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13
 14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 LEANNE TAN, Individually and On
 17 Behalf of All Others Similarly Situated,
 18
 19 Plaintiffs,
 20
 21 v.
 22 QUICK BOX, LLC, et al,
 23
 24 Defendants.

Case No.: 3:20-cv-1082-LL-DDL

**PLAINTIFF’S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Date: December 4, 2022
Time: *
Ctrm: 2B
Judge: Hon. Linda Lopez

*PER CHAMBERS RULES, NO ORAL
 ARGUMENT UNLESS SEPARATELY
 ORDERED BY THE COURT

Complaint Filed: June 12, 2020

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1 **I. INTRODUCTION**

2 Plaintiff and the Quick Box Defendants (Quick Box, LLC, Stephen Adelé, James
3 Martell, and Chad Biggins) have agreed to a Class Settlement to resolve the putative Class’s
4 claims against those Defendants in exchange for \$5.5 million. This settlement came after a
5 lengthy litigation period of more than three years, an Early Neutral Evaluation (ENE), and
6 two separate mediations. The settlement offers relief to the Class that amounts to almost the
7 entirety of the actual damages. It does so in a simple, straightforward settlement which
8 focuses on obtaining monetary relief for Class members. And the settlement makes clear
9 that claims against the La Pura Defendants and the Konnektive Defendants are not being
10 waived, such that not only is the Class guaranteed this substantial recovery against what
11 they lost, but they will have the opportunity to recover even more should Plaintiff’s counsel
12 be successful in pursuing claims against those other Defendants. This settlement eliminates
13 the risk that the Class would receive nothing after long, protracted litigation—and it
14 simplifies any jury trial against the remaining non-settling parties. The settlement is, at a
15 minimum, in “the range of possible approval,” and thus the Court should grant preliminary
16 approval and schedule the necessary proceedings for a final approval hearing after notice to
17 the Class.

18 **II. RELEVANT FACTS**

19 This lawsuit was filed on June 12, 2020. Dkt. 1. Three separate groups of parties filed
20 their own motions to dismiss. *See* dkts. 25, 29-34, 36-40. After an initial order on these
21 motions by the Court, dkt. 88, Plaintiff filed a First Amended Complaint. Dkt. 89. Three
22 separate motions to dismiss were again filed by each group of parties. *See* dkts. 94, 98, 99.
23 The Court resolved those motions, dkt. 130, and the case has proceeded with discovery.
24 This has involved formal or informal discovery motions and conferences on a large volume
25 of issues. *See* dkts. 190, 218, 223, 246, 252, 284, 321. The case was stayed as Plaintiff dealt
26 with a bankruptcy filing by Defendant Total Health Supply TUA, Inc. *See* dkts. 192-194.
27 The lawsuit has been ongoing for more than three years to date.

28 Throughout the lawsuit, there have been both formal and informal efforts to settle the

1 case. These efforts ranged from informal discussions to an Early Neutral Evaluation before
2 Judge Butcher on June 30, 2021, dkt. 174; a mediation before former Magistrate Judge
3 Leonidas Papas on December 15, 2022 (which included ongoing discussions through
4 January 2023); and a mediation before Jill Sperber on August 3, 2023 (along with ongoing
5 discussions afterward).

6 After years of litigation, and multiple mediations, Plaintiff and the Quick Box
7 Defendants have arrived at a settlement which will resolve the claims against those
8 defendants in a way which is beneficial to the Class—and which Plaintiff requests be
9 preliminarily approved by the Court, pending a final hearing after input from members of
10 the Settlement Class. The parties have agreed to a Proposed Order which is attached.

11 The settlement provides a substantial monetary benefit to the Class: \$5.5 million,
12 which is almost the entirety of the actual damages in this case. Ex. 26 at section II ¶ (15).
13 The settlement is straightforward. It does not contain any of the hallmarks of self-dealing
14 (negotiated attorney’s fees which are disproportionate to the settlement, clear sailing
15 provisions, or a reverter to the Defendants). It does not engage in any efforts to artificially
16 inflate the value of the settlement, such as coupon settlements. Any money that is not
17 distributed to the Class directly will go to a highly reputable non-profit, the National
18 Consumer Law Center (“NCLC”). Class members will be eligible to receive up to three
19 times the amount they paid for the La Pura products, depending on claims rates. Ex. 26 at
20 section IV ¶ 4(b). The settlement administrator, Epiq Class Action and Claims Solutions,
21 was selected after a detailed interview with Class Counsel involving technical questions to
22 ensure that they would be able to notify as many Class members as possible. And the
23 settlement occurred not only after mediations with neutral mediators, but after a mediator’s
24 proposal which both sides agreed to—something that courts have held is a strong signal of
25 a fair settlement that is not a product of any kind of self-dealing.

26 **III. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS**

27 Approval of a class action settlement proceeds in three stages. First, the parties present
28 a proposed settlement to the court for preliminary approval. Second, if the court

1 preliminarily approves the settlement, notice of the proposed settlement is sent to the class,
 2 and class members are given an opportunity to object or opt out of the settlement. Third,
 3 after holding a final fairness hearing, the court decides whether to give final approval to the
 4 settlement. *See* Fed. R. Civ. P. 23(e); 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS §
 5 13:1 (6th ed.). At the first stage, preliminary approval, the parties must show “that the court
 6 will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class
 7 for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). “[W]hen considering
 8 certification of a settlement class, the court need not weigh whether further litigation would
 9 present case management difficulties as provided in Rule 23(b)(3)(D).” *In re Packaged*
 10 *Seafood Prods. Antitrust Litig.*, No. 15-md-2670-JLS-MDD, 2021 U.S. Dist. LEXIS 90054
 11 at *61 (S.D. Cal. May 11, 2021). **Plaintiff has also recently uncovered additional**
 12 **evidence proving that Ms. Tan saw identical representations as the rest of the Class,**
 13 **discussed further below.**

14 **A. Plaintiff Has Standing.**

15 As the Ninth Circuit has made clear, “[i]n a class action, standing is satisfied if at
 16 least one named Plaintiff meets the requirements.” *Bates v. UPS*, 511 F.3d 974, 984 (9th
 17 Cir. 2007). And, “[a]t the class certification stage, the court only considers “whether at least
 18 one named plaintiff satisfies the standing requirements.” *Id.* The standing issue has already
 19 been briefed and argued before this Court, which concluded that Plaintiff has standing under
 20 each of the remaining causes of action. *See Tan v. Quick Box, LLC*, No. 3:20-cv-01082-H-
 21 DEB, 2021 U.S. Dist. LEXIS 67791 at *25-26, 45 (S.D. Cal. Apr. 7, 2021) (concluding that
 22 Plaintiff has standing under the UCL/FAL/CLRA), *id.* at *71-72 (same as to RICO).
 23 Discovery has confirmed that she only received a partial refund and thus was injured. Ex. 1
 24 at KNN00017.

25 **B. The Proposed Settlement Class is Sufficiently Numerous.**

26 Numerosity requires that “the class is so numerous that joinder of all members is
 27 impracticable.” Fed. R. Civ. P. 23(a)(1). Numerosity “is generally satisfied when the class
 28 contains 40 or more members.” *Al Otro Lado, Inc. v. Wolf*, No. 17-cv-02366-BAS-KSC,

1 336 F.R.D. 494, 501 (S.D. Cal. 2020). Purchase records indicate that there were far more
2 than 40 consumers of La Pura Products in the U.S. and in California. Here, Quick Box
3 shipped 82,206 orders containing 155,648 units of La Pura products in the U.S., and 11,797
4 of those orders were in California. Ex. 2. The exact size of the Class will be confirmed by
5 the Settlement Administrator using purchase records. “Where the exact size of the proposed
6 class is unknown, but general knowledge and common sense indicate it is large, the
7 numerosity requirement is satisfied.” *Hawkins v. Kroger Co.*, 337 F.R.D. 518, 533 (S.D.
8 Cal. 2020) (quotation omitted).

9 C. The Typicality Requirement Is Met

10 The third requirement is that “the claims and defenses of the representative parties are
11 typical of the claims and defenses of the class.” Fed. R. Civ. P. 23(a)(3). “Under the rule’s
12 permissive standards, representative claims are ‘typical’ if they are reasonably co-extensive
13 with those of absent class members; they do not need to be substantially identical.” *Hanlon*
14 *v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). In this case, Plaintiff’s claims are
15 substantially similar to the other class members and arise from the same common practice
16 of Defendants, including the Quick Box Defendants. Specifically, Ms. Tan saw and relied
17 upon the same, or materially similar, marketing as the other Class Members, and Ms. Tan
18 alleges that the Quick Box Parties were part of that conspiracy.¹

19 Production from Konnektive confirms that Ms. Tan purchased from the website try-la-
20 pura-skincare.com. Ex. 1 at KNN00021. An archive.org copy of the landing pages on this
21 website on April 20, 2019 and January 26, 2020 shows they match the experience Ms. Tan
22 had and include the misrepresentations alleged in the FAC. Ex. 3. Other copies show that
23 they were identical on January 13, 2020 (landing page), Ex. 4; 5; January 13, 2020
24 (shopping cart), Ex. 6; 7; February 7, 2020, Ex. 8; 9; and May 18, 2020, Ex. 10; 11. Plaintiff
25 has also lodged a copy of a video of the website on a mobile phone taken January 26, 2020.
26 Ex. 12.

27
28 ¹ The Quick Box Parties deny all of the allegations alleged in the operative Complaint, and the Settlement Agreement, on its own terms, is not an admission of any liability on the part of the Quick Box Parties.

1 Affiliate offer websites confirm this was the webpage La Pura victims were sent to.
2 See Ex. 13, 14, 15, 16, 17. Notable are: (1) the offers include screenshots of the exact same
3 websites; (2) the dates on the screenshots at the top show they were taken on June 13, 2019,
4 August 15, 2019, and February 26, 2020; and (3) most of the offers are described as “Trial”
5 and three of them are “survey,” consistent with what Ms. Tan says. Further, an individual
6 named Brett Walker took a video of the La Pura sales funnel on January 10, 2020—the
7 same day Ms. Tan bought. Ex. 18. Mr. Walker contacted Plaintiff’s counsel for the first
8 time on September 16, 2020 and provided them with this video, which shows a text message
9 identical to what Ms. Tan saw, *id.* at 2:18; a survey purporting to be from Amazon, *id.* at
10 0:20-1:15; and a web page identical to what Ms. Tan saw, *id.* at 1:17-2:05.

11 While the Defendants had previously argued that Ms. Tan saw an unknown webpage
12 with “lms” appended to the base URL, dkt. 311 at 8, **newly discovered evidence has**
13 **confirmed that this “lms” webpage contained the same misrepresentations as Ms. Tan**
14 **has alleged.** That is because after finally receiving the class member information on June
15 6, 2023, Plaintiff began contacting class members about their experience and what they
16 recalled. Plaintiff ultimately discovered a class member named Alan Kulvete who
17 purchased from the exact same URL as Ms. Tan—something that can be proven because he
18 saved a contemporaneous screenshot of the checkout page, which is identical to the
19 previously identified checkout pages but contains the “lms” url at the bottom. Compare Ex.
20 19 to Ex. 5. He also contemporaneously attempted chargebacks and wrote letters describing
21 his experience, which is the same generally as Ms. Tan except that in his case, the fake
22 survey purported to be from Costco. Ex. 20. Mr. Kulvete was deposed on October 25, 2023,
23 and while the transcript is not yet available, Plaintiff expects to shortly file a motion for
24 leave to supplement her class certification motion with this new evidence as well, because
25 at that deposition Mr. Kulvete testified that he viewed the same webpage as Exhibits 3 and
26 5.

27 Another piece of evidence indicating that all purchasers experienced the same wrongful
28 conduct is the Rocket Management Refunding Policy. Ex. 21. It heavily suggests that

1 RMG’s products all involved fraud: “AG/FTC/CP/BBB/AG/BANK Threat – then Full
2 Refund after following protocol, DEFR / CS911 – Full Refund.” *Id.* It states: “**On FTC**
3 **Threat We can make any exceptions in real time.**” *Id.* (emphasis in original). RMG’s
4 consultant, Marc Evans, also made clear in a Skype chat that the whole business was a
5 scheme: “nobody wants Geraldo Rivera showing up at their front doors trying to do an
6 expose on Trial Products.” Ex. 22 at QUICKBOX_003319. An attorney also sent a letter
7 claiming his client completed a fake COSTCO survey on December 3, 2019 and describing
8 a virtually identical experience as Ms. Tan including being signed up to a La Pura
9 subscription without consent. Ex. 23; Ex. 24. There are also numerous complaints online
10 describing the same experience as Ms. Tan. Ex. 25.

11 Plaintiff was exposed to the same false representations and omissions regarding the La
12 Pura Products and was signed up for free trials without her permission. Plaintiff and the
13 class were injured by the same course of conduct and have the same or similar injuries.
14 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992); *see also Hilsley v. Ocean*
15 *Spray Cranberries, Inc.*, 2018 U.S. Dist. LEXIS 202679, at *17 (S.D. Cal. Nov. 29, 2018)
16 (typicality requirement was met when “the Complaint alleges that she and all class members
17 purchased the Products, were deceived by the false and deceptive labeling and lost money
18 as a result”).

19 **D. The Adequacy Requirement is Met**

20 The fourth requirement is that the “representative parties will fairly and adequately
21 protect the interests of the class” for a class to be certified. Fed. R. Civ. P. 23(a)(4). In
22 determining whether the named plaintiff meets this requirement, courts must resolve two
23 questions. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). First, the
24 court must look to whether “the named plaintiffs and their counsel have any conflicts of
25 interest with other class members.” *Id.* (quoting *Hanlon*, 150 F.3d at 1020). Second, the
26 court must look to whether “the named plaintiff and their counsel [will] prosecute the action
27 vigorously on behalf of the class.” *Id.* (quoting *Hanlon*, 150 F.3d at 1020). Courts seldom
28 deny class certification as a result of the first inquiry, as the Ninth Circuit “does not favor

1 the denial of class certification on the basis of speculative conflicts.” *Cummings v. Connell*,
2 316 F.3d 886, 896 (9th Cir. 2003). Vigor can be demonstrated through counsel’s actions in
3 the case up to the point of class certification and prior experience. *See, e.g., Victorino v.*
4 *FCA US LLC*, No. 14-CV-02367-LHK, 322 F.R.D. 403, 407 (S.D. Cal. 2017).

5 Here, Ms. Tan has previously submitted a declaration stating that she intends to fairly
6 and adequately represent the interests of the Class members, which suffices. *In re Brazilian*
7 *Blowout Litig.*, No. CV 10-8452-JFW (MANx), 2011 U.S. Dist. LEXIS 40158 at *15 (C.D.
8 Cal. Apr. 12, 2011). Her counsel are similarly qualified and experienced in complex
9 litigation. *See* Decl. of K. Kneupper at ¶ 1-29; Decl. of C. Covey at ¶ 1-22; *see also See*
10 *Martin v. Monsanto Co.*, No. ED CV 16-2168-JFW (SPx), 2017 U.S. Dist. LEXIS 135351
11 at *15 (C.D. Cal. Mar. 24, 2017). The adequacy of the settlement amount (discussed below)
12 is further evidence that both counsel and Ms. Tan have adequately represented the Class.
13 After overcoming a number of legal hurdles in lengthy litigation at significant expense, they
14 have obtained a recovery of almost all of the actual damages at issue, while preserving the
15 Class’s ability to continue to pursue additional money from the Konnektive Defendants and
16 the La Pura Defendants.

17 **E. Common Questions of Law and Fact Predominate**

18 A class action may be maintained under Rule 23(b)(3) if the “court finds that the
19 questions of law of fact common to class members and predominate over any questions
20 affecting only individual members, and that a class action is superior to other available
21 methods for fairly and efficiently adjudicating the controversy.” The predominance test is
22 easily met in cases involving consumer fraud or violations of RICO. *See Amchem Prods.*,
23 521 U.S. at 625 (“Predominance is a test readily met in certain cases alleging consumer or
24 securities fraud or violations of the antitrust laws.”); *Friedman v. 24 Hour Fitness USA,*
25 *Inc.*, No. CV 06-6282, 2009 U.S. Dist. LEXIS 81975, at *22-23 (C.D. Cal. Aug. 25, 2009)
26 (“Common issues frequently predominate in RICO actions that allege injury as a result of a
27 single fraudulent scheme.... The question of individual injury would not even arise if
28

1 Plaintiffs fail to establish any of the common elements of a RICO claim, such as a pattern
2 of racketeering activity, an enterprise, and scienter.”).

3 Even if some “important matters will have to be tried separately, such as damages or
4 some affirmative defenses peculiar to some individual class members,” an action may be
5 considered proper under Rule 23(b)(3) so long as “one or more of the central issues . . . are
6 common to the class and can be said to predominate.” *Tyson Foods, Inc. v. Bouaphakeo*,
7 136 S. Ct. 1036, 1056 (2016) (citation omitted). Stated differently, “[t]he predominance
8 element requires only that questions common to the class predominate over those affecting
9 individual members; it does not require that all questions be identical.” *Ortega v. Natural*
10 *Balance, Inc.*, 300 F.R.D. 422, 428 (C.D. Cal. 2014) (quoting *In re Loewn Sec. Litig.*, 233
11 F.R.D. 154, 167 (E.D. Pa. 2005)).

12 **1. The RICO Claim Raises Common Questions That Will Turn on** 13 **Common Proof and Generate Common Answers**

14 “The issues of law and fact in making out a RICO violation will generally be common
15 to all Plaintiffs' claims, because Plaintiffs are asserting a single fraudulent scheme by the
16 defendants which injured each plaintiff.” *In re United Energy Corp. Solar Power Modules*
17 *Tax Shelter Inv. Secs. Litig.*, 122 F.R.D. at 255 (citation omitted). To establish a civil RICO
18 claim, a plaintiff must establish: “(1) conduct (2) of an enterprise (3) through a pattern (4)
19 of racketeering activity (known as predicate acts) (5) causing injury to plaintiff's business
20 or property.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017). To satisfy the
21 latter requirement, the plaintiff must show that such loss “was proximately caused by the
22 fraudulent conduct.” *Freman's Fund Ins. Co. v. Stites*, 258 F.3d 1016, 1021 (9th Cir. 2001).
23 All of these elements depend on the conduct of the Defendants, not on any individualized
24 inquiry specific to the named Plaintiff or any of the putative Class Members.

25 RICO conspiracy likewise requires proof that a Defendant “knew about and agreed to
26 facilitate the scheme.” *United States v. Fiander*, 547 F.3d 1036, 1041 (9th Cir. 2008). This
27 depends entirely on the conduct of the Defendants. RICO also does not require that Plaintiffs
28 prove individual reliance on the representations or omissions of Defendants for them to be

1 liable. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 660 (2008) (“RICO’s text
2 provides no basis for imposing a first-party reliance requirement.”).

3 A classwide presumption of reliance is appropriate because “reliance could be inferred
4 through a common sense link between a defendant's alleged misrepresentations or
5 omissions and the class members' actions.” *In Re Nat’l W. Life Ins. Annuities Litig. (Nat’l*
6 *W. Life Ins. II)*, No. 05-cv-1018-GPC-WVG, 2013 U.S. Dist. LEXIS 20314, at *13 (S.D.
7 Cal. Feb. 14, 2013). This presumption is especially appropriate when uniform
8 representations and omissions were made to all members of the class. *Id.* at *13–15. Broader
9 issues involving proximate causation may similarly be resolved by this “common sense”
10 explanation, and this explanation has often been applied by courts. *See, e.g., In re Nat’l W.*
11 *Life Ins. Deferred Annuities Litig. (Nat’l W. Life Ins. I)*, 268 F.R.D. 652, 665 (S.D. Cal
12 2010). Here, Plaintiff alleges that Defendants made uniform misrepresentations and
13 omissions to them regarding the La Pura Products, and it is appropriate for this Court to
14 presume reliance and proximate causation because it is logical to do so.

15 **2. The California Consumer Claims Raise Common Questions That Will** 16 **Turn on Common Proof and Generate Common Answers**

17 “[W]hen plaintiffs are exposed to a common advertising campaign, common issues
18 predominate.” *Johns v. Bayer Corp.*, 280 F.R.D. 551, 558 (S.D. Cal. 2012). This is “judged
19 by the effect it would have on a reasonable consumer,” who is the “ordinary consumer
20 within the target population...” *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496,
21 506-507, 510 (2003). “[T]he primary evidence in a false advertising case is the advertising
22 itself,” *Brockey v. Moore*, 107 Cal. App. 4th 86, 100 (2003), and “[t]he ‘misleading
23 character’ of a given representation ‘appears on applying its words to the facts.’” *Jefferson*
24 *v. Chase Home Fin.*, No. C 06-6510 TEH, 2007 U.S. Dist. LEXIS 94652 at *49-50 (N.D.
25 Cal. Dec. 14, 2007) (internal quotation omitted). If Plaintiffs demonstrate a representation
26 was likely to deceive under this objective “reasonable consumer” test, relief “is available
27 ‘without individualized proof of deception, reliance and injury,’ so long as the named
28 plaintiffs demonstrate injury and causation.” *Guido v. L’Oreal, USA, Inc.*, 284 F.R.D. 468,

1 482 (C.D. Cal. 2012) (quotation omitted). The objective test for deception and materiality
2 “renders claims under the UCL, FAL, and CLRA ideal for class certification.” *Tait v. BSH*
3 *Home Appliances Corp.*, 289 F.R.D. 466, 480 (C.D. Cal. 2012). “[W]hen the same material
4 *misrepresentations have . . . been communicated to each member of a class*, an inference of
5 reliance arises to the entire class.” *Mirkin v. Wasserman*, 858 P.2d 568, 575 (Cal. 1993)
6 (emphasis in original) (citations omitted).

7 Here, the determination of questions of fact regarding the relevant advertisements
8 would resolve issues central to the claims of the Class Members under the California
9 consumer protection laws in one stroke. These questions of fact include: (1) whether
10 Defendants made certain representations and omissions to consumers regarding the La Pura
11 Products; (2) whether these representations and omissions were material to the decisions of
12 consumers to purchase; (3) whether these representations and omissions were false and
13 misleading; and (4) whether the Class Members were damaged by purchasing the La Pura
14 Products based on these misrepresentations and omissions. Each of these questions can be
15 answered with common evidence. Further, the aiding and abetting and conspiracy theories
16 of liability are core to the case—and those issues depend entirely on common evidence and
17 legal theories focused on the Defendants. And as discussed above on the issue of typicality,
18 the evidence uniformly shows that the same representations were sent to the Class, leading
19 to a presumption of materiality.

20 **F. The Requirement of Superiority Is Met**

21 Rule 23(b)(3) also requires that the court must find “that a class action is superior to
22 other methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. Rule
23 23(b)(3). This inquiry “involves a comparative evaluation of alternative mechanisms of
24 dispute resolution.” *Hanlon*, 150 F.3d at 1023. “Where recovery on an individual basis
25 would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor
26 of class certification. *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
27 Cir. 2010). The consumers that were defrauded by Defendants lost amounts that were at
28 most \$200 a month. Such a small recovery does not provide sufficient incentive for

1 consumers to bring individual claims, particularly given the complex theories of liability.

2 **IV. THE CLASS SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

3 “Assessing a settlement proposal requires the district court to balance a number of
4 factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration
5 of further litigation; the risk of maintaining class action status throughout the trial; the
6 amount offered in settlement; the extent of discovery completed and the stage of the
7 proceedings; the experience and views of counsel; the presence of a governmental
8 participant; and the reaction of the class members to the proposed settlement.” *Hanlon v.*
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) “To survive appellate review, the
10 district court must show it has explored comprehensively all factors.” *Id.* Federal Rule of
11 Civil Procedure 23(e)(2) as amended in 2018 adds additional factors that must be
12 considered: whether “the class representatives and class counsel have adequately
13 represented the class,” “the proposal was negotiated at arm's length,” “the relief provided
14 for the class is adequate” taking into account certain factors, and whether “the proposal
15 treats class members equitably relative to each other.”

16 “[A]t the preliminary approval stage, a court need only review the parties' proposed
17 settlement to determine whether it is within the permissible ‘range of possible approval’ and
18 thus, whether the notice to the class and the scheduling of a fairness hearing is appropriate.”
19 *Steinberg v. Corelogic Credco, LLC*, No. 3:22-cv-00498-H-SBC, 2023 U.S. Dist. LEXIS
20 177325 at *17-18 (S.D. Cal. Oct. 2, 2023). “Preliminary approval of a settlement and notice
21 to the class is appropriate if (1) ‘the proposed settlement appears to be the product of serious,
22 informed, and non-collusive negotiations’; (2) ‘has no obvious deficiencies’; (3) ‘does not
23 improperly grant preferential treatment to class representatives or segments of the class’;
24 and (4) ‘falls within the range of possible approval.’ *Id.* (citations omitted).

25 “[T]here is a strong judicial policy that favors settlements, particularly where complex
26 class action litigation is concerned.” *Briseño v. Henderson*, 998 F.3d 1014, 1031 (9th Cir.
27 2021) (quoting *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Plaintiff
28 submits that on these facts, a partial settlement of the Quick Box Defendants for \$5.5 million

1 is not only a reasonable settlement, but an excellent result for the Class that guarantees them
2 a substantial recovery while still allowing them to pursue additional recovery from other
3 Defendants.

4 **A. The Strength of the Plaintiff’s Case**

5 Even where a court believes a Plaintiff’s case to be strong, courts have still held this
6 factor to weigh in favor of settlement where the litigation is complex. *See Jeter-Polk v.*
7 *Casual Male Store, LLC*, No. EDCV 14-891-VAP (DTBx), 2016 U.S. Dist. LEXIS 204837
8 at *8-9 (C.D. Cal. June 29, 2016) (considering the case to be strong, but subject to “risks
9 and costs associated with future complex litigation”). Courts have recognized the inherent
10 risks in litigation, even where a party believes its case to be strong. *Shahbazian v. Fast Auto*
11 *Loans*, No. 2:18-cv-03076-ODW (KSx), 2019 U.S. Dist. LEXIS 231416 at *18 (C.D. Cal.
12 June 20, 2019) (“Here, as with most class actions, there is risk to both parties in continuing
13 towards trial.”).

14 While Plaintiff believes her substantive case to be very strong, there is always an
15 inherent risk of losing. Plaintiff still has to obtain class certification, create expert reports
16 which survive anticipated *Daubert* motions, survive anticipated summary judgment
17 motions, win a jury trial, and win an anticipated appeal. There are risks inherent to litigation
18 that this settlement avoids by providing certainty and damages awards to the Class.

19 Another factor considered by the Plaintiff is that two insurance policies at issue which
20 covered the Quick Box Defendants are wasting policies. Decl. of K. Kneupper at ¶ 32. A
21 wasting policy decreases as the case goes on and more money is spent on the defense,
22 meaning that less money is available from the policies for the Class to potentially recover.
23 *Booth v. Strategic Realty Tr. Inc.*, No. 13-cv-04921-JST, 2015 U.S. Dist. LEXIS 84143 at
24 *22 (N.D. Cal. June 28, 2015); *see also Stott v. Capital Fin. Servs.*, 277 F.R.D. 316, 330
25 (N.D. Tex. 2011) (“Furthermore, as noted above, the insurance policy at issue is a ‘wasting’
26 policy, and the cost of additional litigation regarding this question would be deducted from
27 the fund itself. Thus, in addition to the delay, class members' recovery would very likely be
28 reduced even further....”).

1 **B. The Risk, Expense, Complexity, and Likely Duration of Further**
2 **Litigation**

3 “In most situations, unless the settlement is clearly inadequate, its acceptance and
4 approval are preferable to lengthy and expensive litigation with uncertain results.” *Natl’l*
5 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting
6 4 A Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002)).
7 “Immediate receipt of money through settlement, even if lower than what could potentially
8 be achieved through ultimate success on the merits, has value to a class, especially when
9 compared to risky and costly continued litigation.” *In re Celera Corp. Sec. Litig.*, No. 5:10-
10 cv-02604-EJD, 2015 U.S. Dist. LEXIS 157408 at *16 (N.D. Cal. Nov. 20, 2015). “It has
11 been held proper to take the bird in hand instead of a prospective flock in the bush.” *Couser*
12 *v. Comenity Bank*, 125 F. Supp. 3d 1034, 1041 (S.D. Cal. 2015) (citations omitted).

13 As described above, there are significant risks, even if Plaintiff believes the case on
14 the merits to be strong. Other courts have recognized that “RICO claims are complex claims
15 that are expensive and time-consuming to litigate.” *Chan v. Brady*, No. 20-CV-06569-LHK,
16 2021 U.S. Dist. LEXIS 153096 at *11 (N.D. Cal. Aug. 13, 2021). There are 349 docket
17 entries in this lawsuit already, and the Defendants have vigorously disputed the claims and
18 can be expected to continue to do so absent settlement. It could take an additional two years
19 (or more) to reach finality after an appeal. Expert reports are likely to be expensive, as will
20 be pursuing the claims to trial. This factor thus weighs in favor of approval of the settlement.

21 **C. The Risk of Maintaining Class Action Status Throughout the Trial**

22 On this factor, the Court considers the risk of whether a class action can be maintained
23 as a class throughout the trial. Where a class has not yet been certified, there is inherently
24 such a risk which Plaintiff’s Counsel must consider in settling the case. *See Grimm v. Am.*
25 *Eagle Airlines, Inc.*, No. LA CV11-00406 JAK (MANx), 2014 U.S. Dist. LEXIS 199608 at
26 *25-26 (C.D. Cal. Sep. 24, 2014) (“Because there is no certified class for any purpose other
27 than the proposed Settlement and Defendant will likely oppose certification if the case
28 proceeds, Plaintiffs necessarily risk losing class action status.”). In addition, there is

1 inherently a risk that the jury might not find its evidence of the Class having seen the same
2 general misrepresentations on the websites at issue as persuasive, because jury decisions
3 can be difficult to predict. This factor therefore favors approval.

4 **D. The Amount Offered in Settlement**

5 “[I]t is well-settled law that a proposed settlement may be acceptable even though it
6 amounts to only a fraction of the potential recovery that might be available to the class
7 members at trial.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527
8 (C.D. Cal. 2004). In the context of statutes with treble damages provisions, the Ninth Circuit
9 has held that a District Court may analyze the reasonableness of the amount of a proposed
10 settlement against either single damages, treble damages, or both. *Rodriguez v. W. Publ’g*
11 *Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009) (“It is our impression that courts generally
12 determine fairness of an antitrust class action settlement based on how it compensates the
13 class for past injuries, without giving much, if any, consideration to treble damages.... We
14 have never precluded courts from comparing the settlement amount to both single and treble
15 damages. By the same token, we do not require them to do so in all cases.”).

16 Plaintiff’s estimate of the actual damages for a nationwide class is slightly over \$6.4
17 million. Decl. of C. Covey at ¶ 27. Trebling of this number would lead to maximum
18 damages of just over \$19.2 million. This is consistent with the estimates of maximum
19 liability provided in bankruptcy by the La Pura Defendants. Decl. of K. Kneupper at ¶ 32.
20 While there have been slight differences during negotiations in estimations of the potential
21 damages by the Quick Box Defendants and Plaintiff, the variance was extremely small.²

22 Based on the numbers estimated by Plaintiff, the settlement of \$5.5 million amounts to
23 85.9% of the actual damages, and 28.6% of those damages if trebled.

24 Other courts in this Circuit have approved amounts in the range of or less than this
25 settlement. *See Nguyen v. Radiant Pharm. Corp.*, No. SACV 11-00406 DOC(MLGx), 2014

26
27 ² That variance was based on how to adjust for chargebacks and refunds, but because the total amount
28 billed to the Class without any adjustment for chargebacks or refunds was \$7.63 million, Plaintiff’s
estimate of the maximum theoretical damages is necessarily close to the actual theoretical maximum.
Decl. of C. Covey at ¶ 27.

1 U.S. Dist. LEXIS 63312 at *7-8 (C.D. Cal. May 6, 2014) (describing a settlement of
 2 “roughly 25.8 percent of the maximum provable damages” as “an excellent recovery”);
 3 *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
 4 (describing a recovery of roughly 16.67% of the maximum damages as “fair and adequate”);
 5 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (describing a
 6 settlement that “represents between 27 percent and 11 percent of the total potential
 7 recovery” as “fair”); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015
 8 U.S. Dist. LEXIS 78671 at *12-13 (N.D. Cal. June 17, 2015) (describing a settlement of 7.3
 9 percent as “on the low end of the spectrum for class settlement awards receiving approval”
 10 but still “within the range of reasonableness”).

11 Also significant is that unlike these other cases, this is a partial settlement which leaves
 12 the Class free to pursue its claims against the Konnektive Defendants and the La Pura
 13 Defendants.³ The percentage recovered here thus does not mean it is the maximum the Class
 14 will recover—it is the percentage that the Class will “bank” as a certain recovery and as a
 15 hedge against any risk of losing the Class’s claims against the non-settling parties which
 16 Counsel will continue to zealously pursue.

17 **E. The Relief Provided to the Class Is Adequate**

18 FRCP 23(e)(2)(C) requires that the relief provided in a class settlement be adequate,
 19 taking into account “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness
 20 of any proposed method of distributing relief to the class, including the method of
 21 processing class-member claims; (iii) the terms of any proposed award of attorney's fees,
 22 including timing of payment; and (iv) any agreement required to be identified under Rule
 23 23(e)(3). As to whether the relief is adequate, “[t]he amount offered in the proposed
 24 settlement agreement is generally considered to be the most important consideration of any
 25 class settlement.” *Hudson v. Libre Tech. Inc.*, No. 3:18-cv-1371-GPC-KSC, 2020 U.S. Dist.
 26

27 ³ The Settlement releases claims against the Quick Box Defendants, and the settlement is intended to
 28 have preclusive effect against the Quick Box Defendants for claims arising from the transactions or
 occurrences at issue in this suit.

1 LEXIS 84576 at *17 (S.D. Cal. May 12, 2020).

2 The adequacy of the amount negotiated has been addressed above. The costs, risks,
3 and delay of trial and appeal have likewise been addressed above.

4 As to “the effectiveness of any proposed method of distributing relief to the class,
5 including the method of processing class-member claims,” the key questions are whether
6 these methods are unduly burdensome and whether they deter or defeat illegitimate claims.
7 *Loomis v. Slendertone Distribution*, No. 19-cv-854-MMA (KSC), 2021 U.S. Dist. LEXIS
8 44047 at *17-18 (S.D. Cal. Mar. 8, 2021). The settlement proposes to create pre-populated
9 claim forms based on the granular class member data available from Defendants’ databases.
10 Ex. 26 at section V ¶ 1. The forms may be submitted via mail or via a website portal. *Id.* In
11 *Loomis*, the Court held that “any subjective burden by a Class Member would be sufficiently
12 mitigated by the toll-free helpline and settlement website to provide assistance.” *Loomis*,
13 2021 U.S. Dist. LEXIS 44047 at *17. This settlement provides for both. Ex. 26 at section
14 VI ¶ 1(b). Epiq, the settlement administrator, has further provided a declaration describing
15 how this claims process will be tailored to ensure that claims are easy to file. Decl. of C.
16 Azari at ¶ 25-27, 31-32. As for illegitimate claims, because both Quick Box and Konnektive
17 have produced spreadsheets with detailed information about the class members and their
18 identities, it is unlikely that illegitimate claims would be successful.⁴

19 As to the terms of any proposed award of attorney's fees, including timing of
20 payment, the amount of any attorney’s fees have not been negotiated, and will be subject to
21 approval by motion.

22 As to “any agreement required to be identified under Rule 23(e)(3),” there is no such
23 agreement, and the terms of the executed settlement were the only agreement made by the
24 parties in connection with this settlement proposal. Decl. of K. Kneupper at ¶ 38.

25
26
27
28 ⁴ This issue is more of a concern in class actions with no identifying records for the class, for example,
when class members bought products in a retail store.

1 **F. The Class Representative and Class Counsel Have Adequately**
2 **Represented the Class**

3 FRCP 23(e)(2)(A) requires consideration of whether “the class representatives and
4 class counsel have adequately represented the class.” As to this factor, courts consider in
5 part the experience of counsel. *See Sengvong v. Probuild Co. LLC*, No. 3:19cv2231-MMA-
6 JLB, 2021 U.S. Dist. LEXIS 189993 at *7-8 (S.D. Cal. Oct. 1, 2021). Class Counsel are
7 experienced in both complex litigation and consumer law. Decl. of K. Kneupper at ¶ 1-29;
8 decl. of C. Covey at ¶ 1-22. The adequacy of the settlement amount is further evidence that
9 both counsel and Ms. Tan have adequately represented the Class.

10 **G. The Extent of Discovery Completed and the Stage of Proceedings**

11 In considering “the extent of discovery completed and the stage of the proceedings,”
12 courts have focused on whether “sufficient discovery has been taken or investigation
13 completed to enable counsel and the Court to act intelligently....” *Maree v. Deutsche*
14 *Lufthansa AG*, No. 8:20-cv-00885-SVW-MRW, 2023 U.S. Dist. LEXIS 25130 at *25-26
15 (C.D. Cal. Feb. 13, 2023) (quoting Herbert B. Newberg, *NEWBERG ON CLASS ACTIONS* §
16 11.41 (4th ed. 2013)). Courts consider the extent of both formal and informal discovery as
17 to this factor. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459
18 (9th Cir. 2000) (“However, ‘in the context of class action settlements, ‘formal discovery is
19 not a necessary ticket to the bargaining table’ where the parties have sufficient information
20 to make an informed decision about settlement.”).

21 Courts have previously found this factor to weigh in favor of approval in cases that
22 have been litigated for several years with multiple mediations. *See Arellano v. Kellermeyer*
23 *Bldg. Servs., LLC*, No. 13-cv-00533-BAS(BGS), 2014 U.S. Dist. LEXIS 168986 at *23-24
24 (S.D. Cal. Dec. 5, 2014). Similarly, in a case where Defendants had produced 3,000 pages
25 of documents, a substantial amount of ESI, and had taken multiple depositions, the court
26 found this to be extensive discovery that justified settlement approval. *Banales v.*
27 *Autoclaims Direct, Inc.*, No. 11cv2914-DHB, 2012 U.S. Dist. LEXIS 201160 at *5-6 (S.D.
28 Cal. Dec. 20, 2012).

1 This case was filed on June 12, 2020 and has been pending for more than three years.
2 Prior to filing this lawsuit, Plaintiff's counsel spent nearly six months investigating the
3 specific claims in this lawsuit in detail. Decl. of K. Kneupper at ¶ 33. Plaintiff's counsel
4 further had been conducting an industry-wide investigation into similar allegations against
5 other companies which lasted much longer. *Id.* Those informal investigations continued
6 during the pendency of the lawsuit. Plaintiff's counsel conducted informal interviews of
7 former employees of Quick Box, LLC and associated companies. *Id.* Plaintiff's counsel
8 further obtained publicly available information about (1) historical aggregate shipping
9 volume by Quick Box, along with data permitting estimates of their revenue; (2) the amount
10 of money which a majority equity stake in Quick Box was sold for in 2019; (3) public
11 statements about the dollar amount of loans made to Quick Box by the bank that made those
12 loans, and (4) information about the property and assets of the individual Defendants. *Id.*

13 There have been numerous discovery issues resolved by the Court, including a lengthy
14 hearing conducted by Magistrate Judge Leshner addressing dozens of discovery disputes.
15 Dkt. 321, 322. The Quick Box Defendants produced more than 5,500 pages of documents.
16 Decl. of K. Kneupper at ¶ 34. This included both (1) insurance agreements, and (2) shipping
17 data. *Id.* The Konnektive Defendants further produced highly granular data about the sales
18 at issue. *Id.* Ms. Tan was deposed, as well as Defendant Adèle and a former employee of
19 Private Label Campaigns. *Id.* Kiet Lieu was deposed, and the owner of Total Health Supply
20 TUA, Inc. was questioned under oath at a bankruptcy hearing. *Id.* Three individuals
21 employed in the payment processing industry at Mastercard or Paysafe were also deposed,
22 as were several Konnektive employees. *Id.*

23 In addition, Plaintiff had insight into the merits of the lawsuit both from the Court's
24 rulings on multiple rounds of motions to dismiss (dkt. 88, 130) and a decision from the
25 Court on many similar issues on a class certification motion in a pending parallel lawsuit
26 (*Sihler v. Fulfillment Lab., Inc.*, No. 20cv1528-LL-DDL, 2023 U.S. Dist. LEXIS 116306
27 (S.D. Cal. June 23, 2023)).

28 Plaintiff's counsel thus had more than adequate information available to assess the

1 strength of their case.

2 **H. The Proposal Was Negotiated At Arms' Length**

3 Rule 23(e)(2)(B), as amended in 2018, now requires that the Court consider whether
4 the proposed class settlement “was negotiated at arm’s length.” The Ninth Circuit has laid
5 out certain factors which Courts should consider in conducting the “higher level of scrutiny
6 for evidence of collusion or other conflicts of interest” that is required for pre-certification
7 settlements. *See Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015). This includes a
8 requirement that the Court look for certain “subtle signs that class counsel have allowed
9 pursuit of their own self-interests . . . to infect the negotiations.” *Id.* (quoting *Jones v. GN*
10 *Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 947 (9th Cir.
11 2011)).

12 Those signs of self-dealing include: (1) when counsel receive a disproportionate
13 distribution of the settlement; (2) when the parties negotiate a ‘clear sailing’ arrangement’
14 (i.e., an arrangement where defendant will not object to a certain fee request by class
15 counsel); and (3) when the parties create a reverter that returns unclaimed fees to the
16 defendant. *Id.*

17 None of these signs exist here. There is nothing in the proposed agreement as to the
18 amount that counsel will receive. Instead, that issue has been left for the Court itself to
19 resolve via motion. *See, e.g.*, Ex. 26 at section IV ¶ 5(a); section IX. Counsel did not seek
20 to negotiate any agreement as to their own fees **at all** in this settlement. The Ninth Circuit
21 has held that a decision by class counsel to leave the issue of their fees to the Court via
22 motion is a strong sign that there has been no collusion or self-dealing: “Providing further
23 assurance that the agreement was not the product of collusion, class counsel McCuneWright
24 did not reach an agreement with the automakers regarding the amount of attorney's fees to
25 which they were entitled.” *Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926
26 F.3d 539, 569-70 (9th Cir. 2019).

27 As to the second sign of self-dealing, a clear sailing arrangement, there is none in this
28 settlement.

1 As to the third sign of self-dealing, an agreement to revert unclaimed fees to the
2 defendants, again, there is none. Instead, class counsel negotiated a clean settlement in
3 which unclaimed fees would be distributed to a well-respected *cy pres* recipient, the NCLC.
4 *See* Ex. 26 at section IV ¶ 4(e); section II ¶ 17. The NCLC is a non-profit which has a history
5 of addressing internet fraud and payment processing fraud. Decl. of R. Dubois. The NCLC
6 has been approved as an appropriate *cy pres* recipient in various other cases. *See Smith v.*
7 *One Nev. Credit Union*, No. 2:16-cv-02156-GMN-NJK, 2020 U.S. Dist. LEXIS 244534 at
8 *3-6 (D. Nev. Dec. 30, 2020); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1261
9 (C.D. Cal. 2016) (“Indeed, courts have repeatedly found the NCLC to have the requisite
10 nexus with consumer classes for qualification as a *cy pres* recipient.”); *Feist v. Petco Animal*
11 *Supplies, Inc.*, No. 3:16-cv-01369-H-MSB, 2018 U.S. Dist. LEXIS 197186 at *17-18 (S.D.
12 Cal. Nov. 16, 2018) Counsel for Plaintiffs have no connection personally or professionally
13 to the NCLC and their only relationship has been purchasing and utilizing highly valuable
14 practice guides the NCLC has created on consumer law, including in this lawsuit. Decl. of
15 K. Kneupper at ¶ 35.

16 Not only are there no signs of self-dealing, but there are many signs to the contrary.
17 The settlement was negotiated only after an initial Early Neutral Evaluation before
18 Magistrate Judge Butcher, dkt. 174, as well as two subsequent mediations before two
19 separate neutral mediators, former Magistrate Judge Leonidas Papas and Jill Sperber, Esq.
20 Decl. of K. Kneupper at ¶ 36. Both are highly accomplished mediators who assisted in
21 negotiating the agreement between the parties. *Id. See Bluetooth*, 654 F.3d at 948 (holding
22 that the “presence of a neutral mediator,” while not dispositive, is “a factor weighing in
23 favor of a finding of non-collusiveness”). Further supporting non-collusiveness is that the
24 settlement amount here was determined after a mediator’s proposal made by Mrs. Sperber.
25 Decl. of K. Kneupper at ¶ 36. *See Barragan v. Populus Fin. Grp., Inc.*, No. 2:21-cv-08021-
26 SB-MRW, 2023 U.S. Dist. LEXIS 27605 at *9 (C.D. Cal. Feb. 10, 2023) (“The settlement
27 was reached after mediation and only after the parties received a mediator's proposal, which
28 suggests that it was the product of informed, arm's-length negotiations.”).

1 Other aspects of the settlement discussed herein further suggest a lack of collusion.
2 The case was not one in which class counsel sought a quick settlement: it was instead a
3 hard-fought one with extensive discovery, as well as extensive investigation pre-suit, and
4 an amount that reflects Class Counsel’s willingness to pursue the case zealously as far as
5 needed to secure a favorable recovery for the Class.

6 **I. The Experience and Views of Counsel**

7 “Great weight is accorded to the recommendation of counsel, who are most closely
8 acquainted with the facts of the underlying litigation. This is because parties represented by
9 competent counsel are better positioned than courts to produce a settlement that fairly
10 reflects each party's expected outcome in the litigation.” *Lloyd v. Navy Fed. Credit Union*,
11 No. 17-cv-1280-BAS-RBB, 2019 U.S. Dist. LEXIS 89246 at *33 (S.D. Cal. May 28, 2019)
12 (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
13 2004)).

14 Counsel for Plaintiff in this case are highly experienced in complex litigation. *See* Decl.
15 of K. Kneupper at ¶ ¶ 1-29; Decl. of C. Covey at ¶ 1-22. Counsel are further highly
16 experienced in consumer law cases, and the law firm of Kneupper & Covey currently
17 maintains a docket of over 350 active individual consumer law cases in either arbitration or
18 litigation. Decl. of K. Kneupper at ¶ 29. The law firm has settled or recovered judgments in
19 over 200 individual consumer law cases this year alone, and counsel are regularly involved
20 in numerous mediations or settlement discussions. *Id.* at ¶ 30. In 2023 thus far, these
21 individually settled or recovered cases by Kneupper & Covey amounted to more than \$2.5
22 million. *Id.*

23 Based on their experience, Counsel for Plaintiff believe this is a highly favorable
24 settlement for the Class. Partly this is because the amount of \$5.5 million is 85.9% of the
25 actual damages, and 28.6% percent of those damages if trebled. Weighed against the risks
26 of an unfavorable litigation outcome and the time and expense needed to try for a higher
27 damages award before a jury, Counsel believes they have obtained an extremely favorable
28 outcome for the Class, even if this was all that is ever recovered.

1 But another issue that was significant to Counsel’s decision was that this is only a
2 **partial** settlement against one group of Defendants. The Class continues to have claims
3 against both (1) the Konnektive Defendants, and (2) claims against the La Pura shell
4 companies which may be collectible through an alter ego action. A settlement that “offers
5 an immediate and certain award for a large number of potential class members” creates
6 “much less risk of anyone who may have actually been injured going away empty-handed.”
7 *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007). By settling for
8 almost all of the actual damages, the Class is guaranteed an immediate, highly significant
9 recovery while retaining the ability to try to recover more money it is entitled to from the
10 other Defendants.

11 **J. The Remaining Factors**

12 As to the presence of a governmental participant, “[n]o government entity participated
13 in this case. Under these circumstances, this factor is neutral.” *Klee v. Nissan N. Am., Inc.*,
14 No. CV 12-08238 AWT (PJWx), 2015 U.S. Dist. LEXIS 88270 at *28 (C.D. Cal. July 7,
15 2015). With respect to the reaction of the class members to the proposed settlement, “[t]he
16 Class has yet to be notified of the Settlement and given an opportunity to object; thus it is
17 premature to assess this factor.” *Beaver v. Tarsadia Hotels*, No. 11-cv-01842-GPC-KSC,
18 2017 U.S. Dist. LEXIS 80648 at *17 (S.D. Cal. May 24, 2017).

19 As to whether “the proposal treats class members equitably relative to each other,” the
20 settlement treats class members equitably because it bases their recovery on the amount
21 they paid, subject to pro rata increases or decreases based on the number of claims. Ex. 26
22 at section IV. Depending on how many class members make claims, that amount can also
23 be increased pro rata up to three times the class member’s actual damages (to reflect
24 trebling). *Id.* at section IV(4)(b).

25 While Plaintiff intends to seek an incentive award in line with 9th Circuit authority,
26 see Ex. 26 at section IX(2), the amount was not negotiated as part of the settlement and the
27 Court will ultimately determine whether such an award is proper, and if so, the amount.
28 Such incentive awards do not constitute inequitable treatment of class members. *Preston v.*

1 *Porch.Com, Inc.*, No. 21-CV-168 JLS (BLM), 2022 U.S. Dist. LEXIS 75256 at *19 (S.D.
2 Cal. Apr. 25, 2022).

3 **V. THE COURT SHOULD APPROVE THE PROPOSED METHOD OF NOTICE**

4 After the Court has determined that a settlement should be preliminarily approved, it
5 must order that the parties provide notice to the settlement class. *See* Fed. R. Civ. P.
6 23(e)(1). The parties must provide the absent class with the “best notice practicable” under
7 the circumstances. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). While this
8 standard does not demand individual notice to every class member, it does require
9 “individual notice to all members who can be identified through reasonable effort.” Fed. R.
10 Civ. P. 23(c)(2); *see In re Packaged Seafood Prods. Antitrust Litig.*, No. 15md2670
11 DMS(MDD), 2023 U.S. Dist. LEXIS 42200 at *46 (S.D. Cal. Mar. 13, 2023). Notice may
12 be provided to the class via “United States mail, electronic means, or other appropriate
13 means.” Fed. R. Civ. P. 23(c)(2)(B).

14 The parties have agreed to a notice plan designed to make sure that as much of the
15 Class receives notice as possible. The proposed notice forms are attached as Exhibits 4-8 to
16 the executed settlement. Ex. 26. They have been drafted in plain English in an attempt to
17 make them easily readable to Class members. The methods of notice include e-mail notice,
18 postcard notice, and website notice. *Id.* at section VI(2) (c) and (d). The parties have agreed
19 to consult with the Class Administrator regarding additional targeted notice via internet
20 advertising and other procedures. *Id.* at section VI(2)(e). These include, for example, re-
21 mailing postcards using new address data for any that are returned. Decl. of C. Azari at ¶
22 24. The online advertising proposed would involve a “list activation” strategy that uses the
23 e-mail addresses for the Class to specifically target class members using advertisements on
24 major social media networks (i.e., to show the ads only to Class members). *Id.* at ¶ 29-30.
25 The Class Administrator estimates that 90% of the Class will be reached by the direct
26 methods of notice, even before the proposed targeted online advertising. *Id.* at ¶ 17, 35.

27 The parties have selected Epiq Class Action and Claims Solutions as the settlement
28 administrator to handle the notice plan. Ex. 26 at section II(39). Plaintiff independently

1 contacted and reviewed other potential administrators, but the parties agreed to Epiq after
2 Plaintiff’s counsel conducted an interview with them and was satisfied with, in particular,
3 their technical understanding of targeted Internet advertising. Decl. of K. Kneupper at ¶ 37.
4 Plaintiff’s counsel has personal experience with such advertising and considered it
5 particularly important because of its effectiveness. *Id.*

6 **VI. CONCLUSION**

7 Plaintiff respectfully requests that the Court should grant preliminary approval and
8 schedule the necessary proceedings for a final approval hearing after notice to the Class.

9
10 DATED: October 31, 2023

KNEUPPER & COVEY, PC

11 /s/Kevin M. Kneupper

12 Kevin M. Kneupper, Esq.

13 *Attorneys for Plaintiff LeAnne Tan*
14 *and the putative Class*