

Exhibit B

1 A.J. de Bartolomeo (SBN 136502)
2 **TADLER LAW LLP**
3 P.O. Box 475847
4 San Francisco, CA 94147-5847
5 Telephone: (415) 226-0260
6 Email: ajd@tadlerlaw.com

7 Richard M. Nichols (SBN 166638)
8 876 Arlene Way
9 Novato, CA 94530
10 Telephone: (415) 314-0066
11 Email: Rnicholspc@gmail.com

12 Attorneys for Class Member
13 HOPE AMELIA SOLO STEVENS
14 [*Additional Counsel on last page*]

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 ALEX MORGAN, et al.,
18 *Plaintiffs,*
19 v.

20 UNITED STATES SOCCER
21 FEDERATION, INC.,
22 *Defendant.*

Case No. 2:19-CV-01717 RGK-AGR

Assigned to Hon. R. Gary Klausner

**CLASS MEMBER HOPE SOLO'S
NOTICE OF OBJECTION AND
OBJECTION TO FINAL APPROVAL
OF SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES**

Objection Filed With Limited Redactions
from Publicly Filed Document to Protect
Personal Identifying Information That Is
Required by Class Notice

Objection Deadline: October 11, 2022
Hearing Date: December 5, 2022
Time: 9:00 a.m.
Judge: Hon. R. Gary Klausner
Location: Courtroom 850

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. PROCEDURAL BACKGROUND AND CLASS MEMBER’S STANDING..... 1
- II. SOLO’S STATEMENT OF OBJECTIONS 4
 - A. Class Member Solo Objects That The Class Notice Is Ambiguous and Misleading..... 4
 - B. Class Member Solo Objects to the Proposed Settlement On the Grounds it Fails to Articulate the Settlement Amount Allocated for Each Class Member And It Fails to Allocate Settlement Proceeds Between the Rule 23(b)(3) Class and the Collective FLSA Action..... 6
 - 1. Proposed Settlement Fails to Set Out the Methodology for the Plan of Allocation to Individual Class Members..... 6
 - 2. Proposed Settlement Fails to Allocate Funds Between Rule 23(b)(3) Class Members and the FLSA Collective Action Members..... 8
 - C. Class Member Solo Objects to the Attorney’s Fees and Expenses Requested as Unreasonable and Disproportionate to the Settlement Fund..... 9
- III. CLASS MEMBER SOLO’S STATEMENT OF INTENTION TO ATTEND FINAL HEARING 10
- IV. CONCLUSION 10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	5, 9
<i>Glass v. UBS Fin. Servs., Inc.</i> , 331 F. App’x 452, 457 (9th Cir. 2009)	10
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	3, 10
<i>Hudson v. Libre Tech. Inc.</i> , No. 3:18-CV-1371-GPC-KSC, 2019 WL 5963648 (S.D. Cal. Nov. 13, 2019).....	8
<i>Hudson v. Libre Tech. Inc.</i> , No. 3:18-CV-1371-GPC-KSC, 2020 WL 2467060 (S.D. Cal. May 13, 2020)	3, 8
<i>Knisley v. Network Assocs., Inc.</i> , 312 F.3d 1123 (9th Cir. 2002)	4
<i>In re MGM Mirage Sec. Litig.</i> , 708 F. App’x 894 (9th Cir. 2017)	4
<i>Millan v. Cascade Water Servs., Inc.</i> , 310 F.R.D. 593 (E.D. Cal. 2015)	8
<i>Rodman v. Safeway Inc.</i> , No. 11-CV-03003-JST, 2018 WL 4030558 (N.D. Cal. Aug. 22, 2018).....	9
<i>Rodriguez v. West Publ’g</i> , 563 F.3d 948 (9th Cir. 2009)	5
<i>Rosado v. Ebay, Inc.</i> , No. 5:12-CV-04005-EJD, 2016 WL 3401987 (N.D. Cal. June 21, 2016).....	9
<i>Six (6) Mexican Workers v. Arizona Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990)	10
<i>Smith v. Kaiser Found. Hosps.</i> , No. 3:18-CV-00780-KSC, 2019 WL 5864170 (S.D. Cal. Nov. 7, 2019).....	8
<i>Toolajian v. Air Methods Corp.</i> , No. 18-CV-06722-AGT, 2020 WL 8674094 (N.D. Cal. Apr. 24, 2020)	5

1 **Rules**

2 Fed. R. Civ. P. 23(c)5

3 Fed. R. Civ. P.23(e)2, 3, 4, 5

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1 Class Member Hope Amelia Solo Stevens (“Class Member Solo”) believes that the
2 proposed Settlement Agreement contains both procedural and substantive defects that must be cured
3 before this Court can grant the proposed Settlement final approval. Accordingly, Class Member
4 Solo files this Notice of Objection and Objection to Final Approval of Settlement and Request for
5 Attorney’s Fees (“Solo’s Objection”). Class Member Solo objects to the proposed Settlement
6 Agreement on the grounds that: (1) the Class Notice is ambiguous and misleading as to the Rule
7 23(b)(3) Damages Class Members’ individual relief under the Settlement fund; (2) the proposed
8 Settlement fails to articulate the allocation of the amount paid for each individual Rule 23(b)(3)
9 Damages Class Member and fails to allocate the Settlement fund between the Rule 23(b)(3)
10 Damages Class and the FLSA Collective action; and (3) the Attorney’s fees and expenses requested
11 are unreasonable and disproportionate to the Settlement fund.

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13 **I. PROCEDURAL BACKGROUND AND CLASS MEMBER’S STANDING**

14 1. On August 24, 2018, Class Member Hope Solo (“Solo”) filed an individual lawsuit against
15 Defendant U.S. Soccer Federation, Inc. (“USSF”) in the Northern District of California, Case No.
16 3:18-CV-05215 JD. Solo’s complaint alleged violations of the Equal Pay Act (“EPA”) and Title VII
17 of the Civil Rights Act of 1964 (“Title VII”).

18 2. On March 8, 2019, members of the Women’s National Team (“WNT”) filed a class action
19 lawsuit (“Class Litigation” or “*Morgan* Plaintiffs”) against USSF in the Central District of California,
20 Case No. 2:19-CV-01717 RGK-AGR. The *Morgan* Class Action also alleged that USSF violated
21 EPA and Title VII’s prohibition on sex discrimination by denying the *Morgan* Plaintiffs working
22 conditions equal to the Men’s National Team players.

23 3. On November 8, 2019, the U.S. District Court Judge in the Class Litigation certified a Rule
24 23(b)(3) class on the Title VII claims at issue, defined as “All WNT players who were members of
25 the WNT at any time from February 4, 2015 through the date of class certification,” (“Damages Class
26 Members”). The Court also conditionally certified a collective action on the Equal Pay claims
27 pursuant to 29 U.S.C. § 216(b), Fair Labor Standards Act, (“FLSA Collective Action Members”).

1 ECF No. 98.

2 4. Class Member *Solo* did not opt out of the certified Rule 23(b)(3) Damages Class under Title
3 VII.

4 5. Class Member *Solo* did not opt in to the *FSLA Collective Action* under the EPA.

5 6. On May 1, 2020, the Court issued an Order granting USSF’s Motion for Summary
6 Judgment in part, dismissing the *Morgan* Plaintiffs’ EPA claims and Title VII pay discrimination
7 claims, and certain of the *Morgan* Plaintiffs’ Title VII claims of working condition discrimination
8 related to on-field playing conditions. ECF No. 250.

9 7. On April 14, 2021, the *Morgan* Plaintiffs appealed the Court’s ruling granting summary
10 judgment on the Class’s Title VII and Equal Pay Act pay-discrimination claims. ECF No. 308.

11 8. On or about February 22, 2022, the *Morgan* Plaintiffs and USSF agreed to a settlement in
12 principle of the Class Litigation.

13 9. On June 22, 2022, the *Morgan* Plaintiffs filed a Notice of Motion and Motion for
14 Preliminary Approval of Class Action Settlement, attaching as exhibits the proposed Class Action
15 Settlement Agreement And Release Of Pay Claims (“Settlement Agreement”) and the Notice of Class
16 and Collective Action Settlement (“Class Notice”). ECF Nos. 317-2 and 317-3.

17 10. Pursuant to Federal Rule 23(e)(5), “Any class member may object to the proposal if it
18 requires court approval under [FRCP 23(e)]. The objection must state whether it applies only to the
19 objector, to a specific subset of the class, or to the entire class, and also state with specificity the
20 grounds for the objection. . . . Unless approved by the court after a hearing, no payment or other
21 consideration may be provided in connection with: (i) foregoing or withdrawing an objection, or (ii)
22 foregoing, dismissing, or abandoning and appeal from a judgment approving the proposal.” Fed. R.
23 Civ. P. 23(e)(5)(A)-(B).

24 11. The Class Notice provides the specific procedure that a Class Member must follow if
25 they believe the proposed Settlement *is not fair, reasonable, or adequate in any way*, and chooses to
26 object to it. ECF No. 317-3, page 6, “**Option B. Object to the Settlement.**” The Class Notice requires
27 Class Members who choose to object to state their “(i) full name, address and telephone number; (ii)

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1 the dates of your employment at USSF; (iii) any Employee ID number; (iv) the basis for the objection;
2 and (v) whether you intend to appear at the final approval hearing.” ECF No. 317-3, at page 6. Thus,
3 the Class Notice requires the Class Member to provide Personal Identifying Information (“PII”) in
4 order to object to the proposed Settlement. This requirement to provide PII is also objectionable as it
5 risks privacy interests and identify theft.

6 12. The decision to approve or reject a proposed class settlement is committed to the sound
7 discretion of the trial judge, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Factors
8 for the court to consider in determining whether a proposal is “fair, reasonable, and adequate” include:
9 1) whether “the class representative and class counsel have adequately represented the class;” 2)
10 whether “the proposal was negotiated at arm’s length;” and 3) whether “the relief provided for the
11 class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the
12 effectiveness of any proposed method of distributing relief to the class, including the method of
13 processing class-member claims, (iii) the terms of any proposed award of attorney’s fees, including
14 timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)”, which
15 requires a “statement identifying any agreement made in connection with the proposal”; and 4) “how
16 the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)-(3);
17 *Hudson v. Libre Tech. Inc.*, No. 3:18-CV-1371-GPC-KSC, 2020 WL 2467060, at *5 (S.D. Cal. May
18 13, 2020) (stating that a court may approve a proposed class action after considering the factors listed
19 under Rule 23(e)(2)).

20 13. Pursuant to the terms of the proposed Settlement Agreement, “USSF will provide \$22
21 million to the Class Members of the Damages Class and the FLSA Collective Action Members,
22 deposit \$2 million in an escrow account to benefit Class Members and the FLSA Collective Action
23 Members in their pursuit of post-playing career goals and charitable efforts, and provide for equal
24 pay going forward in exchange for a release of liability on Plaintiffs’ pay-discrimination claims. **The**
25 **settlement funds will be distributed fairly among the Class Members of the Damages Class and**
26 **FLSA Collective Action Members, as outlined further below.** A brief description of the terms is
27 set forth below” See ECF No. 317-3, at page 3, “*What are the Settlement Terms?*” (Emphasis in
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1 original.)

2 14. Class Member Solo was employed as a member of the United States Women’s
3 National Team from January 2, 2000 through August 24, 2016. *See* the accompanying Class Member
4 Hope Amelia Solo’s Declaration In Support Of Her Notice of Objection And Objection To Final
5 Approval Of Settlement And Application For Attorney’s Fees (“Solo Decl.”) at ¶4.

6 15. Class Member Solo’s Employee ID Number is her Social Security Number and will
7 be redacted from the publicly filed objection and supporting declaration: [REDACTED] *See* Solo
8 Decl., ¶5.

9 16. Class Member Solo *did not opt out of the Rule 23(b)(3) Damages Class* under Title
10 VII and Solo *did not opt in to the EPA collective action*. *See* Solo Decl., ¶6.

11 17. “[A] dissatisfied class member may object in the district court and may generally
12 appeal an adverse decision.” *See Knisley v. Network Assocs., Inc.*, 312 F.3d 1123, 1125 (9th Cir.
13 2002); *see also In re MGM Mirage Sec. Litig.*, 708 F. App’x 894, 896 n.1 (9th Cir. 2017) (“Although
14 he has not filed a claim form, Kacprowski also has standing to appeal the fee award because he appeals
15 the settlement as a whole, and not only the fee award.”).

16 18. Class Member Solo objects to the proposed Settlement Agreement on the grounds that
17 (1) the Class Notice is ambiguous and misleading; (2) the proposed Settlement fails to articulate the
18 allocation of the proposed Settlement amount for each individual Rule 23(b)(3) Damages Class
19 Member and it fails to allocate the proceeds of the Settlement between the Rule 23(b)(3) Damages
20 Class and the FLSA Collective action; and (3) the Attorney’s Fees requested are unreasonable and
21 disproportionate.

22 **II. SOLO’S STATEMENT OF OBJECTIONS**

23 **A. Class Member Solo Objects That The Class Notice Is Ambiguous and**
24 **Misleading.**

25 19. A proposed settlement, voluntary dismissal, or compromise, notice must be provided
26 to the class. Fed. R. Civ. P.23(e)(1). Rule 23 requires the “court [to] direct notice in a reasonable
27 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For
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1 any classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that
2 is practicable under the circumstances, including individual notice to all members who can be
3 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it
4 ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse
5 viewpoints to investigate and to come forward and be heard.’” *Toolajian v. Air Methods Corp.*, No.
6 18-CV-06722-AGT, 2020 WL 8674094, at *11 (N.D. Cal. Apr. 24, 2020) (quoting *Churchill Vill.*,
7 *L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). If the proposed settlement, dismissal or
8 compromise would bind class members, the court may approve it only after a hearing and only on
9 finding that it is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2); *In re Bluetooth Headset*
10 *Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (“Rule 23(e) of the Federal Rules of Civil
11 Procedure requires court approval of all class action settlements, which may be granted only after a
12 fairness hearing and a determination that the settlement taken as a whole is fair, reasonable, and
13 adequate.”). Notices are also required to effectively communicate the essentials of settlement in a
14 sufficiently balanced, accurate and informative way to satisfy due-process concerns. *Rodriguez v.*
15 *West Publ’g*, 563 F.3d 948, 962-63 (9th Cir. 2009). By its very nature, such notice to class members
16 must include a description of the scope of the release of claims, and the precise amount of the
17 settlement amount and allocation to be received by the class members in exchange for the release of
18 claims.

19 20. Concerning the Settlement fund, the Class Notice states, in pertinent part, as follows:

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21 *USSF will provide \$22 million to the Class Members of the Damages Class and FLSA*
22 *Collective Action Members (“\$22 Million Payment”), paid in four equal interest-free*
23 *installments to be divided among the Class Members of the Damages Class and the*
24 *FLSA Collective Action Members, after subtracting Plaintiffs’ attorneys’ fees and*
25 *litigation costs in a manner to be proposed by Plaintiffs and approved by the Court.*
26 *The first installment of the \$22 Million payment (in the amount of \$5.5 million) will be*
*paid by USSF into an escrow account to be established by class counsel within **ten***
***business days** after the new collective bargaining agreement (“New CBA”) is entered*
into, ratified by members of the U.S. Women’s National Team Players Association
(“USWNTPA”), and approved by the USSF Board of Directors. (Emphasis added)

27 The proposed Settlement Agreement states that the first installment of the \$22 Million payment (in

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1 the amount of \$5.5 million) will be paid by USSF into an escrow account to be established by Class
2 Counsel within **fifteen business days** after the New CBA is entered into with agreed upon releases,
3 ratified by the members of the USWNTPA and approved by the USSF Board of Directors. The
4 second, third, and fourth installments (each in the amount of \$5.5 million) shall be paid by USSF into
5 the escrow account to be established by Class Counsel, or any other account directed by Class
6 Counsel, on the three consecutive year anniversary dates of the ratification of the New CBA.”
7 (Emphasis added).

8 21. The proposed Settlement Agreement varies significantly from the language of the
9 Class Notice. It includes an extension of the ten business day account establishment deadline to
10 fifteen business days, and sets forth the payment installment timetable, with the final of the four
11 installments not scheduled until three years after receipt of the first installment. Although the first
12 installment of the \$22 Million was paid by USSF into an escrow account on June 1, 2022, the Class
13 Notice does not state, explain or disclose that it will take the Class Members three full years after
14 ratification of the New CBA to receive their full [unknown and ambiguous] allocation of the
15 Settlement proceeds. Class Member Solo contends this is material information omitted from the Class
16 Notice that would likely impact a Class Member’s or a FLSA Collective Action Members’ decision
17 to object to the proposed Settlement.

18 **B. Class Member Solo Objects to the Proposed Settlement On the Grounds**
19 **it Fails to Articulate the Settlement Amount Allocated for Each Class**
20 **Member And It Fails to Allocate Settlement Proceeds Between the Rule**
21 **23(b)(3) Class and the Collective FLSA Action.**

22 **1. Proposed Settlement Fails to Set Out the Methodology for the Plan**
23 **of Allocation to Individual Class Members.**

24 22. The proposed Settlement Agreement fails to set forth with specificity the allocation of
25 the Settlement fund for each class member. The failure to explain the plan of allocation is material.
26 Neither the Class Notice nor the proposed Settlement Agreement provides the Class Members with
27 the allocation of their individual relief. As a result, Class Members do not have the information
28 necessary to calculate the allocation of the Settlement proceeds per class member. The lack of
disclosure about the Settlement allocation denies Class Members the opportunity to make informed

1 decisions as to releasing their claims in exchange for an unknown allocation of the proposed
2 Settlement fund at an unknown time in the future.

3 23. Neither the Class Notice nor the Settlement Agreement contain information adequate
4 for Plaintiffs to determine the allocation of the Settlement amount for each class member.

5 24. The Class Notice states (in bold print) that the Settlement funds will be distributed
6 “fairly” – but it fails to provide any details or clarification of what is meant by “fairly.” The Class
7 Notice further states that “Each Class Member or FLSA Collective Action Member will receive a *pro*
8 *rata* share of the Damages Fund based on their *pro rata* share of the total damages Plaintiffs sought
9 in this lawsuit based on their expert’s damages calculations.” ECF No. 317-3, at page 5. However,
10 the Class Notice is silent as to either the dollar amount of the expert’s damages calculations, or the
11 *pro rata* share of the total damages sought for each individual Class Member.

12 25. In accordance with the proposed Settlement and the Class Notice, the methodology for
13 the plan of allocation is something to be determined *at some point in the future* after deducting the
14 amounts for Attorney’s fees and costs.

15 26. More particularly, the Settlement Agreement at ¶46 Methodology for Allocation
16 states:

17 *Plaintiffs shall propose to the Court a methodology for allocating the Settlement*
18 *Payments, after deducting Attorneys’ Fees and Litigation Costs, to Class Members*
19 *and FLSA Collective Action Members. USSF shall take no position on how these*
20 *settlement payments are allocated.*

21 27. The allocated dollar amount of the Settlement fund is not specified for each of the
22 Class Members. Simply stated, there is no mention in the proposed Settlement Agreement or the Class
23 Notice as to the actual amount of money USSF will pay to each Class Member. Essentially, the
24 proposed Settlement leaves the individual Class Member awards to be determined *after the Court*
25 *approves the proposed Settlement and after the methodology of the plan of allocation is sorted out at*
26 *some time in the future.*

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2. Proposed Settlement Fails to Allocate Funds Between Rule 23(b)(3) Class Members and the FLSA Collective Action Members.

28. In addition to failing to articulate the individual Settlement amounts allocated for each of the Class Members, the proposed Settlement Agreement fails to articulate allocation of the \$22 Million Settlement fund between the Rule 23(b)(3) Damages Class Members (Title VII claimants) and the FLSA Collective Action Members (EPA claimants). District courts in the Ninth Circuit find that “a Rule 23 class action and a FLSA collective action can be prosecuted in the same action. However, . . . having a single settlement fund from which both the FLSA and Rule 23 claims are satisfied is problematic.” *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 602 (E.D. Cal. 2015). Consequently, due in part to the ‘hybrid’ nature in this case of a settlement of a Rule 23 class action and a FLSA collective action, without proper articulation of allocation as to those actions and the claimants therein, Class Members cannot effectively determine whether the Settlement Amount is fair, reasonable, or adequate.

29. Courts approving settlements releasing both FLSA and Rule 23 claims generally do so only when settlement payments to FLSA claims are expressly allocated. *Smith v. Kaiser Found. Hosps*, No. 3:18-CV-00780-KSC, 2019 WL 5864170, at *11 (S.D. Cal. Nov. 7, 2019). In *Hudson v. Libre Tech. Inc.*, the court stated, “While it has been recognized that district courts in the Ninth Circuit are divided as to whether a Rule 23 class action can co-exist with a related collective action under the FLSA, [] district courts generally allow, if certain requirements are met, approval of a hybrid FLSA Collective/Rule 23 class action settlement.” *Hudson v. Libre Tech. Inc.*, No. 3:18-CV-1371-GPC-KSC, 2019 WL 5963648, at *9 (S.D. Cal. Nov. 13, 2019) (internal citations omitted).

30. The proposed Settlement, which is a FLSA / Rule 23 hybrid settlement, does not create “separate settlement funds for the FLSA class and the Rule 23 class” as the *Millan* court cautioned. Solo cannot determine her own allocation as a Class Member as the proposed Settlement Agreement and the Class Notice fail to indicate the total individual allocations for Class Members. In other words, the proposed Settlement is ambiguous about how much FLSA Collective Action Members and/or Rule 23(b)(3) Class Members are receiving for each claim; therefore, a member

1 cannot assess whether she thinks the proposed settlement amount is fair, reasonable, or adequate.

2 C. **Class Member Solo Objects to the Attorney’s Fees and Expenses**
3 **Requested as Unreasonable and Disproportionate to the Settlement**
4 **Fund.**

5 31. The application for Attorney’s fees and reimbursement for expenses has not yet been
6 filed. The only notice or disclosure as to the scope and content of that Attorney’s fee application are
7 found in the Settlement Agreement and the Class Notice. Neither provide the Class Members with
8 any details as to the underlying bases for Class Counsel to seek nearly 36% of the Settlement fund
9 for attorney’s fees and reimbursement of expenses.

10 32. The Class Notice states that Class Counsel will request the Court for an award of
11 attorneys’ fees and expenses, which will be paid from the \$22 Million fund. The Class Notice further
12 states that Class Counsel will ask the Court for 30% of the \$22 Million fund (\$6.6 Million) and seek
13 approximately \$1,319,127 in litigation expenses.

14 33. As stated *supra*, Class Member Solo maintains that both the Settlement Agreement
15 and the Class Notice are ambiguous as to the scope and timing of the individual relief to the Class
16 Members under the Plan of Allocation. In direct contrast, the Settlement Agreement and the Class
17 Notice set out in stark detail the amount and timing for the attorneys’ fees and expenses to be paid
18 from the \$22 Million payment

19 34. In the Ninth Circuit, Courts typically consider 25% of a settlement fund as the
20 benchmark for a reasonable attorney fee award. *See Rosado v. Ebay, Inc.*, No. 5:12-CV-04005-EJD,
21 2016 WL 3401987, at *7 (N.D. Cal. June 21, 2016). However, where awarding 25% would yield a
22 windfall profit for class counsel in light of the hours spent on the case, Courts should adjust the
23 benchmark percentage or employ the lodestar method instead. *In re Bluetooth Headset*, 654 F.3d at
24 942-43. Additionally, “to avoid routine windfalls where the recovered fund runs into the multi-
25 millions, courts typically decrease the percentage of the fee as the size of the fund increases.” *Rodman*
26 *v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, *4 (N.D. Cal. Aug. 22, 2018).

27 35. In determining reasonable and necessary attorney’s fees, a court may choose between
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1 a lodestar method and a percentage of fund method. *See Six (6) Mexican Workers v. Arizona Citrus*
2 *Growers*, 904 F.2d 1301 (9th Cir. 1990); *see also Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452,
3 457 (9th Cir. 2009). Pursuant to FRCP 23(g), FRCP 23(h), *Hanlon v. Chrysler Corp.*, 150 F.3d at
4 1026, and its progeny, one of the factors for the Court to consider *is the amount of effort in relation*
5 *to the results obtained* (such as prevailing or not prevailing on a motion for summary judgment – like
6 Class Counsel *here*). Accordingly, under the litigation record here, Class Counsel's requested
7 attorney's fees and reimbursement of expenses is disproportionate to the Settlement fund, and are
8 improper as neither reasonable nor necessary. "Active judicial involvement in measuring fee awards
9 is singularly important to the proper operation of the class action process." Advisory Committee Notes
10 on 2003 Amendments to Rule 23.

11 36. In sum, Class Counsel seeks \$7,919,127 from the \$22 million Settlement fund, which
12 constitutes 35.996% of the \$22 million Settlement fund.

13 37. Class Counsel's \$7,919,127 request for attorneys' fees and reimbursement of costs is
14 unreasonable and disproportionate.

15 **III. CLASS MEMBER SOLO'S STATEMENT OF INTENTION TO ATTEND**
16 **FINAL HEARING**

17 38. Class Member Hope Solo is represented by Counsel, may be reached through her
18 counsel at the addresses and telephone numbers indicated, and intends to appear in person or by and
19 through her Counsel at the December 5, 2022 final approval hearing, or whatever date is selected by
20 the Court. *See Solo Decl.*, ¶7.

21 **IV. CONCLUSION**

22 39. Based upon the foregoing, and because the Settlement is neither fair, reasonable, nor
23 adequate, Class Member Solo's Objection should be sustained, the Settlement should be rejected and,
24 approval of the Settlement should be denied.
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DATED: October 11, 2022

Respectfully submitted,

By: /s/ A.J. de Bartolomeo

A.J. de Bartolomeo (SBN 136502)
TADLER LAW LLP
P.O. Box 475847
San Francisco, CA 94147-5847
Telephone: (415) 226-0260
Email: ajd@tadlerlaw.com

Richard M. Nichols (SBN 166638)
Attorney at Law
876 Arlene Way
Novato, CA 94530
Telephone: (415) 314-0066
Email: rnicholspc@gmail.com

Timothy W. Moppin (SBN 133363)
Attorney at Law
2015 Junction Avenue
El Cerrito, CA 94530
Telephone: (510) 232-0442
Email: timmoppin@yahoo.com
timmoppin@aol.com

Paul K. Stafford (*pro hac vice pending*)
STAFFORD MOORE, PLLC
325 N. St. Paul St., Suite 2210
Dallas, TX 75201
Telephone (Main): (214) 764-1529
Telephone (Direct): (214) 764-1531
Facsimile: (214) 580-8104
Email: paul@staffordmoore.law

Attorneys for Class Member Hope Amelia Solo Stevens

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SIGNATURE ATTESTATION

Pursuant to Local Rule 5-1, I certify that all other signatories listed, on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

DATED: October 11, 2022

By: /s/ A.J. de Bartolomeo
A.J. de Bartolomeo