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12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – UNLIMITED CIVIL**

14 JENNIFER GOODWIN, individually
15 and on behalf of all others similarly
16 situated,

15 Plaintiff,

16 v.

17 K M P Enterprises d/b/a Powell Electric,
18 Defendant.

Case No.: 20STCV18428

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS AND
SERVICE AWARD**

Date: January 16, 2024

Time: 10:00 a.m.

Department: 14

Judge: Hon. Kenneth R. Freeman

[Filed concurrently with Declaration of Abbas
Kazerounian; Declaration of Jason A. Ibey;
Declaration of Pamela Prescott; Declaration of
Gil Melili; Declaration of Jennifer Goodwin;
and Declaration of Meagan Brunner]

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Amended Complaint Filed: May 26, 2021

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1 **I. INTRODUCTION**

2 Plaintiff Jennifer Goodwin (“Plaintiff” or “Goodwin”), individually and on behalf of the
3 Settlement Class Members, moves the Court for approval of her request for attorneys’ fees, costs,
4 and service award (“Motion” or “Fee Brief”) as part of this preliminarily approved class action
5 settlement in this case against defendant KMP Enterprises d/b/a Powell Electric (“Defendant” or
6 “Powell Electric”).¹ The requested attorneys’ fees, costs and service award are reasonable and
7 justified considering the fair, adequate and reasonable settlement obtained for the class, among
8 other relevant factors for the Court’s consideration. Pursuant to the revised Settlement Agreement
9 filed on May 5, 2022 as Exhibit 1 to the Declaration of Abbas Kazerounian (“Agreement” or
10 “Agr.”), Plaintiff may request \$570,000 (representing 30% of the Common Fund of \$1,900,000)
11 as attorneys’ fees, and up to \$25,000 in litigation costs. Agr. § 2.7. Further, Plaintiff, as Class
12 Representative, may request a service award of up to \$4,000. *Id.* at § 2.6.

13 **II. BRIEF FACTUAL AND PROCEDURAL POSTURE**

14 On February 19, 2020, Plaintiff called Defendant at 800-660-8076 from her cellular
15 telephone to inquire about its services and receive an estimate for work to install an electric
16 vehicle outlet. First Amended Complaint (“FAC”), at ¶ 17, filed on May 26, 2021. Defendant
17 allegedly failed to inform Plaintiff at the outset of the call that she was being recorded. *Id.* ¶ 18.
18 Plaintiff did not discover she was being recorded until she asked Defendant later in the
19 conversation whether she was being recorded, at which point Defendant’s agent informed
20 Plaintiff that it records all its telephone calls. *Id.*

21 In response to this alleged conduct, Plaintiff filed this putative class action against
22 Defendant on May 14, 2020, seeking recovery for herself and similarly situated individuals in
23 California. The subsequent FAC alleges violations of California’s Invasion of Privacy Act, Cal.
24 Pen. Code § 630, *et seq.* (“CIPA”), and specifically, Cal. Pen. Code § 632.7. Defendant filed its
25 Answer asserting thirty-four affirmative defenses, and Plaintiff served formal written discovery,
26 inclusive of requests by Plaintiff seeking information and documents pertaining to Defendant’s
27 call-recording activities and affirmative defenses, among other things. Declaration of Jason A.

28

¹ Plaintiff and Defendant are referred to, jointly, as the “Parties” and, singularly, as “Party.”

1 Ibey (“Ibey Decl.”), ¶¶ 10-11, filed herewith.

2 The Parties eventually reached a class settlement in principle, after having exchanged
3 informal discovery and participated in a full-day mediation before Hon. Jay C. Gandhi (Ret.) of
4 JAMS on January 21, 2020. *Id.* ¶¶ 7, 11. On April 14, 2022, the Parties fully executed a settlement
5 agreement after they finalized its terms; and Plaintiff was able to obtain confirmatory discovery.
6 *Id.* ¶ 11. On May 5, 2022, Plaintiff filed an Unopposed Motion for Preliminary Approval of Class
7 Action Settlement and Certification of Settlement Class (“Preliminary Approval Motion”).

8 On October 3, 2022, the Court issued an order requiring further briefing on Plaintiff’s
9 Preliminary Approval Motion; providing Plaintiff until March 6, 2023, to submit additional
10 briefing; and continuing the preliminary approval hearing to April 6, 2023. After Plaintiff
11 submitted supplemental briefing in support of preliminary approval and a hearing on the
12 Preliminary Approval Motion and the supplemental briefing, the Court ordered Plaintiff to file a
13 declaration and proposed claim form by April 30, 2023. On July 5, 2023, the Court granted
14 Plaintiff’s Preliminary Approval Motion contingent on providing an exemplar of the class notice
15 and preparing a proposed order containing a calendar of events leading to the Final Approval
16 hearing. After receiving the foregoing class notice and proposed order, the Court, on July 25,
17 2023, signed an Order (1) Conditionally Certifying a Settlement Class, (2) Preliminary Approving
18 Class Action Settlement, (3) Approving Notice Plan, and (4) Scheduling Final Approval Hearing
19 (the “Preliminary Approval Order”).

20 Defendant has provided the Settlement Administrator with the Class List and Cell Phone
21 Number List, and the Settlement Administrator sent out Class Notice and activated the Settlement
22 Website pursuant to the Preliminary Approval Order. Ibey Decl., ¶ 9; Declaration of Meagan
23 Brunner (“Brunner Decl.”), ¶¶ 4, 7-11, filed herewith. As of September 27, 2023, the Settlement
24 Administrator has received zero (0) requests for exclusion and zero (0) objections. Brunner Decl.,
25 at ¶ 12. The Settlement Administrator has been actively engaged in other tasks as required by the
26 Agreement and Preliminary Approval Order. *Id.* at ¶¶ 3-13. The deadline to request exclusion or
27 object to the Settlement is November 22, 2023. *Id.* at ¶ 12; *see* Preliminary Approval Order, p. 8.

28 This Motion is timely filed by the September 28, 2023 deadline (Preliminary Approval

1 Order, p. 8), and will be promptly posted on the Settlement Website (Ibey Decl., ¶ 4).

2 **III. LEGAL STANDARD**

3 The California Supreme Court has long recognized the need for class actions in consumer
4 cases where recoveries are too small to warrant individual prosecution. *See Earley v. Superior*
5 *Court*, 79 Cal.App.4th 1420, 1434 (2000) (internal citations omitted); *see also, Linder v. Thrifty*
6 *Oil Co.*, 23 Cal. 4th 429, 434 (2000) (“Courts long have acknowledged the importance of class
7 actions as a means to prevent a failure of justice in our judicial system.”).

8 Appropriate awards of attorneys’ fees are necessary in order to ensure that consumer rights
9 are protected and defended. One of the fundamental axioms of class action law is that a plaintiff
10 who obtains a settlement on behalf of absentee class members is allowed to recover reasonable
11 attorneys’ fees and costs incurred in the litigation. *See, e.g., Mills v. Electric Auto-Lite Co.*, 396
12 U.S. 375, 391-92 (1970) (recognizing the right of class action plaintiffs who have obtained a
13 settlement to recover attorneys’ fees and costs because, “[t]o allow the others to obtain full benefit
14 from the plaintiff’s efforts without contributing equally to the litigation expenses would be to
15 enrich the others unjustly at the plaintiff’s expense.”). “[A]bsent circumstances rendering the
16 award unjust, an attorney fee award should ordinarily include compensation for all the hours
17 reasonably spent including those relating solely to the fee.” *Ketchum v. Moses*, 24 Cal. 4th 1122,
18 1133 (2001); *see also, Serrano v. Unruh*, 32 Cal. 3d 621, 624 (1982) (“*Serrano IV*”).

19 While CIPA has no attorneys’ fee provision, a plaintiff may nevertheless recover
20 reasonable attorneys’ fees under the private attorney general doctrine codified by Cal. Civ. Proc.
21 Code § 1021.5. *See generally Slayton v. Pomona Unified Sch. Dist.*, 161 Cal. App. 3d 538, 544-
22 45 (1984); *see also Matera v. Google LLC*, No. 5:15-CV-04062 LHK, 2018 U.S. Dist. LEXIS
23 245919, at *6 (N.D. Cal. Feb. 9, 2018) (“ . . . in light of the CIPA claim, the requested attorneys’
24 fees are authorized in this Action pursuant to California’s ‘private attorney general’ statute . . .”).

25 **IV. THE COURT SHOULD AWARD \$570,000 AS ATTORNEYS’ FEES, \$17,440.77 IN**
26 **LITIGATION COSTS, A SERVICE AWARD OF \$4,000 TO PLAINTIFF, AND**
27 **REASONABLE NOTICE AND SETTLEMENT ADMINISTRATION EXPENSES**

28 **A. Costs of \$17,440.77 Were Reasonably Incurred by Plaintiff’s Counsel**

Plaintiff’s counsel have documented \$17,440.77, as of September 26, 2023, in litigation

1 costs incurred in this action. Kazerounian Decl., ¶ 95; Exhibit 2 thereto. These costs, which were
 2 reasonably incurred, include, for example, filing fees, advance jury fees, Case Anywhere monthly
 3 service fees, travel, lodging, copying, postage, service of process, and mediation expenses², and
 4 computerized research (*id.*). See e.g., *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166,
 5 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses,
 6 postage, telephone and fax costs, computerized legal research fees, and mediation expenses are
 7 relevant and necessary expenses in class action litigation). Settlement Class Counsel expect to incur
 8 additional costs to file the present motion, file a motion for final approval of class action
 9 settlement, and in preparing for the Fairness Hearing. Kazerounian Decl., ¶ 32. These costs should
 10 be reimbursed to Settlement Class Counsel from the Common Fund.

11 **B. The Request for Attorneys’ Fees of \$570,000 Should Be Approved**

12 Plaintiff may seek an award of attorneys’ fees of 30% of the Common Fund, as
 13 countenanced by the Agreement (Agr. § 2.7). Attorneys’ fees are specifically requested by Plaintiff
 14 in the Prayer for Relief in the First Amended Complaint (FAC, p. 10), and also permitted (up to
 15 one-third of the recovery) by the attorney-client agreement between Ms. Goodwin and her counsel
 16 (Exhibit 1 to Kazerounian Decl., ¶ 94). Further, this Settlement benefits the California public at
 17 large through meaningful injunctive relief in the form of policy changes by Powell Electric to
 18 prevent future audio recording of calls without consent (Agr. § 11). See Cal. Civ. Proc. § 1021.5.

19 California courts, in exercising their broad discretion to determine the appropriate fee
 20 award may use either the percentage-of-the-fund approach or lodestar approach. See *Laffitte v.*
 21 *Robert Half Internat. Inc.*, 1 Cal. 5th 480, 506 (2016) (agreeing with appellate court that “[t]he
 22 percentage of fund method survives in California class action cases, and the trial court did not
 23 abuse its discretion in using it, in part, to approve the fee request in this class action.”);³ see also
 24 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 65-66, 75 Cal. Rptr. 3d 413, 433 (2008) (“It is not an

25 _____
 26 ² Mediation expenses alone are \$12,450 for the mediation administered by JAMS, before the
 Honorable Jay Gandhi (Ret.). Kazerounian Decl., ¶ 31.

27 ³ “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it
 28 due to the lack of a readily valued common fund, did not purport to bar its usage generally in
 common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 abuse of discretion to choose one method over another as long as the method chosen is applied
2 consistently using percentage figures that accurately reflect the marketplace.”); *Consumer Privacy*
3 *Cases*, 175 Cal. App. 4th 545, 557-58, 96 Cal. Rptr. 3d 127, 137 (2009) (noting that regardless of
4 method used, the ultimate goal is to compensate counsel for their efforts) (citing *Apple Computer,*
5 *Inc. v. Superior Court*, 126 Cal.App.4th 1253, 1270 (2005).

6 **1. An award of \$570,000 for attorneys’ fees is appropriate, representing**
7 **thirty percent of the \$1,900,000 Common Fund**

8 California courts awarding attorneys’ fees based on the percentage-of-the-fund method in
9 common funds cases frequently award fees of one-third of the gross fund. *See e.g., Laffitte*, 1 Cal.
10 5th at 485–486 (upholding fee award of one-third of common fund); *Escobedo v. Pac. W. Bank*,
11 2020 Cal. Super. LEXIS 72594, *5 (Sup. Ct. Los Angeles, 2020) (contingency fee of \$416,667,
12 representing one-third of the gross settlement amount; and costs of \$16,151.53) (Kenneth R.
13 Freeman); *Limon v. Crestline Hotels & Resorts*, 2022 Cal. Super. LEXIS 87150, *6 (Sup. Ct. Los
14 Angeles, 2022) (contingency fee of \$366,667, representing one-third of common fund; and costs
15 of \$20,000) (Kenneth R. Freeman).

16 Here, as permitted by the Agreement, Plaintiff’s counsel seek an award of \$570,000 as
17 attorneys’ fees (representing 30% of the gross fund of \$1,900,000), and separately up to \$25,000
18 in costs incurred by Plaintiff’s counsel as noted above (Agr. §§ 1(j), 2.6-2.7). Such award of
19 attorney’s fees, based on the percentage-of-the-fund approach is reasonable, and supported by case
20 law, counsel’s efforts in this litigation to reach a swift settlement, the contingency fee nature of
21 the case, and the monetary relief to the California Settlement Class Members (without use of a
22 claim form) as well as injunctive relief to benefit the California public. *See generally*, Recitals A-
23 G to the Agr. §§ 2.3 and 11; Exhibit B to Agr. (noting a check of at least \$178 will be provided to
24 each Settlement Class Member automatically); *Ibey Decl.*, ¶ 9.

25 **2. An award of \$570,000 for attorneys’ fees is also appropriate under the**
26 **lodestar approach, with a reasonable risk multiplier of 2.687**

27 Under the lodestar approach, the court computes the “lodestar” amount by multiplying the
28 number of hours reasonably expended by each attorney or legal staff member by their reasonable

1 hourly rates. *See Serrano III*, 20 Cal. 3d at 48; *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19,
2 26 (2000). However, “the lodestar formula does not limit consideration to hours expended and
3 hourly rate, though that is the foundation of the calculation.” *Id.* at 40. The court then enhances
4 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and
5 difficulty of the case, its contingent nature, skill displayed by class counsel, and the degree of
6 success achieved. *See Serrano III*, 20 Cal. 3d at 49; *Lealao*, 82 Cal. App. 4th at 26; *Thayer v. Wells*
7 *Fargo Bank*, 92 Cal. App. 4th 819, 834 (2001) (“[t]here is no hard-and-fast rule limiting the factors
8 that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

9 Also, pursuant to Cal. Civ. Proc. § 1021.5 (as prayed for in the FAC here), California courts
10 may base their calculations on the “lodestar” and “multiplier” method. *See Press v. Lucky Stores,*
11 *Inc.*, 34 Cal. 3d 311, 322 (1983); *Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (1977) (“*Serrano III*”).

12 ***i. The 519.2 hours incurred by Plaintiff’s counsel and support staff***
13 ***combined are reasonable***

14 Counsel for the prevailing party is entitled to compensation “for all time reasonably
15 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally
16 is compensated by a fee-paying client for all time reasonably expended on a matter.” *Hensley v.*
17 *Eckerhart*, 461 U.S. 424, 431 (1983) (internal quotes and citation omitted); *Laffitte*, 1 Cal.5th 480,
18 490; *Roth v. Plikaytis*, 15 Cal. App. 5th 283, 290 (2017), quoting *Ketchum v. Moses*, 24 Cal.4th at
19 1133 (2001) (“[P]arties who qualify for a fee should recover compensation for “all the hours
20 reasonably spent”).

21 The *Ketchum* decision carefully considered and reaffirmed that attorneys’ fees should
22 include all fees expended, including those spent in an effort to recover attorneys’ fees. *See*
23 *Ketchum v. Moses*, *supra*, 24 Cal. 4th at 1141. That court noted that the purpose of statutory fee
24 authorizations “will often be frustrated, sometimes nullified, if awards are diluted or dissipated
25 by lengthy, uncompensated proceedings to fix or defend a rightful fee claim.” *Id.* at 1133
26 (citations omitted). And, in *Downey Cares v. Downey Community Development Commission*,
27 the court addressed whether plaintiffs’ attorney should be compensated for work spent on the
28 motion for attorneys’ fees, as distinguished from their work on the merits of the case. *Downey*

1 *Cares*, 196 Cal.App.3d 983, 997 (1987). The court stated that the theory for awarding fees for
 2 all time spent, including time spent on fee related issues, is to preserve the benefit of the award
 3 for services on the merits. *Id.*; *see also*, *Harbour Landing-Dolfann, Ltd., v. Anderson*, 48 Cal.
 4 App. 4th 260, 263 (1996); *Serrano v. Unruh*, 32 Cal. 3d at 632-33 (*Serrano IV*) (parties “should
 5 recover for all hours reasonably spent”).

6 Plaintiff’s counsel submit that the fee award sought herein is reasonable under the lodestar
 7 approach in determining an appropriate award of attorney’s fees. Plaintiffs’ counsel’s hours and
 8 costs are also fully documented and reasonably incurred. Kazerounian Decl., ¶¶ 10-19; Ibey Decl.,
 9 ¶¶ 12-13; Declaration of Pamela Prescott (“Prescott Decl.”), ¶¶ 5-6; Declaration of Gil Melili
 10 (“Melili Decl.”), ¶¶ 5-6. The hourly rates and 445.7 hours spent by Plaintiffs’ counsel⁴ (which
 11 includes a reasonable number of estimated hours through final approval and overseeing any *cy*
 12 *pres* award or a subsequent distribution) are summarized below:

	HRS. INCURRED	RATE/HR.	TOTAL
KAZEROUNI LAW GROUP, APC	-	-	-
A) ABBAS KAZEROUNIAN (PARTNER)	49.3	\$825	\$40,672.50
B) JASON A. IBEY (PARTNER)	231.2	\$480	\$110,976
C) PAMELA PRESCOTT (ASSOCIATE)	66.4	\$395	\$26,228
D) GIL MELILI (ASSOCIATE)	96.5	\$350	\$33,775
E) GUSTAVO PONCE (ASSOCIATE)	1.5	\$200	\$300
F) NICHOLAS R. BARTHEL (ASSOCIATE)	0.8	\$200	\$160
TOTAL COMBINED LODESTAR OF COUNSEL	445.7		\$212,111.50

23
 24
 25 ⁴ Plaintiff’s counsel are willing to provide detailed billing records upon request by the Court
 26 (*Kazerounian Decl.*, ¶ 16). *See In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th
 27 495, 511-12 (2009) (“We see no reason why [the court] could not accept the declarations of
 28 counsel attesting to the hours worked, particularly as he was in the best position to verify those
 claims by reference to the various proceedings in the case.”); *see also*, *Wershba v. Apple
 Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (2001).



1 \$490 for associates, and \$150-\$430 for paralegals); *Large Audience Display Sys. v. Tennman*
2 *Prods., LLC*, 2017 U.S. Dist. LEXIS 85981, at *7 (C.D. Cal. June 2, 2017) (court found the
3 prevailing market rate for two senior associate attorneys to be \$375 and \$411); *Makaeff v. Trump*
4 *Univ., LLC*, 2015 U.S. Dist. LEXIS 46749, *4-5 (S.D. Cal. Apr. 9, 2015) (approving rates of
5 \$250-\$440 for associates and \$600-\$825 for partners after considering the National Law Journal
6 Survey); *Love v. Mail on Sunday*, 2007 U.S. Dist. LEXIS 97061, at *25 (C.D. Cal. Sep. 7, 2007)
7 (court found partners billing at \$660 to \$690; senior associate billing at \$410 to \$460; and, junior
8 associate at \$305 were acceptable billing rates; such rates are over a decade old).

9 ***iv. The reasonableness of the rates is supported by the 2023 United***
10 ***States Consumer Law Practice & Attorney Fee Survey Report***

11 A recent survey was conducted of consumer advocates across the country to determine
12 the rates charged by attorneys practicing in the area of consumer protection. *See* Exhibit 1 to Ibey
13 Declaration, ¶ 35 (excerpts of the United States Consumer Law Practice & Attorney Fee Survey
14 Report 2023, California Metro Edition (“Billing Survey”). That survey⁵ supports the billing rates
15 requested herein as the California billing rate data in the survey, grouped by both region and years
16 in practice. In particular, the survey shows that, for the area surrounding Los Angeles, the median
17 rate for attorneys handling class actions was \$500, with a range of \$200 to \$1,100. *Id.* at p. 86.
18 Moreover, the median hourly rate for attorneys with 6-10 year of experience is \$475, with a range
19 of \$268 to \$625. *Id.* at p. 87. Such rates are in line with the rates requested herein, which further
20 shows that the requested rates are reasonable and within the acceptable range in California.

21 ***v. A reasonable 2.687 risk multiplier should be applied***

22 Once the lodestar is fixed, the court may, in its discretion, increase or decrease that amount
23 by applying a positive or negative “multiplier” based on other factors. *Lealao*, 82 Cal. App. 4th
24 at 26. In applying a risk multiplier, courts look to a range of factors, such as the novelty and
25 difficulty of the case, its contingent nature, skill displayed by class counsel, and the degree of

26 _____
27 ⁵ Previous versions of the survey have been accepted by various courts in determining reasonable
28 billing rates. *See e.g., Nguyen v. HOVG, LLC*, 2015 U.S. Dist. LEXIS 124019, at *5 (S.D. Cal.
Sept. 15, 2015) (years 2010-2011); *see also Lindenbaum v. NCO Fin. Sys.*, 2011 U.S. Dist. LEXIS
78069 (E.D. Pa. July 18, 2011).

1 success achieved. *See Roos v. Honeywell Internat, Inc.*, 241 Cal. App. 4th 1472, 1491 (2015);
2 *Serrano III*, 20 Cal. 3d at 49; *see also Lealao*, 82 Cal. App. 4th at 26; *Thayer*, 92 Cal. App. 4th at
3 834 (“[t]here is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
4 discretion to increase or decrease a lodestar calculation”).

5 A risk multiplier here of 2.687 is reasonable. This is based on 445.7 hours of attorney
6 work (which includes a reasonable estimate of 68 additional⁶ attorney hours through final
7 approval, including to preparing a motion for final settlement approval, assisting the Settlement
8 Administrator and reviewing reports, preparing for and attending the Fairness Hearing,
9 overseeing the initial settlement award distribution and/or any *cy pres* award of unclaimed funds,
10 and attending any post-accounting hearing⁷), with an attorney lodestar of \$212,111.50, as
11 indicated above.⁸ *See e.g., Barovic v. Ballmer*, 2016 U.S. Dist. LEXIS 6671, 2016 WL 199674,
12 *4 (W.D. Wash. 2016) (multiplier of 2.5); *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD,
13 2014 U.S. Dist. LEXIS 121641, *29 (N.D. Cal. Aug. 29, 2014) (discussing the range of
14 multipliers awarded in various consumer privacy class action settlements and finding a multiplier
15 of 2.59 appropriate); *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 298-99 (N.D. Cal. 1995)
16 (holding that a multiplier of 3.6 was “well within the acceptable range for fee awards in
17 complicated class action litigation” and that “[m]ultipliers in the 3-4 range are common”); *City*
18 *of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a multiplier of 2.34);
19 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th at 255 (multipliers can range from 2 to 4 or
20 even higher); *Malta v. Freddie Mac & Wells Fargo Home Mortgage*, No. 10-cv-1290, Dkt. Nos.
21 56-1 and 91 (S.D. Cal. June 16, 2013) (approved a multiplier of 5.157); *Gutierrez, et al. v.*
22 *Barclays Group, et al.*, No. 3:10-cv-01012, Dkt. No. 57 (S.D. Cal. Mar. 12, 2012) (approved a
23 multiplier of 4.55); *Sherman v. Kaiser Foundation Health Plan*, No. 3:13-cv-00981-JAH-JMA,

24 ⁶ Kazerounian Decl., ¶ 11(19 hours); Ibey Decl., ¶ 13 (35 hours); Melili Decl., ¶ 6 (14 hours).

25 ⁷ The Agreement provides that unclaimed funds will be provided to the proposed *cy pres*
26 beneficiary National Consumer Law Center, unless the Court orders a subsequent distribution to
27 the Settlement Class Members who did not opt-out and who cashed their initial check. *See Agr.*
28 §§ 2.3-2.5.

⁸ (\$570,000 / 212,111.60 = Approx. 2.687).

1 Dkt. No. 58 (S.D. Cal. May 12, 2015) (approved a multiplier of 4.092).⁹

2 Plaintiff filed this action on May 14, 2020, sought relevant discovery from Powell Electric,
3 and reached a class settlement after several months of negotiations. Ibey Decl., ¶ 11. Plaintiff,
4 with the assistance of counsel, has secured a Common Fund of \$1,900,000, from which the Net
5 Settlement Amount (Agr. § 1(y)) will be used to send an automatic check to Identified Settlement
6 Class Members (*id.* at § 1(v)) without the use of a claim form (*see id.* at §§ 2.1 and 2.3). The
7 settlement award here, which will be at least \$178 per Settlement Class Member (Ibey Decl., ¶ 9;
8 Exhibit B to Agr.), has been determined to be a fair and reasonable settlement by all Parties in
9 this action involving alleged violations of Cal. Pen. Code § 632.7, which does not have a fee-
10 shifting provision, *see* Cal. Pen. Code § 637.2.

11 The Settlement also provides beneficial injunctive relief for the California public, wherein
12 Powell Electric has agreed to adhere to a policy change as it pertains to its phone calls where
13 Powell Electric will: (i) announce within the first 30 seconds of a phone call with another party
14 that the call will be recorded or otherwise monitored via automated disclosure; and (ii) and
15 conduct periodic internal reviews on the automated system ever six (6) months for a period of
16 four (4) years unless revoked or modified by the Court for show of good cause. Agr. at §§ 11.1-
17 11.2. *See e.g., Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 351 (D.Mass. 2015) (noting
18 injunctive relief was a valuable contribution to the settlement agreement in a product false
19 advertising case).

20 Thus, this Settlement is a good result for the Settlement Class Members, reached at an
21 early stage of litigation. The higher than typical individual class member recovery in this CIPA¹⁰

22
23 ⁹ *See also In re Linerboard*, 2004 U.S. Dist. LEXIS 10532, 2004 WL 1221350, at *16 (E.D. Pa.
24 June 2, 2004) (noting that “during 2001-2003, the average multiplier approved in common fund
25 class was 4.35”) (citation omitted).

26 ¹⁰ *See e.g., Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359 JM, 2014 U.S. Dist. LEXIS 255 (S.D.
27 Cal. Jan. 2, 2014) (individual recovery if 100% of the settlement class submitted valid claims in a
28 CIPA action was estimated at \$83.08); *McDonalds v. Bass Pro Outdoor Work, LLC*, No. 13-
cv-889-BAS(DIB), Dkt. No. 55 (S.D. Cal. Dec. 18, 2014) (estimated individual recovery if 100%
percent of the class submitted valid claims was \$120.82); *Ridge v. Infinity Sales Grp., LLC*, No.
CV 12-6985-GW (SHx), 2014 U.S. Dist. LEXIS 206340 (C.D. Cal. July 24, 2014) (the estimated

1 case further justifies the requested award of attorneys' fees based on a reasonable multiplier. *See*
2 *Ketchum v. Moses, supra*, 24 Cal. 4th at 1139 (court can award multiplier for an exceptional
3 quality of representation); *see also Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 582 (2003)
4 (enhancement to multiplier justified when exceptional effort produces exceptional benefit).

5 As explained in the briefs in support of preliminary approval (filed on May 2, 2022, pp.
6 17-19; and March 3, 2023, pp. 5-6), Plaintiff faced several risks in this litigation, including denial
7 of class certification if contested, uncertainties associated with complex class action litigation,
8 protracted and burdensome litigation, and the continued denial of the allegations by Powell
9 Electric and its 34 asserted affirmative defenses, as well as Defendant's contention that some of
10 the class members may have heard an automated call recording disclosure as part of hold music
11 if they were on hold long enough to hear it, even if it was not played at the outset of the call.

12 The assumption of these risks and delayed payment further justify the requested award of
13 attorneys' fees. Notably, this action was taken on by Class Counsel entirely on a contingency fee
14 basis, for which they have yet to be paid for over three (3) years of work, since May of 2020.
15 Kazerounian Decl., ¶ 9; Ibey Decl., ¶ 8.

16 Thus, a risk multiplier of 2.687 here is appropriate and reasonable.

17 ***vi. The reaction of the Settlement Class Members is positive***

18 As of September 27, 2023, the Settlement Administrator has reported that 125 people have
19 updated their contact information, and 16 have provided contact information through the
20 Settlement Website, which has had 323 website visitors from 759,724 banner ad impressions.
21 Brunner Decl., ¶¶ 11, 13-14. The deadline for Settlement Class Members to opt out or object is
22 November 22, 2023; no requests for exclusion or objections have been received as of September
23

24 individual recovery if all settlement class members submitted a valid claim in a CIPA action was
25 estimated to be \$10.54); *Cohorst v. BRE Properties, Inc.*, No. 10-cv-2666 JM, 2012 WL 153754,
26 Docket Nos. 101, 109 (S.D. Cal. 2012) (\$5.5 million settlement for approximately 1,170,584
27 potential class members, or \$4.70 per person); *McCabe v. Six Continents Hotels, Inc.*, No. 12-cv-
28 04818, 2015 U.S. Dist. LEXIS 85084, at *27-29 (N.D. Cal. June 30, 2015) (collecting cases
approving CIPA settlements of \$1-\$7.50 per class member). Significantly, unlike many of these
above-mentioned cases, Settlement Class Members here are entitled to a recovery of at least \$178
without having to submit a claim form. *See* Agr. § 1(v) and 2.3; Exhibit B to Agr.

1 27, 2023. *Id.* at ¶ 12. *See e.g., Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1264 (C.D. Cal.
2 2016) (“The positive reaction of the class members supports the fee application.”).

3 Thus, the requested award of \$570,000 for attorneys’ fees should be approved based on a
4 lodestar cross-check. The request litigation costs of \$17,440.77 should also be approved.

5 **V. AN INCENTIVE AWARD FOR PLAINTIFF JENNIFER GOODWIN IN THE**
6 **AMOUNT OF UP TO \$4,000 IS REASONABLE AND APPROPRIATE**

7 In *Cellphone Termination Cases*, the court reasoned that “the rationale for making
8 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
9 expense or risk they have incurred in conferring a benefit on other members of the class.” 186
10 Cal. App. 4th 1380, 1394 (2010) (quoting *Clarke v. American Residential Servs. LLC*, 175 Cal.
11 App. 4th 785, 806 (2009)). In *Cellphone Termination Cases*, the appellate court upheld the trial’s
12 court approval of a \$10,000 incentive award for each class representative. *Id.* at 1396.

13 The Agreement provides that Plaintiff may request a service award in an amount up to
14 \$4,000 (Agr. § 2.6). This service award is well deserved and justified by the fact that Ms. Goodwin
15 took action after realizing that Powell Electric was unlawfully recording callers and invading their
16 lawfully protected right to privacy by recording their phone call allegedly without her consent.

17 Ms. Goodwin has spent an estimated 19 hours working on this case, which includes
18 communicating with her attorneys for the initial consultation, participated in calls regarding fact-
19 finding efforts, serving discovery requests on Powell Electric through her attorneys, reviewing
20 evidence, communicating with her attorneys concerning mediation, exchanging several emails and
21 having calls with her counsel concerning settlement and progress updates, reviewing and signing
22 an initial class action settlement agreement as well as a subsequent revised settlement agreement,
23 and submitting a declaration in support of preliminary approval of the proposed class action
24 settlement. *See* Declaration of Jennifer Goodwin (“Goodwin Decl.”), ¶¶ 6-8, filed herewith.

25 In filing this putative class action, Ms. Goodwin understood that there was a potential risk
26 that she might have to pay some of Defendant’s costs if the lawsuit were lost (*id.* at ¶ 9) and that
27 she was exposing herself to potential public scrutiny in seeking compensation for invasion of
28 privacy rights under CIPA as a proposed class representative (*id.*).

1 Therefore, Plaintiff requests the Court order a service award in the full amount of \$4,000
 2 from the Common Fund for her efforts as Class Representative (Agr. § 2.6), which is well-
 3 supported by case law. *See e.g., Medeiros v. HSBC Card Servs.*, No. CV 15-09093 JVS (AFMx),
 4 2017 U.S. Dist. LEXIS 178484, *44 (C.D. Cal. Oct. 23, 2017) (approving \$5,000 service award);
 5 *Brown v. Hair Celestial Gap., Inc.*, 2016 U.S. Dist. LEXIS 20118, at *26-27 (N.D. Cal. Feb. 18,
 6 2016) (approving \$7,500 service awards); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
 7 267-68 (N.D. Cal. 2015) (approving \$10,000 incentive award, as “Plaintiff filed this lawsuit
 8 despite knowledge that if he lost, the court might have ordered him to pay Defendant’s attorneys’
 9 fees and costs.”). Also, prior awards in other cases from this Court support the requested \$4,000
 10 service award. *See e.g., Jimenez v. Siemens Indus.*, 2020 Cal. Super. LEXIS 3597, *4 (Sup. Ct.
 11 Los Angeles, 2020) (approving \$5,000 service award, and for agreeing to a general release);
 12 *Escobedo v. Pac. W. Bank*, 2020 Cal. Super. LEXIS 72594, *5 (Sup. Ct. Los Angeles 2020)
 13 (approving \$5,000 service award, and for agreeing to a general release) (Kenneth R. Freeman).
 14 Consequently, Ms. Goodwin’s time and effort made resolution of this case possible for other
 15 members of the Settlement Class. Notably, in the Agreement, Ms. Goodwin agrees to a general
 16 release of claims against Defendant under Section 1542 (Agr. § 12.2).

17 Moreover, this action furthers the public policy goals of the CIPA, as well as the well-
 18 established public policy goals of consumer class actions as recognized by our Supreme Court.
 19 Not only do class actions offer consumers a means of recovery for modest individual damages, but
 20 such actions often produce “several salutary by-products, including a therapeutic effect upon those
 21 sellers who indulge in fraudulent practices, aid to legitimate business enterprises by curtailing
 22 illegitimate competition, and avoidance to the judicial process of the burden of multiple litigation
 23 involving identical claims.” *Linder*, 23 Cal. 4th at 445 (quoting *Vasquez*, 4 Cal. 3d at 808).

24 Thus, the efforts and contributions of Ms. Goodwin should be rewarded.

25 **VI. THE NOTICE AND CLAIMS ADMINISTRATION COSTS ARE REASONABLE**

26 Settlement administration and notices expenses are to be paid from the Common Fund.
 27 Agr. § 2.8. The Court preliminarily approved the notice and claims process to be performed by
 28 Simpluris Inc., where class notice and administration expenses were estimated at that time to be

1 \$67,249.00. Brunner Decl., ¶ 15. By recent declaration, Simpluris Inc. has presently incurred
2 \$50,811.87. *Id.* These class notice and administration expenses are reasonable and should be
3 approved. Brunner Decl., ¶ 15. Simpluris Inc. estimates a final invoice in the amount of
4 \$70,437.00. *Id.* This increase of \$3,188 is due to using a (larger) 6x9 postcard to accommodate
5 the required information, NCOA prior to mailing, a case-specific email box, and Project Manager
6 hours to review contact information submitted via mail or without logging into the Online Portal.
7 *Ibid.* A final estimate for administration expenses will be provided by Simpluris Inc. prior to the
8 Fairness hearing scheduled for January 16, 2024. *See* Ibey Decl., ¶ 14.

9 **VII. CONCLUSION**

10 In conclusion, the Court should grant this Motion and approve an award of \$570,000 as
11 reasonable attorneys' fees to Plaintiff's counsel, \$17,440.77 (and up to \$25,000) as reasonable
12 litigation costs, a reasonable service award of \$4,000 to Ms. Goodwin as the Class Representative,
13 and reasonable class notice and administration expenses, all from the Common Fund of
14 \$1,900,000. A proposed order granting attorneys' fees, costs and service award will be submitted
15 in connection with a motion for final approval of class action settlement, which motion is due on
16 or before December 18, 2023.

17
18 Date: September 28, 2023

KAZEROUNI LAW GROUP, APC

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