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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 JULIA BERNSTEIN, et al.,
22
23 Plaintiffs,
24
25 vs.
26 VIRGIN AMERICA INC., et al.;
27
28 Defendants.

Case No. 15-cv-02277-JST

CLASS ACTION

**DECLARATION OF RICHARD M.
PEARL IN SUPPORT OF
PLAINTIFFS' MOTION TO
APPROVE THE PLAN OF
ALLOCATION, ATTORNEYS' FEES
AND EXPENSES, AND SERVICE
AWARDS TO CLASS
REPRESENTATIVES**

Date: July 6, 2023
Time: 2:00 p.m.
Crtrm: Courtroom 6; 2nd Floor
Judge: Hon. Jon S. Tigar

1 I, RICHARD M. PEARL, hereby declare as follows:

2 **INTRODUCTION AND SUMMARY OF OPINIONS**

3 1. I submit this declaration in support of Plaintiffs’ Motion to Approve the Plan of
4 Allocation, Service Awards to Class Representatives, and Attorneys’ Fees and Expenses.

5 2. I am a member in good standing of the California State Bar. I am in private
6 practice as the principal of my own law firm, the Law Offices of Richard M. Pearl, in Berkeley,
7 California. My current practice is focused almost entirely on attorneys’ fees issues, including the
8 representation of parties in fee litigation and appeals, training other attorneys and publishing
9 written materials on the subject, and service as an expert witness and consultant on attorneys’ fee
10 issues.

11 3. I have been asked by counsel for Plaintiffs and the certified Class and Subclasses
12 (“Class Counsel”) to provide my opinion on the reasonableness of the 33% common fund
13 attorneys’ fees Class Counsel are seeking from the over \$31 million fund recovered for the Class,
14 Subclasses, and State of California. I have also been asked to opine on the reasonableness of
15 Class Counsel’s lodestar cross-check, in terms of the hourly rates, hours claimed, and potential
16 lodestar multiplier reflected in Counsel’s fee request.

17 4. To form my opinion as to the reasonableness of the attorneys’ fees Class Counsel
18 request for their work in this case, I have reviewed materials that describe the history of this
19 matter, the results achieved, counsel’s qualifications and experience, the nature of the work
20 required by this case, and the attorneys’ fees they request. These materials include various
21 pleadings, the summary judgment orders, the initial fee order, the Ninth Circuit Opinion, and the
22 instant motion as well as the declarations from Class Counsel in support of the motion. I also
23 have consulted extensively with Monique Olivier of Olivier & Schreiber LLP, lead Class
24 Counsel, about this motion and the underlying facts of the case.

25 5. My opinion that Class Counsel’s fees are reasonable, set forth in more detail
26 below, is based on the indisputable fact that this has not been the ordinary straightforward class
27 action. It was litigated – for over eight years – to judgment, then appellate proceedings,
28 proceedings on remand, and an amended judgment. It has involved novel and complex issues

1 including federal preemption under various federal laws, the application of the Dormant
2 Commerce Clause, and the extraterritorial application of California law to flight personnel. The
3 case litigation involved not only heavily contested district court proceedings culminating in a
4 favorable judgment but two fully litigated appeals at the Ninth Circuit, two amended Opinions
5 from the Ninth Circuit after petitions for rehearing, certiorari proceedings before the U.S.
6 Supreme Court, and further significant post-remand proceedings.

7 6. In this type of case, initiated under a statute with a fee-shifting provision but
8 reaching a judgment that creates a common fund, both California and federal law permit
9 successful plaintiffs' counsel to seek attorneys' fees as a "hybrid" of statutory fee-shifting and a
10 percentage recovery from the common fund. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654
11 F.3d 935, 941 (9th Cir. 2011) ("The award of attorneys' fees in a class action settlement is often
12 justified by [a] common fund or statutory fee-shifting[,] ... and sometimes by both."); *Staton v.*
13 *Boeing Co.*, 327 F.3d 938, 967–69 (9th Cir. 2003) (permitting common fund recovery even where
14 statutory fees may be available); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 725–26 (2004)
15 (trial court approved attorneys' fees to be paid as a percentage of common fund offset by
16 statutory fees awarded).¹

17 7. Class Counsel here have negotiated for Defendants Virgin America Inc. and
18 Alaska Airlines, Inc. ("Defendants") to pay \$6,395,874.95 in fees and \$40,000 in reimbursement
19 of taxable expenses as statutory fees under the applicable California fee-shifting statutes. Class
20 Counsel have also agreed that this amount will be credited to the Class as an offset of the 33%
21 common fund attorneys' fees award they now request the Court to approve.

22 8. Class Counsel now request attorneys' fees in the amount of \$10.4 million which
23 represents 33% of the over \$31 million Common Fund Judgment that has been recovered for the
24 Class in this action. Class Counsel also request reimbursement from the fund of approximately
25 \$580,000 for expenses reasonably incurred in the litigation, including future class administration
26 costs. The attorneys' fees sought from the Class's Common Fund Judgment will be reduced by

27 _____
28 ¹ Citations to legal authorities in this declaration are not intended as argument but only to provide
the legal standards on which my opinions are based.

1 the \$6,395,874.95 Defendants have agreed to pay, which is in fact higher than Class Counsel's
2 reported lodestar. Thus, the actual attorneys' fees the Class is asked to pay from the Common
3 Fund Judgment after this credit is approximately \$4 million -- less than 13% of the Judgment.

4 9. In sum, it is my opinion that based on the excellent results achieved, the significant
5 risks Class Counsel assumed by representing the class on an entirely contingent basis, the high
6 level of skill and quality of work needed to achieve this result, fee awards in comparable
7 California and federal cases, and the percentages reasonably charged in the legal marketplace, a
8 fee constituting 33% of the Common Fund Judgment is reasonable, particularly in light of the
9 credit of over \$6.3 million back to the common fund that Class Counsel has negotiated.

10 10. Correlatively, reviewing the common fund request against the lodestar cross-
11 check, it is also my opinion that the 1.79 multiplier on Class Counsel's \$5,844,319.50 lodestar,
12 which represents modest rates for more than 7,300 attorney and staff hours worked over eight
13 years, is reasonable. I have examined each attorney's requested lodestar billing rate, along with
14 each attorney's experience and background. Based on that review, in my opinion the rates
15 requested are well within, and in fact lower, than the range of hourly rates charged by comparably
16 qualified attorneys in the San Francisco Bay Area and with those that other courts have found
17 reasonable for attorneys with comparable expertise and complex litigation experience performing
18 similar services. It also is my opinion that the number of hours billed by Class Counsel is entirely
19 appropriate and reasonable in light of the litigation's more than eight-year duration, the stakes
20 involved, the complexity of the issues, Defendants' fierce resistance, the high quality of the work
21 I have reviewed, and most importantly, the excellent result obtained. And lastly, it is my opinion,
22 that the 1.79 lodestar multiplier is eminently reasonable in light of the great risk Class Counsel
23 took in litigating this hard-fought, complex class action for over eight years on an entirely
24 contingent fee basis. In fact, the 1.79 multiplier is below the multipliers approved by courts in
comparable but less risky or significant class action settlements and judgments.

25 11. Prosecuting this hard-fought litigation required great skill and expertise from Class
26 Counsel. As lead Class Counsel, Monique Olivier led an experienced and accomplished team of
27 attorneys and staff and tenaciously litigated this case to a Judgment of over \$31 million, fighting
28 back Defendants' repeated efforts to defeat class certification and achieved without the expense

1 and delay of what otherwise would have been a long trial. That Judgment provides significant
2 compensation in the form of back wages and penalties to flight attendants, as well as a multi-
3 million dollar payment to the State of California's wage enforcement agency. The litigation also
4 led to several published orders by this Court and an opinion by the Ninth Circuit Court of Appeals
5 that establishes the applicability of California wage and hour laws to interstate transportation
6 workers, and those workers' rights under those laws.

7 12. This Court found in its earlier order regarding fees that Class Counsel "displayed
8 extraordinary skill, above and beyond that reflected in the prevailing market rate for attorneys
9 with commensurate experience." Dkt. 402 at p. 18. That conclusion is consistent with my review
10 of this action in comparison with the work I have seen in similar cases. In my opinion, in light of
11 the excellent work done by Class Counsel, the risks taken to litigate this case on an entirely
12 contingent basis, the novelty and difficulty of the issues, the skill required to overcome
13 Defendants' vigorous resistance, and the significant results achieved, the 33% common fund fee
14 they are requesting – particularly in light of the over \$6.4 million credit to be paid by Defendants
15 – is reasonable.

16 **MY BACKGROUND AND EXPERIENCE**

17 13. Briefly summarized, my background is as follows: I am a 1969 graduate of
18 Berkeley School of Law (then Boalt Hall), University of California, Berkeley, California. I took
19 the California Bar Examination in August 1969 and learned that I had passed it in November of
20 that year, but because I was working as an attorney in Atlanta, Georgia for the Legal Aid Society
21 of Atlanta (LASA), I was not admitted to the California Bar until February 1970. I worked for
22 LASA until the summer of 1971, when I went to work in California's Central Valley for
23 California Rural Legal Assistance, Inc. (CRLA), a statewide legal services program. From 1977
24 to 1982, I was CRLA's Director of Litigation, supervising more than fifty attorneys. In 1982, I
25 went into private practice, first in a small law firm, then as a sole practitioner. Martindale Hubbell
26 rates my law firm "AV." I also have been selected as a Northern California "Super Lawyer" in
27 Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017,
28

1 2018, 2019, 2020, 2021, 2022, and 2023. A true and correct copy of my Resume is attached as
2 **Exhibit A.**

3 14. Since 1982, the focus of my legal work has been in general civil litigation and
4 appellate practice, with an increasing emphasis on cases and appeals involving court-awarded
5 attorneys' fees. I have lectured and written extensively on various attorneys' fee issues. I also
6 served as a member of the California State Bar's Attorneys' Fees Task Force and have testified
7 before the State Bar Board of Governors and the California Legislature on attorneys' fee issues.

8 15. I am the author of *California Attorney Fee Awards* (3d ed. Cal. CEB 2010) (“Cal.
9 Fee Awards”) and its cumulative Supplements published annually between 2011 and March 2023.
10 I also was the author of *California Attorney Fee Awards* (2d Ed. Calif Cont. Ed. of Bar 1994),
11 and its 1995 through 2008 annual Supplements. (I also helped create the initial treatise, CEB’s
12 *California Attorney’s Fees Award Practice*, and authored its 1984 through 1993 annual
13 Supplements.) Several courts have referred to this treatise as “[t]he leading California attorney
14 fee treatise.” *Calvo Fisher & Jacob LLP v. Lujan*, 234 Cal. App. 4th 608, 621 (2015); *see also*,
15 *e.g., Int’l Billing Servs., Inc. v. Emigh*, 84 Cal. App. 4th 1175, 1193 (2000) (“the leading
16 treatise”); *Stratton v. Beck*, 30 Cal. App. 5th 901, 911 (2019) (“a leading treatise”); *Orozco v.*
17 *WPV San Jose, LLC*, 36 Cal. App. 5th 375, 409 (2019) (“a leading treatise on California
18 attorney’s fees”). It also has been cited many times by the California Supreme Court and Court
19 of Appeal. *See, e.g., Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 576, 584 (2004); *Lolley*
20 *v. Campbell*, 28 Cal. 4th 367, 373 (2002); *In re Conservatorship of Whitley*, 50 Cal. 4th 1206,
21 1214–15, 1217 (2010); *Sonoma Land Trust v. Thompson*, 63 Cal.App.5th 978, 986 (2021); *Yost v.*
22 *Forestiere*, 51 Cal. App. 5th 509, 530 n. 8 (2020); *Highland Springs Conference & Training Ctr.*
23 *v. City of Banning*, 42 Cal. App. 5th 416, 428 n. 11 (2019); *Sweetwater Union High Sch. Dist. v.*
24 *Julian Union Elementary Sch. Dist.*, 36 Cal. App. 5th 970, 988 (2019); *Hardie v. Nationstar*
25 *Mortg. LLC*, 32 Cal. App. 5th 714, 720 (2019); *Syers Props III, Inc. v. Rankin*, 226 Cal. App. 4th
26 691, 698, 700 (2014). California Superior Courts also cite the treatise with approval. *See*,
27 *e.g., Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at *4 (Orange
28 Cty. Super. Ct. Aug. 31, 2018); *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635,
at *10 (Los Angeles Super. Ct. May 02, 2017). Federal courts also have cited it. *See In re*

1 *Hurtado*, Case No. 09-16160-A-13, 2015 WL 6941127 (E.D. Cal. Nov. 6, 2015); *TruGreen*
2 *Companies LLC v. Mower Brothers, Inc.*, 953 F. Supp. 2d 1223, 1236 nn.50, 51 (D. Utah
3 2013). In addition, I authored a federal manual on attorneys' fees entitled "Attorneys' Fees: A
4 Legal Services Practice Manual," published by the Legal Services Corporation. I also co-
5 authored the chapter on "Attorney Fees" in Volume 2 of CEB's *Wrongful Employment*
6 *Termination Practice*, 2d Ed. (1997), as well as numerous other articles for various
7 publications. *See* Exh. A, p. 3.

8 16. More than 98% of my practice is devoted to issues involving court-awarded
9 attorney's fees. I have appeared as counsel in over 200 attorneys' fee applications in state and
10 federal courts, both for myself as one of the merits attorneys and for other attorneys as special
11 fees counsel. I also have briefed and argued more than 40 appeals, at least 30 of which have
12 involved attorneys' fees issues. I have successfully handled five cases in the California Supreme
13 Court involving court-awarded attorneys' fees: (1) *Maria P. v. Riles*, 43 Cal. 3d 1281 (1987),
14 which upheld a C.C.P. section 1021.5 fee award based on a preliminary injunction obtained
15 against the State Superintendent of Education, despite the fact that the case ultimately was
16 dismissed under C.C.P. section 583; (2) *Delaney v. Baker*, 20 Cal. 4th 23 (1999), which held that
17 heightened remedies, including attorneys' fees, are available in suits against nursing homes under
18 California's Elder Abuse Act; (3) *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001), which reaffirmed
19 that contingent risk multipliers are an essential consideration under California attorney fee law
20 (note that in *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair"
21 in the California Supreme Court); (4) *Flannery v. Prentice*, 26 Cal. 4th 572 (2001), which held
22 that under California law, in the absence of an agreement to the contrary, statutory attorneys' fees
23 belong to the attorney whose services they are based upon; and (5) *Graham v. DaimlerChrysler*
24 *Corp.*, 34 Cal. 4th 553 (2004), which held, *inter alia*, that the "catalyst" theory of fee recovery
25 remained viable under California law and that lodestar multipliers could be applied to fee motion
26 work. In that case, I represented trial counsel in both the Court of Appeal (twice) and California
27 Supreme Court, as well as on remand in the trial court. I also represented and argued on behalf of
28 *amicus curiae* in *Conservatorship of McQueen*, 59 Cal. 4th 602 (2014), which held that attorneys'
fees incurred for appellate work were not "enforcement fees" subject to California's Enforcement

1 of Judgments law; I presented the argument relied upon by the Court. Along with Richard
2 Rothschild of the Western Center on Law and Poverty, I also prepared and filed an *amicus curiae*
3 brief in *Vasquez v. State of California*, 45 Cal. 4th 243 (2009). I also have handled other appeals
4 involving attorneys' fees in class actions, including *Lealao v. Beneficial California, Inc.*, 82
5 Cal.App.4th 19 (2000), *Moore v. Bank of America*, 2007 U.S. App. LEXIS 19597 (9th Cir. 2007),
6 and *Alcoser v. Thomas*,) 2011 Cal.App.Unpub.LEXIS 1180 (2011). An expanded list of
7 reported decisions in cases I have handled is set out in **Exhibit A** at pages 4-8.

8 17. I have been retained by various governmental entities, including the California
9 Attorney General's office, at my then current rates to consult with them and serve as their expert
10 regarding their affirmative attorney fee claims. *See, e.g., In re Tobacco Cases I*, 216 Cal. App.
11 4th 570, 584 (2013); *Dep. of Fair Employ. and Hous. v. Law Sch. Admission Council, Inc.*, 2018
12 WL 5791869 (N.D. Cal. No. 12-cv-08130, filed Nov. 5, 2018).

13 18. I am frequently called upon to opine about the reasonableness of attorneys' fees,
14 and numerous federal and state courts have relied expressly on my testimony on those issues. For
15 example:

- 16 • In *Wit v. United Behavioral Health*, 578 F.Supp.3d 1060, 1079 (N.D. Cal. Jan. 5,
17 2022), the court's Fee Order states that "the Court places significant weight on Pearl's
18 opinion that the rates charged by all of the timekeepers listed above are reasonable and
19 'in line with the standard hourly noncontingent rates charged by Bay Area law firms
20 that regularly engage in civil litigation of comparable complexity.' ... Pearl has
21 extensive experience in the area of attorney billing rates in this district and has been
22 widely relied upon by both federal and state courts in Northern California (including
23 the undersigned) in determining reasonable billing rates." (Citations omitted).
- 24 • Previously, in *Human Rights Defense Center v. County of Napa*, 2021 U.SDist.LEXIS
25 59778 *; 2021 WL 1176640 (N.D. Cal. No. 20-cv-01296-JCS, Doc. 50, filed March
26 28, 2021), the Court also had expressly stated that it had "place[d] significant weight
27 on the opinion of Mr. Pearl that the rates charged by all of the timekeepers listed
28 above are reasonable and in line with the rates charged by law firms that engage in

1 federal civil litigation in the San Francisco Bay Area. Mr. Pearl has extensive
 2 experience in the area of attorney billing rates in this district and has been widely
 3 relied upon by both federal and state courts in Northern California [] in determining
 4 reasonable billing rates.” 2021 U.S.Dist.LEXIS 59778, at *32.

- 5 • Likewise, in *Andrews v. Equinox Holdings, Inc.*, N.D. Cal. No. 20-cv-00485-SK,
 6 Order on Motion for Attorney Fees and Costs filed November 9, 2021 (Doc. 110), the
 7 court quoted the above language from the *Human Rights Defense Center* case and
 8 concluded the same: “This Court similarly finds Pearl’s opinions well supported and
 9 persuasive.” Order at p. 4:13-19.

10 19. The following California appellate and reported trial court cases also have
 11 referenced my testimony favorably:

- 12 • *Wood v. Los Angeles County Waterworks Dist. No. 40 (Antelope Valley Groundwater*
 13 *Cases)*, 2021 Cal.App. Unpub. LEXIS 5506 (2021).
- 14 • *Sonoma Land Trust v. Thompson*, 63 Cal.App.5th 978, 986 (2021).
- 15 • *Kerkeles v. City of San Jose*, (2015) 243 Cal.App.4th 88 (2021).
- 16 • *Kaku v. City of Santa Clara*, No. 17CV319862, 2019 WL 331053, at *3 (Santa Clara
 17 Cty. Super. Ct. Jan. 22, 2019), *aff’d* 59 Cal. App. 5th 385, 431 (2020).
- 18 • *Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at *4
 19 (Orange Cty. Super. Ct. Aug. 31, 2018).
- 20 • *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635, at §*10 (Los Angeles
 21 Super. Ct. May 2, 2017).
- 22 • *Habitat and Watershed Caretakers v. City of Santa Cruz*, 2015 Cal. App. Unpub.
 23 LEXIS 7156 (2015).
- 24 • *Laffitte v. Robert Half Int’l Inc.* 231 Cal.App.4th 860 (2014), *aff’d* 1 Cal.5th 480
 25 (2016).
- 26 • *In re Tobacco Cases I*, 216 Cal.App.4th 570 (2013).
- 27 • *Heritage Pacific Financial, LLC v. Monroy*, 215 Cal.App.4th 972.

- 1 • *Wilkinson v. South City Ford* (2010) 2010 Cal. App. Unpub. LEXIS 8680 (2013).
- 2 • *Children's Hospital & Medical Center v. Bonta*, 97 Cal.App.4th 740 (2002).
- 3 • *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628 (1996).

4 20. In addition to the *Wit*, *Andrews* and *Human Rights Defense Center* cases cited
5 above, the following reported federal decisions also have referenced my testimony favorably:

- 6 • *Prison Legal News v. Ryan*, No. 19-17449, Order filed March 21, 2023, at 4 (9th Cir.
7 2023).
- 8 • *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 08-55867, Order filed Dec. 26, 2012,
9 at 6 (9th Cir. 2012).
- 10 • *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (the expert
11 declaration referred to is mine).
- 12 • *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS 13019 (C.D. Cal.
13 2020).
- 14 • *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017), *aff'd* 269
15 F.3d 1066 (9th Cir. 2020).
- 16 • *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214 (S.D. Cal. 2017).
- 17 • *Notter v. City of Pleasant Hill*, 2017 U.S. Dist. LEXIS 197404, 2017 WL 5972698
18 (N.D. Cal. 2017).
- 19 • *Villalpondo v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal. 2016).
- 20 • *State Compensation Insurance Fund v. Khan et al*, Case No. SACV 12-01072-
21 CJC(JCGx) (C.D. Cal.), Order Granting in Part and Denying in Part the Zaks
22 Defendants' Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408).
- 23 • *In re Cathode Ray Tube Antitrust Litig.*, Master File No. 3:07-cv-5944 JST, MDL No.
24 1917 (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 24951 (Report And Recommendation
25 Of Special Master Re Motions (1) To Approve Indirect Purchaser Plaintiffs'
26 Settlements With the Phillips, Panasonic, Hitachi, Toshiba, Samsung SDI,
27 Technicolor, And Technologies Displays Americas Defendants, and (2) For Award Of
28

1 Attorneys' Fees, Reimbursement Of Litigation Expenses, And Incentive Awards To
2 Class Representative), Dkt. 4351, dated January 28, 2016, *adopted in relevant part*,
3 2016 U.S. Dist. LEXIS 88665.

- 4 • *Gutierrez v. Wells Fargo Bank*, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. 2015).
- 5 • *Holman v. Experian Information Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.
6 Cal. 2014).
- 7 • *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827 (N.D.
8 Cal.), Report and Recommendation of Special Master Re Motions for Attorneys' Fees
9 And Other Amounts By Indirect-Purchaser Class Plaintiffs And State Attorneys
10 General, Dkt. 7127, filed Nov. 9, 2012, adopted in relevant part, 2013 U.S. Dist.
11 LEXIS 49885 (N.D. Cal. 2013) ("*TFT-LCD (Flat Panel) Report &*
12 *Recommendation*").
- 13 • *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319 (N.D. Cal. 2013);
- 14 • *A.D. v. California Highway Patrol*, 2009 U.S. Dist. LEXIS 110743, at *4 (N.D. Cal.
15 2009), *rev'd* on other grounds, 712 F.3d 446 (9th Cir. 2013), reaffirmed and additional
16 fees awarded on remand, 2013 U.S. Dist. LEXIS 169275 (N.D. Cal. 2013).
- 17 • *Hajro v. United States Citizenship & Immigration Service*, 900 F. Supp. 2d 1034, 1054
18 (N.D. Cal 2012).
- 19 • *Rosenfeld v. United States Dep't of Justice*, 904 F. Supp. 2d 988, 1002 (N.D. Cal.
20 2012).
- 21 • *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 U.S. Dist. LEXIS 39832, at *9 (N.D. Cal.
22 2011) (thorough discussion), *aff'd* 2013 U.S. App. LEXIS 6369 (9th Cir. 2013).
- 23 • *Armstrong v. Brown*, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal. 2011).
- 24 • *Lira v. Cate*, 2010 WL 727979 (N.D. Cal. 2010).
- 25 • *Californians for Disability Rights, Inc. v. California Dep't of Transportation*, 2010
26 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010).

- 1 • *Nat'l Federation of the Blind v. Target Corp.*, 2009 U.S. Dist. LEXIS 67139 (N.D. Cal. 2009).
- 2
- 3 • *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D. Cal. 2008) (an
- 4 earlier motion).
- 5 • *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx), Order Granting
- 6 Plaintiffs Reasonable Attorneys' Fees and Costs In the Amount of \$168,886.76, Dkt.
- 7 278 (C.D. Cal. Aug. 14, 2006).
- 8 • *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (CWx), Order Awarding
- 9 Attorneys' Fees After Remand, Dkt. 65 (C.D. Cal. July 17, 2006).
- 10 • *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002), *aff'd*
- 11 2003 U.S. App. LEXIS 11371 (9th Cir. 2003).

12 21. Many other trial courts also have relied on my testimony in unreported fee awards.

13 **THE REASONABLENESS OF CLASS COUNSEL'S FEE REQUEST**

14 22. Because this case was litigated under California substantive law, California law

15 provides the basis to review the request for attorneys' fees. Under the correct California and

16 federal law that underlie the facts and law applicable here, Class Counsel are entitled to seek fees

17 on two grounds: (1) as a percentage-based fee under the common fund doctrine; and (2) as a

18 lodestar-based fee under the California Labor Code and California Code of Civil Procedure §

19 1021.5. *See Staton v. Boeing*, 327 F.3d 938, 967-68 (9th Cir. 2003) ("there is no preclusion on

20 recovery of common fund fees where a fee-shifting statute applies....The intent of the fee-shifting

21 provisions...is not countered by the application of common fund principles"); *Laffitte v. Robert*

22 *Half Int'l, Inc.*, 1 Cal. 5th 480, 488 (2016).

23 23. Here, Class Counsel have already negotiated a lodestar-based statutory fee,

24 payable directly by Defendants, in the amount of \$6,395,874.95 plus an additional \$40,000 for the

25 reimbursement of taxable costs. I understand that the negotiated amount represents Class

26 Counsel's full lodestar of \$5,844,319.50 along with the application of a 1.1 lodestar multiplier for

27 work on the merits and no multiplier for the work done related to attorneys' fees). In order to

28 greatly reduce the amount of fees payable by the Class members, Class Counsel have also agreed

1 to credit this amount back to the Common Fund Judgment. Thus, although Class Counsel seek a
 2 33% common fund fee, with the credit applied, the percentage of the fund payable by the Class
 3 members is less than 13% of their recovery.

4 **Class Counsel’s Common Fund Fee Request Is Reasonable**

5 24. Under California law, whether a requested percentage-based fee is reasonable
 6 involves several interrelated factors, including: (1) the potential value of the litigation and the
 7 results obtained on behalf of the class; (2) the litigation risks involved, including the contingent
 8 nature of the representation; (3) the novelty and difficulty of the issues presented; and (4) the skill
 9 shown by counsel. *Laffitte*, 1 Cal. 5th at 504; *see also Lealao v. Beneficial California, Inc.*
 10 (2000) 82 Cal. App. 4th 19, 42–43 (citing Pearl, *California Attorney Fee Awards* (2d ed. 1998) §§
 11 13.1–13.7).

12 25. Unlike the federal courts, California law does not recognize an explicit
 13 “benchmark” to use in determining common fund fees. *Lafitte*, 1 Cal. 5th at 495-504. Many
 14 California courts, however, have concluded that common fund awards in practice “average[s]
 15 around one-third of the recovery.” *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 558
 16 (2009). *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11 (“Empirical studies
 17 show that, regardless whether the percentage method or the lodestar method is used, fee awards in
 18 class actions average around one-third of the recovery”); *In re Omnivision Technologies* (N.D.
 19 Cal. 2008) 559 F. Supp. 2d 1036, 1047 (“in most common fund cases, the award exceeds [the
 20 25% federal] benchmark”); This is the case in many wage and hour class actions. *See, e.g., Boyd*
 21 *v. Bank of America Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. 2014) (33.3% of fund); *Wren*
 22 *v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667 (N.D. Cal. 2011) (42% of fund);
 23 *Hohnbaum v. Brinker Restaurant Corp.*, San Diego County Superior Ct. No. GIC834348 (Dec.
 24 12, 2014) (41.8% of fund); *Savaglio v. Wal-Mart*, Alameda County Superior Court No. C-
 25 835687-7 (Sept. 10, 2010) (\$52.5 million fee - 35% of fund); *Fernandez v. Victoria Secrets, Inc.*,
 26 2008 U.S. Dist. LEXIS 123546 (C.D. Cal. 2008) (34% of fund). Indeed, *Laffitte* itself involved a
 27 33% recovery in a wage and hour class action, based on a lodestar cross-check that resulted in a
 28 2.03 to 2.13 multiplier. *Lafitte*, 1 Cal. 5th at 505. *See also In re Pacific Enter. Sec. Litig.*, 47 F.3d
 373 (9th Cir. 1995) (affirming 33% fee award in shareholder derivative action); *Williams v.*

1 *MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (same); *Roos v.*
2 *Honeywell Int’l, Inc.*, 241 Cal.App.4th 1472, 1494 (2015) (37.5% of fund in unfair competition
3 case).

4 26. As explained more fully in the following, my opinion is that a fee award equal to
5 33% of the Common Fund Judgment in this case is reasonable under California law. Most
6 importantly, in the legal marketplace, the great risk Class Counsel took in litigating a difficult
7 contingent fee case for over eight years against an intransigent opponent with far greater
8 resources and an array of defenses, strongly supports the fee sought. Likewise, the novel,
9 complex, and difficult issues presented by the case support such a fee. In the face of serious
10 defenses on both class certification and the merits, Class Counsel developed a class-wide claim
11 for relief against Defendants, then litigated those claims to a highly successful conclusion. In
12 light of the work done here and the percentages of fees commonly awarded in such high-risk
13 cases, the fee requested by Class Counsel here clearly comports with standards established in the
14 legal marketplace.

15 ***The Excellent Results Obtained***

16 27. In the legal marketplace, law firms that obtain excellent results for their clients can
17 and do expect that those results will be reflected in their fees. Here, the results obtained are
18 certainly exceptional: after more than eight years of hard-fought litigation, the Class has
19 recovered a common fund of over \$31 million for approximately 2,200 Class members.

20 28. Further, because Class Counsel took this all the way to Judgment and obtained a
21 significant amended Judgment after a lengthy appeal, the value of the Common Fund Judgment is
22 *not* a compromise amount, as it would be in the case of a settlement. Instead, it represents 100%
23 of the potential recovery for the losses to the Class on the claims proven. This case thus stands
24 apart from the relief obtained in most class actions, in which significantly lower percentages of
25 the claimed damages are awarded as relief. *See, e.g., Aguilar v. Wawona Frozen Foods*, 2017
26 WL 117789 (E.D. Cal. 2017) (47% recovery “far greater than the percentage recovered in many
27 other wage and hour class actions heard in federal courts in this circuit”) (citing numerous cases);
28 *Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, at *4 (N.D. Cal. Jun. 24, 2014) (“[C]ourts

1 have held that a recovery of only 3% of the maximum potential recovery is fair and reasonable
2 when the plaintiffs face a real possibility of recovering nothing absent the settlement.”).

3 29. In my opinion, comparing these exceptional results to the relief obtained in more
4 typical class actions provides strong support for awarding 33% of the Common Fund Judgment to
5 Class Counsel.

6 ***The Significant Risks Undertaken by Class Counsel***

7 30. Class Counsel took on this litigation, representing California workers who likely
8 otherwise would not be able to vindicate their rights, on a completely contingent basis, advancing
9 all costs and all attorney and staff time without any guarantee of being paid for any of their work
10 or being reimbursed for any of their costs.

11 31. In the legal marketplace, lawyers who assume a significant financial risk on behalf
12 of their clients rightfully expect that if and when they obtain significant success for those clients,
13 their compensation will be substantially greater than it would be if no risk or delay were involved.
14 In my experience, many attorneys will take on such contingent fee cases only if they can expect
15 that if successful, they will receive significantly higher fees than they would in a non-contingent
16 case where the client is obligated to pay for costs and fees incurred on a monthly basis, win or
17 lose. This is particularly true in hard-fought cases such as this one, where an intransigent
18 opponent has and is willing to use its significantly greater resources to litigate every possible
19 defense and where a successful result is far from certain.

20 32. In common fund cases, therefore, the contingent risk taken by Class Counsel can
21 and should be a significant factor in computing what percentage of the fund to award as
22 attorneys’ fees. *See, e.g., Laffitte*, 1 Cal. 5th at 504 (noting that trial court had carefully
23 considered risks and contingency involved in awarding 33.3% fee); *Allapattah Servs. Inc. v.*
24 *Exxon Corp.*, 454 F. Supp. 2d 1185, 2004-05 (S.D. Fla. 2006) (“Factors indicating ‘exceptional
25 success’ include success achieved under unusually difficult or risky circumstances and the size of
26 plaintiffs’ recovery”) (citation omitted); *Chavez v. Converse, Inc.*, 2020 U.S. Dist. LEXIS 257679,
27 at *15, 2020 WL 10575028 (N.D. Cal. 2020) (applying *Laffite* and awarding one-third of fund in
28 wage and hour claim under California law); *Wren v. RGIS Inventory Specialists*, 2011 WL
1230826 & 2011 WL 1838562 at *2 (N.D. Cal. 2011) (42% of fund reasonable, justified in part

1 by risk of obtaining and maintaining class certification: “Counsel's decision to represent
2 Plaintiffs and pursue their claims on a class-wide basis despite the paucity of precedent
3 supporting such class actions, supports an increase in the benchmark”); *Custom LED, LLC v.*
4 *eBay, Inc.*, 2014 WL 2916871, at *4 (despite low recovery rate, fee request equating to 1.94
5 multiplier justified “when the plaintiffs face a real possibility of recovering nothing absent the
6 settlement.”).

7 33. In my opinion, the risks Class Counsel faced here were enormous. In my
8 experience, non-routine class action lawsuits like this one are very risky: if class certification is
9 denied or the case is lost on the merits, thousands of hours of work and hundreds of thousands of
10 dollars may be spent and never compensated or recovered. Here, several factors made this case
11 extraordinarily risky:

12 a. The legal obstacles were formidable. As explained in Plaintiffs’
13 memorandum and supporting declarations, there were many difficulties and uncertainties
14 on the path to winning this case. The primary obstacle was Defendants’ argument that
15 California wage and hour law did not apply *at all* to flight attendants and due to
16 preemption by various federal laws and regulations, including the Airline Deregulation
17 Act, the Federal Aviation Administration Authorization Act, and the Federal Aviation
18 Administration regulations, and the Dormant Commerce Clause of the U.S. Constitution.
19 Defendants filed a motion for summary judgment before any other motions were filed in
20 the case, and repeatedly sought rulings from this Court that federal law wiped out all of
21 Plaintiffs’ claims. Defendants also strenuously opposed certification and sought to
22 decertify the Class on the basis of a novel argument that the residency of Class members
23 could not be determined with certainty to permit the case to proceed as a class action. The
24 vast majority of the action, both at the district court and appellate levels (including the
25 U.S. Supreme Court) was spent on these “winner take all” strategies by Defendants.

26 b. Practical obstacles also existed, given that virtually all evidence relating to
27 to the Class claims was in Defendants’ possession. There were a number of discovery
28 disputes, most of which were a result of Plaintiffs needing to compel discovery from
Defendants. In addition, the scope and format of the information Defendants ultimately

1 did provide required substantial resources to review and process. For example, I
2 understand that all wage statements for over 2,000 class members for a Class period of
3 over five years were provided in .pdf format, which required Plaintiffs' experts to write a
4 unique computer program to export the necessary information in order to analyze the
5 claims in the action and develop a damages model. In addition, Plaintiffs were forced to
6 resist attempts at invasive discovery, including demands for private tax information, from
7 Plaintiffs and absent Class members. I also understand that Defendants sought review in
8 this Court of every decision by a magistrate judge related to discovery matters, and
9 repeatedly sought reconsideration of the Court's own rulings. Defendants also sought
10 stays at various times in an attempt to delay resolution of the action. All of these
11 procedural maneuvers required diligence and the expenditure of significant resources on
12 behalf of Class Counsel.

13 c. The financial risk was enormous. Over an over eight-year period, Class
14 Counsel expended more than 7,300 hours, all on a contingent fee basis. This is a huge
15 commitment, and imposed an exceptionally high risk, especially for the small firms
16 representing the Class here. *See, e.g., Boyd v Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS
17 162880, *28 (noting that small firms face greater risks than larger firms). If this case had
18 not succeeded, none of the firms involved would have been paid for any of their more than
19 combined 7,300 hours of work. At market rates, that loss would have amounted to at least
20 \$6 million. Moreover, Class Counsel also the more than \$500,000 in out-of-pocket
21 expenses that they have advanced to the Class would never have been reimbursed. The
22 risk engendered by the number of hours worked and amount of costs spent reflect the full
23 throttle defense employed by Defendants' counsel, Morgan Lewis & Bockius LLP, a
24 multinational law firm with over 2,200 lawyers and legal professionals. While Defendants
25 had every right to vigorously defend the case, they also were well aware of the greater
26 risks their tactics imposed on Plaintiffs and their Counsel, and of the fact that once
27 Plaintiffs won, those risks would be a significant factor in determining Class Counsel's
28 fees and costs.

1 d. Finally, Class Counsel not only faced, but tackled the great risk of taking
2 this case to judgment. *See In re Transpacific Passenger Air Transp. Antitrust Litig.*, 2019
3 U.S. Dist. LEXIS 206431, *18 (N.D. Cal., Nov. 26, 2019, No. 3:07-cv-05634-CRB)
4 (noting risk when case must be prepared for imminent trial); *Wren v. RGIS Inventory*
5 *Specialists*, 2011 U.S. Dist. LEXIS 38667, *82 (noting that risk of obtaining and
6 maintaining class certification, as well as risk of prevailing on the merits, justified a
7 lodestar-based fee equal to 42% of recovery). Although the vast majority of class actions
8 settle before trial, Plaintiffs prosecuted this case through judgment and appeals, and
9 obtained a 100% recovery on the successful claims. In my opinion, that great risk alone
10 merits the 33% fee that Counsel request.

11 ***The Novelty, Complexity, and Difficulty of Issues***

12 34. As already described above, this case presented several exceptionally novel and
13 difficult issues. While California wage and hour claims can sometimes be relatively
14 straightforward, that was not the case here. Prior to the ruling obtained in this case, there were no
15 published decisions specifically holding that California wage and hour laws apply to flight
16 attendants. Because of the nature of flight attendants' work traveling interstate, Defendants
17 mounted a formidable challenge to whether Plaintiffs were even entitled to seek relief under
18 California law. Defendants extensively and repeatedly argued that flight attendants were not
19 subject to California wage laws at all but were instead governed only by federal law. Defendants
20 also argued that even if California law applied in some limited way to flight attendants, it did not
21 apply to any work performed beyond California. Defendants' arguments required the review,
22 analysis and presentation of complex issues relating to federal preemption based on multiple
23 federal laws and regulations, the constitutionality of California wage laws, and the extraterritorial
24 application of California wage laws.

25 35. This was patently *not* a run-of-the-mill class action. The issues presented in the
26 case are significantly more novel, complex and difficult than those presented by many if not most
27 class action lawsuits.

28 36. This factor also strongly justifies an award of 33% of the Common Fund
Judgment.

1 ***The Exceptional Skill and Quality of Work by Class Counsel***

2 37. The high level of skill displayed here and the excellent quality of work it produced
3 also justify the fee requested by Class Counsel. As set forth in their declarations, Class Counsel
4 are skilled and experienced class action and complex litigation attorneys. Ms. Olivier has
5 particular expertise in California wage and hour class action litigation; the attorneys at Kosinski
6 & Thiagaraj LLP are skilled and experienced California employment lawyers; the attorneys at
7 Miller Shah LLP have expertise and demonstrated success in a range of class action litigation;
8 and Cooper & Kirk LLP, the firm that was brought in specifically to assist in the appeal, is an
9 extremely well-known and credentialed law firm with specific expertise in Ninth Circuit appeals
10 and U.S. Supreme Court proceedings. That skill, experience, and expertise were put to great use
11 here.

12 38. Likewise, my review of Class Counsel's work product and strategy throughout the
13 litigation further confirms my view that their accumulated skill and expertise contributed
14 significantly to the over \$31 million Common Fund Judgment in this case. Ms. Olivier led the
15 team, which pursued a strategy of discovery and motion practice to establish the material
16 undisputed facts, to obtain certification of a Class and Subclasses, to obtain a series of legal
17 rulings as to the validity and scope of the Class's claims, to prove up damages through extremely
18 high quality expert economist models, and ultimately to obtain judgment without the expense and
19 delay of long trial and then defend that judgment on appeal and at the U.S. Supreme Court.

20 39. The fact is that Class Counsel were able to skillfully obtain the judgment through a
21 series of carefully pursued dispositive legal motions rather than requiring the court to empanel a
22 jury to resolve what ultimately were legal claims on a record with no factual disputes. In my
23 view, that exceptional efficiency also strongly supports a percentage-based fee of 33%.

24 40. Even though Plaintiffs' minimum wage claim was reversed on appeal as a result of
25 an intervening decision of the California Supreme Court, Class Counsel were still able to achieve
26 an over \$31 million judgment, which represents 100% of the losses sustained by the Class and
27 Subclasses on their successful claims. The litigation has also resulted in published decisions by
28 this Court and the Ninth Circuit Court of Appeals as to the scope and application of California
wage laws to interstate transportation workers. Those decisions will benefit all interstate

1 transportation workers performing work in California. *See, e.g., Government Tells Supreme Court*
2 *Airlines Must Follow State Wage Laws*, Reuters, May 25, 2022, at
3 [https://www.reuters.com/legal/government/govt-tells-supreme-court-airlines-must-follow-state-](https://www.reuters.com/legal/government/govt-tells-supreme-court-airlines-must-follow-state-wage-laws-2022-05-25/)
4 [wage-laws-2022-05-25/](https://www.reuters.com/legal/government/govt-tells-supreme-court-airlines-must-follow-state-wage-laws-2022-05-25/)

5 41. Further, had Class Counsel not diligently pursued the claims here on behalf of the
6 Class, it is unlikely that in light of the novelty and complexity of the issues and the vast resources
7 Defendants could and no doubt would have unleashed to defeat them, it's highly unlikely that any
8 of the Class Members would have been awarded their back wages or any penalties relating to the
9 California wage violations at issue here.

10 42. The exceptional skill and quality of work demonstrated by Class Counsel also
11 strongly justify an award of 33% of the Common Fund Judgment.

12 **THE FEE SOUGHT IS REASONABLE IN LIGHT OF PERCENTAGE FEES**
13 **APPROVED IN OTHER CASES AND USED IN PRIVATE LITIGATION**

14 43. Class Counsel's fee request of 33% of the Common Fund Judgment is well within
15 the range that other courts have found reasonable and appropriate. The request is also reasonable
16 in light of the percentages charged in private contingency fee agreements, particularly where, as
17 here, Class Counsel not only litigated the case through judgment, but defended the judgment on
18 appeal at the Ninth Circuit Court of Appeals and in certiorari proceedings before the U.S.
19 Supreme Court.

20 44. A fee of 33% of the Common Fund Judgment is squarely in line with the range of
21 reasonable attorneys' fees awarded in other similar cases in California and across the nation. *See,*
22 *e.g., Chavez v. Netflix*, 162 Cal. App. 4th at 66 n.11. Indeed, as noted, in *Laffitte*, the California
23 Supreme Court approved a one-third (33.3%) common fund fee award in a wage and hour case in
24 which the trial court based that award on many of the same circumstances present here: novelty
25 and difficulty of the questions involved, the skill displayed in presenting them, and the inherent
26 risk whenever there is a fee award that is contingent. *Laffitte*, 1 Cal. 5th at 504. California and
27 federal court decisions also regularly award similar percentages to the 33% requested here, even
28 on compromise settlement amounts, as opposed to the judgment here where 100% of the Class's
losses on successful claims have been recovered. *See Smith v. CRST Van Expedited, Inc.*, 2013

1 WL 163293, at *5 (S.D. Cal. 2013) (“Under the percentage method, California has recognized
2 that most fee awards are 33 percent....”).

3 45. Several cases specific to the wage and hour class action context award fees that are
4 at least one third of the common fund. For example, last year, in *Chavez v. Jani-King of*
5 *California, Inc. et al.*, Alameda County Superior Court Case No. RG19043517, a wage and hour
6 case which was litigated for over ten years by a team of law firms led by Ms. Olivier and resulted
7 in a class action settlement of over \$15 million for a Class of California janitors, Judge Seligman
8 awarded a fee of 33.33% of the Settlement Fund, noting that the fee was reasonable and
9 appropriate in light of the “high quality of Class Counsel’s reputation, the novelty and complexity
10 of the issues involved, the excellent results obtained, and the contingent risk presented.” (7/7/22
11 Order Granting Final Approval, p. 15.) *See also* cases cited in ¶ 25, *supra*; , *Rodriguez v. Nike*
12 *Retail Servs., Inc.*, No. 14-CV-01508-BLF, 2022 WL 254349, at *6 (N.D. Cal. Jan. 27, 2022)
13 (33% fee award in wage-and-hour case “in light of the significant amount of work Class Counsel
14 performed in this case, including for the appeal to the Ninth Circuit, and the excellent results
15 achieved” in the face of “unsettled” law); *Villalpando v. Exel Direct Inc.*, No. 3:12-CV-04137-
16 JCS, 2016 WL 7740854, at *2 (N.D. Cal. Dec. 12, 2016) (33% fee award in wage and hour class
17 action was “reasonable under both applicable law, and in light of the contingent risk, Counsel’s
18 documented lodestar, the complex and protracted nature of the case, and strong result for the
19 Class”); *Chavez v. Converse, Inc.*, 2020 WL 10575028 (33.33% of fund in wage and hour class
20 action); *Emmons v. Quest Diagnostics Clinical Labs, Inc.*, 2017 WL 749018 (E.D. Cal. 2017)
21 (33% fee in award wage and hour class action); *Savaglio v. Wal-Mart*, No. C-835687-7
22 (Alameda Cnty. Super. Ct. Sept. 10, 2010) (35% award); *Big Lots Overtime Cases*, JCC
23 Proceeding No. 4283 (San Bernardino Cnty. Super. Ct., Feb. 4, 2004) (33% award).

24 46. Many other courts have similarly approved percentage fee awards of 33% or more
25 in other class action contexts. *See, e.g., Williams v. MGM-Pathe Communications Co.*, 129 F.3d
26 1026, 1027 (9th Cir. 1997) (33% in shareholder derivative action); *Beaver v. Tarsadia Hotels*,
27 2017 U.S. Dist. LEXIS 160214 (S.D. Cal. 2017) (33% of fund); *Aguilar v. Wawona Frozen Foods*,
28 2017 WL 117789 (E.D. Cal. 2017) (33% of fund); *In re Pacific Bell Late Fee Litigation*, No.
MSC 10-00840 (Contra Costa Sup. Ct.) (33% award from a common fund valued at

1 \$28,281,873.93); *Ethridge v. Universal Health Servs.*, No. BC391958 (L.A. Super. Ct.) (33%
 2 award); *Magee v. Am. Residential Servs. LLC*, No. BC423798 (L.A. Super. Ct.) (33% award);
 3 *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. Super. Ct.) (33%
 4 award); *Silva v. Catholic Mortuary Servs., Inc.*, No. BC408054 (L.A. Super. Ct.) (33% award);
 5 *Mares v. BFS Retail & Comm. Operations LLC*, No. BC375967 (L.A. Super. Ct.) (33% award);
 6 *Blair et al. v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. Super. Ct.) (33% award); *Kenemixay v.*
 7 *Nordstroms, Inc.*, No. BC318850 (L.A. Super. Ct.) (50% award); *Barrett v. The St. John*
 8 *Companies*, No. BC354278 (L.A. Super. Ct.) (33% award); *Clymer and Benton v. Candle*
 9 *Acquisition Co.*, No. BC328765 (L.A. Super. Ct.) (33% award); *Dunlap v. Bank of America, N.A.*,
 10 No. BC328934 (L.A. Super Ct.) (33% award); *Case et al. v. Toyohara America Inc.*, No.
 11 BC328111 (L.A. Super. Ct.) (33% award); *Sunio v. Marsh USA, Inc.*, No. BC328782 (L.A. Super
 12 Ct.) (33% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award);
 13 *Crandall v. U-Haul Int'l., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% award); *see also Ammari*
 14 *Electronics et al. v. Pacific Bell Directory et al.*, No. RG05198014 (Alameda Cnty. Super. Ct.
 15 Jan. 4, 2014) (43.67% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Cnty. Super.
 16 Ct.) (35% award); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San
 17 Diego Cnty. Super. Ct.) (40% award); *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-
 18 00084708 (San Diego Cnty. Super. Ct.) (38% award); *Gomez and LaGaisse v. 20 20*
 19 *Communications*, No. RIC 528973 (Riverside Cnty. Super. Ct.) (33% award); *Acheson v. Express*
 20 *LLC*, No. 109CV135335 (Santa Clara Cnty. Super. Ct.) (33% award); *Chin v. Countrywide Home*
 21 *Loans, Inc.*, No.: 39-2010-00252741-CU-OE-STK (San Joaquin Cnty. Super. Ct.) (30% award);
 22 *Perez and Comeaux v Standard Concrete*, No. 30-2008-00211820 (Orange Cnty. Super. Ct.)
 23 (33% award); *Ward v. Doyon Sec. Servs., LLC*, No. BS 9000517 (San Bernardino Cnty. Super.
 24 Ct.) (33% award); *Taylor v. Ross Stores, Inc.*, No. RCV 065453, JCCP 4331 (San Bernardino
 25 Cnty. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San
 26 Diego Cnty. Super. Ct.) (33% award); *Tokar v. GEICO*, No. GIC 810166 (San Diego Cnty.
 27 Super. Ct. July 9, 2004) (33-1/3 % award).

28 47. My opinion also is supported by the fact that private contingent fee arrangements in employment and other types of cases provide for fees of 33-45% in cases that go to judgment.

1 One object of a common fund award is to set a fee that approximates the probable terms of a
2 contingent fee contract negotiated by sophisticated lawyers and clients in comparable private
3 litigation. *See In re Consumer Privacy Cases, supra*, 175 Cal. App. 4th at 557 (common fund fee
4 awards should be “within the range of fees freely negotiated in the legal marketplace in
5 comparable litigation”); Silver, *A Restitutionary Theory of Attorneys’ Fees in Class Actions*, 76
6 Cornell L.Rev. 656, 702-703 (1991) (goal “is to pay attorneys on terms they would probably
7 accept in an ex ante bargain, before the outcome of litigation is known”). In my several decades
8 working with litigators who have private fee agreements with clients, particularly in the
9 employment context, such agreements in employment and other types of cases usually provide for
10 fees of at least 33% and as much as 50% if the matter is litigated to judgment and/or through the
11 appellate process. *See, e.g., Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *16
12 n.59 (C.D. Cal. 2008) (citing study showing that in some jurisdictions, standard contingency fee
13 rates are 33% if the case settles before trial, 40% if a trial commences, and 50% if trial is
14 completed, and finding a 1/3 percentage recovery is supported by such agreements); Lester
15 Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L.
16 Rev. 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty-three percent to
17 forty percent of gross recoveries” [emphasis omitted]).

18 48. Class Counsel’s fee request also is especially reasonable for the additional reason
19 that Class Counsel has already negotiated a statutory fee award of \$6,395,874.95 payable directly
20 from Defendants, which Class Counsel have agreed to credit back to the Common Fund Judgment
21 against the common fund attorneys’ fee award. Thus, the actual attorneys’ fees sought from the
22 Common Fund Judgment after this credit is less than 13% of the Judgment -- approximately \$4
23 million -- far below the percentages typically awarded in class action litigation.

24 49. Given the prospective risks and difficulties of this case, as well as the legal
25 obstacles surmounted before the case was settled, any class member would have found it
26 extremely reasonable to be able to obtain representation at no cost to them unless counsel was
27 successful, and then at a cost of only 13% of the total judgment recovered (after counsel’s
28 expenses). This is especially true given Class Counsel’s willingness to advance more than 7,300

1 hours of time and hundreds of thousands of dollars in costs, with no hope of recovering any
2 compensation for that work or reimbursement of those funds unless the case was successful.

3 **CLASS COUNSEL’S LODESTAR CROSS-CHECK CONFIRMS THAT**

4 **A 33% FEE IS REASONABLE**

5 50. Under *Laffitte*, a lodestar cross-check can often be used as a check on the
6 reasonableness of a fee sought from a common fund. 1 Cal.5th at 503. In my opinion, the
7 lodestar cross-check here confirms that the 33% fee sought is appropriate and reasonable. The
8 lodestar cross-check invites the court to determine whether the percentage-based fee is reasonable
9 in light of the amount that would be determined under the lodestar-based method: hours times
10 rates, as adjusted for non-lodestar factors like contingent risk, exceptional novelty, complexity,
11 and efficiency in obtaining exceptional results. See, e.g., *Graham v DaimlerChrysler Corp.*,
12 *supra*, 34 Cal.4th 553, 582 (noting that “results obtained” multiplier may be appropriate “where
13 an exceptional effort produced an exceptional benefit”). The primary factors that support my
14 opinion here have been discussed previously: the enormous financial risk taken by Class Counsel;
15 the exceptional results achieved for the Class; the extremely complex and difficult nature of this
16 lengthy litigation; the high level of skill and efficiency required; the excellent work product; the
17 public service performed; and the contingent fees charged in the private marketplace.

18 51. Class Counsel’s documented lodestar here is \$5,844,319.50, representing over
19 7,300 billable hours. I understand that this figure was the basis for the negotiated statutory fees
20 with Defendants. With application of a 1.79 lodestar multiplier, the lodestar-based fee equals
21 33% of the Common Fund Judgment. That is a modest multiplier, particularly under the
22 circumstances of this case. See, e.g., *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255
23 (2001) (under California law, “[m]ultipliers can range from 2 to 4 or even higher.”); *Laffitte*, 1
24 Cal.5th at 487 (affirming a 33% fee equivalent to 2.03-2.13 lodestar multiplier). (Additional
25 examples are discussed *infra*.) Moreover, this figure does not include the vast majority of the
26 work done on the instant motion to approve the plan of allocation and attorneys’ fees, nor does it
27 include any time for future work on finalizing the plan of allocation, working with the Class
28 Administrator to distribute the Common Fund Judgment, communicating with Class members,
and monitoring that distribution. Class Counsel estimates that this additional work is worth at

1 least another \$300,000 in lodestar; in my experience, that is a very reasonable estimate for those
2 additional tasks.

3 52. In my view, both Class Counsel's lodestar and their 1.79 multiplier are reasonable
4 and fully demonstrate that a 33% fee is reasonable and appropriate. A comprehensive summary of
5 Class Counsel's lodestar is set forth in Exhibit B to the Declaration of Monique Olivier in Support
6 of Plaintiffs' Motion, and the work performed is described in detail in the Declarations of Monique
7 Olivier, Alison Kosinski, James Miller, and Charles Cooper. In my opinion, the hourly rates, the
8 hours employed to prosecute this action, and the 1.79 lodestar enhancement all are reasonable. As
9 discussed more fully below, the documentation that I have reviewed, as well as the briefing,
10 orders, and appellate opinion in this case, all show that: (a) the hourly rates utilized in the lodestar
11 cross-check are within the range of those charged by comparably qualified attorneys for
12 comparable work in the San Francisco Bay Area legal marketplace; (b) the hours spent are fully
13 documented and consistent with those that would be expected in a matter of this duration,
14 complexity, and stakes, as well as with the excellent results achieved; and (c) a 1.79 lodestar
15 multiplier is amply justified by, *inter alia*, Counsel's great contingent risk, the excellent results
16 obtained for the Class, and the compensation regularly awarded in other common fund cases and
17 in the legal marketplace.

18 ***The Reasonableness of Class Counsel's Hourly Rates***

19 53. Class Counsel's hourly rates are reasonable if they are "within the range of
20 reasonable rates charged by and judicially awarded comparable attorneys for comparable work."
21 *Children's Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002). As is permitted by
22 California law, counsel seeking a lodestar-based fee are permitted to use their current hourly rates to
23 compensate them for the delay in payment they have experienced. *See, e.g., Graham v.*
24 *DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004); *Robles v. Employment Dev. Dept.*, 38 Cal. App.
25 5th 191, 205 (2019).

26 54. Through my writing and practice, I have become familiar with the non-contingent
27 market rates charged by attorneys in California and elsewhere. This familiarity has been obtained
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1 in several ways: (a) by handling attorneys' fee litigation; (b) by discussing fees with other
2 attorneys; (c) by obtaining declarations regarding prevailing market rates in cases in which I
3 represent attorneys seeking fees; and (d) by reviewing attorneys' fees applications and awards in
4 other cases, as well as surveys and articles on attorneys' fees in the legal newspapers and
5 treatises. I also have testified before trial courts or arbitrators on numerous occasions, and have
6 submitted expert testimony by declaration on hundreds of occasions. Each of those efforts have
7 required me to be aware of the hourly rates being charged in the local community, including quite
8 often the San Francisco Bay Area legal community, and my expertise on this issue has been
9 recognized repeatedly by this Court. *See, e.g., Wit v. United Behav. Health, supra*, 570
10 F.Supp.3d at 1079 ("the Court places significant weight on Pearl's opinion"); *Human Rights*
11 *Defense Center v. County of Napa, supra*, 2021 U.S. Dist. LEXIS 59778 at *32, 2021 WL
12 1176640 ("Mr. Pearl has extensive experience in the area of attorney billing rates in this district
13 and has been widely relied upon by both federal and state courts"). See also ¶¶ 18-20, *ante*
14 (listing numerous other cases.)

15
16 55. Here, I have reviewed Class Counsel's work product, qualifications, backgrounds,
17 experience, and the results they have achieved as set forth in their declarations in support of
18 Plaintiffs' Motion. In my professional opinion, based upon my expertise and experience as
19 described above, the rates requested by Class Counsel are in line with, if not below, the non-
20 contingent market rates charged by attorneys of reasonably comparable experience, skill, and
21 reputation for reasonably comparable services. A number of factors support my opinion:

22
23 56. First, although Class Counsel's 2023 rates are higher, they seek approval based on
24 their 2022 rates. All Plaintiffs' law firms have either charged clients their 2022 rates, been
25 awarded their 2022 rates by a court, or both. This Court's prior fee order found counsel's 2019
26 rates reasonable, counsel's current rates represent modest increases since the initial application
27 that in my view are amply justified by rate increases in the legal marketplace generally as well as
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1 their increased skill, experience, reputation and the like.² In addition, I understand that the
2 partners at Miller Shah LLP have capped their rates at Ms. Olivier’s 2022 rate, even though they
3 normally bill at rates substantially higher than Ms. Olivier’s 2022 rate. Moreover, Class Counsel
4 are not including in their hours the majority of work on this motion and any future work, which
5 effectively lowers their hourly rates even further.

6
7 57. Second, Class Counsel’s rates are well within, if not below, the numerous findings
8 of reasonable hourly rates made by San Francisco Bay Area courts. Those findings are
9 summarized in **Exhibit B** attached hereto. For example, in *Wit*, the court found that 2021 hourly
10 rates of \$1,145, \$1,040, and \$980 were reasonable for lawyers with 35-39, 24, and 21 years of
11 experience respectively. All of the rates here, with the exception of Charles Cooper who is a U.S.
12 Supreme Court specialist with over 40 years of experience, are below those amounts, even though
13 the partners charging above \$900 an hour have at least 25 years of experience.

14 57. Similarly, in *Yo LLC v. Krucker*, Santa Clara Superior Ct. No. 17CV306261, Fee
15 Order filed February 9, 2022, a contractual fee case, the court found that a 2020 hourly rate of
16 \$1,275 per hour was reasonable for a 1994 law graduate. Plaintiff’s modest paralegal rates (\$200
17 to \$250) also are in line with these court awards. In *Wit*, for example, the court found that
18 paralegal rates of \$250-390 were reasonable. In *Andrews v. Equinox, supra*, paralegal rates from
19 \$240 to \$275 were found reasonable. Counsel’s rates here are well within these ranges.

20
21 ² Listed billing rates, court awards, and published articles show that over the past four years, San
22 Francisco area rates have risen an average of 4-6% per year. For example, in *Planned*
23 *Parenthood Federation of America, Inc. v. Center for Medical Progress*, 2020 U.S. Dist. LEXIS
24 241035, at *13 (N.D. Cal. Dec. 22, 2020), the district court applied a 25% rate increase for the
25 period from 2016 to 2020. More recently, similar rate increases in the legal marketplace have
26 been observed by commentators. *See, e.g.*, Bloomberg Law (Bureau of National Affairs, Inc.),
27 “Rising Rates Are Law Firms’ Salve as Layoffs and Pay Cuts Surge” (Jan. 19, 2023) (new 2023
28 hourly rates for some commercial firms reflect averaged increases over 2022 rates of 10%); *What*
We’re Watching –Alarming Rates?, Law.Com Morning Minute, Jan. 25, 2022 (rates rose 4% in
2021 and likely to rise “as much or more” in 2022); *Aggressive Billing Rate Increases Appear*
Likely, but Can Clients Stomach It? Maloney, *The American Lawyer* (Jan. 24, 2022) (rates rose
“nearly 4%” in 2021; Simons, *Big Law Should Raise Partner Billing Rates 10+ Percent Now*,
The Recorder (Nov. 15, 2018) at 3 (“In a normal year, partner rates would go up around 5 or 6
percent”).

1 58. Third, my knowledge is based on the reported rates of numerous local law firms
2 set out in **Exhibit C**. I have gathered that data from declarations, surveys, articles, and individual
3 correspondence, and it too supports my opinion that Class Counsel’s rates here are in line with the
4 San Francisco legal marketplace. For example, in 2020, Burson & Fisher, another class action
5 firm, billed a 23-year partner at \$1,000 per hour. Local plaintiffs’ law firm Altshuler Berzon
6 billed a 12-year attorney at \$875 per hour and a 3-year associate at \$600 per hour. In 2020,
7 Schneider Wallace Cottrell & Konecky, another local class action firm, billed a 26-year attorney
8 at \$925 per hour, a rate that was found reasonable by this Court in *Nevarez v. Forty Niners*, 474
9 F.Supp.3d 1041(N.D. Cal. 2020), In 2022, the same firm billed that same attorney at \$1,005 per
10 hour. In 2022, local employment law firm Levy, Vinick, Burrell & Hyams billed its 15-year
11 attorney at \$1,100 per hour.

12 59. Fourth, relevant hourly rate surveys show that counsel’s rates are “within the
13 range” of fees charged in the local legal marketplace. The 2021 Real Rate Report by Wolters
14 Kluwer, excerpts of which are attached hereto as **Exhibit D**, describes at page 22 the 2021 rates
15 charged by 150 San Francisco partners and 108 associates who practiced “Litigation.” For that
16 category, the 2021 litigation hourly rate for the Third Quartile of surveyed attorneys was \$961 per
17 hour for partners and \$628 per hour for associates. Class Counsel’s market rates, again with the
18 sole exception of Mr. Cooper, are *below* the Third Quartile of all attorneys surveyed.

19 60. Likewise, the “High Level Data Cuts” section at page 34 of the Report describes
20 the 2021 rates charged by 158 San Francisco partners with “21 or More Years” of experience.
21 For that category, the Third Quartile 2021 partner rate was \$960 per hour. Again, this shows that
22 Class Counsel’s rates are well within the range of market rates.

23 61. Given Class Counsel’s high levels of expertise and experience, the excellent work
24 performed, and the results obtained here, it is my opinion that their rates are at least at Third
25 Quartile levels and in my view, significantly higher. Nonetheless, the rates sought by Class
26 Counsel here are largely *below* these published rates. Moreover, in my experience, since 2021
27 most firms raised their 2022 rates by at least 4-6%.

28 62. In addition, the rates Class Counsel are requesting here are lower than those
identified in the updated LSI Laffey Matrix. See www.laffeymatrix.com. More specifically, the

1 LSI Matrix rate for attorneys with 20 or more years of experience is \$997 per hour which, when
2 adjusted to account for the rate differential between the Washington D.C. Area and the San
3 Francisco Bay Area equals approximately \$1,106. per hour. *See*
4 www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rate. Class Counsel are
5 seeking rates well below those rates, particularly when adjusted for the fact that all partners
6 seeking an hourly rate over \$900 have at least 25 years of experience.

7 63. Based on the foregoing, Class Counsel's hourly rates for their work in this
8 litigation are reasonable as they are well within the range of rates charged by and awarded to
9 comparably qualified attorneys in this legal community for comparable services.

10 ***The Reasonableness of Class Counsel's Lodestar Hours***

11 64. As noted above, I have reviewed a meaningful sample of the documents filed in
12 this action, including various pleadings, summary judgment orders, the initial fee order, the Ninth
13 Circuit Opinion, and the instant motion as well as the declarations from Class Counsel in support
14 of the motion. I also have consulted extensively with Ms. Olivier about the history and
15 procedural background of the case. I have also reviewed this Court's Docket in this case, which
16 has over 465 entries, as well as the Dockets of the twin appeals in this matter, and the Supreme
17 Court docket. I have also reviewed Class Counsel's time summaries and detailed declarations
18 about the work performed in this action.

19 65. Based upon my review of these materials and my extensive experience with other
20 class actions, the number of hours expended by Class Counsel here appears to be consistent with,
21 and likely less than, the number of hours I would expect to have been reasonably spent in a case
22 of this duration, intensity, complexity, and results achieved. *See, e.g., Villalpando v. Exel Direct,*
23 *Inc.*, 2016 WL 7740854, at *4 (hours spent by class counsel reasonable "given the nature of the
24 case and the defenses presented, the work class counsel had to undertake, the manner in which
25 class counsel allocated their work, and the results achieved"). Indeed, in my experience, Class
26 Counsel's hours here are consistent with, if not below, other cases of comparable scope,
27 complexity, and duration.

28 66. In my view, therefore, Class Counsel's claimed hours are reasonable. This is
particularly the case in light of the fact that Class Counsel have capped their hours as of at least

1 two months ago, and are not including in their hours calculation the majority of the work done on
2 this motion to approve the plan of allocation and attorneys' fees, or any time for future work on
3 finalizing the plan of allocation, working with the Class Administrator to distribute the Common
4 Fund Judgment, communicating with Class members, and monitoring that distribution. Class
5 Counsel's estimate of this additional work having a lodestar value of at least \$300,000 is, in my
6 experience, a very modest estimate for those additional tasks.

7 67. My opinion regarding Class Counsel's hours is also based on the fact that those
8 hours accomplished an excellent result: a \$31 million Common Fund Judgment for a Class of
9 approximately 2,200 members. Obtaining such significant relief against well-funded, well-
10 represented opponents quite clearly required the great effort that Class Counsel gave this case.

11 ***The Lodestar Multiplier Is Reasonable***

12 68. As noted above, Class Counsel's lodestar is \$5,844,319.50. To reach the \$10.4
13 million figure that Class Counsel request, a 1.79 lodestar multiplier must be applied. In my
14 experience, that is a reasonable and, in fact, modest multiplier. Multipliers often exceed 2.0 in
15 similar and even less complex or successful litigation. *See Wershba v. Apple Computer*, 91 Cal.
16 App. 4th 224, 255 (2001) under California law, "[m]ultipliers can range from 2 to 4 or even
17 higher.") Under California law, courts may apply multipliers in light of several factors, including
18 contingent risk, exceptional skill and quality of work by class counsel, novelty and complexity of
19 the issues, excellent results, and whether the interests of the broader public have been served.
20 *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). The unadorned lodestar "does not include any
21 compensation for contingent risk, extraordinary skill, or any other factors a trial court may
22 consider." *Id.* at 1138.

23 69. This Court's January 2020 Order granting fees before the appeals in this case
24 expressly found that a multiplier of 2.0 was appropriate based on Plaintiffs' motion at that time.
25 There are three changes since that motion: (1) counsel have worked over 2,000 additional hours
26 over the last three-plus years to prosecute the appeals and the post-remand proceedings; (2)
27 counsel are seeking their 2022 instead of their 2019 rates that they sought in their first motion;
28 and (3) the overall judgment was reduced due to the Ninth Circuit's reversal of the minimum

1 wage claim and reduction of certain PAGA penalties.

2 70. In my opinion, none of those factors warrants a lesser multiplier. First, Class
3 Counsel are entitled to seek fees at their current hourly rates; as discussed above, however, Class
4 Counsel are using their 2022 rates, which are in fact below market for comparable work. Second,
5 the additional hours reasonably expended on the extensive appellate proceedings, proceedings at
6 the U.S. Supreme Court, and post-remand proceedings in this Court were subject to the same
7 enhancement factors that justified the 2.0 enhancement in 2020: contingent risk, difficulty and
8 complexity, excellent results, and the like. Third, although the judgment amount has been
9 reduced considerably from the original judgment (mostly due to an intervening decision of the
10 California Supreme Court), Class Counsel still overcame Defendants' principal legal and factual
11 arguments that would have wiped out their case entirely and achieved a tremendous result for the
12 Class – over \$31 million on behalf of approximately 2,200 Class members. The case has also
13 resulted in several published decisions that will assist interstate transportation workers seeking
14 redress for California wage violations. Based upon my extensive knowledge and experience in
15 class action litigation, settlement, and fee awards, a 2.0 multiplier would be exceedingly
16 reasonable. Yet, Class Counsel here ask for a lesser multiplier, a 1.79.

17 71. The 1.79 multiplier Class Counsel seek is also well within the range of multipliers
18 awarded in cases of similar complexity and results. *See, e.g., Laffitte*, 1 Cal.5th at 487 (affirming
19 33% fee equivalent to 2.03-2.13 lodestar multiplier); *Uschold v. NSMG Shared Servs., LLC*, No.
20 18-CV-01039-JSC, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of 4
21 to fee award in wage and hour class action settlement); *Ridgeway*, 269 F. Supp. 3d 975, 999 (N.D.
22 Cal. 2017) (applying multiplier of 2.0 to fee award in wage and wage and hour common fund
23 case); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA 2015 WL 2438274, at *7
24 (N.D. Cal. May 21, 2015) (applying 5.5 lodestar multiplier in UCL class action based on “the fine
25 results achieved on behalf of the class, the risk of non-payment [lead counsel] accepted, the
26 superior quality of their efforts, and the delay in payment.”). *See also Vizcaino v. Microsoft*, 290
27 F.3d 1043, 1051 n.6 (9th Cir. 2002) (citing numerous cases); *In re Rite Aid Corp. Sec. Litig.*, 146
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1 F. Supp. 2d 706, 736, n.44 (E.D. Pa. 2001) (multiplier of 4.5- 8.5); *In re Rite Aid Corp. Sec.*
2 *Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (multiplier of 6.96); *Gutierrez v. Barclays Group*, No.
3 10-CV-1012 DMS BGS, 2012 WL 12868392) (S.D. Cal. 2010) (multiplier of 4.55); *Kramer v.*
4 *Autobyte, Inc.*, No. 10-CV-02722-CV, 2012 U.S. Dist. LEXIS 185800 (N.D. Cal. 2012)
5 (multiplier of 2.69). The relevant multiplier factors that apply to these cases – contingent risk;
6 extraordinary skill; novelty, complexity and difficulty; excellent results; public interests served --
7 apply here as well. Indeed, they support a much higher multiplier than the modest 1.79 multiplier
8 reflected in their requested 33% fee.

9 CONCLUSION

10 72. In summary, Class Counsel's request for a fee equivalent to 33% of the Common
11 Fund Judgment is, in my opinion, reasonable and appropriate. This amount equates to \$10.4
12 million on a \$31 million Judgment, of which \$6,395,874.95 will be paid by Defendants to satisfy
13 their statutory fee obligation. In effect, then, Class Counsel is requesting a payment of
14 approximately \$4 million out of the Common Fund, less than 13% of that Fund, plus expenses.

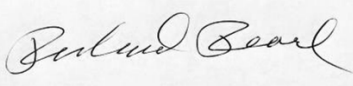
15 73. Based on the excellent results achieved, the significant risks Class Counsel
16 assumed by representing the class on an entirely contingent basis, the high level of skill,
17 efficiency, and quality of work needed to achieve this result, fee awards in comparable California
18 and federal cases, and the percentages reasonably charged in the legal marketplace, it is my
19 opinion that Class Counsel's request is reasonable and appropriate.

20 74. In my opinion, the lodestar cross-check also fully supports a 33% fee. The 1.79
21 multiplier on Class Counsel's \$5,844,319.50 lodestar, representing over 7,300 of attorney and
22 staff hours over eight years, is reasonable and, in fact, below the lodestar-based fees approved by
23 courts in comparable, and less significant, class action settlements and judgments.

24
25 If called as a witness, I could and would competently testify from my personal knowledge
26 to the facts stated herein. I declare under penalty of perjury under the laws of the United States
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that the foregoing is true and correct. Executed this 18th day of May 2023, in Berkeley,
California.



Richard M. Pearl

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