[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:
All Class Actions

CASE NO. 19-md-02913-WHO

CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

MOTION HEARING

DATE: August 9, 2023
TIME: 2:00pm
LOCATION: Courtroom 2, 17th Fl.

HON. WILLIAM H. ORRICK III

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NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

PLEASE TAKE NOTICE THAT on August 9, 2023, at 2:00 p.m., before the Honorable William H. Orrick III of the United States District Court for the Northern District of California, San Francisco Division, located in Courtroom 2, 17th Floor at 450 Golden Gate Avenue, San Francisco, CA 94102, Class Counsel will and hereby do move for entry of an order:[1]

(1) awarding 30% of the JLI Settlement Fund, or $76,500,000, in attorneys' fees plus a proportional share of interest;

(2) awarding up to $4,100,000 in out-of-pocket expenses; and

(3) awarding service awards ranging from $5,000 to $33,000 per plaintiff and totaling $774,600.

Class Counsel's Motion is based on Federal Rule of Civil Procedure 23, the Northern District's Procedural Guidance for Class Action Settlements, the supporting Memorandum of Points and Authorities, the Declaration of Dena Sharp, the reports of Common Benefit Special Master Hon. (Ret.) Gail A. Andler (attached as Exhibit 1 to the Sharp Declaration), the Declaration of Professor Robert Klonoff Relating to Attorneys' Fees and Service Awards ("Klonoff Decl.") (attached as Exhibit 2 to the Sharp Declaration), and the pleadings and papers on file in MDL No. 2913, and any other matter this Court may take notice of.

A copy of Class Counsel's [Proposed] Order Granting Motion for Attorneys' Fees, Expenses, and Service Awards is submitted along with this motion.

[1] Capitalized terms in this Motion incorporate the defined terms from the Class Settlement Agreement.

MEMORANDUM OF POINTS AND AUTHORITIES[2]

I. INTRODUCTION

Before the Court is a Settlement that will create a non-reversionary fund of $255 million for the Settlement Class.[3] The Settlement was reached after years of intense and complex litigation, and mediation overseen by Special Settlement Master Thomas J. Perrelli. This Court closely oversaw every step of the litigation, including ruling on Defendants' motions to dismiss, conducting monthly case management conferences, enlisting the assistance of Judge Corley on discovery matters, certifying two nationwide and two California classes, denying Defendants' motions for summary judgment and *Daubert* motions, ruling on critical *in limine* challenges, deposition designations and other pretrial matters, and ultimately presiding over a jury trial as to Altria. When this Settlement was reached, the parties were preparing to try the first bellwether case, and Class Plaintiffs were defending this Court's class certification order on appeal.

The Settlement represents a favorable recovery for the Class by any measure. This case was not a garden-variety consumer class action, particularly given the challenges historically associated with class certification in tobacco-related litigation, which is notoriously expensive and protracted. Uncertainty about how the FDA would deal with JUUL also loomed large; the FDA's denial of JUUL's premarket application in the summer of 2022 portended the serious possibility of a JLI bankruptcy filing and attendant standstill to MDL proceedings. It was against those headwinds that Co-Lead Counsel negotiated and reached the Settlement. Co-Lead Counsel were able to maximize leverage in those negotiations thanks to the efficient coordination and

[2] The relevant factual and procedural background is set forth in the concurrently filed Motion for Final Approval of Class Action Settlement. Pursuant to the Northern District's Procedural Guidelines for Class Action Settlements, this "motion for attorneys' fees [] refer[s] to the history and facts set out in the motion for final approval." Additional factual and procedural history can be found in the Sharp Declaration.

[3] The Settlement at issue in this motion is between the Class and JUUL Labs, Inc. ("JLI"), on behalf of JLI and others, including co-defendants James Monsees, Adam Bowen, Riaz Valani, Nicholas Pritzker, and Hoyoung Huh. In separate agreements, JLI and the Released Parties have also resolved claims brought by individuals who asserted personal injury claims, and by school district, local governments, and Native American tribes that asserted public nuisance claims. Plaintiffs in the MDL subsequently reached a settlement with the Altria Defendants. The class settlement with Altria will be addressed in later filings.

collaborative approach across the various plaintiff groups in the MDL.

For the risks undertaken, the resources invested, the novelty and complexity of the issues, and the result achieved, Class Counsel seek attorneys' fees of 30% of the Settlement Fund (or $76.5 million), plus proportional interest accrued from the Settlement Fund. The requested fee falls within the range awarded in the Ninth Circuit for cases involving similar risks and results, and the circumstances here warrant an upward adjustment from the 25% "benchmark." As explained in this brief and the accompanying declaration of Professor Robert Klonoff, the $255 million fund represents an exceptional result that reflects the skill, experience, and creativity that counsel brought to this case. The Court also has discretion to decide whether to conduct a high-level "cross-check" of the requested fee by reference to counsel's lodestar. While the hybrid nature of this MDL presents an inapt context in which to apply a lodestar cross-check, any one of the various available metrics supports the requested fees. The expenses for which counsel seek reimbursement are reasonable as well, as they were necessarily incurred. The requested service awards for the class representatives are also reasonable and calibrated to each individual's involvement in the case. In the end, the Court is thoroughly familiar with the effort involved in the litigation and substantial risks the Class faced, and is best positioned to evaluate the proposed settlement, as well as the requested fee and expense awards.

II. SUMMARY OF REQUESTED FEES, EXPENSES, AND SERVICE AWARDS.

Class Counsel request that the Court authorize the following payments from the $255 million Settlement Fund:

- Attorneys' fees in the amount of 30% of the Settlement Fund ($76,500,000.00), plus a proportionate amount of accrued interest
- Expenses of up to $4,100,000 (which is $1,900,000 less than the amount class counsel reserved the right to seek in the notice to the class). The final amount of expenses to be requested from the class fund will be determined in connection with the forthcoming motion to allocate the common benefit expense fund, as discussed further below.

- Service awards to each of the proposed Settlement Class Representatives, ranging from $5,000 to $33,000 per plaintiff and totaling $774,600.00.

Class Counsel seeks these awards solely from the proceeds of the JLI Settlement. While Class Counsel also anticipate seeking awards from the Altria settlement that trails the JLI settlement, those requests will be made by way of separate motions seeking approval of the Altria settlement and for the payment of attorneys' fees and expenses from the Altria settlement.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

In the Ninth Circuit, there are two ways of assessing requests for attorneys' fees in common fund cases: the percentage-of-the-recovery method (where the fee is evaluated as a percentage of the common fund) and the lodestar method (where the fee is evaluated by reference to counsel's lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994) ("*WPPSS*")). District courts have discretion concerning which method to apply in a particular case. *Apple Device*, 50 F.4th at 784. In this case, the more appropriate and reliable method for evaluating the requested fee is the percentage-of-the recovery method. Although the Ninth Circuit has established a 25% "benchmark" for fee awards, the factors courts should consider when deciding whether to adjust that percentage upwards or downwards strongly favor a 30% award in this case.

While the Court may conduct a lodestar cross-check to protect against an excessive fee award, it is not required to do so. In this setting, because of the common liability issues and intertwined claims asserted across the plaintiff groups in this MDL, the collaborative efforts undertaken by plaintiffs' counsel representing various constituencies in the MDL, and the resulting complexities associated with isolating the lodestar that should be considered as benefitting the class recovery (and to what degree), a lodestar cross-check would not be particularly informative in any event. But, as explained below, there are multiple ways to evaluate the lodestar in this case, each of which confirms that the proposed fee award is not excessive and would not result in a windfall to counsel.

A. The Court Should Employ the Percentage-of-the-Recovery Method

The Ninth Circuit has frequently held that "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Apple Device*, 50 F.4th at 78. Consistent with that discretion, the Ninth Circuit has not prescribed a rigid set of factors courts should consider when deciding which method is most appropriate in a particular case. To the contrary, "no presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other." *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (quoting *WPPSS*, 19 F.3d at 1296). The guidance the Ninth Circuit has provided, as well as the unique circumstances of this case, weigh in favor of using the percentage-of-recovery method to determine the appropriate fee award.

Where "the benefit to the class is easily quantified," the Ninth Circuit has "allowed courts to award attorneys a percentage of the common fund in lieu of the more time-consuming task of calculating the lodestar." *Bluetooth*, 654 F.3d 942; *c.f. Hyundai*, 926 F.3d at 570 ("When evaluating the settlement is difficult or impossible, the lodestar method may be more convenient."). Here, the benefit to the class of a single lump-sum common fund payment by JLI is easily quantified and permits a straightforward application of the percentage method. Also counseling for application of the percentage method in this case is the nature of this litigation and how it was prosecuted. In this MDL, lawyers representing different types of plaintiffs (class action, personal injury, and government entity) worked collaboratively to advance the common interests of all plaintiffs. Key experts and fact witnesses, for example, provided opinions and testimony that supported each set of plaintiffs' claims against JLI and the Released Parties, but to varying degrees and on differing ranges of issues depending on the plaintiff. While this "rising tide" approach to the litigation on the plaintiffs' side ultimately contributed to the results achieved across the MDL, it is not conducive to attempting to parse, for example, how many of the of hours spent working with experts on their reports, defending their depositions, and preparing for and taking the fact witness deposition should be credited as common benefit time for the class

case versus the other types of cases. As a result, the lodestar method is not an informative way to calculate a reasonable fee award in this context.

B. The Requested Attorneys' Fees are Reasonable Under the Percentage-of-the-Recovery Method

In the Ninth Circuit, the starting point—or "benchmark"—for a fee award under the percentage-of-the-recovery method is 25% of the settlement fund. *Bluetooth*, 654 F.3d at 942 (citation omitted).[4] But adjustments may be warranted "when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The factors courts consider when determining whether to depart from the 25% benchmark are: "(1) the result achieved; (2) the risk involved in the litigation; (3) the skill required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases." *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *13-16 (N.D. Cal. Feb. 17, 2023) (applying the same factors).

The Ninth Circuit has made clear that when determining the appropriate percentage to apply, the size of the settlement fund is relevant, but the percentage does not necessarily decrease as the size of the settlement increases. *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir. 2020) ("we have already declined to adopt a bright-line rule requiring the use of sliding-scale fee awards for class counsel in megafund cases"); *see also In re Toyota Corp. Unintended Marketing, Sales Pracs. and Prods. Liab. Litig.*, 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) ("no rule in the Ninth Circuit that requires a court to decrease the percentage of the fee award as the size of the settlement increases") (citing *Vizcaino*, 290 F.3d at 1047). Instead, the size of the fund is simply one factor courts can look to when determining a reasonable fee. *Vizcaino*, 290 F.3d at 1047. A presumption that a certain percentage applies based

[4] When calculating the percentage, courts should use the gross settlement amount—*i.e.* including amounts that will be used to pay notice and administrative costs and litigation expenses—as the denominator. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015).

on the size of the settlement fund "flies in the face" of a court's obligation to "consider[] all the circumstances of the case and reach[] a reasonable percentage." *Id*. at 1048; *see also WPPSS*, 19 F.3d at 1298 ("courts cannot rationally apply any particular percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference to all the circumstances of the case"). As discussed below, consideration of the relevant circumstances in this case weighs in favor of an upward adjustment from the 25% benchmark and a fee award of 30% of the JLI Settlement Fund.

1. The Result Achieved

The result obtained for the Settlement Class—a settlement of $255M funded by some, but not all, of the Defendants—is exceptional and warrants an upward adjustment. *See Apple Device*, 2023 WL 2090981, at *16 (noting $310M settlement on relatively novel computer intrusion and trespass-to-chattles claims was exceptional). The settlement amount is non-reversionary, meaning that class members who submit eligible claims will receive the full benefit of the settlement (after deducting any fees, costs, and service awards the Court may award) based on their *pro rata* share of the claims submitted. Based on claims submitted as of June 15, 2023, it is likely that there will be more than one million valid claims, in which case class members on average are likely to recover over one hundred dollars each. *See Six (6) Mexican Workers*, 904 F.2d at 1310 (9th Cir. 1990) (characterizing recovery of $150-$600 per class member as "substantial success" and approving fees). This recovery, for the class as a whole and for each claimant, was anything but assured. To achieve this recovery, Class Plaintiffs overcame numerous obstacles and pursued novel theories, against a backdrop of unfavorable existing class certification caselaw and the challenges associated with seeking a full refund for youth purchasers.

In addition, at the time of Settlement, the sale of JUUL products had dropped precipitously and there was a significant possibility that JLI would go bankrupt. The Settlement thus includes protections in the event of bankruptcy or non-payment. These novel protections were the result of extensive negotiations with bankruptcy counsel for Plaintiffs and JLI, culminating in the creation of a trust structure to help ensure that the settlement proceeds would

remain available to class members. *Cf. Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (approving fee request where class counsel faced "double contingency" of prevailing on class claims and "find[ing] some way to collect"). Obtaining and securing $255 million in relief for class members in light of these circumstances is an excellent result for Settlement Class Members, who otherwise faced the real possibility of receiving nothing.

2. The Litigation Risks

The result is particularly significant given the risks posed throughout the litigation. The tobacco industry is notorious for aggressively defending itself and is willing to fight for decades if needed. *See generally United States v. Philip Morris, Inc.*, 449 F. Supp. 2d 1, 28 (D.D.C. 2006) (discussing history); *see also In re Tobacco II*, 240 Cal. App. 4th 779, 785-87 (2015) (after eighteen years of litigation, denying restitution from Philip Morris due to lack of competent economic evidence, despite tobacco company's advertising violations of UCL and FAL). Another case involving tobacco products noted that, because tobacco cases are so aggressively defended and plaintiffs' success rate is so low, the risk factor supported a 30% fee award of $123 million settlement. *Kurzweil v. Philip Morris Cos.,* 1999 WL 1076105, at *3-4 (S.D.N.Y. Nov. 30, 1999).

Throughout the course of the litigation, counsel faced significant risks and hurdles, including uncertainty in the legal landscape. When the lawsuit was initiated the regulation of e-cigarettes was unclear—an issue that has become even more pronounced with the FDA's ongoing review of e-cigarette products—and Defendants have argued that they cannot be liable under such circumstances. *See* ECF 3270 at 2-3 (rejecting challenges to expert testimony as contrary to federal regulations). In particular, Defendants argued that Plaintiffs' claims were preempted by several federal laws and regulations. *Id*. There was also uncertainty concerning the types of conduct and injuries that are actionable under RICO (an issue raised in Defendants' appeals, concerning which there is little controlling precedent), as well as whether the Court would grant class certification. At the class certification stage, Defendants agued "that no class of purchasers of nicotine or other addictive products could ever be certified" and that federal courts have consistently declined to certify such classes. *In re JUUL Labs, Inc. Mkt'g, Sales Pracs., and*

Prods. Liab. Litig., 609 F. Supp. 3d 942, 969 (N.D. Cal. 2022). The Supreme Court's recent decision in *Transunion* and the Ninth Circuit's recent ruling in *Sonner* also created uncertainty about whether Class Plaintiffs could ultimately prevail on some or all of their claims. *Id*. at 998-99. These risks go beyond the risks faced in other consumers products or class action litigations. And this case—unlike most tobacco cases—presented another substantial risk: the possibility of insolvency of the main defendant. JLI was a new company; its only source of income is the sale of products that had not yet been authorized and, at the time of Settlement, JLI's PMTA had been denied by the FDA (a decision that had been stayed pending further review) and Altria had written down the value of its investment in JLI as the litigation proceeded.

The substantial risk of non-payment presented throughout the course of the litigation weighs strongly in favor of an upward adjustment from the 25% benchmark.

3. The Skill Required and Quality of Work by Counsel

Achieving the results that are now before the Court required experience, skill, and tenacity. Over the course of the litigation, both this Court and Judge Corley frequently noted the professional and cooperative manner in which the parties have conducted themselves, and the tremendous amount of work that has gone into litigating this matter (despite much of the litigation occurring during the COVID pandemic).[5] Successful coordination among the various plaintiff groups in the litigation also posed substantial challenges and required close collaboration on the facts, the law, and case management among lawyers with practices in different areas. Plaintiffs' counsel also deployed their skills and experience to successfully pursue factual and legal issues on a wide range of topics including: the history of tobacco marketing and regulation, the

[5] *E.g.* ECF 2281 at 21 ("I mean, quite honestly, that you have this much discovery done coming up with that deadline is a model, a model MDL."); ECF 2477 at 4 ("I continue to be impressed by the ability of the lawyers to work out issues to the extent that they can, and to propose reasonable alternatives when they can't"); ECF 2539 at 7 ("Well, I continue to be impressed by the way that you're addressing and working through the issues, and so I'm -- I very much appreciate that."); ECF 2767 at 10 ("I have been super impressed in this case how hard the parties have worked and how much you have accomplished"); ECF 3430 at 10 ("there's so much work going on and I appreciate the manner and professionalism in which you're carrying it out"); ECF 3772 at 40 ("I continue to be impressed with the way that . . . you are working together to push these cases into a place where they can be resolved").

chemistry of JUUL products, the products' addictiveness and health risks, marketing and consumer psychology, corporate responsibility, personal injuries, and economic theories of injury and damages. Despite the sprawling nature of the litigation, with the Court's oversight and guidance, Plaintiffs' counsel prepared this litigation for trial and ultimately resolved the entire litigation less than four years after the MDL was formed.

Compounding the risk here was the ominous trail of failed class actions involving tobacco products. Early in the litigation, Class Counsel reviewed the certification decisions in these cases and carefully formulated a strategy designed to succeed where other cases had faltered. Class Plaintiffs, for example, focused on a price premium theory of harm and retaining experts to address classwide exposure (Prof. Chandler and Dr. Pratkanis) and the common nature of the "abuse liability" posed by JUUL products (Dr. Shihadeh). As the Court noted, Defendants' reliance on other tobacco products cases "ignor[ed] the specific facts and legal theories here that distinguish the cases [Defendants] rely on and the expert support provided by plaintiffs that was missing in those cases." *Id*. Success in a space where other cases have failed supports an upward adjustment. *See Farrell v. Bank of Am. Corp.*, 827 Fed. Appx. 628, 630 (9th Cir. 2020) ("Indeed, excepting the district court in this particular matter, no court has ever ruled for bank accountholders on the controlling legal issues.").

4. The Contingent Nature of the Fee

Counsel has litigated this case on a contingent fee basis, dedicating nearly $200 million in attorney time and many millions in expenses, the payment of which was not guaranteed (particularly in light of the risks discussed above). It is well-recognized that representation on a contingency basis weighs in favor of an upward adjustment from the 25% benchmark. *See Larsen*, 2014 WL 3404531, at *9 ("the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing for their work"). Further, for many counsel, this lawsuit has been their primary focus, requiring them to forego or limit work on other cases. *See Vizcaino*, 290 F.3d at 1050 (that litigation required counsel to "forgo significant other work" and entailed "hundreds

of thousands of dollars of expense" supported 28% fee award).

5. Awards in Similar Cases

In similar cases, courts have not hesitated to grant fee requests exceeding the 25% benchmark where, as here, the circumstances warrant it. *E.g.*, *Larsen*, 2014 WL 3404531, at *9 (citing numerous cases awarding fees of 32% or greater); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at *7-9 (N.D. Cal. Apr. 24, 2019) (30% of $8,300,000 recovery). Even for settlements in which the recovery is over $100 million—sometimes referred to as "megafund" cases—courts have "routinely awarded class counsel fees in excess of the 25% 'benchmark.'" *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *5 & n.30 (N.D. Cal. Dec. 6, 2017) ("*NCAA I*"), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) ("*NCAA II*") (collecting cases, including those awarding fees of 1/3 of the settlement fund); *see also In re Capacitors Antitrust Litig.*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (awarding 40% of final settlement, which brought fee award to 31% of all settlements).[6]

The requested 30% fee award is thus well within the range of awards in similar cases.[7]

[6] *See also Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at *3 (W.D. Wash. June 1, 2023) (awarding 29.3% fee of a $415,000,000 settlement fund); *Andrews v. Plains All American Pipe L.P.*, 2022 WL 4453864, at *2-4 (C.D. Cal. Sept. 20, 2022) (applying the percentage method and awarding 32% of a $230 common fund); *In re Lithium Ion Batteries Antitrust Litig.*, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018) (30% of $139,000,000 recovery); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 183285, at *2 (N.D. Cal. Jan. 14, 2016) (approving 30% fee award of $127.45 million settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575003 (N.D. Cal. Dec. 27, 2011) (approving 30% fee award of $405.02 million settlement); *Meijer, Inc. v. Abbott Labs*, No. C-07-05985 CW, 2011 WL 13392313, at *2 (N.D. Cal. Aug. 11, 2011) (33 1/3% of $52,000,000 recovery); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2-4 (N.D. Cal. Sept. 20, 2018) (fee award of 33.3% of $104.75 million settlement, which resulted in a 1.37 multiplier); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1115 (D. Kan. 2018), *aff'd* No. 19-3008, 2023 WL 2262878 (10th Cir. Feb. 28, 2023) (awarding a 33.33% fee award in a $1.51 billion settlement); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) ("although a one-third fee would be at the top of the range of awards in megafund cases, that figure does still fall within that range, especially in more recent cases"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) ("courts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements") (collecting cases).

[7] Some courts have also considered whether counsel's performance "generated benefits beyond

C. Although Not Necessary, a Lodestar Cross-Check Supports the Requested Attorneys' Fees

The Ninth Circuit has explained that courts may consider class counsel's lodestar to "provide[] a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. The use of the lodestar cross-check is not mandatory, and the Ninth Circuit "has consistently refused to adopt a crosscheck requirement." *Farrell*, 827 Fed. Appx. at 630; *see also Senne v. Kansas City Royals Baseball Corp.*, 2023 WL 2699972, at *18 (N.D. Cal. Mar. 29, 2023) ("a cross-check is not required so long as the court achieves a reasonable result using the method it selects"). In other words, "a cross-check is discretionary." *Apple Device*, 50 F.4th at 784. And as one court observed, "[a]lthough modification of a fee award based on a lodestar cross-check may serve some utility in cases at the fringes, routine recourse to it threatens to swallow the benefits that the percentage-of-the-fund method provides . . . ." *NCAA I*, 2017 WL 6040065, at *10.

The utility of a cross-check is significantly reduced where the court has closely supervised the litigation. *See Andrews*, 2022 WL 4453864, at *2 (finding a cross-check unnecessary in light of the "exceptional circumstances of this case and the Court's extensive involvement in supervising" the litigation); *Senne*, 2023 WL 2699972, at *20 (granting 30% fee request and noting that "[a]rguably, a lodestar cross-check is not required here because the Court has been extensively involved in supervising this litigation and has observed first-hand the monumental

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the cash settlement fund." *Vizcaino*, 290 F.3d at 1047. The *Colgate* class action was the first litigation of any kind filed against JLI for the issues in suit and predates every government enforcer lawsuit. Since the initiation of this litigation, JLI has largely suspended its marketing (including print, broadcast, and digital advertising within a year of the Court denying JLI's first motion to dismiss). According to surveys, JUUL was the most popular brand among teenagers when this lawsuit was filed in 2018, with over 55% of teens aged 15-17 reporting JUUL use; today, JUUL use among teens has dropped significantly, while other vaping devices have taken off. The relative decline of JUUL during the litigation is another factor that weighs in favor of an upward adjustment on attorneys' fees. In *Vizcaino*, for example, the court approved a fee increase where Microsoft changed its hiring practices to address allegations it was misclassifying workers. 290 F.3d at 1150. Similarly, in the 46-state class action brought by states against tobacco companies, the attorneys' success in stopping tobacco companies from engaging in conduct parallel to that alleged here supported attorneys' fees of several *billion* dollars. See *Lorillard Tobacco Co. v. Chester*, 589 F.3d 835, 838 (6th Cir. 2009) (discussing background of multistate tobacco litigation fee award).

efforts Class Counsel put into this case"). This Court was, of course, extensively involved in every aspect of overseeing this litigation: the Court held monthly (or more frequent) status conferences, guided the parties through complex pretrial issues and trial preparation, made itself available to resolve disputes (both big and small) among the parties throughout the litigation, and ruled on numerous rounds of briefing on dispositive and non-dispositive issues. Based on this first-hand knowledge of the parties' efforts, the Court has frequently commented upon the volume and quality of the work involved in prosecuting plaintiffs' claims. *See* fn. 5, above.

Many of the factors that weigh in favor of using the percentage-of-recovery method also weigh in favor of not applying a cross-check in this case. As discussed above, a substantial portion of the work performed by plaintiffs' counsel in this MDL inured to the benefit of each plaintiff group (class, personal injury, and government entities) and attempting to isolate the hours incurred specifically for the benefit of the class would overlook the important benefits the overall advancement of the litigation provided to class members, as well as other plaintiffs across the MDL. In short, "given the unique circumstances presented by this litigation, . . . a lodestar cross-check would not be a valuable tool to help assess the reasonableness of Class Counsel's fee request." *See Benson, LLC*, 2023 WL 3761929, at *3.

1. The Purpose of Any Lodestar "Cross-Check" Is to Prevent an Unreasonable Windfall to Counsel, Not to Re-Calculate the Fee Award

Although unnecessary, application of a lodestar cross-check confirms the reasonableness of the requested fee award. The Ninth Circuit has recognized that awarding a percentage of the recovery without further inquiry into the reasonableness of the award in megafund cases could conceivably result in "windfall profits to class counsel" that have little relation to the work performed. *Bluetooth*, 654 F.3d at 942. The cross-check can be used to guard against this outcome by ensuring that the multiplier on class counsel's lodestar is not "extraordinarily high or low." *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *16 (N.D. Cal. Dec. 8, 2021) (lowering a requested 6.24 multiplier to 5.47 after conducting a cross-check). The cross-check should confirm the reasonableness of the fee resulting from the percentage method, rather than recalculate the fee. It should therefore "not result in a second major litigation," transform courts into "green-

eyeshade accountants," or seek to "achieve auditing perfection," but should instead "do rough justice" to confirm an award's reasonableness. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018).

The analysis when doing a cross-check thus does not need to be as exacting as when the primary means for calculating the fee is the lodestar method. In *Senne*, for example, the court granted attorneys' fees of 30% of the common fund and, due to its familiarity with the litigation and counsel's work, only "performed a rough calculation of Class Counsel's lodestar to evaluate whether the percentage-of-recovery method gives rise to a reasonable result." 2023 WL 2699972, at *20. And in *In re Apple iPhone/iPod Warranty Litigation*, the court held that while the "plaintiffs' submission would be woefully insufficient" were it being used "to calculate a lodestar as the primary basis for the fee award," it was sufficient to show that "applying a percentage-based fee recovery is within reason." 40 F. Supp. 3d 1176, 1181 (N.D. Cal. 2014); *see also NCAA II*, 768 F. App'x at 654 ("The district court must gather sufficient information so that the lodestar is a meaningful crosscheck of the percentage-of-the-fund method."); *Larsen*, 2014 WL 3404531, at *9 ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting.") (quotation omitted).

As discussed in the following section, a review of counsel's lodestar confirms that the requested fee award is reasonable will not result in windfall profits.

2. The Requested Fee Would Not Result in a Windfall

Notwithstanding the impracticality of determining the precise number of hours that should be considered as benefitting the class, there are ample ways to evaluate the time spent by plaintiffs' counsel. Any evaluation of that time—which Judge Andler has reviewed and determined was reasonably incurred—leads to the same conclusion: that a $76,500,000.00 fee would not by any metric result in the type of windfall the Ninth Circuit has cautioned against. Each of the below metrics is based on time incurred from the inception of the *Colgate* matter through December 6, 2022, the date of the Settlement.

Total Lodestar: $199,336,544.05 (.38 multiplier). The majority of the time spent by plaintiffs' counsel furthered the common interests of all plaintiffs, including the class. The

requested fee from the Settlement would be a .38 multiplier on that time. One way to evaluate this time is to divide it by three, in recognition of the fact that there are three primary plaintiff groups. This is an approach taken by Professor Robert Klonoff, who courts have frequently relied on when assessing fee awards. Klonoff Decl., ¶¶ 8-9, 86-87; *Syngenta*, 357 F. Supp. 3d at 1112-15 (relying on Professor Klonoff's opinions). Under this approach, the requested fee would still amount to a modest 1.15 multiplier.[8]

Lodestar for Class Committee and Other "Class-Centric" Firms: $26,328,149.75 (2.91 multiplier). A small handful of firms—Girard Sharp, four PSC firms, and one additional firm—dedicated the majority of their efforts in this case to furthering the interests of the class by performing common benefit work essential to the successful prosecution of the class claims (and the overlapping non-class claims), as well as work unique to the class claims (*i.e.* class certification). All or nearly all of the time spent by these class-centric firms substantially and directly benefitted the class. Considering *only* this "class-centric" time, without taking into account any of the over $100 million in common benefit time spent by other firms that undoubtedly redounded to the benefit of the class, would result in a 2.91 multiplier.

Lodestar in Discrete Common-Benefit Categories: $107,351,217.50 (.71 multiplier). For certain lodestar categories (Factual Investigation, Discovery of Defendants, Document Review, Scientific Research, Fact Depositions, Class Certification, and Experts), the proportion of time that may not have benefitted the class (*i.e.*, time that is only relevant to other plaintiff groups) comprises only a fraction of the total time billed. Work related to class certification, regardless of the firm that incurred the time, will be for the common benefit of the class. Factual investigation, discovery of defendants, document review, and fact depositions provided evidence that was generally applicable to all of the plaintiffs' claims. The class likewise benefitted from scientific research related to JUUL products, as well as work with experts prior to December 10, 2021 (the completion of "general"—as opposed to case-specific—expert discovery).

Class Counsel recognizes that none of the above metrics precisely reflects the portion of

[8] Professor Klonoff also reduces the lodestar by the share of the JLI settlement relative to the combined amount of the JLI and Altria settlements. Doing so results in a 1.36 multiplier.

Plaintiffs' counsel's lodestar that benefitted the class (and to what degree), but as noted above, that kind of exactitude is neither necessary for a robust cross-check, nor feasible in this case. In addition to the total lodestar, the other lodestar metrics above support the requested fee—even though each metric is highly conservative and significantly understates the common benefit work performed. Depending on which of the above metrics is used, the requested fee award is anywhere from a significant negative multiplier to a 2.91 multiplier. Courts in the Ninth Circuit have frequently granted, and the Ninth Circuit has approved of, fee awards that result in significant multipliers, including in megafund cases where the fee award is above the 25% benchmark. *E.g. Vizcaino*, 290 F.3d at 1050 (affirming 28% fee and multiplier of 3.65); *Capacitors*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (31% aggregate fee award, a 1.81 multiplier); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at *6, 10 (N.D. Cal. Aug. 3, 2016) (awarding a fee of 27.5% and a 1.96 multiplier). There is no risk that the fee award will result in an unwarranted multiplier or one that is outside the bounds of what is regularly approved in by courts in the Ninth Circuit.

3. Plaintiffs' Counsel's Hours and Hourly Rates Are Reasonable

For a lodestar cross-check to be meaningful, counsel must demonstrate that the lodestar reflects hours reasonably spent and reasonable hourly rates. *Bluetooth*, 654 F.3d at 941. Both criteria are readily met here.

The majority of the total hours spent in the litigation directly benefitted the Settlement Class, regardless of the type of client the firm performing the work represents. As noted above, for example, depositions of key witnesses directly benefitted the class even where the attorney taking the depositions may represent personal injury clients. As another example, both the class and the government entity plaintiffs assert largely overlapping claims under RICO, and briefing concerning RICO issues in the government entity context also informed and, in many instances, directly benefitted the class as well. The connection between the work performed and benefits to the class is even stronger when focusing just on the time incurred by class-centric firms and, as noted above, consideration of *only* this time would on its own provide a sufficient basis for

concluding that the requested 30% fee is reasonable.

The hours spent were also reasonably incurred. The Sharp Declaration details the work performed by Plaintiffs' counsel that inured to the benefit of all Plaintiffs, including class members. As noted above, all time used to calculate the lodestar has been periodically reviewed by Judge Andler. Courts frequently rely on special masters to assess the reasonableness of class counsel's lodestar. *E.g.*, *In re Capacitors Antitrust Litig.*, 2020 WL 6544472, at *2 (N.D. Cal. Nov. 7, 2020) (court "adopt[ed] in full" the "determinations" of the special master). Judge Andler concluded that "the tasks, hours and expenses incurred were appropriate, fair and reasonable and for the common benefit." *E.g.*, Sharp. Decl., Ex. 1 at 12. A full breakdown of the lodestar into distinct litigation categories can be found at paragraph 122 of the Sharp Declaration.

The hourly rates used to calculate the lodestar are also reasonable, and the vast majority of the time billed fell into the following ranges:

- For over 97% of partner hours, rates range from $275 - $1,200
- For over 96.5% of senior counsel hours, rates range from $475 - $1,000
- For over 93.5% of associate hours, rates range from $175 - $800
- For over 92.5% of contract or staff attorney hours, rates range from $100 - $500
- For over 88% of paralegal hours, rates range from $75 - $425

These rates are consistent with rates approved in complex litigations throughout this District. *In re MacBook Keyboard Litig.*, 2023 WL 3688452, at *15 (N.D. Cal. May 25, 2023) (approving partner rates up to $1,195, associate rates up to $850, $425 for contract attorneys, and $325 for paralegals); *Hefler*, 2018 WL 6619983, at *14 (approving partner rates up to $1,250, $650 for associates, and $350 for paralegals); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals). They are also consistent with rates courts have approved for Co-Lead Counsel and the Class Committee. Sharp Decl., ¶ 130 (collecting cases approving rates). Capping the hourly rates that exceed the above ranges (*i.e.*, capping all partner rates at $1,200 and all paralegal rates at $425)

has a minimal effect on the lodestar, reducing it by 1.19% (or $2,350,225.50).

In sum, consideration of the time reasonably spent at reasonable hourly rates provides no reason to doubt the appropriateness of the requested fee award.

IV. THE REQUESTED EXPENSES ARE REASONABLE

"Class counsel is entitled to reimbursement of reasonable expenses." *Larsen*, 2014 WL 3404531, at *10 (citing Fed. R. Civ. P. 23 (h)); *see also In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) ("In common fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense.") (citing *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)). Class Counsel requests the reimbursement of the out-of-pocket expenses of up to $4,100,000. On June 9, 2023, Plaintiffs filed a motion to appoint a Fee Committee, and proposed a schedule for briefing and a hearing on the Fee Committee's recommendations on allocation of fees and expenses. ECF No. 4048. As part of the associated ongoing work, Co-Lead Counsel are analyzing the apportionment of expenses paid in the MDL and have thus far concluded that they need not apply for the full $6,000,000 they reserved the right to seek in the notice to the class. In the forthcoming motion to request that the Court approve the Fee Committee's recommendations for expense payments from the common benefit expense fund, Class Counsel anticipate proposing a cost allocation, including a specific proportion of those payments to be drawn from the class Settlement Fund. If the class's proportion of expenses is less than $4.1 million, the remainder will become a part of the Class Settlement Fund.

The expense reimbursement request is reasonable. The majority of costs incurred in the litigation (which will exceed $25 million in total) would have been incurred even if the litigation included only class claims, and not personal injury or government entity claims. It could therefore be argued that well in excess of $10 million in expenses were unquestionably incurred for the common benefit of the class, and in most class actions would be payable solely from the class settlement fund. Costs related to experts who provided opinions in connection with class certification (and who later prepared merits reports for the class)—Dr. Singer, Professor

Chandler, Dr. Pratkanis, and Dr. Emery—totaled approximately $2,050,000. Sharp. Decl., ¶ 131. Costs related to document hosting exceeded $1,450,000. *Id*. And costs associated with deposition transcripts and related materials exceeded $800,000. *Id.* Thus, the class would have incurred costs exceeding the $4,100,000 requested cap solely based on a portion of the total case costs (*i.e.*, those associated with document hosting, depositions, and just a subset of the experts who were central to the class claims) that would otherwise be paid fully from the settlement fund. The requested expense reimbursement from the class Settlement Fund is therefore significantly lower than it otherwise would be absent the involvement of other plaintiff groups. Put another way, the class substantially benefits from the involvement of other plaintiff groups by spreading litigation costs among the various types of Plaintiffs.[9] Class Counsel requests that the Court authorize the payment of up to $4,100,000 from the class Settlement Fund for the payment of litigation costs.

Finally, Judge Andler has concluded that the expenses were reasonably incurred for the common benefit. *E.g.* Sharp. Decl., Ex. 1 at 12 (finding that the expenses were "appropriate, fair and reasonable and for the common benefit"). By far the largest cost in this litigation related to experts, which is appropriate given the wide range of topics that Plaintiffs—and class Plaintiffs specifically—would need to have addressed at summary judgment and trial. The litigation also involved a large number of fact and expert depositions, and costs related to those depositions (*e.g.*, court reporting service) were reasonably incurred.

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE

A. Class Representatives May Be Compensated for Their Effort

Service, or incentive, awards have "been present in class action law for close to a half century." William B. Rubenstein, 5 Newberg on Class Actions § 17:2 (6th ed.). "The names capture the sense that the payments aim to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function." *Id.* § 17:3. *See*

[9] Applying another metric confirms the reasonableness of the class expense figure. The $4.1 million cap for the class is also less than a 2% cost assessment on the Settlement Fund (or $5.1 million), which is the common benefit cost assessment paid by other Plaintiffs in the litigation. *See* ECF 586 at 11.

also Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009) ("[Service awards] are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

The Ninth Circuit recently reiterated its longstanding holding "that reasonable incentive awards to class representatives are permitted." *Apple Device*, 50 F.4th at 785 (quotation marks and citation omitted). In so doing, the Court explained that nineteenth century caselaw, which established the "common fund doctrine," is "not[] discordant" with the Ninth Circuit's "twenty-first century precedent allowing [service] awards." *Id.* Instead, in the class action context, the common fund doctrine "supports reasonable awards to a litigant." *Id.* at 785-86 (quotation marks and citation omitted). And "private plaintiffs who recover a common fund are entitled to an *extra* reward," so long as it is reasonable. *Id.* (emphasis in original; quotation marks and citation omitted).

B. The Proposed Service Awards Are Reasonable.

"When assessing requests for service awards, courts consider five principal factors: '(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" *Andrews*, 2022 WL 4453864, at *4–5 (quoting *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)). These are often referred to as the "*Van Vranken*" factors.

Class Plaintiffs seek service awards for each of the 86 class representatives ranging from $5,000 to $33,000,[10] depending on each class representative's involvement in the case, totaling $774,600.[11] Given the intrusive and high-profile nature of this litigation, a $5,000 service

[10] Appendix A to the Sharp Declaration includes a chart showing, for each class representative, the proposed service award amount and the bases for that amount.

[11] The notice provided to class members stated that Class Plaintiffs would apply for service awards not to exceed $1 million in total. The request here is considerably lower.

award—which, in this Circuit, is "presumptively reasonable"—is an appropriate baseline. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) ("In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable service award."); *Jacobs v. California State Auto. Ass'n Inter-Ins. Bureau*, 2009 WL 3562871, at *5 (N.D. Cal. Oct. 27, 2009) (explaining that, in the Northern District of California, "a $5,000 [service award] payment is presumptively reasonable"); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (similar). Larger awards for those class representatives who fulfilled more onerous litigation-related obligations are also within the range of awards approved in similar circumstances. Importantly, no decisions were made regarding service awards until well after the execution and filing of the Settlement (Sharp Decl., ¶ 140), eliminating the possibility of conflicts of interest between class representatives and class members.

Under the *Van Vranken* factors described above, all 86 class representatives merit a service award. *See Van Vranken*, 901 F. Supp. at 299.[12] By participating in this lawsuit, all 86 class representatives encountered notoriety and personal difficulties. Prior to being included in the consolidated complaint, the class representatives discussed their claims extensively with counsel, completed surveys regarding the JUUL advertising they had seen, and provided feedback on and ultimately approved the allegations pertaining to their purchases of JUUL. Sharp Decl., ¶ 142. During discovery, they completed a detailed plaintiff fact sheet, which required them to provide information on their JUUL purchasing, employment, educational, smoking, and drug use history, as well as other personal details. *Id*. at ¶ 143. They also responded to written discovery asking them to describe, in detail, their first experiences using JUUL and seeing JUUL marketing. *Id*.; *see also* ECF 1547 (requiring completion of PFS and interrogatory). And with few exceptions, they completed a forensic collection of their documents. Sharp Decl., ¶ 143. The forensic collection made complete copies of class representatives' social media accounts and phone records which, for many class representatives, involved handing over highly sensitive personal information. *Id*. This case has also garnered significant media attention, which increased the

[12] The first factor—the risk to class representatives in commencing the suit—is neutral. All other factors, however, support Class Plaintiffs' requested service awards.

burdens on class representatives. *See Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *10 (C.D. Cal. Sept. 18, 2020) (granting $25,000 service awards where case had attracted media attention). Despite the intrusive discovery and highly public nature of this litigation, the 86 class representatives have stayed involved in the case and many were plaintiffs in *Colgate* prior to the formation of the MDL.

Class Plaintiffs seek awards above the presumptively reasonable baseline of $5,000 only where the class representative spent additional time and effort, and faced greater notoriety and personal difficulties, as a result of their involvement. *See Van Vranken*, 901 F. Supp. at 299. The class representatives for whom Class Plaintiffs request more than $10,000 were deposed at length (including, in many instances, on sensitive topics, such as the representative's medical history and history of drug use) and participated in multi-hour preparation. Sharp Decl., ¶ 143. These additional time-consuming and intrusive responsibilities warrant the larger service awards requested. *See, e.g.*, *Andrews*, 2022 WL 4453864, at *5 (approving $15,000 service award for each class representative, where each had "searched for and provided facts used to compile Plaintiffs' operative complaint, helped Class Counsel analyze claims, sat for deposition, and reviewed and approved the settlement"); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (finding service award of $20,000 "well justified" where, at her deposition, plaintiff "was subjected to questioning regarding her personal financial affairs and other sensitive subjects"); *Nelson v. Avon Prod., Inc.*, 2017 WL 733145, at *7 (N.D. Cal. Feb. 24, 2017) (granting $10,000 service award where plaintiff "invested significant time and energy" into the case, including by being deposed); *In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at *24 (N.D. Cal. Dec. 10, 2020), *aff'd*, 2022 WL 16959377 (9th Cir. Nov. 16, 2022) (awarding $10,000 each to 21 individual class representatives who "spent a significant amount of time assisting in the litigation of th[e] case, including time spent in depositions and responding to discovery"); *In re Animation Workers Antitrust Litig.*, 2016 WL 6663005, at *9 (N.D. Cal. Nov. 11, 2016) (awarding $10,000 incentive award to each named plaintiff, who all reviewed operative complaint and were deposed).

The five class representatives on whose behalf Class Plaintiffs seek service awards of $25,000 or more served as class bellwether plaintiffs and, therefore, in addition to the responsibilities described above, they each also: responded to additional interrogatories, including on sensitive topics such as past drug use; produced documents; worked with counsel to authorize the production of their medical records from their medical providers; participated in the class certification process by reviewing the adequacy arguments made against them; and conferred with counsel regarding their ability and willingness to go to trial. Sharp Decl., ¶ 144. These five bellwether plaintiffs "demonstrated a strong commitment to the class" that warrants the service awards they now seek. *Garner*, 2010 WL 1687832, at *17, n.8; *see also NCAA I*, 2017 WL 6040065, at *11 (awarding $20,000 to each of four class representatives who "spent a significant amount of time assisting in the litigation of th[e] case, in preparing for and having their depositions taken, in searching for and producing documents that spanned many years, and in conferring with counsel throughout the litigation"); *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161, at *14 (N.D. Cal. June 5, 2017) (granting request for a $90,000 service award for each of three named plaintiffs who responded to written discovery, produced documents, were deposed, reviewed the operative complaint and substantive pleadings, and reviewed and approved the settlements); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009) (awarding $25,000 to each of four named plaintiffs, where class counsel filed declaration attesting to named plaintiffs' involvement in the case). In particular, the larger service awards that Class Plaintiffs seek for these class representatives are justified by the fact that not only were these representatives deposed on their medical history and history of drug use, they also had to *produce* their sensitive medical records. *See Garner*, 2010 WL 1687832, at *17. The two highest requested awards (for plaintiffs Colgate and DiGiacinto) are sought for plaintiffs whose friends and family were deposed and subject to motion practice, which Judge Corley recognized was "not the norm in a putative consumer class action" and required further consultation with counsel. ECF 2173.

The requested service awards are thus justified individually, and are also reasonable in the

aggregate. The total service awards requested here, while substantial in the aggregate, represent only 0.3% of the total settlement amount. Courts within the Ninth Circuit have repeatedly found awards constituting such a small share of the Settlement Fund to be reasonable. *E.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving service awards that constituted 0.56% of settlement); *Rabin v. PricewaterhouseCoopers LLP*, 2021 WL 837626, at *10 (N.D. Cal. Feb. 4, 2021) (approving $20,000 service awards where "the aggregate proposed incentive award for the two named plaintiffs is 0.34% of the Gross Fund").[13]

In sum, the service awards that Class Plaintiffs seek on behalf of the 86 class representatives are reasonable and in line with those routinely approved by courts within this District. Class Plaintiffs' request should be approved.

VI. CONCLUSION

For the above reasons, Class Counsel requests that the Court grant their requests for attorneys' fees, expenses, and service awards.

Dated: June 23, 2023

Respectfully submitted,

By: /s/ *Dena C. Sharp*

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[13] *See also Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *8 (C.D. Cal. Oct. 24, 2017) (approving $25,000 service award for each named plaintiff, which constituted "only .60% of the total fund when combined"); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *37 (N.D. Cal. Apr. 1, 2011) (approving service awards totaling $122,500, "which represents only 0.45% of the $27,000,000 gross Settlement Amount").

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

By: /s/ *Dena C. Sharp*
Dena C. Sharp