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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

VITOL INC., SK ENERGY AMERICAS, INC., SK TRADING INTERNATIONAL CO. LTD.; AND DOES 1- 30, INCLUSIVE,

Defendants.

Case No. CGC-20-584456

THE CALIFORNIA ATTORNEY GENERAL'S OFFICE'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

Date: February 28, 2025
Time: 10:00 a.m.
Dept: 613
Judge: The Honorable Andrew Y.S. Cheng

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

INTRODUCTION

Following a years-long investigation and three years of active litigation, the California Attorney General's Office has negotiated an all-cash settlement of $50 million on behalf of the People of the State of California. This settlement represents an excellent result for the People of California, resolving allegations of violations of the Cartwright Act and Unfair Competition Law by gasoline trading firms. The settlement is split into two portions: a $37.5 million common fund, resolving the Cartwright Act claim, and a $12.5 million civil penalty, resolving the Unfair Competition Law claim. The California Attorney General's Office has not only prevailed and secured a favorable result, but it has also signaled to a group of industry insiders, characterized by close-knit relationships, that they are not immune from scrutiny and accountability. This case has received meaningful local and national media coverage and led to new California statutes and organizations regulating industry participants. (Jorgenson Decl. ¶¶ 15-16.)

In the wake of this successful resolution of the case, the Attorney General's Office files this Motion for Attorneys' Fees and Costs, seeking an award of $9.375 million, or 25% of the Cartwright Act Settlement Fund. The Cartwright Act itself permits this award: the Attorney General is entitled to retain a portion of a recovery for attorneys' fees and costs of suit, as awarded by the Court. (Bus. & Prof. Code, § 16760, subd. (e)(2).) Moreover, the award sought is reasonable under any standard. Both the out-of-pocket costs and the attorney time invested in this action far exceed the requested $9.375 million award. In addition, both the outcome of the litigation, and the substance of the litigation itself demonstrate that the Attorney General's Office provided the People of California with excellent representation throughout the case: despite evidentiary challenges and an insular industry, it prevailed on demurrer and on a heavily litigated and twice-appealed Motion to Quash. The Attorney General's Office also fully participated in extensive merits discovery, including aggressive tactics from Defense counsel, and ultimately developed a compelling slate of expert analyses. Finally, it achieved an excellent result for the People of California: the $50 million settlement is 39% of claimed damages. In light of this performance, the $9.375 million award is more than reasonable.

BACKGROUND

I. THE ATTORNEY GENERAL TOOK EXTRAORDINARY RISKS IN PROSECUTING THIS CASE

This case required counsel to take on extraordinary risks. Antitrust actions, in general, are some of the most high-risk and complex cases to litigate. (See *Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining and Manufacturing Company)* (E.D. Pa. 2007) 513 F.Supp.2d 322, 332.) Beyond the traditional complexities of an antitrust action, the Attorney General pursued novel claims against well-funded adversaries despite known evidentiary challenges. At the time the Attorney General's Office filed its Complaint, there were no other cases challenging Vitol's and SK's conduct. (Jorgenson Decl. ¶¶ 3, 4, 10.) While a class action in the Southern District of California accused a different group of defendants for the harm alleged in this case, those defendants successfully moved for summary judgment. (*Persian Gulf Inc. v. BP West Coast Products LLC* (S.D. Cal. 2022) 632 F.Supp.3d 1108, *appeal dismissed sub nom. Persian Gulf, Inc. v. Chevron U.S.A. Inc.* (9th Cir., Jan. 11, 2023, No. 22-56010) 2023 WL 566364.)

The nature of the Defendants' conduct and the gasoline trading market in California also presented unique challenges. For example, Defendants SK Energy Americas ("SKEA") and SK Trading International ("SKTI") are both subsidiaries of a large, Korean conglomerate, the SK Group. Consequently, many of SKEA's, and virtually all of SKTI's, documents were in Korean. Many witnesses were no longer employed by the same, or any, arm of the SK Group. Some had even moved to other countries, and may not have been available at trial. SKTI and SKEA also maintained aggressive document management policies which self-deleted all emails after only two weeks. (Jorgenson Decl. ¶¶ 7-8.)

In addition to SKEA and SKTI's document management policies, the industry itself did not maintain comprehensive, contemporaneous records. The relevant commodities were traded not on a centralized open exchange but directly between traders, sometimes with the assistance of a professional broker. Market participants used a price reporting agency, which produced a daily price assessment, based on transactions for which market participants chose to report the price and volume. Reporting was neither mandatory nor immediate, a significant data limitation.

(Jorgenson Decl. ¶ 5.) The nature of the market presented other challenges. It was comprised of a small, tight-knit, and insular network of traders. These traders' businesses inherently relies on repeat-business with one another, and personal and professional relationships are heavily intertwined, such that speaking out could have meaningful ramifications. (Jorgenson Decl. ¶ 6.)

The Attorney General's antitrust and unfair competition claims also presented potential challenges. Cases seeking liability for the market-wide impact of price index manipulation are few and far between. Similar theories had been rejected under the Sherman Act because harm to consumers was insufficiently direct to create standing, or as seeking to impose impermissible "umbrella damages." (E.g., *Schwab Short-Term Bond Market Fund v. Lloyds Banking Group PLC* (2d Cir. 2021) 22 F.4th 103, 109, 116–117, 125.) These sorts of claims had not been tested previously by California courts. Indeed, at the time this case was settled, Defendants had filed a Motion for Summary Adjudication seeking to resolve the case on the grounds that the Attorney General's theory of causation and harm was legally inadequate. (Defendants' Motion for Summary Adjudication for Lack of Proximate Causation, filed Apr. 3, 2023.)

The Attorney General brought this case despite such uncertainty. While large companies like Chevron, Tesoro, Phillips 66, and ExxonMobil had ostensibly overpaid for wholesale gasoline, none of these companies pursued any claims against the Defendants. Federal antitrust enforcers also did not file any enforcement actions. By contrast, the day after the Attorney General filed and announced this case, putative class action litigants filed complaints in federal court. These complaints stated, "On May 4, 2020, Defendants' conduct became known for the first time [] when the California Attorney General filed a partially redacted complaint against Defendants []," underscoring the novel nature of the Attorney General's claims. (*In re California Gasoline Spot Mkt. Antitrust Litig.* (N.D. Cal., May 6, 2020, No. 20-CV-03131-JSC) 2020 WL 10320155; See Jorgenson Decl. ¶¶ 3-4.)

Defendants required the Attorney General's Office to prevail at every juncture. Defendants filed a Demurrer, which the Attorney General successfully defeated (Order Overruling Defendants' Demurrer, filed Feb. 25, 2021). SKTI also challenged the state's personal jurisdiction, a challenge that, if successful, would have both allowed SKTI to evade

liability, but also may have limited California's future efforts to hold foreign companies accountable for their actions within the state. The Attorney General's Office prevailed on this issue at every stage: on the Motion to Quash itself (Order Denying Motion to Quash, filed August 30, 2021), when this Court's ruling was appealed to the First District, and then, when the Court of Appeal validated this Court's ruling, when SKTI unsuccessfully sought a Writ of Certiorari from the California Supreme Court (*SK Trading Internat. Co., Ltd. v. Superior Court* (2022) 77 Cal.App.5th 378; *SK Trading International Co. v. Superior Court of San Francisco* (July 13, 2022, No. S274311) ___Cal.5th___ [2022 Cal. LEXIS 3944].) Defendants also sought to stay and delay the proceedings pending the various jurisdictional and appellate challenges on five separate occasions (E.g. SKTI's Ex Parte Application for Protective Order, filed Oct. 27, 2021).

In March and April 2023, shortly before the parties attended mediation, Defendants filed eight summary adjudication motions, one summary judgment motion, and a *Sargon* motion to exclude one of the Attorney General's Office's key expert witnesses (see motions filed Mar. 30, 2023). Any of these ten motions may have crippled the Attorney General's case by disposing of entire claims, breaking up the causal chain, significantly reducing damages, or barring pivotal testimony. Reports by Defendants' five expert witnesses purported to show that Defendants' conduct was legitimate trading activity, that there were procompetitive benefits of Defendants' conduct, and that there was an absence of any anticompetitive effects (including price effects). Even assuming these motions were all resolved in the Attorney General's Office's favor, it also faced all the trial and appellate risks detailed in its Motion to Give Notice of *Parens Patriae* Settlement (filed July 9, 2024) ("Motion to Give Notice") (at pp. 17-18)), including an adverse jury verdict, a mistrial in lengthy trial, or a lengthy or successful appeal.

II. THE CASE REQUIRED CONSIDERABLE EFFORT BY THE ATTORNEY GENERAL'S OFFICE

Prosecuting this antitrust case has required lengthy and intense effort by numerous dedicated attorneys over three years of litigation, as evidenced by the sheer number of defense counsel involved in this case. Vitol retained two major law firms, Susman Godfrey LLP and Quinn Emanuel LLP. Similarly, SKEA and SKTI also retained two major law firms, Covington

& Burling LLP and K&L Gates LLP. Combined, the Defendants collectively deployed more than 40 attorneys, excluding any document reviewers and support staff. (See Jorgenson Decl. ¶ 12.) In the face of such opposing counsel, the People required vigorous and adept representation to prosecute this novel action. Indeed, the legal issues of the case were hotly contested: at the time the Settlement Agreement was signed, the docket contains more than 930 entries and the Court issued more than 65 orders. (See Jorgenson Decl. ¶ 14.)

Discovery also required extraordinary effort. Fact discovery spanned 17 months. The parties and non-parties produced over 3 million pages of documents. The parties conducted more than 56 depositions, including over 22 noticed by Defendants, producing more than 11,000 pages of deposition transcripts. Many of these documents were produced in Korean and many depositions were conducted in Korean. (Jorgenson Decl. ¶ 11.) Further, the information produced in discovery required significant analysis: the Attorney General's experts processed and/or analyzed tens of thousands of trades consisting of millions of pieces of data.

Defendants also pursued significant discovery from the Attorney General, serving 91 requests for production; two sets of special interrogatories and one set of form interrogatories, totaling 74 interrogatories; and three sets of requests for admission, totaling 33 requests. (*Id*. at ¶ 12.) Some of this discovery was on ancillary issues, such as campaign contributions to the Attorney General. This discovery alone required significant time and attention from the Attorney General's Office. Defendants also employed other tools of discovery that required not only time and attention, but also significant legal research and preparation. For example, Defendants sought a deposition of the Attorney General's investigator, which the Attorney General's Office opposed as seeking access to privileged materials and deposing an agent of counsel. Defendants also sought a Person Most Qualified deposition of the Attorney General's Office. The Attorney General's Office negotiated limits to such a deposition, then selected and educated a witness, including preparing preparation materials that were ultimately produced to Defendants. Ultimately, this deposition focused largely on the witness's preparation, but also addressed a range of other topics unrelated to the litigation. The Attorney General's Office employed significant time, resources, and legal skill in addressing these discovery challenges.

Discovery-related filings and motion practice also required significant time and resources from the Attorney General's Office. In connection with the Motion to Quash, the SK Defendants moved to seal 74 out of 125 exhibits. (The People's Consolidated Memorandum in Opposition to Defendants SKEA And SKTI's Motions to Seal Exhibits in Connection with Plaintiff's Opposition to Motion to Quash, filed July 20, 2021.) After significant briefing on behalf of the Attorney General, including agreeing to seal one appropriately designated document, the Court denied the remainder of the motion, requiring the SK Defendants to submit briefing that explained how and why each specific document met the sealing standard (Order Granting in Part and Denying Without Prejudice in Part Defendant's SKEA And SKTI's Motions to Seal, filed Sept. 10, 2021). When they submitted briefing that met the sealing standard, the SK Defendants ultimately sought to seal only three documents (Defendants SKEA and SKTI's Renewed Motion to Seal Materials in Connection with Parties Motion to Quash Submissions, filed Dec. 1, 2021). Later, the Attorney General's Office spent resources researching and briefing its efforts to protect Confidential Informants, ultimately participating in a hearing. After this Court allowed the Attorney General to protect Confidential Informants, Vitol sought a writ from the First District, which was denied (SK Trading International Co. v. Superior Court of San Francisco (July 13, 2022, No. S274311) ___Cal.5th___ [2022 Cal. LEXIS 3944].).

III. THE ATTORNEY GENERAL ACHIEVED COMMENDABLE SUCCESS IN LITIGATION

The Attorney General achieved significant success in litigation. It defeated Defendants' Demurrer and SKTI's heavily litigated and appealed Motion to Quash. It successfully engaged in extensive merits discovery, against capable and resourced counsel. Despite this, and the evidentiary challenges posed by the Defendants and the nature of the insular industry, the Attorney General successfully concluded fact discovery and assembled an expert discovery case.

As a result of these efforts, Defendants have agreed to pay $50 million in cash to settle this case. The monetary recovery is significant in light of the Attorney General's expert calculation that Defendants' conduct resulted in a harm of approximately $127 million to Californian consumers. The monetary settlement represents approximately 39% of the damages that the Attorney General intended to present to the jury (See Motion to Give Notice at p. 8).

ARGUMENT

I. THE ATTORNEY GENERAL'S OFFICE IS ENTITLED TO COSTS AND FEES UNDER THE CARTWRIGHT ACT

The Cartwright Act provides that "the Attorney General shall retain that portion of the monetary relief awarded by the court as costs of suit and attorney's fee for deposit in the Attorney General Antitrust Account within the General Fund." (Bus. & Prof. Code, § 16760, subd. (e)-(e)(2)). The Attorney General brought this action pursuant to both the Cartwright Act and the Unfair Competition Law. (Complaint ¶131, 136). The $50 million settlement was allocated into $37.5 million for consumers injured by Defendants' alleged violations of the Cartwright Act, and $12.5 million in civil penalties under the Unfair Competition Law ("UCL") (See Motion to Give Notice (at p. 9)).

The Attorney General has excluded any costs and fees which pertained exclusively to the UCL claim, as the UCL does not provide for attorneys' fees. (Jorgenson Decl. ¶¶ 17-21.) However, one-half of the penalty collected shall be placed in an Unfair Competition Law Fund that is used by the Attorney General to support future investigations and prosecutions of California's consumer protection laws, while the other half will be paid to the City and County of San Francisco. (Bus. & Prof. Code § 17206, subds. (c)-(d).) This provision of the UCL does not in any way alter any statutory provisions in the Cartwright Act. (See *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 179 ["The unfair competition law is independent of . . . other laws."].)

Additionally, though the Attorney General's Office do not seek attorney fees and costs which pertain exclusively to the UCL claim, it *may* recover for expenses on issues common to both causes of action. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Akins v. Enterprise Rent-A-Car Co. of San Francisco* (2000) 79 Cal.App.4th 1127, 1133 ["All expenses incurred on common issues qualify for an award"]; *Cruz v. Fusion Buffet, Inc.* (2020) 57 Cal.App.5th 221, 235.) "When the liability issues are so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not, then allocation [of attorney fees to a specific claim] is not required."

(*Akins*, *supra*, 79 Cal.App.4th at p. 1133.) Indeed, "the joinder of causes should not dilute the right to attorney fees." (*Ibid.*)

In this case, there is substantial overlap between the Cartwright Act and the UCL claims pled in this case. The two causes of action largely relied on the same underlying factual allegations—that Defendants conducted small volume trades at inflated prices in order to boost specific gas product price indices so as to reap the benefit from other large transactions tied to the same price indices. Both claims required proof of the effects of Defendants' conduct and damages to California natural persons. Though the UCL is distinct from the Cartwright Act and has unique legal elements, the vast majority of the time and expenses in this case were expended on fact and legal issues that are common to both claims and are thus compensable.

II. THE $9.375 MILLION REQUESTED BY THE ATTORNEY GENERAL IS MORE THAN JUSTIFIED BY THE COSTS OF THE SUIT AND ATTORNEY HOURS EXPENDED IN THE CASE

The Attorney General is seeking 25% of the $37.5 million allocated to the Cartwright Act in attorneys' fees and costs, amounting to $9.375 million. By all measures, this is a reasonable sum—indeed, it is significantly less than either the reimbursable expenses or the compensable attorneys' fees in a lodestar calculation, both of which could separately justify the entire sought award. The reimbursable expenses itemized in this Motion total $13,765,608.77 while compensable attorneys' fees (see *Infra* Section II. B. 2) reflect a lodestar calculation of approximately $27 million. (Jorgenson Decl. ¶¶ 29, 34.) Though the costs of bringing this suit were substantial, the Attorney General has limited its request to $9.375 million, in an effort to ensure that the bulk of the recovery be distributed to consumers. Accordingly, both the reimbursable costs and reasonable calculations of attorneys' fees more than justify the Attorney General's request for an award of $9.375 million.

A. The California Attorney General's Office Should be Reimbursed for Reasonable Litigation Expenses

The Cartwright Act expressly provides that the Attorney General is entitled to retain a portion of the monetary relief as costs of suit, separate from an award of attorneys' fees. (Bus. &

Prof. Code, § 16760, subd. (e)(2).) Though the Cartwright Act does not further define what constitutes reimbursable "costs of suit," the Ninth Circuit has stated, in analogous common fund cases, "that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense." (*Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (1977); *Grace v. Apple, Inc*. (N.D. Cal., Mar. 31, 2021, No. 17-CV-99551-LHK) 2021 U.S.Dist.LEXIS 66294.) The costs itemized in this Motion are exactly that: reasonable and necessary to litigate this case effectively.

Indeed, the Attorney General's Office had every incentive to—and did—minimize expenses wherever possible, without jeopardizing the successful prosecution of this case: when advancing, interest-free, the costs of litigation, it knew there was a substantial litigation related risk that out-of-pocket expenses would never be recovered. Antitrust cases, including this case, are "particularly complex to litigate and therefore quite expensive." (*In re Flonase Antitrust Litigation* (E.D. Pa. 2013) 951 F.Supp.2d 739, 743). In this case, the Attorney General advanced these expenses, which included those for experts, outside counsel, mediation, discovery hosting, deposition reporters and support, duplication, court reporters, and express delivery or messenger services. To assist the Court's review of these expenses, the Attorney General has submitted a declaration summarizing and detailing the $13,765,608.77 in expenses, separate from attorneys' fees in a lodestar calculation, paid by the Attorney General for which the Attorney General seeks a partial reimbursement. (See Jorgenson Decl. ¶¶ 30-43.)

The majority of the Attorney General's Office's expenses were on just two of these categories: testifying experts and outside counsel. These expenditures were necessary to effectively litigate the case, in consideration of the nature of the case and the resources necessary to achieve a strong result for the People of California. Indeed, $7,866,720.45 (See Jorgenson Decl. ¶ 36) of the costs of litigation, 84% of the $9.375 million award sought by the Attorney General's Office, can be attributed just to testifying experts.

This is no surprise: "expert fees and expense[s] . . . are a substantial but necessary burden in any antitrust action." (*In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal., Dec. 6, 2017, No. 4:14-MD-2541-CW) 2017 WL 6040065, at *3,

aff'd (9th Cir. 2019) 768 Fed.Appx. 651.) Indeed, as courts have observed, "[t]o make out a plausible antitrust claim—much less to convince a trier-of-fact that illegal conduct occurred—it is often necessary to retain an expert whose fees resemble, and might even dwarf, those of counsel." (*Laumann v. National Hockey League* (S.D.N.Y. 2015) 105 F.Supp.3d 384, 407.)

The Attorney General retained four experts to testify about the many expert issues in this antitrust and market manipulation action, including the economics of commodities markets, pass-through analysis, damages, market power, geographic markets, the relevant product market, overcharges and other anticompetitive effects, and to respond to the testimony of Defendants' five experts. The Attorney General's experts processed and cleaned tens of thousands of trade data records consisting of millions of pieces of data and ran numerous econometric analyses using that data. Over three years of litigation, they produced twelve expert reports. The Attorney General's liability and damages experts were repeatedly deposed by Defendants and the Attorney General's liability expert was the target of a *Sargon* motion.

Additionally, the Attorney General's Office also retained outside counsel to assist in the prosecution of the case. Though costs for outside counsel ultimately totaled $5,627,846.56, the Attorney General is only seeking $1,508,280 in addition to the costs for testifying experts. (Jorgenson Decl. ¶ 37.) In this case, it was necessary for the Attorney General to hire outside counsel. As described *supra*, Defendants retained a total of four of the nation's top law firms, collectively deploying over 40 attorneys, excluding any document reviewers and support staff. They also employed aggressive litigation tactics, which required significant work by the Attorney General's Office. Under these circumstances, the Antitrust Section of the Office of the Attorney General did not have the resources required to litigate against Defendants during the most intense periods of litigation, while simultaneously fulfilling the Section's other responsibilities. The services of outside counsel were limited to those necessary to supplement the work performed by the Attorney General so as to ensure the efficient prosecution of the case.

B. Reasonable Attorneys' Fees Also Support the Requested Award

Should the Court find that any portion of the costs requested are not reimbursable, the attorneys' fees detailed herein, provide separate and sufficient support for the Attorney General's

requested award. The Cartwright Act provides that, separately from any costs of suit, the Court may award the attorneys' fees to the Attorney General's Office. (Bus. & Prof. Code, § 16760, subd. (e)(2).) Though the Cartwright Act does not impose a standard for evaluating a fee award, trial courts have looked to the methods used in analogous common fund cases: (1) calculating attorneys' fees as a percentage of the amount of recovery; and (2) the calculation of a "lodestar" figure based upon the number of hours expended multiplied by the prevailing rate per hour for similar legal services in the community. (See e.g., *The People of the State of California, v. Samsung SDI, Co., Ltd., et al.* (CGC-11-515784), Superior Court of California, County of San Francisco, September 29, 2016, Order Granting Final Approval of Settlements, at p. 9 [applying the percentage of recovery method in a Cartwright Act action]; see also *State of California v. eBay, Inc.* (N.D. Cal., Aug. 29, 2014, No. 5:12-CV-05874-EJD) 2014 WL 4273888, at *7 [listing the two methods and applying the percentage of recovery method in a Cartwright Act action].) Under either approach, the award requested by the Attorney General is reasonable.

1. Percentage of recovery method supports the $9.375 million award

In applying the percentage of recovery method, courts typically consider: the skill of counsel, the risks, novelty and difficulty of the case, awards in similar cases, and the contingent nature of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).) These factors more than support the Attorney General's 25% fee award.

Counsel's Skill and Experience. The Attorney General was represented by skilled, capable counsel, many of whom had decades of experience in complex litigation. (Jorgenson Decl. ¶¶ 1-2.) These counsel litigated this case to an excellent result: a monetary settlement which constitutes 39% of maximum claimed damages. This settlement is in the upper range of the recovery rates approved in antitrust settlements (See Motion to Give Notice at p. 19) and this excellent result is an indication of "the superior quality of [their] representation." (See *Santana v. FCA US, LLC* (2020) 56 Cal.App.5th 334, 353.) The monetary relief justifies the requested fee.

The quality of the Attorney General's counsel is reflected in their response to SKTI's significant personal jurisdiction challenges. Though both the instant case and the federal class

action brought largely the same claims, and challenged the same conduct, SKTI succeeded in their jurisdictional challenge in federal court, escaping liability (*In re Gasoline Spot Litig.*, 2020 U.S. Dist. LEXIS 238858, 2020 WL 7431843 (N.D. Cal., Dec. 18, 2020). They did so despite the class being represented by highly skilled and experienced antitrust attorneys, who had been appointed as putative class counsel. In contrast, despite the same claims, same conduct, and same facts, the Attorney General was able to establish personal jurisdiction over SKTI in the trial court, and again when SKTI appealed to the First District Court of Appeals. (*SK Trading International Co. Ltd. v. Superior Court of San Francisco County* (2022) 77 Cal.App.5th 378, 385, review denied (July 13, 2022).)

The Risks, Novelty, and Difficulty of the Case. Litigating this case presented significant challenges and required substantial effort over many years. In addition to the traditional difficulties of proving an agreement between horizontal competitors, this case involved a tight-knit community that blended professional and personal associations. (Jorgenson Decl. ¶ 6.) The Attorney General's Office also faced significant evidentiary challenges, due to both retention policies and the limited nature of industry records. Finally, liability and damages calculations required multiple levels of analysis to determine causation, passthrough, and damages, all requiring analysis of extensive trading records and market pricing data, from both parties and non-parties.

As outlined above, Defendants were highly motivated adversaries who brought tremendous resources to bear on this litigation. In addition to the substantial work developing the case during discovery, the Attorney General's Office devoted significant resources to addressing discovery served by Defendants, such as a Person Most Qualified deposition, Defendants' attempt to depose the Attorney General's Office's investigator and sweeping discovery. Other technical discovery issues were similarly resource-intensive, such as Defendants' extremely broad Motions to Seal, which required significant research and briefing by the Attorney General's Office before Defendants were required by the Court to narrow their Motion. Defendants also appealed two orders of this Court, both unsuccessfully. At the time of settlement, the Attorney General still faced significant litigation, trial, and appellate risks: Defendants brought nine Motions for

Summary Judgment/Adjudication and a *Sargon* motion against the Attorney General's key liability expert witness.

The Contingent Nature of Representation. The Attorney General filed this litigation knowing that, had the present action failed, it would have been unable to recover the ultimately millions of dollars spent in litigating this case. Moreover, the resources devoted to this litigation, including the significant investment of attorney time, prevented the Attorney General from devoting these resources to other cases. Both counsel a higher fee award, as does the delay in payment for contingent work and the risk that such payment would not occur. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580, *as modified (Jan. 12, 2005),* citation omitted [contingent fee must be higher than contemporaneous fee due to the delay and risks and appropriate to consider other work foregone]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

Awards in Similar Cases. A 33% fee award is customary in common fund cases. (See *Lafitte*, 1 Cal. 5th 480, 487-88; ["an award of one-third the common fund was in the range set by other class action lawsuits"]; see also *Sephora Wage and Hour Cases* (Super. Ct. S.F. City and County, June 13, 2022, No. 16CV294112, Cheng, J.) 2022 WL 4295613 at *1 [applying percentage method and awarding 33%]; *Valdez v. Pro Unlimited, Inc*. (Super. Ct. S.F. City and County, May 10, 2021, No. 19-574146, Cheng, J.) 2021 WL 9099684, at *1 [applying percentage method with a lodestar cross-check and awarding 33%]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery" (internal citations omitted)].) Here, the Attorney General's Office seeks a 25% award, significantly less than the typical award. Indeed, in combination with fees sought by the federal plaintiffs (See *infra* section III), the total recovery will not exceed the customary fee award.

2. Lodestar and multiplier analysis confirms reasonableness

The lodestar method compensates attorneys based on *work actually performed*—a reasonable number of hours, paid at a reasonable rate. (See *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 941–42. Though this figure is "presumptively

reasonable," courts may adjust it with a multiplier, based on the same reasonableness factors that support the percentage of recovery analysis. (*Ibid.*) In addition to determining the fee award in the first instance, Courts may also use the lodestar method "to confirm or question the reasonableness" of a percentage of recovery award. (*Lafitte*, 1 Cal. 5th 480, 496.) Similarly, when the award is less than the lodestar amount—sometimes called a negative multiplier—that too suggests that the fee award "is a reasonable and fair valuation of the services rendered." (*Valdez v. Pro Unlimited, Inc*. (Super. Ct. S.F. City and County, 2021, No. 19-574146) 2021 WL 9099684, at *1, citations omitted.) In this case, the Attorney General is seeking a fee award that is *less than half* of the lodestar—a strong indication that it is reasonable.

In this case, the Attorney General's office has calculated a lodestar of $27,696,548.48. This lodestar was calculated using a California state court-approved version of the *Laffey* matrix, which includes a 9% increase to account for the high cost of living in the Bay Area. (See *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 696, 702 [upholding lodestar calculation for an Alameda County case using rates found in the *Laffey* matrix, adjusted upward by nine percent].) It employed the 2021-2022 rates for each timekeeper, along with an estimate of their hours spent from the date of filing the Complaint, May 4, 2020, to the date of the final settlement agreement, October 11, 2023. (Jorgenson Decl. ¶¶ 27-29.)

This lodestar uses the conservative hours estimate of 47,970.75. Counsel audited their respective time records, writing off time for various timekeepers and tasks, to ensure that the time included in the lodestar is appropriate. (See Jorgenson Decl. ¶¶ 17-27.) Because, the Attorney General's Office advanced the costs of litigation, including attorney and staff time, it also had an incentive to keep its prosecution efficient, consistent with obtaining the best possible outcome for the People. Throughout the life of the case, tasks that could appropriately be handled by lower cost timekeepers—be they lawyers, paralegals, or support staff—were so assigned. (*Id*. at ¶ 26.) The Attorney General also limited the dates during which it calculated the lodestar, eliminating significant work on behalf of the People, including ongoing work: finalizing the distribution plan, approval motions, and this fees request. It also does not include the hours expended during the investigation and prior to filing the Complaint. (*Id*. at ¶ 27.)

Finally, the lodestar is significantly in excess of the Attorney General's sought award. The Attorney General's Office seeks $9.375, 25% of the Cartwright Act fund. This amounts to only 34% of the lodestar, or a negative multiplier of 0.34. This too suggests the reasonableness of the sought award. (*Valdez v. Pro Unlimited, Inc*. (Super. Ct. S.F. City and County, 2021, No. 19-574146) 2021 WL 9099684, at *1, citations omitted.)

III. FEDERAL COUNSEL'S REQUESTED AWARD

As noted in the Attorney General's previous filings, Class Counsel in the federal case will seek an award in this case (Motion to Give Notice; Supplemental Brief in Support of Motion to Give Notice, filed Aug. 30, 2024). Though the Attorney General and Class Counsel are making separate award applications, together, the awards will amount to no more than 33% of the Cartwright Act Settlement Fund. As discussed, *supra*, Section II. B. 1, a 33% fee award is customary in common fund cases, and, in view of the reasonableness factors and negative multiplier discussed *supra*, Section II. B. 2,[1] is appropriate in this case as well. The Attorney General and Class Counsel have agreed that the Attorney General will seek an award of $9.375 million, or 25%, while Class Counsel will seek an award of $3 million, or 8%.

The Attorney General takes no position as to the legal propriety of Class Counsel's motion but note that Class Counsel materially contributed to fact and expert development that benefitted the natural persons whose claims will be released by the Settlement. Particularly, counsel for the Attorney General and Class Counsel worked together to review documents in discovery and undertake related analyses, conduct party and non-party depositions, and work with some, but not all, of the experts.

CONCLUSION

The California Attorney General's Office respectfully requests that the Court award $9.375 million in attorneys' fees and costs to the Attorney General's Office to be distributed from the $37.5 million portion of the Settlement allocated to the Cartwright Act claim.

[1] The Attorney General has been informed by federal Class Counsel that the fees sought by federal Class Counsel also represent a significant negative multiplier on their lodestar.

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Respectfully submitted,

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