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13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**
UNLIMITED JURISDICTION

15 SHELBY STEWART, CHARLETA
16 DABROWSKI, BENEDICT JOHNSON,
and KENYA MAYFIELD, individually
17 and on behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 KAISER FOUNDATION HEALTH
PLAN, INC., KAISER FOUNDATION
21 HOSPITALS, THE PERMANENTE
MEDICAL GROUP, INC., and
22 SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP,

23 Defendants.
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Case No.: CGC-21-590966

**NOTICE OF MOTION AND MOTION FOR
ATTORNEYS' FEES AND COSTS AND
CLASS REPRESENTATIVE SERVICE
AWARDS; MEMORANDUM OF POINTS
AND AUTHORITIES**

Hearing Date: February 9, 2022

Hearing Time: 9:00 am

Complaint filed: April 22, 2021

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 9, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 613 of the above-entitled Court, Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated (“Class Members”) will and hereby do move this Court for an order granting (1) Class Counsel’s request for fees of \$3,451,427.70; (2) \$64,228.90 in costs, and (3) service award payments of \$60,000 to Plaintiffs Dabrowski, Johnson, and Mayfield, and \$75,000 for Lead Plaintiff Stewart.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities in support thereof, the Declarations filed herewith, and oral argument on the motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After more than three years of investigating and negotiating a comprehensive resolution,
4 Plaintiffs have achieved a substantial class settlement for the benefit of thousands of class
5 members. Defendants will pay \$11,504,759 for pay and promotion claims and absorb substantial
6 seven figure internal costs to implement state-of-the-art programmatic relief to help ensure fair
7 pay and promotion practices and to facilitate a racially inclusive culture. Class Counsel’s requests
8 for fees of \$3,451,427.70; reimbursement of costs of \$64,228.90; and payment of service awards
9 of \$60,000-\$75,000 unequivocally warrants approval.

10 Each of the relevant factors (*i.e.*, results obtained, risks undertaken, novelty of issues,
11 preclusion of other work, counsel’s experience, and delay in award) supports a finding that the
12 requested fee award is reasonable, whether measured as a percentage of the class fund or based on
13 a lodestar cross-check. The costs advanced by Class Counsel should also be reimbursed. The
14 costs were appropriate and necessary to obtain the settlement. Likewise, the requested service
15 award payments of \$60,000 each to Plaintiffs Dabrowski, Johnson, and Mayfield, and of \$75,000
16 to Lead Plaintiff Stewart are justified by the significant effort Plaintiffs expended to achieve the
17 result here. Additionally, they took on considerable financial and reputational risk for the good of
18 the Class and as a public service in contributing to compliance with the California Labor Code
19 and anti-discrimination laws. The Class is fully informed of the requested fees, costs, and service
20 awards through the Court-approved Notice informing them of the requests. Therefore, and as
21 discussed herein, Plaintiffs respectfully request that the Court grant their requested fees, costs,
22 and service awards.

23 **II. ARGUMENT**

24 **A. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS’**
25 **FEES.**

26 Class Counsel request a fee award of \$3,451,427.70, or thirty percent (30%) of the
27 \$11,504,759 settlement amount. This award is reasonable, and is supported both by the standards
28 governing approval of fee awards in common fund class action settlements and the particular

1 facts, challenges, and successes in this case. California has long recognized a court’s equitable
2 power to award attorneys’ fees to a party who “has recovered or preserved a monetary fund for
3 the benefit of himself or herself and others.” (*Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
4 480, 488–489 (hereafter *Lafitte*.) Under California law, courts may consider the percentage-of-
5 recovery method, the lodestar-times-multiplier method, or a combination of methods to calculate
6 and award attorneys’ fees. (*Id.* at p. 506.) The choice of method is within the discretion of the
7 trial court, with “the goal under either the percentage or lodestar approach being the award of a
8 reasonable fee to compensate counsel for their efforts.” (*Id.* at p. 504.)

9 **1. Class Counsel’s Fee Request Is Reasonable Under the Percentage-of-**
10 **Recovery Method.**

11 In *Laffitte*, the California Supreme Court confirmed that the percentage-of-recovery
12 method is appropriate. (*Id.* at p. 506.) The percentage-of-the-fund method “calculates the fee as
13 a percentage share of a recovered common fund or the monetary value of plaintiffs’ recovery.”
14 (*Id.* at p. 489.) The Court further noted that using the percentage-of-recovery method, as
15 Plaintiffs seek to do here, provides a “better approximation of market conditions” in contingency
16 cases. (*Id.* at p. 503.) Under the percentage-of-recovery method, courts examine whether the
17 requested percentage matches “the amount of attorney fees typically negotiated in comparable
18 litigation.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 47 (hereafter
19 *Lealao*); see also *Chavez v. Netflix Inc.* (2008) 162 Cal.App.4th 43, 66 fn.11; *In re Consumer*
20 *Privacy Cases* (2009) 175 Cal.App.4th 545, 558.) This standard is readily met here.

21 **a. The Request for Thirty Percent of the Fund Is in Line with other Class**
22 **Action Settlements.**

23 Class Counsel’s request for thirty percent of the total settlement fund is reasonable
24 because it is consistent with the percentages awarded in other class action settlements. In
25 California class actions, “[e]mpirical studies show that, regardless [of] whether the percentage
26 method or the lodestar method is used, fee awards in class actions average around one-third of the
27 recovery.” (*In re Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 557, fn.13, citations
28 omitted.) That is less than the award sought here. The award sought here is an appropriate

1 percentage when compared to fee arrangements in other contingency fee litigations, including
2 class employment cases. (Declaration of Kelly M. Dermody in Support of Plaintiffs’ Motion for
3 Attorneys’ Fees, Costs, and Class Representative Service Awards (hereafter Dermody Decl.), ¶
4 15; Declaration of Felicia Medina in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and
5 Class Representative Service Awards ¶¶ 34–35 (hereafter Medina Decl.)) Further, Class
6 Counsel’s request is also less than the thirty-five (up to forty) percent fee the Class
7 Representatives authorized under their retainer agreements, and less than the thirty-three percent
8 (33%) fee awarded in most California class actions. (*Smith v. CRST Van Expedited, Inc.* (S.D.
9 Cal., Jan. 14, 2013), No. 10-CV-1116-IEG) 2013 WL 163293, at *5 [California has recognized
10 that most fee awards based on either a lodestar or percentage calculation are 33 percent]).¹ The
11 thirty percent fee requested is also consistent with the thirty percent fee award the Alameda
12 County Superior Court approved this year for Class Counsel in *Cuenca v. Kaiser Foundation*
13 *Health Plan, Inc.*, No. RG20065123 (hereafter *Cuenca*), an analogous race discrimination case on
14 behalf of Defendants’ Latinx employees, which adopted programmatic relief the *Stewart*
15 Plaintiffs first negotiated. (Dermody Decl., Ex. C, at 6:14–15 [*Cuenca* Final Approval Order].)

16 **b. Class Counsel Have Obtained an Efficient Resolution to This Case.**

17 Employing the percentage method in this case rewards the efficiency with which Class
18 Counsel obtained a resolution to the case. The California Supreme Court has said a benefit of the
19 percentage method is “the encouragement it provides counsel to seek an early settlement and
20 avoid unnecessarily prolonging the litigation.” (*Laffitte, supra*, 1 Cal.5th at p. 503.) The
21 percentage of the fund method acts as an important incentive to encourage counsel “to undertake
22 and diligently prosecute proper litigation for the protection or recovery of the fund.” *Melendres*
23 *v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 273, citation omitted.)

24 Class Counsel’s efforts to master the relevant facts and legal questions—through
25 extensive investigation and informal discovery, including during a global pandemic—reflected

26 _____
27 ¹ “California courts may look to federal authority for guidance on matters involving class action
28 procedures.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392 fn.18,
citations and internal quotation marks omitted.)

1 tenacity and skill. Class Counsel shielded Class Members from the risks, delays, and expenses of
2 protracted litigation, such as motion practice, the burden of formal discovery, and the risk of a
3 denial of class certification or losing the case on the merits. In the latter scenarios, all Class
4 Members would have received less or no recovery at all, notwithstanding the additional time
5 delay for prolonged litigation. Class Counsel made an informed judgment, based on extensive
6 investigation and two mediations prior to filing, that this settlement, as opposed to protracted
7 litigation, would effectively maximize relief to Class Members. Dermody Decl. ¶9; Medina Decl.
8 ¶¶ 8–13. That judgment was based on a careful evaluation of the risks present in the case, and by
9 applying years of experience litigating employment class actions. Dermody Decl. ¶¶ 6–8;
10 Medina Decl. ¶¶ 14–15. By prioritizing the interests of Class Members, Class Counsel secured
11 substantial benefits. Even if Plaintiffs had litigated the case to a favorable monetary outcome—
12 which is far from guaranteed—the Court could not compel the extensive enhancements to
13 Defendants’ business practices that Class Counsel negotiated here.

14 **2. Class Counsel’s Fee Request Is Also Reasonable Under A Lodestar Cross-**
15 **Check.**

16 An analysis of the lodestar is not required for an award of attorneys’ fees in California.
17 (See *Lealao, supra*, 82 Cal.App.4th at p.27 “[T]he lodestar method is not necessarily utilized in
18 common fund cases.”) However, the California Supreme Court has recognized the use of a
19 lodestar “cross-check” as a “mechanism for bringing an objective measure of the work performed
20 into the calculation of a reasonable attorney fee.” (*Laffitte, supra*, 1 Cal.5th at pp. 504–505.) To
21 establish the lodestar, courts multiply the number of hours counsel worked on the case by a
22 reasonable hourly rate. When conducting lodestar cross-checks, trial courts rely on counsel
23 declarations summarizing the work performed, billing rates, and overall time spent. (*Ibid.* .)

24 After calculating the lodestar, a court may recognize the propriety of an enhancement
25 multiplier to account for: (1) the results obtained; (2) the risks presented by the case; (3) the
26 novelty and difficulty of the issues involved; (4) the extent to which the litigation precluded other
27 employment by the attorneys; (5) the experience, reputation, and ability of the attorneys and the
28 skill they displayed in the case; and (6) the delay in awarding fees. (See *ibid.* [noting courts may

1 increase or decrease the lodestar considering a variety of these factors]; *Graham v.*
2 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 582 (same); *Ketchum v. Moses* (2001) 24 Cal.4th
3 1122, 1138 [citing *Serrano v. Priest* (1977) 20 Cal.3d 25, 49].)

4 The lodestar method fully supports the reasonableness of Class Counsel’s fee request.
5 Here, Class Counsel incurred 2,408.7 hours, or \$1,448,545.50 in lodestar. (Dermody Decl. ¶¶ 17–
6 18; Dermody Decl., Ex. A; Medina Decl. ¶ 22; Medina Decl., Ex. A.) Accordingly, the fee
7 request of \$3,451,427.70 reflects a lodestar multiplier of 2.38. This multiplier is well within the
8 range of what courts typically award in employment class actions. (See, e.g., *Cuenca, supra*, at p.
9 7 [2.89 multiplier] (Dermody Decl., Ex. C filed herewith); see also *Vizcaino v. Microsoft Corp.*
10 (9th Cir. 2002) 290 F.3d 1043, 1051–1052 [holding a multiplier of 3.65 was appropriate after
11 surveying 34 common-fund cases from 1996 to 2001 and finding the average multiplier for those
12 cases was 3.32]; *Smith v. Am. Greetings Corp.* (N.D.Cal., Jan. 29, 2016, No. 14-CV-02577-JST)
13 2016 WL 362395, at *9 [1.8 multiplier in wage and hour class action]; *Willner v. Manpower Inc.*
14 (N.D.Cal., June 22, 2015, No. 11-CV-02846-JST) 2015 WL 3863625, at *7 [2.10 multiplier in
15 wage and hour class action]; *Dyer v. Wells Fargo Bank, N.A.* (N.D.Cal. 2014) 303 F.R.D. 326,
16 334 [2.83 multiplier in class action by bank employees]; *Hopkins v. Stryker Sales Corp.*
17 (N.D.Cal., Feb. 6, 2013, No. 11-CV-02786-LHK), 2013 WL 496358, at *4–5 [2.76 multiplier].)

18 Further, under this method, Class Counsel are entitled to their requested hourly rates if
19 they are “within the range of reasonable rates charged by and judicially awarded comparable
20 attorneys for comparable work.” (*Children’s Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th
21 740, 783; see also *Ctr. for Biological Diversity v. County of San Bernardino* (2010) 188
22 Cal.App.4th 603, 616 (hereafter *Ctr. for Biological Diversity*) [generally, the reasonable hourly
23 rate “is that prevailing in the community for similar work”].) The reasonable market value of the
24 attorneys’ services is the measure of a reasonable hourly rate and “applies regardless of whether
25 the attorneys claiming fees charge nothing for their services, charge at below-market or
26 discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel.”
27 (*Ctr. for Biological Diversity*, at p. 619.) The rate determinations from other cases and from the
28 plaintiffs’ attorneys are satisfactory evidence of the prevailing market rate. (*United Steelworkers*

1 *of Am. v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.)

2 Class Counsel’s hourly rates are set forth in the supporting Declarations of Kelly M.
3 Dermody and Felicia Medina. (Dermody Decl., Ex. A; Medina Decl., Ex. A.) These rates are
4 reasonable given the substantial experience of Class Counsel in complex class actions and
5 employment discrimination litigation. (Dermody Decl. ¶¶ 11–14; Medina Decl. ¶ 33–34.) Other
6 courts have approved Class Counsel’s hourly rates. (See, e.g., *Cuenca, supra*, at p. 6 [specifically
7 approving the billing rates of lead Class Counsel Kelly M. Dermody and Felicia Medina]
8 (Dermody Decl., Ex. C); see also *In re Intuit Data Litig.* (N.D.Cal., May 15, 2019, No. 15-CV-
9 1778-EJD-SVK), 2019 WL 2166236, at *1 [approving LCHB rates]; *In re Anthem, Inc. Data*
10 *Breach Litig.* (N.D.Cal., Aug. 17, 2018, No. 15-MD-02617-LHK), 2018 WL 3960068, at *17
11 [approving LCHB rates]; *Campbell v. Facebook Inc.* (N.D.Cal., Aug. 18, 2017, No. 4:13-cv-
12 05996-PJH), 2017 WL 3581179, at *7 [approving LCHB rates]; *In re Volkswagen “Clean*
13 *Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.* (N.D.Cal., Mar. 17, 2017, No. 2672 CRB
14 (JSC)), 2017 WL 1047834, at *5 [approving LCHB rates]; *In re High-Tech Employee Antitrust*
15 *Litigation*, (N.D.Cal., September 2, 2015, No. 11-CV-02509-LHK) at *17 [approving LCHB
16 rates].

17 Further, the hours recorded by Class Counsel are reasonable. Hours are reasonable if “at
18 the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to
19 advance or protect his client’s interest.” (*Moore v. Jas. H. Matthews & Co.* (9th Cir. 1982) 682
20 F.2d. 830, 839; *Norman v. Housing Auth.* (11th Cir. 1988) 836 F.2d 1292, 1306 [“The measure of
21 reasonable hours is determined by the profession’s judgment of the time that may conscionably
22 be billed and not the least time it might theoretically have been done”].) In determining the
23 reasonableness of hours, the court may consider “the entire course of the litigation.” (*Vo v. Las*
24 *Virgenes Municipal Utility Dist.* (2000) 79 Cal.App.4th 440, 447.)

25 As described in Class Counsel’s declarations, the work performed included: fact
26 investigation including interviews with Plaintiffs and many Class Members over hundreds of
27 hours; developing a well-informed discovery plan; filing administrative complaints with the
28 California Department of Fair Employment and Housing and the Equal Employment Opportunity

1 Commission; identifying key corporate witnesses most knowledgeable about Defendants’
2 policies; negotiating a comprehensive pre-filing discovery process with Defendants, including the
3 production of policies, comprehensive personnel and payroll data, HR and training materials, and
4 most knowledgeable corporate witnesses for interview by Class Counsel; analyzing documents;
5 conducting adversarial interviews with Defendants’ corporate witnesses most knowledgeable
6 about the challenged practices; retaining a statistical expert and working with the expert to
7 develop a sophisticated regression analysis to identify potential systemic issues and develop
8 Plaintiffs’ alleged damages exposure; researching and interviewing diversity, equity, and
9 inclusion experts to help inform the practice change negotiations; drafting the complaint;
10 preparing mediation briefs; attending mediation; negotiating the Settlement Agreement, Notice,
11 and all related documents; soliciting Settlement Administrators for bids to perform the work and
12 selecting an administrator; creating a class member website for important case updates and key
13 documents; drafting the Preliminary Approval motion; and assisting in the administration of the
14 Settlement. (Dermody Decl. ¶¶ 2–8; Medina Decl. ¶¶ 2–8.)

15 Furthermore, Class Counsel will continue to work on this case for the next three years, at
16 a minimum, to monitor the programmatic relief post-settlement. In addition, Class Counsel must
17 still file their Motion for Final Approval and prepare for the Final Approval Hearing, and they
18 also anticipate spending significant time even after the Motion for Final Approval and final
19 fairness hearing answering class member questions, communicating with the Settlement
20 Administrator, and negotiating with Defendants as necessary regarding any settlement
21 administration issues that may arise. (See Dermody Decl. ¶ 16; Medina Decl. ¶ 37.) Therefore,
22 the 2.38 multiplier will continue to diminish as Counsel continues to work on the case. (*Ibid.*)
23 The lodestar and multiplier are therefore reasonable and support the requested fee award. As
24 outlined below, factors considered in awarding multipliers also support this conclusion.

25 **Results Obtained.** The first consideration in awarding attorneys’ fees under the lodestar
26 method are the results that counsel have achieved in the litigation. The over \$11.5 million
27 settlement reached in this case represents an excellent outcome for the Class. This amount
28 represents approximately 36.3% of the Classes’ total theoretical maximum recovery, excluding

1 PAGA penalties and the programmatic relief estimated to be valued at a minimum of \$2 million.
2 (Medina Decl. ¶ 32.) Under the Settlement, the average award for Exempt Class Members will
3 be approximately \$6,170 and for Non-Exempt Class Members the average award will be
4 approximately \$1,172. (*Ibid.*) As a result of the Settlement, Defendants have also agreed to
5 implement significant practices to ensure fair pay and promotion practices, including job analyses
6 across the Class positions, annual monitoring, and new training initiatives.

7 **Risks of Litigation.** From the beginning, prosecution of this class action has involved
8 financial risk for Class Counsel, who undertook the matter solely on a contingency basis, with no
9 guarantee of recovery. (Dermody Decl. ¶ 15; Medina Decl. ¶¶ 7, 28.) Class Counsel pursued this
10 action for more than three years without any guarantee of recovery. (*Ibid.*) As described at
11 greater length in Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement and
12 Mem. of Law in Support of Mot. For Preliminary Approval of Class Settlement (hereafter Motion
13 for Preliminary Approval) at 17–18, this litigation involved substantial risks, including the risks
14 of losing class certification, losing the claims on the merits, failing to prove the extent of
15 damages, and appeal of judgment, further extending the litigation. While Plaintiffs believe they
16 would have ultimately prevailed on the merits of their claims at trial and on appeal, they are also
17 cognizant of the significant risks they faced, especially in proving that the differential in pay and
18 promotion between Black and non-Black employees was due to race instead of bona-fide non-
19 race-related-factors. (Medina Decl. ¶ 14.)

20 **Novelty and Difficulty of Questions Involved.** The litigation presented difficult
21 questions, as described in Plaintiffs’ Motion for Preliminary Approval. (See Mot. for Prelim.
22 Approval at p. 17–18.) In particular, Defendants contended that no pay differential existed
23 between Black and non-Black employees when controlling for variables like grade and time in
24 job. This presented significant uncertainty as to which way a court might view the evidence, and
25 as to the damages recoverable for Class Members in this case. Additionally, class certification
26 may have proved difficult because Defendants argue that pay and promotional decisions are
27 decentralized, that compensation policies vary by market and across the organizations, and that
28 their pay and promotional policies give lower-level managers significant discretion in making

1 compensation decisions. Given the potential legal challenges and Class Counsel’s success in
2 negotiating significant relief despite them, this factor weighs in favor of Class Counsel’s fee
3 request.

4 **Preclusion of Other Work.** Class Counsel’s commitment to this case precluded both
5 firms from accepting other profitable cases, both because of the number of hours this case
6 required and because Class Counsel needed to ensure adequate resources to litigate the case if the
7 case did not settle. Dermody Decl. ¶ 17; Medina Decl. ¶ 7. The fact that Class Counsel was
8 precluded from accepting other work as a result of their work in this case also supports their fee
9 request. *Ketchum v. Moses, supra*, 24 Cal.4th at p. 1132 [citing *Serrano v. Priest, supra*, 20
10 Cal.3d at p. 49].)

11 **Experience and Skill of Counsel.** The experience and ability of Class Counsel were
12 essential to the successful result achieved here. Both firms,, are recognized for their excellence in
13 employment and civil rights litigation. (See Dermody Decl. ¶¶ 11–14; Medina Decl. ¶ 7.) Both
14 firms have significant experience litigating employment discrimination class actions. (*Ibid.*) This
15 expertise directly contributed to the excellent settlement in this case, and therefore supports the
16 award of fees. (See, e.g., *Rieckborn v. Velti PLC* (N.D.Cal., Feb. 3, 2015, No. 13-CV-03889-
17 WHO) 2015 WL 468329, at *21 [“the skill required to perform such work” favored the fee
18 award].)

19 In this case, Class Counsel’s skill and quality of work directly contributed to the
20 settlement achieved. As set forth above, Class Counsel performed a thorough investigation and
21 analysis of the issues in this matter, developed an appropriate factual and expert record, and relied
22 on their substantial experience to negotiate to a successful resolution involving creative and
23 cutting edge relief. Therefore, this factor also weighs in favor of granting the fee request.

24 **Delay in Awarding Fees.** Delay in payment also justifies the requested fee. (See
25 *Ketchum, supra*, 24 Cal.4th at p. 1138 [noting that adjustment to lodestar may include premium
26 for risk of delay in payment of fees].) By the time of the Final Approval Hearing, Class Counsel
27 will have invested thousands of hours without receiving any fees for their work on behalf of the
28 Class. (Dermody Decl., Ex. A; Medina Decl., Ex. A.) Class Counsel took on the financial risk of

1 seeking to represent the Class knowing that Class Counsel might not recover any compensation at
2 all, and if they did receive compensation, that they would not receive such compensation until
3 after a significant delay. (Dermody Decl. ¶ 15; Medina Decl. ¶ 7.) This final factor also weighs
4 in favor of Class Counsel’s fee request.

5 **B. CLASS COUNSEL’S REQUEST FOR REIMBURSEMENT OF COSTS IS**
6 **REASONABLE AND PROPER.**

7 Class Counsel seeks reimbursement of \$64,228.90 in out-of-pocket costs expended in this
8 case to be paid from the settlement fund. Courts may, and sometimes must, award costs in
9 successful employment litigation. (Cal. Lab. Code, § 2699(g)(1); Cal. Lab. Code, § 1197.5(h);
10 Cal. Gov’t Code, § 12965(b).) Class Counsel’s expenses include expert expenses, court fees,
11 document printing, messenger services, mail and phone communications, electronic legal
12 research, and mediator’s fees. (Dermody Decl. ¶ 21; Dermody Decl., Ex. B; Medina Decl. ¶ 36;
13 Medina Decl., Ex. B.) Courts regularly approve these types of expenses for reimbursement.
14 (See, e.g., *Plumbers & Steamfitters, Local 290 v. Duncan* (2007) 157 Cal.App.4th 1083, 1099
15 [holding computerized legal research costs are compensable]; see also *In re Media Vision Tech.*
16 *Sec. Litig.* (N.D.Cal. 1996) 913 F.Supp. 1362, 1366–1372 [finding postage, photocopying,
17 consulting and expert fees are compensable].) Moreover, the cost items expended were
18 reasonable and necessary for the successful prosecution of this case—Class Counsel could not
19 have successfully obtained the relief they did without having incurred each cost item.

20 By the time of the Final Approval Hearing, Class Counsel will have advanced costs in this
21 case, without any reimbursement, over a period of three years. Particularly for firms that perform
22 the majority of their work on contingency, any delay places significant financial pressure on them
23 because such firms typically do not receive compensation for hours expended until months or
24 years after the work is performed (and salaries paid). Additionally, Class Counsel will continue
25 to expend significant resources over the next three years overseeing the programmatic relief
26 imposed by the Settlement Agreement. (Dermody Decl. ¶ 16; Medina Decl. ¶ 29.)

27 Moreover, the award of costs accords with the Labor Code itself, which expressly
28 provides that persons injured by wage discrimination are entitled to “costs of the suit.” (Cal.

1 Labor Code § 1197.5(h).) Finally, although Class Counsel’s work is ongoing, Class Counsel will
2 not seek reimbursement of additional expenses to be incurred preparing for the Final Approval
3 Hearing, for continuing to oversee successful implementation of the settlement upon final
4 approval, nor for overseeing the implementation of the programmatic relief. (Dermody Decl. ¶
5 22; Medina Decl. ¶ 37.) The request for reimbursement of costs and expenses is reasonable.

6 **C. THE SERVICE AWARDS ARE JUSTIFIED BY THE TIME AND EFFORT**
7 **PLAINTIFFS EXPENDED AND THEIR RISKS IN PUBLICLY**
8 **PROSECUTING THIS LITIGATION.**

9 Plaintiffs seek service awards of \$60,000 for Plaintiffs Dabrowski, Johnson, and Mayfield
10 and \$75,000 for Lead Plaintiff Stewart. Service awards are typical in class actions. (Newberg on
11 Class Actions (4th ed. 2002) § 11:38, p. 81.) Service awards “are intended to compensate class
12 representatives for work done on behalf of the class to make up for financial or reputational risk
13 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as private
14 attorney general.” (*In re Cellphone Fee Termination Cases*, *supra*, 186 Cal.App.4th at pp. 1393–
15 1394, as modified July 28, 2010; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
16 186 Cal.App.4th 399, 412 [“Plaintiffs are eligible for reasonable incentive payments to
17 compensate them for the expense or risk they have incurred in conferring a benefit on other
18 members of the class”].)

19 The service awards sought here are fully justified by the risks undertaken by the Plaintiffs,
20 as well as the extraordinary effort they put forward on behalf of the Classes. The awards are well
21 within the range that California and federal courts have found reasonable. (See, e.g., *Cuenca*,
22 *supra.*, at p. 7–8 [awarding \$75,000 to class representative] (Dermody Decl., Ex. C); *Seaman v.*
23 *Duke University* (M.D.N.C., Sept. 25, 2019, No. 1:15-cv-462), 2019 WL 4674758, at *7-8
24 [awarding \$125,000 to class representative]; *In re High-Tech Employee Antitrust Litigation*
25 (N.D.Cal., September 2, 2015, No. 11-CV-02509-LHK), 2015 WL 5158730, at *17 [awarding
26 \$80,000 and \$120,000 to class representatives]; *In re Titanium Dioxide Antitrust Litigation*
27 (D.Md., December 13, 2013 No. 10-CV-00318(RDB)) 2013 WL 6577029, at *1 [awarding
28 \$125,000 to a class representative]; *Amochaev v. Smith Barney* (N.D.Cal., Aug. 13, 2008, No.
05-1298-PJH) [awarding between \$35,000-\$50,000 to class representatives in 2008].)

1 “[C]riteria courts may consider in determining whether to make an incentive award
2 include: 1) the risk to the class representative in commencing suit, both financial and otherwise;
3 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of
4 time and effort spent by the class representative; 4) the duration of the litigation and; 5) the
5 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”
6 (*In re Cellphone Fee Termination Cases, supra*, 186 Cal.App.4th at pp. 1394–1395 [citing *Van*
7 *Vranken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 299].) Here, all of these
8 criteria weigh in favor of granting the requested Service Awards to Plaintiffs.

9 1. **The Plaintiffs Undertook Great Risks and Faced Notoriety by Bringing This**
10 **Lawsuit.**

11 Particularly in employment class actions, named representatives risk harming their
12 “reputations and future employability in the field.” (*In re High-Tech Employee Antitrust*
13 *Litigation, supra*, 2015 WL 5158730, at p. *18 [“each of the class representatives risked
14 significant work place retaliation by serving as a named plaintiff in this high-profile lawsuit”];
15 *Smith v. CRST Van Expedited, Inc.* (S.D.Cal. Jan. 14, 2013, No. 10-CV-1116- IEG WMC) 2013
16 WL 163293, at *6; see also *Lusby v. GameStop Inc.* (N.D.Cal., Mar. 31, 2015, No. C12-03783
17 HRL) 2015 WL 1501095, at *9 [class representatives “risked having their participation in this
18 litigation be an impediment to future employment”]; *Eddings v. Health Net, Inc.* (C.D.Cal., June
19 13, 2013, No. CV 10-1744-JST RZX) 2013 WL 3013867, at *7 [class representative “took a
20 significant professional risk . . . as her future job prospects may be impaired by her involvement
21 in this case, because she sued her former employer”].) All Plaintiffs—simply by having their
22 names listed on court documents that are widely available online—have undertaken significant
23 risks and notoriety in bringing this case.

24 All Plaintiffs worked for Defendants during this investigation. (Declaration of Shelby
25 Stewart in Support of Plaintiffs’ Motion for Final Settlement Approval and Application for
26 Service Awards (hereafter Stewart Decl.) ¶ 9; Declaration of Charleta Dabrowski in Support of
27 Plaintiffs’ Motion for Final Settlement Approval and Application for Service Awards (hereafter
28 Dabrowski Decl.) ¶ 9; Kenya Mayfield in Support of Plaintiffs’ Motion for Final Settlement

1 Approval and Application for Service Awards (hereafter Mayfield Decl.) ¶ 9; Declaration of
2 Benedict Johnson in Support of Plaintiffs’ Motion for Final Settlement Approval and Application
3 for Service Awards (hereafter Johnson Decl.) ¶ 9.) They therefore undertook the risk that they
4 would be subjected to hostility or face retaliation as a result of their advocacy. (*Ibid.*) Plaintiffs
5 Dabrowski and Johnson also continue to face this risk from rogue managers because they remain
6 employed by Defendants. Further, Plaintiffs put their future employability at risk, as prospective
7 employers can easily discover that they actively participated in this case through a Google search,
8 meaning that the service they performed for the Class came at an incalculable cost to future
9 earnings. The Plaintiffs’ efforts in the face of significant financial and reputational risk, as well
10 as public notoriety, merit the requested service awards.

11 **2. The Plaintiffs Spent Significant Time and Effort Working on the Case.**

12 Plaintiffs’ active involvement in the case for more than three years also supports the
13 requested service awards. Plaintiffs devoted substantial time and effort to the case, including
14 meeting and speaking with Class Counsel on scores of occasions to provide information and
15 evidence in support of the claims, providing Class Counsel with relevant documents, identifying
16 key witnesses, communicating with coworkers about the investigation, helping Class Counsel
17 with strategy, preparing for mediations, assisting in crafting the settlement remedies, and
18 reviewing and commenting on draft documents before filing. (Stewart Decl. ¶ 7; Dabrowski
19 Decl. ¶ 7; Mayfield Decl. ¶ 7; Johnson Decl. ¶ 7.) In addition, Lead Plaintiff Stewart initiated this
20 case and has been a leader among the Plaintiff group and with Class members. She was also the
21 first to file a class charge of employment discrimination with the California Department of Fair
22 Employment and Housing and the Equal Employment Opportunity Commission on November
23 28, 2018, tolling the statute of limitations for Class Members. Individually and collectively, the
24 Plaintiffs’ efforts and sacrifices directly contributed to the monetary and programmatic relief
25 obtained for the benefit of Class Members. (Dermody Decl. ¶ 23; Medina Decl. ¶ 38.)

26 **3. The Plaintiffs Have Not Received Any Personal Benefits from this Case**
27 **During the Time They Have Been Participating.**

28 The fact that this litigation has been underway and the Plaintiffs have not benefitted from

1 it weighs strongly in favor of granting the requested service awards. (See Stewart Decl. ¶ 4;
2 Dabrowski Decl. ¶ 4; Mayfield Decl. ¶ 4; Johnson Decl. ¶ 4.) Other Class Members will not have
3 to face the same professional risks as the Plaintiffs, but will still benefit from their efforts under
4 the Settlement. The requested award is appropriate to reward Plaintiffs for their sacrifices on
5 behalf of the Class Members.

6 **4. Plaintiffs Should Be Rewarded for Their Public Service in Contributing to**
7 **Compliance with the California Labor Code and Anti-Discrimination Laws.**

8 Finally, it is appropriate to recognize the Class Representatives for their “public service of
9 contributing to the enforcement of mandatory laws.” (*Sullivan v. DB Investments, Inc.* (3d Cir.
10 2011) 667 F.3d 273, 333, fn. 65, citation and quotation omitted.) Without Plaintiffs’ willingness
11 to take on the burden to initiate class action complaints with the California Department of Fair
12 Employment and Housing and Equal Employment Opportunity Commission and to publicly
13 engage Defendants for the benefit of the Class, no class recovery would have been possible.
14 Solely because Plaintiffs came forward at substantial personal risk, Defendants will pay over
15 \$11.5 million into a common fund for the benefit of Class Members.

16 **III. CONCLUSION**

17 For the reasons set forth above, Class Counsel respectfully request that the Court grant
18 their Motion, awarding fees of \$3,451,427.70 and reimbursement of costs of \$64,228.90, as well
19 as service awards to Plaintiffs Dabrowski, Johnson, and Mayfield in the amount of \$60,000 and a
20 Service Award in the amount of \$75,000 to Lead Plaintiff Stewart.

21 Dated: December 23, 2021

22 Respectfully submitted,

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