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9 Attorneys for Plaintiff and
10 the Settlement Class

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 CALIFORNIA CHIROPRACTIC
15 ASSOCIATION, on behalf of itself and its
16 members,

17 Plaintiffs,

18 v.

19 MEDRISK, LLC; MEDRISK HOLDCO,
20 LLC; and DOES 1 through 100, inclusive,

21 Defendants.

Case No: RG19045051

CLASS ACTION

**DECLARATION OF ZEV B. ZYSMAN
IN SUPPORT OF PLAINTIFF'S
MOTION FOR AWARD OF
UNOPPOSED ATTORNEYS' FEES,
EXPENSES AND SETTLEMENT
ADMINISTRATION FEES**

Date: August 15, 2023

Time: 3:00 p.m.

Dept: 23

Judge: Hon. Brad Seligman

1 of \$1,252.60. The attorneys' fees and expenses sought by the Plaintiff are not only imminently
2 reasonable but are well deserved.

3 6. While the fee and expense amount is agreed between the Parties, such an award
4 also is justified under the lodestar-multiplier method of analysis. In this instance, the total
5 combined lodestar amount for attorney time for Class Counsel, including my Co-Lead Counsel at
6 Pomerantz LLP as confirmed in the accompanying Declaration of Jordan L. Lurie is \$1,404,300.50
7 which actually results in a *negative* lodestar multiplier. Accordingly, the amount of the requested
8 fee is below the cross-check which further supports the reasonableness of the negotiated amount.
9 As set forth below, the number of hours and the hourly rates are reasonable and should be
10 approved.

11 **WORKED PERFORMED**

12 7. Class Counsel expended a total of 1,902.50 attorney hours on this matter from
13 inception through July 5, 2023. No secretarial, administrative or other staff time (including
14 paralegal time) is being billed or requested. In my experience, this number of hours is consistent
15 with a class action case that has been pending, litigated and resolved over a period of more than
16 three and one-half years since the original Complaint was filed.

17 8. The individual tasks performed by Class Counsel includes, *inter alia*: (1) time spent
18 in the investigation and drafting of the original Complaint and Amended Complaint, which
19 included researching of the applicable law with respect to the claims asserted therein and the
20 potential defenses thereto; (2) drafting, researching, and filing successful opposition to
21 Defendants' Demurrer; (3) drafting formal and informal discovery requests to Defendants,
22 including special interrogatories, request for production of documents, and requests for
23 admissions; (4) reviewing Defendants' informal responses to discovery requests, and documents
24 otherwise obtained through their investigation; (5) engaging in meet and confer sessions with
25 Defendants' counsel regarding the sufficiency of the informal discovery responses and production;
26 (6) consulting with potential experts/consultants; (7) drafting PMK deposition notices regarding
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1 class certification issues; purpose(s) for MedRisk’s practice of soliciting and receiving allegedly
2 improper payments for the referral of healthcare services and managing services provided to
3 injured workers in violation of specific provisions of the California Business and Professions
4 Code, the Insurance Code, the Labor Code, and the Health and Safety Code; inquiries and
5 complaints initiated by chiropractors relating to electronic billing/payment disputes with MedRisk
6 in violation of Labor Code §§ 4603.2, 4603.4, and 4603.6; and MedRisk’s efforts to comply with
7 applicable California law, including Labor Code §§139.32(c), 3215, and 3820 prohibiting
8 MedRisk from engaging in illegal payments and prohibiting referral systems for workers’
9 compensation treatment services that are directly tied to financial incentives; (8) reviewing records
10 and data provided by Defendants relative to thousands of California contracted providers which
11 showed MedRisk’s billing and referral practices based on pricing during the Class Period; (9)
12 preparing for case management conferences; (10) in-person meeting with Defense Counsel to
13 discuss litigation, relevant evidence and discovery and potential structure for settlement; (11)
14 numerous in-person meetings with client to discuss litigation and strategies; (12) drafting detailed
15 confidential mediation brief, along with supporting evidence and discovery; (13) preparing for and
16 attending full-day mediation in Los Angeles before Judge Meisinger; (14) researching and drafting
17 class certification motion (withheld filing after the Parties’ tentative agreement to settle); (15)
18 negotiating, drafting, editing and finalizing the terms of the Settlement, including the Settlement
19 Agreement, Revised Settlement Agreement, Class Notices, Settlement Website, and Proposed
20 Orders; (16) drafting and filing Motion for Preliminary Approval and Supplemental Brief; (17)
21 fielding and responding to Class Member inquiries regarding settlement and implementation
22 issues; and (18) preparing this Fee Motion and supporting documentation.

23 9. Importantly, Co-Lead Counsel and I were intimately involved in negotiating the
24 nature and scope of the class relief that Defendants ultimately agreed to provide as a direct result
25 of this Settlement. These negotiations relating to the material terms of the injunctive relief spanned
26 over eight months after the Mediation before Judge Louis Meisinger; and thereafter, Class Counsel
27 continued over several more months to finalize the settlement consistent with the terms agreed
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1 upon. During that time period, Class Counsel spent time working out the details of the Settlement
2 and the procedures and schedules for notice to the Class which was memorialized in the
3 Stipulation. Each aspect of this Settlement was vigorously negotiated, including the “Scorecard,”
4 “Scheduling Criteria,” and “Transparency and Process Management Procedures.” This process
5 involved extensive email and telephonic communications between counsel, as Class Counsel
6 drafted, reviewed and edited these documents throughout the drafting process. The settlement
7 negotiations were complicated, protracted, and often contentious.

8 10. Here, all known Class Members have received actual direct notice of the proposed
9 settlement via E-Mail and U.S. Mail. As such, this is not a situation where class members are
10 expected to see notice by publication alone. The Settlement provides for significant and robust
11 injunctive relief to the Settlement Class. Specifically, MedRisk agrees that, commencing no later
12 than ten business days following the Effective Date, and continuing to and including the last day
13 of the Effective Period, MedRisk will implement or comply with the following business practice
14 adjustments, therapeutics, or restrictions, with respect to patients and Chiropractors within the
15 State of California:

16 (a) MedRisk will implement, utilize, and apply, in connection with the
17 scheduling or assignment of patients within the State of California, the “Scheduling Criteria”
18 described in more detail in the Stipulation.

19 (b) MedRisk will implement, utilize, and comply with the “Transparency and
20 Process Management Procedures” described in more detail in the Stipulation.

21 (c) MedRisk will comply with the provider bill of rights set forth within Section
22 1375.5 of the California Health & Safety Code.

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

7 (e) In the event that OMFS is increased during the Effective Period, MedRisk
8 will proportionately increase the rate of reimbursement provided to directly contracted
9 Chiropractors whose reimbursement is based upon OMFS. For the purpose of this provision,
10 “proportional,” with respect to contracted Chiropractors whose reimbursement is based upon
11 OMFS, means that the increase in reimbursement is proportional to the increased OMFS rate for
12 contracted service.

13 (f) MedRisk will not change the “preferred” status or otherwise retaliate
14 against any Chiropractor who seeks to renegotiate their contract. Pursuant to Labor Code Sections
15 3215 and 3829(a)(b)(3), MedRisk will not penalize a current Chiropractor or any Chiropractor
16 whose rate is available to MedRisk through a subcontract or leased access or any future
17 Chiropractor whether directly contracted or whose services are available through a subcontract or
18 leased access on the basis that the Chiropractor has requested modification of an agreement with
19 MedRisk, submitted a grievance to MedRisk, or otherwise exercised their rights under the terms
20 of this Stipulation.

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

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

9 (i) MedRisk will not interfere with or redirect referrals made by the injured
10 worker's primary treating physician ("PTP") which have been approved by a claims adjuster or
11 requested by the injured worker. Except to schedule an appointment with the entity approved by
12 the claims adjuster or requested by the injured worker, MedRisk will not contact the PTP or injured
13 worker for the purpose of redirecting to a different provider once it has notice that the adjuster has
14 approved a referral to a specific Chiropractor.

15 (j) MedRisk will at all times cause compliance with requirements of the
16 California Labor Code, including Section 4603.4, its implementing regulations, 8 C.C.R. section
17 9792.5.0, *et seq.*, regarding but not limited to, content and delivery of Explanations of Review
18 ("EOR").

19 (k) MedRisk will provide written notice to each contracted Chiropractor, in a
20 mutually agreeable form, that provides as follows: "Participating Provider shall have the right
21 to transmit electronic bills consistent with the requirements set forth in the California Division of
22 Worker's Compensation Medical Billing and Payment Guide and the California Division of
23 Workers' Compensation Electronic Medical Billing and Payment Companion Guide through all
24 clearinghouses authorized by the Division of Workers' Compensation. From the date of
25 Settlement, MedRisk shall process all claims consistent with these California e-billing
26 requirements without additional charge by MedRisk."
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1 (l) MedRisk will notify all contracted Chiropractors that they may, but will
2 never be required to, opt in to any particular method of payment of their bills which may include
3 but not be limited to, “virtual cards,” ACH and checks. MedRisk will opt chiropractors into DWC-
4 approved free electronic claims payment at the request of Chiropractors, as required by the Labor
5 Code. Furthermore, current and future Chiropractors will be notified by MedRisk regarding their
6 choice for free electronic claims payment, specifically citing the California Labor Code.
7 Alternative payment methods may not be promoted or used by MedRisk as an inducement to
8 participate in any MPN or other network model, or gain injured worker referrals.

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

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

24 11. Separate and independent from the foregoing changes in business practices,
25 MedRisk has also agreed to file a Licensure Application with the DWC seeking licensure as an
26 MPN, within thirty days of receipt of notice of entry of the preliminary approval order. MedRisk
27 will use its best efforts to secure approval of the Application and licensure as an MPN, provided,
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1 however, that the failure to successfully obtain such licensure will not result in termination of the
2 Stipulation, the Settlement that it contemplates, or any other Settlement provision and all such
3 other provisions will remain in full force and effect. MedRisk will provide Plaintiff with copies
4 of all application papers submitted to the DWC promptly following such submission. Every sixty
5 days following the submission of such initial application papers and continuing until MedRisk
6 receives a final determination MedRisk will provide CCA with a written update regarding the
7 status of and material developments with respect to the Application, accompanied by all
8 correspondence with and submissions to the DWC during the preceding sixty-day period.

9 12. Moreover, MedRisk has agreed to provide a report, under penalty of perjury, to
10 CCA every sixty days following the Effective Date regarding MedRisk's payment of electronically
11 billed claims for the provision of chiropractic services in the State of California. Such report will
12 provide the following information to the extent available to MedRisk: (1) the aggregate number of
13 Valid Claims electronically submitted to MedRisk by California chiropractors during the
14 preceding sixty-days (the "Reporting Period"); (2) the average amount of time elapsed from the
15 date upon which electronically submitted claims became Valid Claims from initial submission to
16 the date of issuance of payment; (3) the number of electronically submitted claims MedRisk
17 actually paid within 15 days; (4) an explanation as to all steps MedRisk is taking, or plans to take,
18 to improve compliance with the 15 day electronic bill pay requirement with respect to Valid
19 Claims; (5) the time frame(s) within which MedRisk intends to become fully complaint with the
20 15 day electronic bill pay requirement; and (6) for any claims tendered during such Reporting
21 Period that were not deemed Valid Claims ("Invalid Claims"), a pie chart or other chart breaking
22 down by % what percentage of electronically submitted claims were deemed invalid as a result of
23 each category of issue, including the specific categories described below. For purposes of the
24 Settlement, "Valid Claims" will include claims (or any portion of claims) that meet all of the
25 following criteria: (1) are complete, including all required information and supporting
26 documentation; (2) were properly submitted to MedRisk, through MedRisk's system; (3) have
27 been approved by the payor(s) providing coverage or potentially providing coverage for such
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1 claims; and (4) for which there is no senior payor obligated to provide first and primary payment
2 for the services covered by such claim(s). For each electronically submitted Valid Claim not paid
3 within 15 days, MedRisk will pay interest and penalties on such claim(s) as required by the Labor
4 Code.

5 13. None of the foregoing changes in business practices as part of the Settlement would
6 have been obtained without the efforts of Class Counsel.

7 14. In addition to the benefits to the Class, MedRisk has agreed to pay for all costs
8 associated with notice and settlement administration, and attorneys' fees and costs. Critically, all
9 such costs are being paid *separate and apart* from the Class benefits.

10 15. Class Counsel understood that it was undertaking complex, lengthy and expensive
11 litigation and nonetheless prosecuted this case on a contingency fee basis with no guarantee of
12 ever being compensated for the investment of time and money the case would require. During its
13 pendency, Class Counsel was obligated to assure that sufficient resources were dedicated to the
14 prosecution of this litigation and that funds were available to compensate staff and to pay for out-
15 of-pocket expenses required in a case like this.

16 16. To reasonably ensure that the present Motion represents only the time spent on the
17 claims subject to this litigation, I exercised my professional judgment and excluded the billable
18 hours that my firm expended on the related action, *Independent Physical Therapists of California*
19 *v. MedRisk, LLC et al.*, Case No. RG 19045049.

20 17. For the Court's convenience, the chart below breaks out and summarizes the hours
21 expended by Class Counsel into categories and provides detailed descriptions, grouping the time
22 entries by the nature of the activity. This information, coupled with the descriptions set forth
23 herein, in the accompanying Declaration of Jordan L. Lurie of Pomerantz LLP, and in Plaintiff's
24 Memorandum filed concurrently justifies Class Counsel's fee request and is sufficient to permit
25 the Court to review the time spent. No secretarial, administrative or other staff time (including
26 paralegal time) is being billed or requested. Moreover, it should be noted, that the following
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lodestar analysis does not include additional work to be performed in this case through and even following the Final Approval Hearing as described further in ¶ 20 below.

Name (Status)	1	2	3	4	Total Hours	Rate	Total Lodestar
Zev B. Zysman	230.25	260.50	168.00	386.25	1045.00	\$635.00	\$663,575.00
Attorney Total:	230.25	260.50	168.00	386.25	1045.00		\$663,575.00

Categories:

(1) **Pre-Filing Investigation/Initial Complaint/Amended Complaint:** This includes: initial contact and in-person meetings with the California Chiropractic Association (“CCA”) and its key leadership Dr. Wayne Whalen, Dawn Benton and others over an eight-month period prior to filing the Original Complaint; investigation of potential legal claims based on MedRisk’s policies and practices 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; evaluation and follow-up of 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; review and analysis of confidential Survey conducted in 2018 and 2019 of member and non-member providers who had existing contracts with MedRisk; pre-filing research and review of civil dockets regarding any litigation against MedRisk; research of applicable California Business & Professions Code §§ 17200, and potential violations of Labor Code §§139.32(c), 3215, and 3820 and Labor Code §§ 4603.2, 4603.4, and 4603.6 and regulations arising from MedRisk’s pricing and referral practices and electronic billing practices; review of MedRisk’s dissemination of press releases and other materials; monitoring and tracking of legal and legislative developments in the workers’ compensation system; review of available financial

1 information relating to MedRisk's profits; researching, drafting and filing of Original Federal
2 Complaint, the Original State Complaint following dismissal of Federal Complaint, and the First
3 Amended Class Action Complaint based on allegations of organizational/associational standing;
4 and evaluating scope of potential post-litigation modifications concerning pricing and referral
5 policies.

6 **(2) Pleadings and Briefs/Legal Analysis:** This includes: legal research of legislative history of
7 Labor Code §§139.32(c), 3215, and 3820 and Labor Code §§ 4603.2, 4603.4, and 4603.6
8 regarding soliciting and receiving payments for the referral of healthcare services and managing
9 services to injured workers and soliciting discounts as an inducement for referring patients to
10 obtain workers compensation benefits; review of administrative decisions and subsequent case law
11 interpreting relevant sections of California Business and Professions Code, the Insurance Code,
12 the Labor Code, and the Health and Safety Code, and evaluation of potential impact of recent cases
13 on specific legal claims alleged in Original Complaint; extensive meet and confer sessions with
14 Defense Counsel regarding subject matter jurisdiction/citizenship issues based on Order to Show
15 Cause by district court following filing of Original Federal Complaint; review of non-public
16 information/documentation provided by Defense Counsel regarding citizenship of certain entities;
17 preparation of response to Order to Show Cause;; reviewing and researching of Demurrer to
18 Original Complaint based on lack of organizational/associational standing to pursue UCL claims
19 and judicial abstention and/or primary jurisdiction doctrines;; reviewing, researching, editing and
20 filing successful Opposition to Defendants' Demurrer; preparation for hearing on Demurrer;
21 preparation for and attendance at case management conferences; preparation of brief re: potential
22 range of prospective injunctive relief based on MedRisk's alleged practices of illegally referring
23 patients to providers based on lower rates/discounts and provider complaints involving MedRisk's
24 claims handling and electronic billing/payment activities in violation of California laws;
25 preparation of brief re: potential range of prospective injunctive relief based on available pricing
26 and referral data; researching viability of Defendants' numerous asserted affirmative defenses to
27 claims based on California Business & Professions Code § 17200 and Labor Code §§139.32(c),
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1 3215, and 3820; researching and drafting Motion for Class Certification (withheld filing following
2 tentative agreement to settle); researching legal issues related to summary judgment/summary
3 adjudication and other dispositive motions based on liability issues.

4 (3) **Discovery:** This includes: researching and preparing discovery plan on class certification and
5 merits issues, and drafting formal class and merits discovery to Defendants, including special
6 interrogatories, request for production of documents, and requests for admissions; reviewing
7 documents, data and information, including company policies and practices, as well as provider
8 data, produced informally by Defendants, and otherwise obtained by Class Counsel in preparation
9 for the anticipated Mediation in Los Angeles; consulting with potential experts/consultants and
10 developing a prospective injunctive relief model based on applicable Insurance Code, Labor Code,
11 and Health and Safety Code violations; interfacing with Class members and interested third parties
12 regarding the claims at issue; interviewing key industry leaders regarding the key allegations and
13 possible resolutions; reviewing and conferring with Defense Counsel regarding sufficiency and
14 scope of Defendants' informal discovery responses and production of documents; preparing and
15 drafting PMK deposition notices regarding class certification issues; purpose(s) for MedRisk's
16 practice of soliciting and receiving allegedly improper payments for the referral of healthcare
17 services and managing services provided to injured workers; inquiries and complaints initiated by
18 chiropractors relating to electronic billing/payment disputes with MedRisk in violation of Labor
19 Code §§ 4603.2, 4603.4, and 4603.6; and MedRisk's efforts to comply with applicable California
20 law, including Labor Code §§139.32(c), 3215, and 3820; reviewing records and data provided by
21 Defendants relative to thousands of California contracted providers which showed MedRisk's
22 billing and referral practices based on pricing during the Class Period; engaging in lengthy
23 dialogue with MedRisk personnel on a multitude of issues relative to the allegations and claims in
24 the First Amended Complaint; engaging in direct interviews with multiple professional
25 chiropractor CCA members who had existing contracts with MedRisk to determine if providers
26 were pressured to accept lower prices, threatened with termination or reductions in referrals, or
27 actually been terminated or otherwise lost patients and business in contravention of California
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1 laws; review and analysis of information based on intakes and conversations by CCA with its
2 members regarding issues identified in the Complaint.

3 **(4) Settlement Negotiations/Preparation of Agreement and Exhibits/Preliminary**
4 **Approval/Motion for Attorneys' Fees:** This includes: Extensive discussions among the Parties'
5 counsel regarding the legal and factual bases for Plaintiff's claims and Defendants' affirmative
6 defenses; researching potential settlement options and range of injunctive and equitable relief in
7 light of case developments and legislative/regulatory landscape; drafting multiple settlement
8 demand letters to Defendants; reviewing of settlement counter-proposals by Defendants; in-person
9 meeting with Defense Counsel to discuss potential settlement; multiple in-person meetings with
10 CCA and its leadership to strategize re settlement options; drafting detailed confidential mediation
11 brief, along with supporting evidence and discovery; preparing for full-day Mediation in Los
12 Angeles with key CCA leadership; engaging in protracted settlement discussions with Defense
13 Counsel over an eight month period following the Mediation; working out the details of the
14 Settlement and the procedures and schedules for notice to the Class which was memorialized in
15 the Stipulation, vigorously negotiating each aspect, including the "Scorecard," "Scheduling
16 Criteria," and "Transparency and Process Management Procedures," which involved extensive
17 email and telephonic communications between counsel, as Class Counsel drafted, reviewed and
18 edited these documents throughout the drafting process; negotiating, drafting, editing, reviewing
19 and finalizing Settlement Agreement and Revised Agreement, along with all corresponding
20 Exhibits, including Class Notices, Settlement Website, Proposed Preliminary Approval and
21 Proposed Final Judgment; researching, drafting and preparing Motion for Preliminary Approval
22 of Settlement and Supplemental Brief; engaging with Defense Counsel in post-settlement activities
23 and taking all actions to finalize a settlement through the preliminary and final approval phases
24 and beyond; supervising and assisting Settlement Administrator with design of Settlement Website
25 and distribution of Class Notices; personally responding to all Class Members who contacted our
26 office requesting information about the settlement following effectuation of Class Notices via E-
27 Mail and U.S. Mail; preparation for and attendance at preliminary approval hearing; researching
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1 and initial drafting of Motion for Final Approval of Settlement and Motion for Attorneys' Fee,
2 Expenses and Incentive Award; preparing detailed supporting declaration and exhibits (includes
3 only work completed through *July 5, 2023*; does *not* include time preparing for and attending Final
4 Approval Hearing, fielding and responding to Class Member inquiries regarding settlement,
5 potential objectors and any appeals).

6 18. As the Court can conclude, this matter was efficiently and leanly prosecuted. At
7 all times, Class Counsel litigated this action in a manner that maximized the efficiency of their
8 efforts in the prosecution of the litigation and pursued discovery to achieve substantial benefits for
9 the Class in a highly efficient manner while avoiding burdening this Court. Along with my Co-
10 Lead Counsel at Pomerantz LLP, I was responsible for conducting discovery and drafting
11 pleadings, investigating the underlying claims, engaging in actual settlement discussions and
12 preparing the settlement papers.

13 19. I am thoroughly familiar with the quality and quantity of work done in this case by
14 all lawyers representing Plaintiff and the Settlement Class. I believe the time expended in this
15 litigation was reasonable and necessary considering the amount of work required to litigate this
16 hard fought action. I have endeavored to ensure there was no unreasonable duplication of the
17 services for which my Firm and my co-counsel now seek compensation. In the situations in which
18 two or more attorneys participated in any matter, that participation was reasonable because of the
19 complexity of the issues or pleadings involved and the time constraints that existed. I believe tasks
20 were delegated appropriately among senior attorneys and less senior attorneys according to their
21 complexity.

22 20. Moreover, Class Counsel's involvement in this case is not at an end. Indeed, Class
23 Counsel will also incur additional time in this case through its conclusion, including drafting and
24 finalizing the Motion for Final Approval of Settlement, attending the hearing on Final Approval
25 of Settlement and Attorneys' Fees, Expenses, and Incentive Award that is *not* reflected in the
26 request for fees. Even following Final Approval of the settlement, Class Counsel will continue to
27 oversee Defendants' compliance with the terms of the injunctive relief Settlement. I estimate that
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1 my firm will spend a minimum of twenty-five (25) hours on this case through its conclusion.
2 Accordingly, Class Counsel's actual lodestar will increase, and the effective lodestar is actually
3 higher than the amount submitted herein.

4 **RATES**

5 21. Below is a schedule of the total hours and billing rates for work performed on this
6 matter, and the lodestar calculation based on my firm's billing rates. The schedule was prepared
7 from contemporaneous, daily time records regularly prepared and maintained by my firm.
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Lodestar - Inception through July 5, 2023			
<u>Attorney</u>	<u>Number of Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Zev B. Zysman	1045.00	\$635.00	
Total			\$663,575.00

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15 22. The total number of hours expended on this litigation by my firm is 1045 hours.
16 The total lodestar for my firm is \$663,575.00.

17 23. Co-Lead Class Counsel at Pomerantz LLP have submitted detailed information
18 regarding their hours spent and hourly rates in the accompanying Declaration of Jordan L. Lurie.
19 In total, Class Counsel at Pomerantz LLP have spent 857.50 hours at the rates stated in the Lurie
20 Declaration totaling \$740,725.50.

21 24. In sum, the cumulative lodestar for the services performed by all firms is
22 \$1,404,300.50. Class Counsel spent a total of 1,902.50 attorney hours in the prosecution of this
23 litigation.

24 25. As explained in the Fee Motion, a lodestar analysis more than confirms the
25 reasonableness of Class Counsel's fee request as the requested fee in the sum of \$1,290,314.32
26 actually results in a *negative* lodestar multiplier which further supports the reasonableness of the
27 negotiated amount.
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1 26. All of the matters undertaken by Class Counsel’s firm are class actions. I have been
2 practicing for over 27 years. While the use of current hourly rates is appropriate because it
3 accounts for the time value of money where, as here, Class Counsel have not been paid
4 contemporaneously for their work on this case, for the purpose of this Motion, Class Counsel relies
5 on the lower rates in effect in **2019** when the case was initiated.

6 27. Class Counsel’s rate is the rate established for all cases in 2019. The hourly rate
7 charged is based, in part, on delay in payment that results from the firm’s contingency-based
8 system of representation, and the skill and experience of counsel in prosecuting class actions.

9 28. Based on my experience in litigating class action cases, my familiarity with the
10 class action practice in California, and my review of rates charged by my class action colleagues,
11 my firm’s hourly rate is in line with the rates prevailing in the community for similar services of
12 lawyers of reasonable comparable skill and reputation.

13 29. Further, based on my experience in litigating class action cases against opposing
14 counsel, my familiarity with the class action practice in California, and my review of rates charged
15 by defense lawyers in class action cases, my firm’s hourly rate is lower than the rates charged by
16 major law firms who serve as opposing counsel in class action cases. Unlike the defense bar,
17 whose attorneys are paid regularly for each hour of service and are reimbursed on a current basis
18 for expenses incurred, plaintiffs’ lawyers normally have no steady flow of income. The financial
19 burden on contingent counsel is far greater than that on a firm that is paid on an ongoing basis.
20 Attached hereto as Exhibit 1 is a true and correct copy of the relevant sections of a survey of
21 attorneys fees provided by the National Law Journal in 2009, which includes fee ranges charged
22 by prominent law firms nationwide. Highlighted are the following firms based or with major
23 presence in Southern California that regularly litigate complex class action cases:

<u>Firm Name</u>	<u>Partner Range</u>	<u>Associate Range</u>
Cozen O’Connor	up to \$880	up to \$695
Loeb & Loeb	up to \$950	up to \$550
Manatt Phelps & Phillips	up to \$850	up to \$505

1 Sheppard Mullin Richter & Hampton up to \$715 up to \$525
2 Winston & Strawn up to \$995 up to \$670
3

4 30. Class Counsel's rate has been approved by numerous other courts. For example, in
5 a consumer class action entitled *Furman v. Station Casinos LLC, et al.*, Case No. 56-2013-
6 00446134-CU-BT-VTA, pending in Ventura County Superior Court, Judge Vincent J. O'Neill
7 approved Class Counsel's hourly rate which is the *same* as the rate charged here. Attached hereto
8 as Exhibit 2 is a copy of the Order Granting Final Approval of Class Action Settlement and
9 Judgment dated June 1, 2016 by Judge Vincent J. O'Neill.

10 31. In addition, in *Brown v. Defender Security, Co.*, Case No. 12-cv-07319-CAS,
11 pending in Los Angeles in the Central District of California, District Judge Christina A. Snyder
12 approved Class Counsel's hourly rate which is the *same* as the rate charged here. Attached hereto
13 as Exhibit 3 is a copy of the Final Order Approving Class Action Settlement and Judgment dated
14 March 18, 2014 by Judge Christina A. Snyder.

15 32. Moreover, in a consumer class action entitled *Sosinov v. RadioShack, Corp.*, Case
16 No. BC449675, pending in the Los Angeles Superior Court, Central Civil West, Judge William F.
17 Highberger specifically approved Class Counsel's hourly rate which is the *same* as Class Counsel
18 is seeking here. Attached hereto as Exhibit 4 is a copy of the Final Order Approving Class Action
19 Settlement and Judgment dated March 27, 2013 by Judge William F. Highberger.

20 33. Further, in a consumer class action entitled *Pomerants v. Skechers U.S.A. Inc.*, Case
21 No. BC436360, pending in the Los Angeles Superior Court, Central Civil West, Judge John S.
22 Wiley approved Class Counsel's rate which is the *same* as Class Counsel is seeking here. Attached
23 hereto as Exhibit 5 is a copy of the Final Order Approving Class Action Settlement and Judgment
24 dated February 7, 2012 by Judge John S. Wiley.

25 34. Moreover, in a consumer class action entitled *Konevskya v. Tommy Bahama Group,*
26 *et al.*, Case No. BC424931, pending in the Los Angeles Superior Court, Central Civil West, Judge
27 Jane L. Johnson approved Class Counsel's rate which is the *same* as Class Counsel is seeking here.
28

1 Attached hereto as Exhibits 6 and 7, respectively, are copies of the Final Order Approving Class
2 Action Settlement and Judgment and Order Awarding Attorneys' Fees, Expenses and Incentive
3 Award dated December 12, 2011 by Judge Jane L. Johnson.

4 35. Additionally, in a consumer class action entitled *Burcham v. Welch Foods, Inc.*,
5 Case No. CV-10-01427-AHM, pending in Los Angeles in the Central District of California, Judge
6 A. Howard Matz approved Class Counsel's hourly rate which is the *same* rate as charged here.
7 Attached hereto as Exhibit 8 is a copy of the Order and Final Judgment dated June 27, 2011 by
8 Judge A. Howard Matz.

9 36. Further, attached hereto as Exhibit 9 is a copy of a Judgment and Order of Dismissal
10 dated September 23, 2008 by Judge William F. Fahey in a consumer class action entitled *Brand v.*
11 *Simple Tech, Inc.*, Case No. BC360001, pending in Los Angeles Superior Court. In that case,
12 Judge Fahey approved Class Counsel's hourly rate which is similar to the rate charged here.

13 37. Attached hereto as Exhibit 10 is a sworn statement by a class action attorney in the
14 matter entitled *Lundell v. Dell Inc.*, Case No. C05-03970 JW (N.D. Cal.) evidencing that firm's
15 hourly rates for class litigation in 2006. Those 2006 rates are consistent with (and even higher
16 than) the rates charged by Class Counsel now in 2023.

17 38. Class Counsel has extensive experience in complex business litigation and class
18 actions. Class Counsel has successfully served as Class Counsel prosecuting numerous consumer
19 class actions to Judgment, including *Fliegelman v. The Talbots, Inc.*, Case No. 56-2018-00513611-
20 CU-BT-VTA (Ventura County Superior Court); *Zhuravleva v. US Outlet Stores, LLC*, Case No.
21 37-2019-00036327-CU-BT-CTL (San Diego Superior Court); *Pascarella v. AM Retail Group,*
22 *Inc., et al.*, Case No. BC589194 (Los Angeles Superior Court, Central Civil West); *Furman v.*
23 *Station Casinos LLC, et al.*, Case No. 56-2013-00446134-CU-BT-VTA (Ventura County Superior
24 Court); *Brown v. Defender Security Co.*, Case No. 12-CV-7310-CAS (Central District of
25 California); *Press v. DS Waters of America, Inc.*, Case No. BC489552 (Los Angeles Superior
26 Court, Central Civil West); *Big 5 Sporting Goods Song-Beverly Cases*, Case No. JCCP4667 ((Los
27 Angeles Superior Court, Central Civil West); *Burcham v. Welch Foods, Inc.*, Case No. CV-10-

1 01427-AHM, (Central District of California); *Sosinov v. RadioShack, Corp.*, Case No. BC449675
2 (Los Angeles Superior Court, Central Civil West); *Pomerants v. Skechers U.S.A. Inc.*, Case
3 BC436360 (Los Angeles Superior Court, Central Civil West); *Yu v. Microsoft Corp.*, Case No.
4 BC316448 (Los Angeles Superior Court, Central Civil West); *Zilberman v. Netgear, Inc.*, Case
5 No. 1-04-CV-021230 (Santa Clara Superior Court); *Satsuta v. The Linksys Group*, Case No. 1-03-
6 CV002896 (Santa Clara Superior Court); *Brand v. Simple Tech, Inc.*, Case No. BC360001 (Los
7 Angeles Superior Court); and *In Re Wireless Product Cases*, JCCP Case No. 4381 (San Francisco
8 Superior Court).

9 39. All of the foregoing supports Class Counsel's representation that the hourly rate is
10 reasonable and should be approved.

11 40. The requested fee is justified for all the reasons set forth in the Fee Motion. The
12 Court also is requested to take into account that, as Class Counsel know from personal experience,
13 despite the most vigorous and competent of efforts, success in contingent class actions is never
14 assured. Lawyers who specialize in contingent matters live in a world of uncertainty. Unlike the
15 defense bar, whose attorneys are paid regularly for each hour of service and are reimbursed on a
16 current basis for expenses incurred, plaintiffs' lawyers normally have no steady flow of income.
17 Moreover, as demonstrated recently, changes in the law through legislation or judicial decree
18 potentially can be catastrophic and can occur on a moment's notice, adversely impacting pending
19 litigation. This occurs in many hard-fought lawsuits where because of the discovery of facts
20 unknown when the case commenced, or a significant change in the law during the pendency of the
21 litigation, highly professional efforts of members of the plaintiffs' bar produce no result for the
22 class or corporation sued for, and hence, no fee for counsel.

23 **CLASS COUNSEL'S EXPENSES ARE REASONABLE AND SHOULD BE**
24 **REIMBURSED**

25 41. The expenses which have been incurred, and for which reimbursement is sought,
26 were necessary for the conduct of this action, are reasonable in amount, and should be reimbursed.

1 an arm's-length negotiated and market-set reasonable fee which under the circumstances is more
2 than reasonable.

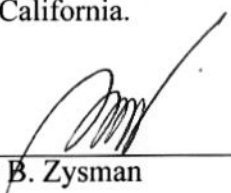
3 49. The requested fee amount does not dilute *any* benefits to the Class. The fee is *not*
4 being paid out of a common fund or some form of payment to be contributed by the Class. Rather,
5 the parties negotiated the material terms of the settlement and then negotiated an agreed-upon fee
6 reimbursement from Defendants. Accordingly, Plaintiff requests that the Court grant the Fee
7 Motion and award the requested fees and costs.

8 **THE NOTICE AND SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**
9 **AND SHOULD BE APPROVED**

10 50. Furthermore, as part of the settlement, Defendants have agreed to pay the
11 Settlement Administrator all expenses incurred in connection with the preparation, mailing and
12 publication of the Notices to the Settlement Class and preparation of the Settlement Website. To
13 date, the Settlement Administrator has incurred a total of \$1,252.60 in notice and settlement
14 administration costs. Under the circumstances present here, approval of this amount is reasonable.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17
18 Executed this 5th day of July, 2023 at Encino, California.

19
20 
21 _____
22 Zev B. Zysman
23
24
25
26
27
28