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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JED and ALISA BEHAR, individually and on behalf of all others similarly situated, Plaintiffs, v. NORTHROP GRUMMAN CORPORATION AND NORTHROP GRUMMAN SYSTEMS CORPORATION, Defendants.	Case No. 21-cv-03946-HDV-SK CLASS ACTION **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES** **<u>Hearing:</u>** Date: November 12, 2026 Time: 10:00 a.m. Place: Courtroom 5B, 5th Floor 350 W. 1st Street Los Angeles, CA 90012 Judge: Hon. Hernán D. Vera

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 12, 2026, at 10:00am, or as soon thereafter as the matter may be heard, in Courtroom 5B of the above-entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Plaintiffs Jedidiah and Alisa Behar will and hereby do move this Court for an order awarding attorneys' fees, litigation expenses, and class representative service awards.

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel Nidel & Nace, PLLC, The Lanier Law Firm, P.C., Environmental Energy & Natural Resources Advocates, PLLC, and the Law Office of Gideon Kracov, respectfully submit this Memorandum of Points and Authorities in support of their Motion for: (1) awarding Class Counsel attorneys' fees in the amount of forty percent (40%) of the $75,000,000.00 Settlement Fund, totaling $30,000,000.00; (2) reimbursing Class Counsel's litigation costs and expenses of $2,371,230.09; and (3) approving service awards of $30,000.00 to each Class Representative. This Motion is based on this Notice, the accompanying Memorandum of Points and

Authorities, the concurrently filed Declarations and any exhibits thereto, all pleadings and papers on file in this action, and such further evidence and argument as may be presented at or before the hearing.

DATED: September 4, 2026 Respectfully submitted,

/s/ *Christopher T. Nidel*
Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND LITIGATION HISTORY

This Motion asks the Court to approve a fee of forty percent of a $75,000,000 non-reversionary common fund, reimbursement of $2,371,230.09 in advanced litigation expenses, and $30,000 Service Awards to each of two Class Representatives.

Four things justify this request. First, Class Counsel tried this case. After more than five years of contingent litigation against Northrop Grumman and Gibson Dunn—through contested certification, a Rule 23(f) petition, summary judgment, decertification, and two rounds of motions to exclude every one of Plaintiffs' six experts—Class Counsel selected and swore a jury, delivered an opening statement, and examined four witnesses before settling on the fourth day of trial. Ellis Decl. ¶¶ 3, 23–28. Class action trials are "almost extinct." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 685 (9th Cir. 2022) (Lee, J., dissenting).

Second, the recovery is complete and the release is narrow. Defendants must pay the entire $75,000,000; no portion reverts to them under any circumstance. Ellis Decl. ¶ 31. The release covers only property damage and mitigation and expressly preserves every class member's personal injury, wrongful death, and medical monitoring claims. *Id.* ¶ 34.

Third, the Settlement bears none of the hallmarks of a collusive fee arrangement. There is no clear-sailing provision. *Id.* ¶ 31. The Settlement Agreement says so expressly and reserves Defendants' right to oppose this Motion. There is also no reverter to Defendants, and the Settlement's effectiveness does not turn on the Court's approval of any fee. *Id.* ¶ 31; *cf. In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

Fourth, the request is conservative when measured against the work. Class Counsel devoted 15,356.5 hours to this yearslong, high-risk, highly complex action, yielding a combined lodestar of $19,803,041.76 and a multiplier of 1.51—a fraction of the hours courts in this Circuit have approved in cases that settled long before trial. Ellis Decl. ¶ 41.

II. THE COURT SHOULD AWARD ATTORNEYS' FEES UNDER THE PERCENTAGE-OF-THE-FUND METHOD

Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In the Ninth Circuit, "[w]here a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The percentage-of-recovery method has become the prevailing method used in this Circuit. *See, e.g.*, *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452, 456–57 (9th Cir. 2009) (affirming district court's use of percentage method in awarding fees); *Ellison v. Steven Madden, Ltd.*, 2013 WL 12124432, at *8 (C.D. Cal. May 7, 2013) (finding "use of the percentage method" to be the "dominant approach in common fund cases").

A. California law governs the fee award, and California law applies no 25% benchmark

Plaintiffs' certified claims—negligence, nuisance, and trespass—arise exclusively under California law. Ellis Decl. ¶ 16. Where a common fund is "the product of the successful claim" governed by state law, that state's law "also governs the award of fees." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995)). California law therefore supplies the standard.

Under California law, fees in class actions "may be calculated in one of two ways: [1] the percentage method … or [2] the lodestar-multiplier method." *Hernandez v. Burrtec Waste & Recycling Servs., LLC*, 2023 WL 5725581, at *6 (C.D. Cal. Aug. 21, 2023) (citing *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 489 (2016)). "[M]ost courts and commentators now believe that the percentage method is superior," *Laffitte*, 1 Cal. 5th at 494.

Critically, California has not adopted the Ninth Circuit's 25% benchmark. *Bernstein v. Virgin Am., Inc.*, 2023 WL 7284158, at *2 (N.D. Cal. Nov. 3, 2023) (California Supreme Court "did not adopt such a benchmark for California cases"). The California norm is materially higher: "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 n.13 (2009); *see Oliveira v. Language Line Servs., Inc.*, 767 F. Supp. 3d 984, 1001 (N.D. Cal. 2025) (one-third is "the typical award of attorneys' fees" in California state court).

Measured against that standard, the requested 40% is a modest premium over the California norm rather than a departure from a benchmark, and the premium is justified by circumstances that are anything but typical: a certified class action prosecuted on contingency for more than five years and tried to a jury. Even if federal common law supplied the rule, which it does not, the request is independently justified under *Vizcaino*, as set out below.

A. Each *Vizcaino* factor independently supports an award of 40% under Ninth Circuit law

Even if federal law governed this request, the result would be the same. Under the percentage method, the Ninth Circuit has established 25% of the common fund as a benchmark award for attorney fees. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). However, "[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases. Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048.

Class Counsel's requested award of 40% is consistent with Ninth Circuit precedent and within the "typical range of acceptable attorneys' fees in the Ninth Circuit." *Quiruz v. Specialty Commodities, Inc.*, 2020 WL 6562334, at *10 (N.D. Cal. Nov. 9, 2020) (citation omitted); *In re Capacitors Antitrust Litig.*, 2023 WL 2396782 (N.D. Cal. Mar. 6, 2023) (awarding 40% of class settlement); *In re Xyrem (Sodium Oxybate) Antitrust Litig.*, 2025 WL 3006647, at *4 (N.D. Cal. Oct. 27, 2025)(awarding 33% of class settlement). In 2017, a similar class settlement involving environmental contamination resulted in a Class Counsel fee award of 40% due to the complex *Daubert* issues and the expertise of class counsel prosecuting the case. *See Cook v. Rockwell Int'l Corp.,* 2017 WL 5076498 (D. Colo. Apr. 28, 2017). Likewise, in *Andrews v. Plains All Am. Pipeline, L.P.*, the Court found that the "substantial risks borne by Class Counsel in pursuing this class action for seven years with no guarantee of recovering fees or litigation expenses" justified an attorney's fee award of 32% of the $230 million common fund settlement). 2022 WL 4453864, at *3-4 (C.D. Cal. Sept. 20, 2022).

When awarding a percentage fee, courts may (but are not required to) cross-check the requested fee with counsel's lodestar to ensure its reasonableness. *See In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022); *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) (noting "cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness"); *see also infra* Section III (lodestar analysis).

B. Awards in comparable cases confirm the reasonableness of the requested fee

The Ninth Circuit has identified several factors that justify departure from the 25% benchmark, including: (1) the results obtained for the class; (2) the risk of non-recovery; (3) the benefits generated beyond the cash settlement fund; (4) market rate evidence; and (5) the duration and financial burden borne by counsel. *Vizcaino*, 290 F.3d at 1048–50. Each of these factors supports a 40% fee here.

1. <u>Class Counsel achieved exceptional results for the Class.</u>

Class Counsel obtained a $75,000,000 non-reversionary settlement fund for 3,294 homes, an exceptional result. Assuming a 100% participation rate, per-home recovery is approximately $21,000 for Sub-Area A (789 homes), $16,000 for Sub-Area B (727 homes), and $7,500 for Sub-Area C (1,778 homes). These recoveries far exceed those approved in comparable TCE-contamination class actions. *See, e.g.*, *Cox v. Ametek, Inc.*, No. 317CV00597GPCAGS, 2020 WL 7353425, at *6 (S.D. Cal. Dec. 15, 2020) ($3.5 million for 7,000 members); *Mejdrech v. Lockformer Co.*, No. 01-cv-6107 (N.D. Ill. 2004) ($14.9 million for 1,400 members).

Class Counsel successfully: defeated Defendants' summary judgment motion; secured and defended class certification on novel issues; defended all six experts against dual *Daubert* challenges at both the class certification and summary judgment stages; defeated Defendants' motion to decertify the classes; prepared the case for trial; presented opening statements and examined witnesses before the jury; and ultimately negotiated a $75 million settlement during trial.

The docket reflects extensive briefing on class certification (ECF No. 175), summary judgment (ECF Nos. 238, 296), decertification (ECF Nos. 246, 262, 302), and twelve Daubert motions targeting all six of Plaintiffs' experts across two rounds (ECF Nos. 133, 134, 143–145, 147, 150, 152, 154, 156, 159, 161, 175, 240–245, 259–261, 263–266, 323). Class Counsel prevailed on every dispositive motion, on class certification, on decertification, and on both rounds of motions to exclude Plaintiffs' experts. This Court previously found Plaintiffs and Class Counsel adequate to represent the Class. ECF No. 175.

This case presented substantial technical and legal complexity. The litigation spanned more than five years from filing in 2021 through trial in 2026. It required attorneys with specialized expertise in chemistry, hydrogeology, and complex economic analyses. Class Counsel reviewed and processed over three million pages of documents relating to site history, complex hydrogeologic analyses and testing related to releases from the Site into the Class Area, and testing related to vapor intrusion in homes within the Class Area. Plaintiffs retained six testifying experts to offer opinions: a hydrogeologist and geologist (Dr. Laton), a vapor intrusion expert (Dr. Kram), a toxicologist (Dr. Ryer-Powder), a hydrogeologist and groundwater modeler (Dr. Tonkin), an industrial historian (Dr. Gorman), and a real estate economist (Dr. Boyle), each of whom submitted reports and supplemental reports and sat for deposition, in most cases more than once. Defendants retained ten experts of their own who each prepared a report and sat for depositions. Plaintiffs took approximately 10 fact and 13 expert depositions and defended against approximately 15 depositions noticed by Defendants.

The litigation was extraordinarily hard-fought. Plaintiffs successfully opposed: (1) a motion for summary judgment (ECF Nos. 238, 296); (2) a motion to decertify the classes (ECF Nos. 246, 262, 302); and (3) dual attempts by Defendants to strike all six of Plaintiffs' experts under Daubert—first at the class certification stage, and again at summary judgment (ECF Nos. 133, 134, 143–145, 147, 150, 152, 154, 156, 159, 161, 175, 240–245, 259–261, 263–266, 323). The parties also submitted competing and joint trial briefs, trial plans, witness and exhibit lists, motions in limine, proposed jury instructions, proposed verdict forms, proposed voir dire questions, and a proposed final pretrial conference order.

The litigation required Class Counsel to address novel issues of California law regarding class certification of property damage and mitigation claims arising from subsurface contamination. The dual rounds of *Daubert* challenges alone generated extensive briefing and required deep technical expertise to defend expert methodologies in hydrogeology, vapor intrusion modeling, and real estate economics. The complexity and duration of this litigation strongly support a fee above the 25% benchmark.

The Class also retains substantial rights. The release is narrow: it covers only property damage and mitigation measures arising from the facts alleged in the Second Amended Complaint and Section VII of the Final Pretrial Conference Order, and it expressly does not release personal injury, wrongful death or medical monitoring claims. Ellis Decl. ¶ 34.

Moreover, the Settlement bears none of the hallmarks of a collusive fee arrangement. The Ninth Circuit has identified three "subtle signs" that class counsel have traded class relief for fees: a disproportionate fee, a clear-sailing arrangement, and a "kicker" returning unawarded fees to the defendant. *In re Bluetooth*, 654 F.3d at 947. None is present. The Settlement Agreement expressly states that the parties do not agree to a clear-sailing provision and that Defendants reserve the right to oppose any application for fees and costs. Ellis Decl. ¶ 31. There is no reverter: Defendants must pay the entire $75,000,000, and no portion returns to them under any circumstance. *Id.* And the Settlement's effectiveness does not depend on the Court's approval of any fee or Service Award. *Id.* Class Counsel acknowledges that every dollar the Court declines to award remains in the fund for the Class. That is precisely why Class Counsel submits the lodestar cross-check below.

2. <u>Class Counsel undertook substantial risk and carried it through trial</u>

Class Counsel assumed substantial risk when it undertook this representation on a full contingency basis in 2021. Defendants denied all liability and vigorously contested every aspect of Plaintiffs' claims. Defendants asserted an affirmative defense that Plaintiffs' claims were time-barred, which could have provided a complete bar to class member recovery.

Most significantly, Defendants launched dual campaigns to exclude all six of Plaintiffs' testifying experts under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), first at the class certification stage and again at summary judgment. Had Defendants succeeded in striking even some of these experts, Plaintiffs' ability to prove contamination, causation, vapor intrusion risk, and property damage would have been severely compromised or eliminated entirely. Class Counsel successfully defended all six experts through both rounds of challenges. The risk of non-payment was not theoretical; it was a recurring, concrete threat that Class Counsel confronted and overcame at multiple stages of the litigation.

Furthermore, this case involved contested class certification on novel issues under California law. The Court's certification order was not a foregone conclusion, and Defendants moved to decertify the classes after certification was granted. ECF Nos. 246, 262, 302.

Aside from the significant contingency risk (discussed below), Plaintiffs' Counsel also faced considerable risks in taking the Action to trial—both with respect to proving Defendants' liability and establishing loss causation and damages, which involved complex scientific issues. While Plaintiffs' Counsel remained confident in their ability to prove the Classes' claims, they also appreciated the risks inherent in taking any case to trial, as well as the case-specific risks they faced here. *See generally In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.”).

Further, the fee request is appropriate here given the advanced stage of the proceedings at settlement. In contrast to cases that settle either prior to, or in conjunction with, class certification, Class Counsel diligently pursued relief for the Classes for two years beyond the Court’s Class Certification Order, through the completion of discovery and four days of trial.

Moreover, even if all of the obstacles to proving liability and damages were surmounted, Plaintiffs would have faced inevitable appellate proceedings that would have tied up any recovery for years and could have eliminated it entirely. The Settlement avoids all of these risks (and others) and secures a meaningful recovery for the Classes. Thus, this factor supports the fee request.

Risk of this magnitude warrants a substantial premium above the 25% benchmark. *See In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 226, 236 (2d Cir. 1987) (risk of non-payment is “perhaps the foremost” factor in common fund cases); *In re Allergan, Inc. Proxy Violation Derivatives Litig.*, 2018 WL 4959014, at *1 (C.D. Cal. Aug. 13, 2018) (noting “in most common fund cases, the award exceeds that [25%] benchmark”). “Without the prospect of some consideration for the risks and uncertainties of the action, the necessary incentive for prosecuting such a suit would be lacking and a major weapon for enforcing various public policies would be blunted.” *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d at 236 (cleaned up).

3. Class Counsel achieved benefits beyond the settlement fund

The Ninth Circuit recognizes nonmonetary benefits achieved for the Class Members flowing from the litigation. *Vizcaino*, 290 F.3d at 1049 (collecting cases).

Class Counsel’s efforts produced substantial public benefits extending well beyond the monetary relief obtained for the Settlement Class. This litigation required extensive environmental investigation, testing, expert analysis, and factual development concerning the alleged contamination at issue. As a result of that work, information regarding environmental conditions, potential exposure pathways, and alleged risks was developed and made available to class members and the broader public, enabling affected residents to make more informed decisions regarding their properties, health, and safety.

Moreover, this action serves important deterrent and precedential functions. Environmental contamination cases involving residential communities are complex, expensive, and difficult to prosecute.

By pursuing this action through years of litigation and substantial financial risk, Class Counsel helped reinforce the principle that entities responsible for alleged environmental contamination may be held accountable through private enforcement actions. The litigation sends a clear message that contamination affecting residential neighborhoods will be subject to scrutiny and potential liability, thereby encouraging compliance with environmental obligations and deterring similar conduct in the future.

The public policy considerations underlying environmental enforcement further support the requested fee award. Environmental contamination of residential communities demands vigorous private enforcement. Without contingency-fee counsel willing to advance significant costs and devote years of specialized effort to complex environmental litigation, many affected homeowners would have no practical means of obtaining relief. An appropriate fee award therefore not only compensates Class Counsel for the substantial public benefits achieved in this case but also encourages capable counsel to undertake similarly risky and resource-intensive environmental cases in the future, advancing the public interest in environmental accountability and community protection.

4. The requested fee is consistent with market rates for comparable contingency representations

The 40% fee request is consistent with contingency rates in complex environmental and toxic tort litigation. The Settlement Agreement itself provides for Class Counsel to seek up to 40% of the Settlement Fund, and up to 45% in the event of an appeal. This negotiated rate, agreed to at arm's length after extensive litigation, reflects the parties' informed assessment of the reasonable market rate for this type of representation. *See Vizcaino*, 290 F.3d at 1048–51 (considering retainer agreements as evidence of market rate).

Furthermore, this case required attorneys with specialized knowledge in chemistry, hydrogeology, and complex economic analyses. In addition to decades of experience in environmental law, Class Counsel possess significant experience prosecuting environmental class actions. Nidel Dec. ¶ 4.[1]

[1] See *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021 (E.D. Cal. 2019) (awarding an "upward departure from the 25% attorney fee benchmark to class counsel in recognition of their "unique skills" necessary to obtain a favorable result in a complex class action); *Marbled Murrelet v. Pac. Lumber Co.*, 163 F.R.D. 308, 318 (N.D. Cal. 1995) (recognizing counsel's unique expertise in scientific and technical

In addition to scientific and technical expertise necessary in this action, using that expertise to prosecute a class action required unique legal skills and abilities. *See In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). Class Counsel has extensive experience prosecuting environmental class actions and other complex litigation. Nidel Dec. ¶ 4; Ellis Dec. ¶¶ 5-13. This experience and skill were critical to the prosecution of the Action and its successful resolution. *See Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *20 (N.D. Cal. Mar. 24, 2017) (finding result "would have been unlikely if entrusted to counsel of lesser experience or capability" given the "substantive and procedural complexities" and the "contentious nature" of the case).

The quality of opposing counsel also is important in evaluating Plaintiffs' Counsel's efforts. *See Gutierrez v. Amplify Energy Corp.*, 2023 WL 6370233, at *5 (C.D. Cal. Sep. 14, 2023). Defendants were represented by experienced counsel from the nationally prominent defense firm, Gibson Dunn & Crutcher, who spared no effort or cost in vigorously defending their clients. Despite this formidable opposition, Plaintiffs' Counsel's ability to present a strong case and to demonstrate their willingness and ability to prosecute the Action through trial and beyond helped secure the Settlement. This factor supports Class Counsel's fee request.

5. <u>Class Counsel financed five years of litigation with no guarantee of recovery.</u>

Class Counsel's representation of the class—on a full contingency basis—extended over five years and required the advancement of over $2,371,230.09 in litigation costs with no guarantee of recovery. Class Counsel invested thousands of attorney hours in this matter and was forced to forgo other significant work during this time. *See Vizcaino*, 290 F.3d at 1050 ("counsel's representation of the class—on a contingency basis—extended over eleven years, entailed hundreds of thousands of dollars of expense, and required counsel to forgo significant other work, resulting in a decline in the firm's annual income."). "[W]hen counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015); *see also Ching v. Siemens Indus., Inc.*, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014) ("Courts have long recognized that the public interest is served by rewarding

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fields in determining reasonable attorney's fees under the Endangered Species Act because their technical knowledge was necessary for prosecution of the environmental case).

attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work."); *In re Wash. Pub. Power Supply*, 19 F.3d 1291, 1299 (C.D. Cal. 1994) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases.").

The risk of no recovery for a class and its counsel in complex cases of this type is very real. There are many examples of plaintiffs' counsel taking on the risk of pursuing claims on contingency, expending thousands of hours, and receiving no remuneration despite their diligence and expertise. *See, e.g., In re Tesla, Inc. Sec. Litig.*, 2022 WL 1497559, at *16–18 (N.D. Cal. Apr. 1, 2022) & Jury Verdict at 2–3, Tesla, No. 3:18-cv-04865-EMC, (N.D. Cal. Feb. 3, 2023), Dkt. No. 671 (jury verdict in defendants' favor after lengthy trial and despite court previously granting summary judgment on certain elements in plaintiff's favor); *Fosbre v. L.V. Sands Corp.*, 2017 WL 55878, at *27–28 (D. Nev. Jan. 3, 2017) (summary judgment for defendants after six years of litigation), *aff'd sub nom. Pompano Beach Police & Firefighters' Ret. Sys. v. L.V. Sands Corp.*, 732 F. App'x 543 (9th Cir. 2018); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050, at *1, *34 (N.D. Cal. June 19, 2009) (summary judgment for defendants after eight years of litigation).

Here, Plaintiffs' Counsel committed the necessary time and resources to prosecute this Action, without any payment or any guarantee of a fee. Plaintiffs' Counsel's fees have always been at risk and contingent on the result achieved and on the Court's approval. *See Sypherd v. Lazy Dog Rests., LLC*, 2023 WL 1931319, at *5 (C.D. Cal. Feb. 10, 2023) ("Courts routinely enhance fees for attorneys who assume representation in common fund cases on a contingent basis to compensate them for the risk."). If Class Counsel failed to overcome Defendants' challenges to Plaintiffs' claims at any stage, it would have received nothing for its diligent advocacy on behalf of the Class.

The duration and magnitude of this financial commitment, borne entirely at Class Counsel's risk, strongly favors a fee above the benchmark.

This burden was not limited to foregone fees. Lanier borrowed against lines of credit to fund this litigation and, between 2021 and August 2026, paid $435,285.62 in interest on the amounts advanced. Ellis Decl. ¶ 50. Notably, Class Counsel does not ask the Class to reimburse a dollar of this interest. *Id.*

That is a quantified, out-of-pocket cost of carrying this case on contingency, absorbed entirely by counsel — and it is exactly what a contingency premium exists to compensate.

6. No objection to the requested fees to date.

Although not specifically articulated in *Vizcaino*, courts in the Ninth Circuit also consider the reaction of the class when deciding a fee. *See Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *7 (N.D. Cal. Feb. 2, 2009). Although this Motion is, by design, being filed and made available to Class Members prior to the objection deadline, the notices advise Class Members of Class Counsel's intent to apply for attorneys' fees in an amount not to exceed 40% of the Settlement Fund. *See, e.g.,* ECF No. 410-1, Long Form Settlement Notice at 11. The notices further advise Class Members of their right to object to this request. To date, no objections have been received. Nidel Dec. ¶ 22.

III. THE LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE

The Ninth Circuit encourages courts to "perform a cross-check by applying the lodestar method to confirm that the percentage-of-recovery amount is reasonable." *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 930 (9th Cir. 2020). The cross-check "measures the lawyers' investment of time in the litigation" and "provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. The cross-check need not entail "mathematical precision nor bean-counting"; courts "may rely on summaries submitted by the attorneys and need not review actual billing records." *Bellinghausen*, 306 F.R.D. at 264.

A cross-check is discretionary, not required, under either California law, *Consumer Privacy Cases*, 175 Cal. App. 4th at 557, or Ninth Circuit precedent, *In re Optical Disk Drive*, 959 F. 3d at 930.

A. The number of hours devoted to the Action was reasonable

As detailed in their supporting declarations, Plaintiffs' Counsel devoted a significant amount of time to this Action. Over the course of five years, Plaintiffs' Counsel, inter alia: (i) diligently investigated the legal claims alleged; (ii) opposed multiple motions to dismiss; (iii) engaged in comprehensive fact and expert discovery, including the review of over millions of pages of documents, participation in numerous depositions, briefing discovery motions, and assisted in preparing six expert reports and supplemental reports; (iv) obtained certification of the Class, briefed and argued against a motion to decertify, and oversaw the extensive Class Notice campaign; (v) briefed and argued Defendants' Summary Judgment

Motion and the numerous rounds of *Daubert* motions; (vi) prepared the case for trial and tried it for four days; and (vii) engaged in protracted settlement negotiations. Nidel Dec. ¶ 2. In total, Plaintiffs' Counsel devoted more than 15,356.50 hours of attorney and other professional support staff time for the benefit of the Class. Nidel Dec. ¶ 18. The total lodestar, derived by multiplying the hours each timekeeper spent on the Action by their hourly rates, is $19,803,041.75. Nidel Dec. ¶ 18.

B. Class Counsel's hourly rates are reasonable

A reasonable hourly rate is "the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Fowler v. Wells Fargo Bank, N.A.*, 2019 WL 330910, at *6 (N.D. Cal. Jan. 25, 2019); *Parkinson v. Hyundai Motor Am*., 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010) (noting courts may find rates reasonable "based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates"). Class Counsel's current rates are the appropriate rates to use, to account for the delay in payment over more than five years. *See Lawson v. PPG Indus., Inc.*, 2025 WL 3725697, at *10 (C.D. Cal. Oct. 30, 2025); *Newton v. Equilon Enterprises, LLC*, 411 F. Supp. 3d 856, 882 (N.D. Cal. 2019) (citing *In re Wash. Pub. Power*, 19 F.3d at 1305). Plaintiffs' Counsel's hourly rates, described in the attached declarations, are reasonable for attorneys and professional support staff working on sophisticated class action litigation in this District and comparable jurisdictions. *See, e.g., Hope Med. Enters., Inc. v. Fagron Compounding Serv., LLC*, 2022 WL 826903, at *3 (C.D. Cal. Mar. 14, 2022) (finding "rates of $895 to $1,295 per hour for partners and counsel, and between $565 and $985 for associates" to be reasonable); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving fee using rates "ranging from $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals").

In comparison, counsel for the Defendants, Gibson Dunn & Crutcher, LLP, reported a partner rate of $2,245 and a senior associate rate of $1,555, a junior associate rate of $1,220, and a paralegal rate of $820 in a recent filing. *See LA Alliance for Human Rights v. City of Los* Angeles, Case No. 2:20-cv-02291 Dkt. 1073 *47 (C.D. Cal. Nov. 12, 2025). These rates exceed Plaintiffs' Counsel's rates.

C. The multiplier is justified given results obtained and contingent nature of the representation

As noted above, under the lodestar method, courts routinely award positive multipliers to account for the contingent nature or risk involved in a case and the quality of the attorneys' work. *See Vizcaino*, 290 F.3d at 1051.

Class Counsel have submitted detailed lodestar declarations with this motion. Class Counsel's lodestar of $19,803,041.75, calculated by multiplying thousands of hours expended by reasonable hourly rates, when compared to the requested $30,000,000 fee, yields a lodestar multiplier of 1.51, well within the range approved in Ninth Circuit common fund cases. The *Vizcaino* court surveyed multipliers in settlements of $50–$200 million and found that most (83%) fell between 1.0 and 4.0, with a majority in the 1.5–3.0 range. 290 F.3d at fn.6 and Appendix Table 1: Table of Percentage-Based Attorneys' Fee Awards in Common Fund Cases of $50-200 million (1996-2001). The *Vizcaino* court itself approved a multiplier of 3.65 from a $96.885 million settlement. *Id.* at 1051–52; *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1300 ("courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases").

Here, the lodestar cross-check confirms the reasonableness of the 40% fee. The resulting multiplier is justified by the extraordinary risk Class Counsel assumed over five years of contingency litigation, the over $3,000,000.00 in costs advanced, the specialized expertise required, and the exceptional result obtained.

As an additional check on Class Counsel's hours, Class Counsel calculated the total lodestar for each attorney using the Laffey Matrix rate, which provides rates well-below the market rate, certainly below the rates charged for complex environmental work. Nidel Dec. ¶ 18. Using the Laffey rates, Class Counsel's lodestar would be $15,461,700.88, yielding a multiplier of 1.94. Nidel Dec. ¶ 18. Even with the much lower rates provided by the Laffey Matrix, Class Counsel's lodestar would still pass the cross-check for fees approved in the Ninth Circuit.

Given the extensive effort required to prosecute this Action, the risks and complexity of the issues litigated, and the excellent result obtained for the Classes, the lodestar crosscheck and resulting multiplier are reasonable, fully justified, and should be approved.

IV. CLASS COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel also requests payment of $2,371,230.09 from the Settlement Fund for expenses reasonably incurred in prosecuting the Action. *See Morgan v. United States Soccer Fed'n*, 2023 WL 2558417, at *2 (C.D. Cal. Jan. 4, 2023) (awarding as costs "what class counsel expended to pay for experts, mediation, filings, meals, travel, copying, and other costs that are also typically billed to a paying client"); *Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) ("Attorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation costs from that fund."); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel may recover "those out-of-pocket expenses that would normally be charged to a fee-paying client"); *Thomas v. MagnaChip Semiconductor Corp.*, 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018) (granting requests for costs consisting of "court fees, online research fees, postage and copying, travel costs, electronic discovery expenses, deposition costs, mediation charges, and travel costs"). A categorical breakdown of Plaintiffs' Counsel's Litigation Expenses is included in the attached Declarations.

The largest component of Plaintiffs' Counsel's expenses (i.e., $1,318,374.13, or approximately 56% of expenses) was for Plaintiffs' experts and consultants. Ellis Dec. ¶ 43. During the Action, Plaintiffs' Counsel worked extensively with multiple experts and their retention and work were critical to the prosecution and resolution of the Action, as their expertise allowed Plaintiffs' Counsel to fully frame the issues, make a realistic assessment of provable damages, structure resolution of the claims, and develop a fair and reasonable method for allocating the Settlement proceeds to the Class.

The second largest category is copying, printing and delivery, at $280,837.55, the great majority of which was incurred in March 2026 to print and assemble trial exhibit binders for the Court, the court reporter, the witness stand and both parties. Ellis Decl. ¶ 45. That the case settled on the fourth day of trial does not make the expenditure unreasonable; it was necessary when incurred. *Id.*

Class Counsel informed the Court at preliminary approval, and the class members in the Settlement Notices, that Class Counsel would seek payment of Litigation Expenses not estimated to exceed $3,000,000.00. The total expenses request is below that amount. For this reason, the request for expense reimbursement should be approved.

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE

Class Counsel and Plaintiffs respectfully request that the Court approve Service Awards of $30,000.00 to each Class Representative, Jed Behar and Alisa Behar, to be paid from the Settlement Fund.

The Ninth Circuit has "repeatedly held that 'reasonable incentive awards' to class representatives 'are permitted.'" *In re Apple*, 50 F.4th at 785. In evaluating service awards, courts consider: (1) the risk to the class representative in commencing the action; (2) the notoriety and personal difficulties encountered; (3) the amount of time and effort spent; (4) the duration of the litigation; and (5) the personal benefit or lack thereof enjoyed as a result. *White v. Experian Info. Sols., Inc.*, 803 F. Supp. 2d 1086, 1094 (C.D. Cal. 2011). Courts also examine the proportionality of the awards to the total settlement and the size of the individual awards to each class member. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

Here, each factor supports the requested $30,000 awards. The Behars have served as Class Representatives since this action was filed in May 2021—more than five years—and have actively participated and worked on behalf of the Class. J. Behar Dec. ¶ 49; A. Behar Dec. ¶ 49. They have participated in extensive discovery, responded to written discovery requests, sat for depositions, and consented to Defendants' testing of their home. *Id.* They attended mediation sessions and were present during trial. *Id.* Their active and sustained participation over five years of complex litigation was essential to the prosecution of this case on behalf of 3,294 class members. *Id.*

The $60,000 total in Service Awards represents a mere 0.08% of the $75,000,000 Settlement Fund—far below the proportionality thresholds that have concerned courts and are proportional to the average recovery range (assuming 100% participation) of $7,000 to $21,000 for current owners and $400 for former owners (also assuming 100% participation). *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949 (approving $5,000 incentive awards that were 417 times larger than the $12 individual awards and were only .17% of the total settlement fund). These awards are also consistent with similar awards in this circuit. *See In re Oracle Corp. Sec. Litig.,* No. 5:18-cv-04844-BLF, Dkt. No. 147, at *3 (N.D. Cal. Jan. 13, 2023) (awarding $64,750 to plaintiff).

VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court enter an order: (1) awarding Class Counsel attorneys' fees of 40% of the $75,000,000.00 Settlement Fund ($30,000,000.00); (2) reimbursing Class Counsel's litigation costs and expenses in excess of $2,371,230.09; and (3) approving Service Awards of $30,000.00 to each Class Representative, Jed Behar and Alisa Behar.

Respectfully submitted,

<u>/s/ Zachary Kelsay</u>

Zachary Kelsay (PHV)

Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 4, 2026, all counsel of record were served with a copy of the foregoing document via the Court's CM/ECF system.

<u>/s/ Zachary Kelsay</u>
Zachary Kelsay (PHV)
Class Counsel

CERTIFICATE OF COMPLIANCE LR 11-6.1

The undersigned, counsel of record for Plaintiff certifies that this brief contains 6,621 words, which complies with the word limit of 7,000 words under L.R. 11-6.1.

<u>/s/ Zachary Kelsay</u>
Zachary Kelsay (PHV)
Class Counsel