Parties continued intensive settlement discussions via telephone and email. The settlement negotiations were complicated, protracted, and often contentious. Zysman Decl., at ¶9.

After nearly eight months of continued negotiations subsequent to mediation, the Parties finally agreed to the material terms of the injunctive relief settlement; and, over the following months, worked to finalize the Settlement consistent with the terms agreed upon. Each aspect of this Settlement was vigorously negotiated, including the "Scorecard," "Scheduling Criteria" and "Transparency and Process Management Procedures," and the Class Notices. The Parties

subsequently drafted and executed the Stipulation currently before the Court. Zysman Decl., at ¶9.

E. Entry of Order Granting Preliminary Approval of the Settlement

On May 16, 2023, the Parties appeared before the Court on the motion for preliminary approval of the Settlement, which the Court granted.

III. SETTLEMENT TERMS

The Settlement resolves all claims of Plaintiff and the proposed Settlement Class against MedRisk related to the alleged systemic policy of making illegal referrals and processing of electronic billings. The Settlement is for injunctive relief only, which is the only relief sought in the FAC. This Action does *not* seek restitution or any monetary relief. A summary of the Settlement terms are as follows:

A. Class Definition

> All members of California Chiropractic Association, located in the State of California, that provided chiropractic treatment services to injured workers in California during the four (4) years preceding June 19, 2020, through the date of final judgment (the "Settlement Class Period") in the matter of *California Chiropractic Association v. MedRisk, LLC et al.*, Superior Court of the State of California for the County of Alameda, Case No. RG19045051 (the "Action").

See Stipulation at §A.25.

B. Injunctive Relief

The Settlement provides for significant and robust injunctive relief to the Settlement Class. Specifically, MedRisk agrees that, commencing no later than ten business days following the Effective Date, and continuing to and including the last day of the Effective Period, MedRisk will implement or comply with the following business practice adjustments, therapeutics, or restrictions, with respect to patients and Chiropractors within the State of California:

a. MedRisk will implement, utilize, and apply, in connection with the scheduling or assignment of patients within the State of California, the "Scheduling Criteria" described in more detail in the Stipulation.

b. MedRisk will implement, utilize, and comply with the "Transparency and Process Management Procedures" described in more detail in the Stipulation.

c. MedRisk will comply with the provider bill of rights set forth within Section 1375.5 of the California Health & Safety Code.

d. During the Effective Period, MedRisk agrees to forward to MedRisk payors, in full, without discounting, all separately billed Evaluation and Management ("E&M") Services delivered by Chiropractors. MedRisk will notify MedRisk payors that these separately billed Services are not subject to discounting under the MedRisk-payor agreement and will use its commercially reasonable best efforts to ensure that its systems are properly instructed, so that the E&M Services so billed and identified herein are not subject to discounting. Alternatively, Chiropractors may choose to bill MedRisk payors directly for E&M Services provided to Covered Persons. As used in this Settlement Agreement, E&M Services include without limitation: CPT Codes 99201-99205, 99212-15, 993358, 99359, G2212 or such E&M Services adopted by the California Division of Workers Compensation into the OMFS subsequent to the date of this Settlement.

e. In the event that OMFS is increased during the Effective Period, MedRisk will proportionately increase the rate of reimbursement provided to directly contracted Chiropractors whose reimbursement is based upon OMFS. For the purpose of this provision, "proportional," with respect to contracted Chiropractors whose reimbursement is based upon OMFS, means that the increase in reimbursement is proportional to the increased OMFS rate for contracted services.

f. MedRisk will not change the "preferred" status or otherwise retaliate against any Chiropractor who seeks to renegotiate their contract. Pursuant to Labor Code Sections 3215 and 3829(a)(b)(3), MedRisk will not penalize a current Chiropractor or any Chiropractor whose rate is available to MedRisk through a subcontract or leased access or any future Chiropractor whether directly contracted or whose services are available through a subcontract or leased access on the basis that the Chiropractor has requested modification of an agreement with MedRisk, submitted a grievance to MedRisk, or otherwise exercised their rights under the terms of this Stipulation.

g. Unless authorized to do so by the State of California, MedRisk will not hold itself out in any written communications with injured workers, the general public, its clients and prospective clients of any kind (including published or online listings of Chiropractic Networks) as chiropractors. MedRisk further agrees that it will not make any communications to Chiropractors indicating that they will receive more injured worker referrals if they lower their rates or based on being in a particular rate tier. In addition, MedRisk will not communicate, offer, suggest, or deliver fewer referrals to a Chiropractor solely because that Chiropractor establishes a new contract, or renegotiates a contract for a higher rate.

h. MedRisk will not solicit, request, receive or accept any discount from any of its contracted Chiropractors nor provide any consideration to its clients in exchange for any offer, suggestion or agreement with the Chiropractor to receive or be in receipt of, preferential referrals of injured workers within their network. MedRisk will not offer any inducement, consideration for future referrals, bonus score, or preferential tiering to Chiropractors who contact MedRisk following a direct communication from a claims administrator.

i. MedRisk will not interfere with or redirect referrals made by the injured worker's primary treating physician ("PTP") which have been approved by a claims adjustor or requested by the injured worker. Except to schedule an appointment with the entity approved by the claims adjustor or requested by the injured worker,

MedRisk will not contact the PTP or injured worker for the purpose of redirecting to a different provider once it has notice that the adjuster has approved a referral to a specific Chiropractor.

j. MedRisk will at all times cause compliance with requirements of the California Labor Code, including Section 4603.4, its implementing regulations, 8 C.C.R. section 9792.5.0, *et seq*., regarding but not limited to, content and delivery of Explanations of Review ("EOR").

k. MedRisk will provide written notice to each contracted Chiropractor, in a mutually agreeable form, that provides as follows: "Participating Provider shall have the right to transmit electronic bills consistent with the requirements set forth in the California Division of Worker's Compensation Medical Billing and Payment Guide and the California Division of Workers' Compensation Electronic Medical Billing and Payment Companion Guide through all clearinghouses authorized by the Division of Workers' Compensation. From the date of Settlement, MedRisk shall process all claims consistent with these California e-billing requirements without additional charge by MedRisk."

l. MedRisk will notify all contracted Chiropractors that they may, but will never be required to, opt in to any particular method of payment of their bills which may include but not be limited to, "virtual cards," ACH and checks. MedRisk will opt chiropractors into DWC-approved free electronic claims payment at the request of Chiropractors, as required by the Labor Code. Furthermore, current and future Chiropractors will be notified by MedRisk regarding their choice for free electronic claims payment, specifically citing the California Labor Code. Alternative payment methods may not be promoted or used by MedRisk as an inducement to participate in any MPN or other network model, or gain injured worker referrals.

m. MedRisk will provide to the contracted Chiropractor a copy of any remittance advice generated as a result of the Chiropractor's billed services, in the event that any billed services were denied and/or reduced. Further, MedRisk will ensure that the remittance advice provided by it to the Chiropractor contains all relevant reason and remark codes and will provide a phone number on each of its EORs, EOBs or other remittance advice that contracted Chiropractors can use to speak to a MedRisk billing professional for questions or disputes or non-payment of claims. MedRisk will also use commercially reasonable efforts to ensure that the Chiropractor is able to contact the claims administrator and licensed utilization reviewer known to MedRisk by including their name, email, and phone number on all MedRisk communications regarding individual patients when payment is denied.

n. Subject to the indemnification provisions of an individual network Chiropractor's contract, MedRisk will utilize commercially reasonable efforts to ensure that the only reasons it has recouped or will retrospectively recoup money from a Chiropractor is because that Chiropractor has been overpaid by MedRisk or has already been paid directly for the service being recouped.

See Stipulation at §§B.1.a-e, B.2.-B.9.

Separate and independent from the foregoing changes in business practices, MedRisk has also agreed, as a term of the Settlement, to file a Licensure Application with the DWC seeking licensure as an MPN, within thirty days of receipt of notice of entry of the preliminary approval

order. MedRisk will use its best efforts to secure approval of the Application and licensure as an MPN, provided, however, that the failure to successfully obtain such licensure will not result in termination of the Stipulation, the Settlement that it contemplates, or any other Settlement provision and all such other provisions will remain in full force and effect. MedRisk will provide Plaintiff with copies of all application papers submitted to the DWC promptly following such submission. Every sixty days following the submission of such initial application papers and continuing until MedRisk receives a final determination MedRisk will provide CCA with a written update regarding the status of and material developments with respect to the Application, accompanied by all correspondence with and submissions to the DWC during the preceding sixty-day period. *See* Stipulation at §B.10.

Further, MedRisk has agreed to provide a report, under penalty of perjury, to CCA every sixty days following the Effective Date regarding MedRisk's payment of electronically billed claims for the provision of chiropractic services in the State of California. Such report will provide the following information to the extent available to MedRisk: (1) the aggregate number of Valid Claims electronically submitted to MedRisk by California chiropractors during the preceding sixty-days (the "Reporting Period"); (2) the average amount of time elapsed from the date upon which electronically submitted claims became Valid Claims from initial submission to the date of issuance of payment; (3) the number of electronically submitted claims MedRisk actually paid within 15 days; (4) an explanation as to all steps MedRisk is taking, or plans to take, to improve compliance with the 15 day electronic bill pay requirement with respect to Valid Claims; (5) the time frame(s) within which MedRisk intends to become fully complaint with the 15 day electronic bill pay requirement; and (6) for any claims tendered during such Reporting Period that were not deemed Valid Claims ("Invalid Claims"), a pie chart or other chart breaking down by % what percentage of electronically submitted claims were deemed invalid as a result of each category of issue, including the specific categories described below. For purposes of the Settlement, "Valid Claims" will include claims (or any portion of claims) that meet all of the following criteria: (1) are complete, including all required information and supporting

documentation; (2) were properly submitted to MedRisk, through MedRisk's system; (3) have been approved by the payor(s) providing coverage or potentially providing coverage for such claims; and (4) for which there is no senior payor obligated to provide first and primary payment for the services covered by such claim(s). For each electronically submitted Valid Claim not paid within 15 days, MedRisk will pay interest and penalties on such claim(s) as required by the Labor Code. *See* Stipulation at § B.11.

Each of the foregoing terms was achieved only after intensive negotiation.

C. Settlement Class Notice and Settlement Administration

The Parties have agreed, and the Court approved, that CCA, as the Settlement Administrator, will provide formal notice to the Settlement Class of the proposed Settlement and that MedRisk would pay for reimbursement of settlement administration and notice expenses. *See* Stipulation at §§A.3, A.14. Notice has been disseminated, as provided by the Settlement.

D. Attorneys' Fees and Expenses

MedRisk has agreed to pay an award of total attorneys' fees and expenses in an amount not to exceed $1,300,000, which includes fees and expenses incurred through Final Approval. The attorneys' fees and costs provision was negotiated at arm's-length, separate and apart from any benefits to the Settlement Class, and only after agreement was reached on all substantive terms of the Settlement with the assistance of Judge Meisinger. *See* Stipulation at §D.1-D.2.

Defendants were represented by highly skilled lawyers from a nationwide law firm, McDermott, Will & Emery, LLP who are very experienced in this type of class action litigation, have litigated on the defense side for many years and are aware of fees paid in other actions of a similar nature. Defendants also considered the possibility that Settlement Class Counsel might apply for and receive a much larger award, especially in the event of any objection or appeal of the settlement, which would necessarily lead to additional protracted litigation and efforts by Settlement Class Counsel to defend the Settlement.

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IV. CLASS COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AS PROVIDED FOR BY THE SETTLEMENT SHOULD BE APPROVED

A. The Amount of Attorneys' Fees Was Negotiated Only After An Agreement Was Reached On All Class Benefits and Notice Terms

Litigants should be encouraged to resolve fee issues by agreement. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1988); *Malchman v. Davis*, 761 F.2d 893, 905 n.5 (2d Cir. 1985) (recognizing "[a]n agreement 'not to oppose' an application for fees up to a point is essential to completion of the settlement, because the defendants want to know their total maximum exposure and the plaintiffs do not want to be sandbagged."), *cert. denied*, 475 U.S. 1143 (1986), *abrogated on other grounds sub nom Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

The United States Supreme Court has indicated that ideally a request for attorneys' fees should not result in a "second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Accordingly, courts are authorized to award attorneys' fees and expenses where all parties have agreed to the amount, subject to court approval, particularly where the amount is ***in addition and separate*** from the defendant's settlement with the class. *See Local 56, United Food & Commercial Workers Union v. Campbell Soup Co.*, 954 F. Supp. 1000, 1005 (D.N.J. 1997) (granting class counsel the maximum amount of fees agreed to by the defendant under the settlement agreement where 'class members … retain all that the settlement provides [and] they do not lose any of the negotiated benefits on account of an attorneys' fee and costs award that equals the cap on such an award set forth in the settlement."). Consistent with the *Manual for Complex Litigation*, the Parties negotiated the agreed-upon attorneys' fees and costs only *after* negotiating and reaching an agreement as to all other material terms of the settlement, including all class benefits. *See Manual for Complex Litigation*, ¶ 21.7 (4th Ed. 2004) ("Separate negotiation of the class settlement before an agreement on fees is generally preferable.") The interests of the Class are promoted by a fee that is negotiated after all class benefits. By deferring the fee negotiation until that time, Class Counsel aligned their interests with the

interests of the Class. Once all the material terms of the Settlement were agreed to, Defendants had every incentive to negotiate as low a fee as possible to decrease its overall costs.

That is the approach that was taken here. The fee award sought is a stipulated amount, agreed to after extensive negotiations with the direct assistance of Judge Louis Meisinger, does not cap or diminish Class members' benefits, and is extremely fair and reasonable in light of Settlement Class Counsel's efforts in this case.

B. Fees are Warranted Under the Private Attorney General Doctrine

Under the private attorney general doctrine, codified at Code of Civil Procedure §1021.5, attorneys' fees are awarded in cases that enforce rights affecting public policies:

> The fundamental objective of section 1021.5 is to encourage suits effectuating a strong public policy by awarding substantial attorney's fees to those who successfully bring such suits. The statute is based on the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions.

California Common Cause v. Duffy, 200 Cal. App. 3d 730, 741 (1987).

Successful litigants are entitled to fees under Section 1021.5 when the litigants' efforts: (1) have enforced an important right affecting the public interest; (2) have conferred a significant benefit on the general public or a large class of persons; and (3) have imposed a financial burden on the plaintiff out of proportion to his individual stake in the matter. *Baggett v. Gate*, 32 Cal. 3d 128, 142 (1982). Each element is satisfied here.

Under Section 1021.5, the decision to award attorneys' fees is left to the sound discretion of the trial court. *See Vasquez v. State of California*, 45 Cal.4th 243, 251 (2008). Absent circumstances rendering the award unjust, fees recoverable under Section 1021.5 ordinarily include compensation for "all hours reasonably spent..." not just those spent on successful theories. *See Sundance v. Municipal Court*, 192 Cal.App.3d 268, 273 (1987) (citation omitted). The rationale being that it is impossible for an attorney to determine before starting work on a potentially meritorious legal theory whether it will or will not pan out.

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1. THE ACTION ENFORCED IMPORTANT RIGHTS AND PUBLIC POLICY

The "important right" criterion in California Code of Civil Procedure § 1021.5 tests whether "the subject matter of the action implicated the public interest." *Beasley v. Wells Fargo Bank,* 235 Cal. App. 3d 1407, 1418 (1991). Under the UCL, consumer protection litigation has long been judicially recognized to be vital to the public interest." *Id*. at 1418 (*citing Vasquez v. Superior Court,* 4 Cal. 3d 800, 808 (1971)).

2. THE ACTION CONFERRED BENEFITS ON A LARGE CLASS OF PERSONS

The benefits this Action conferred on a sizeable class are beyond dispute. Under the Settlement, MedRisk has agreed to provide broad and comprehensive injunctive relief to the Settlement Class by implementing and complying with business practice adjustments, therapeutics, and restrictions, with respect to patients and all contracted chiropractors within the State of California, so as not to violate applicable California state law or regulations. The Settlement directly provides injunctive relief, to a large group of chiropractors (approximately 1,800 Class Members), confirming that Plaintiff and Settlement Class Counsel have more than satisfied the "large persons" element under Section 1021.5. *See Graham v. DaimlerChrysler Corp*., 34 Cal. 4th 553, 561 (2004) (only 1,000 subject vehicles sold to California consumers satisfied the "large persons" requirement of Section 1021.5).

3. THE BURDEN OF PRIVATE ENFORCEMENT JUSTIFIES A FEE AWARD

The "financial burden" criterion of Section 1021.5 is met when "the cost of the claimant's legal victory transcends his or her personal interest, that is, when the necessity of pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her individual stake in the matter." *Woodland Hills Residents Assn., Inc. v. City Council,*23 Cal. 3d 917, 941 (1979); *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors,* 79 Cal. App. 41h 505, 519 (2000) ("The issue, in short, is whether the cost of litigation is out of proportion to the litigant's stake in the litigation."); *Notrica v. State Compensation Ins. Fund,* 70 Cal. App. 4th 911, 955 (1999).

This Action has been prosecuted as a class action. It was *not* brought for the exclusive benefit of an individual plaintiff – given its costs, no rational person would have done that – but

to benefit a large group of chiropractors who allege they have been subjected to unlawful and unfair practices by the illegal referral policies and failure to comply with electronic billing requirements. The burden of prosecuting this Action was wholly out of proportion to the stake of any individual plaintiff.

Indeed, it is a case such as this one that Section 1021.5 was intended to apply: "the doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public polices embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney's fees, private actions to enforce such important public polices will as a practical matter frequently be infeasible." *Woodland Hills*, 23 Cal.3d at 933. Thus, Settlement Class Counsel is entitled to attorneys' fees and costs pursuant to Section 1021.5.

4. INJUSTICE WOULD OCCUR IF ATTORNEYS' FEES WERE NOT AWARDED

Over the course of this litigation, Settlement Class Counsel has been working on a purely contingent basis and has not been compensated by Plaintiff or the Settlement Class for their efforts. *See* Zysman Decl. at ¶15. During this time, class action litigation, and particularly the case law under the applicable statutes alleged, California Business and Professions Code, Insurance Code, Labor Code, and Health and Safety Code, has evolved and Settlement Class Counsel has had to continually pivot, adjust, and adapt to these changes which, in turn, required Settlement Class Counsel to constantly revise the strategy so as to continue with the case. *Id*.

It would have been easy for Settlement Class Counsel to either dismiss or settle this case individually instead of continuing to litigate this matter. At the onset of this case, however, Settlement Class Counsel undertook an obligation to represent Plaintiff and the Settlement Class vigorously and, due to their relentless fervor, accomplished a fair, adequate, and reasonable Settlement. *Id*.

Settlement Class Counsel has diligently litigated this Action on behalf of the Settlement Class. The class action mechanism is a necessary and useful device to provide redress for numerous individuals who could not realistically maintain separate actions. If a court failed to

award attorneys' fees in actions such as this, there would be no enforcement of consumer protection statutes (as well as applicable Labor Codes, Insurance Codes, and Health and Safety Codes) like those at issue here. Settlement Class Counsel pushed hard for the reforms and therapeutics ultimately agreed upon.

V. THE REQUESTED FEE AMOUNT IS FAIR, ADEQUATE AND REASONABLE

To accomplish the objective set forth in *Woodland Hills*, courts are in agreement that the fee award must be large enough "to entice competent counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Society v. County of San Bernardino*, 155 Cal.App.3d 738, 755 (1984). Accordingly, in light of the risks and delays involved in contingent class action litigation, California courts "recognize two methods for calculating attorneys' fees in civil class actions: the lodestar/multiplier method and the percentage of the recovery method." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *see also Lealao*, 82 Cal.App.4th at 49-50. The method to be used depends on whether the case involves "fee shifting" or "fee spreading."

Fee shifting cases are those in which the obligation to pay attorneys' fees is statutorily or otherwise transferred from the plaintiffs or class to the Defendants and is paid separate from the class recovery. In fee spreading cases, a separate or "common fund" is established for the benefit of the class; attorneys' fees are paid out of the common fund and are calculated as a percentage of the class recovery. *Lealao*, 82 Cal.App.4th at 26-27.

In the absence of a common fund, and where, as here, Defendants will pay attorneys' fees separately from the Settlement Class's injunctive relief, it is well established under California law that the lodestar-multiplier method is the appropriate method for calculating attorneys' fees in civil class actions similar to this case. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1137 (2001); *Consumer Privacy Cases*, 175 Cal.App.4th 545, 556-57 (affirming that the lodestar approach was properly used to calculate attorneys' fees in consumer privacy cases); *Robertson v. Fleetwood Travel Trailers of California, Inc.*, 144 Cal.App.4th 785, 818-19 (2006) (holding that the lodestar

method, as the prevailing rule for calculation of statutory attorneys' fees, apply to cases under the Song-Beverly Consumer Warranty Act); *Wershba*, 91 Cal.App.4th at 254.

Under the lodestar-multiplier method, the lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate, which is then enhanced by an appropriate multiplier. *Id.* Settlement Class Counsel is entitled to recover fees for all hours reasonably spent working on the case. *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998) ("the attorney who takes such a [complex] case can anticipate receiving full compensation for every hour spent litigating a claim against even the most polemical opponent.").

A. The Requested Fee is Appropriate Under a Lodestar-Multiplier Analysis

The predominance of the lodestar method for calculating attorneys' fees in private attorney general cases was first established in 1977 in *Serrano v. Priest*, 20 Cal.3d 25 (1977). In *Serrano*, the California Supreme Court held that the starting point for determining the amount of attorneys' fees under the private attorney general doctrine begins by determining the "lodestar" amount. The "lodestar" is calculated by multiplying the time spent by the reasonable hourly compensation for the attorney involved in the presentation of the case. *Serrano III*, 20 Cal. 3d at 48, n.23; *see also Maria P. v. Rile*, 43 Cal. 3d 1281, 1294 (1987); *Vo v. Las Virgenes Municipal Water District*, 79 Cal. App. 4th 440, 445 (2000). In addition, the "lodestar" should normally include out-of-pocket expenses of the type normally billed by an attorney to a fee-paying client. *Bussey v. Affleck*, 225 Cal.App.3d 1162, 1166 (1990); *Guinn v. Dotson*, 23 Cal.App.4th 262, 271 (1994); *Beasley v. Wells Fargo Bank*, 235 Cal.App.3d 1407, 1419-22 (1991). The "lodestar" should also include time spent on the fee application itself. *Serrano v. Unruh*, 32 Cal.3d 621, 632-38 (1982). As explained below, the requested amount of $1,300,000 in attorneys' fees and costs to Class Counsel is clearly reasonable and should be awarded without reduction.

B. The Requested Fees Reflects Settlement Class Counsel's Lodestar with No Multiplier

Settlement Class Counsel requests an attorney's fee award of $1,300,000. This amount is less than Settlement Class Counsel's actual combined total lodestar to date which is $1,404,300.50, as set forth in the supporting Declarations and described below. Under California

law, in order to determine whether a fee award is reasonable, the Court may perform a lodestar-multiplier analysis. The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked on the case. Then to compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding attorneys' fees.

1. SETTLEMENT CLASS COUNSEL'S HOURLY RATES ARE REASONABLE

Under the lodestar method, reasonable hourly rates are determined by "prevailing market rates in the relevant community" which are the rates a lawyer of comparable skill, experience and reputation could command in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Ordinarily, reasonable hourly rates are based on each attorney's current hourly rates. *Vizcaino. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir, 2002) ("[c]alculating fees at [current hourly rates] . . . compensate[s] for delay in receipt of payment"); *WPPSS*, 19 F.3d at 1305 ("The district court has discretion to compensate delay in payment in one of two ways: (1) by applying the attorneys' current rates to all hours billed during the course of the litigation; or (2) by using the attorneys' historical rates and adding a prime rate enhancement."). The relevant community is that in which the court sits, in this case Northern California. *Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). Class Counsel's current rates are therefore reasonable if they are in line with the prevailing rates for other attorneys practicing complex litigation in Northern California.

Under California law, the rates claimed are reasonable so long as they are within the range of hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum*, 24 Cal. 4th at 1133; *Children's Hospital*, 97 Cal.App.4th at 783 (affirming rates that were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work"). An attorneys' actual billing rate for similar work is presumptively appropriate. *See People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996). Declarations by counsel are sufficient to evidence the reasonable hourly rate. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001);

see also United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990) ("Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate."). "Courts also frequently use survey data in evaluating the reasonableness of attorneys' fees." *B-K Lighting, Inc. v. Vision3 Lighting*, No. CV 06-0285 MMM (PLAx), 2009 WL 3838264, at *5 (C.D. Cal. Nov. 16, 2009) (citing *Mathis v. Spears*, 857 F.2d 749, 755-56 (9th Cir. 1988)). Class Counsel's request satisfies all of the foregoing criteria.

Given their expertise and skill, Settlement Class Counsel's rates are within the range of rates charged by similarly experienced and qualified attorneys, and have been approved by other Courts in California and other Courts in the United States. The Law Offices of Zev B. Zysman, APC calculated its lodestar using a billing rate of $635 per hour for Zev B. Zysman, a principal. Pomerantz LLP, used the billing rate of $900 per hour for Jordan L. Lurie, a partner and $685 for Ari Y. Basser, a senior associate. *See* Zysman Decl. at ¶21, 26-37, and Exhs. 1 through 10; Lurie Decl. at ¶¶23-25.[3] No paralegal, secretarial, administrative or other staff time is being billed. Zysman Decl., at ¶¶7, 17; Lurie Decl., at ¶21.

This is significant, as prior determinations of counsel's rates are strong evidence of their reasonableness. *See Margolin v. Regional Planning Commission*, 134 Cal.App.3d 999, 1005 (1982). Settlement Class Counsel commands a high hourly rate due to their success in class actions and are held in very high regard by the legal community. This case was complex and difficult, not one that any lawyer could litigate, but a highly specialized area of law that required highly skilled, experienced, and competent lawyers.

Settlement Class Counsel's rate is in line with the rates prevailing in the community for similar services of lawyers of reasonable comparable skill and reputation, and is appropriate

[3] Moreover, while the use of current hourly rates is appropriate because it accounts for the time value of money where, as here, Class Counsel have *not* been paid contemporaneously with their work on this case (*See, e.g., In re Petroleum Prod. Antitrust Litig.*, 109 F.3d 602, 609 (9th Cir. 1997)), for the purpose of this Motion, Class Counsel relies on the lower rates in effect in ***2019*** when the case was initiated.

given the deferred and contingent nature of counsel's compensation. *See* Zysman Decl., at ¶¶27-29; Lurie Decl., at ¶¶23-24.

2. SETTLEMENT CLASS COUNSEL'S DECLARED HOURS ARE REASONABLE

Under California law, every hour reasonably spent on the Plaintiffs' case is compensable: "[a]bsent special circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee." *Ketchum,* 24 Cal. 4th at 1133. Hours are reasonable if "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H. Matthews & Co.* 682 F.2d 830, 839 (9th Cir. 1982).

Settlement Class Counsel have spent a total of 1,902.50 attorney hours in the prosecution of this Action. These hours are justified by the course of this litigation and by the excellent results obtained. In light of the time required to litigate this case and overcome the procedural, evidentiary and legal hurdles placed in their way, Settlement Class Counsel's time reflects a level of efficiency and economy well within acceptable bounds. The Zysman Decl. at ¶¶7, 17 and Lurie Decl. at ¶¶ 26-29 set forth, in detail, the tasks performed and summarize the hours expended by Settlement Class Counsel into categories, grouping the time entries by the nature of the activity. This information, coupled with the additional descriptions herein and in the supporting Declarations is sufficient to permit the Court to review the time spent.[4]

All of the time billed by Settlement Class Counsel was legitimately incurred and is consistent with a case that has been pending, litigated and resolved over a period of more than three and one-half years since the original Complaint was filed and Plaintiff prevailed over Defendants' Demurrer. At no time did Defendants simply roll over or capitulate. Plaintiff's Counsel had to diligently litigate this case and take all the litigation steps necessary to obtain the

[4] It is well-settled under California law that time records are not required of class counsel to support fee awards in class action cases and that declarations by counsel as to time spent are sufficient. *See Concepcion v. Amscan Holdings,* 223 Cal. App. 4th 1309, 1324 (2014) ("Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked and the tasks performed are sufficient."); *see also Wershba,* 91 Cal. App. 4th at 255 ("California case law permits fee awards in the absence of detailed time sheets."); *see also Dunk v. Ford Motor Co.,* 48 Cal. App. 4th 1794, 1810 (1996) (stating that lodestar calculation could be based on counsel's estimate of time spent).

Settlement benefits for the Settlement Class.

Settlement Class Counsel undertook tasks that were specific to this case, as described in detail in the Zysman Decl. at ¶¶8, 17 and Lurie Decl. at ¶16-18, 29, including tine spent in: (1) pre-suit investigation and drafting of the original Complaint and Amended Complaint, which included researching of the applicable law with respect to the claims asserted therein and the potential defenses thereto; (2) drafting, researching, and filing successful opposition to Defendants' Demurrer; (3) drafting formal and informal discovery requests to Defendants, including special interrogatories, request for production of documents, and requests for admissions; (4) reviewing Defendants' informal responses to discovery requests, and documents otherwise obtained through their investigation; (5) engaging in meet and confer sessions with Defendants' counsel regarding the sufficiency of the informal discovery responses and production; (6) consulting with potential experts/consultants; (7) drafting PMK deposition notices regarding class certification issues; purpose(s) for MedRisk's practice of soliciting and receiving allegedly improper payments for the referral of healthcare services and managing services provided to injured workers in violation of specific provisions of the California Business and Professions Code, the Insurance Code, the Labor Code, and the Health and Safety Code; inquiries and complaints initiated by chiropractors relating to electronic billing/payment disputes with MedRisk in violation of Labor Code §§ 4603.2, 4603.4, and 4603.6; and MedRisk's efforts to comply with applicable California law, including Labor Code §§139.32(c), 3215, and 3820 prohibiting MedRisk from engaging in illegal payments and prohibiting referral systems for workers' compensation treatment services that are directly tied to financial incentives; (8) reviewing records and data provided by Defendants relative to thousands of California contracted providers which showed MedRisk's billing and referral practices based on pricing during the Settlement Class Period; (9) preparing for case management conferences; (10) in-person meeting with Defense Counsel to discuss litigation, relevant evidence and discovery and potential structure for settlement; (11) numerous in-person meetings with client to discuss litigation and strategies; (12) drafting detailed confidential mediation brief, along with supporting evidence and

discovery; (13) preparing for and attending full-day mediation in Los Angeles; (14) researching and drafting class certification motion (withheld filing after the Parties' tentative agreement to settle); (15) negotiating, drafting, editing and finalizing the terms of the Settlement, including the Settlement Agreement, Revised Settlement Agreement, Settlement Class Notices, Settlement Website, and Proposed Orders; (16) drafting and filing Motion for Preliminary Approval and Supplemental Brief; (17) fielding and responding to Settlement Class Member inquiries regarding settlement and implementation issues; and (18) preparing this Fee Motion and supporting documentation.

Settlement Class Counsel were able to focus on litigating the issues specific to this case and harnessing the evidence in order to obtain the best settlement results for the Settlement Class while minimizing the costs. *See* Zysman Decl. at ¶18; Lurie Decl. at ¶29.

Settlement Class Counsel further expects to spend a minimum of 45 hours on this case through its conclusion, including drafting the Motion for Final Approval of the Settlement, attending the Final Approval hearing, and overseeing Defendants' compliance with the terms of the injunctive relief Settlement. Accordingly, the effective lodestar is *higher* than the amount submitted herein. *See* Zysman Decl.at ¶20; Lurie Decl. at ¶28.

3. SETTLEMENT CLASS COUNSEL DOES NOT CURRENTLY SEEK A MULTIPLIER; HOWEVER, A MULTIPLIER WOULD BE JUSTIFIED

Once the lodestar is calculated, it may be enhanced with a multiplier. *Wershba*, 91 Cal.App.4th at 254. The objective of any multiplier is to provide lawyers involved in public interest litigation with a financial incentive. *Ketchum*, 24 Cal.4th at 1133; *see also Press v. Lucky Stores, Inc.* 34 Cal.3d 311, 322 (1983) (purpose of multiplier is to "reflect the broad impact of the results obtained and to compensate for the high quality of work performed and the contingencies involved in undertaking this litigation."). "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *In re Washington Public Power Supply System Sec. Litig.*, (9th Cir. 1994) 19 F.3d 1291, 1300. Only when courts properly compensate experienced and able counsel for successful results, such as

those here, can they assure the continuing effectiveness of the remedies available through class actions. To accomplish this objective, the fee award must be large enough "to entice counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 755.

Though Settlement Class Counsel believes a multiplier would be fully justified in this case in light of the outstanding results achieved, none is requested or necessary to establish the reasonableness of Plaintiff's requested fee award because the requested fees are less than the stated lodestar. *See* Zysman Decl. at ¶¶6, 46; Lurie Decl. at ¶31. However, if the lodestar time or rate are reduced, Settlement Class Counsel requests a multiplier sufficient to reach the requested fee amount, which would be fully justified based on the factors described below.[5]

The fact that Settlement Class Counsel was able to resolve this matter through settlement, without the need for additional litigation and trial, does not negate a multiplier. Counsel should not have to run up unnecessary lodestar in order to justify a fee. In fact, Settlement Class Counsel should be rewarded, not penalized, for their conduct and for their efforts in achieving a resolution of this matter. *See, e.g., Lealao, supra,* 82 Cal. App. 4th at 52.

If necessary, applying a multiplier in this case is more than reasonable in light of: (1) the great risk Settlement Class Counsel took in litigating this case on an entirely contingent basis; (2) the substantial outlay of time and costs; (3) the consistently evolving case law under the claims alleged; (4) the exceptional results; and (5) the long delay in being compensated. *Serrano III*, 20 Cal.3d at 49. All of these factors would weigh in favor of a multiplier in this case. None of the changes in business practices as part of the Settlement would have been obtained without the efforts of Settlement Class Counsel.

Courts frequently award substantial multipliers to account for the risks Settlement Class Counsel taken and the inherent uncertainty in contingency fee arrangements. *See generally Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1052-54 (9th Cir. 2002) (approving multiplier of

[5] Moreover, the effective lodestar is actually less than the amount submitted because the lodestar ***excludes*** time to be spent for services to be rendered by Settlement Class Counsel even after final approval of the Settlement. *See* Zysman Decl. at ¶20; Lurie Decl. at ¶31.

3.65 and citing a survey of class settlements from 1996-2001 indicating that most multipliers range from 1.0 to 4.0), *cert. denied sub nom. Vizcaino v. Waite*, 537 U.S. 1018 (2002); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 67 (2008) (2.5 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher").

VI. THE REQUESTED LITIGATION COSTS ARE REASONABLE

Out-of-pocket expenses are compensable under Cal. Code of Civ. Proc. §1021.5 if they would normally be billed to a fee–paying client. *See Beasley v. Wells Fargo*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part, Olson v. Automobile Club of Southern California*, 42 Cal. 4th 1142 (2008); *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Cal. Civil Code §1780(d) also provides that "the court shall award costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to [the CLRA]."

Here, Settlement Class Counsel are requesting reimbursement of the $9,685.68 in litigation expenses incurred. (The total requested award includes these requested expenses.) As set forth in the Zysman Decl. ¶¶ 41-45 and Lurie Decl. at ¶33, these expenses were necessary for the conduct of the litigation and are reasonable and modest in amount. The expenses include (1) filing and service fees, (2) postage and courier services, (3) copying, (4) process servers, (5) computerized and database legal research, and (6) travel expenses. These types of expenses are typically billed by attorneys to fee-paying clients in the marketplace. *See Beasley*, 235 Cal. App. 3d at 1421; *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989).

VII. THE SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES ARE REASONABLE

The Parties have agreed that the Settlement Administrator, CCA, will provide formal notice to the Settlement Class of the proposed Settlement and that MedRisk would pay for reimbursement of settlement administration and notice expenses. To date, the Settlement Administrator has incurred a total of $1,252.60 in notice and settlement administration expenses. *See* Zysman Decl., at ¶50. CCA will also submit a Declaration Regarding Effectuation of Settlement Notice, Administration and Expenses in connection with the Motion for Final

Approval. Thus, it is respectfully submitted that under the circumstances present here, approval of the settlement administration and notice expenses is warranted.

VIII. CONCLUSION

For all the foregoing reasons, this Court should grant Plaintiff's Motion for the requested award of attorneys' fees and expenses and settlement administration expenses.

Dated: July 5, 2023

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