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BURSOR & FISHER, P.A.
L. Timothy Fisher (State Bar No. 191626)
Yeremey O. Krivoshey (State Bar No. 295032)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ltfisher@bursor.com
ykrivoshey@bursor.com

BURSOR & FISHER, P.A.
Max S. Roberts (*Pro Hac Vice*)
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: mroberts@bursor.com

Class Counsel

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KARLA MAREE and MOURAD
GUERDAD, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

DEUTSCHE LUFTHANSA AG,

Defendant.

Case No. 8:20-cv-00885-SVW-MRW

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR AN
AWARD OF ATTORNEYS' FEES,
COSTS, AND EXPENSES, AND
INCENTIVE AWARDS;
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: July 10, 2023
Time: 1:30 p.m.
Courtroom: 10A
Judge: Hon. Stephen V. Wilson

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 10, 2023 at 1:30 p.m., or as soon thereafter as the matter may be heard by the above-captioned Court, located at the First Street Courthouse, 350 West 1st Street, Courtroom 10A, 10th Floor, Los Angeles, California 90012, in the courtroom of the Honorable Stephen V. Wilson, Plaintiffs Karla Maree and Mourad Guerdad (“Plaintiffs”), by and through their undersigned counsel of record, will move and hereby do move, pursuant to Fed. R. Civ. P. 23(h), for entry of the [Proposed] Order for an Award of Attorneys’ Fees, Costs and Expenses, and Incentive Awards. This motion is based on: (1) this notice of motion and memorandum of points and authorities; (2) the Declaration of Yeremey O. Krivoshey in Support of Motions for Final Approval of Class Action Settlement and for an Award of Attorneys’ Fees, Costs and Expenses and Incentive Awards; (3) the papers and pleadings on file; and (4) the arguments of counsel at the hearing on the motion.

Dated: June 5, 2023

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yeremey O. Krivoshey
Yeremey O. Krivoshey

L. Timothy Fisher (State Bar No. 191626)
Yeremey O. Krivoshey (State Bar No. 295032)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
E-mail: ltfisher@bursor.com
ykrivoshey@bursor.com

BURSOR & FISHER, P.A.
Max S. Roberts(*Pro Hac Vice*)
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: mroberts@bursor.com

Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Karla Maree and Mourad Guerdad (“Plaintiffs”), by and through their undersigned counsel, Bursor & Fisher, P.A. (“Class Counsel”), respectfully submit this memorandum of points and authorities in support of Plaintiffs’ Motion for Award of Attorneys’ Fees, Costs and Expenses and Incentive Awards.

INTRODUCTION

Class Counsel has run the gamut the get this case to a close after more than three years of incredibly contentious litigation. In the end, Class Counsel delivered a tremendous result, a Settlement with a claims-made fund of \$3.5 million, plus the ability for Class Members to receive full refunds of unrefunded flights, subject to no cap. This Court has already conducted extensive examination of the potential damages at trial, finding that the amounts offered are reasonable. *See generally Maree v. Deutsche Lufthansa AG*, 2023 WL 2563914 (C.D. Cal. Feb. 13, 2023) (Order Granting Reconsideration of Preliminary Approval, ECF No. 198). Although “[e]valuating recovery in this case presents several challenges,” the recovery here may very well be orders of magnitude higher than what Class Members could have achieved *at trial*. *See Maree*, 2023 WL 2563914, at *12 (party valuations for damages at trial as low as \$159,730). For this recovery, Class Counsel seek attorneys’ fees just *below* the Ninth Circuit’s 25 percent benchmark, plus their reasonable costs and expenses: \$856,498.61 in attorneys’ fees, and \$18,501.39 in costs and expenses. *See Howard Fan v. Delta Air Lines, Inc.*, 2020 WL 5044614, at *4 (C.D. Cal. May 20, 2020) (Wilson, J.) (“The benchmark for attorney’s fees in the Ninth Circuit is 25% of the common fund, and this is the most common fee award assessed in this district.”). The requested fees amount to 24.47% of the \$3.5 million fund, and an even smaller fraction of the overall benefits created by the Settlement.¹ And, to the extent that the

¹ The value of the Settlement was a hotly contested issue at preliminary approval. Plaintiffs argued the value of the Settlement was approximately \$60 million (the \$3.5 million in addition to the \$56 million in full refunds). *Maree*, 2023 WL 2563914, at *11 (C.D. Cal. Feb. 13, 2023). Although agreeing “[t]he notice to class members and

1 Court opts to perform a lodestar cross-check, the requested fees amount to only a 1.66
2 multiplier, which is more than justified by the results obtained and the severe risks
3 faced by Class Counsel. *See* Declaration of Yeremey O. Krivoshey (“Krivoshey
4 Decl.”) ¶¶ 14-21, 33.

5 As this Court has recognized, “the Ninth Circuit has held that the percentage of
6 recovery method should be judged against the entire fund available rather than the
7 percentage actually claimed.” *Salmonson v. Bed Bath and Beyond, Inc.*, 2013 WL
8 12171817, at *8 n.7 (C.D. Cal. Mar. 14, 2013) (Wilson, J.) (citing *Williams v. MGM-*
9 *Pathe Comms., Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)). Thus, it would be an abuse
10 of discretion to base the fee here on the amount claimed, instead of the amount made
11 available. *See id.*

12 To the extent that the amount claimed is relevant, it also supports Class
13 Counsel’s fee request. Though the Settlement is structured as a claims-made fund, its
14 *realized* benefits are substantial. To date, 20,505 persons have submitted claims,
15 which is approximately 12.42 percent of Settlement Class Members. This is a far
16 higher claims rate than in typical consumer class action settlements. *See* FED. TRADE
17 COMM’N, CONSUMERS AND CLASS ACTIONS: A RETROSPECTIVE AND ANALYSIS
18 OF SETTLEMENT CAMPAIGNS 11 (2019) (“Across all cases in our sample requiring
19 a claims process, the median calculated claims rate was 9%, and the weighted mean
20 (*i.e.*, cases weighted by the number of notice recipients) was 4%.”). It is also far
21 higher than the 4.32% claims rate in another, nearly identical COVID-19 flight refund
22 settlement where final approval was granted. *See* Krivoshey Decl ¶¶ 52-58
23 (discussing claims rate in *Ide v. British Airways, PLC (UK)*, Case No. 1:20-cv-
24 03542-JMF (S.D.N.Y)); *id.* Exs. 17-20.

25 refund value provides some value to the class,” the Court ultimately valued the entire
26 Settlement at \$9.1 million. *Id.* Given that Plaintiffs, Lufthansa, and the Court seem to
27 agree that the \$3.5 million cap provides exactly that in value, Plaintiffs use this
28 number as the value of the Settlement for the purposes of this Motion to be
conservative. Of course, Plaintiffs continue to believe that the Settlement in fact
provides far more than \$3.5 million in benefits.

1 As explained in more detail in the concurrently filed Motion for Final Approval,
2 Class Counsel expects that Lufthansa will have to pay out at least \$3,194,260.59: the
3 \$500,000 Minimum Floor for the \$10 Cash Option, \$45 Voucher Option, and Interest
4 Payment claims, \$1,632,952.59 in full refund claims (excluding Interest Payments),
5 \$182,308 in Claims Administration Expenses, \$875,000 in attorneys’ fees and costs
6 (assuming that they are granted in full), and \$4,000 in incentive awards. See
7 Declaration of Dana Boub Decl. ¶¶ 20; Krivoshey Decl. ¶ 23; *Maree*, 2023 WL
8 2563914, at *11 (“In considering the amount offered to the class, the Court must also
9 consider attorney’s fees, incentive awards, and administrative costs.”). That is a
10 tremendous benefit for the Class.

11 Plaintiffs’ fee request also aligns with this Court’s multitude of fee decisions in
12 common fund class actions over the past decade, as illustrated in the below
13 summaries:

- 14 • *Nur v. Tatitlek Support Servs., Inc.*, 2016 WL 7626144, at *3, *8
15 (C.D. Cal. Aug. 23, 2016) (Wilson, J.). This Court approved a
16 \$3 million claims-made settlement with a \$675,931.13 reversion.
17 Class Counsel had intended to seek up to \$900,000 in fees (30%)
18 at preliminary approval, but sought only \$700,000 at final
19 approval in an exchange for Defendants’ waiver of their right to
20 withdraw from the Settlement, which they could have. The Court
21 approved \$700,000 in fees, amounting to 23.3% of the Gross
22 Settlement Amount (\$3 million). Results of a lodestar cross-
23 check were not included in the opinion.
- 24 • *Howard Fan v. Delta Air Lines, Inc.*, 2020 WL 5044614, at *1-
25 5 (C.D. Cal. May 20, 2020) (Wilson, J.). This Court granted fees
26 of 25% of the \$3.5 million fund, amounting to \$875,000 in fees
27 and an additional \$22,602.26 in costs. The lodestar multiplier
28 was 1.78. The Court noted that “Plaintiffs do not provide a clear
assessment of what fraction of total potential liability the
settlement entails.”
- *In re Snap Inc., Securities Lit.*, 2021 WL 667590, at *1-3 (C.D.
Cal. Feb. 18, 2021) (Wilson, J.). This Court granted fees of 25%
of the \$154,567,500 common fund, or \$38.6 million in fees. The
Court did not conduct a lodestar cross-check, but noted that class

1 counsel “estimated” that they had expended 50,000 hours. *See*
2 *id.*, at *4 n.2. That comes out to a blended rate of \$772.83 per
3 hour. Notably, the Court stated that the total value of the
4 settlement “represents approximately 7.8% of the class’s
maximum potential aggregate damages.” *Id.* at *1.

- 5 • *Amador v. Baca*, 2020 WL 5628938, at *12-13 (C.D. Cal. Aug.
6 11, 2020) (Wilson, J.). This Court granted fees of 25% of the
7 \$53 million “megafund,” totaling \$13,250,000 in fees. The fee
8 awarded amounted to a 2.5x lodestar multiplier.
- 9 • *Galavis v. Bank of Am., N.A.*, 2020 WL 5898800, at *2-4 (C.D.
10 Cal. July 14, 2020) (Wilson, J.). This Court granted fees of 25%
11 of the \$770,000 constructive common fund. The fee resulted in
12 a lodestar multiplier of 0.91, though the Court noted that the
Settlement provided for a “clear sailing” provision and
13 authorized fees of nearly 70% of the direct benefit to class
14 members.
- 15 • *Reyes v. Experian Information Solutions, Inc.*, 2021 WL
16 9748881, at *1 (C.D. Cal. May 4, 2021) (Wilson, J.). This Court
17 granted fees of 25% of the \$24 million fund, after the Ninth
18 Circuit reversed the Court’s previous decision to grant only a
19 16.67% fee. *See Reyes v. Experian Information Solutions, Inc.*,
20 856 F. App’x 108, 110 (9th Cir. 2021).
- 21 • *Unutoa v. Interstate Hotels & Resorts, LLC*, 2016 WL 7496127,
22 at *4 (C.D. Cal. Aug. 23, 2016) (Wilson, J.). This Court granted
23 fees of 25% of the \$1.435 million settlement, amounting to
24 \$358,750. The Court noted that “Plaintiff placed into
controversy at least \$8,542,033,” making the value of the
25 settlement roughly 16.8 percent of potential damages at trial.
The Court also noted that the case “did not present any
26 substantially novel or difficult questions of law,” that “the level
of discovery does not appear overly burdensome or unusual for
27 this type of case,” and that “this case did not involve any complex
motion practice that would require special skill or expertise in
28 this area of law.” *See id.*

Of course, none of these prior decisions are exact fits. But they do illustrate that Class Counsel’s fee is well supported by the Court’s prior decisions in the area, in terms of type of settlement (claims-made), size of the settlement (\$3.5 million, plus),

1 percentage of the award (less than the 25% benchmark routinely awarded by this
2 Court), total dollar amount of the award, percentage of recovery (with the Court
3 approving 25% fees in cases with 7.8% and 16.8% recoveries), and lodestar multiplier
4 (with the Court previously awarding a multiplier of 2.5). This Court has already
5 found that the Settlement is reasonable in part because “[t]he fees provided to Maree’s
6 counsel align with the Ninth Circuit’s 25% benchmark.” *Maree*, 2023 WL 2563914,
7 at *8. Given the results obtained, the risks faced, and the fact that Class Counsel
8 seeks less than the Ninth Circuit’s benchmark, the Court should approve Class
9 Counsel’s motion for fees in full.

10 Finally, Plaintiffs request that the Court award them incentive awards in the
11 amount of \$2,000 each (\$4,000 total) to account for the significant time and effort
12 they invested in this case on behalf of the Class.

13 **BACKGROUND AND PROCEDURAL HISTORY**

14 The Declaration of Yeremey O. Krivoshey, submitted herewith, contains a
15 discussion of the background and procedural history of this case, including (i)
16 Plaintiffs’ pre-suit investigation, (ii) the pleadings and motions, (iii) the parties’ arms-
17 length settlement negotiations, and (v) preliminary approval and dissemination of
18 notice. Plaintiffs also assume that the Court is very familiar with the background and
19 procedural posture of this litigation given its lengthy history.

20 **SUMMARY OF THE PROPOSED SETTLEMENT**

21 The Settlement provides at least \$3.5 million in value to all Settlement Class
22 Members. *Maree*, 2023 WL 2563914, at *11. Specifically, for Settlement Class
23 Members who have received refunds from Lufthansa, these Settlement Class
24 Members shall have the option to claim either \$10 in cash or a \$45 Voucher for future
25 travel. Settlement ¶ III.A. This number is capped at \$3.5 million. *Id.* ¶ III.C. The
26 Court valued this portion of the Settlement at \$3.5 million, inclusive of attorneys’ fees
27 and costs, Claims Administration Costs, and incentive awards. *Maree*, 2023 WL
28 2563914, at *11, *11 n.2. Further, the Parties agreed to modify the Settlement by

1 adding a \$500,000 floor for all Cash Option, Voucher Option, and Interest Payments,
2 which shall be “paid on a pro rata basis to those Settlement Class Members who have
3 submitted claims.” ECF No. 203 ¶ 26.

4 For Settlement Class Members who have not received a refund from Lufthansa,
5 these Settlement Class Members shall have the ability to claim a full refund for any
6 cancelled flight, as well as 1% of their ticket price (*i.e.*, a 101% refund). Settlement
7 ¶ III.B.2. While the Interest Payments are subject to the Settlement Cap, the full
8 refunds are not. *Id.* ¶ III.C. Class Counsel estimates the average payment to these
9 Settlement Class Members to be at least \$1,834.57. Krivoshey Decl. ¶ 15.

10 **ARGUMENT**

11 Fed. R. Civ. P. 23(h) provides that a district court may “award reasonable
12 attorneys’ fees and nontaxable costs that are authorized by law or by the parties’
13 agreement.” Under Ninth Circuit standards, a district court may award attorneys’ fees
14 under either the “percentage-of-the-benefit” method or the “lodestar” method where a
15 common fund has been created. *Fischel v. Equitable Life Assur. Soc’y*, 307 F.3d 997,
16 1006 (9th Cir. 2002); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).
17 However, “the percentage of the fund is the typical method of calculating class fund
18 fees.” *Lopez v. Youngblood*, 2011 WL 10483569, at *11 (E.D. Cal. Sept. 2, 2011).
19 Fee awards must consider the interest in “encourage[ing] plaintiffs’ attorneys to move
20 for early settlement, provid[ing] predictability for the attorneys and the class
21 members, and reduc[ing] the time consumed by counsel and court in dealing with
22 voluminous fee petitions.” *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378-79
23 (N.D. Cal. 1989).

24 The Settlement requires Defendant to pay Class Counsel’s attorneys’ fees,
25 costs, and expenses awarded by the Court “not to exceed 25% of \$3.5 million [*i.e.*,
26 \$875,000].” Settlement ¶ IX.A. Class Counsel here has requested an award of
27 \$856,498.61 in attorneys’ fees, and \$18,501.39 in costs and expenses, which totals
28 \$875,000. The attorneys’ fee in isolation amounts to 24.47% of \$3.5 million, which is

1 less than the Ninth Circuit’s 25% benchmark. *See Maree*, 2023 WL 2563914, at *8.
2 And it equals a 1.66 multiplier on Class Counsel’s lodestar. Krivoshey Decl. ¶ 33. As
3 set forth below, under either the percentage of the benefit method (which the Court
4 should apply) or the lodestar method, Class Counsel’s fee request is reasonable and
5 should be approved accordingly.

6 **I. CLASS COUNSEL’S FEE REQUEST IS REASONABLE UNDER THE**
7 **PERCENTAGE OF THE BENEFIT METHOD**

8 “Where there is a claims-made settlement, such as here, the percentage of the
9 fund approach in the Ninth Circuit is based on the total money available to class
10 members, plus costs (including class administrative costs) and fees.” *Lopez*, 2011 WL
11 10483569, at *12. “It is well established that, in claims made or class reversion cases
12 where there is a maximum fund, and unclaimed funds revert to the defendant, it is
13 appropriate to award class fund attorneys’ fees based on the gross settlement fund
14 [*i.e.*, the total benefits made available rather than the amount actually paid out].” *Id.*;
15 *see also Young v. Polo Retail, LLC*, 2007 WL 951821, at *8 (N.D. Cal. Mar. 28, 2007)
16 (“The Ninth Circuit, however, bars consideration of the class’s actual recovery in
17 assessing the fee award”); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d
18 1026, 1027 (9th Cir. 1997) (“We conclude that the district court abused its discretion
19 by basing the fee on the class members’ claims against the fund rather than on a
20 percentage of the entire fund or on the lodestar.”); *Perez v. Rash Curtis & Associates*,
21 2020 WL 1904533, at *6 (N.D. Cal. Apr. 17, 2020) (“[I]n the Ninth Circuit, it is an
22 abuse of discretion to base attorney’s fees on the class members’ claims against the
23 fund rather than on a percentage of the entire fund or on the lodestar.”) (internal
24 quotations omitted *Castellon v. Penn-Ridge Transportation, Inc.*, 2020 WL 7786659,
25 at *11 (C.D. Cal. Nov. 3, 2020) (collecting cases and noting “Ninth Circuit precedent
26 requires courts to award class counsel fees based on the total benefits being made
27 available to class members rather than the actual amount that is ultimately claimed”).
28

1 Further, as this Court recognized, “[i]n considering the amount offered to the
2 class, the Court must also consider attorney’s fees, incentive awards, and
3 administrative costs.” *Maree*, 2023 WL 2563914, at *11; *see also Lopez*, 2011 WL
4 10483569, at *12 (“Fees and class administration costs are included in determining
5 the size of the fund.”) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003));
6 *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *29 (C.D. Cal. Nov. 23, 2013) (finding
7 notice and claims administration costs “conferred a concrete benefit on the class” and
8 were thus “proper to include [] in the value of the class action settlement”); *Kumar v.*
9 *Salov N. Am. Corp.*, 2017 WL 2902898, at *7 (N.D. Cal. July 7, 2017), *aff’d*, 737 F.
10 App’x 341 (9th Cir. 2018) (“The Court analyzes an attorneys’ fee request based on
11 either the ‘lodestar’ method or a percentage of the total benefit made available to the
12 settlement class, *including costs, fees, and injunctive relief.*”) (emphasis added).

13 “The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to
14 33 1/3% of the total settlement value, with 25% considered the benchmark.” *Edwards*
15 *v. National Milk Producers Federation*, 2017 WL 3616638, at *8 (N.D. Cal. June 26,
16 2017). In this District, as this Court has recognized, the 25% benchmark “is the most
17 common fee award assessed.” *Howard Fan*, 2020 WL 5044614, at *4. The exact
18 percentage varies depending on the facts of the case, and in “most common fund
19 cases, the award exceeds that benchmark.” *Vasquez v. Coast Valley Roofing, Inc.*, 266
20 F.R.D. 482, 491 (E.D. Cal. 2010) (quoting *Knight v. Red Door Salons, Inc.*, 2009 WL
21 248367, at *6 (N.D. Cal. Feb. 2, 2009)).

22 The Ninth Circuit has identified a number of factors that may be relevant in
23 determining if a fee award is reasonable: (i) the results achieved; (ii) the risk of
24 litigation; (iii) the skill required and the quality of work; (iv) market rates as reflected
25 by awards made in similar cases; and (v) the contingent nature of the fee and the
26 financial burden carried by the plaintiffs. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
27 1048-50 (9th Cir. 2002). Here, each of these factors supports Class Counsel’s fee
28

1 request because Class Counsel’s outstanding work secured remarkable results for the
2 Settlement Class in the face of substantial risks to any recovery.

3 **A. Class Counsel Achieved Extraordinary Results For The**
4 **Class**

5 [T]he overall result and benefit to the Class ... has been called the most critical
6 factor in granting a fee award.” *In re Anthem, Inc. Data Breach Litig.*, 2018 WL
7 3960068, at *9 (N.D. Cal. Aug. 17, 2018) (internal quotations omitted). Here, Class
8 Counsel has secured at least \$3.5 million in monetary value for the Settlement Class.
9 *Maree*, 2023 WL 2563914, at *11. This represents between 18% and 2,192% of the
10 Settlement Class’s potential recovery at trial (Krivoshey Decl. ¶ 18), a more than
11 reasonable if not extraordinary recovery for the Settlement Class considering the risks
12 that Class Members would face had this case continued through class certification,
13 summary judgment, and trial. *See Maree*, 2023 WL 2563914, at *12 (“Courts have
14 routinely approved settlements that amount to fractions of maximum recovery.”); *In re*
15 *Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving
16 settlement that was 16.67% of the potential recovery); *Bravo v. Gale Triangle, Inc.*,
17 2017 WL 708766, *10 (C.D. Cal. Feb.16, 2017) (approving a settlement where net
18 recovery to class members was approximately 7.5% of the projected maximum
19 recovery amount); *Ahmed v. Beverly Health and Rehabilitation Servs., Inc.*, 2018 WL
20 746393, at *10 (E.D. Cal. Feb. 6, 2018) (approving settlement that was 1% of the
21 potential recovery).

22 Class Counsel’s fee request of \$856,498.61 —or just 24.47% of the \$3.5
23 million minimum value of the Settlement—is therefore reasonable considering the
24 relief provided to the Settlement Class.

25 **B. Plaintiffs’ Claims Carried Substantial Risk**

26 This factor looks to the risk and novelty of the claims at issue. Both are
27 certainly present here. *See* Krivoshey Decl. ¶¶ 19-21 (discussing the risks of litigating
28 Plaintiffs’ claims).

1 As to the risk, Plaintiffs’ claims faced significant uncertainty from the get-go.
2 At the outset of this case, Judge Fitzgerald dismissed all claims for a full refund.
3 *Maree v. Deutsche Lufthansa AG*, 2020 WL 6018806, at *4-5 (C.D. Cal. Oct. 7,
4 2020). Thus, Plaintiffs were left with only claims related to interest and consequential
5 damages stemming from Lufthansa’s “unreasonable” delay in issuing refunds. *Maree*
6 *v. Deutsche Lufthansa AG*, 2021 WL 267853, at *6 (C.D. Cal. Jan. 26, 2021). And, as
7 this Court noted, “[w]hile limited discovery provided evidence demonstrating that
8 Lufthansa may have taken steps to delay refunds, the limited discovery also
9 demonstrated that ... the average times for refunds were between 40 and 140 days.”
10 *Maree*, 2023 WL 2563914, at *9. “[G]iven the backdrop of COVID-19 and the
11 prospect of Lufthansa going bankrupt, there is a serious question as to whether an
12 average refund period of 40, 45, or even 140 days was a[n] [un]reasonable time
13 provide refunds.” *Id.*, at *10. This is on top of the serious risks Plaintiffs would face
14 at class certification, which the Court acknowledged:

15 Maree and Lufthansa point to three issues that may undermine the
16 ability for the purported Class to satisfy the predominance inquiry.
17 First, the determination of what a reasonable time to issue is a highly
18 individualized factual determination. Second, the determination of
19 whether which class members were injured would be an individualized
20 determination because Lufthansa does not automatically keep track of
when a customer requested or received a refund. Finally, the existence
of condition precedents may raise individual determinations as to
whether each class member provided sufficient proof to be entitled to a
refund.

21 *Id.*

22 As to novelty, this lawsuit was among the initial wave of lawsuits against
23 airlines seeking refunds for cancelled flights due to the COVID-19 pandemic. While
24 these lawsuits in theory rested on archaic principles of contract law, their application
25 to the unprecedented circumstances of the COVID-19 pandemic was entirely novel.
26 That application saw minimal success. Many of these lawsuits did not make it off the
27 tarmac. *See, e.g., Daversa-Evdyriadis v. Norwegian Air Shuttle ASA*, 2020 WL
28 5625740, at *6 (C.D. Cal. Sep. 17, 2020) (MTD granted). Only a few survived the

1 pleadings, but as here, were trimmed to focus on interest damages stemming from the
2 delay in issuing refunds. *Maree*, 2021 WL 267853, at *6 (C.D. Cal. Jan 26, 2021).
3 And, three years after the onset of the COVID-19 pandemic, only three lawsuits have
4 actually resulted in a class settlement that has been granted preliminary or final
5 approval: this lawsuit, another lawsuit brought by Class Counsel against Turkish
6 Airlines, and a third against British Airways. *Ide v. British Airways PLC*, Case No.
7 1:20-cv-3542, ECF No. 131 (S.D.N.Y. Nov. 18, 2022); *Sholopa v. Turk Hava Yollari*
8 *A.O (d/b/a Turkish Airlines)*, Case No. 1:20-cv-3294, ECF No. 86 (S.D.N.Y. Apr. 4,
9 2023). By contrast, to Class Counsel’s knowledge, after more than three years of
10 litigation, *not one* COVID-19 related flight refund case has resulted in a court granting
11 a contested class certification motion. Krivoshey Decl. ¶ 20.

12 Further, Lufthansa is represented by highly skilled and well-paid lawyers from
13 DLA Piper LLP. These lawyers vigorously represented their client, challenged
14 Plaintiffs’ claims, and sought to obtain a defense verdict and deprive the Settlement
15 Class of any recovery. Krivoshey Decl. ¶ 20; *see also Barbosa v. Cargill Meat*
16 *Solutions Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (“The quality of opposing
17 counsel is important in evaluating the quality of Class Counsel’s work.”); *see*
18 *also Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997) (affirming fee award and
19 noting that the court’s evaluation of class counsel’s work considered “the quality of
20 opposition counsel and [defendant’s] record of success in this type of litigation”); *In*
21 *re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977)
22 (“[P]laintiffs’ attorneys in this class action have been up against established and
23 skillful defense lawyers, and should be compensated accordingly.”).

24 In sum, given the serious risks Plaintiffs would have faced at class certification
25 and beyond, the novelty of the claims pursued here, the minimal success similar
26 lawsuits have seen, and the sophisticated opposing counsel representing Lufthansa,
27 Class Counsel’s fee request is more than justified.

28

1 **C. Class Counsel Provided Quality Work In A Complex Case**

2 The prosecution of a complex, nationwide class action like this one “requires
3 unique ... skills and abilities.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
4 1047 (N.D. Cal. 2008) (citation and quotation marks omitted). Class Counsel more
5 than delivered. Through more than three years of litigation, Class Counsel
6 (1) conducted extensive pre-suit investigation into Lufthansa’s refund practices (or
7 lack thereof) during the COVID-19 pandemic; (2) drafted the initial Complaint, First
8 Amended Complaint, Second Amended Complaint, and Third Amended Complaint;
9 (3) litigated two motions to dismiss and a motion to compel arbitration; (4) reviewed
10 extensive discovery produced both prior to and after Plaintiffs executed the
11 Settlement; (5) attended a full-day mediation with the Honorable Wayne Andersen
12 (Ret.) of JAMS; (6) negotiated this Settlement; (7) successfully moved for
13 reconsideration after preliminary approval was denied; (8) managed the dissemination
14 of notice and the claims process; and (9) negotiated amendments to the Settlement—
15 including the reminder notice and the \$500,000 floor—that provided additional
16 benefits to the Settlement Class. Krivoshey Decl. ¶¶ 2-13.

17 The work performed by Class Counsel in this case represents the highest caliber
18 of legal work and strongly supports their requested fee award. *Id.*; *see also Wallace v.*
19 *Countrywide Home Loans, Inc.*, 2015 WL 13284517, at *9 (award of attorneys’ fees
20 supported where “[c]lass counsel developed the factual and legal claims of the case,
21 sought extensive written and deposition discovery, reviewed thousands of pages of
22 documents, retained experts to analyze the merits of Plaintiffs’ claims and the
23 potential damages recoverable in this action, engaged in extensive motion practice,
24 and negotiated and drafted the Settlement Agreement”); *see also In re Anthem, Inc.*
25 *Data Breach Litig.*, 2018 WL 3960068, at *13 (approving attorneys’ fees where class
26 counsel “performed significant factual investigation prior to bringing these actions;
27 engaged in motion practice, including opposing two motions to dismiss ...; engaged in
28 written discovery; and participated in protracted negotiations with Anthem”).

1 **D. Market Rates As Reflected By Awards In Similar Cases**
2 **Support Class Counsel’s Fee Request**

3 Class Counsel’s 24.47% fee request is just below the 25% benchmark set by the
4 Ninth Circuit. *Hanlon*, 150 F.3d at 1029. Such a request easily compares favorably to
5 other fee requests in California. *See, e.g., Dakota Med., Inc. v. RehabCare Grp., Inc.*,
6 2017 WL 4180497, at *7-8, 14 (E.D. Cal. Sept. 21, 2017) (awarding 33.33% in
7 attorney’s fees); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D.
8 Cal. 2014) (awarding 33.33% as attorney’s fees); *Retta v. Millennium Prods., Inc.*,
9 2017 WL 5479637, at *19 (C.D. Cal. Aug. 22, 2017) (awarding 25% in attorneys’
10 fees in claims made settlement); *Young v. Polo Retail, LLC*, 2007 WL 951821, at *10
11 (N.D. Cal. Mar. 28, 2007) (awarding ~\$438,000 in attorneys’ fees in claims made
12 settlement valued at \$1.4 million); *Lopez v. Youngblood*, 2011 WL 10483569, at *15
13 (E.D. Cal. Sept. 2, 2011) (awarding 28.5% in attorneys’ fees in claims made
14 settlement); *Maree*, 2023 WL 2563914, at *8 (“The fees provided to Maree’s counsel
15 align with the Ninth Circuit[’s] 25% benchmark.”); *see also* Introduction, *supra*
16 (citing cases where this Court awarded 25% in attorneys’ fees).

17 **E. Class Counsel Handled This Case On A Contingent Fee**
18 **Basis And Bore The Financial Burden**

19 To date, Class Counsel has worked for three years with no payment, and no
20 guarantee of payment absent a successful outcome. That in itself presented
21 considerable risk. *See Vasquez*, 266 F.R.D. at 492. Courts have long recognized that
22 attorneys’ contingent risk is an important factor in determining the fee award and may
23 justify awarding a premium over an attorneys’ normal hourly rates. *See In re Wash.*
24 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.1994). The
25 contingent nature of Class Counsel’s fee recovery, coupled with the uncertainty that
26 any recovery would be obtained, are significant. *Id.* at 1300. In *Wash. Pub. Power*,
the Ninth Circuit recognized that:

27 It is an established practice in the private legal market to reward
28 attorneys for taking the risk of non-payment by paying them a premium
over their normal hourly rates for winning contingency cases ... [I]f this

1 'bonus' methodology did not exist, very few lawyers could take on the
2 representation of a class client given the investment of substantial time,
3 *Id.* at 1299-1300 (citations omitted) (internal quotations marks omitted); *see also*
4 *McKeen-Chaplin v. Provident Savings Bank, FSB*, 2018 WL 3474472, at *2 (E.D.
5 Cal. July 19, 2018) ("Counsel has not received payment for the vast majority of its
6 time spent on this case over the last five and a half years, and took on significant
7 financial risk by taking on this action on a contingency fee basis.").

8 "Courts have also recognized that the public interest is served by rewarding
9 attorneys who assume representation on a contingent basis with an enhanced fee to
10 compensate them for the risk that they might be paid nothing for their work." *Peel v.*
11 *Brooksamerica Mortgage Corp.*, 2015 WL 12745788, at *6 (C.D. Cal. Apr. 6, 2015)
12 *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004) ("A contingent fee
13 must be higher than a fee for the same legal services paid as they are performed. The
14 contingent fee compensates the lawyer not only for the legal services he renders but
15 for the loan of those services.") (internal citations omitted).

16 Throughout this case, Class Counsel expended substantial time and money to
17 prosecute a class action suit with no guarantee of compensation or reimbursement in
18 the hope of prevailing against a sophisticated defendant represented by high-caliber
19 attorneys from a prominent national law firm. *See* Krivoshey Decl. ¶¶ 2-13, 20. Class
20 Counsel did not just invest almost 900 hours of their time in this case; they also
21 invested \$18,501.39 of their own money to prosecute this action for three years. *Id.*
22 ¶¶ 31-32, 39-40; *see also id.* Exs. 2-3. If the case had been lost, Class Counsel would
23 never have recouped that time and money. *Id.* ¶¶ 46-47. Further, if the case had
24 advanced through class certification, Class Counsel's expenses would have increased
25 many-fold, and Class Counsel would have been required to advance these expenses
26 potentially for several years to litigate this action through judgment and appeals. *Id.*
27 ¶ 47. The Court should also note that Class Counsel had no co-counsel in this case,

28

1 and instead bore all of the financial risk to prosecute this case. *Id.* ¶ 46. This fact also
2 supports a finding that Class Counsel’s requested fee is fair and reasonable.

3 * * *

4 Weighing each of the aforementioned factors, Class Counsel’s fee request of
5 \$856,498.61 —or 24.47% of the minimum value of the Settlement—is reasonable
6 under the “percentage-of-the-benefit” method.

7 **II. CLASS COUNSEL’S ATTORNEYS’ FEES ARE REASONABLE UNDER**
8 **A LODESTAR CROSS-CHECK**

9 As an initial matter, there is no need to perform a lodestar cross-check because
10 the Ninth Circuit “has consistently refused to adopt a crosscheck requirement.”
11 *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020) (holding
12 the district court did not “abuse its discretion in using the percentage-of-recovery
13 method to calculate fees and refusing to conduct a lodestar crosscheck”). To the
14 extent the Court desires to, however, Class Counsel’s fee request is more than
15 supportable.

16 Courts in the Ninth Circuit often examine the lodestar calculation as a cross-
17 check on the percentage fee award to ensure that counsel will not receive a “windfall.”
18 *Vizcaino*, 290 F.3d at 1050. The cross-check analysis is a two-step process. *First*, the
19 lodestar is determined by multiplying the number of hours reasonably expended by the
20 reasonable rates requested by the attorneys.² *See Barbosa*, 297 F.R.D. at 451.

21 *Second*, the court cross-checks the proposed percentage fee against the lodestar. *Id.*
22 “Three figures are salient in a lodestar calculation: (1) counsel’s reasonable hours, (2)
23 counsel’s reasonable hourly rate and (3) a multiplier thought to compensate for
24 various factors (including unusual skill or experience of counsel, or the *ex ante* risk of

25 ² Where a court is calculating a fee award based solely on counsel’s lodestar, the
26 lodestar figure may be adjusted upward or downward by use of a multiplier to account
27 for factors including, but not limited to: (i) the quality of the representation; (ii) the
28 benefit obtained for the class; (iii) the complexity and novelty of the issues presented;
and (iv) the risk of nonpayment. *Hanlon*, 150 F.3d at 1029; *see also Kerr v. Screen
Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (identifying twelve factors courts
may consider in analyzing the reasonableness of an attorneys’ fee request).

1 nonrecovery in the litigation).” *Id.* (citing *In re HPL Techs., Inc. Sec. Litig.*, 366 F.
2 Supp. 2d 912, 919 (N.D. Cal. 2005). Here, the lodestar cross-check confirms the
3 reasonableness of Class Counsel’s requested fee.

4 **A. Class Counsel Spent A Reasonable Number Of Hours On**
5 **This Litigation At A Reasonable Hourly Rate**

6 Class Counsel worked efficiently. Class Counsel have submitted their detailed
7 daily billing records showing what work was done and by whom as exhibits to their
8 declaration. Those records confirm Class Counsel efficient billing. *See* Krivoshey
9 Decl. Ex. 2. As of June 5, 2023, after three years of litigation, Class Counsel has
10 worked 884 hours on this case for a total lodestar fee, at current billing rates, of
11 \$515,477.50. Krivoshey Decl. ¶ 32; *see also id.* Ex. 2. Class Counsel’s blended
12 hourly rate of \$583.12 is quite reasonable. *See id.* ¶¶ 41-45. And the hourly rates for
13 each of the lawyers and staff who worked on this case, which are set forth in the
14 Krivoshey Declaration and exhibits thereto, are also reasonable and amply supported
15 by the evidentiary material submitted with the Krivoshey Declaration. *See id.*; *see*
16 *also id.* at Exs. 4-14.

17 Rates are “reasonable where they [are] similar to those charged in the
18 community and approved by other courts.” *Hartless v. Clorox Co.*, 273 F.R.D. 630,
19 644 (S.D. Cal. Jan. 20, 2011). California courts have repeatedly held rates
20 commensurate with Class Counsel’s rates to be fair and reasonable. *See, e.g., Nozzi v.*
21 *Hous. Auth. for the City of Los Angeles*, 2018 WL 1659984, at *7 (C.D. Cal. Feb. 15,
22 2018) (at 2017 rates, rates of \$1,150, \$750 and \$765 for senior attorneys in private law
23 firm approved); *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *17
24 (approving billing rates for partners between \$400 and \$970, and associates between
25 \$185 to \$850 “with most under \$500”); *Nitsch v. DreamWorks Animation SKG Inc.*,
26 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017) (finding rates for senior attorneys
27 of between \$870 to \$1200 per hour to be reasonable); *In re Amgen Inc. Sec. Litig.*,
28 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) (approving “a billing rate ranging

1 from \$750 to \$985 per hour for partners, \$500 to \$800 per hour for ‘of
2 counsels’/senior counsel, and \$300 to \$725 per hour for other attorneys”); *In re High-*
3 *Tech Employee Antitrust Litig.*, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015)
4 (approving billing rates of \$490 to \$975 for partners, \$310 to \$800 for non-partner
5 attorneys, and \$190 to \$430 for paralegals, law clerks, and litigation support staff);
6 *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010)
7 (approving hourly rates between \$445 and \$675 for class counsel in a consumer class
8 action).

9 Indeed, courts within California have routinely found the rates of Class Counsel
10 fair and reasonable. *See, e.g., Perez v. Rash Curtis & Associates*, 2020 WL 1904533,
11 at *20 (N.D. Cal. Apr. 17, 2020) (finding Bursor & Fisher’s hourly rates and blended
12 hourly rate of \$634.48 to be reasonable, and awarding a multiplier between 13.4 to
13 18.15); *Kaupelis v. Harbor Freight ToolsUSA., Inc.*, 2022 WL 2288895, at *9 (C.D.
14 Cal. Jan. 12, 2022) (finding Bursor & Fisher’s “rate range from \$700-\$1000 for
15 partners, \$315-\$450 for associates, and \$350-\$300 for paralegals ... are reasonable
16 compared to other awards in California courts”); *Elder v. Hilton Worldwide Holdings,*
17 *Inc.*, 2021 WL 4785936, at *9 (N.D. Cal. Feb. 4, 2021) (finding Bursor & Fisher’s
18 rates reasonable, including a blended hourly rate of \$673); *see also Goodrich v.*
19 *Alterra Mountain Co.*, 1:20-cv-01057-RM-SKC, ECD No. 158, at 11 (D. Colo. Jan.
20 27, 2023) (approving Bursor & Fisher’s roughly \$654 blended hourly rate, and
21 awarding a multiplier of 3.6). In performing its cross-check analysis, the Court should
22 therefore find Class Counsel’s hours and rates reasonable.

23 **B. All Relevant Factors Support Applying a Multiplier to**
24 **Class Counsel’s Lodestar**

25 The lodestar analysis is not limited to the initial mathematical calculation of
26 Class Counsel’s base fee. *See Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th
27 Cir. 1996). Rather, Class Counsel’s actual lodestar may be enhanced according to
28 those factors that have not been “subsumed within the initial calculation of hours

1 reasonably expended at a reasonable rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 434
2 n.9 (1983) (citation omitted); *see also Morales*, 96 F.3d at 364. In considering the
3 reasonableness of attorneys’ fees and any requested multiplier, the Ninth Circuit has
4 directed district courts to consider the time and labor required, the novelty and
5 complexity of the litigation, the skill and experience of counsel, the results obtained,
6 and awards in similar cases. *Fischel*, 307 F.3d at 1007, n.7; *see also Kerr*, 526 F.2d at
7 70. Class Counsel discussed most of these factors above and all weigh heavily in
8 favor of a multiplier and the requested fee award in this action. *See* Argument §§ I.A-
9 I.E, *supra*.

10 A fee award of \$856,498.61 would represent a multiplier of 1.66 over the base
11 lodestar fee of \$515,477.50. *Id.* ¶¶ 32-33. In a historical review of numerous class
12 action settlements, the Ninth Circuit found that lodestar multipliers normally range
13 from 0.6 to 19.6, with most (83%) falling between 1 and 4, and a bare majority (54%)
14 between 1.5 and 3. *See Vizcaino*, 290 F.3d at 1051 n.6 (finding no abuse of discretion
15 in awarding a multiplier of 3.65); *see also Steiner v. Am. Broad. Co.*, 248 F. App’x
16 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *Aguilar v. Wawona*
17 *Frozen Foods*, 2017 WL 2214936, at *6 (E.D. Cal. May 19, 2017) (noting that “courts
18 typically approve percentage awards based on lodestar cross-checks of 1.9 to 5.1 or
19 even higher”); ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS
20 § 14:03 (3d ed. 1992) (recognizing that multipliers of 1 to 4 are frequently awarded).
21 Thus, even if the Court somehow finds the hours spent by Class Counsel or their
22 hourly rates excessive, the 24% fee award would be justified by a multiplier within the
23 normal 1 to 4 range approved by the Ninth Circuit. The Court should find that the
24 lodestar cross-check strongly supports the requested fee award.

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1 **C. Class Counsel’s Projected Future Time Should Be Included**
2 **In The Lodestar Cross-Check**

3 Class Counsel’s current time does not end the lodestar cross-check inquiry. On
4 the contrary, the Court should include the at least 248.2 additional hours Class
5 Counsel will likely spend on this litigation going forward.

6 Courts routinely include the time class counsel projects to spend on a matter in
7 the lodestar cross-check. *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales*
8 *Practices, and Prods. Liab. Litig.*, 746 F. App’x 655, 659 (9th Cir. 2018) (“The
9 district court did not err in including projected time in its lodestar cross-check; the
10 court reasonably concluded that class counsel would, among other things, defend
11 against appeals and assist in implementing the settlement”); *Perez*, 2020 WL
12 1904533, at *20 (including future time in lodestar analysis because “[t]he Court
13 recognizes that class counsel will indeed incur continued fees in both the appeal of
14 this case and the subsequent litigation”); *Reyes v. Bakery & Confectionery Union &*
15 *Indus. Int’l Pension Fund*, 281 F. Supp. 3d 833, 856 (N.D. Cal. 2017) (including, over
16 the defendants’ objection, “125 anticipated future hours” to be spent on
17 “communicating with the settlement administrator and responding to inquiries from
18 class members” in the lodestar calculation); *Corzine v. Whirlpool Corp.*, 2019 WL
19 7372275, at *11 (N.D. Cal. Dec. 31, 2019) (including “an estimate of 250 hours for
20 future work to complete Settlement’s claims process through 2026” in
21 the lodestar calculation).

22 Here, Class Counsel anticipates spending additional time on this matter
23 handling issues that may arise with the notice campaign, answering class member
24 questions, and appearing at the final approval hearing. Krivoshey Decl. ¶ 34.
25 Principally, however, Class Counsel expects they will spend additional time on this
26 matter because they anticipate counsel for the *Castanares* Plaintiffs will lodge an
27 objection to the Settlement. *Id.* ¶ 35. Obviously, Class Counsel does not believe any
28 such objection would have merit. *Id.* Nonetheless, Class Counsel will need to spend

1 additional time responding to the objection and likely defending the Settlement on
2 appeal (should the objection be overruled and counsel for the *Castanares* Plaintiffs
3 file an appeal to the Ninth Circuit). *Id.*

4 To get a better understanding of the time Class Counsel would spend defending
5 the Settlement on appeal, the two attorneys primarily involved in this action—Mr.
6 Krivoshey and Mr. Roberts—reviewed Class Counsel’s billing records from three
7 appeals in the Ninth Circuit that either Mr. Krivoshey or Mr. Roberts handled. *Id.*

8 ¶ 36. After review of these billing records, Mr. Krivoshey and Mr. Roberts found that
9 Class Counsel spent an average of 248.2 hours handling an appeal before the Ninth
10 Circuit, from the filing of the notice of the appeal until the Ninth Circuit’s order. *Id.*

11 ¶¶ 36-37. And, notably, each of these three appeals involved a pure question of law,
12 whereas an appeal in this case will likely take more time because it involves a replete
13 factual record. *Id.* ¶ 38. Thus, Class Counsel conservatively estimates they will spend
14 at least an additional 248.2 hours following final approval, and primarily defending
15 the Settlement on appeal from objections by counsel for the *Castanares* Plaintiffs.

16 Including Class Counsel’s at least 248.2 projected hours in the lodestar cross-
17 check, at Class Counsel’s blended hourly rate of \$583.12, Class Counsel’s lodestar
18 will increase to \$660,207.88 and the lodestar multiplier will be reduced to 1.30. *Id.*

19 ¶ 37. This further supports the reasonableness of Class Counsel’s fee request.

20 **III. THE REQUESTED INCENTIVE AWARDS FOR PLAINTIFFS ARE REASONABLE**

21 In recognition of their efforts on behalf of the Class, and subject to the approval
22 of the Court, Plaintiffs seek an incentive award of \$2,000 each (\$4,000 total) as
23 appropriate compensation for their time and effort serving as the Class
24 Representatives in this litigation.

25 “Incentive awards are fairly typical in class action cases.” *Gatlin v. United*
26 *Parcel Serv., Inc.*, 2020 WL 9813328, at *6 (C.D. Cal. July 31, 2020) (Wilson, J.)
27 (citing *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). Such
28

1 awards “are intended to compensate class representatives for work done on behalf of
2 the class, to make up for financial or reputational risk undertaken in bringing the
3 action, and, sometimes, to recognize their willingness to act as a private attorney
4 general.” *Rodriguez*, 563 F.3d at 958-59. In determining whether a service award is
5 appropriate, courts consider the number of named plaintiffs receiving incentive
6 payments, the proportion of the payments relative to the settlement amount, and the
7 size of each payment.” *Gatlin*, 2020 WL 9813328, at *6 (cleaned up).

8 Here, the requested service awards of \$2,000 each amount to 0.02% of the total
9 value of the Settlement. *Gatlin*, 2020 WL 9813328, at *6 (granting service awards
10 where “each amount[ed] to only 0.01% of the gross settlement amount”). Further, as
11 attested to in the Maree and Guerdad Declarations, both Plaintiffs assisted with Class
12 Counsel’s investigation and worked to prepare the pleadings in this matter, kept in
13 regular contact with Class Counsel, reviewed and gave their prior approval to the
14 Settlement, and would have been prepared to sit for a deposition. *See* Krivoshey
15 Decl., Ex. 15 at ¶¶ 2-6 (Maree Declaration); *Id.*, Ex. 16 at ¶¶ 2-5 (Guerdad
16 Declaration). Both Plaintiffs have also kept in regular contact with Class Counsel
17 during the pendency of preliminary approval and since the motion for reconsideration
18 was granted. Krivoshey Decl. ¶ 51. The requested amount of \$2,000 for each
19 Plaintiff reflects their significant involvement and dedication to the case, which was
20 crucial to Class Counsel’s ultimate success. *Id.*

21 Based on the foregoing, the payment of incentive awards to Plaintiffs is
22 appropriate, and the amount of \$2,000 each is reasonable when compared to other
23 service awards. *See, e.g., Gatlin*, 2020 WL 9813328, at *6 (approving \$7,500
24 incentive awards to plaintiffs); *Turk v. Gale/Triangle, Inc.*, 2017 WL 4181088, at *5
25 (E.D. Cal. Sept. 21, 2017) (approving \$10,000 incentive award to plaintiff who “has
26 been involved in every step of the litigation, has been cooperative and helpful in
27 gathering facts”); *Garcia*, 2012 WL 5364575, at *11 (approving \$15,000 incentive
28 awards to four plaintiffs); *Bond v. Ferguson Enterprises, Inc.*, 2011 WL 2648879, at

1 *15 (E.D. Cal. June 30, 2011) (approving service awards of \$11,250); *Harris v.*
2 *Vector Mktg. Corp.*, 2012 WL 381202, at *8 (N.D. Cal. Feb. 6, 2012) (awarding
3 \$12,500 service award).

4 **IV. THE REQUESTED COSTS ARE REASONABLE AND SHOULD BE**
5 **APPROVED**

6 “An attorney is entitled to recover as part of the award of attorney’s fees those
7 out-of-pocket expenses that would normally be charged to a fee paying client.”
8 *Howard Fan*, 2020 WL 5044614, at *5 (cleaned up). Here, Class Counsel spent
9 \$18,501.39 in costs prosecuting this case. Krivoshey Decl. ¶ 40; *see also id.* Ex. 3
10 (itemized list of Class Counsel’s costs and expenses). These expenses consist
11 primarily of mediation fees and travel expenses for hearings, as well as other
12 reasonably necessary expenses such as filing fees, e-discovery costs, transcript costs,
13 and so forth. *Id.* Ex. 3. Because these expenses were reasonably necessary and not
14 excessive, they should be allowed in full. *See* Krivoshey Decl. ¶¶ 39-40.

15 **CONCLUSION**

16 After three years of litigation, Class Counsel secured an exceptional a
17 settlement that provides significant relief to approximately 166,000 class members.
18 This Settlement is the culmination of the determined and skilled work of Class
19 Counsel. As a result, Plaintiffs and Class Counsel respectfully request that this Court
20 award the following:

- 21 • \$856,498.61 in attorneys’ fees;
- 22 • \$18,501.39 in costs and expenses; and
- 23 • \$2,000 incentive awards to each Plaintiff (\$4,000 total)

24 The requests are reasonable and appropriate in light of the tremendous results
25 achieved in this case.

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Dated: June 5, 2023

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yeremey O. Krivoshey
Yeremey O. Krivoshey

L. Timothy Fisher (State Bar No. 191626)
Yeremey O. Krivoshey (State Bar No. 295032)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
E-mail: ltfisher@bursor.com
ykrivoshey@bursor.com

BURSOR & FISHER, P.A.
Max S. Roberts (*Pro Hac Vice*)
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: mroberts@bursor.com

Class Counsel