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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS W. MCNAMARA, as the Court-Appointed Receiver for Triangle Media Corporation, Apex Capital Group, LLC; and their successors, assigns, affiliates, and subsidiaries,

Plaintiff,

v.

WELLS FARGO & COMPANY, a corporation, WELLS FARGO BANKS, N.A., a national banking association,

Defendants.

JOHN MCCRANER, SHARON STIANSEN, JANET POLLARD, MICHAEL DARLINGTON, SUSAN R. LANDREAU, JOHN N. TUFFIELD, individually and on behalf of all similarly situated,

Plaintiffs,

v.

WELLS FARGO & COMPANY, a corporation, WELLS FARGO BANKS, N.A., a national banking association,

Defendants.

Lead Case No. 3:21-cv-1245-TWR-DDL [Consolidated with Case No. 3:21-cv-1246-TWR-DDL]

CLASS COUNSEL'S: (1) NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES; AND (2) MEMORANDUM OF LAW IN SUPPORT THEREOF

Date: March 26, 2026
Time: 1:30 p.m.
Crtrm.: 14A

Judge: Todd W. Robinson

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

NOTICE OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 388, the "Preliminary Approval Order"), on March 26, 2026, at 1:30 p.m., or as soon thereafter as the matter can be before the Honorable Todd W. Robinson, in Courtroom 14A, 333 West Broadway, San Diego, CA, 92101, Glancy Prongay Wolke & Rotter LLP ("GPWR" or "Class Counsel")[1] will, and hereby, do move the Court for an Order awarding attorneys' fees and reimbursement of Litigation Expenses in the above-captioned consolidated actions (the "Action").[2]

This Motion is based on this Notice of Motion; the memorandum of law in support thereof; the Rotter Declaration and the exhibits filed therewith; all pleadings and papers filed herein; arguments of counsel; and any other matters properly before the Court.[3]

[1] Class Counsel's name changed from Glancy Prongay & Murray LLP to Glancy Prongay Wolke & Rotter LLP. ECF No. 389.

[2] Class Counsel will submit a [Proposed] Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses in conjunction with their Reply Brief once Class Members have had the opportunity to request exclusion and object.

[3] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated June 25, 2025 (ECF No. 383-2) (the "Class Agreement") or the concurrently-filed Declaration of Jonathan M. Rotter in support of (1) Class Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Rotter Declaration" or "Rotter Decl."). Citations herein to "¶ __" and "Ex. __" refer, respectively, to paragraphs in, and exhibits to, the Rotter Declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

In accordance with the Notice disseminated to Class Members, Class Counsel requests the Court grant the motion for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund, or $11,000,000, plus interest earned at the same rate as the Settlement Fund. Class Counsel also seeks reimbursement of: (i) $2,416,461.45 in litigation expenses reasonably and necessarily incurred in prosecuting and resolving the Action; and (ii) a total of $60,000 to Class Plaintiffs ($12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, $10,000 each to plaintiffs McCraner, Stiansen, Landreau and Tuffield) related to their representation of the Class.

I. PRELIMINARY STATEMENT

The proposed Settlement, which provides for a $33,000,000 all cash payment in exchange for the resolution of the Action, is an outstanding result for the Class, and it did not come easily or quickly. Rather, it is the product of Class Plaintiffs, the Receiver, and Class Counsel's hard work and perseverance over the span of nearly six years including pre-litigation investigation and mediation efforts, and hard-fought litigation. Class Counsel began investigating Wells Fargo's conduct in 2019, engaged in extensive mediation efforts before filing, and only after exhaustive litigation, and following oral argument on dispositive, evidentiary, and class certification motions, did the parties reach an agreement in principle to settle the Action.

At all times Class Counsel made conscious efforts to litigate the Action efficiently and without duplication of effort, but getting to this stage of the litigation required an immense commitment of time and resources. Class Counsel, together with the Receiver's separate counsel (collectively, "Plaintiffs' Counsel") spent more than 23,311 hours on this litigation (a lodestar of more than $16,389,193—and spent over $2,416,461.45 in out-of-pocket costs, all on a fully contingent basis. Very few firms are capable of or willing to risk non-payment of such large sums, and the law recognizes the importance of adequately compensating for that risk, which enables such firms to take worthy cases on contingency in the future.

This Action was fraught with risk. Class Counsel faced numerous challenges to establishing liability and damages. The risk of losing was very real, and it was greatly enhanced by the fact that Plaintiffs would be litigating against one of the biggest banks in the United States, represented by defense counsel with extensive experience defending banks in class action cases.

As compensation for the significant efforts and achievements on behalf of the Class, Class Counsel respectfully requests a total fee award in the amount of 33⅓% of the Settlement Fund, representing 4.83% above the 28.5% fee already approved for the Receiver action. ¶135. The requested fee is consistent with fee awards in comparable class action settlements, whether considered as a percentage of the Settlement Fund or in relation to Plaintiffs' Counsel's lodestar. The requested fee represents a "negative" or fractional multiplier of 0.67 on Plaintiffs' Counsel's lodestar, which itself is a strong indication of the reasonableness of the requested fee. *See Ross v. Trex Co., Inc.*, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16, 2013) ("Plaintiffs sought no extraordinary award of fees; to the contrary, they sought less than their lodestar, which further supports the reasonableness of the fees requested and awarded."); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("The resulting so-called negative multiplier suggests that the percentage-based amount is reasonable and fair based on the time and effort expended by class counsel.").

Class Counsel also seeks reimbursement of $2,416,461.45 in out-of-pocket litigation expenses incurred in prosecuting the consolidated Action. *See* ¶¶158-61. This amount is below the $2,967,000 limit on Litigation Expenses disclosed in the Notice—which is defined to include awards to Class Plaintiffs. The expenses are reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Accordingly, approval is appropriate.

Finally, Class Counsel seeks a total of $60,000 in service awards for the six Class Plaintiffs ($12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, $10,000

each to plaintiffs McCraner, Stiansen, Landreau and Tuffield). Class Plaintiffs' efforts were extraordinary. Over the course of approximately five years, they worked closely with Class Counsel to prosecute this Action, including by communicating regularly with counsel regarding the posture, progress, and strategy of the case; reviewing the complaints and other key filings; preserving, searching for, collecting, and producing responsive documents; responding to extensive written discovery (including numerous requests for production, written interrogatories, and requests for admission); submitting sworn declarations in support of class certification; and consulting with counsel regarding settlement negotiations and ultimately approving the Settlement.[4]

Several Class Plaintiffs also responded to subpoenas and sat for multiple depositions (Wells Fargo subpoenaed and deposed several of Class Plaintiffs in the Receiver action before consolidation and then deposed them again in the Class case), expending significant time preparing for and traveling, at Wells Fargo's insistence, to provide testimony. In total, Class Plaintiffs devoted substantial time—ranging from approximately 80 to 115 hours—to execute their duty protecting the interests of absent Class members. Despite potential reputational harm associated with filing lawsuits, they persevered on behalf of the Class and deserve substantial service awards for their dedicated time and effort and the result achieved for the Class.

For all the reasons set forth herein, and in the Rotter Declaration, Class Counsel respectfully request that the Court award total attorneys' fees equal to 33⅓% of the Settlement Fund, approve reimbursement of $2,416,461.45 in litigation expenses incurred by Class Counsel, and grant awards to Class Plaintiffs in the following amounts: $12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, $10,000 each to plaintiffs McCraner, Stiansen, Landreau and Tuffield.

[4] Class Counsel is seeking varying awards based on the work each plaintiff performed in representing the Class. ¶162.

II. PROCEDURAL AND FACTUAL HISTORY

The Rotter Declaration is an integral part of this submission. For a complete recitation of the circumstances of the case the Court is respectfully referred to it for a detailed discussion of, *inter alia*: the nature of the claims asserted (¶14); the Action's procedural history (¶¶17-80); the negotiations leading to the Settlement (¶¶76-77); the risks and uncertainties of continued litigation (¶¶81-95); and a summary of the services Class Counsel provided for the benefit of the Class (¶¶9, 143, 148).

III. THE REQUESTED ATTORNEYS' FEE IS REASONABLE

A. Class Counsel Is Entitled To An Award Of Attorneys' Fees From The Common Fund

It is well settled that attorneys who represent a class and are successful in recovering a common fund for the benefit of class members are entitled to a reasonable fee from the common fund as compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Indeed, the Ninth Circuit has held that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) ("[T]hose who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it.") ("*WPPSS*"); *accord Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016).

This rule, known as the "common fund" doctrine, is "designed to prevent unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal 2008).

B. Calculating The Requested Fee As A Percentage Of The Common Fund Is Appropriate

District courts in the Ninth Circuit retain discretion to award attorneys' fees in common fund cases based upon either the percentage-of-the-fund method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944-45 (9th Cir. 2011) (finding when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method). Notwithstanding that discretion, where there is an easily quantifiable benefit to the class—such as a cash common fund—the percentage-of-the-fund approach is the prevailing method used. *See, e.g., 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"); *Omnivision*, 559 F. Supp. 2d at 1046 (same).

Consistent with this Court and Judge Walter's approval of a percentage fee for the Receiver action,[5] most courts have found the percentage approach superior in cases with a common fund recovery because it parallels the use of percentage-based contingency fee contracts, which are the norm in private litigation; aligns the lawyers' interests with that of the class in achieving the maximum possible recovery; and

[5] *See FTC v. Triangle Media Corp.*, 3:18-cv-01388-TWR-DDL ("*Triangle* Action"), Order Granting Motion for Approval of Settlement with Wells Fargo & Company and Wells Fargo Bank, N.A. (Sept. 8, 2025, ECF No. 189); *Triangle* Action, Memorandum of Points and Authorities in Support of Receiver's Motion for Approval of Settlement with Wells Fargo & Company and Wells Fargo Bank, N.A. (Aug. 11, 2025, ECF No. 186-1), at 15 (describing contingent-fee agreement); *FTC v. Apex Capital Group.*, C.D. Cal. 2:18-cv-9573-JFW-JPR ("*Apex* Action"), Order Granting Receiver's Motion to Approve Settlement with Wells Fargo & Company and Wells Fargo Bank, N.A. (Sept. 5, 2025, ECF No. 271); *Apex* Action, Memorandum of Points and Authorities in Support of Receiver's Motion to Approve Settlement Agreement with Wells Fargo & Company and Wells Fargo Bank, N.A. (Aug. 11, 2025, ECF No. 270-1), at 15 (describing contingent-fee agreement).

reduces the burden on the court by eliminating the detailed and time-consuming lodestar analysis. *See Omnivision*, 559 F. Supp. 2d at 1046; *Vinh Nguyen v. Radient Pharm. Corp.*, 2014 WL 1802293, at *9 (C.D. Cal. May 6, 2014) (finding "significant benefit to the percentage approach, including consistency with contingency fee calculations in the private market, aligning the lawyers' interests with achieving the highest award for the class members, and reducing the burden on the courts that a complex lodestar calculation requires."); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (lodestar/multiplier method "adds to the work load of already overworked district courts"). Indeed, when the Receiver originally sought and obtained court approval to retain GPWR to prosecute the Receiver's claims against Wells Fargo, it was on the basis of precisely such a contingent-fee agreement.[6]

For these reasons, among others, Class Counsel respectfully request that the Court award attorneys' fees in this case on a percentage-of-the-fund basis, and use an informal lodestar cross-check to assess the reasonableness of the percentage award. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2002) ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure …."); *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x. 452, 456 (9th Cir. 2009) ("the district court properly performed an informal lodestar cross-check").

C. The Requested Fee's Approval Is Supported By The Factors Considered By Courts In The Ninth Circuit

Courts in the Ninth Circuit consider certain factors when determining whether

[6] *See Triangle* Action, Memorandum of Points and Authorities in Support of Receiver's Motion for Authorization to Engage Contingency Fee Counsel and Extend Receivership (Oct. 22, 2019, ECF No. 136-1); *Triangle* Action, Order Granting Receiver's Motion for Authorization to Engage Contingency Fee Counsel and Extend Receivership (Nov. 19, 2019, ECF No. 142); *Apex* Action, Memorandum of Points and Authorities in Support of Receiver's Motion for Authorization to Engage Contingent Fee Counsel (Feb. 4, 2020, ECF No. 144-1); *Apex* Action, Order Approving Receiver's Motion for Authorization to Engage Contingent Fee Counsel (Mar. 9, 2020, ECF No. 153).

a fee award is "reasonable under the circumstances." *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). Those factors include: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; (5) the reaction of the Class; and (6) awards made in similar cases. *See Omnivision*, 559 F. Supp. 2d at 1046-48 (citing *Vizcaino*, 290 F.3d at 1048-51); *see also In re Charles Schwab Corp. Sec. Litig.*, 2011 WL 1481424, at *8 (N.D. Cal. Apr. 19, 2011). The Ninth Circuit has explained that these factors should not be used as a rigid checklist or weighed individually, but rather, should be evaluated considering the totality of the circumstances. *Vizcaino*, 290 F.3d at 1048-50. As demonstrated below, each of these factors, along with the lodestar cross-check, militate in favor of approving the requested fee.

1. The Quality Of The Result Achieved Supports The Fee Request

Courts have consistently acknowledged that the quality of the result achieved is the most important factor in determining an appropriate fee award. *See, e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re Bluetooth*, 654 F.3d at 942 ("Foremost among these considerations, however, is the benefit obtained for the class."); *Rodman v. Safeway*, 2018 WL 4030558, at *3 (N.D. Cal. Aug. 22, 2018); *Omnivision*, 559 F. Supp. 2d at 1046. Class Counsel submits that the $33,000,000 proposed Settlement is an excellent result for the Class given the many risks of continued litigation and the procedural posture of the case at the time of settlement.

Here, the $33 million recovery represents approximately 5.0% of a ***maximum*** combined compensatory damages of $658 million amount in the consolidated actions—assuming that: (i) the Court certified the Class, as defined; (ii) Plaintiffs fully prevailed at summary judgment and trial; (iii) the Court and jury accepted Plaintiffs' damages theories and did not reduce the claimed damages due to overlap in Plaintiffs'

various damages theories. Less than a complete victory on any aspect of these assumptions would decrease recoverable damages or eliminate them altogether. ¶96.

This case remained extremely risky through the time of settlement and presented meaningful barriers to recovery, both from the general uncertainties of complex class action litigation and from claim-specific and procedural risks present here. Although Plaintiffs and Class Counsel believed the remaining claims had considerable merit, the Court's partial dismissal of the Class Complaint underscored a real risk of recovering materially less than $33 million—or nothing at all. Proceeding on the remaining claims, Plaintiffs still bore the burden to prove each element at trial, and Wells Fargo's dispositive and evidentiary challenges highlighted substantial litigation risk. Indeed, a win by Wells Fargo on summary judgment could have eliminated or substantially reduced damages.

2. The Substantial Risks Of The Litigation Support The Fee Request

The second factor courts in this Circuit consider in awarding attorneys' fees is "[t]he risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues." *Omnivision*, 559 F. Supp. 2d at 1046-47; *see also Vizcaino*, 290 F.3d at 1048 (noting "[r]isk is a relevant circumstance" in awarding attorneys' fees). This consolidated case involved claims not only asserted on behalf of Class Plaintiffs and the Class but also on behalf of the Receiver and the Receivership Entities. While partially overlapping, the remaining unique claims involved distinct evidence, and specifically as to the class action, there were additional procedural and substantive complexities that amplified litigation risks. *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").

While Class Counsel believes the claims of Class Plaintiffs and the Class are meritorious, Class Counsel also recognized from the outset that there were substantial

risks in the litigation and the ability to succeed at trial and obtain a large judgment was far from certain. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 55 (2d Cir. 2000) ("It is well-established that litigation risk must be measured as of when the case is filed."); *In re Waste Mgmt., Inc. Sec. Litig.*, 2002 WL 35644013, at *28 (S.D. Tex. May 10, 2002) ("These risks must be assessed as they existed at the inception of the litigation, and not in light of the settlement achieved in the end."). Nevertheless, Class Counsel accepted the challenge.

While the inquiry's focus is on assessing risk at the start of the case, the litigation risks certainly did not end with the filing of the complaint. Indeed, the risks inherent in this case are highlighted by the Court's Order dismissing Class Plaintiffs' claims in the initial class action complaint. *See McCraner* Action, ECF No. 22 (allegations insufficient to satisfy the knowledge requirement for the aiding and abetting, conspiracy to commit fraud, and Cal. Penal Code § 496 claims; dismissing the UCL claim for failure to allege Wells Fargo knew the Enterprises were engaged in any misconduct toward Class Plaintiffs specifically). This was a strong indication of potential future risk Class Plaintiffs faced in continuing litigation. *In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("The court needs to look no further than its own order dismissing the shareholder … litigation to assess the risks involved.").

Even though Class Plaintiffs eventually partially prevailed at the pleading stage, major litigation obstacles remained. Class Plaintiffs still bore the burden to prove each element of the remaining claims at summary judgment and at trial, and Wells Fargo's dispositive and evidentiary motions underscored that success was far from assured. For example, as to the aiding-and-abetting claim, Wells Fargo disputed whether Plaintiffs could establish the requisite knowledge standard and argued the record lacked competent evidence that the Bank "must have known" of consumer fraud. ¶56. Proving knowledge posed a substantial risk given the absence of

admissions by Wells Fargo bankers and the resulting need to rely largely on circumstantial evidence. ¶83.

Plaintiffs also faced a meaningful risk on the "substantial assistance" element—*i.e.*, that a jury might not accept Plaintiffs' characterization of Wells Fargo's conduct as conduct that meaningfully furthered the Enterprises' fraud as opposed to ordinary banking conduct. ¶84. Similarly, on the conspiracy claim, Wells Fargo consistently argued there was no competent evidence of any agreement between Wells Fargo and the Enterprises or any shared unlawful objective, and Plaintiffs faced the risk that the Court or jury would view the evidence as insufficient to show knowing and intentional participation in a fraudulent scheme. ¶¶86-87. Finally, on the Cal. Penal Code § 496 claim, Plaintiffs faced the risk that the Court would narrow or reject the claim on choice-of-law and extraterritoriality grounds and the additional risk that Plaintiffs would be unable to prove, by admissible evidence, the core statutory predicates—particularly that Wells Fargo "received" property that qualifies as "stolen" within the meaning of the statute and did so with the requisite knowledge or culpable state of mind. ¶¶88-89.

These merits risks were compounded by substantial risks regarding damages proof and expert admissibility. Wells Fargo moved for summary judgment or partial summary judgment and simultaneously filed motions to exclude or substantially limit Plaintiffs' experts under Rule 702/Daubert, including opinions necessary to establish both the scope of consumer-harm proceeds and the applicable banking standards Plaintiffs contended Wells Fargo violated. ¶¶60-62. If Wells Fargo had succeeded in excluding Plaintiffs' experts, Plaintiffs' ability to prove key elements of liability and damages would have been materially impaired, and any potential recovery for the Class could have been reduced dramatically or eliminated.

In addition, when the Settlement was reached, class certification had been fully briefed, argued, and taken under submission, and certification was by no means guaranteed. Wells Fargo argued certification should be denied based on (i) challenges

to Plaintiffs' classwide damages methodology under *Comcast* and (ii) individualized injury and offset issues arising from refunds, chargebacks, and FTC-administered redress. ¶¶72, 91. An adverse class certification ruling—whether denial or significant narrowing—would have substantially reduced or eliminated any meaningful recovery for absent Class members.

In sum, the risks posed by litigation were substantial, and they were present every step of the way. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding attorneys' fees of 33% "justified because of the complexity of the issues and the risks").

3. The Skill Required And The Quality Of The Work Support The Fee Request

The third factor to consider in determining the reasonableness of a fee award is the skill required and the quality of the work performed. Courts have recognized that the "prosecution and management of a complex national class action requires unique legal skills and abilities," *Omnivision*, 559 F. Supp. 2d at 1047, and that "[t]he experience of counsel is also a factor in determining the appropriate fee award." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *12 (C.D. Cal. June 10, 2005).

Here, the attorneys at GPWR are among the most experienced and skilled practitioners in complex litigation, including consumer class actions. *See* Ex. 9. Class Counsel respectfully submits that the quality of its efforts in the case, coupled with substantial experience in complex litigation including consumer class actions, provided the leverage necessary to negotiate a favorable settlement.

From the outset, Class Counsel aggressively sought to obtain the maximum recovery for the Class. Among other things, Class Counsel:

- conducted an extensive pre-suit investigation beginning in 2019 into Tarr, Apex, and Triangle's business practices, which included reviewing publicly available information regarding the Enterprises and their principals, analyzing voluminous receivership records from Apex and Triangle, reviewing information produced pursuant to a subpoena issued to Wells

Fargo, and working with a private investigator who contacted former Wells Fargo employees and other relevant sources;

- participated in pre-litigation mediation before the Hon. Daniel Weinstein (Ret.) by exchanging substantial mediation statements and attending two full-day, in-person mediation sessions (November 5, 2020 and April 29, 2021), both of which ended without a settlement;
- commenced the *McCraner* Action by filing an 81-page initial complaint asserting claims for aiding and abetting fraud, conspiracy to commit fraud, violation of Cal. Penal Code § 496, and a UCL claim, and later filing a detailed First Amended Class Action Complaint that added substantial factual allegations supporting Class Plaintiffs' claims;
- opposed two rounds of motions to dismiss and to strike nationwide class allegations, including researching and briefing two rounds of motions practice and obtaining an order that denied Wells Fargo's motion to dismiss in part and denied Wells Fargo's motion to strike in its entirety;
- opposed Wells Fargo's motion to consolidate the *McNamara* and *McCraner* Actions, and negotiated and obtained a Court-approved discovery protocol that permitted use of Apex and Triangle discovery from the *McNamara* Action while also allowing limited additional discovery as to Apex and Triangle in fact discovery;
- vigorously pursued fact discovery, including serving and responding to written discovery, issuing subpoenas to more than 25 third parties, reviewing and analyzing approximately 70,000 pages of documents produced by Wells Fargo and third parties and more than one million documents produced in the *McNamara* Action;
- prepared for and took numerous fact depositions—including depositions of former Wells Fargo bankers, Enterprise principals, and third-party representatives—conducted multiple Rule 30(b)(6) depositions of Wells Fargo, defended the depositions of all Class Plaintiffs (including second depositions for certain plaintiffs);
- engaged in extensive successful motion practice and proceedings before the Court on discovery issues following lengthy meet-and-confer processes, including disputes concerning privilege objections and expert deposition instructions, production disputes tied to a Wall Street Journal article, Apex-doctrine protective order motions involving former Wells Fargo employees with varying levels of seniority, Rule 30(b)(6) scope and logistics issues, disputes concerning certain plaintiff documents, and issues relating to the length and scope of expert depositions;

- conducted expert discovery by retaining and working extensively with experts in forensic accounting, banking regulation, and social computing, exchanging opening and rebuttal reports, defending depositions of Plaintiffs' experts, and taking depositions of Wells Fargo's experts in banking regulation, economics/damages, and class certification;
- fully litigated dispositive and evidentiary motions, including opposing Wells Fargo's motion for summary judgment and Daubert/Rule 702 motions to exclude Plaintiffs' expert testimony, moving to exclude the expert report of Atanu Saha and certain opinions of Carlyn Irwin and briefing that motion through reply, and preparing for and participating in the Court's hearing on the summary judgment, Daubert, and class certification motions;
- filed Class Plaintiffs' motion for class certification, filed a reply, and litigated certification-related expert issues (including a motion to exclude certain defense expert opinions), with class certification and related motions argued and taken under submission at the time the Settlement was reached;
- participated in multiple settlement efforts facilitated by the Court, including an Early Neutral Evaluation and court-supervised mediation before Magistrate Judge Leshner, followed by continued arm's-length negotiations that resulted in a settlement in principle to settle the Action for $33,000,000; and
- negotiated and executed a global settlement resolving the Receiver and Class claims as set forth in the Class and Receiver Agreements and thereafter moving for and obtaining the Court's preliminary approval of the Settlement. *See* ¶¶9, 17-80.

Moreover, the case did not settle at the pre-litigation mediations or the Settlement Conference before Magistrate Judge Leshner in January 2024 because Class Counsel and Class Plaintiffs refused to settle "on the cheap." ¶55. Class Counsel's extensive efforts, tenacity, skill, and demonstrated willingness to litigate rather than accept a below value settlement led to the Settlement and strongly supports the requested fee.

"[T]he quality of opposing counsel is [also] important in evaluating the quality of Plaintiff's counsel's work." *Heritage Bond*, 2005 WL 1594403, at *20; *In re Adelphia Commc'ns Corp. Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants

represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Wells Fargo was represented by McGuireWoods LLP, a well-respected national law firm with extensive experience in defending banks against class actions that vigorously defended the Action for nearly four years. ¶154. Thus, this factor militates in favor of the requested fee. *See*, *e.g.*, *In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) ("plaintiffs' attorneys in this class action have been up against established and skillful defense lawyers, and should be compensated accordingly").

4. The Contingent Nature Of The Fee And The Financial Burden Carried By Counsel Support The Fee Request

In the Ninth Circuit, the fourth factor for a fair and reasonable fee requires courts to consider the contingent nature of the fee and the obstacles overcome:

> 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. *See* Richard Posner, Economic Analysis of Law § 21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.

WPPSS, 19 F.3d at 1299; *see also Omnivision*, 559 F. Supp. 2d at 1047 ("The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee."); *Destefano v. Zynga*, *Inc.*, 2016 WL 537946, at *18 (N.D. Cal. Feb, 11, 2016) ("[W]hen counsel takes on a contingency fee case and the litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award."). "This is especially true where, as here, class counsel has significant experience in the particular type of litigation at issue; indeed, in such contexts, courts have awarded an even higher 33 percent fee award." *Id*.

Plaintiffs' Counsel have to date received no compensation, invested 23,311.40 hours of work equating to a total lodestar of $16,389,193.50, and incurred expenses of $2,416,461.45 to prosecute and resolve this Action. Additional work in implementing the Settlement and claims administration will also be required. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist [c]lass [m]embers in submitting their [p]roof[s] of [c]laim[], the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). Since case inception, Class Counsel has borne the risk that any compensation and expense reimbursement would be contingent on the result achieved, as well as on this Court's discretion in awarding fees and expenses.

The risk of no recovery in complex cases like this one is very real. Class Counsel knows from experience that, even with vigorous and competent efforts, success in contingent litigation is never guaranteed. *See*, *e.g.*, *In re: Korean Ramen Antitrust Litig.*, 3:13-cv-04115 (N.D. Cal. Dec. 17, 2018) (GPWR served as Co-Lead Counsel; after more than five years of litigation, extensive foreign discovery, millions in attorney time and costs, and a multi-week trial, the jury returned a defense verdict).[7]

Class Counsel is not alone. Many other hard-fought cases yield no attorneys' fees despite excellent work by plaintiffs' counsel—due to later-discovered facts, intervening legal changes, or adverse trial outcomes. *See, e.g.*, *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (after significant and expensive foreign discovery, 95% of plaintiffs' damages were eliminated by Supreme Court's

[7] *See also Gross v. GFI Grp., Inc.*, 310 F. Supp. 3d 384, 399 (S.D.N.Y., 2018) (GPWR served as Co-Lead Counsel in case where the Court granted summary judgment for defendants following four years of litigation, discovery in the U.S. and U.K., and the expenditure of millions of dollars of attorney time and hard costs), *aff'd on other grounds* 784 F. App'x. 27, 29 (2d Cir. Sept. 13, 2019).

reversal, in *Morrison v. Nat'l Australia Bank Ltd*., 561 U.S. 247 (2010), of over 40-years of unbroken circuit court precedent). Indeed, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy*, 364 F. Supp. 2d at 994.[8] Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See*, *e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding $2.46 billion jury verdict after 13 years of litigation).[9]

Here, because Class Counsel's fee was entirely contingent, the only certainties were there would be no fee without a successful result, realized only after expending substantial amounts of time, effort, and expense. Class Counsel committed significant amounts of both time and money to prosecute this Action for the benefit of the Class. ¶¶138-48. Under such circumstances, the contingent nature of counsel's representation strongly favors approval of the requested fee. *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998).

5. A 33⅓% Fee Award Is Consistent With Fee Awards In Similar, Complex, Contingent Litigation

The Ninth Circuit in *Paul, Johnson, Alston & Hunt v. Graulty* established 25% of the fund as the "benchmark" award for attorneys' fees. 886 F.2d 268, 272 (9th Cir. 1989); *see also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (reaffirming 25% benchmark). However, "a reasonable fee award is the hallmark of common fund cases" and the guiding principle in this Circuit is that a fee award be

[8] *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 16, 2009), *aff'd* 627 F.3d 376 (9th Cir. 2010) (summary judgment to defendants after eight years of litigation and plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing lodestar of about $48 million).

[9] *See also Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs).

"'reasonable under the circumstances.'" *WPPSS*, 19 F.3d at 1294 n.2.[10] As applied, this means that "in most common fund cases, the award exceeds that benchmark." *Omnivision*, 559 F. Supp. 2d at 1047; *see also In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018) (awarding 33⅓% of $104,750,000 and stating: "a fee award of one-third is within the range of awards in this Circuit."); *Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *8 (C.D. Cal. Sept. 18, 2020) (awarding one-third of $12.375 million settlement fund, collecting cases and stating: "[a]n attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions."); *Multi-Ethnic Immigrant Workers Org. Network v. City of L.A.*, 2009 WL 9100391, at *4 (C.D. Cal. June 24, 2009) (reviewing empirical research and stating: "[n]ationally, the average percentage of the fund award in class actions is approximately one-third."); *Romero v. Producers Dairy Foods, Inc*., 2007 WL 3492841, *4 (E.D. Cal. Nov. 14, 2007) (approving a fee award of 33% of the common fund, and stating "'[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery,'" *citing* 4 Newberg and Conte, NEWBERG ON CLASS ACTIONS § 14.6 (4th ed. 2007).

Here, Class Counsel are requesting an additional 4.83% on top of the amount the Court has already approved for the Receiver action.[11] In view of the result obtained, the contingent fee risk, the number of hours dedicated to this matter by Class Counsel, and the financial commitment of Class Counsel, a total award of 33⅓% of

[10] *See also Paul, Johnson*, 886 F.2d at 271 ("[I]t is well settled that the lawyer who creates a common fund is allowed an ***extra*** reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of such a reward is that which is deemed 'reasonable' under the circumstances."); *Vizcaino*, 290 F.3d at 1048 ("Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.").

[11] *See supra* n.5 and n.6.

the recovery obtained for the Class is appropriate. The requested fee award is consistent with recent attorneys' fee awards in similar complex, contingent litigation in the Ninth Circuit. *See In re Banc of California Sec. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding 33% of $19.75 million settlement fund); *Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *6 (S.D. Cal. June 6, 2022) (awarding 33⅓% of $12.75 million settlement fund); *Villalpando v. Exel Direct Inc.*, 2016 WL 7740854, at *2 (N.D. Cal. Dec. 12, 2016) (finding one-third fee of $13.5 million settlement fund "reasonable" under both applicable law and considering "the contingent risk, Counsel's documented lodestar, the complex and protracted nature of the case, and strong result for the Class."); *Heritage Bond*, 2005 WL 1594403, at *19 (awarding 33.33% fee of $27,783,000 settlement fund; noting "courts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions").[12]

6. The Reaction Of The Class Supports The Requested Fee

"The existence or absence of objectors to the requested attorneys' fee is a factor i[n] determining the appropriate fee award." *Heritage Bond*, 2005 WL 1594403, at *21; *see also OmniVision*, 559 F. Supp. 2d at 1048. While the time to object to the requested fee and expenses does not expire until March 5, 2026, to date, not a single objection has been received. ¶155. Should any objections be received, they will be addressed in the reply papers. "The lack of objection from any Class Member supports the attorneys' fees award." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007); *Omnivision*, 559 F. Supp. 2d at 1048 (same); *see also Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *13 (C.D. Cal. 2008) (three members objected and 29 opted out, indicating favorable result and support for award of "generous fee").

[12] *See also* Ex. 12 (collecting Ninth Circuit cases with 33% or higher fee awards).

D. A Lodestar Cross-Check Supports The Requested Fee

"Generally, a district court is 'not required' to conduct a lodestar cross-check to assess the reasonableness of a fee award." *Perez v. Rash Curtis & Assocs.*, 2020 WL 1904533, at *18 (N.D. Cal. Apr. 17, 2020); *see also In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 748 (9th Cir. 2017) ("Although ***not required to do so***, the district court took an extra step, cross-checking this result by using the lodestar method.") (emphasis added) *vacated on other grounds sub nom. Frank v. Gaos*, 139 S. Ct. 1041 (2019); *Hageman v. AT & T Mobility LLC*, 2015 WL 9855925, at *4 (D. Mon. Feb. 11, 2015) (awarding 33.33% of the $45 million settlement fund as attorney's fees without a lodestar cross-check). However, as "[a] final check on the reasonableness of the requested fees, courts often compare the fee counsel seeks as a percentage with what their hourly bills would amount to under the lodestar analysis." *Omnivision*, 559 F. Supp. 2d at 1048; *see also In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) ("Although an analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness.").

"A lodestar cross-check first computes the plaintiffs' attorneys' reasonable hourly rate for the litigation and multiplies that rate by the number of hours dedicated to the case." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 845 (E.D. Va. 2016). "Calculation of the lodestar, however, is simply the beginning of the analysis." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *Graulty*, 886 F.2d at 272. In the second step of the analysis, a court adjusts the lodestar to account for, among other things, the time and labor required, the result achieved, the quality of representation, whether the fee is fixed or contingent, the novelty and difficulty of the questions involved, and awards in similar cases. *See, e.g.*, *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1209 (9th Cir. 2013). In so doing, "courts have routinely enhanced the lodestar to reflect the risk

of non-payment in common fund cases." *Vizcaino*, 290 F.3d at 1051-52 (approving a 3.65 multiplier and noting that on lodestar cross-check, "most" multipliers fall between 1 and 4—while citing numerous examples of higher multipliers); *Buccellato v. AT & T Operations, Inc.*, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) ("multiplier of 4.3 is reasonable in light of the time and labor required, the difficulty of the issues involved, the requisite legal skill and experience necessary, the excellent and quick results obtained for the Class, the contingent nature of the fee and risk of no payment, and the range of fees that are customary.").

When the lodestar is used as a cross-check, "the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *Glass v. UBS Fin. Servs.*, 331 F. App'x. 452, 456 (9th Cir. 2009).[13] Here, the lodestar method – whether used directly or as a "cross-check" on the percentage method – strongly demonstrates the reasonableness of the requested fee

Class Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 18,1016.90 hours to the prosecution of the consolidated Action. ¶139. While much of this work furthered the actions on behalf of both the Receiver and the Class, a significant portion of Class Counsel's total hours and lodestar were spent in representing the Class. For example, work uniquely related to representation of the Class included, *inter alia*: drafting the Class complaints, opposing the motions to dismiss the Class complaints and motions to strike the Class complaints' class allegations, defending Class Plaintiffs' depositions, conducting

[13] *See also Dakota Med., Inc. v. RehabCare Grp., Inc.*, 2017 WL 4180497, at *8 (E.D. Cal. Sept. 21, 2017) ("Where a lodestar is merely being used as a cross-check, the court may use a rough calculation of the lodestar."); *In re Am. Apparel Inc. S'holder Litig.*, 2014 WL 10212865, at *23 (C.D. Cal. Jul. 28, 2014) ("In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours.").

discovery relating to the Tarr enterprise, providing expert discovery regarding the Class's theories of damages and fraud against consumers, and moving for Class certification. This substantial work on behalf of the Class, above and beyond Class Counsel's similarly substantial commitment of time to representing the Receiver, more than justifies a modest additional fee of 4.83% of the Settlement Fund, in addition to the 28.5% fee agreement already made with the Receiver and approved by this Court, Judge Burns, and Judge Walter. *See supra* n.5 and n.6.

Class Counsel worked to avoid duplication of efforts amongst attorneys and believes the hours submitted in support of the lodestar calculation were necessary for the successful and efficient litigation of the case. Despite taking many years to bring the case to a successful conclusion, individual attorneys staffing the Action remained relatively consistent, allowing them to maintain a high level of institutional knowledge of the law and facts of the case, improving litigation efficiency. Drafting briefs, taking and defending depositions, preparing for and conducting hearings, *etc*., were divided such that where feasible one or two attorneys took the laboring oar on a particular task while another more senior attorney reviewed the work to minimize duplication of efforts. Class Counsel was also diligent in seeking to engage attorneys with the appropriate experience level to conduct the various tasks. In short, Class Counsel believes it efficiently litigated the case through summary judgment.

As is customary when seeking a percentage-of-the-fund award in common fund cases and submitting data for a lodestar cross-check, Class Counsel is submitting a declaration that includes a schedule breaking down the lodestar by individual, position, billing rate, and hours billed.[14] ¶139. Based on current hourly rates,[15]

[14] *See In re Immune Response*, 497 F. Supp. 2d at 1176 ("Here, counsel have provided sworn declarations from attorneys attesting to the experience and qualifications of the attorneys who worked on the case, the hourly rates, and the hours expended.").

[15] Courts use current rather historic rates, to ensure that "[a]ttorneys in common fund cases [are] compensated for any delay in payment." *Fischel v. Equitable Life Assur.* (footnote continued)

Plaintiffs' Counsel's lodestar is $16,389,193.50. ¶145.[16] Thus, the 33⅓% fee request (equal to $11,000,000.00) yields a fractional or "negative" multiplier of 0.67. ¶146.

A "multiplier of less than one … suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class." *Chun–Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (finding requested fee award was not unreasonable when lodestar cross-check revealed a multiplier of 0.59); *see also In re Myford Touch Consumer Litig.*, 2019 WL 6877477, at *1 (N.D. Cal. Dec. 17, 2019) ("[T]he negative multiplier … suggests the request is reasonable."); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."). Indeed, "an award exceeding 25 percent is reasonable where the total fee award is lower than the lodestar calculation." *Cabiness v. Educ. Fin. Sols., LLC*, 2019 WL 1369929, at *7 (N.D. Cal. Mar. 26, 2019). This is because, as is true here, "the requested award would not 'yield windfall profits for class counsel in light of the hours spent on the case.'" *Id.* (quoting *Bluetooth*, 654 F.3d at 942); s*ee also In re Initial Pub. Offering Sec. Litig.*, 2011 WL 2732563, at *9 (S.D.N.Y. July 8, 2011) (noting fractional multiplier meant "every firm was . . . compensated for a small fraction of the time spent on the case").

Soc'y of U.S., 307 F.3d 997, 1010 (9th Cir. 2002).

[16] Class Counsel's rates range from $845 to $1,300 for partners and $425 to $900 for non-partners (¶141), which are comparable to billing rates in other complex class action litigation involving Class Counsel. *See*, *e.g.*, *In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2025 WL 933955, at *1 (S.D.N.Y. Mar. 27, 2025) (granting GPWR fee award based on submission using 2025 rates of $875 to $1,325 for partners and $395 to $725 for non-partners, *see* 1:20-cv-09568-GBD-JW (S.D.N.Y. Feb. 20, 2025) ECF No. 146-9); *see also* Ex. 11 (chart of rates charged by peer plaintiff and defense counsel in complex litigation).

"The fact that [Plaintiffs'] Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request." *Leach v. NBC Universal Media, LLC*, 2017 WL 10435878 at ¶49 (S.D.N.Y. Aug. 24, 2017); *see also Facebook,* 2015 WL 6971424, at *10. Indeed, among other things, Class Counsel will oversee the claims administration process and respond to inquiries. The multiplier will, therefore, diminish as the case moves forward because Class Counsel will not seek any additional compensation for this work.

In sum, Class Counsel's requested fee award is reasonable, justified, and in line with what courts in this Circuit award in class actions such as this one, whether calculated as a percentage of the fund or as a multiple of counsel's lodestar.

IV. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND WARRANT APPROVAL

In addition to an award of attorneys' fees, attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses from the fund. *Omnivision*, 559 F. Supp. 2d at 1048; *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). The appropriate analysis for compensable expenses in a common fund case is whether the costs are ones attorneys typically bill paying clients. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'"); *Omnivision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.").

From the beginning of the case, Class Counsel was aware that it might not recover any of the expenses incurred and would not recover anything unless and until the Action was successfully resolved. Class Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate for the lost use of the funds advanced to prosecute this Action. Thus,

Class Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action. ¶161.

In the aggregate, Plaintiffs' Counsel incurred $2,416,461.45 in expenses prosecuting the case. These expenses are set forth in the Rotter Declaration, ¶¶159-60. The vast majority of expenses were for the experts ($1,450,535.40), court reporting transcription services ($239,858.22), document management ($427,152.20), and online research ($122,057.12). These expenses total $2,239,602.94, or approximately 92.6% of the total expenses. ¶162. These expenses were critical to Class Counsel's success in achieving the Settlement and, like the other categories of expenses for which counsel seek reimbursement, are the types of expenses routinely charged to clients who pay hourly. Thus, reimbursement out of the common fund is warranted. *See In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) (approving reimbursement of "(1) expert witness fees; (2) mediator's fees; (3) a document vendor to host the over 3.2 million pages of documents produced; (4) court reporting and videographer services . . . (5) electronic research; (6) copying, mailing, and serving documents; and (7) case-related travel for Plaintiffs, witnesses, experts, and counsel.").[17]

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE

Class Counsel also seek a total of $60,000 in service awards for the six Class Plaintiffs ($12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, $10,000 each to plaintiffs McCraner, Stiansen, Landreau, and Tuffield). As detailed in the Rotter

[17] The Notice informed Class Members that Class Counsel intended to apply for the reimbursement for Litigation Expenses in an amount not to exceed $2,967,000 and Service Awards in an amount not to exceed $15,000 per Class Plaintiff. Ex. 7-3 at ¶23. Class Counsel's requested reimbursement of $2,416,461.45, plus a total of $60,000 for Class Plaintiffs and the additional non-offset expenses the Receiver will seek in the *Apex* and *Triangle* Actions, is less than the maximum amount disclosed and, to date, there have been no objections to the reimbursement request. ¶¶155, 158.

Declaration and Class Plaintiffs' declarations, Class Plaintiffs undertook significant responsibilities on behalf of absent Class Members—including responding to extensive written discovery, producing documents, sitting for depositions (including multiple depositions for certain Plaintiffs), and consulting with counsel throughout the litigation and settlement process. Their efforts materially assisted Counsel in prosecuting the case and achieving the Settlement, and the requested awards are reasonable in light of the time, burden, and risks undertaken in service to the Class.

Class Plaintiffs and Class Counsel respectfully submit that an award of ($12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, $10,000 each to plaintiffs McCraner, Stiansen, Landreau, and Tuffield) for the considerable time and effort each expended for the Class's benefit is reasonable and appropriate. It is also comparable to reimbursement awards in similar complex cases. *In re: Facebook, Inc. Consumer Privacy User Profile Litig.*, 2023 WL 8445812 at *3 (N.D. Cal. Oct. 10, 2023) ($15,000 to each representative plaintiff "given the amount and kind of work" they performed on behalf of the Class); *In re Animation Workers Antitrust Litig.*, 2016 WL 6663005, at *9 (N.D. Cal. Nov. 11, 2016) ($10,000 to each representative for responding to discovery and producing documents, sitting for a deposition, reviewing substantive pleadings, and reviewing/approving settlement); *Wightman v. Cobham Advanced Elec. Sols. Inc.*, 2024 WL 5706069, at *19 (S.D. Cal. Sept. 6, 2024) (awarding $12,000 to representative plaintiff for his significant service to the Class).

VI. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Rotter Declaration, Class Counsel respectfully requests that the Court: (i) award attorneys' fees in the amount of 33⅓% of the Settlement Fund ($11,000,000) plus applicable interest; (ii) reimburse Class Counsel's reasonable litigation expenses in the amount of $2,416,461.45; and (iii) approve the requested service awards to the six Class Plaintiffs totaling $60,000.

DATED: February 19, 2026

GLANCY PRONGAY WOLKE & ROTTER LLP

By: */s/ Jonathan M. Rotter*

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On February 19, 2026, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 19, 2026, at Los Angeles, California.

/s/ Jonathan M. Rotter
Jonathan M. Rotter