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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 JAVANNI MUNGUIA-BROWN, ANGELINA
MAGAÑA, NORMA RODRIGUEZ, DAVID
18 BONFANTI, and SHANNAH SMITH individually
and on behalf of others similarly situated,

19 Plaintiffs,
20 vs.

21 EQUITY RESIDENTIAL, a real estate investment
trust, ERP OPERATING LIMITED PARTNERSHIP,
22 a partnership, EQUITY RESIDENTIAL
MANAGEMENT, L.L.C., EQR-WOODLAND
23 PARK A LIMITED PARTNERSHIP, and EQR-
WOODLAND PARK B LIMITED PARTNERSHIP,

24 Defendants.
25

CLASS ACTION

Case No.: 4:16-cv-01225-JSW-TSH

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR REASONABLE
ATTORNEYS' FEES, COSTS, AND
EXPENSES; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: June 26, 2026
Time: 9:00 a.m.
Dept: Courtroom 5
Before: Hon. Jeffrey S. White

Trial Date: June 8, 2023

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TABLE OF CONTENTS

Page

1

2

3 NOTICE OF MOTION AND MOTION 1

4 MEMORANDUM OF POINTS AND AUTHORITIES 1

5 I. INTRODUCTION..... 1

6 II. RELEVANT BACKGROUND 2

7 A. The Settlement Achieves Outstanding Results for the Certified Classes. 2

8 B. The Results Achieved Reflect Years of Dedicated, Skilled, and Hard-Fought
Litigation by Class Counsel. 4

9 1. Case Initiation and Class Certification Discovery..... 4

10 2. Class Certification and Equity’s Attempts to Defeat Class Certification 6

11 3. Summary Judgment, Merits Discovery, and Motion for Decertification 7

12 4. Expert Discovery 10

13 5. Pretrial Filings and Trial 11

14 6. Post-Trial Briefing and the Court’s Findings of Fact and Conclusions of
Law 12

15 7. *Van Cott v. Equity Residential*..... 13

16 III. ARGUMENT..... 14

17 A. Fee Shifting Applies to the Claims Plaintiffs Successfully Litigated in this Case..... 14

18 B. Plaintiffs’ Fee Request, Which Is Substantially Less Than Their Actual Lodestar, Is
Reasonable. 16

19 1. Class Counsel’s Hours Are Documented and Reasonable. 17

20 2. Class Counsel’s Hourly Rates Are Reasonable and in Line with Those of
Attorneys with Commensurate Skill, Experience, and Reputation in the
Bay Area..... 20

21 3. Class Counsel Do Not Seek the Multiplier to Which They Are Entitled. 22

22 C. A Percent-of-Fund Cross Check Affirms the Reasonableness of the Requested
Award..... 23

23 D. Plaintiffs’ Litigation Costs and Expenses Are Reasonable and Recoverable. 25

24 IV. CONCLUSION..... 25

25

26

27

28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

1
2
3
4 *In re Bluetooth Headset Prods. Liab. Litig.*,
5 654 F.3d 935 (9th Cir. 2011)..... 14, 15, 22, 24
6 *Camacho v. Bridgeport Fin., Inc.*,
7 523 F.3d 973 (9th Cir. 2008)..... 20
8 *Carlin v. DairyAmerica, Inc.*,
9 380 F. Supp. 3d 998 (E.D. Cal. 2019)..... 24
10 *Carson v. Billings Police Dep’t*,
11 470 F.3d 889 (9th Cir. 2006)..... 21
12 *Chicken Ranch Rancheria of Me-Wuk Indians v. California*,
13 65 F.4th 1145 (9th Cir. 2023)..... 14
14 *Clayborne v. Newtron, LLC*,
15 No. 4:19-cv-07624-JSW, 2023 WL 5748773 (N.D. Cal. Sept. 6, 2023)..... 25
16 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,
17 509 U.S. 579 (1993)..... 9
18 *Davis v. City & County of San Francisco*,
19 976 F.2d 1536 (9th Cir. 1992)..... 19
20 *Frank Music Corp. v. MGM, Inc.*,
21 886 F.2d 1545 (9th Cir. 1989)..... 18
22 *Grove v. Wells Fargo Fin. Cal., Inc.*,
23 606 F.3d 577 (9th Cir. 2010)..... 25
24 *Hanlon v. Chrysler Corp.*,
25 150 F.3d 1011 (9th Cir. 1998)..... 15
26 *Hensley v. Eckerhart*,
27 461 U.S. 424 (1983)..... 17, 18, 19
28 *In re Heritage Bond Litig.*,
No. 2:02-ml-01475-DT, 2005 WL 1594403 (C.D. Cal. June 10, 2005)..... 25
In re Hyundai & Kia Econ. Litig.,
926 F.3d 539 (9th Cir. 2019)..... 23
Indep. Living Ctr. of S. Cal., Inc. v. Kent,
909 F.3d 272 (9th Cir. 2018)..... 15

1 *Kanawi v. Bechtel Corp.*,
 2 No. 3:06-cv-05566-CRB, 2011 WL 782244 (N.D. Cal. Mar. 1, 2011) 24

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 4 309 F.R.D. 573 (N.D. Cal. 2015) 20

5 *In re Media Vision Tech. Sec. Litig.*,
 6 913 F. Supp. 1362 (N.D. Cal. 1996)..... 25

7 *Missouri v. Jenkins*,
 8 491 U.S. 274 (1989) 20

9 *Moreno v. City of Sacramento*,
 10 534 F.3d 1106 (9th Cir. 2008) 19

11 *Nevarez v. Forty Niners Football Co., LLC*,
 12 474 F. Supp. 3d 1041 (N.D. Cal. 2020)..... 24

13 *In re Optical Disk Drive Prods. Antitrust Litig.*,
 14 959 F.3d 922 (9th Cir. 2020) 24

15 *Perdue v Kenny A.*,
 16 559 U.S. 542 (2010) 20

17 *Razuki v. Equity Residential Mgmt., LLC*,
 18 No. 3:15-cv-01057-BEN-JLB (S.D. Cal.) 5

19 *Stanger v. China Elec. Motor, Inc.*,
 20 812 F.3d 734 (9th Cir. 2016) 16

21 *Staton v. Boeing Co.*,
 22 327 F.3d 938 (9th Cir. 2003) 23

23 *Troy v. Aegis Senior Cmty. LLC*,
 24 No. 4:16-cv-03991-JSW, 2021 WL 6129106 (N.D. Cal. Aug. 23, 2021)..... 24

25 *United Steelworkers of Am. v. Phelps Dodge Corp.*,
 26 896 F.2d 403 (9th Cir. 1990) 20

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 28 No. 3:25-cv-02358-JSW (N.D. Cal.) *passim*

Vizcaino v. Microsoft Corp.,
 290 F.3d 1043 (9th Cir. 2002) 14, 24

Walsh v. Kindred Healthcare,
 No. 3:11-cv-00050-JSW, 2013 WL 6623224 (N.D. Cal. Dec. 16, 2013) 24

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2 *Beasley v. Wells Fargo, NA,*
 3 235 Cal. App. 3d 1407 (1992)..... 15, 22

4 *Chavez v. City of Los Angeles,*
 5 47 Cal. 4th 970 (2010)..... 16

6 *Graham v. DaimlerChrysler Corp.,*
 7 34 Cal. 4th 553 (2004)..... 20, 22

8 *Heritage Pac. Fin., LLC v. Monroy,*
 9 215 Cal. App. 4th 972 (2013)..... 20

10 *Holguin v. Dish Network LLC,*
 11 229 Cal. App. 4th 1310 (2014)..... 14

12 *Horsford v. Bd of Trustees of Cal. State Univ.,*
 13 132 Cal. App. 4th 359 (2005)..... 18

14 *Karton v. Ari Design & Constr., Inc.,*
 15 61 Cal. App. 5th 734 (2021)..... 18

16 *Kerkeles v. City of San Jose,*
 17 243 Cal. App. 4th 88 (2015)..... 17

18 *Ketchum v. Moses,*
 19 24 Cal. 4th 1122 (2001)..... 17, 22

20 *Laffitte v. Robert Half Int’l Inc.,*
 21 1 Cal. 5th 480 (2016)..... 16

22 *Peak-Las Positas Partners v. Bollag,*
 23 172 Cal. App. 4th 101 (2009)..... 18

24 *PLCM Grp. v. Drexler,*
 25 22 Cal. 4th 1084 (2000)..... 16, 20

26 *Serrano v. Priest,*
 27 20 Cal. 3d 25, 49 n.23 (1997)..... 16

28 *Serrano v. Unruh,*
 32 Cal. 3d 621 (1982)..... 19

Skinner v. Ken’s Foods, Inc.
 53 Cal. App. 5th 938 (2020)..... 15

Snoeck v. ExakTime Innovations, Inc.,
 96 Cal. App. 5th 908 (2023)..... 18

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

State Statutes

Cal. Civ. Code

§ 1671(d)*passim*
 § 1717(a)..... 14

Cal. Civ. Proc. Code

§ 1021.5 15
 § 1033.5(a)..... 25

Rules

Fed. R. Civ. P.

13 7
 23(a)..... 9
 23(b)(2)..... 8, 9
 23(b)(3)..... 6, 9
 23(f)..... 6
 23(h) 14, 25
 26 10
 54 23
 54(d)..... 25

N.D. Cal. L.R. 54-3 25

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Northern District of California’s Procedural Guidance for Class Action Settlements,
<https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/> 2

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 26, 2026 at 9:00 a.m., or as soon thereafter as the Court is
4 available, Plaintiffs Javanni Munguia-Brown, Angelina Magaña, Norma Rodriguez, David Bonfanti, and
5 Shannah Smith (“Plaintiffs”) will and hereby do move the Court for an award of \$17,227,761.62 for their
6 reasonable attorneys’ fees, costs, and expenses in accordance with the terms of the Settlement Agreement,
7 which the Court preliminarily approved by Order dated February 2, 2026 (ECF No. 590). The motion will
8 be heard by Zoom video conference before the Honorable Jeffrey S. White of the United States District
9 Court for the Northern District of California, whose Courtroom is located at 1301 Clay Street, Second
10 Floor, Oakland, California. This motion is based on this notice of motion and motion, the accompanying
11 memorandum of points and authorities, the accompanying Declarations of Linda M. Dardarian, Margaret
12 McBride, and Craig Nicholas in Support of Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs, and
13 Expenses (“Dardarian Fee Decl.,” “McBride Decl.,” and “Nicholas Decl.”), the previously filed
14 Declaration of Linda M. Dardarian in Support of Plaintiffs’ Motion for Preliminary Approval (ECF No.
15 587-1, “Dardarian Prelim. Decl.”), the argument of counsel, all papers and records on file in this case, and
16 such other matters as the Court may consider.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 For over a decade, Plaintiffs and Class Counsel diligently litigated this hard-fought case through
20 extensive lay and expert discovery, class certification, summary judgment, an eight-day bench trial, and
21 multiple rounds of post-trial briefing, ultimately securing declaratory relief holding that Defendant Equity
22 Residential’s (“Equity’s”) Standard Late Fee was null and void and obtaining an outstanding settlement on
23 behalf of nearly 200,000 current and former Equity tenants in California. In total, Plaintiffs have won over
24 \$58.40 million worth of relief on behalf of Class Members. In addition, Plaintiffs won a first-of-its-kind
25 ruling invalidating Equity’s late fee policy, which impacts the entire residential leasing industry in
26 California by making clear that landlords operating in this state may not impose excessive and
27 unreasonable percentage-based late fees on their residential tenants – who often have no choice but to
28

1 accept their landlord's terms.

2 As provided in the Settlement Agreement ("Settlement") ¶ 58,¹ Plaintiffs now move for an award
 3 of \$17,227,761.62 for their reasonable attorneys' fees, costs and expenses, which Equity will pay separate
 4 and apart from the class's restitution and credits.² The requested amount is amply justified by Class
 5 Counsel's work in this long-running litigation, where Plaintiffs succeeded in spite of Equity's aggressive
 6 litigation tactics. Plaintiffs' request is substantially less than Class Counsel's actual documented lodestar
 7 and out-of-pocket costs, and is reasonable. The number of hours spent on this litigation is reasonable given
 8 its length and success, and Plaintiffs have significantly reduced their lodestar in the exercise of billing
 9 judgment. Class Counsel's rates have been approved by federal and state courts throughout California,
 10 were recently approved by this Court in the related case *Van Cott v. Equity Residential, et al.*, No. 3:25-cv-
 11 02358-JSW (N.D. Cal.) ("*Van Cott*") and are well within the range of market rates charged by attorneys
 12 with similar skill and experience performing complex litigation in the Bay Area market. Furthermore,
 13 Plaintiffs' request results in a negative multiplier to their total lodestar after billing judgment, although a
 14 positive multiplier would be warranted given the contingent risk, skill required, lengthy delay in payment,
 15 and excellent result obtained in this public-interest action, further demonstrating the reasonableness of their
 16 requested attorneys' fees. Plaintiffs' requested costs were reasonably incurred for the Classes' benefit.
 17 Plaintiffs therefore respectfully request that the Court award \$17,227,761.62 for reasonable attorneys' fees,
 18 costs, and expenses.

19 **II. RELEVANT BACKGROUND**

20 **A. The Settlement Achieves Outstanding Results for the Certified Classes.**

21 The Settlement Agreement's terms are discussed at length in Plaintiffs' Motion for Preliminary
 22 Approval of Class Action Settlement. *See* ECF No. 587 at 7-11 & record citations therein. The extensive
 23 relief memorialized in the Settlement Agreement, along with additional benefits Class Counsel secured for
 24 the class through tenacious litigation through trial and post-trial briefing, represents a value of over \$58.40

25 _____
 26 ¹ The Settlement Agreement is attached as Exhibit A to the Dardarian Prelim. Decl. ECF No. 587-1.

27 ² Plaintiffs make this motion at least 35 days prior to the deadline for class members to object to or opt
 28 out of the Settlement, in compliance with the Northern District of California's Procedural Guidance
 for Class Action Settlements ("Settlement Guidance"), *see* ¶ 9. available at
<https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

1 million won on behalf of the class.

2 Under the terms of the Settlement, Equity has agreed to pay \$22,707,238.38 in restitution to nearly
 3 200,000 Class Members, reasonable attorneys' fees and costs of \$17,227,761.62, and service award
 4 payments of \$25,000 for each of the five Class Representatives (totaling \$125,000). Settlement ¶ 36. The
 5 Settlement Administrator will automatically distribute funds to the Class Members without any need to
 6 submit a claim form or supporting documentation, and no amount will revert back to Equity. Each Class
 7 Member will receive around 87% of the restitution owed to them as determined by Plaintiffs' experts, who
 8 calculated restitution as the amount of the Standard Late Fees or Woodland Park \$50 Late Fees paid by that
 9 Class Member, according to Equity's tenant-ledger data, minus Equity's actual cost-per-late-fee. Dardarian
 10 Prelim. Decl. ¶ 48.

11 In addition to the \$22,707,238.38 Equity will pay in restitution, Equity has agreed to credit accounts
 12 for Class Members who were charged a Standard Late Fee or Woodland Park \$50 Late Fee on their
 13 account balance but who did not pay the fee before April 30, 2024. *Id.* ¶¶ 50-51. Equity will credit these
 14 Class Members with the net amount of the fee minus \$22.51 for any late fee charged prior to May 1, 2022
 15 and \$31.98 for any late fee charged on or after May 1, 2022. *Id.* The credits will total approximately
 16 \$2,939,639.53,³ and are separate from the amount of class restitution. The Settlement also requires Equity
 17 to separately pay for settlement administration. This represents an additional value of up to \$300,000 won
 18 for the class. Settlement ¶ 72. Class Counsel has also secured valuable benefits to the class outside of the
 19 Settlement Agreement. In April 2024, Plaintiffs obtained a declaration from the Court that Equity's
 20 Standard Late Fee was null and void. Dardarian Prelim. Decl. ¶ 55. As a direct result of Plaintiffs'
 21 prevailing on declaratory relief, Equity ceased charging its Standard Late Fee. *Id.* ¶ 55. The changed late
 22 fee policy represented a savings to Class Members of approximately \$6.6 million to date, plus at least an
 23 additional \$8.5 million of value going forward. Dardarian Fee Decl. ¶ 115.

24 In sum, as a result of their diligent representation, Plaintiffs have won the Classes a settlement
 25 worth over \$58.40 million to date, which includes the \$40.06 million spelled out in the Settlement, credits
 26

27 ³ After working with Plaintiffs' expert to determine estimated credit allocations for Class Notice,
 28 Plaintiffs have raised the estimated amount of credits to be awarded to Class Members from the figure in
 the Motion for Preliminary Approval, which estimated credits of \$2,876,993. Dardarian Fee Decl. ¶ 3.

1 to Class Members' accounts, the value of the settlement administration, and value of Equity's cessation of
2 its unlawful fee. *Id.* ¶ 57.

3 **B. The Results Achieved Reflect Years of Dedicated, Skilled, and Hard-Fought Litigation by**
4 **Class Counsel.**

5 Achieving this extraordinary result required tens of thousands of hours of work in this highly
6 contentious litigation, including extensive discovery requests and multiple discovery battles, complex
7 motion practice, pretrial procedures, an eight-day bench trial, and multiple rounds of post-trial briefing.
8 The Parties also engaged in five separate mediation sessions with four different mediators before reaching
9 this settlement through direct negotiations. Dardarian Fee Decl. ¶ 5. In all, Class Counsel have devoted
10 over 27,466.75 hours to litigating this case for more than eleven years. Class Counsel have also paid
11 \$1,644,811.55 in expert costs, and \$394,593.79 in other litigation costs. *Id.* ¶ 6. Below, Plaintiffs provide a
12 detailed account of the extraordinary effort it took to overcome Equity's obstructionist tactics and obtain
13 this outstanding result for the Classes.

14 **1. Case Initiation and Class Certification Discovery**

15 Dardarian Ho Kan & Lee ("DHKL") and Community Legal Services in East Palo Alto
16 ("CLSEPA") began investigating Equity Residential's late fees in 2013. Plaintiffs Javanni Munguia-
17 Brown, Angelina Magaña, and Norma Rodriguez filed this class action in Alameda County Superior Court
18 on September 3, 2014, alleging that Equity's late fee was an unlawful liquidated damages provision under
19 California Civil Code section 1671(d) ("Section 1671(d)") and an unlawful and unfair business act and
20 practice under the UCL. Plaintiffs brought the case on behalf of themselves and all Equity tenants in
21 California who had been charged or paid Equity's late fee of \$50 or more.

22 Plaintiffs sought early discovery into the amount of late fees charged to and paid by putative class
23 members, Equity's claimed actual damages arising from late rent, and its policies and practices relating to
24 collecting late rent, among other information. In 2015, after extensive meet and confer, Plaintiffs were
25 forced to move to compel discovery because Equity refused to identify or even count putative class
26 members (simply those tenants who were charged late fees), to provide a statewide sampling of tenant
27
28

1 ledgers containing late fees, to provide exemplar leases, or to provide information regarding the
2 relationships between the various corporate defendants. Dardarian Fee Decl. ¶ 8.

3 The Superior Court granted Plaintiffs’ motion in part, including by compelling Equity to provide
4 660 tenant ledgers—a 1% sample of the 660,000 ledgers Equity estimated to exist. *Id.* ¶ 9. Equity then
5 took months to produce those ledgers, claiming to the Court that producing even the subset ordered by the
6 Court would “take 45,000 hours—or 5,625 8-hour days—to compile.” *Id.* Years later, it became clear that
7 Equity’s insistence that information in tenant ledgers could only be produced individually in hard copy, *i.e.*,
8 in the manner the Court compelled, was false: Equity could (and later did on multiple occasions) run data
9 queries that extracted detailed tenant-ledger data for all of the nearly two hundred thousand class members
10 and was generally able to produce that data within a week. *Id.* ¶ 10. This example – Equity’s stonewalling
11 discovery by claiming it would take over 15 years to provide information that actually only took a week –
12 is emblematic of Equity’s conduct throughout this litigation.

13 On May 11, 2015, a similar, independent class case was filed against Equity and several corporate
14 subsidiaries in the Southern District of California. *See Razuki v. Equity Residential Mgmt., LLC*, No. 3:15-
15 cv-01057-BEN-JLB (S.D. Cal.) (“Razuki”). The plaintiffs in *Razuki*, who were represented by Nicholas &
16 Tomasevic, LLP (“N&T”), similarly challenged Equity’s late fee policy, and similarly pled a statewide
17 class. Dardarian Fee Decl. ¶ 11.

18 In March 2016, Equity removed the *Munguia-Brown* action to the Northern District, where it was
19 assigned to this Court. *Id.* ¶ 12. Shortly afterwards, Equity moved to stay this action pending the outcome
20 of a class certification motion filed in *Razuki*. *Id.* Before that motion was decided, the parties in *Razuki*
21 jointly moved to dismiss the action with prejudice, which the *Razuki* Court granted on June 1, 2016. *See*
22 *id.*; *see also Razuki*, 15-cv-01057 (S.D. Cal.) (ECF No. 34).

23 While the case was pending, Equity sold the portfolio of apartment buildings where the original
24 named Plaintiffs resided, so on February 8, 2017, Plaintiffs filed the Second Amended Complaint (“SAC”)
25 to add a current tenant. Dardarian Fee Decl. ¶ 13. The SAC also added N&T as Plaintiffs’ co-counsel.
26 Plaintiffs continued to pursue class certification discovery after the case was transferred to this Court.
27 Numerous disputes arose regarding discovery, and Plaintiffs were required to file six motion to compel
28

1 letter briefs seeking the production of various documents and information. *Id.* ¶ 14. In particular, the
2 Parties disputed whether Equity had produced all communications regarding Equity’s 2008 adoption of the
3 Standard Late Fee of 5% of monthly rent, minimum of \$50. Equity claimed that no such communications
4 existed. ECF No. 52. This, too, was a blatant falsehood that drove up Plaintiffs’ litigation costs and
5 burdens. *Id.* ¶ 15.

6 **2. Class Certification and Equity’s Attempts to Defeat Class Certification**

7 On October 23, 2017, the Court certified two classes pursuant to Federal Rule of Civil Procedure
8 23(b)(3): the Standard Late Fee Class and the Woodland Park Class. Dardarian Fee Decl. ¶ 17. The Court
9 found that “the central legal determinations under Section 1671(d) – whether it is impracticable to
10 determine actual damages from late payment of rent and whether the landlord made a reasonable endeavor
11 to estimate fair compensation for any loss sustained – are common to all named plaintiffs and the classes
12 they seek to represent” and that “common questions of law and fact predominate over individual issues and
13 are well suited to class treatment.” *Id.*

14 On November 6, 2017, Equity filed a petition for permission to appeal the Court’s Order Granting
15 Class Certification pursuant to Rule 23(f), which the Ninth Circuit denied on January 23, 2018. Dardarian
16 Fee Decl. ¶ 18. Equity also filed a motion to stay the proceedings pending any appeal, which was denied
17 as moot following the Ninth Circuit’s denial of the petition, as well as a motion to reconsider the Court’s
18 order, which the Court also denied. *Id.* Class certification notice was disseminated to approximately
19 123,000 class members in December 2017. In December 2018, Plaintiffs issued class certification notice to
20 another 23,000 class members after Equity discovered that it had inadvertently omitted those individuals
21 from the initial class list. *Id.* ¶ 19.

22 On May 22, 2018, Equity filed a Motion for Leave to File Counterclaims against all class members
23 for damages arising from unrelated and unspecified breaches of their leases. *Id.* ¶ 20. Equity’s motion was
24 a direct response to the Court’s decision to certify the classes. Plaintiffs strenuously opposed this motion,
25 which seemed designed to intimidate, deter, and harass class members. *Id.* The Court denied Equity’s
26 motion in August 2018, finding that class members were not litigation adversaries within the meaning of
27 Rule 13, and therefore could not be subject to Equity’s counterclaims in this case. *Id.* ¶ 21. The Court also
28

1 found that “Defendants’ efforts to file counterclaims against individual plaintiffs in this class action context
2 to be in contravention of the purpose of the consumer protection statute and the unnamed plaintiffs’ due
3 process rights.” *Id.*

4 **3. Summary Judgment, Merits Discovery, and Motion for Decertification**

5 On January 7, 2019, Plaintiffs filed a Motion for Partial Summary Judgment against Equity based
6 on deposition testimony from Equity’s now former in-house counsel James Fiffer demonstrating that
7 Equity’s executives set the Standard Late Fee without regard to Equity’s actual costs resulting from class
8 members’ late payment of rent. Dardarian Fee Decl. ¶ 22. Plaintiffs sought findings on liability, certain
9 categories of offset damages, and many of Equity’s affirmative defenses. On August 12, 2019, the Court
10 granted in part and denied in part Plaintiffs’ motion. In opposing summary judgment, Equity submitted a
11 declaration by in-house counsel Denise Beihoffer, in which she claimed that Equity had “evaluate[d] the
12 Company’s costs and damages resulting from rent that is not paid on time” and had checked with outside
13 counsel in California to confirm that the late fee was reasonable. *Id.* ¶ 23. As subsequent trial evidence
14 proved, this declaration testimony was exaggerated, if not outright false, but it was sufficient to create a
15 disputed issue of fact that precluded summary judgment on liability. *Id.* The Court, however, eliminated a
16 host of Equity’s affirmative defenses. *Id.*

17 The Parties spent much of the next three years engaged in intensive discovery and motion practice.
18 Through their persistent discovery efforts in the face of Equity’s strenuous and unfounded objections and
19 refusal to produce responsive documents, Plaintiffs obtained damning internal documents that strongly
20 supported liability after succeeding on multiple levels of motions to compel. Specifically, on June 9, 2020,
21 Magistrate Judge Thomas Hixson concluded that by submitting the Beihoffer declaration and some
22 testimony by Mr. Fiffer in opposition to Plaintiffs’ motion for summary judgment that selectively disclosed
23 the legal advice Equity obtained when adopting the Standard Late Fee, Equity waived attorney-client
24 privilege. *Id.* ¶ 25. Equity objected to the Magistrate’s order, which Plaintiffs challenged, and this Court
25 upheld the order. *Id.* Thereafter, Equity filed a writ of mandamus to the Ninth Circuit and a motion to stay
26 the order in this Court, both of which Plaintiffs opposed, and the Ninth Circuit rejected. *Id.*

1 That should have, but did not, end the dispute. After Magistrate Judge Hixson issued his June 9,
2 2020 order, Equity then claimed that many of the documents at issue were protected from disclosure by the
3 attorney work product doctrine. Dardarian Fee Decl. ¶ 26. In response, the Court ordered Equity to
4 produce a privilege log, and required Plaintiffs to file a formal motion to compel to resolve any disputes
5 over Equity’s privilege claims. *Id.* Plaintiffs did so, and Judge Hixson largely granted Plaintiffs’ motion to
6 compel, ordering Equity to produce numerous internal emails, and finding that Equity’s “selective
7 disclosures of attorney advice” in Equity’s opposition to Plaintiffs’ motion for partial summary judgement
8 “allowed them to misrepresent what their attorneys told them and omit conflicting opinions Defendants
9 received that cast doubt on the legality of the late fee.” ECF No. 273 at 5 (Feb. 18, 2021), *see also* 337
10 F.R.D. 509, 513; Dardarian Fee Decl. ¶ 26. These documents demonstrated that the Standard Late Fee was
11 designed to generate revenue, rather than recoup costs caused by the late payment of rent. These are the
12 same documents that Equity claimed in 2016 did not exist. These documents also showed that the evidence
13 this Court relied on in denying Plaintiffs’ motion for summary judgment on liability—specifically, the
14 declaration of in-house counsel Denise Beihoffer—was false and misleading. Dardarian Fee Decl. ¶ 27.

15 From October 2020 to January 2021, the Parties filed several other significant motions. Equity
16 filed a motion for summary judgment regarding Plaintiff Bonfanti, contending that he had voluntarily paid
17 late fees. Equity also moved to exclude from the class any class members who had at one time worked for
18 Equity, without any evidence whatsoever that these class members had any authority over the late fee’s
19 adoption or discretion in its implementation. Dardarian Fee Decl. ¶¶ 28-29. Plaintiffs filed a motion to
20 certify an injunctive relief class pursuant to Rule 23(b)(2) and to extend the period for the damages classes
21 past the October 23, 2017 date of class certification, because Equity refused to agree to expanding the
22 classes to encompass additional class members who had since paid the late fee. Plaintiffs additionally filed
23 a companion motion for leave to file a third amended complaint to add current-tenant Plaintiff Shannah
24 Smith and maintain standing to pursue their injunctive relief claims. *Id.* ¶ 29. Plaintiffs also filed a motion
25 to dismiss Equity’s seventh affirmative defense that sought to set off from class restitution the debts some
26 class members allegedly owed Equity for cleaning costs, early lease termination fees, attorneys’ fees and
27 costs, and unpaid rent, among others. *Id.*

1 The Court resolved all of these motions on October 25, 2021. ECF No. 315. The Court denied
2 Equity’s motions for summary judgment and to exclude the “managerial” employees from the class. *Id.* at
3 3-4 & 6. In contrast, the Court largely granted Plaintiffs’ motions for leave to file a third amended
4 complaint and to modify the class certification order, appointed Plaintiff Smith as class representative,
5 certified an injunctive relief class, and extended the damages class period to 75 days before trial, bringing
6 the Standard Late Fee class to approximately 190,000 of Equity’s current and former California tenants. *Id.*
7 at 4-6. The Court also dismissed Equity’s set-off claims, agreeing with Plaintiffs that “[t]hese debts,
8 incurred as a result of other provisions in the lease, are sufficiently unrelated to Plaintiffs’ claims about the
9 validity of the late rental fees,” and declined to exercise supplemental jurisdiction over them. *Id.* at 2.

10 Then, despite the Court having already rejected its position twice, including only a few months
11 earlier, on March 24, 2022, Equity filed a motion to decertify the Rule 23(b)(3) classes, arguing yet again
12 that its offset and voluntary payment defenses presented individualized issues that predominated over
13 common issues. Dardarian Fee Decl. ¶ 31. On January 24, 2023, the Court denied Equity’s decertification
14 motion, holding that “Defendants have still not met their burden to demonstrate that individual inquiries are
15 necessary to adjudicate” its defenses, and emphasizing that “Plaintiffs have satisfied the requirements of
16 certification pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2) on two separate occasions.”
17 *Id.*⁴

18 Meanwhile, Plaintiffs once again had to go to the Court to compel Equity to permit Plaintiffs to
19 obtain basic discovery, such as depositions of several witnesses that Equity disclosed for the first time in
20 late 2020, including: several key corporate witnesses who were identified as late-fee decisionmakers in the
21 previously withheld emails; property-level personnel who Equity’s expert interviewed but Equity refused to
22 disclose; outside legal counsel who Equity (falsely) claimed had supported the reasonableness of the

23
24 ⁴ During this period, Plaintiffs also filed a *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.
25 579 (1993) motion to exclude the report and testimony of Equity’s expert Mr. Hosfield on several
26 grounds that the Court later adopted in its post-trial findings of fact and conclusions of law. The Court
27 denied Plaintiffs’ motion on the grounds that Plaintiffs’ critiques went more to the weight to be
28 accorded to Mr. Hosfield’s report and testimony rather than their admissibility and that the Court,
serving as the fact finder in a bench trial, could assess the evidence and weigh it accordingly. ECF
No. 422 at 5. The Court ultimately found Mr. Hosfield’s analysis and methods to be not accurate or
persuasive, “inappropriate,” and “unscientific and lacking in foundation” (ECF No. 546 at 18, n. 2 &
32 n. 3), and disregarded much of the evidence that Plaintiffs’ sought to exclude. *See* ECF No. 546 at
Finding of Fact (“FOF”) Nos. 53, 92.

1 Standard Late Fee; and an expert accountant from PriceWaterhouseCoopers who had produced a draft
2 report (“the PwC Report”) that assisted Equity with prior late-fee litigation the late 1990s—*Consumer*
3 *Justice Foundation v. Equity Residential*, and which report Equity intended to use as evidence that its later-
4 adopted Standard Late Fee was the result of a reasonable endeavor to estimate its costs of late rent
5 collection. Dardarian Fee Decl. ¶ 32.

6 **4. Expert Discovery**

7 Given the complexity of the underlying evidence and several categories of claimed actual damages,
8 expert testimony was vital to the claims and defenses in this action. Plaintiffs relied on five expert
9 witnesses: one database expert who evaluated and designed queries to further extract information from
10 Equity’s property management and personnel payroll databases; one forensic accountant who performed
11 complicated calculations of tenants’ late fee charges and payments and interest thereon, as well as Equity’s
12 actual lost-use-of-funds from the late payment of rent; an econometrics and statistical expert who
13 performed a multiple regression analysis to calculate the personnel costs caused by tenants’ late payment of
14 rent; a work-measurement expert who critiqued Equity’s expert accountant’s Mark Hosfield’s non-
15 scientific survey of hours worked by personnel involved in collecting late rent; and an expert accountant
16 who illustrated the unreliability of Equity’s PwC report and claims for lost-use-of-funds and other
17 damages. Dardarian Fee Decl. ¶ 35.

18 Equity disclosed accountant Mark Hosfield to support its claimed actual damages from late rent
19 collection. Mr. Hosfield conducted informal interviews of 58 property-level personnel witnesses to
20 estimate Equity’s personnel costs of late rent collection, yet Equity refused to disclose those interviews to
21 Plaintiffs during the fact discovery period. Equity also disclosed another accountant to rebut Plaintiffs’
22 expert’s critiques of the PwC report. But Equity failed to disclose the facts and witnesses that Mr. Hosfield
23 relied upon during the fact discovery period when Plaintiffs could cross-examine them, so Plaintiffs again
24 had to resort to court intervention to force Equity to produce Mr. Hosfield’s back-up materials, despite
25 disclosure being so clearly required by Rule 26. Dardarian Fee Decl. ¶ 36.

26 To summarize the magnitude of the discovery in this case, the Parties exchanged 19 expert reports
27 prior to trial (including supplemental reports as the data continued to be updated or corrected). *Id.* ¶ 37.

28

1 Plaintiffs propounded 100 special interrogatories, 118 requests for production, 115 substantive requests for
2 admission, and 751 requests for admission regarding the genuineness of documents. Equity produced
3 12,366 pages of documents, and millions of lines of data from its electronic tenant ledger and property
4 management database (which included the information that Equity had falsely represented in 2015 to only
5 be available in hardcopy tenant files) and millions of lines of data from its personnel databases. *Id.*
6 Plaintiffs filed 14 letter briefs regarding discovery disputes and two formal motions to compel, and the
7 Parties appeared before Magistrate Judge Hixson for 16 discovery hearings, all of which were initiated by
8 Plaintiffs in response to Equity’s failure to cooperate in producing discovery. *Id.* ¶ 38. Moreover,
9 Plaintiffs deposed 32 witnesses over 38 days of fact and expert depositions. Plaintiffs also defended four
10 Named Plaintiff depositions and eight days of deposition for their five expert witnesses. *Id.* ¶ 39.

11 **5. Pretrial Filings and Trial**

12 On January 23, 2023, the Parties submitted their pre-trial filings, including trial briefs, motions *in*
13 *limine*, proposed findings of fact and conclusions of law, exhibit lists, witness lists, and deposition and
14 interrogatory designations. One of Plaintiffs’ motions *in limine* sought to exclude the PwC report and other
15 evidence related to the *Consumer Justice Foundation v. Equity Residential* case that concerned a different
16 late fee. Plaintiffs also sought to exclude evidence related to the extraneous class member debts that the
17 Court had dismissed from the case, Equity’s percentage-based collection agency fees, and witnesses who
18 were not timely disclosed during fact discovery. Dardarian Fee Decl. ¶ 40.

19 Consistent with the Court’s “open approach to the evidence,” it denied Plaintiffs’ motions *in limine*
20 except for the one seeking to exclude evidence regarding class members’ unrelated debts to Equity. ECF
21 No. 429. The Court initially denied that motion, but changed its ruling after Plaintiffs filed a motion for
22 reconsideration based on the Court’s previous decision to dismiss Equity’s offset affirmative defense. ECF
23 No. 447. Additionally, at trial, the Court ultimately excluded the PwC report and related *Consumer Justice*
24 *Foundation* evidence as hearsay and found that Equity’s collection costs could not be offset against class
25 members’ restitution, thereby agreeing with Plaintiffs’ arguments in their motions *in limine*. Dardarian Fee
26 Decl. ¶ 41.

27 Trial commenced on June 8, 2023. Over the course of the eight days of trial, the Parties called three
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1 of the five named Plaintiffs, all seven expert witnesses (some with multiple days of testimony), four
2 property-level personnel, and four corporate fact witnesses. Dardarian Fee Decl. ¶ 43. Based on Equity’s
3 earlier representations that it would call these witnesses for trial, Plaintiffs also prepared to defend or to
4 cross-examine: the two monolingual Spanish-speaking Named Plaintiffs, dozens of the 104 class members
5 Equity identified for the first time on its trial witness list in January 2023 (several of whom Equity
6 subpoenaed to appear at trial), 18 property-level personnel witnesses (most of whom Equity never
7 previously disclosed), and Equity’s corporate representative regarding its lost-use-of-funds damages.
8 Equity changed its mind about calling each of these witnesses – often with very short notice while trial was
9 proceeding. For example, Equity had confirmed its corporate representative for its lost-use-of-funds
10 defense would be testifying live up until the day before he was set to testify. After Equity withdrew the
11 witness at the last minute, Equity then objected to Plaintiffs’ designating the witness’s deposition testimony
12 in lieu of his live testimony as “untimely” – another argument that Equity ultimately lost. *Id.*

13 **6. Post-Trial Briefing and the Court’s Findings of Fact and Conclusions of Law**

14 Following trial, from July through October 2023, the Parties engaged in extensive post-trial
15 briefing, as each Party filed proposed findings of fact and conclusions of law, and submitted post-trial
16 briefs. Dardarian Fee Decl. ¶ 44.

17 In April 2024, the Court issued its findings of fact and conclusions of law resolving nearly every
18 issue in the case in Plaintiffs’ favor. ECF No. 546. The Court concluded that “The Standard Late Fee is
19 invalid because it is not the result of a reasonable endeavor by Equity to estimate its costs actually incurred
20 as a result of late rent.” Dardarian Fee Decl. ¶ 45. Regarding Woodland Park, the Court made the same
21 conclusion about the absence of any cost analysis but also invalidated the late fee because the Woodland
22 Park Plaintiffs did not agree in writing to the \$50 Late Fee, which is a requirement under Section 1671(d),
23 and because the fee was not proportionate to the costs Equity actually incurred from late rent. *Id.* The
24 Court granted declaratory relief, declaring “that the Standard Late Fee provision in Equity’s residential
25 leases in California is null and void under Section 1671(d),” and that “Equity has engaged in an unlawful
26 business practice” in violation of the Unfair Competition Law. *Id.*

27 The Court also ordered the Parties to further brief the injunctive relief issues and to update their
28

1 restitution and damages analyses. Dardarian Fee Decl. ¶ 46. Plaintiffs updated their calculations of
2 restitution, offset by their experts' calculation of Equity's damages, through April 30, 2024 (to account for
3 Equity's cessation of the Standard Late Fee on May 1, 2024) and also briefed injunctive relief. *Id.* The
4 Court ultimately determined that Plaintiffs' request for a permanent injunction was moot because Equity
5 represented that it had "stopped charging the Standard Late Fee, removed the fee from their California
6 leases, informed residents that they will not charge the fee, ceased collection activity on unpaid late fees,
7 paused adverse credit reporting for residents with unpaid late fees, and commenced the process of reversing
8 and crediting accounts that were assessed with the disputed late fees." *Id.* ¶ 47.

9 The Court determined that the Classes were not entitled to post-trial restitution and ordered further
10 briefing on the measure of restitution up until 75 days before the June 8, 2023 trial date, which the Parties
11 submitted in October 2025. *Id.* ¶ 48. Plaintiffs also prepared a final judgment and joint proposed
12 distribution plan to file on November 14, 2025, but the Parties instead reached an agreement in principle to
13 settle the case. *Id.* ¶ 49.

14 **7. Van Cott v. Equity Residential**

15 Class Counsel here are also settlement class counsel in the separate and related action *Van Cott v.*
16 *Equity Residential, et al.*, which includes Equity residents who were first assessed a Standard Late Fee after
17 October 28, 2022, after the class definition in this case closed. The Parties reached a classwide settlement
18 in that case, which provides approximately 21,800 class members with a total of \$2,934,620 in restitution
19 of Standard Late Fees paid or credits for late fees charged but not yet paid. This Court granted final
20 approval of the settlement on January 9, 2026, approved Plaintiff's request for \$430,000 in attorneys' fees
21 and costs, and approved Class Counsel's 2025 hourly rates. The Plaintiff and class in that case benefited
22 from Class Counsel's experience and successes in litigating the *Munguia-Brown* case, which helped lead to
23 a swift resolution of the related action. Dardarian Fee Decl. ¶ 52.

24 In sum, for the past eleven years Equity has fought vigorously against this case and has thrown up a
25 variety of roadblocks to make this litigation more difficult and burdensome for Plaintiffs, yet Plaintiffs had
26 the tenacity and skill to overcome those roadblocks and ultimately prevail in a landmark effort that not only
27 halted Equity's longstanding illegal practice of charging an excessive late fee to hundreds of thousands of
28

1 its California tenants but restores significant amounts of unlawful late rent charges and sends a message
 2 throughout the residential lease community that excessive late fees are no longer a slam dunk way for
 3 landlords to generate extra revenue from their tenants.

4 **III. ARGUMENT**

5 In a class action settlement, the court may award reasonable attorney’s fees and nontaxable costs
 6 that are authorized by law or by the parties’ agreement. Fed. R. Civ. P. 23(h). In approving fees under a
 7 class action settlement, the Court has “an independent obligation to ensure that the award ... is reasonable.”
 8 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). As Plaintiffs’ underlying
 9 claims are based on state law, the Court applies state law with respect to Plaintiffs’ request for attorneys’
 10 fees. *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 65 F.4th 1145, 1148-49 (9th Cir. 2023);
 11 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

12 Plaintiffs respectfully request an award of \$17,227,761.62 in fees, costs and expenses, which
 13 represents approximately \$16,878,776.72 for fees, and \$348,984.90 for non-expert costs, although the full
 14 amount could also be awarded solely as attorneys’ fees. This request is amply justified on this record.
 15 Plaintiffs’ requested amount of attorneys’ fees, costs, and expenses through final approval is reasonable and
 16 less than the amount to which Class Counsel is entitled under applicable law.

17 **A. Fee Shifting Applies to the Claims Plaintiffs Successfully Litigated in this Case.**

18 A lodestar approach to calculating fees “is appropriate in class actions brought under fee-shifting
 19 statutes.” *In re Bluetooth*, 654 F.3d at 941, 943. Plaintiffs are entitled to seek “reasonable attorneys’ fees”
 20 under Equity’s Standard Lease. *See* Dardarian Fee Decl. Ex. 10 (Standard Lease) (“the party that does not
 21 prevail in any litigation commenced under this Lease will pay all attorneys’ fees and costs reasonably
 22 incurred by the prevailing party in prosecuting or defending such litigation, up to a maximum of \$2,000”
 23 per class member lessee);⁵ *see also* Cal. Civ. Code § 1717(a) (providing fees and costs for “any action on a
 24 contract” that so provides). Under California law, “reasonable attorneys’ fees” under a contract are
 25 calculated using the lodestar method. *Holguin v. Dish Network LLC*, 229 Cal. App. 4th 1310, 1329 (2014).
 26 Plaintiffs also seek their lodestar under California Civil Procedure Code section 1021.5, which applies to a
 27 _____

28 ⁵ The Parties stipulated that this lease is a representative exemplar of the Standard Lease used by
 Equity throughout the class period. ECF No. 546 at FOF No. 32.

1 successful party in (1) any action that has resulted in the enforcement of an important right affecting the
2 public interest, if: (2) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the
3 general public or a large class of persons; (3) the necessity and financial burden of private enforcement are
4 such as to make the award appropriate; and (4) such fees should not in the interest of justice be paid out of
5 the recovery. Cal. Civ. Proc. Code § 1021.5; *Indep. Living Ctr. of S. Cal., Inc. v. Kent*, 909 F.3d 272, 283
6 (9th Cir. 2018); *see also In re Bluetooth*, 654 F.3d at 941; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
7 (9th Cir. 1998).

8 Plaintiffs are the prevailing party entitled to recover their attorneys' fees and costs under the
9 Standard Lease. They also meet the requirements of California Code of Civil Procedure section 1021.5.
10 First, in successfully litigating this action under California Civil Code section 1671(d), Plaintiffs have
11 enforced important consumer and tenant rights that are vital to the public interest. *Beasley v. Wells Fargo*,
12 *NA*, 235 Cal. App. 3d 1407, 1418 (1992) (important public interest in case to recover excessive fees that
13 were invalid liquidated damages under Section 1671(d)); *Skinner v. Ken's Foods, Inc.* 53 Cal. App. 5th
14 938, 951 (2020) (“[T]he enforcement of the California consumer protections laws [is] an important right
15 affecting the public interest.”). Second, the restitution of 87% of all late fees paid, credits to class member
16 accounts for fees charged but not yet paid, and the cessation of Equity's Standard Late Fee policy
17 significantly benefit “a large class of persons,” numbering nearly 200,000 class members. This case also
18 benefits tenants in California as a whole because it serves as a deterrent against other landlords who are
19 charging excessive late fees or who have set late fees without engaging in a reasonable endeavor to
20 estimate fair average compensation for their actual late rent costs. *See Beasley*, 235 Cal. App. 3d at 1417
21 (upholding award of Cal. Civ. Proc. Code § 1021.5 attorneys' fees for class action under Cal. Civ. Code §
22 1671(d) which benefited thousands of class members and indirectly benefited California customers by
23 serving as a deterrent against unlawful fees).

24 In addition, the necessity and financial burden of private enforcement makes an award appropriate
25 in this case. Government agencies did not take any action to investigate or enforce class members' rights,
26 making private enforcement necessary. And the litigation placed a large financial burden on Plaintiffs as
27 Class Counsel dedicated thousands of hours and spent close to two million dollars on expert expenses and
28

1 costs on a contingency basis to vindicate claims that Equity vigorously fought. Finally, in the interest of
2 justice, none of the fees should be paid out of the class recovery. Given the relatively low recovery
3 individual tenants could expect to obtain under section 1671(d) compared to the costs of litigation, fee-
4 shifting encourages the enforcement of this important consumer right.

5 **B. Plaintiffs' Fee Request, Which Is Substantially Less Than Their Actual Lodestar, Is**
6 **Reasonable.**

7 The “starting point of every fee award” under California law is to determine the amount of
8 reasonable attorney fees based on the “lodestar-multiplier” method. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.
9 5th 480, 498 (2016) (quoting *Serrano v. Priest*, 20 Cal. 3d 25, 49 n.23 (1997)). “Using that method, the
10 trial court first determines a touchstone or lodestar figure based on a careful compilation of the time spent
11 by, and the reasonable hourly compensation for, each attorney, and the resulting dollar amount is then
12 adjusted upward or downward by taking various relevant factors into account.” *Chavez v. City of Los*
13 *Angeles*, 47 Cal. 4th 970, 985 (2010) (citing *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 321-22 (1983)).
14 There is a strong presumption that the lodestar amount represents a reasonable fee. *PLCM Grp. v. Drexler*,
15 22 Cal. 4th 1084, 1097 (2000), *as modified* (June 2, 2000); *see also Stanger v. China Elec. Motor, Inc.*, 812
16 F.3d 734, 738 (9th Cir. 2016).

17 Class Counsel’s lodestar through February 28, 2026 is \$22,493,911.75 based on 27,466.75 hours of
18 work, and after the exercise of significant billing judgment that reduced Plaintiffs’ request by 2,368.30
19 hours or \$1,629,677.50 (6.76% of total fees incurred). Dardarian Fee Decl. ¶ 90. The Dardarian Fee
20 Declaration sets forth this lodestar broken down by biller, and broken down by billing category.

21 Class Counsel also anticipate reasonably incurring additional fees and costs through final
22 distribution of the settlement for performing additional tasks that include finalizing and filing Plaintiffs’
23 Motions for Reasonable Attorneys’ Fees, Costs, and Expenses, the Class Representative Service Awards,
24 and for Final Approval of the Class Action Settlement; working with Defense Counsel and the Settlement
25 Administrator to facilitate class notice to those class members who have not yet received the notice
26 disseminated on March 2, 2026; responding to class member inquiries regarding the settlement; responding
27 to any objections to the settlement; monitoring the distribution of awards to class members under the
28

1 settlement; and preparing and filing a Post-Distribution Accounting to the Court. Dardarian Fee Decl. ¶ 62.
 2 Class Counsel will update the Court with their total lodestar prior to the hearing of this motion.

3 Class Counsel's requested attorneys' fee is reasonable. The time spent on this action was effective
 4 and diligently performed, especially in light of the prolonged length and difficulty of this litigation. *See*
 5 Dardarian Fee Decl. ¶ 63. Their work resulted in an outstanding settlement that restores to the Classes
 6 nearly all the unlawful late fees Equity charged them. Furthermore, their requested hourly rates are well
 7 within the range of market rates charged by attorneys with similar skill and experience handling complex
 8 litigation in the Bay Area and have been awarded to Class Counsel in the related *Van Cott* case. *Id.* ¶ 64.
 9 Plaintiffs' fee request is further reasonable in light of the negative multiplier that will result from Plaintiffs'
 10 fee request, in spite of the fact that a positive multiplier is amply justified in this case.

11 **1. Class Counsel's Hours Are Documented and Reasonable.**

12 The lodestar inquiry begins with an examination of whether the hours that Class Counsel expended
 13 on litigation were reasonable. The California Supreme Court has instructed that attorney fee awards
 14 "should be fully compensatory," and absent "circumstances rendering the award unjust" an award "should
 15 just ordinarily include compensation for *all* the hours *reasonably spent*." *Ketchum v. Moses*, 24 Cal. 4th
 16 1122, 1133 (2001) (emphasis original); *see also Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (Attorneys
 17 who obtain excellent results in the public interest "should recover a fully compensatory fee. Normally this
 18 will encompass all hours reasonably expended on the litigation"). "By and large," courts should defer to
 19 attorneys' "professional judgment as to how much time [they were] required to spend on the case."
 20 *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534
 21 F.3d 1106, 1112 (9th Cir. 2008)).

22 The number of hours that Class Counsel devoted to this case is eminently reasonable, particularly
 23 because this litigation was hard-fought for more than a decade and through trial and post-trial briefing, and
 24 because of the myriad successes Class Counsel obtained for the Classes through litigation and settlement
 25 negotiations.

26 It is well settled that a reasonable fee award must take into account the nature of the defendant's
 27 defense strategy. *See, e.g., Frank Music Corp. v. MGM, Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989); *Peak-*
 28

1 *Las Positas Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (2009). Here, the number of hours expended
 2 were necessary to combat Equity’s aggressive litigation tactics and extensive delays in discovery, which
 3 increased the amount of work and time necessary to resolve this matter. As described above, Plaintiffs’
 4 counsel litigated this case for over eleven years against Defendants who engaged in such obstructionist
 5 tactics as falsely claiming that electronically available data would take over 15 years to produce in
 6 hardcopy, concealing internal documents that proved liability and later claiming they did not exist,
 7 submitting false and misleading evidence to defeat summary judgment, filing retaliatory counterclaims
 8 against all class members to intimidate them, and repeatedly seeking decertification of the class after
 9 multiple failed attempts. These tactics forced Plaintiffs’ counsel to file fourteen discovery dispute letter
 10 briefs and multiple motions to compel, and to defeat the same arguments raised repeatedly in motions for
 11 class certification, decertification and summary judgment. Plaintiffs’ counsel met each of these challenges
 12 with skill and tenacity, ultimately prevailing at an eight-day bench trial and securing this landmark result.

13 In addition, in deciding fee requests, courts may “consider whether an attorney’s incivility in
 14 litigation has affected the litigation costs.” *Karton v. Ari Design & Constr., Inc.*, 61 Cal. App. 5th 734, 738
 15 (2021) (“It is a salutary incentive for counsel in fee-shifting cases to know their own low blows may return
 16 to hit them in the pocketbook.”); *see also Snoeck v. ExakTime Innovations, Inc.*, 96 Cal. App. 5th 908, 911
 17 (2023) (courts may consider incivility by a party in determining appropriate fee awards). As set forth
 18 above and in the accompanying Dardarian Fee Declaration, that certainly was the case here. Dardarian Fee
 19 Decl. ¶ 16. *See also* Decls. of Pls. Javanni Brown, Norma Rodriguez Garcia, Angelina Magaña, David
 20 Bonfanti, and Shannah Smith in Supp. of Pls.’ Mot. for Service Awards, filed herewith.

21 Class Counsel documented their work in this case with detailed, itemized time records, that log
 22 each activity down to .1 of an hour. Time records are *prima facie* evidence that Class Counsel’s hours are
 23 reasonable. *See, e.g., Hensley*, 461 U.S. at 437 n.12 (adequate time records “identify the general subject
 24 matter of ... time expenditures”); *Horsford v. Bd of Trustees of Cal. State Univ.*, 132 Cal. App. 4th 359, 396
 25 (2005). The attorney declarations submitted herewith summarize these time records,⁶ explain Class
 26 Counsel’s billing procedures, how counsel allocated case work, and summarize by each biller the work

27 _____
 28 ⁶ Plaintiffs will make their many hundreds of pages of detailed time records available to the Court and
 Class Members upon request.

1 performed that was necessary to prosecute this case effectively and efficiently. *See* Dardarian Fee Decl. ¶¶
2 67-86 & Ex. 2; Nicholas Decl. ¶¶ 17-25 & Ex. 1; McBride Decl. ¶¶ 5-15 & Ex. 1. These declarations show
3 that Class Counsel reasonably and necessarily spent time performing all of the tasks described in the history
4 recounted above. All of this work is compensable. *See, e.g., Serrano v. Unruh*, 32 Cal. 3d 621, 639
5 (1982); *Hensley*, 461 U.S. at 431.

6 Plaintiffs also categorized their billing by tasks. Plaintiffs' accompanying declarations explain how
7 many hours were spent on tasks related to, for example, taking and defending depositions, reviewing and
8 analyzing documents and data, briefing discovery and substantive motions, preparing for trial, and working
9 on post-trial briefing. *See* Dardarian Fee Decl. ¶¶ 97-98; *see also* Nicholas Decl. ¶ 19 & Ex. 1; McBride
10 Decl. ¶ 6 & Ex. 1.

11 Class Counsel assigned tasks to maximize efficiency and to minimize the duplication of effort. *See*
12 Dardarian Fee Decl. ¶ 87; *see also* Nicholas Decl. ¶ 20; McBride Decl. ¶ 7. They then further reviewed
13 their billing records on an entry-by-entry basis to exercise billing judgment, including by removing
14 inefficient or duplicative work and clerical or purely administrative entries where they were found. *See*
15 Dardarian Fee Decl. ¶¶ 88-91; *see also* Nicholas Decl. ¶ 20; McBride Decl. ¶ 7. In total, through February
16 28, 2026, Class Counsel deducted 2,368.30 of their hours worked (totaling \$1,629,677.50) in the exercise
17 of billing judgment, resulting in a decrease of 6.76 percent of Class Counsel's total lodestar. *See* Dardarian
18 Fee Decl. ¶ 90. On top of this reduction from billing judgment, Class Counsel's fee request of
19 \$16,878,776.72 represents a reduction of an additional \$5,615,135.03 from their \$22,493,911.75 audited
20 lodestar. This reduction (a 25% reduction from their lodestar, post-billing judgment) is more than
21 sufficient to account for any other unnecessary duplication, inefficiency, clerical or administrative time, or
22 billing errors. *See, e.g., Davis v. City & County of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992),
23 *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993) (5% billing reduction by counsel sufficient
24 to address clerical time and other billing errors); *see also Moreno*, 534 F.3d at 1112 (recommending courts
25 defer to "winning lawyer's professional judgment" as to amount of time required, and limiting reductions
26 to "no greater than 10 percent—a 'haircut'—based on [a court's] exercise of discretion and without a more
27 specific explanation"). That Class Counsel are taking a sizeable reduction in their lodestar, even after
28

1 exercising billing judgment further demonstrates the reasonableness of Plaintiffs' fee request. No further
 2 reduction is warranted.

3 **2. Class Counsel's Hourly Rates Are Reasonable and in Line with Those of Attorneys**
 4 **with Commensurate Skill, Experience, and Reputation in the Bay Area.**

5 The second part of the lodestar analysis is evaluating the reasonable market value of Class
 6 Counsel's services at an hourly rate. Counsel are entitled to compensation at the prevailing market rates for
 7 attorneys of similar skill and experience conducting similar work in the relevant community. *See PLCM*
 8 *Grp.*, 22 Cal. 4th at 1096 (affirming attorney fee award based "on the number of hours expended by
 9 counsel multiplied by the prevailing market rate for comparable legal services in San Francisco, where
 10 counsel is located"); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *see, e.g., In re*
 11 *LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 591 (N.D. Cal. 2015) ("The reasonableness of the rates is
 12 judged in comparison to the prevailing rates in the community, which here is Bay Area in Northern District
 13 of California, for similar work performed by attorneys with similar skills and experience."). "Affidavits of
 14 the Plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate
 15 determinations in other cases, particularly those setting a rate for the Plaintiff's attorney, are satisfactory
 16 evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403,
 17 407 (9th Cir. 1990); *see also Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013).

18 Here, Class Counsel's request for fees based on their 2025 hourly rates⁷ is reasonable in light of
 19 their significant experience, expertise, skill, and reputation litigating complex class actions, including their
 20 uniquely invaluable experience litigating this case for over 11 years, and their requested rates are
 21 commensurate with the rates charged by practitioners with similar experience within the Bay Area legal
 22 market. *See Dardarian Fee Decl.* ¶¶ 99-106; *Nicholas Decl.* ¶ 26; *McBride Decl.* ¶ 6. This Court recently
 23 approved Class Counsel's 2025 rates in the related *Van Cott* case, explaining that these rates "are
 24 reasonable and within the range of market rates charged by attorneys with similar skill and experience
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27 ⁷ Class Counsel are entitled to use their current hourly rates to calculate the lodestar on all time spent
 28 since the inception of the case in order to compensate for delay in payment. *See Missouri v. Jenkins*,
 491 U.S. 274, 283-84 (1989); *Perdue v Kenny A.*, 559 U.S. 542, 555 (2010); *Graham v.*
DaimlerChrysler Corp., 34 Cal. 4th 553, 583 (2004).

1 handling similarly complex litigation in this district.” Order Grant’g Final Approval 9, *Van Cott*, ECF No.
2 36. These same rates should be approved here.

3 In addition to this Court’s approval of Class Counsel’s 2025 rates in January of this year, Class
4 Counsel’s hourly rates have been approved by other federal and state courts. As one of the most well-
5 established public interest class action litigation boutiques in the country, DHKL’s hourly rates are
6 routinely approved by federal and state courts within the Bay Area and beyond. *See Dardarian Fee Decl.* ¶
7 99, 106 (citing cases). Similarly, N&T’s hourly rates, which are based on the San Diego legal market, are
8 routinely approved by federal and state courts within California, and elsewhere, including the Northern
9 District of California. *See Nicholas Decl.* ¶ 22 (citing cases).

10 Additionally, DHKL’s hourly rates, including its 2025 rates, have been paid by several entities with
11 whom DHKL has class action and complex settlement agreements that require hourly work based on actual
12 hourly rates, including the City of San Jose, the Forty Niners Football Co., the City of Santa Clara, the City
13 of Long Beach, and Kaiser Permanente. *Dardarian Fee Decl.* ¶ 56. *See Carson .v Billings Police Dep’t*,
14 470 F.3d 889, 892 (9th Cir. 2006) (“that a lawyer charges a particular hourly rate, and gets it, is evidence
15 bearing on what the market rate is, because the lawyer and his clients are part of the market”). Class
16 Counsel’s hourly rates are also comparable to those judicially approved for other attorneys in the Bay Area
17 with commensurate skill, experience, and reputation in handling complex class litigation. *See Dardarian*
18 *Fee Decl.* ¶ 105 (citing cases).

19 In support of their motion for attorneys’ fees in the *Van Cott* case, Plaintiffs submitted the
20 Declaration of Richard M. Pearl, an expert in issues related to court-awarded attorneys’ fees. He attested
21 that Class Counsel’s rates—which are the same rates at issue here—were well within the range of market
22 rates for attorneys of comparable skill, experience and reputation in the Bay Area. *See Declaration of*
23 *Richard M. Pearl, Van Cott*, ECF No. 28-4. This Court cited the Pearl declaration as evidence that
24 counsel’s rates were reasonable. Order Grant’g Final Approval 9, *Van Cott*, ECF No. 36 at 9. Mr. Pearl’s
25 declaration supports the same rates being approved here.

26 Given Class Counsel’s substantial experience in complex class action litigation and the
27 combination of expertise and skill that they were able to bring to this case, and the unique expertise they
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1 gained in litigating this case for over eleven years, the Court should approve their requested hourly rates as
2 reasonable and commensurate with the rates charged by similarly skilled counsel in similar complex civil
3 litigation in this District.

4 **3. Class Counsel Do Not Seek the Multiplier to Which They Are Entitled.**

5 Plaintiffs' request for \$17,227,761.62 in fees and costs (including \$16,878,776.72 for fees) is also
6 more than reasonable because the amount Class Counsel seeks is only approximately 75% of their audited
7 lodestar, despite an upward multiplier being justified in this case. Dardarian Fee Dec. ¶ 107. Under
8 California law, courts may adjust Class Counsel's lodestar upward or downward by a multiplier based on
9 "reasonableness factors," including the benefits obtained for the class, the quality of the representation, the
10 novelty and complexity of the issues in the case, the undesirability of the case, the risk that Class Counsel
11 would not get paid, and the extent to which the litigation precluded other employment. *In re Bluetooth*, 654
12 F. 3d at 941-42 (citation and quotation marks omitted); *Ketchum*, 24 Cal. 4th at 1132. All of these factors
13 would weigh strongly in favor of an upward multiplier here.

14 As detailed above, Class Counsel obtained an outstanding result for the classes. Plaintiffs have
15 secured restitution of nearly the full value of the late fees charged to class members and declaratory relief
16 that resulted in significant changes to Equity's late fee policy, and a ruling that Equity's late fees were
17 unlawful under California law. *See* Dardarian Prelim. Decl. ¶ 48. Obtaining this "exceptional benefit," on
18 behalf of nearly 200,000 class members is particularly outstanding, and required exceptional representation,
19 in light of the difficult and novel issues in this case, and the challenges presented by Equity's aggressive
20 defense of the case. *See Graham*, 34 Cal. 4th at 582. By obtaining these benefits for the Classes and a
21 ruling nullifying Equity's percentage-based late fee, Class Counsel have successfully enforced Section
22 1671(d), which has "long been judicially recognized to be vital to the public interest," *see Beasley*, 235 Cal.
23 App. 3d at 1418.

24 In addition, Class Counsel assumed the substantial risk of not receiving payment in accepting and
25 litigating this case for over eleven years on a contingency basis. *Ketchum*, 24 Cal. 4th at 1138 (a multiplier
26 "reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned
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1 compensation”). The significant time and effort invested into successfully litigating this hard-fought case
2 also precluded Class Counsel from other employment.

3 It also bears emphasis that Plaintiffs expended \$1,644,811.55 in expert costs to date, which they
4 have paid out of pocket but are not recovering as costs and expenses. Instead, they are merely seeking
5 recovery of \$348,984.90 in court costs, deposition costs, mediation fees, and other taxable or routine out-
6 of-pocket costs and expenses that are authorized under California law and Federal Rule 54. Dardarian Fee
7 Decl. ¶ 110. Expert expenses in this case were essential to the claims and defenses, and to the calculation
8 of the restitution and claimed offsets. Plaintiffs are continuing to incur expert expenses related to
9 calculating final awards. *Id.* ¶ 111. The fact that Class Counsel took on these extreme costs with no chance
10 of recovery, in addition to carrying the burden of millions of dollars in lodestar on a contingent basis for
11 over a decade, militates strongly in favor of a lodestar multiplier to compensate for undesirability of the
12 case and contingent risk. Yet Plaintiffs are not seeking a multiplier here.

13 Given that Plaintiffs are well justified in seeking a substantial multiplier on their lodestar but are
14 instead taking an enormous deduction therefrom, the Court should award Plaintiffs the requested attorneys’
15 fees as reasonable.

16 **C. A Percent-of-Fund Cross Check Affirms the Reasonableness of the Requested Award.**

17 The Ninth Circuit “do[es] not require courts employing the lodestar method to perform a
18 ‘crosscheck’ using the percentage method.” *In re Hyundai & Kia Econ. Litig.*, 926 F.3d 539, 571 (9th Cir.
19 2019) (citations omitted). However, a cross-check here further supports Plaintiffs’ request.

20 In calculating the value of the settlement, the Court should include all monetary relief Plaintiffs
21 have obtained under the settlement, including restitution (\$22,707,238.38), attorneys’ fees and costs
22 (\$17,227,761.62), service award payments (\$125,000), settlement administration costs (approximately
23 \$300,000), and credits to class members’ accounts (approximately \$2,939,639.53). The Court should also
24 include the value of Equity ceasing its Standard Late Fee policy in April 2024 as a direct result of Plaintiffs
25 obtaining declaratory relief invalidating its Standard Late Fee. This case provides a clear record of the
26 amount of fees charged to the class during the class period, and it is thus possible to “accurately ascertain[]”
27 the value of that relief for class members. *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003)

1 (value of injunctive relief can be included in measure of a common fund where it can be accurately
2 ascertained); *Nevarez v. Forty Niners Football Co., LLC*, 474 F. Supp. 3d 1041, 1052 (N.D. Cal. 2020)
3 (same); *Walsh v. Kindred Healthcare*, No. 3:11-cv-00050-JSW, 2013 WL 6623224, at *3 (N.D. Cal. Dec.
4 16, 2013) (same). Plaintiffs estimate that Equity’s cessation of the Standard Late Fee after April 30, 2024
5 led to Class Members saving approximately \$6.6 million to date, plus an additional \$8.5 million of value
6 going forward. Dardarian Fee Decl. ¶ 115. As such, the total value Plaintiffs have won for the Classes is
7 over \$58.40 million to date. Consequently, Plaintiffs’ request for attorneys’ fees amounts to 29% of the
8 total value of the constructive common fund.

9 Plaintiffs’ request is well within range of the benchmark 25% that courts in the Ninth Circuit apply
10 to common fund cases. *See In re Bluetooth*, 654 F.3d at 942. The benchmark is not rigid, but rather “a
11 starting point for analysis.” *Vizcaino*, 290 F.3d at 1048. Ultimately, the fee percentage approved by the
12 Court “must be supported by findings that take into account all of the circumstances of the case.” *Id.* An
13 upward departure from the benchmark may be justified by a non-exhaustive list of factors, including the
14 results achieved for the class, the risk class counsel undertook, the benefits achieved beyond the cash
15 settlement fund, and “the burdens class counsel experienced while litigating the case.” *See In re Optical*
16 *Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 930 (9th Cir. 2020). The record here justifies the modest
17 upward departure to 29%, particularly because this case settled after trial, Class Counsel shouldered
18 considerable costs and risks of the case by litigating on a contingency basis against an intractable defendant
19 for over a decade, won an outstanding result for the class, and benefited the public by winning a ruling that
20 a percentage-based late fee violated California law. Dardarian Fee Decl. ¶ 117; *see, e.g., Troy v. Aegis*
21 *Senior Cmty. LLC*, No. 4:16-cv-03991-JSW, 2021 WL 6129106, at *3-4 (N.D. Cal. Aug. 23, 2021)
22 (White, J.) (granting fee request of \$6.35 million, representing 39% of common fund, where plaintiffs also
23 obtained significant injunctive relief); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1023 (E.D. Cal.
24 2019) (attorneys’ fees of 33⅓% of \$40,000,000 common fund were reasonable “given the complexity of
25 [the] case, its lengthy procedural history, and the extraordinary results achieved for the class”); *Kanawi v.*
26 *Bechtel Corp.*, No. 3:06-cv-05566-CRB, 2011 WL 782244, at *1 (N.D. Cal. Mar. 1, 2011) (awarding 30%

1 of \$18.5 million fund); *In re Heritage Bond Litig.*, No. 2:02-ml-01475-DT, 2005 WL 1594403, at *18
 2 (C.D. Cal. June 10, 2005) (33 ⅓% of \$27,783,000 common fund awarded).

3 **D. Plaintiffs' Litigation Costs and Expenses Are Reasonable and Recoverable.**

4 The Settlement Agreement provides that “Class Counsel will make an application to the Court for
 5 an award of Attorneys’ Fees, Costs and Expenses in the Action that will not exceed \$17,227,761.62.” ECF
 6 No. 587-1, Ex. A (Settlement Agreement) ¶ 18. Through February 28, 2026, Plaintiffs have incurred and
 7 paid \$394,593.79 in out-of-pocket costs, including court filing fees, deposition costs, mediation fees, legal
 8 research, travel fees associated with the bench trial, and other trial related expenses. *See* Dardarian Fee
 9 Decl. ¶ 124; *see generally* Fed. R. Civ. P. 23(h), 54(d); N.D. Cal. L.R. 54-3; Cal. Civ. Proc. Code §
 10 1033.5(a) (allowable costs) & (c)(4) (in its discretion, court may also allow “[i]tems not mentioned”);
 11 *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 579-81 (9th Cir. 2010) (computerized legal research
 12 costs among those typically awarded to the prevailing party). Plaintiffs will incur additional costs and will
 13 supplement the cost figure prior to the Fairness Hearing. All costs incurred here were necessary to the
 14 prosecution of this litigation for the benefit of the class and would normally have been billed to a client
 15 paying for counsel’s services on a regular basis. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp.
 16 1362, 1372 (N.D. Cal. 1996) (awarding “necessary expenses incurred in furnishing effective
 17 representation”); *see, e.g., Clayborne v. Newtron, LLC*, No. 4:19-cv-07624-JSW, 2023 WL 5748773, at *6
 18 (N.D. Cal. Sept. 6, 2023) (White, J.) (quoting *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Class
 19 counsel is entitled to recover ‘those out-of-pocket expenses that would normally be charged to a fee-paying
 20 client.’”)) (awarding costs for legal research, filing, printing and photocopying, postage, and mediation as
 21 reasonably incurred). Accordingly, the Court should award Class Counsel reimbursement of \$348,984.90
 22 their actual litigation expenses as part of the award of \$17,227,761.62.

23 **IV. CONCLUSION**

24 For the reasons stated above, Plaintiffs respectfully request that the Court approve their request for
 25 \$17,227,761.62 in attorneys’ fees, costs and expenses.

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Dated: March 12, 2026

Respectfully submitted,

DARDARIAN HO KAN & LEE

/s/ Stephanie E. Tilden

Stephanie E. Tilden

Attorneys for Plaintiffs and the Certified Classes