

1 BETSY C. MANIFOLD (182450)
2 manifold@whafh.com
3 RACHELE R. BYRD (190634)
4 byrd@whafh.com
5 **WOLF HALDENSTEIN ADLER**
6 **FREEMAN & HERZ LLP**
7 750 B Street, Suite 1820
8 San Diego, CA 92101
9 Telephone: 619/239-4599
10 Facsimile: 619/234-4599

11 MARK C. RIFKIN (*pro hac vice*)
12 rifkin@whafh.com
13 **WOLF HALDENSTEIN ADLER**
14 **FREEMAN & HERZ LLP**
15 270 Madison Avenue
16 New York, New York 10016
17 Telephone: 212/545-4600
18 Facsimile: 212/545-4653

19 LEE SHALOV (*pro hac vice*)
20 lshalov@mclaughlinstern.com
21 **MCLAUGHLIN & STERN LLP**
22 260 Madison Avenue
23 New York, New York 10016
24 Telephone: 646/278-4298
25 Facsimile: 212/448-0066

JANINE L. POLLACK (*pro hac vice*)
jpollack@calcaterrapollack.com
CALCATERRA POLLACK LLP
1140 Avenue of the Americas, 9th Floor
New York, NY 10036-5803
Telephone: (212) 899-1765
Facsimile: (332) 206-2073

C. MARIO JARAMILLO
cmj@access.law
C. MARIO JARAMILLO, PLC (dba
ACCESS LAWYERS GROUP)
527 South Lake Ave., Suite 200
Pasadena, CA 91101
Telephone: 866/643-9099
Facsimile: 866/686-5590

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

IN RE: RENOVATE AMERICA FINANCE)
CASES)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Case No. RICJCCP4940

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND CLASS REPRESENTATIVE
AWARDS; MEMORANDUM OF
POINTS AND AUTHORITIES**

DATE: July 8, 2020
TIME: 8:30 a.m.
JUDGE: Hon. Sunshine S. Sykes
DEPT.: 6

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 8, 2020, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 6 of the Superior Court of California, County of Riverside,
4 located at 4050 Main Street, Riverside, California 92501, Class Counsel and Class
5 Representatives George and Judith Loya (the “Loyas”), Richard Ramos, Michael Richardson,
6 and Shirley Petetan (hereinafter, “Plaintiffs” or “Class Representatives”), will move for an order:

7 1. Awarding Class Counsel \$841,500.00 in attorneys’ fees and reimbursement of
8 expenses of \$58,423.66; and

9 2. Approving the payment of Class Representative Awards to Plaintiffs in the total
10 amount of \$20,000 (\$5,000 to each of three Class Representatives and jointly to the Loyas).

11 This motion is based upon:

12 a. the accompanying Memorandum of Points and Authorities;

13 b. the First Amended Settlement Agreement;

14 c. the Joint Declaration of Janine L. Pollack and Rachele R. Byrd in Support of:
15 (1) Plaintiffs’ Motion for Final Approval of Class Action Settlement; and (2) Plaintiffs’ Motion
16 for Attorneys’ Fees, Reimbursement of Expenses and Payment of Class Representative Awards
17 (the “Joint Declaration” or “Joint Decl.”);

18 d. the May 26, 2020 Declaration of Cameron R. Azari, Esq. on Implementation and
19 Adequacy of Settlement Notices and Notice Plan;

20 e. the November 14, 2019 Declaration of Randall S. Newman (submitted with
21 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement), attached to the Joint
22 Declaration as Exhibit D;

23 f. the Declaration of Rachele R. Byrd in Support of Plaintiffs’ Motion for Award of
24 Attorneys’ Fees, Reimbursement of Expenses and Payment of Class Representative Awards;

25 g. the Declaration of Janine L. Pollack in Support of Plaintiffs’ Motion for Award of
26 Attorneys’ Fees, Reimbursement of Expenses and Payment of Class Representative Awards;

27 h. the Declaration of Lee S. Shalov in Support of Plaintiffs’ Motion for Award of
28 Attorneys’ Fees, Reimbursement of Expenses and Payment of Class Representative Awards;

1 i. the Declaration of C. Mario Jaramillo in Support of Plaintiffs' Motion for Award
2 of Attorneys' Fees, Reimbursement of Expenses and Class Representative Awards;

3 j. the Declaration of Jason P. Sultzer in Support of Plaintiffs' Motion for Award of
4 Attorneys' Fees, Reimbursement of Expenses and Class Representative Awards;¹

5 k. all files and records in this action; and

6 l. any argument and evidence which may be presented at the hearing on this motion.

7
8 DATED: May 26, 2020

By:


RACHELE R. BYRD

9
10 BETSY C. MANIFOLD
11 manifold@whafh.com
12 RACHELE R. BYRD
13 byrd@whafh.com
14 **WOLF HALDENSTEIN ADLER**
15 **FREEMAN & HERZ LLP**
16 750 B Street, Suite 1820
17 San Diego, CA 92101
18 Telephone: 619/239-4599
19 Facsimile: 619/234-4599

20 MARK C. RIFKIN
21 rifkin@whafh.com
22 **WOLF HALDENSTEIN ADLER**
23 **FREEMAN & HERZ LLP**
24 270 Madison Ave., 10th Fl.
25 New York, NY 10016
26 Telephone: 212/545-4600
27 Facsimile: 212/545-4653

28 JANINE L. POLLACK (*pro hac vice*)
jpollack@calcaterrapollack.com
CALCATERRA POLLACK LLP
1140 Avenue of the Americas, 9th Floor
New York, NY 10036-5803
Telephone: (212) 899-1765
Facsimile: (332) 206-2073
LEE SHALOV
lshalov@mclaughlinstern.com

¹ The individual declarations of Rachele R. Byrd, Janine L. Pollack, Lee S. Shalov, C. Mario Jaramillo, and Jason P. Sultzer, on behalf of their respective firms, are collectively referred to herein and in the following Memorandum of Points and Authorities as the "Class Counsel Declarations" or "Class Counsel Decls." Janine L. Pollack has joined a new law firm, Calcaterra Pollack LLP, and thus she is submitting a Declaration on its behalf while Jason P. Sultzer is submitting a Declaration on behalf of her prior law firm, The Sultzer Law Group P.C.

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MCLAUGHLIN & STERN LLP

260 Madison Avenue
New York, New York 10016
Telephone: 646/278-4298
Facsimile: 212/448-0066

C. Mario Jaramillo
cmj@access.law

**C. MARIO JARAMILLO, PLC (dba ACCESS
LAWYERS GROUP)**

527 South Lake Ave., Suite 200
Pasadena, CA 91101
Telephone: 866/643-9099
Facsimile: 866/686-5590

*Attorneys for Plaintiffs George Loya, Judith
Loya, Richard Ramos, Michael Richardson, and
Shirley Petetan*

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

 A. Background 1

 B. Statement of Facts 1

II. LEGAL ARGUMENT 4

 A. The Requested Fees Should Be Approved Under the
 Percentage of the Common Fund Method 4

 B. The Requested Fees Should Be Approved Under
 the Lodestar Method 7

 1. Class Counsel’s Lodestar is Reasonable
 and Supports the Requested Award 7

 2. The Is a "Negative" Multiplier 9

 C. Class Counsel’s Expenses Are Reasonable 11

 D. The Requested Class Representative Awards to Plaintiffs Are Reasonable 11

III. CONCLUSION 12

TABLE OF AUTHORITIES

Cases

1

2

3 *Antelope Valley Groundwater Cases v. Diamond Farming Co.*,

4 JCCP No. 4408, 2011 Cal. Super.
LEXIS 739 (L.A. Cnty. Super. Ct. May 4, 2011)..... 11

5 *Bergstein v. Stroock & Stroock & Lavan*,

6 No. BC483164, 2013 Cal. Super.
LEXIS 593 (L.A. Cnty. Super. Ct. Feb. 14, 2013) 8

7 *Blacksher v. United States Sec. Assocs., Inc.*,

8 No. BC348103, 2008 Cal. Super.
LEXIS 1464 (L.A. Cnty. Super. Ct. Mar. 7, 2008)..... 8, 11

9 *Blackwell v. Foley*,

724 F. Supp. 2d 1068 (N.D. Cal. 2010) 9

10 *Boeing Co. v. Van Gemert*,

444 U.S. 472 (1980)..... 5

11 *Cellphone Termination Fee Cases*,

186 Cal. App. 4th 1380 (2010) 11

12 *Chavez v. Netflix, Inc.*,

162 Cal. App. 4th 43 (2008) 6, 10

13 *Chodos v. Borman*,

227 Cal. App. 4th 76 (2014) 7

14 *Collins v. City of Los Angeles*,

205 Cal. App. 4th 140 (2012) 5

15 *Consumer Privacy Cases*,

175 Cal. App. 4th 545 (2009) 5, 11

16 *Cundiff v. Verizon Cal., Inc.*,

167 Cal. App. 4th 718 (2008) 11

17 *Destefano v. Zynga, Inc.*,

18 No. 12-cv-04007-JSC, 2016 U.S. Dist.
LEXIS 17196, (N.D. Cal. Feb. 11, 2016) 7

19 *Duran v. United States Bank Nat’l Ass’n*,

20 No. 2001-035537, 2010 Cal. Super.
LEXIS 1058 (Alameda Cnty. Super. Ct. Dec. 16, 2010)..... 9

21 *Eates v. KB Home*,

22 No. RG-08-384954, 2011 Cal. Super.
LEXIS 810 (Alameda Cnty. Super. Ct. June 16, 2011)..... 12

23 *Estrada v. iYogi, Inc.*,

24 No. 2:13-cv-01989 WBS CKD, 2016
25 U.S. Dist. LEXIS 8947 (E.D. Cal. Jan. 26, 2016) 5

26 *Evans v. Linden Research, Inc.*,

27 No. C-11-01078 DMR, 2014 U.S. Dist.
LEXIS 59432 (N.D. Cal. Apr. 29, 2014)..... 10

28 *Fernandez v. Victoria Secret Stores, LLC*,

No. C-06-04149 MMM (SHx), 2008
U.S. Dist. LEXIS 123546 (C.D. Cal. July 21, 2008)..... 5

1	<i>Glass v. UBS Fin. Servs.</i> ,	
2	No. C-06-4068 MMC, 2007 U.S.	
	Dist. LEXIS 8476, (N.D. Cal. Jan 26, 2007)	5
3	<i>Goldman v. Lifelock, Inc.</i> ,	
4	No 115CV276235, 2016 Cal. Super.	
	LEXIS 82 (Santa Clara Cnty. Super. Ct. Feb. 5, 2016)	8
5	<i>Granados v. County of L.A.</i> ,	
6	No. BC361470, 2018 Cal. Super.	
	LEXIS 7789 (Nov. 14, 2018).....	8
7	<i>In re Amgen Sec. Litig.</i> ,	
8	No. CV 7-2536 PSG (PLAx), 2016 U.S.	
9	Dist. LEXIS 148577 (C.D. Cal. Oct. 25, 2016).....	10
10	<i>In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.</i> ,	
11	No. 1031494, 1998-2 Trade Cases (CCH) P 72, 336,	
12	1998 WL 1031494 (Alameda Super. Ct. Oct. 22, 1998)	10
13	<i>In re Flag Telecom Holdings, Ltd. Sec. Litig.</i> ,	
14	CV 2-3400 (CM), 2010 U.S.	
15	Dist. LEXIS 119702 (S.D.N.Y. Nov. 8, 2010).....	10
16	<i>In re: Wash. Pub. Power Supply Sys. Secs. Litig.</i> ,	
17	19 F.3d 1291 (9th Cir. 1994)	9
18	<i>Jordan v. Dep't of Motor Vehicles</i> ,	
19	100 Cal. App. 4th 431 (2002)	4
20	<i>Ketchum v. Moses</i> ,	
21	24 Cal. 4th 1122 (2001)	6, 9, 11
22	<i>Laffitte v. Robert Half Int'l Inc.</i> ,	
23	231 Cal. App. 4th 860 (2014)	6
24	<i>Laffitte v. Robert Half Int'l, Inc.</i> ,	
25	1 Cal. 5th 480 (2016)	4, 6, 9, 11
26	<i>Lealao v. Beneficial Cal., Inc.</i> ,	
27	82 Cal. App. 4th 19 (2000)	5, 6, 7
28	<i>LeBlanc-Sternberg v. Fletcher</i> ,	
	143 F.3d 748 (2d Cir. 1998)	8
	<i>Mackinnon v. Imvu, Inc.</i> ,	
	No. 111-cv-193767, 2016 Cal. Super.	
	LEXIS 175 (Santa Clara Cnty. Super. Ct. Feb. 22, 2016)	8
	<i>Melendres v. Los Angeles</i> ,	
	45 Cal. App. 3d 267 (1975)	7
	<i>Mo. v. Jenkins</i> ,	
	491 U.S. 274 (1989).....	8
	<i>Oxina v. Lands' End, Inc.</i> ,	
	No. 14cv2577-MMA (NLS), 2016 U.S.	
	Dist. LEXIS 191738 (S.D. Cal. Dec. 2, 2016).....	10
	<i>Perfect 10, Inc. v. Giganews, Inc.</i> ,	
	No. CV 11-07098-AB (SHx), 2015 U.S.	
	Dist. LEXIS 54063 (C.D. Cal. Mar. 24, 2015).....	8

1	<i>Pierce v. Rosetta Stone, Ltd.</i> , No. C 11-01283 SBA, 2013 U.S. Dist. LEXIS 138921 (N.D. Cal. Sept. 26, 2013)	10
2		
3	<i>PLCM Grp., Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000)	11
4	<i>Rodriguez v. Cnty. of Los Angeles</i> , 96 F. Supp. 3d 1012 (C.D. Cal. 2014)	8
5	<i>Roos v. Honeywell Int'l, Inc.</i> , 241 Cal. App. 4th 1472 (2015)	4
6	<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1997)	4
7		
8	<i>Serrano v. Unruh</i> , 32 Cal. 3d 621 (1982)	7
9	<i>Six (6) Mexican Workers v. Ariz. Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990)	5
10	<i>Skold v. Intel Corp.</i> , No. 1-05-CV-039231, 2015 Cal. Super. LEXIS 122 (Santa Clara Cnty. Super. Ct. Jan. 28, 2015).....	9
11		
12	<i>Sternwest Corp. v. Ash</i> , 183 Cal. App. 3d 74 (1986)	10
13	<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009)	10
14		
15	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	10
16	<i>Williams v. MGM-Pathe Commc'ns Co.</i> , 129 F.3d 1026 (9th Cir. 1997)	5
17		
18		
19		
20		
21		
22		
23		
24		
25		
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27		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Background**

4 Almost four years ago, Class Counsel undertook three separate cases seeking redress for
5 persons or entities who were deceived in connection with obtaining Property Assessed Clean
6 Energy (“PACE”) tax assessment financing through Renovate America, Inc.’s (“Renovate” or
7 “Defendant”) Home Energy Renovation Opportunity (“HERO”) program in several respects
8 related to specific disclosures in their tax assessment contracts. The three original complaints
9 included as defendants Renovate and, respectively, each of the governmental entities involved in
10 the HERO program for each region, namely the Western Riverside Council of Governments
11 (“WRCOG”), the San Bernardino Associated Governments (“SANBAG”), and the County of
12 Los Angeles (“LAC”). Plaintiffs generally alleged that certain of the fees and features of the tax
13 assessment contracts were misrepresented and unfair. These were risky and hard-fought cases,
14 as demonstrated by the fact that they were litigated through dismissal proceedings in both federal
15 and state court. Through the hard work of Class Counsel and the dedication to the case of the
16 Plaintiffs, a settlement was achieved. Plaintiffs now seek final approval of the settlement (in a
17 motion filed concurrently herewith), and Class Counsel seek an award of fees and expenses for
18 their work in achieving that settlement, as well as Class Representative Awards for the Plaintiffs.

19 **B. Statement of Facts**

20 The history of the litigation and Class Counsel’s efforts are detailed in the accompanying
21 Joint Declaration of Janine L. Pollack and Rachele R. Byrd in Support of: (1) Plaintiffs’ Motion
22 for Final Approval of Class Action Settlement; and (2) Plaintiffs’ Motion for Attorneys’ Fees,
23 Reimbursement of Expenses and Payment of Class Representative Awards (the “Joint
24 Declaration” or “Joint Decl.”) as well as the November 14, 2019 Declaration of Randall S.
25 Newman (submitted with Plaintiffs’ Motion for Preliminary Approval of Class Action
26 Settlement) (“Newman Decl.”), attached to the Joint Declaration as Exhibit D, and Plaintiffs
27
28

1 respectfully incorporate that information here to avoid repetition. Class Counsel² diligently and
2 skillfully prosecuted this extremely risky case over the course of almost four years, on a fully
3 contingent basis without compensation or reimbursement of costs. Class Counsel submit that the
4 Settlement is fair, reasonable and adequate as demonstrated in the accompanying papers filed
5 concurrently herewith. Renovate has agreed to pay \$2,550,000 (the “Settlement Fund”) to settle
6 this litigation. The Settlement entitles Class Members to receive a refund of a portion of the fees
7 alleged to have been misrepresented/unfair during various periods (depending on which program
8 the Class Member subscribed to) for financing contracts issued from January 1, 2012 to June 15,
9 2017 (the “Class Periods”). Moreover, the Settlement provides for certain injunctive relief in the
10 form of changes to written disclosures used in connection with the HERO programs that
11 Renovate will recommend to the governmental entities currently operating those programs. *See*
12 Joint Decl. ¶ 27; First Amended Settlement Agreement (“SA”), § 4.12. This collective relief is
13 an excellent result given the factors discussed below.

14 Class Counsel also negotiated a notice program that was both economical for the Class
15 and informative. *See* May 26, 2020 Declaration of Cameron R. Azari, Esq. on Implementation
16 and Adequacy of Settlement Notices and Notice Plan (“Azari Decl.”) at ¶¶ 4-20. Name and
17 address information was available for virtually all Class Members because the PACE
18 Assessments that are the subject of the Actions are assessments on a Class Member’s property,
19 therefore Defendant knows every Class Member’s property address. *See Id.*, ¶ 7. Notice was
20 sent via emailing or mailing individual notice to all Class Members who were reasonably
21 identifiable. *See Id.* Of the 74,954 Class Member records, Epiq sent email notice to 74,947
22 Class Members who had a facially valid email addresses, and Epiq sent seven Notice Packages to
23 all Class Members associated with assessments with a physical address that did not have a

24
25 ² Capitalized terms have the meaning ascribed in the First Amended Settlement Agreement
26 (“SA”), unless otherwise noted. *See* Joint Declaration, Exhibit (“Ex.”) A. However, “Class
27 Counsel,” as used herein, substitutes the firm of Calcaterra Pollack LLP for The Sultz Law
28 Group P.C. due to the departure of the principal attorney working on this matter from inception,
Janine L. Pollack, from The Sultz Law Group P.C. for Calcaterra Pollack LLP. Plaintiffs seek
this substitution in their Motion for Final Approval of Class Action Settlement, filed
concurrently herewith.

1 facially valid email address. In addition, Epiq sent 4,097 Notice Packages to all records where
2 an Email Notice was not deliverable. *See Id.*, ¶¶ 8, 12, 14. Epiq also established a settlement
3 website and a toll-free number where Class Members could obtain additional information. *See*
4 *Id.*, ¶¶ 16-20. Thus, the negotiated notice program was appropriate, efficient and effective.

5 Moreover, Class Counsel negotiated with Defendant to avoid the need for a claim form
6 entirely. Every Class Member who does not opt out will automatically receive a check in the
7 mail. As of this time there are only 13 opt-outs out of 74,954 total contracts included in the
8 Class. *See Azari Decl.* at ¶ 8.

9 Achieving this Settlement was far from certain. Class Counsel faced a significant risk,
10 *perhaps a likelihood*, that their investment of substantial resources over the course of nearly four
11 years would be entirely for naught. Indeed, while Plaintiffs originally included claims under the
12 Truth in Lending Act and Home Ownership and Equity Protection Act, as well as conspiracy
13 claims under those acts, the federal court dismissed those claims and dismissed the governmental
14 defendants entirely from the litigation. Plaintiffs faced extreme uncertainty as to whether any of
15 their claims would survive once remanded back to state court. However, after proceeding
16 through the process of consolidating all three of the actions, through the diligence and hard work
17 of Class Counsel, most of the state law claims were ultimately sustained. The Court thereafter
18 ordered informal discovery to begin and Renovate provided information on certain issues to
19 Plaintiffs. *Joint Decl.*, ¶ 15.

20 On November 20, 2018, the parties participated in a mediation session before Judge
21 Jeffrey King (Ret.) but they could not reach consensual resolution for a settlement. *Joint Decl.*,
22 ¶ 16. Thereafter, the Court held another Case Management Conference and formally opened
23 discovery on class issues. *Id.* Plaintiffs began to conduct discovery but, simultaneously with
24 discovery, the parties continued to discuss settlement for several months, engaging in extensive
25 and hard-fought negotiations. *Id.* The parties were ultimately able to bridge the gap between
26 their negotiation positions and signed a term sheet dated June 4, 2019. *Id.*

27 Class Counsel seek an award of \$841,500.00 for attorneys' fees, or 33% of the
28 \$2,550,000.00 Settlement Fund, plus reimbursement of out-of-pocket expenses of \$58,423.66, as

1 compensation for their considerable investment of time and effort and their success in achieving
2 the Settlement. Class Counsel have invested a collective lodestar of \$1,890,867.75 over the
3 nearly four-year course of this litigation. Joint Decl., ¶ 35; Class Counsel Decls. Thus, the
4 requested fee represents a negative multiple of 0.45 of Class Counsel’s combined lodestar. All
5 of the relevant factors demonstrate that an award of \$841,500.00 in fees, plus expenses, is
6 warranted here. Plaintiffs also request Class Representative Awards of \$5,000 each (with one
7 joint \$5,000 award to the Loyas) in recognition of their time spent in service on behalf of the
8 Class.

9 **II. LEGAL ARGUMENT**

10 There are two generally accepted methods for determining an award of attorneys’ fees
11 under California law: (1) the percentage-of-the-recovery method, and (2) the lodestar method.
12 Typically the percentage method is selected when a settlement results in a common fund, and the
13 lodestar method is selected when a settlement does not result in a common fund. In either case,
14 courts will typically refer to the other method as a cross-check to ensure that the fee award is
15 fair. *Roos v. Honeywell Int’l, Inc.*, 241 Cal. App. 4th 1472, 1493 (2015). “The trial court is the
16 best judge of the value of professional services rendered in its court, and while its judgment is
17 subject to our review, [the Court of Appeal] will not disturb that determination unless . . .
18 convinced that it is clearly wrong.” *Id.* at 1482 (internal quotations omitted). Class Counsel’s
19 request for \$841,500.00 for attorneys’ fees is appropriate under either the lodestar or percentage-
20 of-recovery standard.

21 **A. The Requested Fees Should Be Approved Under the Percentage of the 22 Common Fund Method**

23 The common fund doctrine is generally held applicable “where plaintiffs’ efforts have
24 effected the creation or preservation of an identifiable fund of money out of which the fees will
25 be paid.” *Jordan v. Dep’t of Motor Vehicles*, 100 Cal. App. 4th 431, 446-47 (2002) (citing
26 *Serrano v. Priest*, 20 Cal. 3d 25, 37-38 (1997)). Here, the Settlement resulted in creation of an
27 identifiable \$2.55 million fund from which refunds, notice and administration costs, attorneys’
28 fees and expenses, and any class representative awards will be paid. In *Laffitte v. Robert Half
Int’l, Inc.*, 1 Cal. 5th 480, 503 (2016), the Supreme Court held that where, as here, “class action

1 litigation establishes a monetary fund for the benefit of the class members, and the trial court in
2 its equitable powers awards class counsel a fee out of that fund, the court may determine the
3 amount of a reasonable fee by choosing an appropriate percentage of the fund created” and that
4 “the percentage method is a valuable tool.”

5 While there is no claim form and checks will automatically be sent to all eligible Class
6 Members, it is possible that the entire Settlement Fund will not be exhausted if some people do
7 not cash their checks after the supplemental distribution, and therefore some amount could revert
8 to *cy pres*. However, in applying the common fund method under California law, attorneys’ fees
9 are “calculated on the basis of the ***total fund made available*** rather than the actual payments
10 made to the class.” *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 51 (2000) (emphasis
11 added) (citing *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997)).³ So, for
12 example, in *Collins v. City of Los Angeles*, 205 Cal. App. 4th 140, 147-48, 158 (2012), the Court
13 included in its common fund valuation for purposes of determining appropriate attorneys’ fees
14 the entire value of the judgment, even though a portion of that amount was payable to class
15 members who could not be located and would revert to the City.

16 Courts have noted that fees awarded in class actions average around 33% of the recovery.
17 *See, e.g., Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557, n.13 (2009) (“Empirical studies
18 show that, regardless whether the percentage method or the lodestar method is used, fee awards
19 in class actions average around one-third of the recovery.”). In *Laffitte*, for example, the

20 ³ *See also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.
21 1990) (“attorneys’ fees sought under a common fund theory should be assessed against every
22 class members’ share, not just the claiming members.”) (citing *Boeing Co. v. Van Gemert*, 444
23 U.S. 472, 480-81 (1980)); *Estrada v. iYogi, Inc.*, No. 2:13-cv-01989 WBS CKD, 2016 U.S. Dist.
24 LEXIS 8947, at *18 (E.D. Cal. Jan. 26, 2016) (“Where there is a claims-made settlement . . . the
25 percentage of the fund approach . . . is based on the total money available to class members, not
26 just the money actually claimed.”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S.
27 Dist. LEXIS 8476, at *50 (N.D. Cal. Jan 26, 2007) (the court “must award fees as a percentage
28 of the entire fund, or pursuant to the lodestar method, not on the basis of the amount of the fund
actually claimed by the class.”); *Fernandez v. Victoria Secret Stores, LLC*, No. C-06-04149
MMM (SHx), 2008 U.S. Dist. LEXIS 123546, at *36 n.39 (C.D. Cal. July 21, 2008) (“Use of the
‘common fund’ concept in a case such as this, where each class member can recover only a finite
amount, does not affect the calculation of attorneys’ fees even if a portion of the fund is not
claimed.”).

1 Supreme Court of California affirmed a fee award representing 33.33% of a \$19 million common
2 fund, plus expenses. *Laffitte*, 1 Cal. 5th 480; *Laffitte v. Robert Half Int’l Inc.*, 231 Cal. App. 4th
3 860, 869-71 (2014). Courts thus routinely award a one-third fee in contingency cases such as
4 this.⁴ As such, here the 33% fee sought falls squarely within the average commonly approved.
5 *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (noting “[e]mpirical
6 studies show that, regardless whether the percentage method or the lodestar method is used, fee
7 awards in class actions average around one-third of the recovery”).

8 The percentage method is appropriate here as it “provides a credible measure of the
9 market value of the legal services provided” in contingency litigation (which almost always
10 involves percentage fee agreements). *Lealao*, 82 Cal. App. 4th at 49. As explained in *Laffitte*:

11 The recognized advantages of the percentage method—including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better
13 approximation of market conditions in a contingency case, and the encouragement
14 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation . . . —convince us the percentage method is a valuable tool that
should not be denied our trial courts.

15 *Laffitte*, 1 Cal. 5th at 503. The percentage method also encourages the successful attorney to
16 accept the contingency risk and delay in payment, the importance of which California decisions
17 have repeatedly emphasized. *See, e.g., Ketchum v. Moses*, 24 Cal. 4th 1122, 1136 (2001)
18 (“lawyers generally will not provide legal representation on a contingent basis unless they
19 receive a premium for taking that risk”) (internal quotations omitted); *Lealao*, 82 Cal. App. 4th at
20 47 n.15 (“attorneys providing the essential enforcement services must be provided incentives
21 roughly comparable to those negotiated in the private . . . legal marketplace, as it will otherwise

22
23 ⁴ A non-exhaustive list of other cases awarding a percentage of the common fund of one-
24 third or more include: *Ethridge v. Universal Health Servs.*, L.A. Cty. Super. Ct. (“LASC”) No.
25 BC391958 (May 27, 2011) (33% award); *Magee v. Am. Residential Servs. LLC*, LASC No.
26 BC423798 (Apr. 21, 2011) (same); *Blue v. Coldwell Banker Residential Brokerage Co.*, LASC
27 No. BC417335 (Mar. 21, 2011) (same); *Silva v. Catholic Mortuary Servs., Inc.*, LASC No.
28 BC408054 (Jan. 4, 2011) (same); *Mares v. BFS Retail & Comm. Operations LLC*, LASC No.
BC375967 (June 24, 2010) (same); *Blair v. Jo-Ann Stores, Inc.*, LASC No. BC394795 (June 2,
2010) (same); *Barrett v. The St. John Companies*, LASC No. BC354278 (July 10, 2008) (same);
Clymer and Benton v. Candle Acquisition Co., LASC No. BC328765 (Feb. 4, 2009) (same). *See*
Joint Decl., Ex. E.

1 be economic for defendants to increase injurious behavior”); *Melendres v. Los Angeles*, 45 Cal.
2 App. 3d 267, 273 (1975) (“There must always be a flavor of generosity in the awards . . . in order
3 that an appetite for efforts may be stimulated.”).

4 **B. The Requested Fees Should Be Approved Under the Lodestar Method**

5 California courts typically apply the lodestar plus multiplier method as a cross-check on
6 fees calculated under the percent-of-recovery method, or when there is not a common fund
7 capable of valuation with reasonable certainty. *Lealao*, 82 Cal. App. 4th at 37-39, 45-46. While
8 the Court is not required to perform an exhaustive cataloging and review of counsel’s hours, *see*
9 *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *66-68 n.11
10 (N.D. Cal. Feb. 11, 2016) (noting that “the Court may rely on . . . summaries [of hours worked],
11 as actual billing records are unnecessary in the context of assessing the lodestar cross-check.”),
12 Class Counsel have nonetheless provided both a summary and their detailed time records in their
13 individual Firm Declarations. *See* Class Counsel Decls. As demonstrated therein, the time
14 incurred here was reasonable given the extensive work by Class Counsel over the course of four
15 years through state and federal court and the excellent result achieved.

16 **1. Class Counsel’s Lodestar is Reasonable and Supports the Requested Award**

17 Class Counsel’s collective lodestar of \$1,890,867.75 for work performed over the course
18 of this nearly four-year litigation is reasonable. The starting point in the lodestar analysis is to
19 discern the prevailing hourly rate for similar work in the pertinent geographic region. *Chodos v.*
20 *Borman*, 227 Cal. App. 4th 76, 93 (2014) (“hourly amount to which attorneys of like skill in the
21 area would typically be entitled”) (citing *Serrano v. Unruh*, 32 Cal. 3d 621, 640 n.31 (1982)).

22 Class Counsel are highly-regarded members of the bar and have extensive experience in
23 class actions and complex litigation. Their rates are squarely in line with prevailing rates in this
24 jurisdiction and Southern California and are paid by hourly paying clients of their firms and/or
25 have been approved by numerous other courts. *See* Class Counsel Decls. Class Counsel’s rates
26 of \$450 to \$995 for partners and \$450 to \$575 for associates and Of Counsel are within the
27 prevailing market rates in the Southern California area for attorneys of comparable skill,
28

1 experience, and reputation.⁵ See, e.g., *Granados v. County of L.A.*, No. BC361470, 2018 Cal.
2 Super. LEXIS 7789, at *81 (Nov. 14, 2018) (“Class Counsel’s hourly rates [of \$625 to \$965 for
3 partners and \$445 to \$530 for associates] are reasonable for their skill and the work they
4 performed.”); *Bergstein v. Stroock & Stroock & Lavan*, No. BC483164, 2013 Cal. Super. LEXIS
5 593, at *12 (L.A. Cnty. Super. Ct. Feb. 14, 2013) (approving rates up to \$920 per hour and
6 noting that “in the Los Angeles legal community, attorney billing rates of \$1000 per hour and
7 above are no longer unheard of”); *Rodriguez v. Cnty. of Los Angeles*, 96 F. Supp. 3d 1012, 1022-
8 23 (C.D. Cal. 2014) (approving attorney rates from \$500 to \$975 in a case against County of Los
9 Angeles); *Blacksher v. United States Sec. Assocs., Inc.*, No. BC348103, 2008 Cal. Super. LEXIS
10 1464, at *6-7 (L.A. Cnty. Super. Ct. Mar. 7, 2008) (noting that partner billing rates for Southern
11 California ranged as high as \$825 in 2008). Likewise, Class Counsel’s rates for paralegals,
12 which range from \$175 to \$330, are reasonable. See *Goldman v. Lifelock, Inc.*, No
13 115CV276235, 2016 Cal. Super. LEXIS 82, at *6 (Santa Clara Cnty. Super. Ct. Feb. 5, 2016)
14 (approving paralegal rates up to \$320 per hour); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-
15 07098-AB (SHx), 2015 U.S. Dist. LEXIS 54063, at *65 (C.D. Cal. Mar. 24, 2015) (approving
16 paralegal rates of \$240 to \$345).

17 Further, Class Counsel’s total hours are reasonable. The extensive work performed by
18 Class Counsel, from initial investigation and the filing of three separate state court cases, through
19 the motion to dismiss proceeding in federal court, through the remand back to state court and
20 filing of three separate state complaints, through a consolidation proceeding, through a demurrer
21 proceeding, through the beginning of discovery, and the month’s-long exhaustive settlement
22 negotiation process, is set forth more fully in the accompanying Joint Declaration. See Joint
23 Decl., ¶¶ 9-21. On average, Class Counsel collectively invested approximately 875 hours per

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25 ⁵ The Supreme Court has held that the use of current rates is proper since such rates
26 compensate for inflation and loss of use of funds. *Mo. v. Jenkins*, 491 U.S. 274, 283-84 (1989).
27 That is particularly apt here, in a case that has lasted almost four years. See also *Mackinnon v.*
28 *Imvu, Inc.*, No. 111-cv-193767, 2016 Cal. Super. LEXIS 175, at *2-3 & n.1 (Santa Clara Cnty.
Super. Ct. Feb. 22, 2016) (“current rates, rather than historical rates, should be applied in order to
compensate for the delay in payment”) (citing *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764
(2d Cir. 1998)).

1 year in this nearly four-year litigation. Courts routinely find comparable expenditures of time
2 reasonable in similarly complex litigation. *See, e.g., Skold v. Intel Corp.*, No. 1-05-CV-039231,
3 2015 Cal. Super. LEXIS 122, at *14-15 (Santa Clara Cnty. Super. Ct. Jan. 28, 2015) (finding that
4 17,651.2 hours was reasonable for ten years of litigation, especially, “[r]ecognizing the length
5 and complexity of this lawsuit and the amount of work involved over an extended period of time
6 as well as the risks associated with the outcome”); *Duran v. United States Bank Nat’l Ass’n*, No.
7 2001-035537, 2010 Cal. Super. LEXIS 1058, at *54 (Alameda Cnty. Super. Ct. Dec. 16, 2010)
8 (holding that 14,500 “hours are fully justified by the tremendous burdens of over eight years of
9 intense, bitterly-contested litigation.”); *In re: Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d
10 1291, 1298 (9th Cir. 1994) (affirming 137,000 billable hours was reasonable for a seven-year
11 case).

12 Each firm here has submitted a declaration summarizing the work performed, attesting
13 that their reported hours are accurate and were reasonably incurred in connection with the
14 prosecution of the case, and submitting their daily, contemporaneous time records. *See, e.g.,*
15 *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (“An attorney’s sworn
16 testimony that, in fact, it took the time claimed ‘. . . is evidence of considerable weight on the
17 issue of the time required . . .’”) (alterations in original). Class Counsel also expects to incur
18 some additional lodestar going forward overseeing the claims administration process and
19 communicating with Class Members. Class Counsel will closely monitor the claims process and
20 be proactive in addressing issues and advising and assisting claimants.

21 **2. There Is a “Negative” Multiplier**

22 Very often in the settlement of class actions, the attorneys request a “multiplier” on their
23 lodestar amount to capture risk and other factors. In fact, plaintiffs’ counsel’s “unadorned
24 lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any
25 compensation for contingent risk, extraordinary skill, or any other factors a trial court may
26 consider . . .” *Ketchum*, 24 Cal. 4th at 1138; *see also Laffitte*, 1 Cal. 5th at 488, 506 (approving
27
28

1 a multiplier of 2.03 to 2.13).⁶

2 Here, however, Class Counsel request a total award of \$841,500.00 in fees, which
3 equates to a “negative multiple” of 0.45 on their lodestar of \$1,890,867.75. Courts routinely
4 hold that a negative multiplier strongly supports the reasonableness of the requested fee. *See,*
5 *e.g., Oxina v. Lands' End, Inc.*, No. 14cv2577-MMA (NLS), 2016 U.S. Dist. LEXIS 191738, at
6 *13 (S.D. Cal. Dec. 2, 2016) (“Class Counsel’s request for fees is reasonable, given that the
7 requested fees are a negative multiplier of Class Counsel’s lodestar to date.”); *In re Amgen Sec.*
8 *Litig.*, No. CV 7-2536 PSG (PLAx), 2016 U.S. Dist. LEXIS 148577, at *27 (C.D. Cal. Oct. 25,
9 2016) (“Moreover, courts have recognized that a percentage fee that falls below counsel’s
10 lodestar strongly supports the reasonableness of the award”) (citing *In re Flag Telecom*
11 *Holdings, Ltd. Sec. Litig.*, CV 2-3400 (CM), 2010 U.S. Dist. LEXIS 119702, at *77 (S.D.N.Y.
12 Nov. 8, 2010) (“Lead Counsel’s request for a percentage fee representing a significant discount
13 from their lodestar provides additional support for the reasonableness of the fee request.”));
14 *Evans v. Linden Research, Inc.*, No. C-11-01078 DMR, 2014 U.S. Dist. LEXIS 59432, at *23
15 (N.D. Cal. Apr. 29, 2014) (“The lodestar crosscheck results in a negative multiplier of .43, which
16 suggests that the percentage of the fund amount is reasonable and fair.”) (citing *Pierce v. Rosetta*
17 *Stone, Ltd.*, No. C 11-01283 SBA, 2013 U.S. Dist. LEXIS 138921, at *18 (N.D. Cal. Sept. 26,
18 2013)).

19 While Class Counsel is not requesting that a multiplier be applied to its lodestar, and in
20 fact is requesting an amount that results in a significant **negative** multiplier, under the
21 circumstances of this case it would have been justified in doing so.⁷ Accordingly, Class Counsel

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23 ⁶ See also, *e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009)
24 (affirming 2.52 multiplier); *Chavez*, 162 Cal. App. 4th at 66 (affirming 2.5 multiplier); *Wershba*
25 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or
26 even higher.”); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for lodestar
27 enhancement of “two, three, four or otherwise”); *In re Cal. Indirect Purchaser X-Ray Film*
Antitrust Litig., No. 1031494, 1998-2 Trade Cases (CCH) P 72, 336, 1998 WL 1031494, at *10
(Alameda Super. Ct. Oct. 22, 1998) (“Cases from California and other jurisdictions reflect that
multipliers of two or more are commonplace in class actions.”).

28 ⁷ To “approximate market-level compensation for such services, which typically includes a
premium for the risk of nonpayment or delay in payment of attorney fees” (*Ketchum*, 24 Cal. 4th

1 respectfully submit that their time was reasonably incurred and supports the requested fee.⁸

2 **C. Class Counsel’s Expenses Are Reasonable**

3 Class Counsel also seek \$58,423.66 in unreimbursed expenses, which include, *inter alia*,
4 necessary travel and other reasonable expenses. Class Counsel have included a chart with each
5 Declaration detailing every expense incurred as directed by the Court in CMO #1. *See* Class
6 Counsel Decls. Class Counsel also anticipate incurring additional expenses through the end of
7 the claims process.

8 **D. The Requested Class Representative Awards to Plaintiffs Are Reasonable**

9 Class Counsel request a \$5,000 Class Representative Award for each of three Class
10 Representatives (Plaintiffs Richardson, Ramos, and Petetan) and a single \$5,000 award for the
11 Loyas, an amount which is less than the amounts often awarded. *See, e.g., Cellphone*
12 *Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393-95 (2010) (affirming \$10,000 incentive
13 awards); *Blacksher*, 2008 Cal. Super. LEXIS 1464, at *10-11 (\$10,000 award); *Antelope Valley*
14 *Groundwater Cases v. Diamond Farming Co.*, JCCP No. 4408, 2011 Cal. Super. LEXIS 739, at
15 *17 (L.A. Cnty. Super. Ct. May 4, 2011) (same); *Eates v. KB Home*, No. RG-08-384954, 2011

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17 at 1138), courts employ fee enhancements, adjusting the fee “based on consideration of factors
18 specific to the case.” *PLCM Grp., Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). Those factors
19 include: (1) the results achieved on behalf of the Class; (2) the novelty and difficulty of the
20 questions involved and the skill displayed in presenting them; (3) the response of the Class to the
21 settlement, including a lack of objections to the settlement terms, and particularly to the fee
22 award; (4) counsel’s experience, reputation, and ability; (5) counsel’s preclusion from other
23 work; and (6) the contingent nature of the fee award. *See Ketchum*, 24 Cal. 4th at 1132; *Laffitte*,
1 Cal. 5th at 489; *Cundiff v. Verizon Cal., Inc.*, 167 Cal. App. 4th 718, 724 n.3 (2008); *Consumer*
Privacy Cases, 175 Cal. App. 4th at 556. As demonstrated throughout this motion, all of these
factors would weigh in favor of enhancement here were Class Counsel seeking an enhancement
in this entirely contingent class action that resulted in an excellent settlement for the Class.

24 ⁸ At preliminary approval, Ms. Janine Pollack was a partner with The Sultzter Law Group
25 P.C., one of the firms appointed as Class Counsel. Ms. Pollack has since joined Calcaterra
26 Pollack LLP, which now seeks to be appointed as Class Counsel in place of The Sultzter Law
27 Group P.C. Ms. Pollack has been actively involved in this litigation since its inception (while
she was a partner at Wolf Haldenstein Adler Freeman & Herz LLP and then a partner at The
Sultzter Law Group P.C.) and has played a major role in the prosecution and settlement of the
28 case. *See* Joint Decl. ¶ 21. The Sultzter Law Group P.C. has submitted its own individual Firm
Declaration with its time and expense records, as has Calcaterra Pollack LLP.

1 Cal. Super. LEXIS 810, at *6-7 (Alameda Cnty. Super. Ct. June 16, 2011) (same). The efforts of
2 the Class Representatives in assisting Class Counsel to achieve this excellent settlement are
3 described in the declarations submitted by each Class Representative. See Declarations of
4 George and Judith Loya, Shirley Petetan, Richard Ramos, and Michael Richardson in Support of
5 Plaintiffs' Motion for Payment of a Class Representative Award, filed herewith.

6 **III. CONCLUSION**

7 For the foregoing reasons, Class Counsel respectfully request an award of \$841,500.00 in
8 attorneys' fees, reimbursement of \$58,423.66 in expenses, and a Class Representative Award of
9 \$5,000 to each of three of the individual Class Representatives and jointly to the Loyas (for a
10 total of \$20,000 in Class Representative Awards), to be paid from the Settlement Fund.

11 DATED: May 26, 2020

12 By:


13 RACHELE R. BYRD

14 BETSY C. MANIFOLD
15 manifold@whafh.com
16 RACHELE R. BYRD
17 byrd@whafh.com
18 **WOLF HALDENSTEIN ADLER**
19 **FREEMAN & HERZ LLP**
20 750 B Street, Suite 1820
21 San Diego, CA 92101
22 Telephone: 619/239-4599
23 Facsimile: 619/234-4599

19 MARK C. RIFKIN
20 rifkin@whafh.com
21 **WOLF HALDENSTEIN ADLER**
22 **FREEMAN & HERZ LLP**
23 270 Madison Ave., 10th Fl.
24 New York, NY 10016
25 Telephone: 212/545-4600
26 Facsimile: 212/545-4653

24 JANINE L. POLLACK (*pro hac vice*)
25 jpollack@calcaterrapollack.com
26 **CALCATERRA POLLACK LLP**
27 1140 Avenue of the Americas, 9th Floor
28 New York, NY 10036-5803
Telephone: (212) 899-1765
Facsimile: (332) 206-2073

LEE SHALOV
lshalov@mclaughlinstern.com

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MCLAUGHLIN & STERN LLP

260 Madison Avenue
New York, New York 10016
Telephone: 646/278-4298
Facsimile: 212/448-0066

C. Mario Jaramillo
cmj@access.law

**C. MARIO JARAMILLO, PLC (dba ACCESS
LAWYERS GROUP)**

527 South Lake Ave., Suite 200
Pasadena, CA 91101
Telephone: 866/643-9099
Facsimile: 866/686-5590

*Attorneys for Plaintiffs George Loya, Judith
Loya, Richard Ramos, Michael Richardson, and
Shirley Petetan*

26466