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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CALIFORNIA GASOLINE SPOT MARKET ANTITRUST LITIGATION

Case No. 3:20-cv-03131-JSC

REPLY IN SUPPORT OF MOTIONS FOR FINAL APPROVAL AND ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

DATE: February 20, 2025
TIME: 10:00 a.m.
LOCATION: Courtroom 8, 19th Floor

HON. JACQUELINE S. CORLEY

Pursuant to the deadlines set forth in the Joint Stipulation and Order Setting Deadlines Concerning Settlement Agreement (Dkt. 617), Settlement Class Representatives and Settlement Class Counsel submit this Reply in Support of the Motion for Final Approval and Motion for Fees, Expenses, and Service Awards.

The positive response from the Class confirms the fairness and adequacy of the Settlement as detailed in the final approval motion (Dkt. 622) and the reasonableness of the requested fees, expenses, and service awards as detailed in the motion for payment of attorneys' fees, expenses, and service awards (Dkt. 621).

The claims, opt-out, and objection deadline was January 8, 2025. Cooley Suppl. Decl., ¶¶ 8-10, Dkt. 623-1. There are no objections to the Settlement. *Id.*, ¶ 10. The Settlement Administrator received 8,050 timely-filed claim forms, of which 1,522 are from businesses and 6,528 are from non-California consumers. *Id.*, ¶ 8. This reflects claims rates of approximately 2.5% for businesses and 0.12% for non-California consumers based on a preliminary estimate of the Settlement Class size. Dkt. 613 at 2 (estimating 60,623 businesses and 5,388,673 non-California consumers in the Settlement Class but cautioning that "[t]he estimates that Settlement Class Counsel provides are just that—estimates.").

These claims rates are in line with other class action settlements that have received final approval. *See, e.g.*, *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 599 (N.D. Cal. 2020) (granting final approval with 0.83% claims rate, stating that the rate was "on par with other consumer cases, and d[id] not otherwise weigh against approval"); *Bostick v. Herbalife Int'l of Am., Inc.*, 2015 WL 12731932, at *27 (C.D. Cal. May 14, 2015) (approving settlement with "response rate of less than 1%"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (granting final approval with 1.8% claims rate); *Broomfield v. Craft Brew Alliance, Inc.*, 2020 WL 1972505, at *7 (N.D. Cal. Feb. 5, 2020) (approving settlement with response rate of "about two percent"); *Touhey v. United States*, 2011 WL 3179036, at *7-8 (C.D. Cal. July 25, 2011) (approving settlement with a 2% claims rate); *Moore v. Verizon Commc'ns Inc.*, 2013 WL 4610764, at *8 (N.D. Cal. Aug. 28, 2013 (granting final approval of class action settlement with 3% claims rate); *In re Online DVD-Rental*

Antitrust Litig., 779 F.3d 934, 944-45 (9th Cir. 2015) (affirming approval of settlement with less than 3.4% claims rate).

The claims rates are also not unexpected, in particular given the proof of purchase requirement here to avoid fraudulent claim submissions. Dkt. 613. The proof of purchase requirement and the resulting claims rate will redound to the benefit of participating Class members by maximizing recoveries for legitimate claimants, particularly businesses who Settlement Class Counsel anticipated made most of the qualifying purchases. Dkt. 601 ("[B]usinesses collectively and on average suffered greater damages due to Defendants' alleged conduct than non-California natural persons.").

The Settlement Administrator received 60 timely requests for exclusion, 8 of which are made on behalf of businesses, with the remaining 52 from non-California consumers. *Id.*, ¶ 9. The exclusion rates are thus 0.013% for businesses and 0.00096% for non-California consumers; both of which reflect a favorable reaction to the Settlement. *See Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (granting final approval and noting that 0.008% exclusion rate "indicate[s] a favorable reaction by class members and their overall satisfaction with the Settlement"); *Custom LED, LLC v. eBay, Inc,* 2013WL 6114379, at *9 (N.D. Cal. Nov. 20, 2013) (granting final approval and characterizing 0.04% exclusion rate, with one objection, as an "overwhelmingly positive" reaction); *Chun–Hoon v. McKee Foods Corp.,* 716 F.Supp.2d 848, 852 (N.D. Cal. 2010) (explaining that 4.86% opt-out rate strongly supported approval). The names of the individuals and businesses that submitted timely exclusion requests are identified in Exhibit A to the Supplemental Cooley Declaration. Dkt. 623-1.

Between January 9, 2025, and January 28, 2025, the Settlement Administrator and Settlement Class Counsel received inquiries from persons and entities about submitting claims after the January 8, 2025, deadline. Several of those persons and entities stated that they were unable to file their claim sooner due to the wildfires in Southern California. None has indicated that they wished to object to, or opt out from, the Settlement. In light of those unique circumstances, Settlement Class Counsel recommends that the persons and entities that contacted the Settlement Administrator or Settlement Class Counsel by January 28, 2025, about submitting claims after the January 8 deadline be given the opportunity to submit a claim. Settlement Class Counsel believe the number of persons and entities

covered by this extension would likely not exceed 117. The Settlement Administrator would promptly inform these persons and entities that they may submit a claim within 14 days of a Court order (if any) providing an extension of the claims filing deadline for these persons and entities. The Settlement Administrator would review and verify these claims in the same manner as claims submitted on or before January 8, 2025.

For these reasons and those set forth in the opening motions, Settlement Class Representatives request that the Court (i) approve the Settlement and enter the attached revised proposed final approval order[1] and (ii) approve the request for fees, expenses, and service awards and enter the related attached revised proposed order.[2]

Dated: January 29, 2025

Respectfully submitted,

By: /s/ *Christopher L. Lebsock*

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[1] The final approval order is revised to add the total number of timely claims, opt-outs, and objections (pgs. 2, 11), reference the opt-out list (pg. 3 fn. 2), and incorporate Settlement Class Counsel's recommendation to allow persons and entities to submit untimely claims given the unique circumstances of the Southern California wildfires (pgs. 2 (fn. 1), 14).

[2] The fees, expenses, and service awards order is revised to add the italicized language in the following: "the attorneys' fee award shall not exceed $2,058,169.82 *(plus 30% of the interest)*" (pgs. 10-11). That revision is consistent with the preceding sentence granting approval of "an award of attorneys' fees equal to 30% of the Net Settlement Fund (plus interest)."

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FILER'S ATTESTATION

I, Dena Sharp, am the ECF User whose ID and password are being used to file this document. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that all counsel listed above have concurred in this filing.

/s/ Dena C. Sharp
Dena C. Sharp

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CALIFORNIA GASOLINE SPOT MARKET ANTITRUST LITIGATION This Document Relates to: All Actions	CASE NO. 3:20-cv-03131-JSC **[REVISED PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** HON. JACQUELINE S. CORLEY

1 On December 18, 2024, Settlement Class Representatives moved for final approval of their
2 class action settlement with Defendants. Having considered the motion and related briefing, and
3 good cause appearing, the Court **GRANTS** Settlement Class Representatives' motion.

4 **I. BACKGROUND**

5 Plaintiffs filed the first proposed class action in this matter on May 6, 2020 shortly after the
6 California Attorney General's filing of a complaint against overlapping Defendants in San
7 Francisco Superior Court. *See The People of the State of California v. Vitol, Inc., et al.*, Case No.
8 CGC20584456 (S.F. Superior, filed May 4, 2020) ("AG Action"); (Dkt. No. 1.) The Court
9 appointed leadership in the class actions, and plaintiffs filed a consolidated complaint on behalf of a
10 class of all purchasers of gasoline in California during the relevant time period. (Dkt. Nos. 167,
11 186.) After a series of motions to dismiss, class plaintiffs moved to certify a class of all Southern
12 California gasoline purchasers. (Dkt. No. 512.)

13 During the class certification proceedings, the parties advised the Court a settlement had
14 been reached in the AG Action. (Dkt. No. 577.) And on February 1, 2024, the parties in this action
15 advised the Court they had reached a settlement in principle; a motion for preliminary approval was
16 filed and subsequently granted. (Dkt. Nos. 595, 601, 614.) Settlement Class Representatives moved
17 for final approval of the class action settlement on December 18, 2024. (Dkt. No. 622.) The final
18 approval motion for the AG Action will be filed on January 31, 2025. (Dkt. No. 617.)

19 **II. FINDINGS AND CONCLUSIONS OF LAW**

20 Unless otherwise noted, defined terms used in this Order and Judgment shall be defined as
21 set forth in the Settlement Agreement.

22 **A. Jurisdiction**

23 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

24 **B. Notice and Administration**

25 The Settlement Administrator, Verita Global, LLC ("Verita") previously established a
26 settlement website which includes: the long-form notice (explaining the procedures for Settlement
27 Class Members to submit claims, object, or exclude themselves), the Settlement Agreement, the
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Preliminary Approval Order, online and printable versions of the claim forms and the opt out forms, and answers to frequently asked questions. In addition, the motion papers filed in connection with Settlement Class Counsel's motions (in this action and the AG Action) for attorneys' fees and expenses were placed on the settlement website after they were filed (which was before the opt out and objection deadline). The Settlement Administrator also operated a toll-free number for Settlement Class Member inquiries.

Notice of the settlement was provided by direct notice and by widespread publication notice on relevant websites and social media platforms. In total, the Notice Plan is estimated to have reached at least 70% of Settlement Class Members. *See Chinitz v. Intero Real Est. Servs.*, No. 18-CV-05623-BLF, 2020 WL 7042871, at *2 (N.D. Cal. Dec. 1, 2020) (The Federal Judicial Center has concluded that a notice plan that reaches at least 70% of the class is reasonable)*; Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 596 (N.D. Cal. 2020) (approving a notice plan reaching at least 70.69% of class members). The Court finds that the Notice Plan provided the best practicable notice to the Settlement Class Members and satisfied the requirements of due process. Settlement Class Members were given until January 8, 2025 to exclude themselves from the proposed settlement or to object to it. A total of 8,050 Claim Forms were timely received by the Settlement Administrator.[1]

The record establishes that the Settlement Administrator served the required notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28 U.S.C. § 1715(b)(1)-(8). (Dkt. No. 605.)

[1] Between January 9, 2025, and January 28, 2025, the Settlement Administrator and Settlement Class Counsel received inquiries from persons and entities about submitting claims after the January 8, 2025, deadline. Several of those persons and entities stated that they were unable to file their claim sooner due to the wildfires in Southern California. Given the unprecedented nature of the Southern California wildfires, the Court agrees that the persons and entities that contacted the Settlement Administrator and/or Settlement Class Counsel by January 28, 2025, about submitting a claim after the January 8, 2025 deadline be given the opportunity to submit a claim within 14 business days of this order.

C. Certification of the Settlement Class

For purposes of the settlement only and this Order and Judgment, Class Settlement Representatives have moved to certify the following Settlement Class:

> (a) natural persons who, at the time of purchase, were not residents of the State of California, and (b) all Persons that are not natural persons, wherever located, that: (i) purchased Gasoline from a retailer, (ii) for their own use and not for resale, (iii) within the State of California, (iv) from February 18, 2015, through May 31, 2017.[2]

1. Rule 23(a)

The Rule 23(a) factors are satisfied.

First, the Settlement Class is sufficiently numerous. Verita estimates the number of businesses in and around California with large fleets exceeds 60,623. (Dkt. No. 601-6 at ¶ 18.)

Second, the typicality requirement is similarly satisfied. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *A. B. v. Hawaii State Dep't of Educ.*, 30 F.4th 828, 839 (9th Cir. 2022) (cleaned up). Here, the Settlement Class Representatives' claims and those of the members of the proposed Settlement Class are based on the same legal theory (price-fixing through manipulation of the benchmark price for gasoline in California) and injury (overcharges on retail purchases of Gasoline). "In cases involving an alleged price-fixing conspiracy, the representative plaintiff's claim is often considered typical even where the plaintiff followed different purchasing procedures, purchased in different quantities or at different prices, or purchased a different mix of products than

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[2] Excluded from the Settlement Class are (a) the California Attorney General, bringing suit in the name of the People of the State of California, including in his role as *parens patriae* for natural persons residing in the State of California, as pleaded in the complaint in the People's Action; (b) the Settling Defendants or any other named defendant in the litigation; (c) officers, directors, employees, legal representatives, heirs, successors, or wholly or partly owned subsidiaries or affiliated companies of the Settling Defendants or any other named defendant in the litigation; (d) Class Counsel and their respective partners and employees; (e) the Court and other judicial officers, their immediate family members, and associated court staff assigned to the Litigation; and (f) those individuals who timely and validly exclude themselves from the Settlement Class and are listed at Dkt. 623-1, Ex. A.

did the members of the class." *In re Optical DiskDrive Antitrust Litig*., 303 F.R.D.311, 317 (N.D. Cal. 2014).

Third, the commonality requirement is satisfied because there are common questions of law and fact that relate to Defendants' allegedly anticompetitive conduct. "The commonality requirement of Rule 23(a)(2) requires plaintiffs seeking class certification to show that their claims depend upon a common contention that is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *A. B*., 30 F.4th at 839 (cleaned up).

Finally, the adequacy of representation requirement is met as to both the Settlement Class Representatives and Settlement Class Counsel. Adequacy of representation requires "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "In making this determination, courts must consider two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1031(9th Cir. 2012) (cleaned up). There is no apparent conflict between the Settlement Class Representatives and Settlement Class Members, and the Settlement Class Representatives and Settlement Class Counsel have vigorously pursued this action on behalf of the class.

2. Rule 23(b)

Rule 23(b)(3) requires a plaintiff to establish the predominance of common questions of law or fact and the superiority of a class action relative to other available methods for the fair and efficient adjudication of the controversy. Rule 23(b)(3) includes the following nonexhaustive list of factors pertinent to the predominance and superiority analysis:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

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Fed. R. Civ. P. 23(b).

i. Predominance

The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quotation marks omitted). The Supreme Court has defined an individualized question as one where "members of a proposed class will need to present evidence that varies from member to member." *Id*. (quotations omitted). A common question, on the other hand, is one where "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Id*. (quotations omitted). Here, the common questions raised by Settlement Class Members' claims predominate over any individual questions sufficiently for the purposes of a settlement class because the focus is Defendants' conduct and its effect on the market which are all common questions. *In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 558 (9th Cir. 2019) (the predominance inquiry "must be considered in light of the reason for which certification is sought—litigation or settlement—which is relevant to a class certification . . . [and] in deciding whether to certify a settlement-only class, a district court need not inquire whether the case, if tried, would present intractable management problems.") (internal citations and quotations omitted).

ii. Superiority

The superiority requirement tests whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Court considers four non-exclusive factors: (1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *Id*. The Court concludes a class action enables the most efficient use of Court and attorney resources and reduces costs to the Settlement Class Members by allocating costs among them. "In antitrust cases such as this, the damages of individual

[indirect] purchasers are likely to be too small to justify litigation, but a class action would offer those with small claims the opportunity for meaningful redress." *In re Static Random Access (SRAM) Antitrust Litig.*, 2008 WL 4447592 at *7 (N.D. Cal. Sept. 29, 2008). Further, this forum is appropriate, and there are no obvious difficulties in managing this class action.

In sum, the Court finds the predominance and superiority requirements of Rule 23(b)(3) are met.

D. Final Approval of the Settlement

A court may approve a proposed class action settlement only "after a hearing and on finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).[3] In reviewing the proposed settlement, the Court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

[3] Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had enumerated a similar list of factors to consider in evaluating a proposed class settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement"). In the notes accompanying the Rule 23 amendments, the Advisory Committee explained that the amendments were not designed "to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Accordingly, this Court applies the framework of Rule 23 while "continuing to draw guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 17, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020).

For the reasons further detailed below, the Court finds that the proposed settlement is fair, reasonable, and adequate under the Rule 23(e)(2) factors. The settlement provides significant recoveries for Settlement Class Members, particularly when balanced against the risks and expenses of continuing litigation. A class trial would have been costly, recovery was not guaranteed, and there was the possibility of protracted appeals that could result in any class certification or final judgment being overturned.

Counsel for all Parties are highly experienced. Settlement Class Counsel explained why they supported the settlement, and there is no factual basis to support any allegation of collusion or self-dealing.

1. Settlement Class Representatives and Settlement Class Counsel Have Adequately Represented the Settlement Class.

In the Preliminary Approval Order, this Court found that the Settlement Class Representatives and Settlement Class Counsel had adequately represented the interests of the proposed Settlement Class. This Court has seen no evidence to contradict its previous finding, and the Court reconfirms it here with respect to Settlement Class Representatives and Settlement Class Counsel, who have vigorously prosecuted this action through discovery, motion practice, mediation, and preparations for trial. Settlement Class Counsel "possessed sufficient information to make an informed decision about settlement." *Hefler*, 2018 WL 6619983 *6 (citation omitted).

2. The Settlement Was Negotiated at Arm's Length.

The Court finds that the Settlement Agreement is the product of serious, non-collusive, arm's length negotiations by experienced counsel with the assistance of a well-respected, experienced mediator Honorable Layn R. Phillips (Ret.). *See, e.g., G. F. v. Contra Costa Cty*., 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) (noting that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive"); *Hefler*, 2018 WL 6619983 *6 (noting that the settlement "was the product of arm's length negotiations through two full-day mediation sessions and multiple follow-up calls" supervised by a mediator). Before agreeing on the terms of the settlement, the Parties engaged in extensive factual investigation,

which included dozens of depositions, the production and review of millions of pages of documents, extensive written discovery, robust motion practice, and expert discovery. The record was thus sufficiently developed that the Parties were fully informed as to the viability of the claims and able to adequately evaluate the strengths and weaknesses of their respective positions and risks to both sides if the case did not settle.

The Court has independently and carefully reviewed the record for any signs of collusion and self-dealing, and finds no such signs. Specifically, the Court finds that Settlement Class Counsel did not compromise the claims of the Settlement Class in exchange for higher fees as there has been no agreement concerning attorneys' fees or otherwise disadvantaging the Settlement Class.

3. The Cash Payments Provide Adequate Recovery to the Settlement Class.

In the Rule 23(e) analysis, "[t]he relief that the settlement is expected to provide to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. "The Court therefore examines 'the amount offered in settlement.'" *Hefler*, 2018 WL 6619983 *8 (quoting *Hanlon*, 150 F.3d at 1026).

Defendants have agreed to pay $13.93 million, which will be used as a common fund to pay cash benefits to Settlement Class Members as set forth in the Plan of Allocation. Settlement Class Members who submit eligible claims will therefore have the opportunity to receive payments corresponding to their gasoline purchases. Based on the record evidence and argument the parties submitted in connection with the Settlement, as well as the familiarity the Court has developed with this case, the Court finds that this monetary recovery is fair, reasonable, and adequate given the risks of proceeding to trial and the maximum recovery potentially available to Settlement Class Members if plaintiffs had prevailed at trial.

4. The Risk of Continuing Litigation.

The amount provided for in the settlement is also reasonable in light of the risks of continued litigation. Both sides believed they had persuasive facts to support their positions, and there is limited precedent available regarding the Parties' competing theories. Trial would have involved a clash of expert analyses as to whether Defendants' actions were anticompetitive; how

1 damages should be calculated; and what damages, if any, should be awarded, particularly given
2 what Defendants described as the "umbrella damages" theory of this case. And even if plaintiffs
3 succeeded at trial, appeals would undoubtedly have followed.

4 **5. Attorneys' Fees and Expenses.**

5 The Parties have reached no agreements regarding the amounts of attorneys' fees and
6 expenses to be paid. *See, e.g.*, *Hyundai.*, 926 F.3d at 569-70 (rejecting fairness objection because
7 class counsel "did not reach an agreement with the automakers regarding the amount of attorney's
8 fees to which they were entitled," which "[p]rovid[es] further assurance that the agreement was not
9 the product of collusion"). The payment of attorneys' fees and expenses, if any, is subject to
10 approval of the Court based on a finding that such amounts are fair and reasonable.

11 **6. Other Agreements.**

12 The Court is required to consider "any agreements required to be identified under Rule 23
13 (e)(3)." Two individual plaintiffs in this litigation, Justin Lardinois and Asante Cleveland—named
14 plaintiffs who are not part of the proposed Settlement Class and are therefore not eligible for either
15 service awards or to recover under the Settlement Agreement, and who have, like the Settlement
16 Class Representatives, participated extensively in discovery and general litigation efforts—entered
17 into individual settlement agreements with Defendants that provide for awards that mirror the
18 service awards Settlement Class Counsel seeks for Settlement Class Representatives. (Dkt. No. 621
19 at 23 n.2.) No part of the class settlement is contingent on or affected by those individual
20 settlements.

21 Settlement Class Counsel have coordinated their attorneys' fees requests with the California
22 Attorney General (as detailed in Settlement Class Counsel's motion for attorneys' fees and
23 expenses). The settlement is not contingent upon the amount of attorneys' fees counsel receives in
24 this action or in the AG Action.

25 **7. The Plan of Allocation is Reasonable and Treats Settlement Class Members Equitably Relative to Each Other**

26 The claims process and distribution method are reasonable. Settlement Class Members must
27 provide contact information and photo ID along with proof of purchase, either through a simple
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online claim form or through the mail. (Dkt. No. 601-12.) William B. Rubenstein, *Newberg on Class Actions* § 12:18 (6th ed. 2023) (noting that "a claiming process is inevitable" when "[t]here would be no way of distributing a settlement fund to the class members without a process by which the class members identified themselves, their mailing addresses, etc."); *Shay v. Apple Inc.*, 2024 WL 1184693, at *9 (S.D. Cal. Mar. 19, 2024) ("[A]ll class members were required to provide proof of purchase at one point in the process . . . [t]his proof of purchase requirement was successful at weeding out many fraudulent claims[.]").

The method for distributing funds is also reasonable. The Plan of Allocation distributes 85% of the Settlement Fund to businesses and 15% to non-California consumers (unless that leads to compensation of either group beyond their collective single damages), which reflects the estimated collective shares of damages by these two types of Settlement Class Members, as calculated by Settlement Class Representatives' expert. "[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Rieckborn v. Velti PLC*, 2015 WL 468329, at *8 (N.D. Cal. Feb. 3, 2015) (citation omitted). Under the Plan of Allocation, all Settlement Class Members who submit valid claims will receive cash payments amounting to their *pro rata* allocation share of the Settlement Fund based on the amount they paid for gasoline. In this calculation, purchases made in Southern California will be afforded twice the value compared to purchases made in Northern California (purchases in Southern California will carry a weight of 1 and purchases in Northern California will carry a weight of 0.5), to reflect the relative strength of these claims on the merits, given that class plaintiffs did not move to certify a litigation class of Northern California purchasers. *Id.*; *see In re MyFord Touch Consumer Litig.*, No. 13-cv-03072-EMC (N.D. Cal. Mar. 28, 2019), Dkt. No. 526 at 4-5 (granting approval of settlement plan that pays a lower dollar amount based on the relative strength of certain claims); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2023 WL 6205473, at *6-7 (N.D. Cal. Sept. 19, 2023) (granting approval of a settlement allocating enhanced payments for certain class members).

Settlement Class Members have been given the option to choose their preferred method of

payment, including electronic methods or by paper check. After an initial distribution, if there are substantial funds from uncashed payments, the remaining funds will, where economically rational, be redistributed to the Settlement Class Members who made claims and accepted their initial distribution payments. Only if the distribution of residual funds becomes uneconomical will distribution be made to a *cy pres* or other similar recipient, subject to the Court's approval.

8. The Response of Settlement Class Members

Out of millions of Settlement Class Members, there were 60 opt-outs—8 opt outs on behalf of businesses and the remaining 52 being from individuals—and no objections to the Settlement. In comparison, Settlement Class Members submitted 8,050 timely-filed claim forms, of which 1,522 are from businesses and 6,528 from individuals. These figures represent a positive response. *See Churchill Village, LLC v. General Electric,* 361 F.3d at 577 (explaining that a court may infer appropriately that a class action settlement is fair, adequate, and reasonable when few class members object to it); *Zepeda v. PayPal, Inc*., 2017 WL 1113293, at *16 (N.D. Cal. Mar. 24, 2017) (holding "the indisputably low number of objections and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude that the reaction to settlement by the class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it."); *see also, e.g., In re Carrier IQ, Inc., Consumer Privacy Litig*., 2016 WL 4474366, at *4 (N.D. Cal. Aug. 25, 2016) (stating that, "[i]n an analysis of settlements . . . where notice relied on media notice exclusively, the claims rate ranged between 0.002% and 9.378%, *with a median rate of 0.023%*") (emphasis added).

E. Releases

By operation of this Order and Judgment, on the Effective Date, each Settlement Class Representative and Settlement Class Member hereby releases and forever discharges and holds harmless the Defendant Releasees of and from any and all Settlement Class Released Claims which the Settlement Class Member ever had, now has, or will have in the future. Each Settlement Class Member further covenants and agrees not to commence, file, initiate, institute, prosecute, maintain,

1 or consent to any action or proceedings against the Defendant Releasees based on the Settlement
2 Class Released Claims.

3 By operation of this Order and Judgment, with respect to the Settlement Class Released
4 Claims, Settlement Class Representatives, the Defendants Releasees, and Settlement Class
5 Members shall be deemed to have waived and relinquished, to the fullest extent permitted by law,
6 the provisions, rights and benefits conferred by any law of any state of the United States, or
7 principle of common law or otherwise, which is similar, comparable, or equivalent to section 1542
8 of the California Civil Code, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
10 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
11 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR
HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
12 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

13 The settlement states that Settlement Class Representatives, the Defendants Releasees, and
14 Settlement Class Members understand and acknowledge the significance of these waivers of
15 California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or
16 regulation relating to limitations on releases, but acknowledge that this release extends only to
17 economic loss claims (other than those expressly exempted from the scope of the release).

18 The Settlement Class Released Claims are dismissed with prejudice and without costs.
19 Accordingly, the Consolidated Class Action Complaint and any other complaints in the litigation
20 asserting Settlement Class Released Claims are hereby dismissed with prejudice and without costs.

21 Except as provided in this Order and Judgment, Settlement Class Members shall take
22 nothing against the Defendant Releasees. This Order and Judgment shall constitute a final judgment
23 binding the Defendant Releasees, Settlement Class Representatives, and Settlement Class Members
24 with respect to the Settlement Class Released Claims.

25 **F. Other Effects of This Order**

26 No action taken by the parties, either previously or in connection with the negotiations or
27 proceedings connected with the settlement, shall be deemed or construed to be an admission of the
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truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other party. Neither the settlement nor any act performed or document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or Settlement Class Counsel, or of any wrongdoing or liability of the persons or entities released under this Order and Judgment and the settlement, or (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any of the persons or entities released under this Order and Judgment and the settlement, in any proceeding in any court, administrative agency, or other tribunal. The Defendant Releasees' agreement not to oppose the entry of this Order and Judgment shall not be construed as an admission or concession that class certification was or would be appropriate in the litigation outside of the context of settlement or would be appropriate in any other action

No distributions shall be made from the Settlement Account, or from any account holding the Gross Settlement Fund or Net Settlement Fund, without the written authorization of Settlement Class Counsel.

Defendants will have no role in, nor will they be held liable in any way for, the determination of monetary relief to be accorded each claimant. No Settlement Class Member or any other person will sue or have any claim or cause of action against the Settlement Class Representatives, Settlement Class Counsel, any person designated by Settlement Class Counsel, or the Settlement Administrator arising from or relating to the settlement, the Settlement Class Released Claims, the Action, or determinations or distributions made substantially in accordance with the settlement or Orders of the Court, including this Order and Judgment.

Without affecting the finality of the judgment hereby entered, the Court reserves exclusive jurisdiction over the implementation of the settlement. In the event the Effective Date does not occur in accordance with the terms of the Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null and void and shall be vacated, and in such event, all orders

and judgments entered, and releases delivered in connection herewith shall be null and void and the parties shall be returned to their respective positions ex ante.

III. CONCLUSION

For the foregoing reasons, the Court certifies the Settlement Class and grants final approval of the settlement.

There is no just reason for delay in the entry of this Judgment, and immediate entry by the Clerk of the Court is expressly directed.

The Court further orders that the persons and entities that contacted the Settlement Administrator and/or Settlement Class Counsel by January 28, 2025, about submitting claims after the January 8 deadline be given the opportunity to submit a claim. The Settlement Administrator shall inform these persons and entities within three (3) business days of this Order that they may submit a claim within fourteen (14) business days of this Order.

IT IS SO ORDERED.

Date: ____________________________ ________________________________

HON. JACQUELINE SCOTT CORLEY
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CALIFORNIA GASOLINE SPOT MARKET ANTITRUST LITIGATION This Document Relates to: All Actions	CASE NO. 3:20-cv-03131-JSC **[REVISED PROPOSED] ORDER GRANTING CLASS COUNSEL'S MOTION FOR ATTORNE S' FEES E PENSES AND SERVICE AWARDS** HON. JACQUELINE S. CORLEY

On December 6, 2024, court-appointed counsel in this matter ("Class Counsel") moved for an award of attorneys' fees, expenses, and service awards from the Net Settlement Fund. Having Considered the motion and related briefing, and good cause appearing, the Court **GRANTS** Class Counsel's motion.

This litigation began in May 2020 with the filing of cases by the California Attorney General ("AG") in California state court and by private plaintiffs in this Court. The AG and Class Counsel jointly prosecuted their overlapping claims against Defendants, including conducting coordinated document review, depositions, expert work, and strategy, with Class Counsel taking the lead on the work on behalf of the proposed class.

While class certification briefing was underway, the AG reached a settlement with Defendants on behalf of all California natural persons. Damages related to California natural persons represented roughly 75% of the total classwide damages. Following the AG's settlement, negotiations between Defendants and Class Counsel commenced under the supervision of mediator Hon. Layn R. Phillips (Ret.). Defendants and Settlement Class Representatives reached a settlement on May 30, 2024.

Class Counsel now requests an award of attorney fees in the amount of 30% of the Net Settlement Fund. The Net Settlement Fund is equal to the full settlement amount ($13,930,000) minus (1) any expense payments awarded by the Court, (2) service awards, and (3) amounts paid to the settlement administrator. Because the final amount that will be paid to the notice and claims administrator is not currently known, the exact amount of the Net Settlement Fund is not currently known but would range from $6,860,566.05 to $6,360,566.05 if the Court were to grant Class Counsel's requested expense reimbursements and service awards. A 30% award to Class Counsel from the Net Settlement Fund would therefore range from $2,058,169.82 and $1,908,169.82, plus 30% of any interest accrued on the settlement account.

Class Counsel also request expense reimbursements in the amount of $6,554,433.95. Lastly, Class Counsel requests a service award of $5,000 for each of the Settlement Class Representatives.

I. THE RE UESTED ATTORNE S' FEES ARE REASONABLE

In the Ninth Circuit, there are two ways of assessing requests for attorneys' fees in common fund cases: the percentage-of-the-recovery method (where the fee is evaluated as a percentage of the common fund) and the lodestar method (where the fee is evaluated by reference to counsel's lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) ; *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994) ("*WPPSS*")). District courts have discretion concerning which method to apply in a particular case. *Apple Device*, 50 F.4th at 784. As set forth below, an award of 30% of the Net Settlement Fund is reasonable under either approach.

A. The Percentage of the Recovery Method Supports the Requested Fees

When using the percentage-of-the-recovery method, "courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). "The benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The factors courts consider when determining whether to depart from the 25% benchmark are: (1) the result achieved; (2) the risk involved in the litigation; (3) the skill required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases. *Vizcaino*, 290 F.3d at 1048-50. Consideration of these factors weighs in favor of a 30% fee award, particularly when considering the complexity of the case and that the fee is calculated based on the Net Settlement Fund and will result in a significant negative multiplier. *See Ramirez v. TransUnion, LLC*, 2022 WL 17722395, at *10 (N.D. Cal. Dec. 15, 2022) (negative multiplier supported an award of 46 percent of the settlement fund).

1. The Results Achieved

Given the nature and scope of the claims in play, particularly after the AG settled claims on behalf of California natural persons, the $13.93 million settlement represents a substantial return for the Settlement Class. The $13.93 million settlement represents a 33% recovery on the $42 million single damages estimate for the settlement class. This percentage is at the higher end of typical recoveries in antitrust cases. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009) (antitrust settlement for 30% of plaintiffs' estimated damages was "fair and reasonable no matter how you slice it"); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *7 n.19 (N.D. Cal. July 7, 2016) (describing survey of 71 settled cartel cases where weighted mean settlement recovery was 19% of single damages); *In re High Tech Empl. Antitrust Litig.*, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2, 2015) (approving total settlements that were 14% of the class damages estimate, and noting that "[d]istrict courts in the Ninth Circuit routinely approve settlements with much larger differences between the settlement amount and estimated damages"). The meaningful recovery on behalf of the Settlement Class weighs in favor of a 30% fee award. *See In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2-3 (N.D. Cal. Sept. 20, 2018) (finding that "the size of the recovery here—whether measured in dollars or by reference to percentage-of-damages recovery" warranted a 33% fee award and lodestar multiplier).

2. The Litigation Risks

The Settlement occurred against the backdrop of the significant risks litigating this case entailed. As the Court noted in its order on Defendants' motion for judgment on the pleadings, Plaintiffs faced an uphill battle in overcoming multiple causation challenges and producing models and evidence sufficient to support an umbrella theory of damages, both at class certification and on the merits. Defendants strongly opposed Plaintiffs' umbrella theory of impact and damages.

Plaintiffs' motion for class certification was pending at the time of settlement and even if the Court certified a class, an appeal focusing on substantive legal issues for which there is not clear

1 Ninth Circuit precedent would have likely followed. Class Plaintiffs would also have needed to
2 present a complicated case about events having taken place nearly a decade ago to a jury.
3 Given these and other considerations, this litigation carried significant risks.

4 **3. The Skill Required and uality of Work by Counsel**

5 Prosecuting this case against highly capable defense counsel required skill and dedication on
6 the part of Class Counsel. Class Counsel was required to develop an understanding of the complex
7 trading and pricing dynamics in the gasoline industry, including how to interpret sometimes opaque
8 trading logs and other documents related to Defendants' and third parties' trading activities. As
9 noted above, the legal issues in this case were not straightforward. Defendants tried more than once
10 to have this case thrown out due to Plaintiffs' umbrella theory of impact and damages. Class
11 Counsel opposed, and the Court denied, each of Defendants' motions. The complex factual and
12 legal nature of this case, and the quality of work needed to meet those challenges, weighs in favor
13 of an upward adjustment from the 25% benchmark.

14 **4. The Contingent Nature of the Fee**

15 Class Counsel litigated this case on an entirely contingent basis, with no assurances of
16 recovery. It is well-recognized that representation on a contingency basis weighs in favor of an
17 upward adjustment from the 25% benchmark. *See In re Lidoderm Antitrust Litig.*, 2018 WL
18 4620695, at *3 (N.D. Cal. Sept. 20, 2018) ("the public interest is served by rewarding attorneys who
19 assume representation on a contingent basis with an enhanced fee to compensate them for the risk
20 that they might be paid nothing for their work."). And it was not only the non-payment of fees that
21 was at risk. Class Counsel spent millions of dollars out-of-pocket on experts and other litigation
22 expenses without any assurances of reimbursement. *See Vizcaino*, 290 F.3d at 1050 (finding that the
23 litigation entailed "hundreds of thousands of dollars of expense" was a relevant consideration
24 supporting an upward adjustment).
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5. A ards in Similar Cases

In similarly complex cases, most of which involved attorney fee awards on the gross settlement fund, rather than the net fund, courts have not hesitated to grant fee requests exceeding the 25% benchmark where, as here, the circumstances warrant it. *E.g.*, *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 2023 WL 11820531, at *1 (N.D. Cal. Dec. 18, 2023) (30% of $255M gross settlement fund); *In re Capacitors Antitrust Litig.*, 2023 WL 2396782, at *1-2 (N.D. Cal. Mar. 3, 2023) (awarding 40% of final settlement, which brought fee award to 31% of all settlements); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at *7-9 (N.D. Cal. Apr. 24, 2019) (30% of $8,300,000 recovery); *In re Nat'l Collegiate Athletic Ass'n Athletic Grant in Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *5 n.30 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (collecting cases, including those awarding fees of 1/3 of the settlement fund); *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014) (citing numerous cases awarding fees of 32% or greater).

6. The Requested Fee is a Percentage of the Net Not Gross Settlement Amount

In the Ninth Circuit courts have discretion to use either the gross settlement amount or the net settlement amount as the basis for calculating a percentage-based fee award. *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015); *see also Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (the "choice of whether to base an attorneys' fee award on either net or gross recovery should not make a difference so long as the end result is reasonable"). In this case, given the amount of expenses Class Counsel advanced relative to the size of the Gross Settlement Fund, Class Counsel is seeking an award of attorneys' fees based on the size of the Net Settlement Fund. Using the Net Settlement Fund instead of the gross settlement fund reduced the requested fee roughly by half.

B. A Lodestar Crosscheck Confirms that the Requested Fees Are Reasonable

The Ninth Circuit has explained that courts may consider class counsel's lodestar to "provide[] a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. "There is a strong presumption that the lodestar is a reasonable fee." *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016). The lodestar is calculated by multiplying the hours reasonably spent by reasonable hourly rates. *Bluetooth*, 654 F.3d at 941. Between August 7, 2020 (the appointment of Co-Lead Interim Class Counsel) and July 1, 2024 (Court's order granting preliminary approval), Class Counsel spent 31,262.2 hours prosecuting this litigation with a resulting lodestar of $17,721,644.50. Both the number of hours expended, and Class Counsel's hourly rates are reasonable.

Class Counsel had to expend substantial time on motion practice (motions to dismiss, jurisdictional motions, discovery motions, motions for judgment on the pleadings, class certification) and discovery. The Court actively oversaw the litigation and is aware of its complexities and volume of work Class Counsel performed.

Class Counsel represented that work was allocated to various firms and lawyers based on their experience with specified subject matters, and the overall litigation efforts were highly centralized, with Co-Lead Interim Class Counsel billing over 86% of the total hours. Class Counsel also reduced the number of hours by splitting work where feasible with the AG. This was particularly true with respect to document review and depositions. Lastly, Co-Lead Interim Class Counsel put in place billing protocols and reviewed time records to avoid unnecessary billing. The lodestar attributable to timekeepers with fewer than 10 hours were excluded, as was time spent by counsel preparing individual complaints (or conducting any other work) before the Court's order appointing interim class leadership.

Class Counsel's hourly rates range from $225 to $1,370 for attorneys (with less than 1% of the hours billed at more than $1,150), and from $175 to $380 for litigation staff. These rates are consistent with rates approved in complex class actions throughout this District. *See JUUL Labs*,

2023 WL 11820531, at *2 (approving rates ranging from $300 to $1,050 for attorneys); *In re MacBook Keyboard Litig.*, 2023 WL 3688452, at *15 (N.D. Cal. May 25, 2023) (approving partner rates up to $1,195, associate rates up to $850, $425 for contract attorneys, and $325 for paralegals); *TransUnion*, 2022 WL 17722395, at *9 (finding hourly rates ranging from $1,325 to $455 to be "generally in line with rates prevailing in this community for similar services by lawyers of reasonably comparable skill, experience and reputation"); *In re Glumetza Antitrust Litig.*, 2022 WL 327707, at *8 (N.D. Cal. Feb. 3, 2022) (approving attorney rates between $300 and $1,105); *In re Volkswagen Clean Diesel Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving rates of $275 to $1,600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals). The hourly rates of Co-Lead Interim Class Counsel and the other firms have been approved by courts in this District in other matters. *E.g. MacBook*, 2023 WL 3688452, at *15 (approving Girard Sharp rates); *In re Google Play Developer Antitrust Litig.*, 2024 WL 150585, at *3 (N.D. Cal., Jan. 11, 2024) (approving Hausfeld rates).

Class Counsel's fee award will be at most 11.6% of their lodestar (*i.e.*, 30% of the highest Net Settlement Fund range set forth above). A "negative multiplier" such as this "suggests that the fee request is reasonable." *Smith v. Keurig Green Mountain, Inc.*, 2023 WL 2250264, at *10 (N.D. Cal. Feb. 27, 2023); *see also TransUnion*, 2022 WL 17722395, at *10 (negative multiplier "strongly suggests the reasonableness" of the fee) (quotation omitted); *In re DRAM Antitrust Litig.*, 2013 WL 12387371, at *12-13 (N.D. Cal. Nov. 5, 2013) (observing that a negative multiplier "is virtually sufficient to satisfy the cross-check requirement"). The fact that Class Counsel is seeking a significant negative multiplier also addresses any concern that might arise regarding inefficient billing (although, as noted above, Class Counsel took steps to minimize inefficiencies). *See Juarez v. Social Fin., Inc.*, 2023 WL 3898988, at *7 (N.D. Cal. June 8, 2023) (noting that fee request resulting from negative multiplier was still "far less" than an adjusted lodestar would be); *Pemberton v. Nationstar Mortgage, LLC*, 2020 WL 230014, at *2 (S.D. Cal. Jan. 15, 2020) (court

1 "need not reach a conclusion" about whether to adjust the hourly rate because the requested fee was
2 "well below the lodestar").

3 The possibility that Class Counsel will be awarded additional fees from the AG settlement in
4 the state court action does not undermine the reasonableness of the requested fee award in this
5 matter. Even if Class Counsel receives the full $3,000,000 in attorneys' fees it requested in the state
6 court action, that amount, combined with the maximum fee award in this case, would be
7 $5,058,169.82, which is 28.5% of Class Counsel's lodestar—still a significant negative multiplier.

8 Thus, regardless of the approach to analyzing Class Counsel's requested fee award, a
9 lodestar crosscheck supports the reasonableness of the request.

10 **II. THE RE UESTED E PENSES FEES ARE REASONABLE**

11 Class Counsel also requests the reimbursement of $6,554,433.95 in litigation expenses
12 (which is less than the $7,000,000 cap set forth in the class notice). In common fund cases "[c]lass
13 counsel is entitled to reimbursement of reasonable expenses." *Lidoderm*, 2018 WL 4620695, at *4
14 (quotation omitted); *see also In re High Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D.
15 Cal. Sept. 2, 2015) ("In common fund cases, the Ninth Circuit has stated that the reasonable
16 expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense.") (citing
17 *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)).

18 The requested expense reimbursement request, while substantial, is reasonable for this case.
19 Most of the expenses ($5,607358.86) were costs for industry and economic experts. While this
20 amount is substantial, it is reasonable given the complexity and intensity of the expert work.

21 The non-expert costs are also reasonable. Document hosting costs, deposition, research,
22 filing, and travel costs are necessary costs in complex litigations. These "categories of expenses . . .
23 are the type routinely charged to clients, and should be reimbursed." *Lidoderm*, 2018 WL 4620695,
24 at *4; *see also High Tech*, 2015 WL 5158730, at *16 (awarding costs for (1) expert witness fees; (2)
25 mediators' fees; (3) document review; (4) court reporting and videographer services; (5) electronic
26 research; (6) copying, mailing, and serving documents; and (7) case-related travel for plaintiffs,
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1 witnesses, experts, and counsel). Class Counsel were able to reduce costs by, for example, using in-
2 house document reviewers and deposition check translators fluent in Korean, instead of paying high
3 hourly rates to foreign language contract reviewers and interpreters. Only when official translations
4 were needed (*i.e.*, for documents submitted to the Court or used in depositions) did Class Counsel
5 incur the expense of obtaining certified translations from an outside source. Such translation service
6 costs are typically considered "[r]easonable reimbursable litigation expenses." *In re Capacitors*
7 *Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018).

8 **III. THE RE UESTED SERVICE AWARDS ARE REASONABLE**

9 The Ninth Circuit recently reiterated its holding "that reasonable incentive awards to class
10 representatives are permitted." *Apple Device*, 50 F.4th at 785 (quotation marks and citation
11 omitted). In so doing, the Court explained that nineteenth century caselaw, which established the
12 "common fund doctrine," is "not[] discordant" with the Ninth Circuit's "twenty-first century
13 precedent allowing [service] awards." *Id.* Instead, in the class action context, the common fund
14 doctrine "supports reasonable awards to a litigant." *Id.* at 785-86 (quotation marks and citation
15 omitted). And "private plaintiffs who recover a common fund are entitled to an *extra* reward," so
16 long as it is reasonable. *Id.* (emphasis in original; quotation marks and citation omitted).

17 "When assessing requests for service awards, courts consider five principal factors: '(1) the
18 risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety
19 and personal difficulties encountered by the class representative; (3) the amount of time and effort
20 spent by the class representative; (4) the duration of the litigation; (5) the personal benefit (or lack
21 thereof) enjoyed by the class representative as a result of the litigation.'" *Andrews v. Plains All*
22 *American Pipe L.P.*, 2022 WL 4453864, at *4-5 (C.D. Cal. Sept. 20, 2022) (quoting *Van Vranken v.*
23 *Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)). These are often referred to as the "*Van*
24 *Vranken*" factors.

25 Class Counsel requests a service award of $5,000 to each of the three Settlement Class
26 Representatives. "In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable
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service award." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019); *see also Jacobs v. California State Auto. Ass'n Inter Ins. Bureau*, 2009 WL 3562871, at *5 (N.D. Cal. Oct. 27, 2009) (explaining that, in the Northern District of California, "a $5,000 [service award] payment is presumptively reasonable"); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (similar).

The awards are also reasonable under the *Van Vranken* factors. Each of the Settlement Class Representatives spent substantial time and energy participating in this lawsuit, including searching various sources for potentially responsive documents as far back as 2014, responding to interrogatories about their businesses, and producing witnesses to sit for depositions in their personal and 30(b)(6) capacities. *See In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at *24 (N.D. Cal. Dec. 10, 2020), *aff'd*, 2022 WL 16959377 (9th Cir. Nov. 16, 2022) (awarding $10,000 each to 21 individual class representatives who "spent a significant amount of time assisting in the litigation of th[e] case, including time spent in depositions and responding to discovery"). Their participation in the litigation has spanned four years but, given the size of the settlement, their overall financial stake as class members is limited. Modest service awards are therefore appropriate to financially compensate Settlement Class Representatives for their service and will not result in an undue windfall. Collectively, the service awards would represent less than 0.04% of the total settlement amount. Courts within the Ninth Circuit have repeatedly found awards constituting such a small share of the settlement fund to be reasonable. *E.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving service awards that constituted 0.56% of settlement); *Rabin v. PricewaterhouseCoopers LLP*, 2021 WL 837626, at *10 (N.D. Cal. Feb. 4, 2021) (approving $20,000 service awards where "the aggregate proposed incentive award for the two named plaintiffs is 0.34% of the Gross Fund").

IV. CONCLUSION

For the foregoing reasons, the Court grants Class Counsel's request for an award of attorneys' fees equal to 30% of the Net Settlement Fund (plus interest). The attorneys' fee award

shall not exceed $2,058,169.82 (plus 30% of the interest) and shall be calculated based upon the final amount approved by the Court for payment of notice and claims administrator costs.

Class counsel is awarded $6,554,433.95 in litigation expenses.

Each of the Settlement Class Representatives is awarded service awards in the amount of $5,000.

IT IS SO ORDERED.

Date: ______________________________

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HON. JACQUELINE SCOTT CORLEY
UNITED STATES DISTRICT COURT JUDGE