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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

XIN CHEN, an individual; and BRIAN CHIANG, an individual; individually and on behalf of all others similarly situated;

Plaintiffs,

vs.

GHP MANAGEMENT CORPORATION, a California corporation, *et al.*

Defendants.

KIERNEY WALDRON; ROES 1 through 100 inclusive; individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

GHP MANAGEMENT CORPORATION, a California corporation, *et al.*

Defendants.

Lead Case No.: BC 713402

(Consolidated Case No. 19STCV03883)

Assigned for All Purposes to:
The Hon. Elihu M. Berle, Dept. 6

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF ATTORNEY FEES, LITIGATION EXPENSES, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently:
1. Compendium of Declarations;
2. Proposed Order;
3. Proposed Judgment]

Date: December 13, 2023
Time: 9:00 a.m.
Dept.: 6 (Spring Street)

Action Filed: July 13, 2018
Trial Date: None Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 13, 2023 at 9:00 a.m., or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Xin Chen, Brian Chiang, and Kierney Waldron (collectively, "Plaintiffs") will and hereby do move for approval of attorney fees, litigation expenses, and named-plaintiff service awards. Plaintiffs respectfully request an award of $3,300,000 in attorney fees, $123,487.75 in litigation expenses, $160,000 in administration expenses, and $10,000 per named plaintiff in service awards, which are consistent with or less than the amounts presented at preliminary approval.

This Motion is made pursuant to Civil Code § 1717, Code of Civil Procedure §§ 1021.5, 1032, 1033.5, and 1034, California Rules of Court, rule 3.769(b), and the Court's inherent equitable authority, *see Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Serrano v. Priest* (1977) 20 Cal.3d 25, 35, on the following grounds:

1. Fees and costs are recoverable under the "common fund" doctrine, pursuant to the standard form lease agreements at issue in this case, and under the "private attorney general" doctrine, Code Civ. Proc. § 1021.5.

2. Plaintiffs seek a reasonable award of fees representing 26.4% of the total monetary relief comprising $10,000,000 in cash and an estimated $2,500,000 in relief from disputed debts to defendants (value of injunctive relief notwithstanding), or 33% of the $10,000,000 cash fund obtained for the class. This reflects a multiplier of less than 2.0. The fees sought are fair, reasonable, and fully consistent with awards granted in similar cases and the Court's Preliminary Approval Order.

3. Plaintiffs are entitled to reimbursement of their ordinary litigation expenses. These expenses were reasonably and necessarily incurred in the prosecution of this action. They are also materially less than the estimated costs presented for preliminary approval, resulting in additional funds available for the class.

4. The Court's Preliminary Approval Order authorized CPT Group, Inc. ("CPT") to act as settlement administrator and to mail notice to the class. CPT's flat fee bid for notice and

settlement administration is reasonable and appropriate.

4. The named Plaintiffs should recover service awards of $10,000 each, equal to 0.1% of the cash fund, to compensate for their time and service on behalf of the class and their participation in this lawsuit. The named plaintiffs also undertook personal risk in pursuing this action when Defendants had threatened them with collections and adverse credit reporting over the move-out charges in dispute in this action.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the accompanying Compendium of Declarations, the records and files herein, and such other matters as the Court may consider at the hearing.

Dated: October 16, 2023

Respectfully submitted,

By: s/ Damion Robinson
Damion D. D. Robinson

Diamond McCarthy LLP

Attorneys for Plaintiffs Xin Chen and Brian Chiang and the Class and Subclasses

By: s/ Jimmie Davis Parker
Jimmie Davis Parker

Law Office of Jimmie Davis Parker, APC

Attorneys for Plaintiff Kierney Waldron and the Class and Subclasses

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Rules

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After over five years of hard-fought litigation resulting in an unqualified victory for the class, Plaintiffs seek recovery of the reasonable fees, expenses, and service awards necessary to the successful prosecution of this action. The compensation and reimbursements Plaintiffs seek are authorized by law and consistent with public policy. They are abundantly reasonable considering the long history of this case, the stellar results obtained, and the risk that Plaintiffs and counsel undertook in pursuing this case for more than five years against well-funded and well-represented defendants. Plaintiffs' counsel invested not only thousands of hours of time, but also over $120,000 in costs on a pure contingency basis. The requested awards are consistent with (and in some cases lower than) the amounts the Court preliminarily approved.

This case is on the cutting edge of landlord-tenant litigation in California. It is among the largest, if not the largest, settlement in a case of this type in history. Plaintiffs recovered over $12.5 million on behalf of over 33,000 California tenants whose security deposits were illegally withheld by Defendants GHP Management Corporation, et al. ("Defendants"). The $10 million cash portion of the settlement reflects *more than 135% of actual damages*. The settlement was only possible through the determined efforts of Plaintiffs and their counsel, including extensive investigation and discovery, comprehensive expert analysis, a successful motion for certification, and three years of negotiations.

Consistent with settled law, counsel should receive a fully compensatory fee. Counsel seeks a standard "common fund" award of 26.4% of the total monetary recovery or 33% of the cash portion of the settlement. Using a lodestar cross-check, this equates to a multiplier of only 1.975. This is at the low end of the range of multipliers routinely approved by California courts. It is fully justified by the novelty and complexity of this case, the high level of success achieved, and the contingent nature of representation.

Plaintiffs and counsel are also entitled to reimbursement of the costs they necessarily advanced for the benefit of the class. In common-fund cases, counsel is entitled to recover ordinary litigation costs, such as consultants and experts, necessary to generate the common

fund. The amount is less than that set aside the Court preliminarily approved. It is conservative considering the difficulties and complexities faced by Plaintiffs in this long-running dispute.

Finally, the class Plaintiffs should receive service awards for their work on behalf of the class. They provided meaningful assistance in developing this case, responding to substantial discovery, and engaging in settlement discussion. They remained involved in this case for over five years. Awards of $10,000 each, reflecting 0.1% of the total cash fund, are modest and consistent with awards in similar cases.

Because the fees, expenses, and service awards are authorized by law, reasonable, and appropriate, the Court should approve them.

II. BACKGROUND

A. Background of this Case

This is a certified class action on behalf of over 33,000 former tenants of Defendants. Plaintiffs allege that Defendants systematically violated Civil Code § 1950.5 and tenants' leases by withholding repair and cleaning charges from their security deposits without providing mandatory disclosures required by law. Plaintiffs' primary theory was that Defendants' failure to provide the disclosures required a 100% return of the deposits withheld, and that the bad-faith failure to comply with the statute subjected Defendants to double damages. *See* Code Civ. Proc. § 1950.5(*l*); *Granberry v. Islay Investments* (1995) 9 Cal.4th 738.

B. The Pleadings

Plaintiff Xin Chen and Brian Chiang filed their operative First Amended Complaint on January 31, 2019. On February 7, 2019, Plaintiff Kierney Waldron filed the related action, No. 19STCV03883. The two actions were jointly and professionally prosecuted by respective counsel and are consolidated. Decl. of Damion Robinson ("Robinson Decl.") ¶ 3.

Defendants filed Demurrers and Motions to Strike, which the Court denied. *Id.* ¶ 4.

After certification, Defendants moved for leave to file a class Cross-Complaint against 4,700 class members. The Court denied Defendants' Motion and Defendants appealed. *Id.*

C. Plaintiffs' Investigation and Discovery Efforts

Plaintiffs engaged in significant formal and informal discovery. They obtained an initial

sampling of complete "move-out files" before early mediation, and ultimately obtained approximately 500 files through discovery. Counsel and a research assistant manually reviewed all the files for compliance with section 1950.5(g) and suspicious entries. *Id.* ¶¶ 6-9.

After further discovery and an IDC, Plaintiffs also conducted an on-site inspection of files at two complexes as well as obtaining a sampling of 50 sets of "proof of payment" records to assess whether the charges claimed by Defendants were actually incurred. Plaintiffs' counsel worked with an expert statistician to analyze the 500-file sampling to support class certification, revealing 75% non-compliance with the disclosure requirements. *Id.* ¶¶ 8, 10-12.

Plaintiffs also served thousands of document requests and interrogatories to the two-dozen Defendants. Through written discovery, in addition to the file sampling, Plaintiffs obtained (a) the named Plaintiffs' complete tenant files; (b) hundreds of pages of operating procedures; (c) forms of tenant disclosures and leases; (d) training materials; and (e) billing documents from two of Defendants' primary vendors; and (e) statistical information about the class size and deposit withholdings. All told, Plaintiffs obtained over 13,000 pages of documents from Defendants and third parties. *Id.* ¶¶ 13-14.

In January 2020, the Court authorized a "*Belaire* Notice" to the approximately 500 former tenants. After receiving contact information, counsel contacted each of them and interviewed those willing to speak. Through this effort, Plaintiffs secured 16 declarations of class members in support of certification. *Id.* ¶ 16.

Plaintiffs also deposed four Persons Most Qualified of Defendants as well as two of Defendants' main vendors. Defendants took the depositions the named Plaintiffs as well as several class members.[1] *Id.* ¶ 17.

This discovery was critical both to class certification and to the settlement. It established Defendants' overwhelming non-compliance with the statutory requirements and led to strong evidence of bad faith. *See* Decl. of Richard Scott Lysle ("Lysle Decl.") ¶¶ 9-13.

[1] Discovery necessitated regular Court intervention, including multiple IDCs. Robinson Decl. ¶ 18.

D. Class Certification

Plaintiffs filed comprehensive class certification briefing on April 26, 2021. The Court granted certification on August 4, 2021. Robinson Decl. ¶¶ 20-22 & Ex. 1.

E. Settlement Discussions

The parties worked through two mediators over the course of approximately three years to reach the final settlement. They held an initial mediation in July 2019 with the Honorable Richard A. Stone (Ret.) of Signature Resolutions. *Id.* ¶¶ 23-24. The first mediation was unsuccessful. Shortly before Plaintiffs moved for certification, they held another session with the Honorable Dickran M. Tevrizian (Ret.) of JAMS in March 2021. While they were unable to reach agreement, Judge Tevrizian stayed in contact with counsel for several months and negotiations continued through and after certification. *Id.* ¶ 25.

After the Court granted certification, Defendants made Code of Civil Procedure § 998 offers to settle the entire case for $6,000,000. Plaintiffs disputed the validity of the offers. They proposed a settlement bracket through Judge Tevrizian. *Id.* ¶ 26.

Defendants responded in early December by proposing a last, best, and final settlement offer of $10,000,000 cash. With Judge Tevrizian's encouragement, Plaintiffs accepted. *Id.* Counsel for all parties then spent several months negotiating a detailed term-sheet and long-form settlement documents. *Id.* ¶¶ 27-29 & Ex. 2.

F. The Parties' Comprehensive Data Analysis

Plaintiffs moved for preliminary approval of the prior settlement on June 1, 2022. Days before the hearing, on July 15, Defendants reported that the class composition and damages data on which the settlement was based was potentially materially inaccurate due to the way in which Defendants had collected it. Plaintiffs withdrew from the settlement, served discovery relating to the class and damages data, and sought appointment of a referee. *Id.* ¶¶ 30-31.

The parties ultimately agreed to have two teams of independent experts analyze Defendant's tenant accounting data to verify class composition and damages. Defendants retained the accounting firm of Green Hasson & Janks ("GHJ") and Plaintiffs engaged three database (Microsoft .SQL) experts, led by Larry Berliner of Standpoint IT. *Id.* ¶¶ 31-32; *see*

also Berliner Decl. ¶ 5. The data analysis took several months and multiple refinements. Ultimately, all parties' experts concluded that the final class list and damages figures were sufficiently reliable to support the settlement. Robinson Decl. ¶¶ 33-35; Berliner Decl. ¶¶ 7-14.

G. Preliminary Approval

After receiving initial feedback from the experts, counsel resumed settlement discussions in March 2023. Although the data analysis suggested that class damages were slightly less than originally estimated, the parties were able to maintain the material terms of the original settlement, including Defendants' payment of $10,000,000 in cash and an estimated $2,500,000 in debt relief. Robinson Decl. ¶ 36 & Ex. 4.

Plaintiffs moved for preliminary approval of the modified settlement on June 30, 2023. The Court granted approval on September 1, 2023 after a series of revisions to the Settlement Agreement and Class Notice. *See id.* ¶¶ 38-39 & Exs. 5, 6. The Class Administrator then gave notice to the class by mail, email, and publication in the L.A. Times. *Id.* ¶¶ 40-44; *see generally* Decl. of Irvin Garcia.

III. ARGUMENT

A. Counsel's Request for a 33% Fee Based on the Cash Fund Is Reasonable.

The Court has discretion in awarding fees. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 25. Because an "experienced trial judge is the best judge of the value of professional services rendered in his court," the award is presumed reasonable. *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556 (citation omitted). "A trial judge's determination of a reasonable amount of attorney fees will not be disturbed on appeal unless … it is clearly wrong." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255, overruled on other grounds in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260.

The "ultimate goal" is to set a reasonable fee "to compensate counsel for their efforts, irrespective of the method of calculation." *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270 (quoting *Brytus v. Spang & Co.* (3d. Cir. 2000) 203 F.3d 238, 247). The California Supreme Court has "reiterated" that "fee awards should be fully compensatory." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.

The parties' Settlement Agreement provides for a 33% fee, subject to Court approval. Robinson Decl., Ex. 4, p. 11 § 9.3.2; *see also* Cal. R. Ct., rule 3.769(b) (requiring presentation and approval of agreed fee award). This fee is reasonable and consistent with established law.

1. The Fee Is Reasonable on a Common-Fund Basis.

Under the "common fund" doctrine, "a lawyer who recovers a common fund for the benefit of persons other than … his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (citation omitted). This doctrine rests on equitable principles:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.

Id. (citation omitted); *see also Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26 (noting that common-fund award "assures that all those benefited by the litigation pay their fair share of obtaining the recovery"). The common-fund exception to the American rule, "has become as well established as the rule itself." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35.

The standard award in common-fund cases is a percentage of the fund, subject to a lodestar crosscheck in the Court's discretion. *See Lealao*, *supra*, at 26-27, 40 (noting "ground swell of support" for the percentage method); *Blum v. Stenson* (1984) 465 U.S. 886, 900 n.16 ("a reasonable fee is based on a percentage of the fund"); *In re Omnivison Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1046 ("use of the percentage method in common fund cases appears to be dominant") (collecting cases).[2] As a general rule, "attorneys' fees awarded under the common fund doctrine are based on a 'percentage-of-the-benefit' analysis." *Apple Computer*, *supra*, 126 Cal.App.4th at 1270 (citation omitted).

As the California Supreme Court held in the leading common-fund case in California:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the

[2] "California courts may look to federal authority for guidance on matters involving class action procedures." *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 656 n.7.

> benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us that the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Int'l (2016) 1 Cal.5th 480, 503 (internal citations omitted). Courts have long recognized the advantages of the common-fund method. *Lealao*, *supra*, at 27. It "more closely aligns the interests of the counsel and the class, *i.e.*, class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner." *Lopez v. Youngblood* (E.D. Cal. Sept. 2, 2011) 2011 WL 10483569, at *3. It also more closely approximates the fees that contingency counsel would negotiate in non-class cases. *See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 ("the object is to set it at a level that will approximate what the market would set"); *Lealao*, *supra*, at 48-49.

The requested fee is only 26.4% of the total monetary recovery to the class, or 33% of the cash portion of the settlement. Not only is this well within the range of standard common-fund awards, but it is fully justified by the extraordinary recovery of over 135% of class damages and the thorough and diligent work that it took to achieve this result.

Traditionally, awards in common-fund cases are between 20 and 50%. *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 297. "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (citation omitted); *see also Marshall v. Northrop Grumman Corp.* (C.D. Cal. Sept. 18, 2020) 2020 WL 5668935, at *8 ("Nationally, the average percentage of the fund award in class actions is approximately one-third"). This is particularly true where the common fund is at or below $10,000,000. *See Taylor v. Bd. of Trustees of Leland Stanford Jr. Univ.* (N.D. Cal. Apr. 18, 2022) 2022 WL 1137083, at *5 ("reasonable fees often constitute a higher percentage of the common fund when the fund is worth less than ten million dollars"); *Van Vranken*, *supra*, at

297-98. Courts have routinely awarded similar fees in similar cases. *See*, *e.g.*, *Laffitte*, *supra*, 1 Cal.5th 480 (one-third fee on $19 million); *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (one-third fee on $12 million derivative settlement); *Morris v. Lifescan, Inc.* (9th Cir. 2003) 54 F. App'x 663, 664 (33% of $14.8 million); *Marshall*, *supra*, at *8 (one-third fee on $12,375,000) (collecting cases); *Stanley Donen Films, Inc. v. Twentieth Century Fox Film Corp.* (L.A. Super. Ct. Apr. 9, 2018) 2018 WL 2881500 (Berle, J.) (33.3% fee on $12.6 million).

This case is far outside of the zone of "average" class actions because the settlement reflects over 100% of damages. Nonetheless, counsel seeks a fee that is squarely within the average range even without considering the $2.5 million in debt relief or forward-looking relief obtained. *Cf. Collins v. Cty. of L.A.* (2012) 205 Cal.App.4th 140, 158 (affirming award of 40% fee on cash portion of recovery and 20% on debt relief). The large settlement ensures that class members will almost certainly recover over 100% of damages even after deducting fees and costs. The circumstances warrant a fee at the high end of the range. Plaintiff's request for a fee squarely in the middle is reasonable and prudent.

2. Fees Are Also Authorized by Contract and Under the Private Attorney General Doctrine.

The tenant leases at issue also provide for fees to the prevailing party. *See* Robinson Decl., Ex. 13 ("[i]f any action, proceeding or arbitration is brought by either party to enforce any part of this agreement, the prevailing party shall recover … reasonable attorney's fees and costs"). Plaintiffs brought a cause of action for breach of lease based on the same factual predicate as their other claims. *See* FAC ¶¶ 112-119. They are entitled to recover fees by contract. *See* Civ. Code § 1717(a).

The "private attorney general" doctrine also supports the award. *See* Code Civ. Proc. § 1021.5 (permitting fees in an action which "resulted in the enforcement of an important right affecting the public interest" and conferred a "significant benefit" on "a large class"). The Supreme Court has held that it is public policy to award "substantial attorney fees" for successful litigants who have enforced statutory mandates affecting large numbers of people:

> [T]he private attorney general doctrine "rests upon the recognition that

> privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." Thus, the fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing ***substantial attorney fees*** to successful litigants in such cases.

Maria P. v. Riles (1987) 43 Cal.3d 1281, 1288-89 (emphasis added; citation omitted).

Plaintiffs brought this action to enforce a remedial, public-interest statute designed to curb the very practice they challenged – *i.e.*, the landlords routinely retaining tenants' deposits without basis. *See Granberry v. Islay Investments*, *supra*, 9 Cal.4th 738, 745-46 ("the security deposit in actuality has evolved into a bonus to be kept by the landlord upon termination of the lease agreement regardless of the damages actually sustained") (citation omitted). The Legislature recognized that former tenants are "severely inhibited" from pursuing individual claims. *Id.* Class litigation is an essential tool to protect consumers from this type of exploitation. *See Discover Bank v. Superior Court* (2005) 36 Cal. 4th 148, 156-57; *e.g.*, *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 445-46 ("the class action is often the only effective way to halt and redress such exploitation") (citation omitted).

Plaintiffs secured a substantial benefit to a large class. They obtained more than a 100% refund for 33,000-plus former tenants. They also obtained forward-looking relief that will protect current and future tenants of Defendants more than 15,000 residential units.[3]

3. The Fees Are Reasonable Under a Lodestar Crosscheck.

Although a lodestar crosscheck is not required, the Court has discretion to perform one. *Laffitte*, *supra*, 1 Cal.5th 480, 504-05. Here, a lodestar crosscheck not only fails to raise any concerns with the requested fee but further confirms the reasonableness of that fee.

The purpose of a crosscheck is to confirm that the percentage award is not totally out of line with market compensation. *Id.* at 504. Courts will reexamine the percentage award only if it "produces an imputed multiplier *far outside* the normal range" after considering the enhancement factors. *Id.* (emphasis added). If the enhanced lodestar is within the range of

[3] There is also strong evidence that Defendants significantly changed their policies in direct response to this action, conferring a substantial benefit even prior to the settlement.

reason, the percentage fee is deemed appropriate. *Id.*

The lodestar crosscheck yields a multiplier of less than 2.0. This is not "far outside" the normal range. It is at the low end of that range.

a. Counsel Spent a Reasonable Number of Hours on this Hard-Fought, Five-Year Litigation.

The Court is "not [] required to closely scrutinize each claimed attorney-hour" in common-fund cases. *Laffitte*, *supra*, at 505 (quoting 5 Newberg on Class Actions § 15:86.). It merely uses counsel's hours to answer the "general question of whether the fee award appropriately reflects the degree of time and effort expended." *Id.*

Declarations of counsel are *prima facie* evidence of reasonable and necessary hours worked. *Hadley v. Krepel* (1985) 167 Cal. App. 3d 677, 683-84 ("conclusory and unsubstantiated objections [are] simply inadequate"). Detailed time records are not required. *Wershba*, *supra*, 91 Cal.App.4th 224, 254-55; *see also Steiny & Co. v. Cal. Elec. Supply Co.* (2000) 79 Cal.App.4th 285, 293. Counsel's declarations are "entitled to credence in the absence of a clear indication the records are erroneous." *Horsford v. Bd. of Tr'ees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 396.

The attorneys representing Plaintiffs and the class submit detailed summaries reflecting that they spent nearly 2,600 hours prosecuting this case.[4] This is reasonable in a case spanning over five years, involving over 33,000 class members and a $12.5 million settlement. The case was complex, involved a host of novel issues, and was vigorously defended. Plaintiffs were required to secure evidence of a common enterprise and practice across the two dozen named defendants. The parties engaged in extensive motion practice, thorough investigation and discovery, multiple IDCs, and a comprehensive analysis of accounting data. Counsel's hours reflect efficiency in the circumstances.

[4] *See* Decl. of Jimmie Davis Parker ("Parker Decl.") Ex. B; Lysle Decl., Ex. B; Decl. of David W. Affeld, Ex. 2; Decl. of Brian R. England, Ex. 2; Decl. of David Markevitch, Ex. 2; Decl. of Edward L. Wei, Ex. 1; Decl of Damion Robinson, Ex. 11.

b. Counsel's Hourly Rates Are Within the Reasonable Range.

The Court has "wide latitude" in determining reasonable rates. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095 (citation omitted). It must determine whether the rates are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work" in the local market. *Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783. This includes consideration of counsel's "experience, skill, and reputation," and may be based on the Court's own knowledge of the legal market. *Heritage Pac. Financial v. Monroy* (2013) 215 Cal.App.4th 972, 1009. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community … are satisfactory evidence of the prevailing market rate." *Id.* (citation omitted).

Counsel and their expert submit that the following hourly rates are reasonable based on counsel's experience and qualifications detailed in the accompanying declarations:

Name	**Rates**					
	2018	**2019**	**2020**	**2021**	**2022**	**2023**
David W. Affeld: 37-year attorney and founding partner	$900	$900	$900	$900	$900	$900
Richard Scott Lysle: 51-year attorney and solo practitioner	$550	$550	$550	$550	$600	$600
Brian R. England: 23-year attorney and Senior Counsel				$800	$800	
Damion D. D. Robinson: 16-year attorney and partner	$550	$550	$595	$650	$700	$750
Jimmie Davis Parker: 16-year attorney, solo practitioner, and Of Counsel	$550	$550	$595	$650	$700	$700
David Markevitch: 16-year attorney and Special Counsel				$650	$700	
Edward Wei: 16-year attorney	$550	$550	$595	$595	$650	$700

These rates are well within the Los Angeles market as confirmed by the declarations of counsel[5] and other attorneys. *See* Decls. of Scott Baker and Elliott Tiomkin. They are also confirmed by

[5] See Parker Decl. ¶¶ 36-; Lysle Decl. ¶¶ 2-6, 15; Decl. of David W. Affeld, ¶¶ 2-11 & Ex. 1; Decl. of Brian R. England ¶¶ 2-6 & Ex. 1; Decl. of David Markevitch ¶¶ 2-11 & Ex. 1; Decl. of Edward L. Wei ¶¶ 2-6; Robinson Decl. ¶¶ 59-63, 69 & Ex. 9.

publicly available benchmarking tools and awards in other cases. Robinson Decl. ¶ 64 & Ex. 10. Finally, Plaintiffs submit the declaration of one of the foremost fee experts and auditors in California, confirming based on empirical data that the submitted rates are squarely in line with the market range. *See generally* Decl. of Grant Stiefel.

b. A 1.975 Multiplier Is More than Reasonable.

Counsel seeks a fee enhancement at the low end of the range routinely awarded. Fee enhancements or "[m]ultipliers can range from 2 to 4 and even higher." *Wershba*, *supra*, 91 Cal.App.4th 224, 255 (citation omitted); *see also Natural Gas Anti-Trust Cases* (San Diego Super. Ct. Dec. 11, 2006) 2006 WL 5377849, at *4 ("numerous cases have applied multipliers of between 4 and 12"). Two- to three-times multipliers are routine. *See*, *e.g. Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (finding "nothing wrong" with 2.52 multiplier); *Stanley Donen Films*, *supra*, 2018 WL 2881500 (approving 2.74 multiplier).

Because the "unadorned lodestar" only reflects the general hourly rate "for a *fee-bearing* case" it is not fully compensatory unless it is adjusted to reflect the specific circumstances. *Ketchum*, *supra*, 24 Cal.4th at 1138 (emphasis in original). Courts consider various factors, including "the novelty and difficulty" of the case, its "contingent nature," and the degree of success. *Serrano*, *supra*, 20 Cal.3d 25, 49; *see also Chavez*, *supra*, 162 Cal.App.4th 43, 61. These factors decisively support the modest multiplier of less than 2.0.

First, the level of success achieved is often "[t]he most important factor." *Guillory v. Hill* (2019) 36 Cal.App.5th 802, 805; *see also Chavez*, *supra*. It is beyond dispute that this case was a resounding success. The settlement reflects over 135% of damages. This is unprecedented in landlord-tenant litigation. It appears to be one of the largest (if not the largest) settlements in a case of this type. This weighs strongly in favor of a substantial multiplier.

Second, this case was on the cutting-edge of landlord-tenant litigation and was aggressively defended. When Plaintiffs filed suit, the only published decision on point was *Granberry v. Islay Investments*, *supra*, 9 Cal.4th 738, decided almost 30 years ago. *Granberry* left open many questions about how to properly manage security-deposit litigation on a class basis. The only recent case on point, *Peviani v. Arbors at California Oaks* (2021) 62

Cal.App.5th 874, was decided shortly before Plaintiffs sought certification. Defendants aggressively defended this case both on the merits and its viability as a class action. It was only through Plaintiffs' dogged efforts that they were able to achieve the large settlement.

Finally, Plaintiffs' counsel pursued this challenging case for over five years on a pure contingency. They not only invested thousands of hours of attorney time, but over $120,000 in out-of-pocket costs. Counsel is entitled to a contingency enhancement by default. *Ketchum*, *supra*, 24 Cal.4th at 1132, 1136-39. It is an abuse of discretion not to consider a contingency multiplier. *Green v. Dillingham* Constr., N.A., Inc. (2002) 101 Cal.App.4th 418, 428; *Horsford*, *supra*, 132 Cal.App.4th 359, 399-400. As the California Supreme Court and the Court of Appeal have repeatedly recognized, a bare lodestar fee does not fairly compensate counsel for the risk and delay in being paid inherent in contingent litigation. *Ketchum*, *supra*, at 1132-33 (citation omitted); *Horsford*, *supra*. Combined with the other factors, the extraordinary risk that counsel undertook for five years supports the requested award.

C. Counsel Should Recover Reasonable and Necessary Costs Incurred for the Benefit of the Class.

In common-fund cases, counsel is entitled to recover its investment of costs for the benefit of the class. This includes "all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement." *Dowdell v. City of Apopka, Fla.* (11th Cir. 1983) 698 F.2d 1181, 1192; *see also Stanton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977. This has long been the rule in California. *See*, *e.g.*, *Mallon v. Cty. of Long Beach* (1961) 188 Cal.App.2d 761, 768 (finding it "established that the litigant is entitled to be compensated for the expense he has incurred in the prosecution of such an action"); *Solorza v. Park Water Co.* (1949) 94 Cal.App.2d 818, 821. In common-fund cases, counsel is reimbursed for expenses "that would normally be charged to a fee-paying client." 5 Newberg & Rubenstein on Class Actions (6th Ed.) § 16:10; *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (statutory fee-shifting case). "There is no doubt that an attorney who has created a common fund … is entitled to reimbursement of reasonable litigation expenses from that fund." *West v. Circle K Stores* (E.D. Cal. Oct. 20, 2006) 2006 WL 8458679, at *7 (citation omitted).

Counsel respectfully requests reimbursement of the $123,487.75 advanced on behalf of Plaintiffs and the class. *See* Robinson Decl., Ex. 12; Affeld Decl., Ex. 4; Lysle Decl., Ex. A; Parker Decl., Ex. A. This is substantially less than the $200,000 allowance submitted at preliminary approval. It reflects a reasonable outlay of costs in a case of this length and magnitude. The primary expenses involved, *i.e.*, depositions and experts, were essential to Plaintiffs' successful motion for class certification and the ultimate settlement. The case initially settled shortly after the ***fourth*** deposition of Defendants was suspended due to damaging testimony secured by Plaintiffs' counsel. The lions' share of the expert fees was incurred in performing the data analysis described above, which was essential to verify the accuracy of class data for settlement purposes, consistent with counsel's fiduciary duties to the class. In a case spanning five years, these costs are reasonable and appropriate.

D. CPT's Fees Should Be Approved.

The fees of the class administrator, CPT, are also reasonable and should be approved. Plaintiff's counsel obtained bids from two prospective class administrators. Not only is CPT one of the largest and best-known settlement administrators in California, but its flat fee bid was competitive with the other vendor's non-guaranteed bid. Robinson Decl. ¶ 41. The administrative costs of $160,000 are less than the $175,000 set aside in the settlement, resulting in additional funds being available for the class.

E. The Incentive Awards Are Reasonable.

Finally, service awards of $10,000 per class representative are warranted. This reflects only 0.1% of the total cash recovery for each Plaintiff. Service awards are an important incentive for class representatives to undertake the burden, time commitment, and risk of class litigation. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1394-95 (citation omitted). Awards of $10,000 are routine in modern class litigation. *See*, *e.g.*, *id.* ($10,000 for each representative); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) 2013 WL 5700403, at *6 ($10,000 award on $1.7 million settlement); *Stanley Donen Films*, *supra*, 2018 WL 2881500 ($10,000 award on $12.5 million settlement).

The awards sought here are justified based on the work the named Plaintiffs performed

and the risk they undertook. The named Plaintiffs remained engaged in this case for over five years and participated in significant written and deposition discovery and seemingly never-ending settlement discussions. *See* Robinson Decl. ¶¶ 70-71; *see generally* Decls. of Chen, Chiang, and Waldron. They also took on the risk of serving as representatives when Defendants had threatened collections and negative credit reporting over the disputed charges at issue. *Id.*

IV. CONCLUSION

For the foregoing reasons, the Court should approve the requested attorney fees, expense reimbursement, and service awards.

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Respectfully submitted,

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