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

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

Plaintiffs,

v.

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

Defendants.

Case No.: CGC-21-590966

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

Hearing Date: February 9, 2022
Hearing Time: 9:00 am
Complaint filed: April 22, 2021

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

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

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

## II. ARGUMENT

### A. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES.

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

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

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

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

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

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

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

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

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

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

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

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

**2. <u>Class Counsel's Fee Request Is Also Reasonable Under A Lodestar Cross-Check.</u>**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### B. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF COSTS IS REASONABLE AND PROPER.

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

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

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

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

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

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

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

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

**1. <u>The Plaintiffs Undertook Great Risks and Faced Notoriety by Bringing This Lawsuit.</u>**

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

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

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

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

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

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

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

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

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

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

## III. CONCLUSION

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

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Respectfully submitted,

By: _____

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