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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AGUSTIN CACCURI et al., on behalf of themselves and all others similarly situated, *Plaintiffs,* v. SONY INTERACTIVE ENTERTAINMENT LLC, *Defendant.*	Case No. 3:21-cv-03361-AMO **CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS** **<u>MOTION HEARING</u>** Date: October 15, 2026 Time: 2:00 pm, PST Courtroom: 3, 3rd Floor Location: Oakland Courthouse Honorable Araceli Martínez-Olguín

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NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

PLEASE TAKE NOTICE THAT Lead Counsel and Class Counsel (together "Class Counsel")[1] for Class Plaintiff Adrian Cendejas hereby move the Court for entry of an order granting: (i) Class Counsel $1,962,500.00 or twenty-five percent of the $7,850,000 Settlement Amount; (ii) reimbursement of $625,067.77 in expenses advanced by Class Counsel in the course of litigation; and (iii) service awards of $30,000 in total or $10,000 each to Messrs. Agustin Caccuri, Adrian Cendejas and Allen Neumark. Mr. Cendejas is the Class Representative Plaintiff in this case since Messrs. Caccuri and Neumark no longer have qualifying purchases under the revised Class definition. But as detailed in this motion and their respective declarations, Messrs. Caccuri and Neumark actively participated in the prosecution of this action as plaintiffs protecting the interests of those harmed by the alleged anticompetitive conduct.

This Motion is supported by the accompanying Memorandum of Law, the Declaration of Michael M. Buchman dated June 17, 2026 and exhibits attached thereto which include, *inter alia*, the individual Declarations of Class Counsel describing the work they performed during the course of the litigation and the individual Declarations of Messrs. Agustin Caccuri, Adrian Cendejas and Allen Neumark. This motion is made in accordance with the schedule established in the Preliminary Approval Order entered in this case on April 8, 2026 (ECF No. 224) and the Northern District of California's *Procedural Guidance for Class Action Settlements*.[2]

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[1] Saveri Law Firm, LLP (saverilawfirm.com); Motley Rice LLC (motleyrice.com); Westerman Law Corp. and Zimmerman Reed LLP (zimmreed.com); Israel David LLC (davidllc.com); Milberg Coleman Bryson Phillips Grossman PLLC (milberg.com); and Steve Williams Law P.C. (stevenwilliamslaw.com) (collectively "Class Counsel").

[2] CAND-ProceduralGuidanceforClassActionSettlements.pdf – *See* Final Approval (2) & (3).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court has preliminarily approved the Settlement Agreement with Defendant Sony Interactive Entertainment LLC ("SIE"). The Settlement Agreement provides for the distribution of $7,850,000 ("Settlement Amount) in PlayStation Network ("PSN") account credits to eligible Class members' PSN accounts minus attorneys' fees, expenses, service award(s) and notice expenses. *See* ECF No. 224. The settlement in this case was reached after: (i) more than three and a half years of hard-fought litigation; (ii) the production and review of documents from Sony and major non-party retailers, (iii) significant expert damages evaluation; and (iv) shortly before depositions were scheduled to commence in the U.S., Canada and the UK. The Settlement Amount represents approximately 26.5% of the potential single damages in this case. If approved, the PSN account credits will be placed in eligible Class members PSN accounts on a *pro rata* basis and directly accessible to each Class member without the need to submit claim forms or risk of denial of claims. The Class could quite easily have come away from this litigation empty-handed. Aside from the risk on the merits, the Court reserved ruling on issues in SIE's anti-class motion, such as the validity of Sony's class action waiver which risked forcing class members to pursue uneconomical individual claims and the eventual elimination of a class settlement altogether. But a settlement was achieved for the benefit of the Class. Class Counsel will file a motion for final approval of the settlement on September 3, 2026 in accordance with the Court Ordered schedule. *See* ECF No. 224, pp. 12–13.

This motion is being filed before the July 2, 2026 deadline for Class members to object or opt out. In this motion, Class Counsel seek an attorneys' fees award of $1,962,500.00 or the Ninth Circuit benchmark twenty-five percent of the $7,850,000.00 for the risks undertaken and the result achieved. The requested fee represents a significant negative multiplier on Class Counsel's cumulative lodestar of approximately $7m. The requested fee falls well within the range of percentages awarded in the Ninth Circuit for cases involving similar risks and results. Class Counsel devoted more than 13,325.25 hours litigating this case, foregoing other opportunities and assuming the risk of recovering nothing as well as potentially losing over $625,067.77 in out-of-pocket expenses advanced in connection with the litigation. Class Counsel, therefore, respectfully request that the Court: (i) award attorneys' fees of $1,962,500.00; (ii) grant the reimbursement of the $625,067.77 expenses advanced; and (iii) approve Service Awards of $30,000.00 or $10,000 for the Class Representative Adrian Cendejas and non-class representatives Messrs. Agustin Caccuri and Allen Neumark.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The first complaint in this multidistrict litigation was filed May 5, 2021. ECF No. 1. Two other complaints were later filed by Messrs. Adrian Cendejas and Allen Neumark in this District. *Cendejas v. Sony Interactive Entertainment LLC et al.*, No. 21-cv-03447, ECF No. 1, filed May 7, 2021 and *Neumark v. Sony Interactive Entertainment LLC et al.,* Case No. 21-cv-05031, ECF No. 1, filed June 29, 2021.

On December 3, 2021, Chief Judge Richard G. Seeborg appointed Michael M. Buchman as Interim Lead Counsel. ECF No. 35. Lead Counsel, in coordination with local counsel Jeff Westerman, has directed the overall conduct of the litigation and has worked with the Class Counsel to effectively and efficiently prosecute the litigation. A description of the work performed by each firm is contained in the individual Declarations of Class Counsel which are attached to the Declaration of Michael M. Buchman dated June 17, 2026 ("Buchman Decl.") as Exhibits A–F. Below is a succinct summary of the litigation events which transpired prior to the Settlement Agreement in this matter.

Motion to Dismiss. On February 18, 2022, Defendant SIE filed a motion to dismiss the Consolidated Class Action Complaint. ECF No. 45. Class Counsel filed an opposition to Defendant's motion to dismiss. ECF No. 51. On July 15, 2022, Chief Judge Seeborg entered an Order granting, Defendant's motion to dismiss and granting Plaintiffs leave to amend. ECF No. 60. The Court found that the Plaintiffs failed to adequately to plead anticompetitive conduct under the Sherman Act, and the derivative claims. *Id*. On August 15, 2022, Plaintiffs filed a Consolidated Amended Class Action Complaint addressing the prior complaint's pleading deficiencies. ECF No. 61. Plaintiffs pled anticompetitive conduct with greater specificity alleging that: (i) Sony profited from its former course of dealing; (ii) sacrificed short-term profits for long-term gain; and (iii) unilaterally refused to deal with retailers. ECF No. 61. On September 22, 2022, Defendant SIE moved to dismiss the Consolidated Amended Class Action Complaint. ECF No. 67. On February 7, 2023, Chief Judge Seeborg denied the motion to dismiss and discovery commenced. ECF No. 80.

Discovery of Defendant and Third Parties. Plaintiffs served initial document requests on April 28, 2023. Buchman Decl., ¶ 26. SIE served objections and responses on May 30, 2023. *Id*. at ¶ 27. On January 30, 2024, after an extensive meet and confer process, SIE served amended objections and responses to Plaintiffs' first set of requests for production. *Id*. at ¶ 28. SIE, thereafter, began producing documents on a rolling basis.

On February 6, 2024, Plaintiffs served a subpoena on third-party The Value Engineers, Inc., a market research consulting firm retained by SIE. *Id*. at ¶ 29. On February 14, 2024, Plaintiffs served subpoenas on: (i) Amazon.com, Inc.; (ii) Best Buy Co., Inc.; (iii) GameStop Corp.; (iv) Target Corporation; and (v) Walmart Inc. *Id*. at ¶ 30. The subpoenas sought to obtain transactional data and other documents. *Id*. These retailers sold game specific vouchers ("GSVs") prior to the April 1, 2019 implementation of SIE's decision to eliminate the sale of GSVs at retail. SIE similarly served third-party subpoenas on the same retailers, as well as certain other third-parties whose productions were all produced to Plaintiffs. In total, SIE produced over 100,000 documents and voluminous transactional data, which Class Counsel and/or their economic expert reviewed prior to conducting settlement discussions. *Id*. at ¶ 32. Approximately 6,500 documents were produced from third-parties: (i) Amazon.com, Inc.; (ii) Best Buy Co., Inc,; (iii) GameStop Corp.; (iv) Target Corporation; (v) Walmart Inc.; and (vi) The Value Engineers, Inc. *Id*.

The transactional data produced by SIE and the third-party retailers established that retailers were charging the manufacturer's suggested retail prices or prices higher than those being charged by SIE. *Id*. at ¶ 35. The transactional data produced in the litigation demonstrated that only certain consumers may have been injured concerning a small number of digital games sold prior to and after April 1, 2019. Plaintiffs' economic expert, with the benefit of SIE and third-party productions, concluded that the breadth of injury and damages were *significantly* smaller than initially anticipated. *Id*. at ¶ 37. Plaintiffs' economic expert conveyed that proving economic injury and resulting damages would be very difficult in this case. *Id*. at ¶ 38.

Discovery of Plaintiffs. SIE served a first set of requests for the production of documents on Plaintiffs on December 6, 2023, to which Plaintiffs responded on January 19, 2024. In total, Plaintiffs produced approximately 2,164 documents to SIE. *Id*. at 35.

Completion of Document Discovery and Commencement of Depositions: Over Sony's opposition, Plaintiffs requested more than ten depositions. Ultimately the Court allowed plaintiffs to notice thirteen Fed. R. Civ. P. 30(b)(1) depositions as well as a Fed. R. Civ. P. 30(b)(6) deposition of SIE. *Id*. at ¶ 39. Following the review of the documents and data produced in the litigation, Plaintiffs began preparing for international and domestic depositions. Plaintiffs worked closely with their economic expert in preparation for these depositions. Plaintiffs were prepared to take the deposition of SIE's current and former employees. *Id*. at ¶ 40. Class Counsel was also ready to defend the depositions of the three named Plaintiffs. Shortly before the depositions were scheduled to commence, counsel for SIE at the time, Paul Weiss, contacted Plaintiffs' counsel to propose potential resolution of the matter.

The Settlement. The parties agreed to engage Mr. Christopher Hockett, who served as the Court-appointed Early Neutral Evaluator, to explore potential resolution in August of 2024. Mr. Hockett conducted many separate and joint mediation sessions over an approximately three-week period. *Id*. at ¶ 43. The parties reached the proposed Settlement on September 15, 2024. Declaration of Christopher B. Hockett dated August 6, 2025, ¶¶ 5–8. ECF No. 207-5.

The Settlement was reached after two motions to dismiss and a motion to preemptively deny class certification were briefed, argued, and resolved. The Court left open some issues for Plaintiffs' eventual class certification motion that left the viability of the class device in doubt and potentially made individual claims uneconomical to pursue. The Settlement was also reached after SIE and third-party discovery was obtained and reviewed. To be clear, the settlement was reached *after* over one hundred thousand documents, and SIE transaction and pricing data was reviewed by Plaintiffs' counsel and Plaintiffs' economic expert. As the docket in this case reflects, this was hard-fought and highly adversarial litigation. Accordingly, the parties (as well as Mr. Hockett from conducting the ENE) were well-versed in the strengths and weaknesses of the case and were well-positioned to assess and balance the risks and rewards of continuing to pursue the litigation at the time the Settlement was reached.

Preliminary Approval: The Court granted preliminary approval of the proposed settlement and certification of a settlement Class on April 8, 2026. ECF No. 224. The Court also reappointed Interim Lead Counsel as Lead Counsel and appointed Mr. Adrian Cendejas as the Class Representative Plaintiff. *Id*. at 11.

III. SUMMARY OF REQUESTED FEES, EXPENSES, AND SERVICE AWARDS.

As detailed below and in the accompanying individual Declarations, Class Counsel devoted a total of 13,325.25 hours to this case, with a resulting lodestar of $7,289,347.80. Each of the firm's overall lodestar is listed below:

Firm	Hours	Lodestar
Motley Rice LLC	8,449.50	$4,421,820.00
Saveri Law Firm, LLP	2908.45	$1,509,455.50
Westerman Law Corp. and Zimmerman Reed LLP	1,668.95	$1,111,580.50
Israel David LLP	56.60	$42,332.50
Milberg Coleman Bryson Phillips Grossman, PLLC	220.00	$176,971.80
Steven William Law P.C.	21.75	$27,187.50
Totals	**13,325.25**	**$7,289,347.80**

Class Counsel respectfully request an award of twenty-five percent of the Settlement Amount ($1,962,500) in attorneys' fees, which represents a *negative multiplier* on their $7,289,347.80 lodestar. They also respectfully request the reimbursement of $625,067.77 in unreimbursed expenses.

To facilitate the Court's consideration of this fee and expense application, each firm has submitted a Declaration, in accordance with the Northern District of California Procedural Guidance for Class Action Settlements requirement. *See* n.2. The Declarations: (i) identify the attorneys and staff members who worked on the case and the tasks the key members performed; (ii) describe the amount of time spent by each of the attorneys and staff members, and the hourly rates for them; and (iii) provides an itemization of the expenses incurred by each firm. *See* Buchman

Decl., Exhibits A–F. Class Counsel also respectfully request that Messrs. Caccuri, Cendejas and Neumark each receive a Service Award in the amount of $10,000 as discussed in Section VI below.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE.

Under Federal Rule of Civil Procedure 23(h), a "court may award reasonable attorneys' fees" to plaintiffs' counsel in class action cases. "[C]ourts have an independent obligation to ensure that the award, like the settlement itself, is reasonable[.]" *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *see also In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022). "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *Bluetooth*, 654 F.3d at 942. "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *Id.* Class Counsel's requested fee is reasonable under either approach, and a loss to counsel, while still providing a significant benefit to the Class.

A. The Percentage-of-the-Recovery Method Supports the Requested Attorneys' Fee Amount.

Class counsel respectfully request a fee award of $1,962,500.00 or twenty-five percent of the Settlement Amount. Courts supervising antitrust cases in this District regularly apply the percentage of the fund approach. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *5 (N.D. Cal. Aug. 17, 2018); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018). "In the Ninth Circuit, the benchmark for percentage of recovery awards is 25 percent of the total settlement award, which may be adjusted up or down." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1019 (E.D. Cal. 2019) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)).

Class Counsel's request for a fee award of twenty-five percent of the Settlement Amount is reasonable under the percentage-of-the-recovery method. It has been recognized that "[t]he 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 (6) Mexican Workers v. Arizona Citrus*

Growers, 904 F.2d 1301, 1311 (9th Cir. 1990). Class Counsel *is not* seeking an upward adjustment from the twenty-five percent benchmark since that would reduce the Class members' potential recovery.

The factors courts consider when determining whether to depart from the twenty-five percent benchmark are: "(1) the results achieved, (2) the risk of litigation, (3) the complexity of the case and skill required, (4) the contingent nature of the litigation, and (5) awards made in similar cases." *Katz-Lacabe v. Oracle Am., Inc.*, No. 3:22-cv-04792-RS, 2024 WL 4804974, at *3 (N.D. Cal. Nov. 15, 2024); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). These factors support the $1,962,500.00 or twenty-five percent fee request in this case.[3]

With respect to the *first factor*, the overall result and benefit to the Class from the litigation is the most critical factor in granting a fee award. *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014). Class Counsel recovered approximately 26.5% of Class Plaintiff's damages estimate. "Far lesser results (with 20% recovery of damages or less) have justified *upward departures* from the 25% benchmark." *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at *3 & n.14 (9th Cir. 2019), *aff'd* 768 F. App'x 651 (9th Cir. 2019) ("*NCAA*"). This settlement represents a valuable and significant recovery to the Class. The settlement benefits the Class by providing an immediate monetary benefit without filing a claim form. Credits will be placed in eligible Class members' PSN accounts automatically. This will allow Class members to completely avoid the time, energy and administrative expense involved in the typical claims administration process.

With regard to the *second factor*, Class Counsel assumed a significant risk in undertaking this litigation. Success is never guaranteed in contingency litigation. Despite the risk involved in this case, Class Counsel committed the time, money and energy to prosecute this multi-year litigation to successful conclusion. There was significant risk of recovering nothing in this complex

[3] When calculating the percentage, courts should use the gross settlement amount—*i.e.* including amount that will be used to pay notice and administrative costs and litigation expenses—as the denominator. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015).

antitrust case which was litigated on a contingency basis for six reasons. *First*, the number of games sold at retail was much smaller than originally contemplated. The games in question were, therefore, a small subset of the digital games sold by SIE through the PlayStation Store. *Second*, the smaller set of games meant that the class size would be much smaller than initially contemplated. *Third*, retailers were selling a number of digital games at the same price as SIE or at higher prices, thereby making the universe of actionable games and *quantum* of damage even smaller. This would make it more difficult to prove that SIE engaged in the underlying conduct as alleged in the Consolidated Amended Class Action Complaint. *Fourth*, establishing and proving damages would be very challenging according to Plaintiffs' economic expert. *Fifth*, the class action waiver issue under SIE's contracts with customers remained outstanding under the Court's ruling on SIE's preemptive class certification motion. That issue created significant uncertainty about class size, let alone certification, going forward. *Sixth*, SIE repeatedly argued in court filings that "the only conceivable rationale or purpose" test under *FTC v. Qualcomm, Inc.*, 969 F.3d 974, 993 (9th Cir. 2020) would be applied to its decision to stop selling digital games at retail. This is a developing area of the law which has historically proven challenging for plaintiffs. The existence of these issues, individually and collectively, created considerable uncertainty about obtaining any relief for the Class and support the view that resolution of this action at this time is in the best interests of the Class. Buchman Decl., ¶ 6.

Class Counsel undertook this matter at risk with no parallel government litigation. Class Counsel incurred more than $7,289,347.80 million in attorney time and $625,067.77 in out-of-pocket expenses, with no guarantee of receiving payment. In cases like this, "the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing for their work." *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 4620695, at *3 (N.D. Cal. Sept. 20, 2018) (quoting *Larsen*, 2014 WL 3404531, at *9). The requested twenty-five percent fee is appropriate here since Class Counsel expended considerable time in this case, approximately $7m in lodestar, the majority of which will go uncompensated.

With respect to the *third and fourth factors*, overcoming the risks presented in this case required skillful and thoughtful representation, and close collaboration. The docket and procedural history in this case evidence Class Counsel's expertise and success. Class Counsel are well experienced class action practitioners, and their experience and skills were brought to bear to achieve the result here. SIE hired *three* of the most sophisticated antitrust firms in this country to represent it in this case. *See Barbosa v. Cargill Meat Sols. Corp.,* 297 F.R.D. 431, 449 (E.D. Cal. 2013) ("The quality of opposing counsel is important in evaluating the quality of Class Counsel's work."). Thus, the settlement here was achieved on a contingency fee basis which was completely at significant risk.

With regard to the *fifth factor*, a fee award of twenty-five percent of the settlement fund is below antitrust awards in this Circuit. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33%); *see also In re Telescopes Antitrust Litig.*, No. 5:20-cv-03639-EJD, 2025 WL 1093248, at *10 (N.D. Cal. Apr. 11, 2025) (finding fee award of one-third of the fund to be "consistent with Ninth Circuit precedent"); *In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-02670-DMS (MSB), 2024 WL 4941471 (S.D. Cal. Nov. 22, 2024) (awarding $48 million in fees, which represented 33% of the settlement fund); *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD, 2023 WL 2396782, at *1 (N.D. Cal. Mar. 6, 2023) (fee award of 31% was "well within the range of reasonable fee awards, especially in light of the complexity of these antitrust cases, and the degree of work and skill required to obtain highly beneficial results for the class"); *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2020 WL 1904533, at *17 (N.D. Cal. Apr.17, 2020) (awarding 33% fee of $267 million recovery); *NCAA*, 2017 WL 6040065, at *5 & n.30 (collecting cases, including those awarding fees of 1/3 of the settlement fund); *Lidoderm*, 2018 WL 4620695, at *2–4 (fee award of 33.3% of $104.75 million settlement, which resulted in a 1.37 multiplier); *Meijer, Inc. v. Abbott Lab'ys*, No. C. 07-5985 CW, 2011 WL 13392313, at *2 (N.D. Cal. Aug. 11, 2011) (33 1/3% of $52,000,000 recovery); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1049 (N.D. Cal. 2008) (awarding 28% of a $13,750,000 settlement fund); *Spann v. J.C. Penney Corp.,* 211 F. Supp. 3d 1244, 1266 (C.D. Cal. 2016) (awarding 27% of a $50,000,000 settlement fund). As these precedents demonstrate, the twenty-five percent request in this matter is reasonable. In short, the rationale for awarding fees at the twenty-five percent benchmark applies here given the significant efforts made by Class Counsel as well as the result achieved for the benefit of the Class. All of the relevant factors support the requested fee award of twenty-five percent of the Settlement Amount, especially when one considers that a majority of Class Counsel's approximately $7m in lodestar will go uncompensated.

B. The Lodestar Method Supports the Requested Attorneys' Fees.

The lodestar method is calculated by multiplying the number of hours reasonably spent by a reasonable hourly rate. *Bluetooth*, 654 F.3d at 941. Courts may, however, "adjust [the lodestar figure] upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors." *Id.* at 941–42 (citation omitted).

Class Counsel here spent 13,325.25 hours prosecuting this litigation on behalf of the Class with a resulting lodestar of $7,289,347.80. Class Counsel's requested fee award of twenty-five percent of the Settlement Amounts represents a *negative multiplier* of the total lodestar. As explained below, the requested fee is reasonable given the risks undertaken by Class Counsel in prosecuting this litigation, the financial investment made, and the extensive efforts expended by Class Counsel.

1. The Time Spent by Class Counsel is Reasonable.

Class Counsel's lodestar reflects time that was necessary and reasonably spent for the benefit of the Settlement Class. Chief Judge Seeborg's December 2, 2021 Order appointing leadership for the Class vested Interim Lead Counsel with authority for the overall conduct of the case and responsibility for carrying out all major aspects of the litigation. ECF No. 35. In accordance with that directive, Lead Counsel, while at Motley Rice LLC, led the litigation and performed a large portion of the work, including strategic oversight of case management, preparing for and responding to written discovery, working with an economic expert, briefing, court appearances, and overall case strategy. This work was performed in conjunction with Local Counsel – Jeff Westerman of his own firm Westerman Law Corp. and then Zimmerman Reed LLP. Lead Counsel also shared tasks with Class Counsel such as document review and discrete research assignments. Lead Counsel effectively and efficiently staffed this case as leanly as possible, but in accordance with the needs of the case and the skillset of the available attorneys. Duplication of effort was minimized, and any duplicative or unnecessary work has been excluded as a basis for the attorney fee award sought here.

Lead Counsel also took steps to ensure that the time submitted reflects work reasonably performed for the benefit of the Class. Each firm maintained contemporaneous time records. Lead Counsel has reviewed the time and expense records and provided comments to the firms where appropriate. Lead Counsel in this case is not submitting time which arose in this case after December 31, 2025, although significant time will be spent in order to achieve settlement approval. Accordingly, Class Counsel respectfully submit that the requested hours are reasonable.

2. Class Counsel's Hourly Rates are Reasonable.

The second part of the lodestar calculation is multiplying the hours spent by a "reasonable hourly rate for the region and for the experience of the lawyer." *Bluetooth*, 654 F.3d at 941. Class Counsel's historic rates—which range $1,400 to $468 for partners, $800 to $340 for associates, $1,100 to $725 for senior counsel and of counsel, and $650 to $150 for litigation support staff (including senior case managers)—meet both criteria. *See* Exhibits A–F. Contract lawyers and document review time has been capped at $340.00.

Class Counsel's hourly rates are consistent with rates approved in recent antitrust class actions in this District. *E.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 19-md-02913-WHO, 2023 WL 11820531, at *4 (N.D. Cal. Dec. 18, 2023) (finding rates "facially reasonable" where the vast majority of partner hourly rates ranged between $275 and $1,200 and associate rates ranged between $175 and $800); *In re Xyrem (Sodium Oxybate) Antitrust Litig.,* No. 20-md-02966-RS, 2025 WL 3006647 at *2 (N.D. Cal. Oct. 27, 2025) (approving rates ranging between $525 to $1500 for partners, $240 to $950 for associates, $240 to $1100 for senior associates and of counsel, and $150 to $650 for litigation support staff). Each firm's rates are also the usual and customary rates charged by the firm in similar contingency fee matters, as well as the firm's noncontingent matters. Buchman Decl., Exhibits A–F.

Class Counsel's lodestar in this matter has been conservatively calculated using historic billing rates. Courts in this district have recognized that the use of current billing rates for all work is appropriate "'in order to account for the delay . . . in receiving payment.'" *In re: Cathode Ray Tube* (*CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at *7 (N.D. Cal. Aug. 3, 2016) (citing *Fischel v. Equitable Life Assur. Soc.*, 307 F.3d 997 (9th Cir. 2002)); *see also Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 740 (9th Cir. 2016) (quoting *Fischel*, 307 F.3d at 1010) (noting "'attorneys in common fund cases must be compensated for any delay in payment'" and directing the district court to use current rates or a rate enhancement on remand). But Class Counsel have not used current rates and instead are conservatively using historic rates.

V. THE REQUESTED EXPENSES ARE REASONABLE.

Class Counsel respectfully request the reimbursement of unreimbursed out-of-pocket expenses in the amount of $625,067.77. It is appropriate to reimburse attorneys prosecuting class claims on a contingent basis for reasonable out-of-pocket costs advanced for the Class. *Katz-Lacabe*, 2024 WL 4804974, at *6 (citing Fed. R. Civ. P. 23(h)); *see also In re High-Tech Emp. Antitrust Litig,*, No. 11-cv-02509-LHK, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) (citing *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)) ("In common fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense."); *Telescopes*, 2025 WL 1093248, at *11 (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)) ("attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters"). Under the common fund doctrine, plaintiffs' counsel should receive reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement. *See generally Vincent v. Hughes Air W., Inc.*, 557 F.2d 759 (9th Cir. 1977).

Lead Counsel restricted travel to hearings, and other litigation activities to only those individuals who were necessary to attend an event. Given the diligent efforts to minimize costs and reduce expenses, the typical expenses incurred for the benefit of the Class in this case were relatively low. The total non-expert expenses were $251,136.95. Expenses of even greater magnitude are common in complex antitrust cases. *See In re HIV Antitrust Litig.,* No. 19-cv-02573-EMC, 2022 WL 20611257, at *1 (N.D. Cal. Oct. 27, 2022) (Court found the litigation expenses of $1,919,831 were reasonable as the Plaintiffs had been litigating the "antitrust class action for more than three years and they have already incurred more than that amount as litigation expenses").

No litigation fund was established in this case and each firm paid case related expenses as they accrued such as for legal research, travel, postage, printing and copying costs, and filing fees. An accounting of these expenses is included in the individual firm Declarations. *See* Buchman Decl., Exhibits A–F. In total, Class Counsel has incurred $625,067.77 in unreimbursed out-of-pocket expenses. *Id*., ¶ 56.

The expense reimbursement request is reasonable. The categories of expenses for which Class Counsel seek reimbursement are of the type routinely charged to clients and should be reimbursed such as expert fees, mediator fees, document hosting fees, court reporting services, electronic research, photocopying, and travel expenses. *See High-Tech Emp.*, 2015 WL 5158730, at *16 (awarding costs for (1) expert witness fees; (2) mediators' fees; (3) document review; (4) court reporting and videographer services; (5) electronic research; (6) copying, mailing, and serving documents; and (7) case-related travel for Plaintiffs, witnesses, experts, and counsel); *In re Capacitors Antitrust Litig*., No. 3:14-cv-03264-JD, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) ("Reasonable reimbursable litigation expenses include: those for document production, experts and consultants, depositions, translation services, travel, mail and postage costs.").

While the amount of expenses incurred on the expert is a significant portion of the expenses in this case, "[a]ntitrust cases are particularly risky, challenging, and widely acknowledged to be among the most complex actions to prosecute" *See In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR, 2020 WL 7264559, at *15, 23–24 (N.D. Cal. Dec. 10, 2020) (granting $4,857,677.85 in reimbursement for expert and consultant fees). The complexity of the economic issues in this case required extensive expert analysis by both sides. Aside from expert costs, the largest expenses incurred were for document collection, data hosting and mediation. Buchman Decl., ¶¶ 57–59. The amount of these expenses ($73131.99) in this case is less than the amounts billed in other antitrust cases. *See Lithium Ion Batteries*, 2020 WL 7264559, at *23 (granting $951,168.46 for online document database services); *In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-02670-DMS (MDD), ECF No. 2845-2, Ex. 2 (counsel incurred $380,000 in e-discovery services and

$157,000 for deposition vendors); *High-Tech Emp.*, 2015 WL 5158730, at *16 (awarding expenses for costs associated with 93 depositions including court reporting and videographer services); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 183285, at *3 (N.D. Cal. Jan. 14, 2016) (approving $83,724.42 in mediation costs); *Fleming v. Impax Lab'ys Inc.*, No. 16-cv-06557-HSG, 2022 WL 2789496, at *10 (N.D. Cal. July 15, 2022) (approving request for reimbursement of litigation expenses, including $62,097.50 in mediation costs to Phillips ADR Enterprises as described at ECF No. 127-5 at 10).

The firm-specific expenses are also reasonable given the context of the litigation. This case required Class Counsel to research a wide range of legal issues, which were often complex. *See Carlin.*, 380 F. Supp. 3d at 1024 ("Computerized legal research is an essential tool of a modern efficient law office, and the complexity of this case justifies the costs of these services . . ."). Those costs were reduced by Class Counsel's staffing practices, which provided for clear lines of authority and minimized duplication of effort.

The rest of the expenses were necessarily incurred for basic litigation activities, such as filing fees, copies, and service fees. *See e.g., In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-2670-DMS (MDD), 2022 WL 3588414, at *3 (S.D. Cal. Aug. 19, 2022) (approving request for reimbursement of over $200,000 in travel expenses, as described in *In re Packaged Seafood Products Antitrust Litigation*, No. 15-md-2670-DMS (MDD), ECF No. 2862-2 at 15); *Lidoderm*, 2018 WL 4620695, at *4 (granting reimbursement of over $114,000 in research expenses as described in *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521-WHO, ECF No. 1032).

VI. THE REQUESTED SERVICE AWARDS ARE REASONABLE.

Service awards are intended to compensate Class Representatives for work undertaken on behalf of a Class. They are typically awarded in class action cases. *Online DVD-Rental,* 779 F.3d at 942. Lead Counsel's request for a service award of $30,000 or $10,000 each to Messrs. Caccuri, Cendejas and Neumark is reasonable. The request represents 0.382% of the total value of the Settlement. Each Class Representative: (i) actively participated in the litigation; (ii) stayed abreast of the progress of the case; (iii) worked closely with Class Counsel; (iv) collected and produced documents responsive to Defendant's document requests; and (v) attended the Early Neutral

Evaluation session. *See* Exhibits G, H, I. The Declarations of Messrs. Caccuri, Cendejas and Neumark describe the risks they undertook in participating, the time they spent on the litigation, a description of what tasks they performed and other justifications for their requested service award in accordance with the Procedural Guidance for Class Action Settlement. Buchman Decl., Exhibits G, H, I. Service awards of this amount are appropriate. *Patel v. Trans Union, LLC, No.* 14-CV-00522-LB, 2018 WL 1258194, at *7 (N.D. Cal. Mar. 11, 2018) (approving $10,000 service award of a $8,000,000 settlement fund); *Gutierrez v. Amplify Energy Corp.*, No. 8:21-cv-01628-DOC(JDEx), 2023 WL 3071198, at *7 (C.D. Cal. Apr. 24, 2023) (approving $170,000 or $10,000 each for 17 class representatives for service awards of a $50,000,000 settlement fund); *In re ImmunityBio, Inc. Sec. Litig.,* No. 3:23-cv-01216-GPC-VET, 2025 WL 1686263, at *16 (S.D. Cal. June 16, 2025) (awarding $10,000 service award of a $10,500,000 settlement fund).

Lead Counsel disclosed and the Court previously noted that Messrs. Caccuri and Neumark do not have qualifying purchases and, therefore, are no longer part of the Class. At the January 29, 2026 preliminary approval hearing, the Court raised the issue whether: (i) individuals no longer in the Class may receive a service award for their efforts; and (ii) the award can come out of the attorneys' fees or the Class settlement monies.

The issuance of Service Awards to Messrs. Caccuri and Neumark is appropriate. *Chambers v. Whirlpool Corp.*, 980 F.3d 645, 670 (9th Cir. 2020) (presupposing that granting incentive awards to non-class members is proper since the Ninth Circuit held that "non-class members receiving service awards are not considered class representatives under the settlement, [therefore] their receipt of payments is irrelevant to the Rule 23(a) typicality and adequacy analyses"); *In re Apple Inc. Device Performance Litig.*, No. 5:18-md-02827-EJD, 2023 WL 2090981, at *20 (N.D. Cal. Feb. 17, 2023) ("Service awards to non-class members are permitted.").

There are, however, cases which go the other way. *See Juarez v. Soc. Fin., Inc.,* No. 20-CV-03386-HSG, 2023 WL 3898988, at *9 (N.D. Cal. June 8, 2023); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *8-9 (N.D. Ohio Aug. 12, 2019) ("service awards to plaintiffs who were not class members" denied).

The Court possesses the discretion whether to award Messr. Caccuri and Neumark a Service Award under these circumstances. If the Court is of the view that Messrs. Caccuri and Neumark cannot receive monies from the Settlement Amount, Class Counsel alternatively propose that Messrs. Caccuri and Neumark receive a Service Award through a reduction of Class Counsel's attorneys' fees. There is support for this alternative approach. *Staton v. Boeing Co.,* 327 F.3d 938, 977–78 (9th Cir. 2003) ("if those individuals rendered compensable services to the lawyers, then the lawyers should pay for those services from the amount of the fund properly awarded for costs or fees, as appropriate"); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) ("Class Counsel have agreed that the service awards will be provided from their fee award, so the class's net fund is not impacted . . ."); *In re Presidential Life Sec.*, 857 F. Supp. 331, 337 (S.D.N.Y. 1994). In *Presidential Life*, the court granted a service award with payment from the attorneys' fees stating:

> The matter of payments of incentives to the individual plaintiffs who acted as class representatives need not be subjected to intense scrutiny inasmuch as these funds will come out of the attorney's fees awarded to plaintiffs' counsel. The interests of the class, of the public, and of the defendant are not directly affected. Indeed the sole reason for seeking judicial approval appears to be the Code of Professional Responsibility DR 3-102 which bars splitting of legal fees with non-lawyers with exceptions not pertinent here. Such splitting may have corrupt aspects such as use of misleading representations by lay ambulance chasers in return for a share in resulting fees. *See Gorman v. Grodensky*, 130 Misc. 2d 837, 498 N.Y.S.2d 249 (Sup.Ct.1985).
>
> Whatever the potential risk or expense of litigation which may be incurred by named plaintiffs in class actions, excessive payments of incentives in class suits based on alleged securities law violations might have the effect of creating a potential cadre of ready-to-sue clients who could afford to have sufficient stock in any number of companies to be positioned so that counsel could obtain a built-in plaintiff for any contemplated lawsuit. However, the $2,000 amount per plaintiff here is not sufficient to trigger such a concern.

Id.

This antitrust case does not raise the specter of repeat plaintiffs or a diverse inventory of investors being harvested by counsel to serve as repeat class representatives. Moreover, the requested $10,000 Service Award is nominal. The requested amount does not trigger the type of concern raised in *Presidential Life*. Allowing Messrs. Caccuri and Neumark to receive a Service Award will encourage other individuals in the future to step forward to serve as private attorneys' general seeking to remedy a public wrong. It is well recognized that private class action suits are a vital weapon in the enforcement of the laws designed to protect the consuming public. Class Counsel, therefore, respectfully submit that in addition to principles of fundamental fairness for the valuable and extensive work Messrs. Caccuri and Neumark have performed, the approval of a Service Award to Messrs. Caccuri and Neumark is also warranted as a matter of public policy. Regardless of the Court's decision, Messrs. Caccuri and Neumark have authorized Lead Counsel to file Notices of Voluntary Dismissal with Prejudice which will be filed after this Court's decisions on the settlement and fees are final. The notices were not filed earlier in order to preserve Messrs. Caccuri and Neumark's standing to request a Service Award in this case.

VII. CONCLUSION

For the foregoing reasons, Lead Counsel and Class Counsel respectfully request that the Court enter an Order granting: (i) attorneys' fees of twenty-five percent of the Settlement Amount or $1,962,500; (ii) $625,067.77 in expenses; and (iii) service awards of $30,000 or $10,000 each to Messrs. Agustin Caccuro, Adrian Cendejas and Allen Neumark.

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Respectfully submitted,

By: /s/ *Michael M. Buchman*

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