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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

10  
11 PAMELA CARTER, DEBORAH  
MARTIN, CHRISTINE MORALES,  
12 STANLEY CARAKER, STANLEY  
NICKS, MICHAELA VECHT, BERT  
13 SCHORLING, JEANETTE BREITEN,  
RAYMOND BACHAR, KATHERINE  
14 MITCHELL, STEPHANIE CASTRO,  
BRUCE HINSLEY, ARLENE  
15 POUNDS, individually and as  
Representatives of All Others Similarly  
16 Situated,

17 Plaintiffs,

18 vs.

19 STRATEGIC EQUITY GROUP;  
CHRISTOPHER KRAMER;  
20 SHORELINE CAPITAL, INC.;  
EDGEWATER CAPITAL, LLC and  
21 DOES 1-100, inclusive,

22 Defendants.  
23

Case No.:  
30-2016-00866025-CU-BT-CXC

**NOTICE OF MOTION AND  
MOTION FOR AWARD OF  
ATTORNEYS' FEES,  
LITIGATION EXPENSES,  
AND SETTLEMENT  
ADMINISTRATION COSTS**

Date: August 22, 2019

Time: 2:00 p.m.

Dept: CX102

Judge: Hon. Peter J. Wilson

24 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD**

25 PLEASE TAKE NOTICE that on August 22, 2019, or as soon thereafter as  
26 the matter may be heard, Plaintiffs PAMELA CARTER, DEBORAH MARTIN,  
27 CHRISTINE MORALES, STANLEY CARAKER, STANLEY NICKS,  
28 MICHAELA VECHT, BERT SCHORLING, JEANETTE BREITEN, RAYMOND

1 BACHAR, KATHERINE MITCHELL, STEPHANIE CASTRO, BRUCE  
2 HINSLEY, and ARLENE POUNDS (“Plaintiffs”) shall move before the Honorable  
3 Peter J. Wilson of the California Superior Court, County of Orange, Civil Complex  
4 Division, Department CX102, located at 751 West Santa Ana Blvd., Santa Ana,  
5 CA 92701, for entry of an Order approving Class Counsel’s application for an  
6 award of attorney’s fees, payment of expenses, and settlement administration costs.

7 Plaintiffs’ Motion is brought pursuant to the law as it relates to class actions  
8 as set out in California Rules of Court, Rule 3.760 et seq., California Code of Civil  
9 Procedure section 382 (authorizing class actions generally) and is based on this  
10 Notice and Motion, the Stipulation of Settlement between the parties, and the  
11 following accompanying pleadings and documents:

12 1. Plaintiffs’ Memorandum of Points and Authorities in support of  
13 Motion For Award of Attorneys’ Fees and Litigation Expenses;

14 2. Declaration of Jeffrey T. Belton in Support of Plaintiffs’ Motion For  
15 Award of Attorneys’ Fees and Litigation Expenses; and all exhibits attached  
16 thereto;

17 3. Declaration of Anthony W. Trujillo in Support of Plaintiffs’ Motion  
18 For Award of Attorneys’ Fees and Litigation Expenses;

19 4. Declaration of Alexander H. Winnick in Support of Plaintiffs’ Motion  
20 For Award of Attorneys’ Fees and Litigation Expenses;

21 5. Declaration of Alexander R. Wheeler in Support of Plaintiffs’ Motion  
22 For Award of Attorneys’ Fees and Litigation Expenses;

23 6. The pleadings and other documents on file in this action; and


24 7. All other written material or oral argument as may be presented to the  
25 Court.

26 As this Motion is unopposed, the Parties respectfully request relief from the  
27 page limit requirement set by California Rules of Court, Rule 3.1113(d).

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DATED: March 6, 2019

TRUJILLO & WINNICK, LLP

By:   
\_\_\_\_\_  
Anthony W. Trujillo  
Alexander H. Winnick  
Jeffrey T. Belton  
Attorneys for Plaintiffs Pamela Carter, et al.

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21 DOES 1-100, inclusive,

22 Defendants.

Case No.:  
30-2016-00866025-CU-BT-CXC

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
AWARD OF ATTORNEYS' FEES,  
LITIGATION EXPENSES, AND  
SETTLEMENT  
ADMINISTRATION COSTS**

Date: August 22, 2019  
Time: 2:00 p.m.  
Dept: CX102  
Judge: Hon. Peter J. Wilson

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1    **I. INTRODUCTION**

2           On February 4, 2019, this Court preliminarily approved the settlement of this  
3 class action (the “Action”), in which the Plaintiffs assert claims for state law breach  
4 of fiduciary duty, aiding and abetting, negligence, and negligent misrepresentation  
5 relating to the Fleet Card Fuels Employee Stock Ownership Plan (“Plan” or  
6 “ESOP”). The settlement negotiated between the Representative Plaintiffs and  
7 Defendants STRATEGIC EQUITY GROUP, CHRISTOPHER KRAMER,  
8 SHORELINE CAPITAL, INC., and EDGEWATER CAPITAL, LLC  
9 (“Defendants”) was the product of serious, informed and non-collusive  
10 negotiations, and was reached after significant law and motion practice, substantial  
11 discovery, and two rounds of formal mediation. Now, after more than three and a  
12 half years of hard-fought litigation, Class Counsel move for an award of: (1)  
13 attorneys’ fees of \$33,333.33 which is 33 1/3% of the total settlement fund  
14 (\$100,000.00); (2) reimbursement of case-related expenses in the amount of  
15 \$11,526.87; and (3) settlement administration costs of \$9,338.00. These requests  
16 are in accordance with the terms of the settlement. (Declaration of Jeffrey T.  
17 Belton [“Belton Decl.”], ¶ 31, Exhibit 6 [¶36-39]).

18           The Declarations of Jeffrey T. Belton, Anthony W. Trujillo, and Alexander  
19 H. Winnick (“Class Counsel”) in support of this motion contain detailed  
20 descriptions of the efforts of Class Counsel throughout the course of this litigation.  
21 As set forth in the Declarations, Class Counsel commenced this action on  
22 September 17, 2015 in the United States District Court- Central District of  
23 California- Southern Division (Case No. 8:15-cv-01507-JVS-JCG) (the “Federal  
24 Court Action”), against Defendants, as well as against San Pasqual Fiduciary Trust  
25 Company, Fleet Card Fuels, and Richard and William Davies (collectively, the  
26 “Federal Court Defendants”). Plaintiffs sought to recover compensation from the  
27 Defendants in this case and the Federal Court Defendants for the alleged fiduciary  
28 breaches, under both ERISA and state law. (Belton Decl., ¶ 14 ).

1 On or about June 27, 2016, the District Court dismissed all claims by  
2 Plaintiffs against the Defendants in this case for lack of pendant jurisdiction under  
3 Federal Rule of Civil Procedure 12(b)(1), without prejudice. The District Court  
4 ruled that the relationship between Plaintiffs and Defendants was not governed by  
5 ERISA. (Belton Decl., ¶ 17). Following the District Court ruling, Plaintiffs filed  
6 this Action against Defendants in this Court on July 26, 2016. Over the last three  
7 and a half years, Class Counsel has opposed numerous motions to dismiss filed by  
8 these Defendants, conducted significant discovery, attended two all-day mediation  
9 sessions- all before the settlement was achieved. Plaintiffs entered into a written  
10 Stipulation of Settlement and Release with the Federal Court Defendants on or  
11 about July 2017 and entered into a written Stipulation of Settlement and Release  
12 with these Defendants on or about February 2018. The Federal Court Action has  
13 been fully resolved, whereas on February 28, 2018, Judge James V. Selna of the  
14 Central District Court granted approval of the Federal Court Action settlement as  
15 well as Plaintiffs' motion for attorney's fees and litigation costs in the Federal  
16 Court Action.

17 As explained below, in presenting the motion for attorneys' fees and costs in  
18 the Federal Court Action, Class Counsel did not include any of the work Class  
19 Counsel performed against these Defendants, and any work done in that matter  
20 before the Court's dismissal, which concerned both these Defendants and the  
21 Federal Defendants, such as the joint mediations, was properly allocated between  
22 this Action and the Federal Court Action. (Belton Decl., ¶ 28). With regard to the  
23 settlement administration costs, the amount requested herein applies only to the  
24 settlement administration in this case. (Belton Decl., ¶ 70). The settlement  
25 administration for the Federal Court Action has already been completed.

26 The benefit of the settlement to class members, which is the direct result of  
27 Class Counsel's efforts, is substantial. The settlement amount of \$100,000 will  
28 result in a substantial monetary recovery for all the class members that submit

1 claims. Each class member’s payment amount will be calculated based on the  
2 number of vested shares that each class member owned at the time the shares were  
3 redeemed. The settlement will be distributed pro rata to the class members that  
4 make claims based on the number of shares that they owned. The settlement in this  
5 case is in addition to the significant settlement approved and already dispersed to  
6 the class members in the Federal Court Action.

7 The proposed settlement resolves all the Plaintiffs’ and the class members’  
8 claims against the Defendants. Projected settlement amounts will range from  
9 approximately \$7 dollars for a class member that owned only 30 shares to more  
10 than \$2,286 for a class member that owned more than 10,600 shares. If all the  
11 class members submitted claims, the average net settlement payment would be  
12 approximately \$288. All the settlement terms are contained in the parties’  
13 Stipulation of Settlement (“Settlement”). (Belton Decl., ¶ 32, Exhibit 6 [¶36-39])

14 Plaintiffs filed their Motion for Preliminary Approval of Class Action  
15 Settlement on January 24, 2019. (Belton Decl., ¶ 22). On February 4, 2019, the  
16 court granted Plaintiffs’ Motion for Preliminary Approval. The Court issued an  
17 order preliminarily approving the settlement and providing for notice. (Belton  
18 Decl., ¶ 22). Thereafter, the settlement administrator began the process of  
19 preparing the approved notice for mailing to the class as directed. Plaintiffs will  
20 file their Motion for Final Approval according to the timeline approved by the  
21 court. (Belton Decl., ¶ 22).

## 22 23 **II. SUMMARY OF KEY SETTLEMENT TERMS**

24 The consideration to be paid by Defendants is One Hundred Thousand  
25 Dollars (\$100,000.00) (the “Gross Settlement Amount”). Plaintiffs have already  
26 recovered Five Hundred Sixty-Two Thousand Five Hundred Dollars (\$562,500)  
27 from the Federal Court Defendants following the Federal Court’s order granting  
28 Plaintiff’s motion for class action settlement on February 28, 2018. (Request for

1 Judicial Notice in Support of Motion for Attorney’s Fees [“RJN”], ¶ 1, Exhibit A,  
2 pg 14; Belton Decl., ¶ 21).

3 From the Gross Settlement Amount, the following payments will be made,  
4 subject to Court approval: (a) Class Counsel’s reasonable attorneys’ fees in an  
5 amount not to exceed one-third (33 1/3 %) of the Gross Settlement Amount (i.e.,  
6 not to exceed Thirty Three Thousand Three Hundred Thirty Three Dollars and  
7 thirty three cents (\$33,333.33)); (b) Class Counsel’s reasonable litigation costs, not  
8 to exceed Twelve Thousand Dollars (\$12,000); (c) the reasonable costs of the  
9 settlement administrator in administering the Settlement, not to exceed Ten  
10 Thousand Dollars (\$10,000). (Belton Decl., ¶ 31, Exhibit 6 [¶36-39]). The  
11 remainder of the Gross Settlement Amount, after the deduction of the Court-  
12 approved payments (a) through (c) have been made (the “Net Settlement Fund”),  
13 shall be paid out in its entirety to the Class Members who submit valid and timely  
14 claim forms pro rata based on the number of shares that they owned. (Belton  
15 Decl., ¶ 32, Exhibit 6 [¶40a-g]). If a Class Member opts out of the settlement, that  
16 Class Member must submit a valid and timely exclusion form and that Class  
17 Member’s proportionate share of the Net Settlement Fund will be returned to the  
18 Defendants. (Belton Decl., ¶ 32, Exhibit 6 [¶40e]). If 15 or more Class Members  
19 opt out, Defendants may within their discretion terminate the Settlement. (Belton  
20 Decl., ¶ 33, Exhibit 6 [¶63]). For any funds remaining of Class Members who  
21 submit claim forms but have not cashed their settlement check, those funds will be  
22 forwarded, in the name of the Class Member, to the State of California, Controller  
23 – Unclaimed Property Division for further handling. (Belton Decl., ¶ 34, Exhibit 6  
24 [¶96]).

25 Additionally, the parties agreed that any reduction by the Court in the  
26 amount of attorneys’ fees approved for Class Counsel shall not be a basis for  
27 rendering the entire settlement voidable or unenforceable. If the Court approves a  
28 fees payment of less than the amount sought, the remainder will be retained in the

1 Net Settlement Fund for distribution to the class. (Belton Decl., ¶ 35, Exhibit 6  
2 [¶37]).

3  
4 **III. THE FEDERAL CLASS ACTION SETTLEMENT AND ITS EFFECT**  
5 **ON THIS SETTLEMENT**

6 This case presents the unusual circumstance where the action was originally  
7 filed against all these Defendants and the Federal Court Action Defendants in  
8 Federal Court, whereby after approximately nine (9) months, the case against these  
9 Defendants only was moved to state court. Approximately six (6) months after the  
10 case was moved to state court with this Action, this Action and the Federal Court  
11 Action settled concurrently.

12 As a result, the Federal Court Action does bear some relation to Class  
13 Counsel's fee request in this case. First, the Federal Court approved an attorney fee  
14 award of 33.3% of the Federal Court Action's gross settlement amount. In making  
15 this determination, the Federal Court found that class counsel was entitled to an  
16 upward adjustment from the federal benchmark of 25%. The Federal Court also  
17 approved Class Counsel's hourly rates, and time. The Federal Court Action  
18 Settlement should also be considered when determining the results obtained by  
19 Class Counsel when compared to the Total Class Loss. While Class Counsel  
20 expects this Court to perform its own analysis, the Federal Court's findings on  
21 these issues are pertinent and helpful.

22 Most importantly, Class Counsel affirms that none of the billing time or costs  
23 submitted in the Federal Court Action justifying Class Counsel's fee in that case is  
24 offered with this Motion to justify Class Counsel's requested fee award in this  
25 Action. In other words, Class Counsel did not double bill to justify its fee request.  
26 (Belton Decl., ¶ 55). Instead, Class Counsel has properly allocated its fees and  
27 costs incurred as they relate to *these Defendants* and to this Action.

1 **A. Relevant Procedural History Relating To Defendants**

2 Plaintiffs filed the Federal Court Action on September 17, 2015, against  
3 Defendants and 4 other parties- William Davies, Richard Davies, San Pasqual  
4 Fiduciary Trust Company, and Fleet Card Fuels (the “Federal Action Defendants”).  
5 At all times, Defendants, and each of them, were represented by Manuel D. Balam  
6 of Cruser, Mitchell, Novitz, Sanchez Gaston & Zimet, LLP. William Davies,  
7 Richard Davies and Fleet Card Fuels were represented by Robert Guite of  
8 Sheppard Mullin. San Pasqual Fiduciary Trust Company was represented by Eric  
9 Schneider and Carlton Burch of Anderson, McPharlin & Conners LLP. (Belton  
10 Decl., ¶ 15). Plaintiffs’ complaint alleged that each party was responsible in some  
11 manner for the Total Class Loss.

12 Defendants filed three (3) Motions to Dismiss in the Federal Court Action,  
13 two of which were opposed by Plaintiffs and ruled on by the Federal Court.  
14 Plaintiffs, Defendants, and Federal Court Action Defendant San Pasqual also  
15 participated in a first mediation presided over by Eugene Moscovitch, Esq. on  
16 March 18, 2016. On June 27, 2016, more than nine (9) months after the Federal  
17 Court Action was originally filed, and in response to another Motion to Dismiss  
18 filed by these Defendants, the Federal Court dismissed all claims against these  
19 Defendants in the Third Amended Complaint for lack of pendant jurisdiction under  
20 Federal Rule of Civil Procedure 12(b)(1), without prejudice. This Action was  
21 subsequently filed in this Court on July 26, 2016. Discovery commenced in the  
22 Federal Court Action. Class counsel also took the deposition of Defendant  
23 Christopher Kramer on August 23, 2016. On December 14, 2016, Plaintiffs,  
24 Defendants, and all of the Federal Court Action Defendants participated in a  
25 second mediation before Robert Meyer of JAMS, whereby shortly thereafter all  
26 parties agreed to settlement terms. Following negotiations, the Federal Court  
27 Action stipulation of settlement and release was executed on or about June 2017.  
28 The Stipulation of Settlement and Release in this Action was executed on or about

1 February 2018. The Federal Court granted Final Approval of the settlement in the  
2 Federal Court Action on February 28, 2018. This Court granted Preliminary  
3 Approval of the settlement in this Action on February 4, 2019. (Belton Decl., ¶  
4 22).

5  
6 **B. The Federal Court’s Approval Of The Federal Class Action Settlement**  
7 **And Fee Award Is Relevant Here**

8 **i. The Federal Court Approved Class Counsel’s Fees, Rate and Time.**

9 In the Federal Court Action, Hon. James V. Selna of the Central District  
10 Court granted Class Counsel an award of 33.3% of the gross settlement amount in  
11 that matter, using the “percentage of the fund” method. (RJN, ¶ 1, Exhibit A, pg.  
12 14; Belton Decl., ¶ 26). The Federal Court found that, based on (1) the results  
13 achieved, (2) the risks involved, (3) skill of counsel and contingent fees, (4) results  
14 in similar cases, and (5) reaction of the class, all five factors support Class  
15 Counsel’s requested award of 33.3%. (RJN, ¶ 1, Exhibit A, pgs. 15-17; Belton  
16 Decl., ¶ 26).

17 The Federal Court next performed a Lodestar Cross-Check and found that  
18 the requested award was less than the attested lodestar, and that “awarding one-  
19 third of the Settlement Amount in attorneys’ fees is justified.” (RJN, ¶ 1, Exhibit  
20 A, pg. 19; Belton Decl., ¶ 27). Specifically, the Federal Court found to be  
21 reasonable the hourly rates of Class Counsel: Jeffrey T. Belton (\$475), Anthony W.  
22 Trujillo (\$400), and Alexander H. Winnick (\$375), and [paralegal] Stephanie  
23 Belton (\$95). (RJN, ¶ 1, Exhibit A, pgs. 17-18; Belton Decl., ¶ 27). The Federal  
24 Court also found the number of hours expended by Class Counsel to be reasonable.  
25 (RJN, ¶ 1, Exhibit A, pg. 9; Belton Decl., ¶ 27). Furthermore, the Federal Court  
26 noted that Class Counsel “removed hours spent litigating issues relating to the  
27 claims against SEG.” (RJN, ¶ 1, Exhibit A, pg. 9; Belton Decl., ¶ 28). These are  
28 the hours class counsel seeks to be compensated for in this case.

1 While Class Counsel expects this Court to perform its own independent  
2 analysis of the fee request in this Action, Plaintiffs do present Judge Selna’s  
3 analysis in the Federal Class Action as simply a factor supporting Class Counsel’s  
4 fee request and requested rates. The Federal Court’s finding is highly relevant  
5 because the two cases are closely interconnected and were litigated together.

6 **ii. The Federal Class Action Settlement Should Be Considered With This**  
7 **Action In Evaluating Class Counsel’s Results.**

8 The Federal Class Action settlement should be considered when this Court  
9 analyzes the Class’ total recovery compared to the Total Class Loss, for the  
10 purposes of determining the reasonableness of Class Counsel’s fee request.

11 As previously stated, all parties were originally sued in the Federal Court  
12 Action, and all parties agreed to settle this Action and the Federal Court Action  
13 concurrently following the second mediation, which involved all the parties.  
14 Plaintiffs alleged in the second mediation that the Total Class Loss (defined below)  
15 was approximately \$1,568,000 (the “Total Class Loss”), which is based on the  
16 latest analysis performed by Defendants before the redemption, which valued the  
17 shares at approximately \$10.32 per share.<sup>1</sup>

18 Class Counsel obtained a \$562,500 gross settlement from the Federal Court  
19 Action Defendants and an additional \$100,000 from the Defendants in this Action.  
20 In total, Class Counsel obtained \$662,500 in gross proceeds for the Plaintiff Class,  
21 which constitutes approximately \$3.19 per share.<sup>2</sup> This recovery more than  
22 doubles the amount the Class Members originally received for their shares. The  
23

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24 <sup>1</sup> The shares were redeemed for approximately \$2.78 per share. Multiplied by the  
25 approximately 208,000 shares owned by the class members, Defendants’ and the  
26 Federal Court Action Defendants’ total exposure was \$1,568,320.00 ( $[\$10.32 - \$2.78]$   
x 208,000 shares).

27 <sup>2</sup>  $\$662,500 / 208,000 \text{ shares} = \$3.19 \text{ per share.}$



1 total gross proceeds of both settlements represent approximately forty two percent  
2 (42%) of the Total Class Loss. (Belton Decl., ¶ 52).

3 When this Court compares the fee request to the results achieved, it would be  
4 most appropriate to view the results in conjunction with the collective results  
5 achieved in both cases. As further examined below, obtaining 42% of the Total  
6 Class Loss is an exceptional result and supports the reasonableness of the requested  
7 33.3% contingent fee.

8  
9 **C. Class Counsel Has Properly Allocated The Fees Incurred In Pursuing**  
10 **This Action Against These Defendants**

11 As Judge Selna acknowledged, Class Counsel “removed hours spent  
12 litigating issues relating to the claims against SEG...” from their fee request in the  
13 Federal Action. (RJN, ¶ 1, Exhibit A, pg. 9; Belton Decl., ¶ 28). In this matter,  
14 Class Counsel has removed any time spent litigating issues relating to the claims  
15 against the Federal Action Defendants in seeking fees and costs. (Belton Decl., ¶  
16 28). Class Counsel has further cross-checked its billing records submitted in this  
17 Action versus those billing records submitted in the Federal Court Action to  
18 confirm that no billing time was duplicated. (Belton Decl., ¶ 55, Trujillo Decl., ¶ 8,  
19 Winnick Decl. ¶ 6). For any instance where time litigating both matters was  
20 submitted in the Federal Court Action, the same time has not been submitted in this  
21 Action to support Class Counsel’s fee request and the Lodestar crosscheck.  
22 (Belton Decl., ¶ 56). For example, Class Counsel billed its time from both  
23 mediations in their fee request in the Federal Court Action. Therefore, no time for  
24 those mediations is included in this fee request. (Belton Decl., ¶ 57). A copy of  
25 Class Counsel’s billing records relating to these Defendants are attached to the  
26 Declaration of Jeffrey T. Belton as **Exhibits 1-4**.

1 **D. Class Counsel Has Properly Allocated Costs Incurred In Both Actions**

2 In granting approval of the Federal Court Action Settlement, Judge Selna  
3 awarded costs of \$15,589.00 for the reimbursement of reasonable expenses, stating  
4 that “Class Counsel states that the expenses were for court reporters for mediation  
5 fees, filing and service fees, postage charges, copy charges, legal research, and an  
6 accounting expert. [citation omitted].” Judge Selna further stated that “Class  
7 Counsel provides adequate documentation of these expenses in Class Counsel’s  
8 declaration and an accompanying spreadsheet of costs.” (RJN, ¶ 1, Exhibit A, pg.  
9 19).

10 As with the billing, Class Counsel allocated costs associated with these  
11 Defendants and this Action from those costs incurred as a result of the Federal  
12 Action. (Belton Decl., ¶ 67). In addition, in this Action, Plaintiffs incurred  
13 additional costs related solely to this Action and Defendants, and not the Federal  
14 Action, such as filing fees and court call fees. (Belton Decl., ¶ 66). No cost  
15 reimbursement requested in this Action duplicates any cost reimbursement  
16 requested in the Federal Action. (Belton Decl., ¶ 65). A copy of Class Counsel’s  
17 costs submitted for this Action are attached to the Declaration of Jeffrey T. Belton  
18 as **Exhibit 5**.

19 Finally, with regard to the settlement administration costs, the amount  
20 requested herein applies only to the settlement administration in this Action.  
21 (Belton Decl., ¶ 70).

22  
23 **IV. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE**

24 A fee award is justified when class benefits are obtained via settlement.  
25 *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmty. for Indep.*  
26 *Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53. Fee awards may be based on  
27 (1) a percentage of a common fund created for the class’ benefit, or (2) counsel’s  
28 lodestar plus multiplier. *Lealao v. Beneficial California, Inc.* (2000) 82

1 Cal.App.4th 19, 27. Both methods are proper in California, though the lodestar  
2 approach is commonly used to cross check against the percentage of the recovery.  
3 *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao*, 82  
4 Cal.App.4th at 27. Whether analyzed under the percentage-of-recovery method or  
5 the lodestar-times-multiplier method, the request for one-third of the Settlement  
6 Fund in this case is fair, reasonable, and appropriate under California law. In cases  
7 such as this, where the class benefit can be monetized with a reasonable degree of  
8 certainty, a percentage of the benefit approach may be used. *In re Consumer*  
9 *Privacy Cases* (2009) 175 Cal.App.4th 545.

10 Trial courts have “wide latitude” in assessing the value of attorneys' fees and  
11 their decisions will “not be disturbed on appeal absent a manifest abuse of  
12 discretion.” *Lealao*, 82 Cal.App.4th at 41; *Ketchum v. Moses* (2001) 24 Cal.4th  
13 1122, 1132 (The “experienced trial judge is the best judge of the value of  
14 professional services rendered in his court[.]”); *Cellphone Termination Fee Cases*  
15 (2009) 180 Cal.App.4th 1110, 1118.

16 California law provides that an attorney fee award should be equivalent to  
17 fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at  
18 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the  
19 court held that when an action leads to a recovery that can be “monetized” with a  
20 reasonable degree of certainty, the trial court should “ensure that the fee awarded is  
21 within the range of fees freely negotiated in the legal marketplace in comparable  
22 litigation.” *Lealao*, 82 Cal.App.4th at 50. Fee awards that are too small will “chill  
23 the private enforcement essential to the vindication of many legal rights and  
24 obstruct the representative actions that often relieve the courts of the need to  
25 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in class and  
26 representative actions should approximate the probable terms of a contingent fee  
27 contract negotiated by a sophisticated attorney and client in comparable litigation.  
28 *Id.* at 48.

1 “The ultimate goal...is the award of a ‘reasonable’ fee to compensate counsel  
2 for their efforts, irrespective of the method of calculation.” *In re Consumer Privacy*  
3 *Cases* 175 Cal.App.4th at 557-58 (quoting *Apple Computer, Inc. v. Superior Court*  
4 (2005) 126 Cal.App.4th 1253, 1270). It is not an abuse of discretion to choose one  
5 method over another as long as the method chosen is applied consistently using  
6 percentage figures that accurately reflect the marketplace. In cases where class  
7 members present claims against a maximum settlement fund and the settlement  
8 agreement provides that the defendant agrees to pay the attorneys a percentage of  
9 the same, use of that percentage method is appropriate. *Lealao*, 82 Cal.App.4th at  
10 32.

11 In this Action, Class Counsel respectfully requests an award of attorneys’  
12 fees in the amount of \$33,333.33, representing 33 1/3% of the common fund, or  
13 Gross Settlement Amount. Considering the small size of this case, the requested  
14 fee is a fair percentage of the common fund and is reasonable for undertaking a  
15 complex, risky, expensive, and time-consuming class action on a wholly contingent  
16 basis. The requested fee is also warranted because the results achieved for the class  
17 are excellent. Class Counsel’s total lodestar is \$71,294.25. As a result, the  
18 \$33,333.33 in fees requested reflects a fractional multiplier of only .47. The  
19 request should be approved whether the request is evaluated under the percentage-  
20 of-recovery or lodestar method.

21 This motion analyzes the fee request under both methods, both of which  
22 confirm that the fee is reasonable.

23  
24 **A. An Attorneys’ Fees Award of a Percentage of the Entire Fund is**  
25 **Appropriate**

26 California and federal courts have long recognized that an appropriate  
27 method for determining the award of attorneys’ fees is based on a percentage of the  
28 total value of benefits made available to class members by the settlement. *Boeing*

1 *Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v.*  
2 *Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th  
3 Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34. The  
4 purpose of this equitable doctrine is to spread litigation costs proportionally among  
5 all the beneficiaries so that the active beneficiary does not bear the entire burden  
6 alone. See *Vincent*, 557 F.2d at 769. Where the amount of a settlement is a  
7 “certain easily calculable sum of money,” California courts may calculate  
8 attorneys' fees as a reasonable percentage of the settlement created. Weil and  
9 Brown, California Practice Guide, Civil Procedure Before Trial, Chapter 14,  
10 section 14:145; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1808.

11 The percentage-of-the-benefit approach is preferred in class and  
12 representative actions because “it better approximates the workings of the  
13 marketplace than the lodestar approach.” *Lealao*, (2000) 82 Cal.App.4th at 49.  
14 The propriety of calculating and awarding attorneys’ fees as a percentage of  
15 monetary benefits that have, by litigation, been preserved or recovered for others,  
16 has been confirmed by the California Supreme Court. *Laffitte*, 1 Cal.5th at 486,  
17 506. The California Supreme Court has taken the position that “[t]rial courts have  
18 discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain  
19 the discretion to forgo a lodestar cross-check and use other means to evaluate the  
20 reasonableness of a requested percentage fee[.]” and “[t]he percentage of fund  
21 method survives in California.” *Id.* (internal quotes omitted). The California  
22 Supreme Court has also urged trial courts to consider class action federal authority.  
23 *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4  
24 Cal.3d 800, 821.

25 When the Federal Court Action and this Action were originally filed, not  
26 only were they inescapably contingent, but the prospect of a long drawn-out battle  
27 with Defendants and the Federal Court Defendants, represented by knowledgeable  
28 and experienced counsel, was almost a certainty. By taking on this case on a

1 wholly contingency basis, Class Counsel risked substantial economic loss if the  
2 results were not successful. This substantial risk is a reason that courts approve the  
3 use of the percentage method when a settlement is obtained by the efforts of Class  
4 Counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49  
5 (citations omitted) (discussing the risks of engaging in litigation without certainty  
6 of compensation).

7 Under the terms of the Settlement Agreement, Defendant will pay a  
8 settlement amount of \$100,000.00. Class Counsel's attorneys' fees award is  
9 calculated as a percentage of the total value of benefits made available to the Class  
10 under the Settlement. In light of Class Counsel's successful prosecution and  
11 resolution of the cases, the requested attorneys' fees award is appropriate and  
12 reasonable.

13 Compensating class counsel in class litigation on a percentage basis makes  
14 good sense because (1) it is consistent with the private marketplace where  
15 contingent fee attorneys are customarily compensated on such a basis; (2) it aligns  
16 the interests of class counsel and absent class members in achieving the maximum  
17 possible resolution of the cases; and (3) it encourages the most efficient and  
18 expeditious resolution of the litigation by providing an incentive for early, yet  
19 reasonable, settlement. Here, the requested attorneys' fees award meets all those  
20 criteria such that attorneys' fees should be approved and awarded in this matter on  
21 a percentage basis.

22 Furthermore, a percentage-fee award is not dependent on a determination of  
23 the actual amount claimed out of the Settlement by those entitled-it is the creation  
24 of the Settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*,  
25 the California Supreme Court expressly held that "it is equitable that [the  
26 attorney's] compensation and expenses should come from the entire fund saved for  
27 all classes concerned before it is distributed." *Winslow v. Harold G. Ferguson*  
28 *Corp.* (1944) 25 Cal.2d 274, 284. Likewise, the court in *Lealao* expressly

1 recognizes that a percentage-based fee “may be calculated on the basis of the total  
2 fund made available rather than the actual payments made to the class.” *Lealao*, 82  
3 Cal.App.4th at 51; see also *Boeing*, 444 U.S. at 478. In this case, the entire Net  
4 Settlement Fund will be distributed to those class members that submit claim forms  
5 on a pro rata basis.

6 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and  
7 the Class, and the results achieved justify the award of a fee that is the equivalent  
8 of the standard market fee and that is consistent with the contingency-fee  
9 agreement entered into by and between Plaintiffs and Class Counsel. Thus, the  
10 requested attorneys’ fees award of 33.3% of the Gross Settlement Amount, or  
11 \$33,333.33, is appropriate.

12  
13 **B. The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable**  
14 **Based on the Factors Considered in Determination of Fee Awards.**

15 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified  
16 twelve factors to be considered in determining whether fee awards are reasonable:  
17 (1) the time and labor required; (2) the novelty and difficulty of the questions  
18 involved; (3) the skill required to perform the legal services properly; (4) the  
19 preclusion of other employment by the attorney due to the acceptance of the case;  
20 (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation  
21 imposed by the client or the circumstances; (8) the amount involved and results  
22 obtained; (9) the experience, reputation and ability of the attorney; (10) the  
23 undesirability of the case; (11) the nature and length of the professional relationship  
24 with the client; and (12) awards in similar cases. *Camden I Condominium*  
25 *Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.

26 Each and every one of these factors favors the attorneys’ fees award sought  
27 herein; however, some of the most relevant factors to this Court’s fee determination  
28 will be addressed herein. It should be highlighted that the percentage award sought

1 is commensurate with the time, efforts, and expense dedicated by Class Counsel to  
2 the cases, the contingent nature of Class Counsel’s fee and the risks taken in  
3 commencing the cases, the skill and determination required, the results that Class  
4 Counsel have achieved, and the value of the Settlement that Class Counsel have  
5 obtained for the Settlement Class Members. For the reasons discussed herein, an  
6 award of one-third (33.3%) of the Gross Settlement Amount is reasonable.

7 **i. Time and Labor Required**

8 The work performed in the Settled Actions was managed in a manner  
9 designed to most effectively utilize the combined skills and attorney power of Class  
10 Counsel, while avoiding duplication of efforts involved with the Federal Class  
11 Action Defendants. Class Counsel’s time and labor in its litigation against these  
12 Defendants involved drafting pleadings, engaging in motion practice, propounding  
13 discovery, communicating with and gathering information from Plaintiffs,  
14 conducting interviews of Settlement Class Members, conducting legal research,  
15 reviewing and analyzing documents produced by Defendants, and preparing the  
16 settlement agreement and supporting documents in this case. Specifically, Class  
17 Counsel initiated two separate actions, one against all Defendants in Federal Court,  
18 and later another action against these Defendants in State court. Plaintiffs reviewed  
19 and analyzed three F.R.C.P 12b(6) Motions to Dismiss filed by Defendants,  
20 opposing two.<sup>3</sup> Class Counsel conducted discovery, including propounding and  
21 reviewing the initial disclosures under the F.R.C.P., deposing Defendants’  
22 principal, Christopher Kramer, and propounding Requests for Admission. Class  
23 Counsel also spent significant time meeting and conferring with opposing counsel,  
24 drafting the Settlement Agreement and supporting documents, and seeking and  
25

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26 <sup>3</sup> One motion to dismiss filed by Defendants in the Federal Court Action was declared  
27 moot following a Federal Court ruling on a Federal Court Defendant’s motion.  
28



1 obtaining Preliminary Approval.<sup>4</sup> (Belton Decl., ¶ 46, Trujillo Decl., ¶ 8,  
2 Winnick Decl., ¶ 6). The time and labor spent by Class Counsel on this case is  
3 further evidenced by Class Counsel’s detailed billing records. (Belton Decl., ¶ 7,  
4 Exhibits 1-4).

5 Collectively, Class Counsel devoted a considerable number of hours to this  
6 matter over the course of the litigation against these Defendants in both Federal and  
7 State Court. The billing records, which are attached as Exhibits to the  
8 accompanying Declarations of Jeffrey T. Belton, set forth in detail the hours that  
9 Class Counsel spent performing tasks on behalf of Plaintiffs and the Class. The  
10 billing records are thorough and comprehensive, and were prepared so that the  
11 Court can peruse them without having to set forth each and every task in the body  
12 of this Motion. Most importantly, the billing records submitted in this Action do  
13 not mirror or duplicate any billing records submitted in the Federal Court Action to  
14 justify Class Counsel’s fee in that case.

15 **ii. Results Obtained**

16 As explained above, the most appropriate manner in which to review Class  
17 Counsel’s results is to look at both this Settlement and the Federal Court Action  
18 Settlement together, given that both actions were filed and settled concurrently.  
19 Originally, the Total Class Loss was \$1,568,000, representing Defendants and the  
20 Federal Action Defendants’ combined exposure. In addition, as expressed above,  
21 the California Supreme Court expressly held that “it is equitable that [the  
22 attorney’s] compensation and expenses should come from the entire fund saved for  
23 all classes concerned before it is distributed.” *Winslow*, 25 Cal.2d at 284.

24 Plaintiffs obtained a \$562,500 gross settlement from the Federal Court Action  
25 Defendants and an additional \$100,000 from Defendants in this Action. In total,

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26 <sup>4</sup> Class Counsel does not include time spent in preparing this Motion for Attorney’s fees  
27 or the time anticipated in preparing motions for final approval.

1 Class Counsel obtained \$662,500 in total gross proceeds for the Plaintiff Class,  
2 which constitutes approximately \$3.19 per share, representing more than the  
3 amount that the shares were originally redeemed for.<sup>5</sup> The total gross proceeds  
4 represents approximately forty two percent (42%) of the Total Class Loss. (Belton  
5 Decl., ¶ 52).

6 In the Federal Court Action, Judge Selna stated that that settlement was “fair,  
7 adequate and reasonable,” agreeing that the results achieved weighed in favor of  
8 Plaintiff’s requested award of 33.3%. (RJN, ¶ 1, Exhibit A, pg. 16; Belton Decl., ¶  
9 26).

10 In addition, the results achieved and the monetary benefits recovered on  
11 behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in  
12 further litigation.

13 While Plaintiffs believe the claims in this case are solidly grounded and were  
14 prepared to litigate this case to trial, Plaintiffs were likewise cognizant of the risks  
15 associated with proceeding. If the parties continued to litigate this case, both sides  
16 would need to spend tens of thousands of dollars on witness depositions, experts,  
17 summary judgment motions, and pre-trial preparation. Indeed, Class Counsel was  
18 faced with exponentially increasing expert costs and no guarantee those expenses  
19 could ever be recovered. Litigating through trial and any appeals would present  
20 significant risks to the Class and Class Counsel. Additionally, there still exists the  
21 risk that the class would not be certified. (Belton Decl., ¶ 47).

22 If Class Counsel’s requests for fees and costs, as well as the costs for the  
23 settlement administrator, are granted, the Net Settlement Fund in this case will be  
24 \$45,801.80. Combined with the net settlement amount from the Federal Court  
25 Action, the total net settlement amount obtained for the Plaintiff Class is  
26

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27 <sup>5</sup> \$662,500 / 208,000 shares = \$3.19 per share.

1 \$384,335.80 [= \$338,534.00 + \$45,801.80]. The total net settlement amount  
2 constitutes approximately 24.4% of the Total Class Loss. In total, Plaintiffs  
3 obtained an addition \$1.63 per share for each member of the Plaintiff Class after  
4 fees and costs.

5 **iii. Fee Awards In Similar Cases**

6 California state and federal courts routinely award attorneys' fees at or in  
7 excess of the thirty-three and one-third percent (33.3%) of the common fund's total  
8 value presently sought in this Action. See, e.g., *Chavez v. Netflix, Inc.* (2008) 162  
9 Cal. App. 4th 43, 66 n.11 (accord); Eisenberg & Miller, Attorney Fees in Class  
10 Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1,  
11 Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation  
12 nationwide conclude that a thirty-three and one-third percent fee is consistent with  
13 market rates)<sup>6</sup>.

14 Thirty-three and one-third percent (33.3%) of the common fund is also  
15 reasonable because it is at the low end of the market rate for contingency fees. See  
16 *Lealao*, 82 Cal. App. 4th at 47 (“attorneys providing the essential enforcement  
17 services must be provided incentives roughly comparable to those negotiated in the  
18 private bargaining that takes place in the legal marketplace”). The negotiated fees

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19  
20 <sup>6</sup> See *Hudson v. National Ready Mixed Concrete Co.* 2014 WL 7076812 (Orange  
21 County Super Ct.); *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491-92 (E.D.  
22 Cal 2010) (awarding as fees 33.3% of \$300,000 settlement); *Romero v. Producers*  
23 *Dairy Foods, Inc.*, 1:05-cv-00484 (E.D. Cal. Nov. 14, 2007) (awarding as fees 33.3%  
24 of \$240,000 settlement); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super.  
25 Ct) (35% award); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-  
26 00077680 (San Diego Super. Ct.) (40% award); *Gomez and LaGaisse v. 20 20*  
27 *Communications*, No. RIC 528973 (Riverside Super. Ct.) (33% award); *Acheson v.*  
28 *Express LLC*, No. 109CV135335 (Santa Clara Super. Ct.) (33% award); *Weisbarth*  
*and List v. HR Block Financial Advisors, Inc.*, No. 07-00236 (CD. Cal.) (33%  
award); *Perez and Comeaux v. Standard Concrete*, No. 30-2008-00211820 (Orange  
County Super. Ct.) (33% award);

1 reflect the market rate for fees in two ways. First, the fees representing thirty-three  
2 and one-third percent (33.3%) of the recovery reflects the rate negotiated in  
3 “typical contingency fee agreements [which] provide that class counsel will recover  
4 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*  
5 *Victoria Secret Stores LLC*, 2008 U.S. Dist LEXIS 123546, \*55-57 (C.D. Cal. July  
6 21, 2008) (citing an academic study collecting contingency fee agreements and  
7 finding that a fee award constituting 34% of the fund is reasonable on that basis).  
8 (Belton Decl., ¶ 60). In this case, all the named Plaintiffs signed a retainer  
9 agreement with Class Counsel establishing a 40% contingent fee, whereas Class  
10 Counsel is only seeking 33.3% in this motion. Because the negotiated fee structure  
11 mimics the marketplace, it is reasonable and should be approved.

12 Second, courts have recognized that the negotiated fee is the best indication  
13 of the market price for fees. In a common fund case, the object “is to give the  
14 lawyer what he would have gotten in the way of a fee in an arm's-length  
15 negotiation, had one been feasible.” *In re Cont'll Ill. Sec. Litig.* (7th Cir. 1992) 962  
16 F.2d 566, 568. In *In re Cont'll Ill. Sec. Litig.*, Judge Posner reasoned that the  
17 negotiated fee reflects a market-based price because it encompasses both parties'  
18 best estimate and view as to the value of the legal services and what the court might  
19 have awarded if the matter had been litigated. *Id.* For this reason, courts generally  
20 defer to the parties regarding the reasonableness of the negotiated attorneys' fees.  
21 Indeed, because “the parties are compromising to avoid litigation,” the court “need  
22 not inquire into the reasonableness of the fees at even the high end with precisely  
23 the same level of scrutiny as when the fee amount is litigated.” *Laguna v. Coverall*  
24 *No. Am.* (9th Cir. 2014) 753 F.3d 918, 922. While the Court must conduct an  
25 independent inquiry into the reasonableness of the fee request, it should give  
26 substantial weight to the Parties' agreement on fees, which is the product of  
27 negotiations in the legal marketplace.

1 **iv. Skill Required To Perform The Legal Services Properly**

2 As Judge Selna ruled, “The single clearest factor reflecting the quality of  
3 class counsels’ services to the class are the results obtained.” Citing *In re Heritage*  
4 *Bond*, No. 02-ML-1475, 2005 WL 1594389, at \*12 (C.D. Cal. June 10, 2005), at  
5 \*12 (quoting *Cullen v. Whitman Med. Corp.*, (E.D. Pa. 2000) 197 F.R.D. 136, 149.  
6 As explained above, combined with the Federal Class Action settlement, Class  
7 Counsel obtained an excellent result, recovering approximately 42% of the Total  
8 Class Loss.

9 The skill required to properly litigate the Federal Class Action and this  
10 Action against Defendants is evident not only in the results achieved, but in the  
11 steps necessary to obtain them. For instance, the quality of opposing counsel is  
12 also important in evaluating the quality of the work done by Class Counsel. *In re*  
13 *Equity Funding Corp. Sec. Litig.* (C.D. Cal. 1977) 438 F.Supp. 1303, 1337  
14 (recognizing that “Plaintiffs’ attorneys in this class action have been up against  
15 established and skillful defense lawyers, and should be compensated accordingly.”)  
16 Defendants retained well-respected counsel to represent their interests. Defendants  
17 and their counsel felt very strongly about Defendants’ ability to obtain a denial of  
18 certification and to prevail on the merits. (Belton Decl., ¶ 15). Additionally, the  
19 uncertainties regarding ERISA cases also signify their complexity. *In re Global*  
20 *Crossing Sec. & ERISA Litig.* (S.D.N.Y. 2004) 225 F.R.D 436, 456. As stated  
21 above, Defendants were originally sued under both state law and ERISA in federal  
22 court and they were even successful in getting that case dismissed from federal  
23 court.

24 Class Counsel undertook extensive investigation, analysis, and research prior  
25 to filing the cases and during the litigation. Class Counsel took steps to prepare the  
26 cases for class certification, and had every intention of taking the cases to trial on a  
27 class-wide and/or representative basis if Defendants did not offer an appropriate  
28 class-wide settlement. (Belton Decl., ¶ 48).

1 Judge Selna found in the Federal Court Action that “Class Counsel has  
2 competently litigated [the Federal Court Action], diligently investigating the  
3 claims. The settlement was not reached lightly, but after years of litigation.” (RJN,  
4 ¶ 1, Exhibit A, pg. 16).

5 **v. Whether the Fee is Fixed or Contingent**

6 In *Ketchum*, the California Supreme Court instructed courts to adjust fee  
7 compensation to ensure that the fees account for contingency risk:

8 A lawyer who both bears the risk of not being paid and provides legal services is  
9 not receiving the fair market value of his work if he is paid only for the second of  
10 these functions. If he is paid no more, competent counsel will be reluctant to accept  
11 fee award cases.

12 *Ketchum*, 24 Cal. 4th at 1132-33. The Court further stated that fee awards that  
13 adjust for contingency fee risk “constitutes earned compensation; unlike a windfall,  
14 it is neither unexpected or fortuitous.” *Id.* at 1138.

15 Plaintiffs entered into contingency-fee agreements with Class Counsel, and  
16 the representation of the Settlement Class provided by Class Counsel has been  
17 wholly contingent. Class Counsel took on these cases without knowing whether  
18 they would obtain any recovery. Class Counsel have collectively invested 174.83  
19 hours of time to the litigation against these Defendants, to obtain relief on behalf of  
20 Plaintiffs and the Plaintiff Class. Class Counsel have also collectively incurred  
21 litigation costs and expenses in the amount of \$11,526.87.

22 Class Counsel took this case on a wholly contingent basis more than three  
23 years ago. This commitment of time and resources was a very significant risk for a  
24 small law firm. When the Federal Class Action was filed more than three and a  
25 half years ago, it was with the knowledge that Class Counsel would spend hundreds  
26 of hours in a hard-fought litigation against well-funded defendants, with no  
27 guarantee of success. Given the inherent risks and uncertainties, Class Counsel  
28 filed this lawsuit with the expectation that, if the lawsuit were successful, Class  
Counsel would receive a premium to account for the risk of nonpayment. (Belton

1 Decl. ¶ 49). Class Counsel’s prosecution of this case on a contingency basis  
2 presented a great amount of risk, and therefore supports the requested fee of 33 1/3  
3 % of the common fund.

4  
5 **C. CLASS COUNSEL’S FEE REQUEST IS ALSO REASONABLE**  
6 **UNDER THE LODESTAR METHOD**

7 While the percentage-of-the-benefit approach is endorsed as the better  
8 approximation of the workings of the marketplace, when a settlement fund is  
9 involved, courts may also use the lodestar method to “cross-check” the results.  
10 *Laffitte*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a  
11 quantitative method for bringing a measure of the time spent by counsel into the  
12 trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at  
13 1050 (“[W]hile the primary basis of the fee award remains the percentage method,  
14 the lodestar may provide a useful perspective on the reasonableness of a given  
15 percentage award.”). Importantly, “the lodestar calculation ... does not override the  
16 trial court’s primary determination of the fee as a percentage” of the settlement  
17 fund and “does not impose an absolute maximum or minimum on the potential fee  
18 award.” *Laffitte*, 1 Cal.5th at 505.

19 The lodestar is calculated based on reasonable hours at reasonable prevailing  
20 hourly rates for the attorneys. *Ketchum*, 24 Cal.4th at 1131-32. Under California  
21 law, counsel is entitled to compensation for every hour reasonably spent on the  
22 matter. *Id.* at 1133.

23 Here, Class Counsel’s lodestar significantly exceeds the fee being requested,  
24 even *before* any multiplier is applied. Class Counsel’s combined lodestar amount,  
25 based on their reasonable fees and reasonable hours expended on this matter, is  
26 \$71,294.25. The fee request of \$33,333.33 falls *well below* Class Counsel’s  
27 lodestar, which strongly supports the reasonableness of the fee. See, e.g., *In re*  
28 *Flag Telecom Holdings, Ltd. Sec. Litig.* (S.D.N.Y. Nov. 8, 2010) 7:02-cv-02541

1 (Dkt. 14, pg. 45) (“Lead Counsel’s request for a percentage fee representing a  
2 significant discount from their lodestar provides additional support for the  
3 reasonableness of the fee request.”).

4 Class Counsel’s fee request is a fractional multiplier of only 0.47<sup>7</sup>. The fee  
5 request is more than reasonable based on the risk and complexity of the litigation  
6 and the excellent results achieved. Class Counsel has expended significant  
7 professional time and out-of-pocket expenses litigating this case for more than  
8 three and a half years. Further work will need to be completed in the preparation of  
9 Plaintiff’s Motion for Final Approval, attending the hearing on the motion and  
10 overseeing final administration of the Settlement. The following chart reflects the  
11 hours spent by Class Counsel and their requested hourly rates approved in the  
12 Federal Court Action.

<b>Timekeeper</b>	<b>Title</b>	<b>Hours</b>	<b>Requested Hourly Rate</b>	<b>Lodestar</b>
Anthony Trujillo	Partner	46.0	\$400	\$18,400.00
Alex Winnick	Partner	46.9	\$375	\$17,587.50
Jeffrey Belton	Partner	72.43	\$475	\$34,404.25
Stephanie Belton	Paralegal	9.50	\$95	\$902.50
<b>Total Lodestar</b>		174.83		<b>\$71,294.25</b>

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18  
19 (Belton Decl., ¶ 5).

20  
21 **i. Class Counsel Performed Work for a Reasonable Number of Hours**

22 The reasonableness of hours is assessed by “the entire course of the  
23 litigation, including pretrial matters, settlement negotiations, discovery, litigation  
24 tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79  
25 Cal.App.4th 440, 447. In performing a lodestar cross-check, mathematical

26  
27 <sup>7</sup> The fractional multiplier is calculated as follows: \$33,333.33 (total fees requested)  
divided by \$71,294.25 (total lodestar) = 0.47



1 precision is not required. *Young v. Polo Retail, LLC*, 2007 U.S. Dist. Lexis 27269  
2 (N.D. Cal. March 8, 2007) (“In contrast to the use of the lodestar method as a  
3 primary tool for setting a fee award, the lodestar cross-check can be performed with  
4 a less exhaustive cataloging and review of counsel’s hours.”); *In Re Rite Aid Corp.*  
5 *Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-07 (“The lodestar cross-check  
6 calculation need entail neither mathematical precision nor bean-counting.”)

7 The hours worked are provided to the Court in detail in the concurrently filed  
8 Declarations of Class Counsel. The lodestar does not include all hours expended  
9 on this case as Class Counsel exercised billing judgment regarding the hours  
10 worked. Class Counsel further avoided duplicative billing, not just between its  
11 work among both actions, but also among Class Counsel. For matters worked on  
12 by more than one Class Counsel attorney, the billing was allocated and divided  
13 amongst the attorneys. (Belton Decl., ¶ 50).

14 As shown in the attached billing records, Class Counsel conducted  
15 significant motion work, document review, as well as discovery. They engaged in  
16 significant law and motion and attended two all day mediations. Class Counsel  
17 further prepared and obtained a Motion for Preliminary Approval of the Settlement.  
18 Class Counsel will have to perform additional work on the case to obtain final  
19 approval, however, Class Counsel does not include an estimation of those hours  
20 with its billing, nor does it include those hours spent in preparing this Motion.  
21 (Belton Decl., ¶ 51).

22 **ii. Class Counsel’s Hourly Rates Are Reasonable**

23 Both California and federal courts recognize that attorneys should be  
24 compensated for providing representation on a contingency basis and for taking on  
25 the risks associated with said representation, as well as being provided with  
26 financial incentives to enforce important rights and protections like those at issue in  
27 the Settled Actions. *Ketchum*, 24 Cal.4th at 1132-33. In awarding attorneys’ fees,  
28 the aim is to mirror “the established practice in the private legal market of

1 rewarding attorneys for taking the risk of nonpayment by paying them a premium  
2 over their normal hourly rates for winning contingency cases.” *Id.*

3 Courts “must determine a reasonable hourly rate considering the experience,  
4 skill, and reputation of the attorney requesting fees.” *Chalmers v. City of Los*  
5 *Angeles*, (9th Cir. 1986) 796 F.2d 1205, 1210. The reasonable rate is derived from  
6 the reasonable market value of their services in the community. *Blum v. Stenson*  
7 (1984) 465 U.S. 886, 895, n.11. “Courts may find hourly rates reasonable based on  
8 evidence of other courts approving similar rates or other attorneys engaged in  
9 similar litigation charging similar rates.” *Parkinson v. Hyundai Motor America*  
10 (C.D. Cal. 2010) 796 F.2d 1160, 1172; *Ackerman v. Western Electric Co.* (9th Cir.  
11 1988) 860 F.2d 1514. “Affidavits of the plaintiffs’ attorney and other attorneys  
12 regarding prevailing fees in the community, and rate determinations in other cases,  
13 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence  
14 of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*  
15 (9th Cir. 1990) 896 F.2d 403, 407.

16 In this case, the requested hourly billing rate for Jeffrey T. Belton is \$475.00;  
17 the requested hourly billing rate for Anthony W. Trujillo is \$400.00; and the  
18 requested hourly billing rate for Alexander H. Winnick is \$375.00. Class  
19 Counsel’s rates are based on each attorney’s position, experience level, and  
20 location. These rates are reasonable because they are consistent with (1) Class  
21 Counsel’s customary rates and (2) the rates allowed in other ERISA/stock valuation  
22 cases or class action cases in this district. (Belton Decl., ¶¶ 53). Furthermore, in  
23 the Federal Class Action, Judge Selna approved all of Class Counsels requested  
24 hourly billing rates, finding the rates to be reasonable. (RJN, ¶ 1, Exhibit A, pg.  
25 18; Belton Decl., ¶ 27).

26 Class Counsel has provided detailed information regarding their position,  
27 experience level, and location, as well as their customary rates charged, in the  
28 accompanying Declarations of Jeffrey T. Belton, Anthony W. Trujillo, and

1 Alexander H. Winnick. (Belton Decl., ¶ 37-44; Trujillo Decl. , ¶¶ 3-11; Winnick  
2 Decl., ¶¶ 3-5).

3 Furthermore, as established in the concurrently filed declaration of attorney  
4 Alexander R. Wheeler, Class Counsel’s rates are consistent with, if not less than,  
5 rates typically awarded to class counsel in Southern California. Like Class  
6 Counsel, Alexander Wheeler is a graduate of Pepperdine University School of Law  
7 and has also been practicing since 2005. In the Central District case *Campbell, et*  
8 *al. v. Best Buy Stores, L.P.* Case No. LA CV12-07794 JAK (SHx), Mr. Wheeler  
9 was awarded \$650 per hour in June of 2015 for his work as class counsel, and his  
10 paralegal was awarded \$125 per hour. Mr. Wheeler had been practicing law for  
11 slightly less than 10 years at that time. The fee award in *Campbell* was one-third of  
12 a \$674,500 common fund. (See, Declaration of Alexander R. Wheeler, ¶¶ 6-9).

13 Accordingly, Plaintiffs respectfully request that the Court grant approval of  
14 an attorneys’ fees award in the amount of \$33,333.33 to Class Counsel, which is  
15 both reasonable, customary, and supported by a Lodestar crosscheck.

16  
17 **V. THE COURT SHOULD AWARD THE REQUESTED EXPENSES**

18 The Settlement provides for reimbursement of litigation costs and expenses  
19 of up to \$12,000. However, here Class Counsel only requests \$11,526.87 in  
20 reimbursement of costs. As set forth in the Declaration of Jeffrey T. Belton, Class  
21 Counsel have collectively incurred \$11,526.87 in litigation costs and expenses in  
22 this Action. (Belton Decl., ¶ 9).

23 In the Federal Court Action, Class Counsel was granted a reimbursement of  
24 \$15,859.00 in costs. (RJN, ¶ 1, Exhibit A, pg. 18; Belton Decl., ¶ 29). This  
25 amount was based on \$6,433.33 in mediation fees, \$906.90 in filing and service  
26 fees, \$67.06 in postage charges, \$298.11 in copy charges, \$503.60 in legal research  
27 costs, and \$7,650.00 for the accounting expert. (Belton Decl., ¶ 29). As previously  
28 expressed, Class Counsel does **not** seek reimbursement of any costs or fees with

1 which it had been previously awarded in the Federal Court Action. (Belton Decl., ¶  
2 36).

3 In this Action, Class Counsel seeks reimbursement of the following  
4 recoverable expenses directly related to this case:

<b>Date</b>	<b>Description</b>	<b>Amount</b>
1/1/2016	Expert Adam Minow Regarding review of ESOP records and Analysis	\$3,650.00
7/27/2016	Client Expense - Filing Fee - OneLegal Order # 3439435	\$1,435.00
10/14/2016	Client Expense - Filing Fee - OneLegal Order #10610849	\$9.95
10/19/2016	Client Expense - Courtcall	\$86.00
11/18/2016	Client Expense - SEG Service of Summons	\$75.00
11/30/2016	Carr Legal Media Inc. [Fees paid to videographer to obtain interviews of Class Representatives for mediation presentation, review and editing of deposition footage of Kramer for use in mediation, organization and digitization of documents produced by SEG Defendants for use in mediation.]	\$5,000.00
1/16/2017	Client Expense - Courtcall	\$116.00
1/16/2017	Client Expense - Courtcall	\$86.00
4/3/2017	Client expense - Courtcall	\$86.00
4/3/2017	Client Expense - Courtcall	\$86.00
6/7/2017	Client Expense - Courtcall	\$116.00
6/7/2017	Client Expense - Courtcall	\$86.00
9/11/2017	Client Expense - Courtcall	\$116.00
1/8/2018	Client Expense - Courtcall	\$94.00
1/9/2018	Client Expense - E - Filing Fee # 261836.	\$40.00
1/9/2018	Client Expense - Courtcall	\$116.00
2/13/2018	Client Expense - Filing Fee - OneLegal Order # 11735950.	\$74.76
4/17/2018	Client Expense - Courtcall	116.00
8/30/2018	Client Expense - Filing Fee - OneLegal Order # 12259454.	\$16.20
9/12/2018	Client Expense - Filing Fee - OneLegal Order # 12289067.	\$16.20
9/12/2018	Client Expense - Filing Fee - OneLegal Order #12289067.	\$61.56
9/12/2018	Client Expense - Filing Fee - OneLegal Order # 12304425.	\$14.20

12/4/2018	Client Expense - Courtcall	\$86.00
1/2/2019	Client Expense - Filing Fee - OneLegal Order # 12302237.	\$60.00
<b>TOTAL EXPENSES</b>		<b>\$11,526.87</b>

(Belton Decl., ¶¶ 9, see Exhibit 5- detailed spreadsheet of expenses).

Class Counsel incurred these costs with no assurance they would be repaid, and the expenses incurred are standard and are the type of expenses typically billed by attorneys to paying clients in the marketplace. (Belton Decl., ¶ 11). See, *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, deposition expenses, and mediation expenses are relevant and necessary). The requested reimbursement amount is reasonable and is significantly less than the amount initially projected.

Class Counsel will incur future costs in preparation for the final approval hearing, such as copy costs, legal research and delivery charges, however, they will not seek reimbursement of any of these future expenses. (Belton Decl., ¶ 12). Class Counsel respectfully requests that the Court grant reimbursement of all costs incurred by Class Counsel in order to successfully prosecute this litigation.

**VI. THE COURT SHOULD AWARD THE REQUESTED SETTLEMENT ADMINISTRATION COSTS**

According to the Settlement Administrator, Simpluris, approximately \$10,000 will be needed to administer the class action notices and payments. (Belton Decl., ¶¶ 70, see Exhibit 7- Simpluris Estimate). Simpluris is a Class Action Settlement company with significant experience managing these types of cases, located in Costa Mesa, California.

In the Federal Court Action, Judge Selna approved a payment of \$10,607.00 to Simpluris for settlement administration costs. Unfortunately, it was impossible

1 for the settlement administrator to administer both this Action and the Federal  
2 Court Action simultaneously to avoid duplicative costs. This is because each case  
3 required its own court approved notices and settlement payment schedules.  
4

5 **iii. CONCLUSION**

6 As Class Counsel's lodestar amount significantly exceeds the amount  
7 requested under the percentage of recovery method, the reasonableness of the  
8 requested fee is confirmed. Accordingly, Class Counsel requests that the Court  
9 award Class Counsel \$33,333.33 in attorney's fees and reimbursement of litigation  
10 expenses incurred in this matter of \$11,526.87. Additionally, Plaintiffs and Class  
11 Counsel request that the Court award the settlement administrator, Simpluris,  
12 \$9,338.00 in settlement administration costs.  
13  
14  
15

16 TRUJILLO & WINNICK, LLP

17 DATED: March 6, 2019

18 By:



19 \_\_\_\_\_  
Anthony W. Trujillo

Alexander H. Winnick

20 \_\_\_\_\_  
Jeffrey T. Belton

21 Attorneys for Plaintiffs Pamela Carter, et al.  
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