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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MARION WILLIAMS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

UDEMY, INC., a Delaware limited liability
company, and DOES 1- 50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/18/2023 at 11:42:00 AM
Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

Case No. 37-2023-00003666-CU-BT-NC
[E-FILE]
CLASS ACTION
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**
Date: July 28, 2023
Time: 1:30 p.m.
Judge: Hon. Robert Dahlquist
Place: Dept. N-29

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1 **I. INTRODUCTION**

2 This Lawsuit¹ formally commenced on August 23, 2021, when Marion Williams (“Plaintiff”),
3 through Plaintiff’s Counsel, filed a putative class action against Udemy, Inc. (“Defendant” or
4 “Udemy”) United States District Court for the Northern District of California, Case No. 3:21-cv-
5 06489-EMC (the “Federal Court Action”), asserting false advertising claims under California’s
6 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), California’s False
7 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (the “FAL”), and the California Consumer
8 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (the “CLRA”). From January 6, 2022, through
9 December 12, 2022, the Parties engaged in settlement discussions, including three mediation
10 sessions, two facilitated by JAMS Mediator Robert Meyer, on January 28, 2022, and March 18, 2022,
11 with a third mediation session facilitated by JAMS Mediator Shirish Gupta on December 12, 2022.
12 As a result of these mediation meetings, the Parties were able to reach a Class-wide Settlement. On
13 April 21, 2023, this Court preliminarily approved the Settlement as fair, adequate, and reasonable.
14 Plaintiff now seeks final approval of the Settlement.

15 Since the Court issued the Preliminary Approval Order, nothing has happened to change the
16 Court’s determination. The Settlement’s Notice and Claims Administrator, Postlethwaite &
17 Netterville, APAC (“P&N”), has sent Email Notices to 7,302,158 Class Members, of which 6,887,420
18 were confirmed received – 91.67% of the deliverable email addresses provided by Defendant. (See
19 Declaration of Ryan Aldridge Regarding Implementation of Notice and Claims Administration, filed
20 concurrently herewith, (“Aldridge Decl.”) ¶¶ 5-6.) P&N also established the Settlement Website,
21 www.PricePromotionSettlement.com, which was created to provide Settlement Class Members
22 access to the Full Notice, Printable PDF Claim Form and Exclusion Form, Settlement Agreement,
23 and other relevant documents. (*Id.* at ¶ 8.) As of July 14, 2023, the Settlement Website has received
24 422,918 unique visitors and been viewed 1,756,280 times. (*Ibid.*)

25 The Settlement’s Objection Deadline was July 10, 2023, and the Exclusion Response
26 Deadline will end on July 21, 2023. As of July 14, 2023, only 389 Class Members out of 6,887,420
27

28 ¹ All capitalized terms, unless otherwise defined, have the same definition as those terms in the Settlement Agreement and Release (ROA No. 12, Ex. 1).

1 who received direct notice have timely requested exclusion from the Settlement² and none have
2 timely objected. (*Id.* at ¶¶ 12-13.)

3 As of the date of this filing, 106,793 claims have been submitted, seeking an average of 4.37
4 courses per claim. As a result, under the preliminary-approved Settlement, Defendant will distribute
5 a minimum of \$1,856,368 in cash to Class Members and will distribute an additional estimated
6 \$843,632 in in-kind relief in the form of account credit to Class Members who submitted Claims.
7 Combined, this results in approximately \$2,700,000³ of cash and in-kind relief that Defendant will
8 distribute following final approval of the Settlement of out of a \$4,000,000 cash fund made available
9 as a result of the Settlement.

10 This outstanding result for the Class, which includes a *significant* cash Class benefit, was
11 reached despite recent rulings that plaintiffs in a false discounting case of this nature may very well
12 be entitled to no monetary recovery. (See, e.g., *Chowning v. Kohl's Dep't Stores, Inc.* (9th Cir. 2018)
13 735 F. App'x 924, 925.) Additionally, the Settlement is also a quality result because individual Class
14 Members and their Claims were arguably subject to an arbitration provision per the Terms of Use on
15 Udemy's website which created a substantial hurdle to achieving Class-wide relief. It was the
16 presence of experienced class action law firms and the threat of mass arbitration, uniquely brought to
17 bear by Lynch Carpenter and Keller Postman, that contributed to this Settlement.

18 The Class Members have spoken loudly in terms of their response to the substantial cash and
19 in-kind benefits made available under the Settlement. Class Members have given confirmation to
20 this Court's previous finding that the Settlement is fair, adequate, and reasonable. With such an
21 unquestionable endorsement, Plaintiff now moves for final approval of the Settlement and the entry
22 of Judgment.

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27 ² Less than .00005604% of those who received direct notice.

28 ³ This amount is calculated by subtracting the estimated costs of P&N's notice and administration costs as well as Class Counsel's request for 25% of the \$4,000,000 Settlement Fund Account made available.

1 **II. SUMMARY OF LAW, FACTS, AND PROCEDURAL HISTORY**

2 **A. Procedural History**

3 Udemey is an e-commerce website that sells online educational courses, ranging from
4 computer programming to personal development courses such as relationship building and career
5 development courses. Udemey’s library of courses contain more than 200,000 courses in 75 languages.
6 Prior to the commencement of this litigation, Class Counsel conducted an investigation of Udemey’s
7 pricing practices and analyzed the relevant legal issues in regard to the claims asserted in the
8 Complaint and Udemey’s potential defenses. The investigation involved tracking and cataloging items
9 listed for sale at Defendant’s website, Udemey.com. Class Counsel interpreted the results of the
10 investigation to reveal that Udemey’s pricing practices were designed to induce consumers to believe
11 that the courses were once sold at the “original” price from which the stated discount and
12 corresponding “sale” prices were derived when in fact they were not. Further, according to Plaintiff’s
13 investigation, many of the courses appeared to be “discounted” for a period in excess of the time
14 allowed under the FAL and the Federal Trade Commission Act.

15 Based on the investigation, on August 23, 2021, Marion Williams, through Class Counsel,
16 filed the Federal Court Action asserting false advertising claims under the UCL, the FAL, and the
17 CLRA. From January 6, 2022, through December 12, 2022, the Parties engaged in settlement
18 discussions, including three mediation sessions, two facilitated by JAMS Mediator Robert Meyer on
19 January 28, 2022, and March 18, 2022, with a third mediation session facilitated by JAMS Mediator
20 Shirish Gupta on December 12, 2022. As a result of these mediation meetings, the Parties were able
21 to reach a prospective settlement on a Class-wide basis. In the following months, the Parties heavily
22 negotiated the details of the Settlement, and the Parties ultimately reached the Settlement Agreement
23 that is before this Court for final approval.

24 **B. The Parties’ Respective Positions**

25 Plaintiff believes his pre-suit investigation demonstrates that Defendant pervasively engaged
26 in a fraudulent pricing scheme in the sale of online courses on its e-commerce store, Udemey.com, by
27 advertising fictitious “Original” reference prices and corresponding phantom discounts. Through this
28 practice, Defendant created the false impression that consumers were obtaining a significant deal by

1 purchasing online courses from Udemy.com. Class Counsel believes their lengthy pre-suit
2 investigation, described more fully below, revealed that the advertised reference prices used by
3 Defendant were fictional because such prices were either never offered to the general public and,
4 more specifically, never offered at the reference price including during the 90-day “look-back” period
5 set forth pursuant to FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, and were thus deceptively
6 marketed.

7 Defendant has denied any and all wrongdoing, asserting that its reference prices were not false
8 or misleading, and that Plaintiff and Class Members have suffered no damage. Defendant has also
9 asserted that any and all claims brought against them by Class Members are otherwise subject to
10 arbitration per its Terms of Use on Udemy.com.

11 **C. Investigation and Other Work Performed**

12 Prior to commencement of the Federal Court Action, Class Counsel performed an
13 investigation involving data collection software that monitored Udemy’s online pricing for 8 months.
14 (Declaration of Todd D. Carpenter in support, filed concurrently herewith, (“Carpenter Decl.”) ¶ 5.)
15 The process leveraged an open-source software library which is used for software test automation.
16 (*Ibid.*) An outside consultant developed an application utilizing the library that initiated a web
17 browser, loaded the respective URLs, then inspected the content of each page, isolating product links.
18 (*Ibid.*) The application sought out each product that was on sale, recorded information about that
19 product, and took a screenshot of the item and the entire webpage to ensure the veracity of the data.
20 (*Ibid.*) The data was collected from January 2021 and continues uninterrupted to this day. (*Ibid.*)

21 Class Counsel also concurrently researched and monitored decisions issued by state and
22 federal courts addressing the relevant legal issues in connection with the claims asserted in the
23 Complaint and Udemy’s potential defenses, including its ability to compel arbitration for individual
24 litigants. (*Id.* at ¶ 6.) This investigative work was critical to Class Counsel’s understanding of
25 Defendant’s conduct and the formation of the legal theories advanced by Plaintiff.

26 Lynch Carpenter and Keller Postman retained a prominent economic damages expert to
27 perform multiple regression analyses using the data collected concerning Udemy’s pricing practices
28 and the various features of the courses identified. A preliminary analysis of the data provided

1 suggested to Class Counsel that consumers paid a price premium because of the alleged misconduct.
2 Previous analysis on similar cases with these facts yielded damages in the range of 8% to 25% of the
3 average purchase price. The average price of a course sold by Udemy is \$11.00 per course and, thus,
4 the range of average damages under similar models would be \$0.88 to \$2.75. However, in terms of
5 relief, Class Members will be receiving \$4.00 per Eligible Course Purchase, which is relief up to and
6 in some cases exceeding 400% of their actual damages for each course claimed. (*Id.* at ¶ 7.)

7 After filing of the Federal Court Action, Class Counsel engaged in informal discovery with
8 counsel for Defendant with respect to the facts and law at issue. After several meaningful discussions
9 and exchanges of data, the Parties opted to explore resolution through mediation. Thereafter,
10 Defendant provided Class Counsel with additional information with which they were able to evaluate
11 and analyze the prospects for Settlement. Specifically, Class Counsel were provided with information
12 spanning the Class Period regarding the volume of Defendant’s sales transactions, average purchase
13 prices, average number of courses purchase per customer, and Class size, and the availability of Class
14 contact information. (*Id.* at ¶ 8).

15 Prior to each of the three mediation sessions conducted in this case, Class Counsel prepared
16 an extensive confidential mediation brief, representing the culmination of Class Counsel’s pre- and
17 post-litigation investigative work, including information related to Plaintiff’s purchases, Class data
18 from Defendant, Defendant’s widespread pricing practices, and expert analysis thereof. During this
19 time, Class Counsel worked closely with its damages expert to develop the damages model alleged
20 against Defendant. Following settlement in principle, Class Counsel and Defense counsel drafted the
21 substantive terms of the Settlement and Notice plan and engaged in further negotiation over the
22 structure of the Settlement Agreement with Defendant. (*Id.* at ¶ 9.)

23 **D. Mediations Before JAMS Mediators, Robert A. Meyer and Shirish Gupta**

24 On January 28, 2022, and March 18, 2022, the Parties attended two all-day mediations with
25 JAMS Mediator, Robert A. Meyer. Despite best efforts during these two mediations, the Parties were
26 unable to reach a final resolution on all material terms. Over the next several months, the Parties
27 continued to negotiate in good faith and eventually agreed to a third mediation. This final mediation
28 took place before JAMS Mediator, Shirish Gupta on December 12, 2022. Prior to each of the

1 mediation efforts, Class Counsel provided both Mediators with a confidential, detailed mediation
2 statement that included an analysis of the evidence and relevant case law, and the respective positions
3 of the Parties. Class Counsel also provided various damages analyses, which were developed in
4 consultation with an economic expert and which, according to Plaintiff, supported the alleged
5 damages sought in this case. (Carpenter Decl., ¶ 10.)

6 At the close of the third full-day session, after exchanging numerous proposals and
7 counterproposals, the Parties had made substantial progress and, as a result of that progress and in
8 subsequent discussions, the Parties reached a Class-wide Settlement, culminating in the Settlement
9 Agreement currently before this Court. Each aspect of the Settlement Agreement was heavily
10 negotiated, including, but not limited to, the value and specifications of the Class relief, the
11 distribution of any in-kind value, and the intricacies of any proof of Eligible Course Purchase
12 requirement for any claims made. The Parties ultimately agreed to all material terms of the Settlement
13 then spent significant time negotiating, drafting, and executing the Settlement Agreement. (*Id.* at
14 ¶ 11.)

15 **E. Preliminary Approval**

16 On March 7, 2023, Plaintiff filed an Unopposed Motion for Preliminary Approval of
17 Settlement and Provisional Class Certification. (ROA Nos. 10-16.) On April 21, 2023, the Honorable
18 Robert P. Dahlquist preliminarily approved the Settlement as fair, reasonable and adequate to all
19 concerned. (ROA No. 35.) In granting Plaintiff’s unopposed motion, this Court (i) provisionally
20 certified the Class; (ii) found the Settlement to be fair, reasonable, and adequate; (iii) found that the
21 proposed Notice program for the Settlement complied with due process. The Court then set the matter
22 for a Fairness Hearing on July 28, 2023. (*Id.*)

23 **III. NOTICE WAS PROVIDED IN ACCORDANCE WITH THE PRELIMINARY**
24 **APPROVAL ORDER**

25 Defendant’s Counsel provided the Claims Administrator, P&N, with data files containing
26 7,513,167 email addresses of potential Class Members. (Aldridge Decl., ¶ 5) After deduplication,
27 syntax validation, domain validation, and risk validation, P&N built a Settlement Class list of
28 7,302,158 unique potential Class Members. (*Id.* at ¶ 6.) From there, P&N successfully delivered

1 6,887,420 Court-approved Email Notices. (*Id.*) Following this extensive campaign and through the
2 date of the filing of this Motion for Final Approval, only 389 Class Members timely requested to be
3 excluded, and none have timely objected to the Settlement. (*Id.* at ¶¶ 12-13.) Each Class Member
4 who was sent Email Notice and made a Claim will be sent a cash payment of \$4.00 per Eligible
5 Course Purchase. Because the relief is in cash, Class Members will be able to use this money as they
6 see fit. The average number of courses claimed by Class Members as of the date of filing this Motion
7 was 4.37 courses per claimant. Thus, Class Members who made a Claim will receive approximately
8 \$17.00 each. In addition to the cash payments, each Class Member who made a Claim will receive
9 an estimated \$8.00 worth of course credit to use at Udemy.com as in-kind relief and this credit will
10 remain valid for 3 years after receipt. Relief will be provided within 45 days after the Effective Date
11 of Settlement. (See SA, § C(3)(b).)

12 On May 8, 2023, P&N established Settlement Website, (Aldridge Decl., ¶ 8.) The Settlement
13 Website is dedicated to this Settlement and provides an explanation of the Settlement and important
14 dates; contains a summary of options available to Class Members; provides answers to frequently
15 asked questions; allows for online Claim submission; and posts copies of: (i) the Complaint,
16 (ii) Settlement Agreement, (iii) Preliminary Approval Order, (iv) Full Notice, (v) E-Mail Notice, and
17 (vi) Claim Form. Additionally, Class Counsel’s Unopposed Motion for Attorneys’ Fees, Costs, and
18 Incentive Award (ROA Nos. 41-46) was posted to the Settlement Website promptly after it was filed.
19 Class Members were also able to file a Claim via the Settlement Website, or download a paper Claim
20 Form, which they could then file by mail or by email. References to the Settlement Website were
21 prominently displayed in Email Notice and Full Notice. Potential Class Members who learn of the
22 Settlement through any means can obtain copies of these documents through the Settlement Website,
23 24 hours per day, even if they had not directly received Notice. (*Id.* ¶ 20.) To date, the Settlement
24 Website has received 422,918 unique visitors and 1,756,280 webpage views. (*Id.* at ¶ 21.)

25 As the Court preliminarily determined, the method of disseminating Class Notice was the
26 most reasonable notice under all of the circumstances, and it comports with California law, including
27 rules 3.766(e)-(f) and 3.769 of the Rules of Court.

28

1 **IV. CLAIMS, OBJECTIONS, AND EXCLUSIONS**

2 As of July 14, 2023, P&N has successfully confirmed delivery 6,887,420 Email Notices to
3 Class Members and has received 107,047 Claims. (Aldridge Decl., ¶¶ 10, 12, 13) The last day for
4 Class Members to object to the Settlement was July 10, 2023. As of July 14, 2023, with just a week
5 remaining in the Notice period, only 389 Class Members timely requested to be excluded from the
6 Settlement (less than .00005604% of direct notice recipients) and none have timely objected. (*Id.* at
7 ¶¶ 12-13.) As explained below, this is strong indicia that the Class Members find the Settlement to
8 be fair, adequate, and reasonable.

9 **V. THE TRIAL COURT’S ROLE IN REVIEWING THE SETTLEMENT AGREEMENT**
10 **AT THE FINAL FAIRNESS HEARING**

11 Approval of a class action settlement involves a three-step process. First, the Court holds a
12 hearing to preliminarily approve the settlement as within the range of acceptable settlements. (Cal.
13 Rules of Court, rule 3.769(c).) Second, notice of the settlement and its terms are provided to class
14 members, who are then given a period of time to comment on the settlement, opt out of the settlement,
15 object to the settlement, or participate in the settlement. (Cal. Rules of Court, rule 3.769(f).) Third,
16 the Court conducts a “Fairness Hearing” at which all interested parties are afforded an opportunity to
17 be heard. (Cal. Rules of Court, rule 3.769(g); *see In re Microsoft I-V Cases* (2006) 135 Cal.App.4th
18 706, 723.)

19 The court’s inquiry on a motion for final approval of a class action settlement is whether the
20 settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
21 1801.) Further, with class action settlements:

22 Due regard[] should be given to what is otherwise a private consensual agreement
23 between the parties. The inquiry “must be limited to the extent necessary to reach a
24 reasoned judgment that the agreement is not the product of fraud or overreaching by,
or collusion between, the negotiating parties, and that the settlement, taken as a
25 (*Id.* at 1801 (citing *Officers for Justice v. Civil Service Comm’n, etc.* (9th Cir. 1982) 688 F.2d 615,
26 625).)

27 The court should not reach “ultimate conclusions on the contested issues of fact and law which
28 underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance

1 of wasteful and expensive litigation that induce consensual settlements. In other words, the settlement
2 or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.” (*7-Eleven*
3 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145 (citing *Officers*
4 *for Justice*, 688 F.2d at 625).)

5 **VI. THE SETTLEMENT REMAINS FAIR, REASONABLE, AND ADEQUATE**

6 This Court has already determined that the Settlement in this Action is fair, reasonable, and
7 adequate. (ROA Nos. 32, 35.) The Court’s previous determination was supported by ample case law
8 identifying the factors necessary for a presumption of fairness: (1) the Settlement was reached
9 through arm’s-length bargaining; (2) investigation and discovery were sufficient to allow Class
10 Counsel and the Court to act intelligently; (3) Class Counsel is experienced in similar litigation; and
11 (4) there are no objections. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

12 **A. This Settlement is Reasonable in Light of *Chowning v. Kohls***

13 Before discussing the fairness factors, it bears emphasizing that this Settlement was finalized
14 after a Ninth Circuit decision finding that monetary relief may not be available in pricing cases where
15 the amount paid by a plaintiff does not exceed the actual value of the items purchased. (*Chowning v.*
16 *Kohl’s Dep’t Stores, Inc.* (C.D. Cal. Mar. 15, 2016) 2016 WL 1072129, at *13, reconsideration
17 denied, (C.D. Cal. Apr. 26, 2016) 2016 WL 9180374, and aff’d, (9th Cir. June 18, 2018) 2018 WL
18 3016908; *see also In re Tobacco Cases II* (2015) 240 Cal. App. 4th 779, 792, 94 (price/value
19 differential “sets forth the proper measure of restitution” in circumstances where plaintiffs have
20 obtained value from the item they bought).)

21 The Ninth Circuit in *Chowning* rejected all of the measures of monetary relief put forth by the
22 plaintiffs and granted summary judgment in favor of the defendant because no such relief was
23 available. Even before *Chowning*, several district courts granted summary judgment in favor of
24 defendants in pricing cases, consistently rejecting the plaintiffs’ proposed models for measuring
25 restitution and damages. Simply put, *Chowning* may have drastically reduced the potential value of
26 this price advertising case. Thus, the \$4.00 per course benefit negotiated in the Settlement provides
27 the Class a “guaranteed, fixed, immediate, and substantial recovery,” especially when compared to
28 the real uncertainties involved in continued litigation, and is therefore well within the range of

1 possible judicial approval.⁴ Plaintiff also recognizes the expense and delay associated with continued
2 prosecution of this case through certification, trial, and subsequent appeal(s), which could take several
3 more years with no guarantee of success.

4 Based on the above, the Settlement is reasonable and the best practical result for Class
5 Members in light of the uncertain state of the law in false discounting cases.

6 **B. The Settlement Was the Result of Arm’s-Length Bargaining**

7 The Parties negotiated at arm’s-length each term that eventually formed the basis of the
8 Settlement. Each Party believed that its position was meritorious and would ultimately prevail, while
9 each Party also recognized the uncertainty of litigation. Class Counsel recognized that, even if a
10 judgment was obtained against Defendant at trial, the recovery to the Class might be of no greater
11 value, and could be less valuable, than the award provided through the Settlement. Although
12 Defendant disputed Plaintiff’s allegations and denied any wrongdoing or liability, it also recognized
13 the significant exposure it faced if it lost at trial. (Carpenter Decl., ¶ 12.)

14 With this in mind, the Parties actively engaged in arm’s-length negotiations after sufficient
15 discovery was obtained to assess the benefits and risks to each Party. These protracted negotiations
16 over several months resulted in the preliminary-approved Settlement. Further, the material terms of
17 the Settlement were agreed upon by the Parties with the assistance of two highly experienced, neutral
18 mediators, Robert A. Meyer and Shirish Gupta. Accordingly, the Settlement was the result of non-
19 collusive, arm’s-length negotiation. (*Id.* at ¶ 13.)

20 **C. The Extent of Discovery Completed and the Stage of the Proceedings Also**
21 **Support the Settlement**

22 The Parties investigated and evaluated the factual strengths and weaknesses of this case and
23 engaged in extensive pre-litigation investigation and informal discovery to support the Settlement.
24 Throughout this litigation, Class Counsel engaged in sufficient discovery and investigation to
25 evaluate the merits and risks associated with the prosecution of this matter, including engaging

26 _____
27 ⁴ “Even if plaintiff were to prevail at trial, there is a very real risk that plaintiff could recover nothing.”
28 (*Spann v. JC Penney Corp.* (C.D. Cal. 2016) 314 F.R.D. 312, 326; *see e.g., In re Tobacco Cases II*
(Cal. App. Sept. 28, 2015) 2015 WL 5673070, at *5–9 (declining to award restitution because
plaintiffs failed to establish a price/value differential despite prevailing on liability under the UCL
and FAL).)

1 informal discovery, expert analysis of the pricing practices at issue, and examining documents and
2 data produced by Defendant. Through discovery and independent research, review, and evaluation,
3 Class Counsel was sufficiently informed of the nature of the claims and defenses and was in an ideal
4 position to evaluate the Settlement for fairness, adequacy, and reasonableness at the time of the
5 mediation. Class Counsel believes the Settlement is in the best interest of the Class. Class Counsel
6 balanced the terms of the Settlement, including the proposed Settlement amount, against the risks and
7 range of recovery at trial, as well as the risks associated with Class certification, trial, and presenting
8 a viable damages model in connection therewith. (Carpenter Decl., ¶ 14.) The Settlement came only
9 after the case was fully investigated by Class Counsel and the litigation had reached the stage where
10 “the Parties certainly have a clear view of the strengths and weaknesses of their cases” to support the
11 Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

12 **D. Counsel for Each Party Is Experienced and Support the Settlement**

13 Experienced attorneys, operating at arm’s-length, have weighed the strengths of the case and
14 examined the issues and risks of litigation and endorse the Settlement. (Carpenter Decl., ¶ 15.) The
15 view of the attorneys actively conducting the litigation “is entitled to significant weight” in deciding
16 whether to approve the Settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
17 630 F.Supp. 482, 488; *Boyd*, 485 F.Supp. at 616-17.) Class Counsel are very experienced in civil
18 litigation and consumer class actions. Defendant’s Counsel is also very experienced in civil litigation
19 and consumer class actions. Class Counsel are well qualified to evaluate the Class claims and to
20 evaluate Settlement versus trial on a fully-informed basis. Counsel on both sides share the view that
21 this Settlement is a fair and reasonable result in light of the complexities of the case, the state of the
22 law with respect to the uncertainties of Class certification and litigation, and is a good result for the
23 Class. (*Id.*)

24 **E. No Class Members Timely Objected to the Settlement and Less Than .000056%
25 Have Requested Exclusion**

26 After delivering direct notice to approximately 6,871,966 Class Members and giving Class
27 Members sufficient opportunity to review the Court’s file and the terms of the Settlement, an
28 infinitesimally small percentage opted out and no valid objection was received. (Aldridge Decl., ¶10.)

1 Thus, the reaction of the Class has been overwhelmingly favorable and virtually unanimous in support
2 of the Settlement. A court may appropriately infer that a Class Settlement is fair, adequate and
3 reasonable when few Class Members object to it. (*Dunk*, 48 Cal.App.4th at 1802.) As such, this
4 overwhelming Class support provides perhaps the best evidence of the fairness of the Settlement.

5 **VII. CONCLUSION**

6 The Settlement is highly beneficial to the Class, and will efficiently, economically, and
7 favorably resolve what would otherwise be protracted, expensive, and uncertain litigation.
8 Accordingly, Plaintiff and the Class request that the Settlement be given final approval, and that the
9 Court award the requested attorneys' fees and costs to Class Counsel and the requested incentive
10 award to the Class Representative.

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