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10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 RALPH MILAN and ELIZABETH ARNOLD on
 14 behalf of themselves, those similarly situated and
 the general public,

15 Plaintiffs,

16 v.

17 CLIF BAR & COMPANY,

18 Defendant.

Case No: 18-cv-02354-JD

**DECLARATION OF JACK FITZGERALD IN
 SUPPORT OF MOTION FOR PRELIMINARY
 APPROVAL OF CLASS SETTLEMENT**

Judge: Hon. James Donato
 Hearing Date: December 14, 2023
 Location: Courtroom 11, 19th Floor

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1 I, Jack Fitzgerald, declare:

2 1. I am a member in good standing of the State Bars of California and New York; and of the
3 United States District Courts for the Northern, Central and Southern Districts of California, the Southern
4 and Eastern Districts of New York, and the Western District of Wisconsin; and of the United States Courts
5 of Appeal for the Second, Eighth, and Ninth Circuits. I make this declaration based on my own personal
6 knowledge, in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

7 2. Attached hereto as Exhibit 1 is the Parties' executed Settlement Agreement ("SA").¹ There
8 are no other agreements made in connection with the proposed settlement or Settlement Agreement. *See*
9 Fed. R. Civ. P. 23(e)(3). The information required by the "Preliminary Approval" section of the Northern
10 District of California's Procedural Guidance for Class Action Settlements is set forth below.

11 **N.D. Cal. Procedural Guidelines for Class Action Settlements**

12 **1. Information About the Settlement**

13 **a. Any differences between the settlement class and the class proposed in the operative**
14 **complaint (or, if a class has been certified, the certified class) and an explanation as to**
15 **why the differences are appropriate.**

16 3. On September 27, 2021, the Court certified the following State Classes:

17 The *California Clif Bar Class*, consisting of "all persons in California who, between April 19,
18 2014 and the date the class is notified of certification, purchased Original Clif Bars in
19 packaging bearing the phrase 'Nutrition for Sustained Energy'";

20 The *New York Clif Bar Class*, consisting of "all persons in New York who, between April 19,
21 2015 and the date the class is notified of certification, purchased Original Clif Bars in
22 packaging bearing the phrase 'Nutrition for Sustained Energy'";

23 The *California Clif Kid ZBar Class*, consisting of "all persons in California who, between
24 April 19, 2014 and the date the class is notified of certification, purchased Clif Kid ZBars other
25 than in 24-, 36-, or 42-bar packages"; and

26 The *New York Clif Kid ZBar Class*, consisting of "all persons in New York who, between April
27 19, 2015 and the date the class is notified of certification, purchased Clif Kid ZBars other than
28 in 24-, 36-, or 42-bar packages" (together, the "Certified Classes").

See Dkt. No. 207, at 1-2, 12.

¹ Due to the purchase of Clif Bar & Company by Mondelez Global LLC in 2022, the agreement is nominally with Mondelez as successor to Clif.

1 4. The Settlement Class differs from the Certified Classes in that it expands class membership
2 from California and New York purchasers, to purchasers in every state. SA ¶ 2.7. Expanding the Class
3 definition to include purchasers from all states is appropriate, with the Court having found “that a nationwide
4 settlement class may be certified consistent with *In re Hyundai and KiaFuel Economy Litigation*, 926 F.3d
5 539, 562-566 (9th Cir. 2019),” Dkt. No. 240, Order, at 1. Moreover, the Complaint pleaded, as an alternative,
6 a nationwide class under California law. *See* Dkt. No. 1, Compl. ¶¶ 208, 218-58.

7 5. Further, the Class Period for the Certified Classes ran from April 19, 2014 (for the California
8 Classes) or April 19, 2015 (for the New York Classes) to December 30, 2021 (when the Certified Classes
9 were first notified of certification). The Settlement Class Period runs from April 19, 2014 to March 31, 2023
10 for California and New York purchasers and from March 31, 2019 to March 31, 2023 for purchasers in other
11 states. SA ¶ 2.13.

12 6. Extending the end of the Class Period to March 31, 2023, is appropriate. Clif continued to
13 sell the Class Products with the Challenged Claims (as defined in the Complaint) after the California and
14 New York classes were certified. But in anticipation that the original settlement would be approved, Clif
15 removed labeling claims consistent with the Settlement Agreement (both the current and previous version—
16 the injunctive relief has not changed). Clif has represented that it rolled out new packaging (i.e., having
17 removed the Challenged Claims) on March 31, 2023, and modified its website consistently on that date as
18 well.

19 7. Setting the beginning of the Class Period as March 31, 2019 for purchasers outside California
20 and New York is reasonable because earlier purchases in those states are likely barred by applicable statutes
21 of limitations, and their claims are not tolled under *American Pipe & Construction Co. v. Utah*, 414 U.S.
22 538 (1974). *Cf.* Dkt. No. 234, Tr. of Sept. 1, 2022 Hrg. at 3 (Court observing that “[n]o consumer in these
23 other states would have expected” a nationwide settlement “after my certification order.”).

24 8. Using this new Class definition, Plaintiffs’ economic expert, Colin Weir, performed an
25 analysis of the existing sales data to determine the proportion of sales that would no longer be included in
26 the present Settlement compared to the previous one. Based on that analysis, the Settlement Class is now
27 estimated to be 7.4 million households, compared to 15.7 million previously.
28

1 **b. Any differences between the claims to be released and the claims in the operative**
2 **complaint (or, if a class has been certified, the claims certified for class treatment) and**
3 **an explanation as to why the differences are appropriate.**

4 9. The Settlement releases the same claims as those for the Certified Classes and which the
5 Certified Classes could have alleged based on the identical factual predicate as in the Complaint. SA ¶¶
6 2.39, 8. Thus, the Released Claims are tailored to reflect the Certified Classes' claims.

7 **c. The class recovery under the settlement (including details about and the value of**
8 **injunctive relief), the potential class recovery if plaintiffs had fully prevailed on each of**
9 **their claims, claim by claim, and a justification of the discount applied to the claims.**

10 **i. Injunctive Relief**

11 10. Clif “will revise the packaging and labels of the original Clif Bars and Clif Kid ZBars,
12 including both the outer box packaging and individual bar wrapper” and maintain those changes “for a
13 period of at least 24 months,” “so long as 10% or more of [a bar’s] calories come from added sugars.” SA
14 ¶ 4.6. Specifically, Clif “will refrain from using the word ‘Nutrition’ (including ‘Nutritious’)” on original
15 Clif Bars, and “will refrain from using the word ‘Nutritious,’” and the phrase “Nourishing Kids in Motion”
16 on Clif Kid ZBars. SA ¶ 4.6.1. In fact, Clif has already done this, in anticipation that the original settlement
17 (which contained the same agreement to change the labeling) would be approved. Clif has represented to us
18 that modifying the bars’ labeling has cost it approximately \$312,000 in direct costs, and \$172,000 in
19 additional indirect costs associated with branding, regulatory compliance, commercialization, food safety /
20 quality assurance, its supply chain, and research and development. Thus, to date, Clif has spent at least
21 **\$474,000** related to the Settlement’s injunctive relief component.

22 11. This injunctive relief appropriately addresses the allegation that Clif misleadingly labeled its
23 Clif Bars and Kid ZBars to suggest the bars are healthy and nutritious. As courts have recognized, “there is
24 a high value to the injunctive relief obtained” in consumer class actions resulting in labeling changes, which
25 benefits not just Class Members, but also “the marketplace, and competitors who do not mislabel their
26 products.” *See Bruno v. Quten Research Inst., LLC*, 2013 WL 990495, at *4 (C.D. Cal. Mar. 13, 2013).

27 12. In *Hadley v. Kellogg Sales Co.*, a lawsuit challenging health and wellness claims on sugary
28 cereals, the Honorable Lucy H. Koh found, in granting final approval to a classwide settlement, that similar

1 “injunctive relief”—the cessation or revision of health and wellness claims on sugary cereals—“provides
2 health benefits to all purchasers of Defendant’s products.” 2021 WL 5706967, at *2 (N.D. Cal. Nov. 23,
3 2021). And the FDA recently concluded that limiting manufacturers’ use of “healthy” claims on sugary
4 foods would result in healthcare savings of up to \$700 million over 20 years. *See* 87 Fed. Reg. 5063, 5064
5 (Jan. 31, 2022) (“Updating the definition of ‘healthy’ to align with current dietary recommendations can
6 help consumers build more healthful diets to help reduce their risk of diet-related chronic diseases.
7 Discounted at seven percent over 20 years, the mean present value of benefits of the proposed rule is \$260
8 million, with a lower bound estimate of \$17 million and an upper bound estimate of \$700 million.”).

9 13. Accordingly, while the value of injunctive relief can be difficult to quantify, we believe it
10 holds real monetary and practical value to the Class here (and cost Clif real money too).

11 **ii. Monetary Benefit**

12 14. Clif will establish a \$12 million non-reversionary common fund (the “Common Fund” or
13 “Settlement Fund”). SA ¶¶ 2.16, 4.1. The Settlement Fund is all cash (no coupons or vouchers) and will be
14 used to pay Class Notice and Settlement Administration; Court-approved attorneys’ fees, expenses, and
15 Service Awards; and Class Member Claims. SA ¶ 4.1.

16 15. In this case, Plaintiffs brought claims and developed damages models relating to both
17 challenged labeling claims, *i.e.*, affirmative misrepresentations, and omissions (information Plaintiffs allege
18 should have been disclosed). Plaintiffs’ damages expert estimated the total actual damages available at trial
19 for each challenged affirmative misrepresentation and omission theory, which are summarized below.

20

21 **Table 2.**

22 **Overpayment Damages**

Original		Damages			
Class	Dollar Sales	NFSE ³³	Warning 1	Warning 2	
Overpayment % -->		3.8%	25.5%	20.4%	
California	\$265,840,768	\$10,101,949	\$67,789,396	\$54,231,517	
New York	\$117,993,685	\$4,483,760	\$30,088,390	\$24,070,712	
ZBar		Damages			
Class	Dollar Sales	Nourishing	No HFCS	Nutritious	Warning 1
Overpayment % -->		7.8%	6.5%	6.3%	23.1%
California	\$49,156,411	\$3,834,200	\$3,195,167	\$3,096,854	\$11,355,131
New York	\$11,297,328	\$881,192	\$734,326	\$711,732	\$2,609,683

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1 See Dkt. No. 188-2, March 20, 2021 Decl. of Colin Weir at 19, Table 2.

2 16. For their affirmative misrepresentation claims, at trial, Plaintiffs' maximum price premium
3 damages for the Certified Classes were \$14,585,709 for the original Clif Bars (i.e., \$10.1M in California
4 and \$4.48M in New York, relating to "Nutrition for Sustained Energy"); and \$12,453,471 for the ZBars
5 (relating to "Nourishing," "No HFCS," and "Nutritious"). Thus, if Plaintiffs prevailed at trial on *all*
6 affirmative misrepresentation claims, the total price premium damages would be \$27.04 million. The \$12
7 million Common Fund is thus about 44.4% of potential price premium damages for Plaintiffs' affirmative
8 misrepresentation claims. Of course, a jury could find for Plaintiffs on some of the misrepresentation claims
9 and not others. For example, if Clif was found not liable on the "No HFCS" claim—which Clif vigorously
10 argued was literally true—this would have reduced damages by \$3,929,493.

11 17. For Plaintiffs' omission claims regarding the Original Clif Bars, Plaintiffs measured the
12 damages associated with two separate but competing "warning" statements designed to provide the
13 information Plaintiffs allege was improperly omitted—the first regarding the dangers of sugar generally,
14 and the second regarding Clif Bar's intended design purpose for athletes during intense exercise. For ZBars,
15 Plaintiffs measured the damages relating to a general warning statement only.

16 18. Although Plaintiffs had two theories of liability for Clif's omissions regarding the original
17 Clif Bars, we determined that, as a practical matter, we could only advance one theory at trial. As shown
18 above, using the largest possible damages figure, the maximum trial damages for omissions for Clif Bars is
19 \$97,877,786, and the maximum trial damages for omissions for ZBars is \$13,964,814. Combined, this is
20 approximately \$111.8 million, with the Common Fund representing a recovery of about 10.7% of these trial
21 damages.

22 19. Adding damages for both affirmative misrepresentations and omissions, maximum trial
23 damages are \$138.8 million. The Common Fund represents about 8.6% of these trial damages.

24 20. The New York Classes also brought claims under N.Y. GBL §§ 349 and 350, which allow
25 for statutory damages of \$50 and \$500 per violation, respectively, upon a finding of liability and showing
26 of actual damages. Here, that would amount to \$2.57 billion (at \$50 per unit) and \$25.7 billion (at \$500 per
27 unit). The Common Fund represents 0.4% and 0.04% of those damages, respectively.

1 21. To our knowledge, however, only one court has ever awarded statutory damages under N.Y.
2 GBL §§ 349 or 350 in a class action. *See Montera v. Premier Nutrition Corp.*, 621 F. Supp. 3d 1012, 1016-
3 21 (N.D. Cal. 2022) (Seeborg, J.). In that matter, the defendant had sold only 166,249 units and the
4 Honorable Richard Seeborg only awarded the lower amount of \$50 per unit for a total of \$8,312,450. *See*
5 *id.* at 1021. That award is currently on appeal based on, *inter alia*, due process challenges. Moreover, the
6 decision had not yet issued when the Parties in this case initially reached their \$10 million settlement in
7 2022.

8 22. Further, Clif raised several defenses that affected the potential for recovering damages—
9 some of which were successful in other sugar cases and some of which were novel.

10 23. For example, in *McMorrow*, the Court found persuasive defendant’s argument that the proper
11 measure of damages should only account for the price premium attributable to the single word “Nutritious,”
12 in the challenged claim “4 Hours of Nutritious Steady Energy.” This substantially altered the price premium,
13 such that when we ran a conjoint analysis to measure the price premium associated with just “Nutritious,”
14 while there was measurable premium among California purchasers, the price premium for the New York
15 respondents went to zero, which also took statutory damages off the table.

16 24. Given that Clif raised the same argument through its experts (that Plaintiffs only challenged
17 the word “Nutrition” in the phrase “Nutrition for Sustained Energy”), Plaintiffs faced the risk that this would
18 be persuasive to the finder of fact and create an issue with proving damages. We considered this a substantial
19 risk as it had been persuasive in the past, and accordingly had to significantly discount all New York
20 damages, including statutory damages, in our analysis.

21 25. Not only was Clif able to take such arguments that were successful in other matters and
22 advance them here, it also refined such arguments and raised new arguments and defenses that provide
23 challenges here. For example, Clif was the first defendant to present a damages expert, William Choi, that
24 actually performed a supply-side analysis to show that there were no damages in this matter. While Plaintiffs
25 believed this analysis was flawed, barring the exclusion of Mr. Choi’s testimony on this issue, we would
26 have had to convince the jury not to give the analysis any weight.

27 26. In addition, this case presented a unique factual circumstance in that for an approximate two-
28 year period the phrase “Nutrition for Sustained Energy” was taken off of the individual Clif Bar wrapper

1 (although it remained on the outer packaging). Based on this, Choi presented an analysis purportedly
2 demonstrating that there was no material change in the price of the original Clif Bars, during this period and
3 thus there was no price premium for “Nutrition for Sustained Energy.” Although Plaintiffs’ motion to
4 exclude such testimony was still pending, given the relatively low threshold for admissibility of expert
5 testimony (i.e., excluding junk science), there was a substantial risk that Clif could raise this issue at trial.

6 27. During the deposition of Plaintiffs’ economics expert, Colin Weir, Clif also laid the
7 foundation for another defense to New York statutory damages. Because statutory damages under New York
8 law are awarded “per violation,” Clif attempted to establish that Plaintiffs’ evidence was insufficient to
9 establish the number of violations. More specifically, Clif contended Plaintiffs improperly equated the
10 number of violations with the number of units sold. According to Clif, however, if a purchaser bought three
11 individual bars in a single purchase, then this should be counted as a single violation. And further, since the
12 IRI data Plaintiffs relied upon only provided for the number of units sold with no way of determining the
13 number of transactions, Plaintiffs had no factual basis for calculating the number of violations. Thus,
14 Plaintiffs lacked an adequate basis for measuring statutory damages.

15 28. While in *Montera*, Judge Seeborg found that the proper measure of violations was the number
16 of units rather than the number of transactions, that issue is currently on appeal and there is currently no
17 controlling authority on the issue.

18 29. Accordingly, we considered the likelihood of obtaining a statutory award of \$50 per unit,
19 much less \$550, per unit, to be unlikely and, even if awarded, almost impossible to practically collect. Any
20 such award would undoubtedly be delayed by appeals and, especially if tens of billions of dollars, might
21 render Clif judgment proof.

22 30. In considering the reasonability and fairness of the Settlement in light of the maximum
23 potential recovery at trial, we considered the risk of losing at trial or of prevailing on the merits but obtaining
24 only a small damages judgment. Clif vigorously contested several aspects of Plaintiffs’ claims and supported
25 its position with expert and other evidence. For example, Clif disputed that the Challenged Claims convey
26 a health message, and that they are material, and supported those arguments with expert evidence from
27 Stanford professor Dr. Itamar Simonson. Clif also retained Dr. James Rippe and Dr. Joanne Slavin to opine
28 that sugar is not as harmful as Plaintiffs allege. Further, Clif disputed that the particular makeup of its bars,

1 because of the types of sugar it used, were as detrimental to health as Plaintiffs claimed. If Clif's evidence
2 on any of these aspects were compelling to the jury, it would break the chain of causality Plaintiffs needed
3 to establish liability. At best, trial would have been a battle of a substantial number of experts.

4 31. We especially considered these risks in light of the numerous focus groups, trial surveys, and
5 mock trials we conducted in preparation for the trial that was scheduled to begin in August 2022. In
6 November 2021, we retained a leading research-based trial consulting firm to conduct a series of focus
7 groups, to help us formulate how to best frame the case for a jury. In April 2022, we also retained a survey
8 and mock trial expert, who designed and implemented several online mock trial surveys with participants
9 drawn from the relevant jury pool. Combined, these exercises provided a great deal of insight regarding jury
10 attitudes and the potential risks and benefits of taking the case to a verdict. In particular, this demonstrated
11 two key additional risks. First, we found that approximately 20% of the population, attitudinally, was
12 extremely unlikely to ever find in Plaintiffs' favor in this case, essentially because they put the responsibility
13 on the consumer to figure out when the manufacturer is being misleading. Given limited control over jury
14 selection, Plaintiffs would have needed some luck avoiding this type of juror. Second, even among mock
15 jurors that found in favor of Plaintiffs on liability, it was not uncommon for them to be resistant to voting
16 in favor of damages in the amounts supported by Plaintiffs' models and instead opt for nominal, or symbolic
17 damages. Such a result at trial would have been a pyrrhic victory only. *Cf. Guttman v. Ole Mexican Foods,*
18 *Inc.*, 2016 WL 9107426, at *3 (N.D. Cal. Aug. 1, 2016) ("The Court agrees that these types of food labeling
19 claims are difficult to maintain. For example, Plaintiff would need to prove that Defendant's labels,
20 including 'Xtreme Wellness,' were misleading entirely by virtue of the product containing a small amount
21 of trans-fat.").

22 32. Thus, while maximum price premium trial damages were approximately \$138.8 million, we
23 considered it unlikely that a jury would award damages in this amount. A more likely scenario, if Plaintiffs
24 prevailed, was that the jury would have found liability in Plaintiffs' favor on some affirmative
25 misrepresentations claims and awarded some but not the full amount of damages supported by Plaintiffs'
26 damages models.

27 33. Further, we considered that, even if Plaintiffs obtained a verdict after trial, Clif would have
28 appealed many issues in the case, including class certification, summary judgment, and damages, presenting

1 additional risk on the merits, and at a minimum, significant delay of relief to the Class.

2 34. In sum, we believe the realistic risk to Clif at trial for the Certified Classes was in the range
3 of \$27 million. Given the results of our focus groups and trial surveys, the likelihood of establishing liability
4 and obtaining an award of this amount was in the ballpark of 50%. Thus, the settlement value of \$12 million,
5 which is 44.4% of those damages, is reasonable.

6 35. This conclusion is not only informed by the present litigation, but also by my firms
7 significant experience in prosecuting class actions.

8 36. My colleagues and I have considerable experience prosecuting consumer fraud class actions,
9 especially regarding foods advertised as healthy. We are also deeply familiar with the issues in this case,
10 not only because of the extensive litigation, discovery, and trial preparation in this matter, but also because
11 we have prosecuted a number of other cases that relied upon the same theory of liability as in this matter—
12 that it is misleading to advertise foods as healthy when they contain high amounts of sugar. Including this
13 matter, we have settled six such cases on a nationwide class basis (*Krommenhock*, *Hadley*, *Hanson*,
14 *McMorrow*, *Adrade-Heymselfield*, and this case, *Milan*).

15 37. The litigation and discovery in this matter was extensive and the Parties were both prepared
16 for trial. Further, in the similar sugar cases, we had obtained significant discovery from both the defendants
17 and third Parties, giving us a strong foundation to understand the underlying issues in this matter. For
18 example, in *Hadley*, which was litigated through summary judgement and was near the brink of trial, we
19 received hundreds of thousands of pages of discovery, and conducted numerous fact and expert witness
20 depositions. This included a significant amount of consumer research by Kellogg bearing on issues such as
21 the materiality of wellness labeling claims, and other important issues relevant to this matter. In each of the
22 other sugar cases that we settled on a nationwide class basis, we likewise obtained tens of thousands of
23 pages of documents bearing on relevant issues here.

24 38. In these other sugar cases, we also litigated a wide variety of defenses relevant to this matter,
25 which informed us of the risks presented by such defenses. For example, regarding damages in the
26 *McMorrow* matter, the Court found persuasive defendant’s argument that the only portion of the claim “4
27 Hours of Nutritious Steady Energy” the plaintiffs could challenge was the single word “Nutritious.” This
28 substantially altered the price premium, such that when we ran a conjoint analysis to measure the price

1 premium associated with just “Nutritious,” there was only a premium among California purchasers, the price
2 premium for the New York respondents went to zero, which also took statutory damages off the table.

3 39. Given that Clif raised the same argument through its experts (that Plaintiffs only challenged
4 the word “Nutrition” in the phrase “Nutrition for Sustained Energy”), Plaintiffs faced the risk that this would
5 be persuasive to the finder of fact and create an issue with proving damages. We considered this a substantial
6 risk as it had been persuasive in the past, and accordingly had to heavily discount all New York damages,
7 including statutory damages, in our analysis.

8 40. Not only was Clif able to take such arguments that were successful in other matters and
9 advance them here, it also refined such arguments and raised new arguments and defenses that provide
10 challenges here. For example, Clif was the first defendant to present a damages expert that actually
11 performed a supply-side analysis to show that there were no damages in this matter. While Plaintiffs
12 believed this analysis was flawed, barring the exclusion of Mr. Choi’s testimony on this issue, we would
13 have had to convince the jury not to give the analysis any weight.

14 41. Considering the case’s strength and damages, the possible lengthy time to resolution through
15 trial and appeals, and the expenses and risks attendant to trial, we believe the \$12 million Settlement Fund
16 in this case is fair, reasonable, and adequate. The Settlement will not only provide a significant number of
17 Americans with appropriate monetary compensation for Clif’s alleged false advertising but will also
18 highlight an important issue of public health and reduce the effect of health claims in influencing consumers
19 to eat products with substantial amounts of added sugar.

20 42. An additional benefit of the Settlement is that it provides practical relief to purchasers outside
21 California and New York that would otherwise be without any practical ability to obtain any relief, since
22 even complete success at trial would leave Settlement Class Members outside of California and New York
23 uncompensated. To obtain relief for purchasers outside California and New York, Class Counsel or other
24 attorneys would have to file and prosecute actions in all other states since, given the existing legal
25 precedents, it is virtually impossible that the claims of the nationwide Settlement Class could ever be
26 adjudicated in a single forum and trial. Such litigation would cost the respective state classes millions of
27 dollars to prosecute, such that it would be economically prohibitive.

28 43. Give all of these considerations, we believe this settlement is a strong result for the Class.

1 **d. Any other cases that will be affected by the settlement.**

2 44. No other cases will be affected by the Settlement.

3 **e. The proposed allocation plan for the settlement fund.**

4 45. The Settlement Fund will be used to pay all settlement-related expenses including Class
5 Notice; Settlement Administration; attorneys' fees and costs; Class Representative Service Awards; and
6 Cash Payments to Class Members who make Claims. SA ¶ 4.1.

7 46. Class Members, whether or not they provide Proof of Purchase, may receive: (i) five dollars
8 (\$5) if they purchased up to 30 bars; (ii) ten dollars (\$10) if they purchased between 31 and 60 bars; and
9 (iii) fifteen dollars (\$15) if they purchased more than 60 bars. SA ¶ 4.8(a).

10 47. Class Members who provide Proof of Purchase may receive \$15 for the first 60 bars, plus
11 twenty-five cents (\$0.25) for each additional bar up to a maximum recovery of fifty dollars (\$50). Thus, for
12 example, if a Class Member has proof of purchase of 75 bars, the Class Member will receive \$18.75 (\$15 +
13 15 x \$0.25). SA ¶ 4.8(b).

14 48. For purposes of making Claims, "bars" are counted individually, whether purchased
15 individually or in multi-packs (*i.e.*, a 12-pack counts as 12 bars). The claim form and/or process will assist
16 Class Members in estimating the number of bars purchased. SA ¶ 4.8(c).

17 49. If the total value of all approved Claims either exceeds or falls short of the funds available
18 for distribution to Class Members, then the amounts of the Cash Payments will be reduced or increased *pro*
19 *rata* as necessary, to use all funds available for distribution to Class Members. Any such *pro rata* adjustment
20 will be calculated prior to distribution of funds to any Class Member with an approved Claim (*i.e.*, will be
21 made in a single distribution). SA ¶ 4.9.

22 50. When submitting a Claim, Claimants will be able to select distribution of funds through
23 digital means. This is more cost effective than paper checks and ensures the funds will be received by
24 Claimants (whereas paper checks can get lost or forgotten and thus never deposited or cashed). SA ¶ 4.10.

25 **f. If there is a claim form, an estimate of the expected claim rate in light of the experience**
26 **of the selected administrator and/or counsel based on comparable settlements, the**
27 **identity of the examples used for the estimate, and the reason for the selection of those**
28 **examples.**

1 51. As explained below, the best estimate for the rate of Claims in this matter based on
2 comparable settlements is approximately three percent (3%). Given an estimated Class size of 7.4 million
3 households, this suggests 222,000 claims.

4 52. Based on our experience, and as confirmed by P&N and other administrators, in settlements
5 of class action lawsuits concerning relatively inexpensive and consumable goods, claims rates generally fall
6 between one and five percent (1% to 5%). Certain factors, such as the type of product at issue, class size,
7 and expected recovery, can have small effects on claims rates in these types of cases, but the effects are
8 inconsistent and overshadowed by random variability.

9 53. To predict a claims rate in this case consistent with the Procedural Guidelines, we first looked
10 at the claims rates in cases with settlements structured similar to that here (all cash, non-reversionary
11 common funds), where the underlying claims involved misleading health and wellness messaging on high-
12 sugar food and beverage products. We primarily looked at these cases because the settlements and the
13 underlying cases bear the greatest similarity to those here and therefore are presumably likely to be the most
14 reliable for the purposes of predicting the claims rate in this matter. Specifically, those matters are:

- 15 a. *Hadley v. Kellogg Sales Co.*, 16-CV-04955-LHK (N.D. Cal.);
- 16 b. *Krommenhock v. Post Foods LLC*, 16-cv-04958-WHO (N.D. Cal.);
- 17 c. *Hanson v. Welch Foods Inc.*, 20-cv-02011-JCS (N.D. Cal.); and
- 18 d. *McMorrow v. Mondelez International, Inc.*, 17-cv-02327-BAS-JLB (S.D. Cal).

19 54. Second, to ensure a sufficiently broad perspective in our analysis, we included cases that did
20 not involve high-sugar products but still concerned small-dollar, consumer packaged goods. Specifically,
21 we looked at the following two cases, the relevant details of which are summarized below.

22 a. *Pettit v. Proctor & Gamble*, 3:15-cv-02150 (N.D. Cal.), in which there was an
23 estimated class of 3.8 million class members and a claims rate of 3.53%. In that case, plaintiff alleged
24 defendant's advertising of its bathroom wipes as "flushable" was misleading. The settlement
25 provided a maximum of \$4.20 per claimant without proof of purchase, and up to \$30 per claimant
26 with proof of purchase.

27 b. *Fitzhenry-Russell v. Keurig Dr. Pepper Inc.*, 5:17-cv-00564 (N.D. Cal.), in which
28 there was an estimated class of 2.3 million class members and a claims rate of 3.32%. In that case,

1 plaintiffs alleged defendant's advertising of its Canada Dry Ginger Ale with the phrase "Made from
2 Real Ginger" was misleading. The settlement provided up to \$5.20 per claimant without proof of
3 purchase, and up to \$40 per claimant with proof of purchase.

4 55. As summarized below, the highest claims rate in these cases was 4.87%, the lowest was
5 1.08%, and the average was 2.95%.

Case	Est. Class Size	Claims Rate
<i>Krommenhock v. Post Foods LLC</i>	20.9 million	1.61%
<i>Hadley v. Kellogg Sales Co.</i>	16.0 million	3.17%
<i>McMorrow v. Mondelez International, Inc</i>	5.7 million	4.40%
<i>Hanson v. Welch Foods Inc.</i>	3.2 million	4.87%
<i>Pettit v. Proctor & Gamble</i>	3.9 million	3.53%
<i>Fitzhenry-Russell v. Keurig Dr. Pepper Inc.</i>	2.4 million	3.32%
Avg. Claims Rate =		2.95%

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13 56. In light of these settlements, which serve as a reasonable baseline since they all concern
14 claims regarding relatively low-dollar consumer packaged goods, a claims rate of approximately three
15 percent (3%) is the most likely claims rate in this matter.

16 57. Nevertheless, the Parties and the Settlement Administrator will do numerous things to try to
17 significantly increase this number. This includes: designing a Class Notice Program for an 80% (rather than
18 the more traditional 70%) reach; obtaining as much Class Member contact information as possible from the
19 top retailers of Clif Bars and Kid ZBars, in order to give as many Class Members Direct Notice as possible;
20 and ensuring that the amount of recovery is sufficiently substantial to incentivize claims.

21 **g. In light of Ninth Circuit case law disfavoring reversions, whether and under what**
22 **circumstances money originally designated for class recovery will revert to any**
23 **defendant, the expected and potential amount of any such reversion, and an explanation**
24 **as to why a reversion is appropriate.**

25 58. No Settlement Funds will revert to Defendant under any circumstances. SA ¶¶ 2.16, 4.1.

26 **2. Settlement Administration**

27 **a. Identify the proposed settlement administrator, the settlement administrator selection**
28 **process, how many settlement administrators submitted proposals, what methods of**

1 **notice and claims payment were proposed, and the lead class counsel’s firms’ history**
2 **of engagements with the settlement administrator over the last two years.**

3 59. The Parties propose Postlethwaite & Netterville (“P&N”) as the Settlement Administrator.
4 The qualifications of P&N are set forth in the concurrently-filed Declaration of Brandon Schwartz.

5 60. My office worked with Clif’s counsel to vet and select a Settlement Administrator. We began
6 by identifying and considering settlement administrators who had requested to submit bids in this or other
7 matters, as well as administrators with whom we had worked or received bids from in the past. Based on
8 our experience with these administrators, we selected five administrators to contact and provided them with
9 the relevant information that they would need to submit bids. We received bids from four of these
10 administrators.

11 61. To compare the bids, I broke them down broadly into notice and administration costs. For
12 notice costs, I compared (by inputting into a spreadsheet) the bids’ estimated audience, reach, and frequency,
13 online and hard copy publication costs, online and additional impressions, total cost, cost per impression as
14 stated, and cost per impression when filtered through the proposed reach and frequency statistics.

15 62. For administration costs, I compared the number of claims assumed, and the costs associated
16 with case management and setup, a website and toll-free telephone number, additional communications with
17 Class Members, Claims and opt-out processing, additional processing and reporting, distribution and
18 postage, and any additional or miscellaneous costs. I then compared the total administration costs, and cost-
19 per-claim, as well as the total notice and administration cost, and the total of the notice cost-per-impression
20 and administration cost-per-claim. In this way, I was able to compare and evaluate the bids on a variety of
21 bases.

22 63. I shared the various bids received with Clif’s counsel and responded to questions regarding
23 how the various bids compared to one another.

24 64. Based on my analysis and conversations with Clif’s counsel, the Parties agreed P&N was the
25 best choice for administration of this Settlement.

26 65. The administrators submitted bids with notice proposals that combined publication notice
27 (online and traditional), direct notice, and statutorily required CLRA and CAFA notice. Generally, the
28 administrators proposed online notice through banner ads, social media (Facebook, Instagram, Twitter,

1 YouTube, and TikTok), and “targeted” websites that were likely to be of interest to the target audience. The
2 administrators also proposed publication notice through more traditional print media, including newspapers,
3 magazines that were likely to be of interest to the target audience, and press releases.

4 66. The administrators’ bids proposed paying Claims via both paper checks and electronically.
5 Electronic means of payment included, Paypal, Zelle, Venmo, ACH, Virtual Mastercard, and Apple Pay.
6 Electronic payments have a number of advantages, including being cheaper than paper checks, but it is
7 unlikely that all Claimants have access to electronic payments. Thus, we considered it important to have
8 both options available for Claimants.

9 67. Over the last two years, my firm has retained P&N to administer settlements in the following
10 matters:

- 11 a. *Hadley v. Kellogg Sales Co.*, 16-cv-4955-LHK (N.D. Cal.);
- 12 b. *Krommenhock v. Post Foods LLC*, 16-cv-4958-WHO (N.D. Cal.);
- 13 c. *Hanson v. Welch Foods Inc.*, 20-cv-02011-JCS (N.D. Cal.);
- 14 d. *McMorrow v. Mondelez International, Inc.*, 17-cv-02327-BAS-JLB (S.D. Cal); and
- 15 e. *Andrade-Heymfield v. NextFoods, Inc.*, 21-cv-01446-BTM-MSB (S.D. Cal.) (motion for
16 preliminary approval pending as of the date of this Declaration).

17 68. Based on these engagements, in our experience, P&N provides highly professional and
18 reliable service at very competitive rates, if not the most competitive rates, when compared to other
19 administrators. Moreover, each of the above settlements was in a lawsuit brought on the same theory, and
20 so P&N has significant recent experience with this precise type of case and settlement.

- 21 **b. Address the settlement administrator’s procedures for securely handling class member**
22 **data (including technical, administrative, and physical controls; retention; destruction;**
23 **audits; crisis response; etc.), the settlement administrator’s acceptance of responsibility**
24 **and maintenance of insurance in case of errors, the anticipated administrative costs,**
25 **the reasonableness of those costs in relation to the value of the settlement, and who will**
26 **pay the costs.**

27 69. Information about P&N’s procedures for securely handling Class Member data is addressed
28 in the concurrently-filed Declaration of Brandon Schwartz, at paragraphs 37-39 and Exhibit C.

70. All Notice and Claim Administration Expenses will be paid from the Settlement Fund. SA ¶¶ 2.31, 4.1.

71. Based on a Class Notice Program designed to obtain an 80% reach, P&N estimates Class Notice costs at \$337,491. We also asked P&N to estimate administration costs based on potential 1%, 3%, 5%, and 10% claims rates. Its estimates are as follows.

Claims Rate	1%	3%	5%	10%
Administrative Cost Estimate	\$106,343	\$183,129	\$298,030	\$537,450

72. These notice and administrative costs are reasonable in comparison to the value of the Settlement because, even at a 10 percent claims rate, estimated notice and administrative costs totaling \$874,941 represent just 7.3% of the Settlement Fund. At the more likely claims rate of around 3%, estimated notice and administrative costs of \$520,620 will represent less than 4.3% of the Settlement Fund. Similar proportions were approved in *Hadley*,² *Krommenhock*,³ *Hanson*,⁴ and *McMorrow*.⁵

3. Notice

73. P&N has designed a Notice Plan designed to reach 80% of the Target Audience (as defined in the Schwartz Declaration) at an average frequency of 2.42 times each. The Class Notice employs a multifaceted approach that combines (1) direct email notice, (2) magazine notice (Us Weekly), (3) online display ads, (4) social media, (5) search advertising, (6) national press release, (7) newspaper notice (CLRA fulfillment), (8) toll-free settlement hotline, and (9) Settlement Website. A major component of the notice plan will be targeted online ads as well as ads on social media networks. The online component allows for

² The Honorable Lucy H. Koh approved \$672,787 in administrative costs and fees against a \$13 million non-reversionary common fund (5.2% of fund). See *Hadley v. Kellogg Sales Co.*, No. 16-cv-4955-LHK (N.D. Cal.), Dkt. No. 410 (Post-Distribution Accounting).

³ The Honorable William H. Orrick approved \$535,000 in administrative costs and fees against a \$15 million non-reversionary common fund (3.6% of fund). See *Krommenhock v. Post Foods, LLC*, No. 16-cv-4958-WHO (N.D. Cal.), Dkt. No. 306 (Post-Distribution Accounting).

⁴ The Honorable Joseph C. Spero approved \$324,658 in administrative costs and fees against a \$1.5 million non-reversionary common fund (22% of fund). See *Hanson v. Welch Foods Inc.*, 20-cv-02011-JSC (N.D. Cal.), Dkt. No. 72 (Post-Distribution Accounting).

⁵ The Honorable Cynthia Bashant approved \$219,827 in administration costs against an \$8 million non-reversionary common fund (2.7% of fund). See *McMorrow v. Mondelez Int'l, Inc.*, No. 17-cv-2327-BAS (S.D. Cal.), Dkt. No. 212 (Final Approval Order).

1 targeting individuals that are likely to be Class Members and increase the reach of notice. The Parties
2 considered, and with the Court's approval, will seek contact information for those Class Members who
3 purchased the Class Products from the four largest retailers of Clif's bars during the relevant period,
4 Walmart, Target, Kroger, and Amazon. This will help maximize both the reach of class notice and the
5 Claims rate. The Parties have already advised the retailers of the likelihood of the forthcoming subpoenas,
6 and will ensure that Class Member contact information is either securely transmitted directly to the
7 Settlement Administrator or that the retailers directly send the notice to their customers. More specific
8 details about the Class Notice Program are set forth in the concurrently-filed Declaration of Brandon
9 Schwartz.

10 74. Moreover, the proposed Long-Form Notice itself is easily understandable and includes the
11 required information: (a) contact information for Class Counsel to answer questions; (b) the address for a
12 website, maintained by the Settlement Administrator, that lists key deadlines and has links to the notice,
13 Claim Form, Preliminary Approval Order, motions for preliminary approval and final approval and for
14 attorneys' fees, and other important documents in the case; (c) instructions on how to access the case docket
15 via PACER or in person at any of the Court's locations; (d) the date and time of the Final Approval Hearing,
16 clearly stating that the date may change without further notice to the Class; and (e) a note to advise Class
17 Members to check the Settlement Website or the Court's PACER site to confirm that the date has not been
18 changed. *See* SA Ex. 4.

19 **4. Opt-Outs**

20 75. In addition, the Class Notice instructs Class Members who wish to opt out of the Settlement,
21 how to do so, including the applicable deadline, and the Settlement does not require any extraneous
22 information or hurdles to opt out. *See* SA Ex. 4 at 6-7.

23 **5. Objections**

24 76. The Class Notice also instructs Class Members who wish to object, how to do so, including
25 the applicable deadline, and advises objecting Class Members that the Court can only approve or deny the
26 Settlement and cannot change the terms of the Settlement. *See* SA Ex. 4 at 7-8.

1 **6. Attorneys' Fees and Costs**

2 **a. Class Counsel's Hours**

3 77. Fitzgerald Joseph LLP ("FJLLP")⁶ dedicates its practice almost entirely to prosecuting class
4 action lawsuits and was appointed Class Counsel for the California and New York Certified Classes in this
5 case. FJLPP prosecuted this Action on a contingency basis and advanced all out-of-pocket expenses.

6 78. FJLLP's timekeepers are myself; co-principal Paul Joseph; partner Melanie Persinger; senior
7 associate Trevor Flynn; associates Richelle Kemler and Caroline Emhardt; and paralegals Julie Hinton and
8 Christina Mendez. FJLLP's practice is to keep contemporaneous records for each timekeeper, and to
9 regularly record time records in the normal course of business. Moreover, FJLLP's practice is to bill in 6-
10 minute (tenth-of-an-hour) increments. Each timekeeper kept time records in this case consistent with these
11 practices.

12 79. Prior to tallying FJLLP's hours in this matter, we reviewed the billing records and made cuts
13 for obvious entry errors, duplications, and instances where we determined the hours should be reduced or
14 not billed, for instance for any time billed with respect to working with Ms. Aquino, for whom we withdrew
15 as counsel after being unable to contact her. *See* Dkt. Nos. 203, 206. However, for purposes of this Motion,
16 we have not yet completed our evaluation of each time entry in detail to make further cuts if appropriate.
17 Given that further work will be required through preliminary and final approval, I do not believe our hours
18 will be less even after those discretionary cuts, and in fact will likely be higher at the time of final approval.

19 80. The total time spent by Class Counsel on this matter through October 15, 2023 is **10,662.8**
20 hours, which is summarized in the below tables.

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22
23
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25
26 ⁶ The two principal attorneys of FJLLP, Jack Fitzgerald and Paul Joseph, initially filed this case as a joint
27 effort by their individual firms, The Law Office of Jack Fitzgerald, PC ("LOJF") and The Law Office of Paul
28 K. Joseph, PC ("LOPJ"). In May 2021, they merged those firms into FJLLP. LOJF, LOPJ, and FJLLP were
comprised of the same lawyers and staff, and each had the same billing practices throughout this case. As a
result, I refer only to FJLLP for convenience, even where the work was conducted prior to the firm merger.

Hours by Timekeeper

Timekeeper	Hours	% of Work
Attorneys		
Jack Fitzgerald	2208.2	20.7%
Paul Joseph	2069.2	19.4%
Melanie Persinger	2120.4	19.9%
Trevor Flynn	1757.3	16.5%
Caroline Emhardt	689.4	6.5%
Richelle Kemler	933.5	8.8%
Paralegals		
Christina Mendez	610.9	5.7%
Julie Hinton	273.9	2.6%
Total =	10,662.8	

Hours by Category

Category	Hours	% of Work
Investigation & Complaint	107.5	1.0%
Case Management	61.6	0.6%
Rule 12	121.6	1.1%
Discovery	2,312.7	21.7%
Work with Plaintiffs' Experts	135.5	1.3%
Motions Regarding Experts	557.2	5.2%
Class Certification	620.4	5.8%
Summary Judgment	329.5	3.1%
Pre-Trial	1604.6	15.0%
Trial	3,978.8	37.3%
ADR	485.0	4.5%
Preliminary Approval	225.0	2.1%
Final Approval	122.9	1.2%
Total =	10,662.8	

b. Class Counsel's Billing Rates

81. While our billing rates have increased over the last year, for purposes of this Settlement, we are seeking the same rates as in our 2022 motion for preliminary approval, which are as follows:

Timekeeper	Position	Rate
Jack Fitzgerald	Principal	\$870
Paul Joseph	Principal	\$700
Melanie Persinger	Partner	\$680
Trevor Flynn	Associate	\$670
Caroline Emhardt	Associate	\$500
Richelle Kemler	Associate	\$580
Christina Mendez	Paralegal	\$235
Julie Hinton	Paralegal	\$235

82. These rates are consistent both with previous fee awards, and prevailing rates in the community for attorneys of similar experience, skill, and reputation.

83. First, the requested rates are consistent with rates recently approved for the above

1 timekeepers as follows.⁷ In April 2022, a Northern District court awarded fees as requested, thereby
 2 approving rates of \$825 for myself, \$625 for Ms. Persinger, \$625 for Mr. Flynn, and \$205 for Ms. Hinton.
 3 *See Hanson v. Welch Foods Inc.*, 2022 WL 1133028, at *2 (N.D. Cal. Apr. 15, 2022).

4 84. Also in April 2022, a Southern District of California court awarded fees as requested, thereby
 5 approving of the requested rates of \$825 for myself, \$660 for Mr. Joseph, \$645 for Ms. Persinger, \$635 for
 6 Mr. Flynn, \$550 for Ms. Kemler, and \$225 for Ms. Hinton. *See McMorrow v. Mondelez Int'l, Inc.*, 2022
 7 WL 1056098, at *5 (S.D. Cal. Apr. 8, 2022) (acknowledging that the hourly rate depends partly on “the
 8 experience of the attorney,” and awarding fees as requested, which were based on the aforementioned
 9 lodestar rates.).

10 85. In November 2021, a Northern District of California court awarded fees as requested, thereby
 11 approving rates of \$825 for myself, \$625 for Mr. Flynn, \$600 for Ms. Persinger, and \$205 for Ms. Hinton.
 12 *See Hadley v. Kellogg Sales Co.*, 2021 WL 5706967, at *2 (N.D. Cal. Nov. 23, 2021).

13 86. In June 2021, another Northern District of California court reduced Class Counsel’s fee from
 14 one-third of the common fund to 30% of the common fund, but otherwise did not take issue with Class
 15 Counsel’s requested rates of \$825 for myself, \$625 for Mr. Flynn, \$600 for Ms. Persinger, and \$205 for Ms.
 16 Hinton. *See Krommenhock v. Post Foods, LLC*, 2021 WL 2910205, at *2 (N.D. Cal. June 25, 2021).

17 87. The rates now requested here represent a modest annual increase of approximately 2.5%
 18 from the requested and approved 2021 rates to account for the fact that “hourly attorney fee rates
 19 generally increase over time with inflation,” *Tehachapi Unified Sch. Dist. v. K.M. by & Through Markham*,
 20 2019 WL 331153, at *6 (E.D. Cal. Jan. 25, 2019).

21 88. Second, the requested rates are consistent with prevailing rates in the community for
 22 attorneys of similar experience, skill, and reputation. In *Pennington v. Tetra Tech EC, Inc.*, 2022 WL
 23 899843, at *6 (N.D. Cal. Mar. 28, 2022) (Donato, J.), this Court found the following “hourly rates used were
 24 reasonable:” between \$750 and \$950 for partners, \$650 for an associate, and \$275 to \$325 for paralegals.⁸

25 _____
 26 ⁷ *See Johnson v. Quantum Learning Network, Inc.*, 2017 WL 747462, at *6 (N.D. Cal. Feb. 27, 2017) (that
 27 other courts had approved class counsel’s requested hourly rate “support[ed] granting Class Counsel’s [fee]
 request”).

28 ⁸ Attached as Exhibit 2 is a true and correct copy of *Pennington v. Tetra Tech EC, Inc.*, Case No. 18-cv-
 05330-JD (N.D. Cal.), Dkt. No. 175-1, Decl. of Anne Marie Murphy. *See id.* ¶¶ 6-8, Ex. 1.

1 *See also Siddle v. Duracell Co.*, 2021 WL 6332775, at *4 (N.D. Cal. Apr. 19, 2021) (Donato, J.) (“Class
 2 counsel’s \$850 hourly rate is within the local market rates awarded to counsel with 30 years of class action
 3 experience”); *Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 2018 WL 6726963, at *1 (N.D. Cal.
 4 Dec. 22, 2018) (Donato, J.) (Approving hourly rates of \$450 for the associate on the case, and \$900 for the
 5 partner finding the applicants “support[ed] these hourly rates with evidence of prevailing rates in the
 6 market,” including, among other things, “citations to fee awards in other cases that approved similar, albeit
 7 somewhat lower, hourly rates.”).

8 89. In February 2021, in *In re Facebook Biometric Info. Priv. Litig.*, this Court also approved
 9 rates for partners of between \$685 and \$1,150, and rates for associates between \$475 and \$750. 522 F. Supp.
 10 3d 617, 633 (N.D. Cal. 2021), *appeal dismissed*, 2021 WL 2660668 (9th Cir. June 22, 2021), *and aff’d*,
 11 2022 WL 822923 (9th Cir. Mar. 17, 2022) (“The Court finds that the hourly rates used by the three law
 12 firms for attorneys and staff were reasonable for the applicable localities and experience levels of the
 13 timekeepers.”)⁹

14 90. In December 2020, a different Northern District of California court found that “opinions
 15 from this District and evidence . . . supports awarding the partner rates sought,” approving rates of between
 16 \$545 and \$1,280 per hour for twelve billing attorneys, and \$390 and \$405 for paralegals. *Planned*
 17 *Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 2020 WL 7626410, at *3 & nn.4-5 (N.D. Cal. Dec.
 18 22, 2020). Rate determinations by several other judges in this District show Class Counsel’s rates here are
 19 reasonable. *See Harvey v. Morgan Stanley Smith Barney LLC*, 2020 WL 1031801, at *21 (N.D. Cal. Mar.
 20 3, 2020) (approving rates between \$820 and \$1,250 for partners, \$315 to \$575 for associates, and \$250 to
 21 \$290 for paralegals);¹⁰ *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2 (N.D. Cal. Sept. 20, 2018)
 22 (finding reasonable “historic rates” ranging from \$350 to \$1,050 for partners and senior counsel, \$300 to
 23 \$675 for associates, and \$100 to \$400 for paralegals and other litigation staff); *In re Nat’l Collegiate Athletic*
 24 *Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.* (“NCAA”), 2017 WL 6040065, at *8 (N.D. Cal. Dec. 6,

25 _____
 26 ⁹ Attached as Exhibit 3 is a true and correct copy of *In re Facebook Biometric Info. Priv. Litig.*, Case No. 15-
 cv-03747-JD (N.D. Cal.), Dkt. No. 499-6, Decl. of Rafey S. Balabanian. *See id.* at Ex. A.

27 ¹⁰ Compare Exhibit 4, *Harvey v. Morgan Stanley Smith Barney LLC*, Case No. 18-cv-02835-WHO, Dkt.
 28 No. 84, Pl.’s Mot. for Attorneys’ Fees at 15-16; Exhibit 5, *Harvey v. Morgan Stanley Smith Barney LLC*,
 Case No. 18-cv-02835-WHO, Dkt. No. 87, Decl. of Jahan C. Sagafi ¶ 50.

2017) (approving hourly rates for partners of \$578 to \$1,035 and rates for associates of \$295 to \$635); *Max Sound Corp. v. Google, Inc.*, 2017 WL 4536342, at *12 (N.D. Cal. Oct. 11, 2017) (approving attorney rates ranging from \$336-\$950 because “[t]hese rates are well in line with the billing rates for attorneys with similar qualifications in the Bay Area” (citing *inter alia Banas v. Volcano Corp.*, 47 F.Supp.3d 957, 965 (N.D. Cal. 2014) (in 2014 approving hourly rates ranging from \$355 to \$1,095 per hour for partners and associates and \$245 to \$290 per hour for paralegals); *In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015) (approving partner rates of \$490 to \$975, non-partner rates of \$310 to \$800, and staff rates of \$190 to \$430)).

* * *

91. Given the foregoing hours and rates, Class Counsel’s lodestar in this case through October 15, 2023 is **\$7,082,895**, which is summarized in the table below.

Timekeeper	Rate	Hours	Lodestar
Jack Fitzgerald	\$870	2208.2	\$1,921,134.00
Paul Joseph	\$700	2069.2	\$1,448,440.00
Melanie Persinger	\$680	2120.4	\$1,441,872.00
Trevor Flynn	\$670	1757.3	\$1,177,391.00
Caroline Emhardt	\$500	689.4	\$344,700.00
Richelle Kemler	\$580	933.5	\$541,430.00
Christina Mendez	\$235	610.9	\$143,561.50
Julie Hinton	\$235	273.9	\$64,366.50
Totals =		10662.8	\$7,082,895.00

92. As of October 15, 2023, Class Counsel has expended over 10,660 hours on the litigation for a total lodestar of about \$7.08 million. A one-third fee, if awarded, would thus represent a negative multiplier of 0.56 to Class Counsel’s lodestar, demonstrating its reasonableness.

c. Class Counsel’s Expenses

93. FJLLP advanced all out-of-pocket costs associated with the prosecution of this Action. As of the filing of Plaintiffs’ Motion for Preliminary Approval, we have incurred a total of **\$917,584.35** in

1 expenses for which we intend to seek reimbursement.¹¹ I have examined and categorized those expenses.
 2 They can be broken down as follows.¹²

3	Category	Amount	Proportion
4	Air Travel	\$2,838.66	0.31%
5	Case Initiation, Management & Admission Fees	\$1,675.00	0.18%
6	Class Certification Notice	\$41,843.03	4.56%
7	Deposition Costs & Transcripts	\$122,319.49	13.33%
8	Document Review & Organization Costs	\$21,561.60	2.35%
9	Expert Testimony & Related Costs	\$632,803.53	68.96%
10	Focus Group & Trial Consultation	\$58,604.50	6.39%
11	Ground Travel	\$320.66	0.03%
12	Lodging & Accommodations	\$1,476.74	0.16%
13	Mediation Costs	\$19,875.00	2.17%
14	Service & Subpoena Costs	\$13,240.87	1.44%
15	Hearing Transcripts	\$246.00	0.03%
16	Meals While Traveling	\$630.30	0.07%
	Miscellaneous	\$148.97	0.02%
	Total =	\$917,584.35	

17 7. Service Awards

18 94. Plaintiffs and Class Representatives Ralph Milan and Elizabeth Arnold intend to seek Service
 19 Awards of \$5,000 each. While additional information will be provided when moving for Service Awards,
 20 the Service Awards are reasonable given their time and effort over five years of litigation.

21 95. Milan and Arnold assisted counsel, consulting with counsel in drafting the Complaint,
 22 reviewing the Complaint and approving its filing. Each also assisted in responding to discovery, which
 23 included preparing and sitting for deposition, responding to 25 interrogatories, and searching for documents
 24 responsive to Clif's 55 document requests. They further assisted counsel in moving for certification, by
 25 _____

26 ¹¹ Our actual expenses are greater than this because we are not seeking reimbursement for (i) working meals
 27 other than when traveling or meeting with clients, (ii) postage, (iii) legal research, (iv) PACER, and (v)
 color copies. These amounts for this case were substantial, totaling several thousands of dollars.

28 ¹² We will provide a detailed report of expenses, listing them chronologically and by category, when we
 move for fees and expenses.

1 working with counsel to draft and submit declarations demonstrating their standing and adequacy, which
2 helped ultimately obtain certification. Milan and Arnold also participated in the Settlement process,
3 consulted with counsel on the adequacy of proposed settlements, reviewed the settlement agreements with
4 counsel, and ultimately approved the Settlement. Thus, both Milan and Arnold devoted considerable time
5 over more than half a decade of litigation, that was indispensable and without which the Class would receive
6 nothing. Despite their service, the Settlement is not conditioned on the Court granting Service Awards or in
7 a particular amount. SA ¶ 9.4.

8 **8. Cy Pres Awards**

9 96. Settlement Agreement provides that, after Cash Payments are distributed to Claimants, any
10 amounts remaining uncleared after 120 days will be provided to Class Member claimants in a supplemental
11 distribution or, if not economically feasible, donated *cy pres*. SA ¶ 4.11.

12 97. The Parties have met and conferred regarding potential *cy pres* recipients, keeping in mind
13 the requirement that their activities be sufficiently tethered to Plaintiffs' claims. *See Dennis v. Kellogg Co.*,
14 697 F.3d 858, 866-67 (9th Cir. 2012). They jointly propose and ask the Court to approve as potential *cy pres*
15 recipients (i) the Resnick Center for Food Law and Policy at the University of California, Los Angeles
16 School of Law; and (ii) the Tufts University Friedman School of Nutrition Science & Policy. These
17 organizations are described further below.

18 a. *The UCLA Resnik Center for Food Law & Policy.* The Resnick Center performs
19 cutting-edge legal research and scholarship in food law and policy to improve health and quality of
20 life for humans and the planet, focusing on food governance strategies to promote accountability,
21 transparency, and safety in the national and global food chain. To advance its mission, the Resnick
22 Center works with UCLA Law students and faculty and the broader UCLA and UC communities,
23 and engages with national and international scholars, experts, and policymakers to provide robust
24 academic support to organizations working to change food policy. Through its publications, courses,
25 clinic, and events, the Resnick Center also affords students valuable scholarship, research, and
26 networking opportunities. The Resnick Center also maintains a robust slate of outside advisors,
27 including its Outside Advisory Board, and its Research Affiliates, who are recent law school
28 graduates working to better the food system who will consult and assist on various Resnick Center

1 research projects. The Resnick Center has hosted various events on consumer protection issues and
 2 on issues concerning sugar, including an event on food litigation in 2014 and a roundtable on sugar
 3 reduction strategies in 2018, both of which contained components on false advertising. Currently,
 4 the Center is working with a group of academics and scientists to write a petition to FDA to advocate
 5 for better labeling on fruit and vegetable juice beverages, specifically regarding added sugars.
 6 Because the Resnick Center works to protect consumers from fraud in the sale and consumption of
 7 foods by providing legal, governmental, and regulatory services, and education regarding food law,
 8 it is an appropriate *cy pres* recipient. See [https://law.ucla.edu/academics/centers/resnick-center-](https://law.ucla.edu/academics/centers/resnick-center-food-law-policy)
 9 [food-law-policy](https://law.ucla.edu/academics/centers/resnick-center-food-law-policy) for additional information.¹³

10 b. *The Tufts University Friedman School of Nutrition.* The Friedman School of Nutrition
 11 brings together biomedical, nutritional, clinical, social, and behavioral scientists to conduct research,
 12 educational, and community service programs in the field of human nutrition. The school’s mission
 13 is to generate trusted science, educate future leaders, and produce real world impact in nutrition
 14 science and policy. Because Friedman School of Nutrition’s students study in the area of health
 15 promotion, disease prevention and clinical nutrition, it is an appropriate *cy pres* recipient. See
 16 <https://nutrition.tufts.edu/about> for additional information.

17 9. Timeline

18 98. The Settlement provides for a 60-day notice period, which will begin 21 days after an order
 19 granting preliminary approval is issued. The notice period is set to begin 21 days after a Preliminary
 20 Approval Order to allow time to subpoena top retailers for Class Member contact information so that Direct
 21 Notice can be made where possible.

22 99. As required, the proposed schedule provides Class Members with at least thirty-five days to
 23 opt out or object to the Settlement and the motion for attorney’s fees and costs. SA ¶ 4.13.1.

24 100. An illustrative timeline of major events, if preliminary approval were to be granted on

25 ¹³ While the Resnick Center only has five officially “affiliated faculty,” counsel that recently appeared for
 26 Clif, David Biderman, is an Adjunct Professor at the UCLA Law School, and teaches a class titled, “Food
 27 Litigation: Consumer Protection, Regulation, and Class Actions.” Other members of Mr. Biderman’s firm,
 28 Perkins Coie, assist in teaching that class. Notably, the Resnick Center was chosen as a potential *cy pres*
 recipient for the previous 2022 settlement, which occurred long before Mr. Biderman appeared on behalf of
 Clif. His involvement with UCLA Law School had no bearing on the selection.

December 14, 2023, is provided below.

Event	Day	Approximate Weeks After Preliminary Approval	Example Assuming PA Approval Granted December 14, 2023
Date Court grants preliminary approval	0	-	December 14, 2023
Deadline to serve retailer subpoenas (on Walmart, Target, Kroger and Amazon)	7	1 week	December 21, 2023
Deadline to commence 60-day Class Notice period	21	3 weeks	January 4, 2024
Deadline for Plaintiffs to file Motion for Attorneys' Fees, Costs, and Service Awards	46	6.5 weeks	February 5, 2024
Notice completion date, and deadline to make a claim, opt out, and object	81	11.5 weeks	March 11, 2024
Deadline for Plaintiffs to file Motion for Final Approval	99	14 weeks	March 21, 2024
Final Approval hearing	113	16 weeks	April 4, 2024

10. Class Action Fairness Act (CAFA) and Similar Requirements

101. CAFA Notice is required by 28 U.S.C. § 1715(b), and will be mailed by the Settlement Administrator within 10 days of the filing of this Motion. SA ¶ 6.2.5. There are no other required notices to government entities.

102. The requirements of 28 U.S.C. § 1712 for coupon settlements do not apply because the Common Fund is all cash and does not involve coupons. The provision of 28 U.S.C. § 1713 that protects against loss by Class Members likewise does not apply because there is no possibility the Settlement will cause a loss to Class Members. Finally, the Settlement does not provide “for the payment of greater sums to some Class Members than to others solely on the basis that the Class Members to whom the greater sums are to be paid are located in closer geographic proximity to the court,” 28 U.S.C. § 1713. Rather, the amount Class Members receive is based on the number of units purchased and whether they have proof of those purchases.

11. Comparable Outcomes

103. In comparison to other settlements, the Settlement here is reasonable given the claims released, benefits provided, and total exposure.

104. The most comparable recent settlements in terms of the claims released, theories of liability, and settlement structure are the those in *Hadley*, *Krommenhock*, *McMorrow*, and *Hanson*. However, to ensure a broader perspective, we also looked at two additional settlements of low-dollar consumer packaged goods. As required by the Procedural Guidelines, the key metrics for these settlements are provided in the table below.

Fund	Class Size	No. Class Members Noticed	Method of Notice	Number and % Claim Forms Submitted ¹⁴	Average Recovery Per Claimant	Amount Cy Pres	Admin Costs	Fees and Costs	Actual Damages Exposure (Statutory Exposure)
<i>Milan</i>									
\$12M	2.7M	80% (2.42x freq.)	Online, Print, Emails	Est. 81,000 (3.0%)	\$81.80	Unknown	\$449,775	\$4.0M fee, \$915k costs	\$138.8 M (\$25.7 B)
<i>Krommenhock</i>									
\$15M	20.9M	72.14% (2.12x freq.)	Online, Print, ~70,000 Emails	335,816 (1.61%)	\$27.07	\$111,484 (x3) total = \$334,452	\$517,836	\$4.5M fee, \$968k costs	\$57.9 M (NA)
<i>Hadley</i>									
\$13M	16.0M	76.86% (2.54x freq.)	Online, Print	507,121 (3.17%)	\$14.28	\$189,708 (x2) total = \$379,416	\$672,787	\$3.9M fee, \$1.16M costs	\$13.6 M certified class (NA)
<i>McMorrow</i>									
\$8M	5.7M	72.94% (2.07x freq.)	Online, Print	250,753 (4.4%)	\$20.96	\$108,770 (x2) total = \$217,540	\$219,827	\$2.67M fee, \$288k costs	\$21.9M (\$22B)
<i>Hanson</i>									
\$1.5M	3.2M	72.59% (2.02x freq.)	Online, Print	155,845 (4.87%)	\$4.94	\$51,220.73	\$324,658	\$375k fee, \$24k costs	\$7.3 M (N/A)
<i>Pettit</i>									
Claims Made	3.88M	72% (2.6x freq.)	Online, Print	137,068 (3.53%)	\$3.92	N/A Claims Made	\$677,122	\$1.9M fee, \$261k costs	\$25.3 M ¹⁵ (N/A)

¹⁴ These percentages indicate number of *valid* claims after verification.

¹⁵ The papers in this matter primarily speak in terms of the “average price nets a retail price premium of approximately \$0.34 per package sold” and that the settlement provided “\$0.60 per-package recovery under the settlement accordingly exceeds the ‘premium.’” Dkt. No. 117-3 at ¶ 10. However, there is a single footnote that notes, “P&G estimates approximately 74.5 million units of the Product were sold nationwide (excluding purchases in New York) during the settlement class period.” *Id.* ¶ 10 n.3. Multiplying the \$0.34 premium per unit by 74.5 million units, yields \$25.3 M in potential damages.

Fund	Class Size	No. Class Members Noticed	Method of Notice	Number and % Claim Forms Submitted ¹⁴	Average Recovery Per Claimant	Amount Cy Pres	Admin Costs	Fees and Costs	Actual Damages Exposure (Statutory Exposure)
<i>Fitzhenry-Russell</i>									
Claims Made (\$11.2 M Cap)	2.38M	74% (2.3x freq.)	Online, Print, ~15.6k Emails	78,896 (3.3%)	\$4.74	N/A Claims Made	\$750,000 (est)	\$1.8M fee, \$425k costs	\$10.7 M (NA)

105. Looking first at the other sugar settlements, if one takes the total settlement fund and divides it by the number of class members, the total settlement funds equate to \$0.72 (*Krommenhock*), \$0.81 (*Hadley*), \$1.40 (*McMorrow*), and \$0.47 (*Hanson*), per class member respectively. The total common fund for this Settlement, however, equates to **\$1.62 dollars per class member**, which compares favorably at more than triple the next-best example (*McMorrow*).

106. Further, while the highest actual average payout to claimants in the other sugar settlement was \$27.07 (*Krommenhock*), here, as shown below, the estimated payout based on the predicted 3% claims rate will be \$29.78 per claimant. Thus, the present Settlement compares favorably to other sugar settlements.

Settlement Fund: \$12M	Allocation at 1% Claims Rate (74,000 claims)	% of Fund	Allocation at 3% Claims Rate (222,000 claims)	% of Fund	Allocation at 5% Claims Rate (370,000 claims)	% of Fund	Allocation at 10% Claims Rate (740,000 claims)	% of Fund
Notice Costs	(\$337,491)	2.81%	(\$337,491)	2.81%	(\$337,491)	2.81%	(\$337,491)	2.81%
Admin Costs	(\$106,343)	0.89%	(\$183,129)	1.53%	(\$298,030)	2.48%	(\$537,450)	4.48%
Attorneys' Fees	(\$4,000,000)	33.3%	(\$4,000,000)	33.3%	(\$4,000,000)	33.3%	(\$4,000,000)	33.3%
Litigation Expenses	(\$917,584)	7.6%	(\$917,584)	7.6%	(\$917,584)	7.6%	(\$917,584)	7.6%

Settlement Fund: \$12M	Allocation at 1% Claims Rate (74,000 claims)	% of Fund	Allocation at 3% Claims Rate (222,000 claims)	% of Fund	Allocation at 5% Claims Rate (370,000 claims)	% of Fund	Allocation at 10% Claims Rate (740,000 claims)	% of Fund
Service Awards	(\$10,000)	0.1%	(\$10,000)	0.1%	(\$10,000)	0.1%	(\$10,000)	0.1%
Remainder	\$6,628,582	55.3%	\$6,551,796	54.6%	\$6,436,895	53.6%	\$6,197,475	51.6%
Average Award	\$89.57		\$29.78		\$17.40		\$8.37	

107. The current Settlement compares even more favorably to the non-sugar settlements in *Pettit* and *Fitzhenry-Russell*. Each of those settlements was a claims-made settlement without a true, non-reversionary common fund. Further, after the claims process, a total of \$537,879 (*Pettit*) and \$373,964 (*Fitzhenry-Russell*) were paid to class members. In this Settlement, assuming a three percent claims rate and that the full amount of requested fees, costs, and Service Awards are awarded, over \$6.55 million is estimated to be awarded to the Class. And the Settlements' provision for a pro-rata distribution ensures that the vast majority of this will go directly to Class Members. Thus, when compared to other settlements, this Settlement compares favorably.

108. Thus, the present Settlement is well within the range of reasonableness and compares favorably to similar settlements in terms of the relief provided to Class Members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.
Executed this 31st day of October 2023, in San Diego, California.

By: /s/ Jack Fitzgerald
Jack Fitzgerald

Exhibit 1

CLASS ACTION SETTLEMENT AGREEMENT

1. RECITALS

1.1 This Settlement Agreement is entered into by Class Counsel and the Class Representatives on behalf of the Class Members, and Mondelēz Global LLC, as successor in interest to Defendant Clif Bar and Company (“Clif Bar”) (collectively, the “Parties”). Capitalized terms used herein are defined in Section 2 of this Settlement Agreement or indicated in parentheses.

1.2 Subject to Court approval, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

1.3 WHEREAS, on April 19, 2018, Ralph Milan, Sarah Aquino, and Elizabeth Arnold (“Plaintiffs”) filed a class action complaint against Clif Bar in the United States District Court for the Northern District of California, captioned *Ralph Milan et al. v. Clif Bar & Company*, Case No. 18-cv-02354-JD (the “Action”), on behalf of themselves and a class of all persons in the United States (or alternatively, California and New York) who purchased the Class Products;

1.4 WHEREAS, on September 3, 2021, the Court dismissed Ms. Aquino without prejudice from the Action for lack of prosecution and subsequently relieved Class Counsel as her counsel in the Action;

1.5 WHEREAS, on September 27, 2021, the Court certified a California Clif Bar class, a New York Clif Bar class, a California Kid Clif ZBar class, and a New York Clif Kid ZBar class, and has not certified any nationwide class;

1.6 WHEREAS, on March 29, 2023, the Court issued an order finding that a nationwide Settlement Class may be certified in this Action for settlement purposes consistent with *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 562-566 (9th Cir. 2019);

1.7 WHEREAS, Clif Bar denies all allegations in the Action;

1.8 WHEREAS, Plaintiffs and Class Counsel have determined that a settlement of the Action on the terms reflected in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class; and

1.9 WHEREAS, Clif Bar, to avoid costs, disruption and distraction of further litigation, and without admitting the truth of any allegations made in or related to the Action, or any liability with respect thereto, has concluded that it is desirable that the claims against it be settled and resolved on the terms in this Settlement Agreement.

1.10 NOW, THEREFORE, this Settlement Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and forever settled and compromised as between Plaintiffs and the Settlement Class on the one hand, and Clif

Bar on the other hand; and (2) upon final approval of the Settlement Agreement, the Final Judgment and Order Approving Settlement shall be entered dismissing the Action with prejudice and releasing all Released Claims against the Released Parties.

2. DEFINITIONS

As used in this Settlement Agreement and the attached Exhibits, the following terms shall have the meanings set forth below unless this Settlement Agreement specifically provides otherwise:

2.1 “Action” means *Ralph Milan et al. v. Clif Bar & Company*, Case No. 18-cv-02354-JD (N.D. Cal.).

2.2 “Cash Payment” means the cash settlement awards paid to eligible Claimants as set forth in Section 4 of this Settlement Agreement.

2.3 “Claim” means a request for a Cash Payment on a Claim Form submitted to the Settlement Administrator in accordance with the terms of this Settlement Agreement.

2.4 “Claim Deadline” means the date by which all Claim Forms must be postmarked or submitted online to the Settlement Administrator to be considered timely. The Claim Deadline shall be ten (10) days after the date first set by the Court for the Final Approval Hearing unless the Parties agree to a longer period.

2.5 “Claim Form” means the document to be submitted by a Claimant requesting a Cash Payment.

2.6 “Claimant” means a Class Member who submits a Claim.

2.7 “Class” or “Settlement Class” means all persons who, during the “Class Period” (as defined below), purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below. Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with Section 7 of this Settlement Agreement or as approved by the Court.

2.8 “Class Counsel” or “Plaintiffs’ Counsel” means the attorneys of record for the Class Representatives and Class in the Action, namely Fitzgerald Joseph LLP.

2.9 “Class Member” means a member of the Settlement Class.

2.10 “Class Member Household” means all persons who share a single physical address. For all persons who are a legal entity, such as a corporation, partnership, business organization or association, or any other type of legal entity, there can be only one physical address for purposes of this Settlement, even if the entity has multiple offices or locations.

2.11 “Class Notice” means, collectively, the Long-form Notice, Short-form Notice, Email Notice, Postcard Notice, Internet Banner Advertisements, and Media Notice discussed in Section 4 of this Settlement Agreement.

2.12 “Class Notice Program” means the Court-approved plan for disseminating Class Notice.

2.13 “Class Period” means:

2.13.1. For Class Members in California and New York, April 19, 2014, to March 31, 2023.

2.13.2. For Class Members outside of California and New York, March 31, 2019 through March 31, 2023.

2.14 “Class Products” means original Clif Bars in packaging bearing the phrase “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging bearing the Challenged Claims (as identified in the Complaint in the Action).

2.15 “Class Representatives” or “Plaintiffs” means Ralph Milan and Elizabeth Arnold.

2.16 “Common Fund” or “Settlement Fund” means the qualified settlement fund this Settlement Agreement obligates Clif Bar to fund in the amount of Twelve Million Dollars (\$12,000,000), which is in the form of a non-reversionary Common Fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

2.17 “Complaint” means the Class Action Complaint filed in the Action on April 19, 2018 [Docket No. 1].

2.18 “Court” means the United States District Court for the Northern District of California, the Honorable James Donato presiding, or any judge who will succeed him as the judge in the Action.

2.19 “Cy Pres Recipients” means (i) the Resnick Center for Food Law and Policy at the University of California, Los Angeles, School of Law, and (ii) Tufts University Friedman School of Nutrition Science & Policy, or, if not approved by the Court, one or more other Court-approved nonsectarian, not-for-profit organizations whose work is sufficiently tethered to the allegations in this Action.

2.20 “Defendant” or “Clif Bar” means Clif Bar & Company.

2.21 “Defendant’s Counsel” or “Clif Bar’s Counsel” means David T. Biderman and Jasmine W. Wetherell of Perkins Coie LLP and Christopher Van Gundy and Khirin A. Bunker of Sheppard, Mullin, Richter & Hampton, LLP.

2.22 “Direct Notice” means distribution of Class Notice by email (if an email address is available) or if not, by first class mail through the United States Postal Service to Class Members who can be identified in the records of third-party retailers, Clif Bar, or otherwise.

2.23 “Effective Date” means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final on the later in time of: (a) if no appeal has been taken from the Judgment, the date on which the time to appeal has expired; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari; or (e) if Class Counsel and Defendant agree in writing, any other agreed date that is earlier than the Effective Date as calculated according to subparagraphs (a) - (d) above.

2.24 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Common Fund, as set forth in Section 9 of this Settlement Agreement.

2.25 “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement Agreement.

2.26 “Final Judgment and Order Approving Settlement” means, collectively, the Final Judgment and Final Order Approving Settlement to be entered by the Court approving the settlement as fair, adequate, and reasonable, confirming the certification of the Settlement Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement. The Final Judgment and Order Approving Settlement shall be substantially in the form of Exhibits 2 and 3 or as otherwise modified by the Court or the Parties.

2.27 “Internet Banner Advertisements” means the form of online legal notice, as approved by the Court, containing a hyperlink to the Claim Form section of the Settlement Website, to be distributed by the Settlement Administrator according to the Class Notice Program.

2.28 “Long-form Class Notice” means the legal notice of the terms of the proposed Settlement, as approved by the Court, to be distributed according to the Class Notice Program. The Long-form Class Notice shall be substantially in the form of Exhibit 4, or as otherwise modified by the Court.

2.29 “Media Notice” means the form of notice, as approved by the Court, to be distributed by the Settlement Administrator according to the Class Notice Program.

2.30 “Net Fund” means the amount of the Common Fund remaining after deducting the amount of the Fee Award and the costs of class notice.

2.31 “Notice and Claim Administration Expenses” means costs and expenses incurred by the Settlement Administrator, including all notice expenses, the costs of administering the Class Notice Program, and the costs of processing and distributing all the Cash Payment to Claimants.

2.32 “Notice Date” means the date by which the Settlement Administrator shall commence dissemination of the Class Notice, which shall be within twenty-one (21) days from

the Preliminary Approval Order, unless the Parties agree to a different date, subject to Court approval.

2.33 “Objection Date” means the date by which Class Members must file and serve objections to the Settlement Agreement and shall be no later than eighty-one (81) days after the Settlement Notice Date, or another time set by the Court.

2.34 “Opt-Out Date” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator, and shall be no later than eighty-one (81) days after the Settlement Notice Date, or another time set by the Court.

2.35 “Parties” means the Plaintiffs and Defendant in this Action.

2.36 “Preliminary Approval Order” means the order to be entered by the Court conditionally certifying the Settlement Class, preliminarily approving the Settlement Agreement, setting the date of the Final Approval Hearing, appointing Class Counsel for the Settlement Class, appointing Class Representatives for the Settlement Class, approving the Class Notice Program and forms of Class Notice, and setting the Opt-Out Date, Objection Date, and Notice Date. The Preliminary Approval Order shall be substantially in the form of Exhibit 1 or as otherwise modified by the Court or the Parties.

2.37 “Proof of Purchase” means a receipt or retailer record showing the Claimant purchased the Class Product during the Class Period and the amount purchased.

2.38 “Publication Notice” means distribution of the Class Notice, including through the Media Notice and Internet Banner Advertisements.

2.39 “Released Claims” means, with the exception of claims for personal injury, any and all claims or causes of action, whether known or unknown, that were or could have been asserted in the Action, which arise from Plaintiffs’ allegations that Clif Bar’s labeling, packaging, marketing and/or advertising of Class Products was misleading or deceptive due to the added sugar content of the Class Products. Class Members are releasing claims based only on the identical factual predicate set forth in the Complaint and nothing further.

2.40 “Released Party” or “Released Parties” means Defendant and its parents (including past, current, or future parent companies, whether intermediate or ultimate parents), subsidiaries, divisions, departments, agents, and affiliates, and any and all of its past, present, or future officers, directors, employees, stockholders, agents, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns including but not limited to third party distributors or sellers of the Class Products, but only with respect to Released Claims.

2.41 “Releasing Party” means Plaintiffs and each Class Member.

2.42 “Request for Exclusion” means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Settlement Class. A Request for Exclusion form shall be made available on the Settlement Website where it can also be submitted.

2.43 “Service Award” means any award approved by the Court that is payable to the Class Representatives from the Common Fund.

2.44 “Settlement Administrator” means Postlethwaite & Netterville, APAC, the entity retained by the Parties and approved by the Court to design, consult on, and implement the Class Notice Program for disseminating Class Notice, administer and send the Cash Payment to eligible Claimants, and perform overall administrative functions.

2.45 “Settlement Agreement” or “Settlement” means this Settlement Agreement (including all Exhibits attached to this Settlement).

2.46 “Settlement Costs” means: (i) all Notice and Claim Administration Expenses; (ii) any Fee Award approved by the Court; and (iii) any Service Award approved by the Court.

2.47 “Settlement Website” means the Internet website to be created and maintained for this settlement by the Settlement Administrator to provide information to the public and the Settlement Class about this Settlement Agreement.

2.48 “Short-form Class Notice” means the shortened form of the legal notice of the terms of the proposed Settlement, as approved by the Court, to be distributed according to the Class Notice Program. The Short-form Class Notice shall be substantially in the form of Exhibit 5, or as otherwise modified by the Court.

Capitalized terms used in this Settlement Agreement, but not defined in Section 2, shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

3. CLASS CERTIFICATION AND COMPLAINT

3.1 Stipulation to Class Certification for Settlement Purposes Only. For the purposes of this Settlement Agreement, the Parties stipulate and agree that the Settlement Class should be certified. Such certification is for settlement purposes only, and has no effect for any other purpose. The certification of the Settlement Class shall be binding only with respect to this Settlement Agreement. Defendant consents, solely for purposes of settlement, to the certification of the Settlement Class, to the appointment of Class Counsel, and to the approval of Plaintiffs as suitable representatives of the Settlement Class; provided, however, that if the Court fails to approve this Settlement Agreement or the Settlement Agreement otherwise fails to be consummated, then Defendant shall retain all rights it had, including the right to object to the maintenance of the Action as a class action.

3.2 Preliminary Approval. After executing this Settlement Agreement, Class Counsel and Class Representatives will move the Court for entry of the Preliminary Approval Order. In the Motion for the Preliminary Approval Order, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel and Class Representatives, approve the proposed forms of Notice, find that the Notice Plan satisfies Due Process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a hearing to determine whether the Settlement should be granted final approval, and whether an application for a Fee Award and Service Awards should be granted.

3.3 Final Approval. A Final Approval Hearing shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one hundred and thirteen (113) calendar days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) calendar days after the Objection Date, Class Counsel and Class Representatives will make a Motion for a Final Approval, seeking an Order that grants final approval of this Settlement Agreement, finally certifies the Settlement Class, authorizes the Settlement Administrator to administer the Settlement benefits to members of the Settlement Class, authorizes the creation of the qualified settlement fund by the Class Administrator to receive payments under this Settlement Agreement, awards a Fee Award and the Service Awards, rules on timely objections to the Settlement Agreement (if any), and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

3.4 Subpoenas to Non-Party Retailers. No later than seven (7) calendar days after the Preliminary Approval Date, unless otherwise ordered by the Court, Class Counsel shall issue subpoenas to Walmart, Target, Kroger, and Amazon (the “Non-Party Retailers”) to obtain Class Member contact information (“Class Member Data”) sufficient to provide direct notice of this Settlement to as many Class Members as practicable. Notwithstanding the timeline limitation set forth in Section 3.3 above, the hearing on the Motion for Final Approval Order and Judgment may be set, or continued as necessary, to allow time for Class Counsel to obtain the Class Member Data. The Class Member Data shall be provided directly to the Settlement Administrator, not to Class Counsel or Defendant’s Counsel, and shall be collected and maintained in compliance with the Northern District of California’s Settlement Administration Data Protection Check List.

3.5 The Parties agree that Clif Bar may submit a motion, brief, or other materials to the Court related to preliminary approval, notice, class certification, attorneys’ fees, expenses, final approval, service awards, claim administration, or objections.

4. SETTLEMENT RELIEF

4.1 Common Fund. As set forth in Section 4.3 below, Clif Bar agrees to establish a Common Fund of Twelve Million Dollars (\$12,000,000), and shall pay such amounts into a qualified settlement fund at the Fund Institution, such fund to be established to meet the requirements applicable to a qualified settlement fund pursuant to Treasury Regulations Section 1.463B, subject to the following limitations and conditions. The Common Fund shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fee Award; Service Awards; and Class Members’ Claims.

4.2 Creation and Administration of Common Fund. The Class Administrator is authorized to establish the Common Fund pursuant to 26 C.F.R. Sections 1.468B-1(c) and (e)(1), to act as the “administrator” of the Common Fund pursuant to 26 C.F.R. Section 1.468B- 2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under Section 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Common Fund shall be construed as costs of Claims Administration and shall be borne solely by the Common Fund. Interest on the Common Fund shall inure to the benefit of the Class.

4.3 Clif Bar Payments into the Common Fund. Clif Bar shall make payments into the Common Fund in the amounts and by the dates specified in Sections 4.13.2 and 6.4, but in any event, no later than ten (10) bank days after the Effective Date, Clif Bar shall make any additional payments into the Common Fund such that the total payments amount to Twelve Million Dollars (\$12,000,000). This deadline may be extended by mutual consent of the Parties.

4.4 Clif Bar's Maximum Liability Under this Settlement Agreement. In no circumstances shall Clif Bar's total contribution to or liability for the Common Fund exceed Twelve Million Dollars (\$12,000,000.00). Under this Settlement Agreement, the Parties agree that the Common Fund encompasses the full extent of Clif Bar's monetary payments due under this Settlement Agreement. These payments, pursuant to the terms and conditions of this Settlement Agreement, will be in full satisfaction of all Released Claims.

4.5 Return of Common Fund. In the event the Effective Date does not occur because preliminary approval or final approval are denied or reversed on appeal, all amounts paid into the Common Fund, less amounts incurred for the Notice and Other Administrative Costs, shall be returned to Clif Bar, its successor or assigns within ten (10) bank days, and this Action shall revert to the status that existed as of May 26, 2022 except as otherwise ordered by the Court or agreed to by the Parties.

4.6 Injunctive Relief. Beginning no later than twelve (12) months following the Effective Date, and for a period of at least twenty-four (24) months thereafter, Clif Bar will revise the packaging and labels of the original Clif Bars and Clif Kid ZBars, including both the outer box packing and individual bar wrapper. Clif Bar agrees to the following labeling practices, applicable to any Class Product so long as 10% or more of its calories come from added sugars.

4.6.1. The revisions to the product labeling are as follows:

(a) Original Clif Bars: Clif Bar will not use the word "Nutrition" (including "Nutritious").

(b) Clif Kid ZBars: Clif Bar will not use the word "Nutritious," or the phrase "Nourishing Kids in Motion."

4.6.2. The twenty-four (24) months' time period described in Section 4.7 will begin on the date Clif Bar or co-packers on behalf of Clif Bar begin production of product with the revised product packaging (at which time Clif Bar shall give Class Counsel written notice of the commencement of the 24-month period). Clif Bar will be permitted to sell through all existing product and packaging inventory produced before the date of the aforementioned labeling changes, *i.e.*, need not recall or destroy packaging already in the marketplace, in its stock or its customer's stock, or printed.

4.6.3. Clif Bar reserves the right to begin these labeling changes before entry of the Final Approval Order and Judgment. The time periods noted in this Section refer to actual production by Clif Bar (or one or more of the co-packers on behalf of Clif Bar).

4.7 Eligibility for Cash Payment. To be eligible for a Cash Payment, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class

Administrator. A maximum of one Claim Form may be submitted for each household. The Claim made via the Claim Form will proceed through the general steps described in Section 5 below. The Class Administrator shall be responsible for reviewing all Claims to determine their validity. Claims that are not rejected by the Class Administrator shall constitute Approved Claims.

4.8 The Cash Payment. Class Members who submit a timely valid Claim Form will receive a Cash Payment. Cash Payments shall be distributed to Class Members as follows, subject to pro rata increase or decrease as described in Section 4.10:

- a. Class Members, whether or not they provide Proof of Purchase, may receive:
 - i. Five dollars (\$5) if they purchased up to 30 bars;
 - ii. Ten dollars (\$10) if they purchased between 31 and 60 bars; and
 - iii. Fifteen dollars (\$15) if they purchased more than 60 bars.
- b. Class Members who provide Proof of Purchase may receive \$15 for the first 60 bars plus twenty-five cents (\$0.25) for each additional bar up to a maximum recovery of fifty dollars (\$50), (i.e., if there is proof of purchase for 75 bars, that claimant may receive $\$15 + 15 \times \$0.25 = \$18.75$).
- c. For purposes of making claims “bars” are counted individually, whether purchased individually or in multi-packs (i.e., a 12-pack counts as 12 bars). The claim form and/or process will assist Class Members in estimating the number of bars purchased.

4.9 Pro Rata Adjustments. If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments will be reduced or increased *pro rata*, as necessary, to use all funds available for distribution to Class Members. Any such *pro rata* adjustment will be calculated prior to distribution of funds to any Class Member with an Approved Claim (i.e., will be made in a single distribution).

4.10 Method of Distribution of Cash Payments. The Parties shall work with the Class Administrator to choose one or more manners of payment that are secure, cost-effective, and convenient for Claimants.

4.11 Uncleared Payments: Second Distribution and Cy Pres. Those Class Members whose payments are not cleared within one hundred and twenty (120) calendar days after issuance will become ineligible to receive a Cash Payment and the Class Administrator will have no further obligation to such Class Member to make any Cash Payment from the Common Fund pursuant to this Settlement Agreement or otherwise. Any funds that remain unclaimed or remain unused after the initial distribution will be distributed to Class Members who cashed the initial payment, on a *pro rata* basis, to the extent the cost of such redistribution is considered economical by the Class Administrator, Class Counsel, and Clif Bar. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated in equal shares to the Cy Pres Recipients.

4.12 Taxes on Distribution. Any person who receives a Cash Payment will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Cash Payment. Such taxes and tax-related expenses will not be paid from the Common Fund. In no event will Clif Bar, the Class Representatives, Class Counsel, the Class Administrator, or any of the Released Parties, have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Payments or other payments made from the Common Fund to Class Representatives, Settlement Class Members, or any other person or entity.

4.13 Release of the Common Fund

4.13.1. Plaintiffs' Motion for a Fee Award and Service Award shall be filed at least thirty-five (35) days before the deadline for objecting to the Settlement.

4.13.2. Within fourteen (14) days following entry of a Final Approval Order, the Defendant shall pay into the Common Fund, and the Settlement Administrator shall pay to Class Counsel from the Common Fund their Fee Award as awarded by the Court, provided that Class Counsel shall be obligated to return to the Common Fund any fees or expenses if the amount awarded by the Court is reduced prior to the Effective Date.

4.13.3. No later than ten (10) bank days after the Effective Date, calculated assuming there are no appeals, Defendant shall deposit the amount of the Net Fund into the Common Fund.

4.13.4. The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) calendar days after the Effective Date, or as otherwise ordered by the Court.

4.13.5. Within twenty-one (21) days after distribution of the Cash Payment to Claimants, the Parties will cooperate in filing a Post-Distribution Accounting as described in the Northern District's Procedural Guidance for Class Action Settlements and in the Court's Standing Order for Civil Cases.

5. CLAIM FORM SUBMISSION, REVIEW AND PAYMENT

5.1 To be eligible to receive the Cash Payment, Class Members must submit a valid and timely Claim Form. Claim Forms may be submitted either by mail or electronically through the Settlement Website and if submitted by mail must be postmarked or submitted electronically on or before the Claim Deadline.

5.2 Claim Forms will be available for online submission on the Settlement Website, available for download from the Settlement Website, and upon request, will be mailed or emailed to Class Members by the Settlement Administrator. Hard copy Claim Forms may be submitted to the Settlement Administrator by U.S. mail or other regularly maintained mail delivery service.

5.3 The Settlement Administrator shall review Claims to determine if the Claimant has substantially complied with the instructions on the Claim Form and process the Claim accordingly. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section; that is submitted after the

Claims Deadline; or that the Class Administrator identifies as fraudulent. The Class Administrator shall apply usual and customary standards and procedures for detecting and invalidating fraudulent claims, and retains sole discretion in accepting or rejecting Claims. For example, where a good faith basis exists, the Class Administrator may reject a Claim Form for, among other reasons: (i) failure to attest to the purchase of the Class Products for personal, family or household use; (ii) failure to provide adequate verification or additional information about the Claim pursuant to a request of the Class Administrator; (iii) failure to fully complete and/or sign the Claim Form; (iv) failure to submit a legible Claim Form; (v) submission of a fraudulent Claim Form; (vi) submission of a Claim Form that is duplicative of another Claim Form; (vii) submission of a Claim Form by a person who is not a member of the Settlement Class; (viii) submission of claims forms that have indicia of fraud, including without limitation, multiple submissions from the same mailing or internet protocol address, or submissions in a method that has previously been deemed fraudulent; (ix) failure to submit a Claim Form by the end of the Claim Period; or (x) failure to otherwise meet the requirements of this Agreement for making a Claim. Unless otherwise ordered by the Court, the Class Administrator shall have no obligation to advise Claimants with invalid claims that their claims have been rejected.

5.4 Failure to provide all information requested in the Claim Form will not automatically result in nonpayment of the Claim. Instead, the Settlement Administrator will take all adequate and customary steps to determine the Class Member's eligibility for payment based on the information contained in the Claim Form, and such other reasonably available information from which eligibility for settlement benefits can be determined.

5.5 The Settlement Administrator's review of Claims will be in accordance with standard fraud detection practices regularly employed by the Settlement Administrator to prevent the approval and payment of Claims that are fraudulent or invalid.

6. ADMINISTRATION AND CLASS NOTICE

6.1 Settlement Administrator

6.1.1. Subject to Court approval, the Parties shall retain Postlethwaite & Netterville, APAC, or another firm approved by the Court, as Settlement Administrator, to help implement the terms of the Settlement Agreement.

6.1.2. The Settlement Administrator will be tasked with conducting matters relating to the administration of this Settlement Agreement, as set forth herein. Those responsibilities include, but are not limited to: (i) arranging for dissemination of the Publication Notice and Direct Notice compliant with Rule 23 and approved by the Court; (ii) mailing or arranging for the mailing, emailing or other distribution of the Class Notice and the Cash Payment to Claimants; (iii) handling returned mail and email not delivered to Class Members; (iv) making any additional mailings required under the terms of this Settlement Agreement; (v) answering written inquiries from Class Members and/or forwarding such inquiries to Class Counsel or their designee; (vi) receiving and maintaining on behalf of the Court and the Parties any Class Member correspondence and Requests for Exclusion from the Settlement; (vii) establishing the Settlement Website that posts the operative complaint, Settlement Agreement, the Class Notice, and other related

documents; (viii) sending notification of any deficiency in any Claim Form to permit a Claimant to cure any such deficiency; (ix) establishing and maintaining a toll-free telephone number that will provide settlement-related information to Class Members; (x) receiving and processing (including monitoring for fraud and validating or rejecting) Class Member Claims and distributing Cash Payments to Class Members; (xi) providing regular updates on the claims status to counsel for all Parties; and (xii) otherwise assisting with administration of the Settlement Agreement.

6.1.3. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following performance standards: (1) The Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Settlement Agreement in communications with Class Members; and (2) The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Clif Bar and/or Clif Bar's Counsel.

6.2 Class Notice

6.2.1. Class Notice: The Class Notice forms will include a Long-form Class Notice, Postcard Notice, and the Internet Banner Advertisements and Media Notice disseminated in connection with the Publication Notice.

6.2.2. Long-form and Short-form Notice: The Long-form Notice shall be available on the Settlement Website in English and Spanish and shall be available to be sent to Class Members at their request. The Long-form Class Notice shall be substantially in the form of Exhibit 4, or as otherwise modified by the Court. Where Class Notice is being made in printed forms where the Long-form Notice is impracticable, a Short-form Notice substantially in the form of Exhibit 5, or as otherwise modified by the Court, may be used.

6.2.3. Internet Banner Advertisements: The Settlement Administrator will design and implement a geographic and contextual targeting digital and social media campaign that utilizes Internet Banner Advertisements that contain an embedded hyperlink directing Class Members directly to the Claim Form link on the Settlement Website.

6.2.4. Website: The Settlement Website shall be created and maintained by the Settlement Administrator. The Settlement Website shall be available in English and Spanish. The Settlement Website shall be activated no later than the Notice Date and shall remain active until sixty (60) days after the Settlement benefits are distributed to Claimants. The URL of the Settlement Website will be "www.BarsClassAction.com." The Settlement Administrator shall post the Long-form Class Notice, a copy of this Settlement Agreement and its Exhibits, the Preliminary Approval Motion, the Preliminary Approval Order, the operative complaint, the Motion for Final Approval and Motion for Fee Award and Service Award, the Final Approval Order, answers to frequently asked questions, the number for the toll-free hotline maintained by the Settlement Administrator for this Settlement, Settlement-related deadlines, and any other materials or information the Parties agree to

include on the Settlement Website. These documents shall be available on the Settlement Website for as long as the Settlement Website is active.

6.2.5. Class Action Fairness Act Notice: Clif Bar shall work with the Settlement Administrator to comply with all notice requirements imposed by 28 U.S.C. § 1715(b) (“CAFA Notice”). The Class Administrator, on behalf of Clif Bar, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Settlement Agreement with the Court. *See* 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Common Fund.

6.3 Dissemination of Class Notice

6.3.1. Direct Notice: The Email Notice or Postcard Notice (as applicable) shall be sent via email, or for those Class Members for whom an email address is not available but a physical address is available, then via the United States Postal Service, to every Class Member who can be identified in the records of (1) third-party retailers, (2) Clif Bar, or (3) otherwise, including but not limited to Class Members who directly purchased the Class Products from the clifbar.com website or registered a purchase of the Class Products with Clif Bar through any products reward program or otherwise. Clif Bar shall provide the Settlement Administrator with any of the aforementioned Class Member contact information it possesses. Direct Notice will be sent on the Notice Date. To facilitate Notice to the Class Members, Class Counsel shall seek an order from the Court permitting Class Counsel to serve subpoenas on certain Non-Party Retailers as set forth in further detail at Section 3.4 above.

6.3.2. Prior to the Notice Date, the Settlement Administrator shall employ its regular data processing and data cleaning procedures on the records (names/addresses) for the Direct Notice. The Settlement Administrator shall design the Direct Notice (for both delivery by U.S. mail and by email) in such a manner as to enhance the likelihood that it will be opened or viewed by the Class Member. After posting of the Postcard Notice by the Settlement Administrator with the United States Postal Service, for any such mailed notices returned as undeliverable, the Settlement Administrator shall utilize the National Change of Address registry in an attempt to obtain better addresses for such returned mail notices, and should that registry show a more current address, the Settlement Administrator shall send the returned Postcard Notice to the more current address. The Settlement Administrator will promptly resend any Postcard Notice that is returned as undeliverable with a forwarding U.S. mail or email address to such forwarding address.

6.3.3. Media Notice: The Media Notice shall be published no later than the Notice Date, with the Settlement Administrator using accepted reach methodology to reach the Settlement Class.

6.3.4. Website Notice: No later than the Notice Date, the Settlement Administrator will post the Long-form Class Notice on the Settlement Website and shall post the additional documents and information discussed in Section 6.2 above as they become available.

6.3.5. Toll-Free Telephone Number: No later than the Notice Date, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members via interactive voice recording with a live operator option.

6.4 Costs of Class Notice. All costs of providing Class Notice as provided herein, including the costs of identifying Class Members and the costs of emailing, printing, mailing, and publishing all forms of notice in accordance with this Settlement Agreement, shall be paid into the Common Fund by Clif Bar at least seven (7) days prior to the commencement of the Notice Date. The Class Administrator shall provide Clif Bar with the exact dollar amount to be paid by Clif Bar into the Common Fund for such costs at least fourteen (14) days prior to commencement of the notice.

6.5 Costs of Administering Claims. All costs of administering this Settlement Agreement, including all fees of the Class Administrator, the costs of reviewing and processing Claims, and generating and mailing any checks or issuing digital payment as part of this Settlement Agreement, shall be paid from the Common Fund after the Effective Date.

7. OBJECTIONS AND REQUESTS FOR EXCLUSION

7.1 Requests for Exclusion

7.1.1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Class Member who wishes to opt out of the Class must do so no later than the Opt-Out Date. To opt out, a Class Member must send to the Settlement Administrator a written Request for Exclusion that is postmarked no later than the Opt-Out Date. A Request for Exclusion may also be submitted at the Settlement Website by the Opt-Out Date. The Request for Exclusion must be personally signed by the Class Member and contain a statement that indicates a desire to be excluded from the Settlement Class. No person may opt out of the Settlement Class for any other person or be opted-out by any other person, and no Class Member shall be deemed opted-out of the Settlement Class through any purported “mass” or “class” opt-outs.

7.1.2. Any Class Member who does not submit a timely, written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant asserting the Released Claims.

7.1.3. Any Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement Agreement; (b) be entitled to submit a Claim, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement.

7.1.4. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with a final list of all timely Requests for Exclusion within three (3) days after the

Opt-Out Date. Clif Bar's Counsel shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

7.2 Objections

7.2.1. Any Class Member who intends to object to the fairness of the Settlement Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and if represented by counsel, the name, address, and telephone number of his/her counsel; (c) a statement under oath that the objector is a Class Member; (d) a statement of the objection and the specific grounds supporting the objection; (e) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's handwritten, dated signature.

7.2.2. The Parties will have the right, upon an order of the Court, to obtain document discovery from and take the deposition of any Objecting Class Member on topics relevant to the objection. The Parties shall further have the right, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval or as otherwise ordered by the Court.

7.2.3. Absent a showing of good cause, any Class Member who fails to substantially comply with the provisions of Sections 7.1.1-2 above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object and shall be bound by all of the terms of this Settlement Agreement and by all proceedings, orders, and judgments, including, but not limited to, the Release, in the Action.

8. RELEASES

8.1 Upon the Effective Date, each and every Releasing Party shall by order of this Court be deemed to have released, waived, forfeited and shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any court or any forum.

8.2 In consideration for the Settlement Agreement, Defendant parents (including past, current, or future parent companies, whether intermediate or ultimate parents), subsidiaries, divisions, departments, agents, and affiliates, and any and all of its past, present, or future officers, directors, employees, stockholders, agents, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released Class Counsel and Class Representatives from any and all claims relating to the prosecution of the Action.

To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this

Settlement Agreement, or any other action or claim that arises out of the identical factual predicate or same set of operative facts as this Action.

8.3 The Court shall retain exclusive and continuing venue and jurisdiction over the Parties and the Class Members to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement, and any disputes over such issues shall be brought in this Court.

9. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

9.1 Plaintiffs and/or Class Counsel shall make an application for an award of attorneys' fees and for reimbursement of its reasonable out-of-pocket expenses. The Fee Award will be paid from the Common Fund.

9.2 Plaintiffs and/or Class Counsel will apply for Class Representative Service Awards. Any Court-approved Service Award is in addition to the benefits that the Class Representatives are entitled to receive as members of the Settlement Class. The Court-approved Service Awards will be paid from the Common Fund. The Service Awards shall be paid to the Class Representatives within seven (7) days of the Effective Date.

9.3 Defendant may independently review any application for a Fee Award or Service Award and may in good faith submit objections to such awards.

9.4 The Court's determination of the Fee Award and Service Awards will not affect the remainder of the Settlement.

10. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

10.1 This Settlement Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Class for the purposes of this Settlement, grants final approval of the Settlement Agreement, and provides the relief specified herein. Such Final Judgment and Order Approving Settlement shall be substantially in the form attached hereto as Exhibits 2 and 3.

11. NO ADMISSION OF LIABILITY/FOR SETTLEMENT ONLY

11.1 This Settlement Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Settlement Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by Clif Bar, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Defendant, Released Party, or their respective counsel.

11.2 The terms of this Settlement Agreement are not, and should not be construed as, an admission of liability or wrongdoing on the part of Clif Bar.

12. TERMINATION OF THIS SETTLEMENT AGREEMENT

12.1 Any Party may terminate this Settlement Agreement by providing written notice to the other Parties within ten (10) days of any of the following events:

12.1.1. The Court does not enter a Preliminary Approval Order; or

12.1.2. The Court does not enter a Final Judgment and Order Approving Settlement, or if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court.

12.2 In the event that this Settlement Agreement terminates for any reason, all Parties shall be restored to their respective positions as of the date of execution of the Settlement Agreement. In no event will Defendant be entitled to recover any funds spent for Notice and Claim Administration Expenses prior to termination of this Settlement Agreement.

13. ADDITIONAL PROVISIONS

13.1 Entire Settlement Agreement: The Settlement Agreement, including all Exhibits, shall constitute the entire Settlement Agreement among the Parties with regard to the Action and shall supersede any previous settlement agreements, terms sheets, representations, communications, and understandings among the Parties with respect to the subject matter of the Settlement Agreement.

13.2 Execution in Counterparts: The Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be treated as original signatures and shall be binding.

13.3 Notices: Whenever this Settlement Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class U.S. Mail and email to:

Class Counsel

Jack Fitzgerald

jack@fitzgeraldjoseph.com

Fitzgerald Joseph LLP

2341 Jefferson Street, Suite 200

San Diego, CA 92110

Clif Bar Co-Counsel

David T. Biderman

dbiderman@perkinscoie.com

Perkins Coie LLP

1888 Century Park East, Suite 1700

Los Angeles, California 90067

Tel: 310-788-9900

Clif Bar Co-Counsel

Christopher Van Gundy
cvangundy@sheppardmullin.com
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center, Suite 1700
San Francisco, CA 94111

13.4 Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Settlement Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

13.5 Publicity: To the extent Defendant or Plaintiffs make any public statements regarding the Settlement of this Action, any such statements shall be consistent with the Court-approved documents that comprise this Settlement Agreement or otherwise agreed on by the Parties in writing in advance.

13.6 Binding on Successors: The Settlement Agreement shall be binding upon, may be enforced by, and inure to the benefit of the heirs, successors and/or assigns of the Released Parties.

13.7 Arms-Length Negotiations: The determination of the terms and conditions contained herein and the drafting of the provisions of this Settlement Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Settlement Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Settlement Agreement, and the Parties agree that the drafting of this Settlement Agreement has been a mutual undertaking.

13.8 Waiver: The waiver by one Party of any provision or breach of the Settlement Agreement shall not be deemed a waiver of any other provision or breach of the Settlement Agreement.

13.9 Variance: In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

13.10 Taxes: No opinion concerning the tax consequences of the Settlement Agreement to any Class Member is given or will be given by Defendant, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Settlement Agreement as to any Class Member. Each Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement Agreement, if any.

13.11 Modification in Writing: The Settlement Agreement may not be changed, modified, or amended except in writing, signed by one of Class Counsel and one of Clif Bar's Counsel and, if required, approved by the Court. The Parties contemplate that the Exhibits to the

Settlement Agreement may be modified by subsequent agreement of Defendant and Class Counsel so long as the modifications do not alter the substantive terms of the Settlement Agreement or reduce the rights and benefits of Class Members.

13.12 Retain Jurisdiction: The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement Agreement embodied in this Settlement Agreement.

13.13 Choice of Law: This Settlement Agreement is governed by and shall be construed and enforced in accordance with California, and as applicable, federal law.

13.14 Computation of Time: All deadlines and time periods prescribed in this Settlement Agreement shall be calculated pursuant to Fed. R. Civ. P. 6.

13.15 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed as of the last date set forth below.

Class Representatives, on behalf of the Class

Dated: 10/31/2023

Ralph Milan

DocuSigned by:

56241A72E40A4AE...

Dated:


Elizabeth Arnold

Class Counsel

Dated: 10/31/2023

Fitzgerald Joseph, LLP

By: Jack Fitzgerald

DocuSigned by:

568092CC961748B...
Class Counsel

**Mondelēz Global LLC,
Successor in Interest to
Clif Bar and Company**

By: Gustavo Valle

Dated: 10/31/2023

/s/ Gustavo Valle

Executive Vice President North America

Class Representatives, on behalf of the Class

Dated: Ralph Milan

Dated: 10/31/2023

Elizabeth Arnold

DocuSigned by:
Elizabeth Arnold
B5C131B7BB07450...

Class Counsel

Dated: Fitzgerald Joseph, LLP

By: Jack Fitzgerald

Class Counsel

**Mondelēz Global LLC,
Successor in Interest to
Clif Bar and Company**

By: Gustavo Valle

Dated:

Executive Vice President North America

Exhibit 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

1 WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for
2 Preliminary Approval of Class Action Settlement (the "Motion");

3 WHEREAS, the Court finds that it has jurisdiction over the action and each of the Parties
4 for purposes of settlement and asserts jurisdiction over the Class Members for purposes of
5 effectuating this Settlement and releasing their claims¹; and

6 WHEREAS, this Court has considered all submissions related to the Motion and is otherwise
7 fully advised in the premises;

8 IT IS HEREBY ORDERED AS FOLLOWS:

9 **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

10 1. The terms of the Settlement Agreement dated October 30, 2023, including all
11 exhibits thereto (the "Settlement Agreement"), are preliminarily approved as fair, reasonable and
12 adequate, are sufficient to warrant sending Class Notice to the Settlement Class, and are subject to
13 further consideration at the Final Approval Hearing referenced below. This Order incorporates the
14 Settlement Agreement, and its exhibits and related documents. Unless otherwise provided herein,
15 the terms defined in the Settlement Agreement shall have the same meanings in this Order.

16 2. The Settlement Agreement was entered into after extensive arm's length negotiations
17 by experienced counsel and with the assistance and oversight of several experienced mediators. The
18 Court preliminarily finds that this Settlement complies with the Northern District of California's
19 Procedural Guidance for Class Action Settlements and this Court's standard for preliminary
20 approval of class action settlements. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035-37 (N.D.
21 Cal. 2016). Further, the Court finds that the Settlement embodied in the Settlement Agreement is
22 within the range of reasonableness, so that Notice of the Settlement should be given to the Class as
23 provided in the Settlement Agreement and this Order. In making this determination, the Court has
24 considered the current posture of this litigation and the risks and benefits to the Parties involved in
25 both settlement of these claims and continuation of the litigation.

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28 ¹ See *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539 (9th Cir. 2019) (en banc).

1 **II. THE CLASS, CLASS REPRESENTATIVES AND CLASS COUNSEL**

2 3. The Court certifies the following Settlement Class for settlement purposes only (the
3 “Settlement Class”):

4 All persons who, during the “Class Period” (as defined in Section 2.13 of the
5 Settlement Agreement), purchased in the United States, for household use and not
6 for resale or distribution, either original Clif Bars in packaging bearing the phrase
7 “Nutrition for Sustained Energy,” or Clif Kid ZBars in packaging bearing the
8 Challenged Claims (as identified in the Complaint in the Action).²

9 4. The Court finds, for settlement purposes only that the Settlement Class meets all the
10 applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3), including: (a) numerosity; (b)
11 commonality; (c) typicality; (d) adequacy of the Class Representatives and Class Counsel; (e)
12 predominance of common questions of fact and law among the Settlement Class; and (f) superiority.
13 The Court hereby provisionally certifies the Settlement Class for settlement purposes only. The
14 Court finds, in the specific context of this Settlement Agreement, that: (a) the number of Class
15 Members is so numerous that their joinder in one lawsuit would be impractical; (b) there are some
16 questions of law or fact common to the Settlement Class; (c) the claims of the Class Representatives
17 are typical of the claims of the Class Members they seek to represent; (d) the Class Representatives
18 have fairly and adequately represented the interests of the Settlement Class and the Class
19 Representatives have retained experienced counsel to represent them and the Settlement Class,
20 whom the Court finds have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g); (e) the
21 questions of law and fact common to the Settlement Class predominate over any questions affecting
22 any individual Class Member; and (f) a class action is superior to the other available methods for
23 the fair and efficient adjudication of the controversy through settlement.

24 5. The Court previously found Plaintiffs were adequate class representatives for the
25 Classes the Court certified and now designates Plaintiffs Ralph Milan and Elizabeth Arnold as Class
26 Representatives for the Settlement Class.

27 ² Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers
28 including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and
the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the
Settlement Class.

1 6. The Court previously found Plaintiffs’ counsel, Fitzgerald Joseph LLP, adequate
2 Class Counsel for the Classes the Court certified and now designates Fitzgerald Joseph LLP and its
3 attorneys Class Counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23(g).

4 7. If the Settlement Agreement is not finally approved by the Court, or for any reason
5 a Final Judgment and Order Approving Settlement is not entered as contemplated in the Settlement
6 Agreement, or if the Settlement Agreement is terminated pursuant to its terms for any reason, or if
7 the Effective Date does not occur for any reason, then:

8 (a) All orders and findings entered in connection with the Settlement Agreement
9 shall become null and void and have no force or effect whatsoever, shall not be used or
10 referred to for any purposes whatsoever, and shall not be admissible or discoverable in this
11 or any other proceeding;

12 (b) The provisional certification of the Settlement Class pursuant to this Order
13 shall be vacated automatically and the Action shall proceed as though the Settlement Class
14 had never been certified;

15 (c) Nothing contained in this Order will be construed as a presumption,
16 concession or admission by or against Defendant or Class Representatives of any default,
17 liability or wrongdoing as to any facts or claims alleged or asserted in the Action;

18 (d) Nothing in this Order pertaining to the Settlement Agreement shall be used
19 as evidence in any further proceeding in the Action; and

20 (e) All of the Court’s prior orders having nothing whatsoever to do with
21 certification of the Settlement Class or the Settlement Agreement shall, subject to this Order,
22 remain in force and effect.

23 **III. NOTICE TO CLASS MEMBERS**

24 8. The Court has considered the proposed Class Notice and finds that the forms of Class
25 Notice and methodology for its publication and dissemination as described in the Settlement
26 Agreement and in the Declaration of the Settlement Administrator: (a) meet the requirements of due
27 process and Fed. R. Civ. P. 23(c) and (e); (b) constitute the best notice practicable under the
28 circumstances to all persons entitled to notice; and (c) satisfy the Constitutional requirements

1 regarding notice. In addition, the forms of Class Notice: (a) apprise Class Members of the terms of
2 the proposed Settlement and their rights and deadlines under the Settlement; (b) are written in simple
3 terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal
4 Judicial Center’s illustrative class action notices and the Northern District of California’s Procedural
5 Guidance for Class Actions. The Court approves, as to form and content, each of the forms of Class
6 Notice and the methodology for its publication and dissemination as described in the Settlement
7 Agreement and in the Declaration of the Settlement Administrator in all respects.

8 9. The Parties have requested three weeks before commencing Class Notice so that they
9 may serve subpoenas on the top four retailers of the Class Products (Walmart, Target, Kroger, and
10 Amazon), to obtain contact information sufficient to provide direct notice of the Settlement
11 Agreement to Class Member customers who purchased the Class Products, as defined in Section
12 2.14 of the Settlement Agreement, at any time during the Class Period, as defined in Section 2.13
13 of the Settlement Agreement. *See* Fed. R. Civ. P. 23(c)(2)(B) (Requiring “individual notice to all
14 [class] members who can be identified through reasonable effort.”). The Court approves the request
15 and hereby reopens discovery in this matter for the limited purpose of the Parties subpoenaing these
16 retailers for Class Member contact information. The Parties are directed to serve the subpoenas
17 within seven (7) days of this Order. The Court hereby orders that Class Notice be commenced within
18 twenty-one (21) days of this Order.

19 10. The Court further approves the establishment of an internet website,
20 www.BarsClassAction.com, for the Settlement by the Settlement Administrator (the “Settlement
21 Website”). The Settlement Administrator shall post on the Settlement Website the Long-form Class
22 Notice, a copy of this Settlement Agreement and its Exhibits, the Preliminary Approval Motion, the
23 Preliminary Approval Order, the operative Complaint, the Motion for Final Approval and Motion
24 for Attorneys’ Fees and Expenses, the Final Approval Order, answers to frequently asked questions,
25 the number for the toll-free hotline maintained by the Settlement Administrator for this Settlement,
26 Settlement-related deadlines, and any other materials or information the Parties agree to include on
27 the Settlement Website. These documents shall be available on the Settlement Website until sixty
28 (60) days after the Settlement benefits are distributed. The Notice and Claim Administration

1 Expenses are to be paid in accordance with the Settlement Agreement. The Parties are hereby
2 authorized to establish the means necessary to implement the Class Notice and other terms of the
3 Settlement Agreement.

4 11. The Court also permits Amazon, a third-party retailer who will receive a subpoena
5 for Class Member contact information, to send the approved Class Notice directly to the email
6 addresses associated with Amazon customers that Amazon's records indicate purchased the Class
7 Products during the Class Period. Within seven (7) days after sending the email notice, Amazon
8 shall provide the parties a declaration indicating compliance with this Order and setting forth the
9 total number of Class Members to whom it sent email notice, and the total number of those emails
10 that were delivered successfully as reported by Amazon's email server.

11 12. The Court hereby appoints Postlethwaite & Netterville, APAC ("P&N") to be the
12 Settlement Administrator. Responsibilities of the Settlement Administrator are found in the
13 Settlement Agreement.

14 **IV. REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS**

15 13. Class Members who wish to be excluded from the Settlement Class must send to the
16 Settlement Administrator a written Request for Exclusion that is postmarked no later than eighty-
17 one (81) days after the Settlement Notice Date. A request for exclusion may also be submitted online
18 at the Settlement Website no later than eighty-one (81) days after the Settlement Notice Date (the
19 "Opt-Out Date"). The Request for Exclusion must be personally signed by the Class Member and
20 contain a statement that indicates a desire to be excluded from the Settlement Class. No person may
21 opt out of the Settlement Class for any other person or be opted-out by any other person, and no
22 Class Member shall be deemed opted-out of the Settlement Class through any purported "mass" or
23 "class" opt-outs.

24 14. Any Class Member who does not submit a timely, written Request for Exclusion
25 shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving
26 Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation,
27 arbitration, or any other proceeding against Defendant asserting the Released Claims.

28 15. Any Class Member who timely and validly excludes themselves from the Settlement

1 Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the
2 Settlement Agreement; (b) be entitled to submit a Claim, or be affected by, the Settlement
3 Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to
4 any aspect of the Settlement Agreement. No later than three (3) days after the Opt-Out Date, the
5 Settlement Administrator shall provide the parties with a final list of timely Requests for Exclusion.
6 Class Counsel shall file this list in connection with the Final Approval Hearing.

7 **V. OBJECTIONS**

8 16. Any Class Member who intends to object to the fairness of the Settlement Agreement
9 must do so in writing no later than eighty-one (81) days after the Notice Date (the “Objection Date”).
10 The written objection must be filed with the Court no later than the Objection Date.

11 17. To be considered by the Court, any objection must be in writing and include the
12 following information: (a) a heading which refers to the Action (*Ralph Milan et al. v. Clif Bar &*
13 *Company*, Case No. 18-cv-02354-JD); (b) the objector’s name, address, telephone number and if
14 represented by counsel, the name, address, and telephone number of his/her counsel; (c) a statement
15 under oath that the objector is a Class Member; (d) a statement of the objection and the specific
16 grounds supporting the objection; (e) a statement whether the objection applies only to the objector,
17 to a specific subset of the Class, or to the entire Class; (f) copies of any papers, briefs, or other
18 documents upon which the objection is based; and (g) the objector’s handwritten, dated signature.

19 18. Any Class Member who files and serves a written objection, as described above, may
20 appear at the Final Approval Hearing, either in person or through counsel hired at the Class
21 Member’s expense, to object to any aspect of the fairness, reasonableness, or adequacy of the
22 Settlement Agreement. Class Members or their attorneys who intend to make an appearance at the
23 Final Approval Hearing must serve a notice of intention to appear on Class Counsel and Defendant’s
24 Counsel and file the notice of appearance with the Court, no later than seven (7) days before the
25 Final Approval Hearing. The written notice and objection requirements may be excused by the Court
26 upon a showing of good cause.

27 19. The Parties will have the right, upon an order of the Court, to obtain document
28 discovery from and take depositions of any objecting Class Member on topics relevant to the

1 objection. The Parties shall further have the right, either jointly or individually, to respond to any
2 objection, with a written response due the same day as the Motion for Final Approval.

3 20. Absent a showing of good cause, any Class Member who fails to substantially
4 comply with the provisions above shall waive and forfeit any and all rights he or she may have to
5 appear separately and/or to object and shall be bound by all of the terms of this Settlement
6 Agreement and by all proceedings, orders, and judgments, including, but not limited to, the Release,
7 in the Action.

8 **VI. FINAL APPROVAL HEARING**

9 21. The Final Approval Hearing will be held on [113 days after entry of the Preliminary
10 Approval Order, or as soon thereafter as the Court’s schedule permits] at _____ Pacific Time
11 before this Court, at the United States District Court for the Northern District of California, 450
12 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 11, on the 19th Floor, to consider,
13 *inter alia*, the following: (a) whether the Settlement Class should be certified for settlement
14 purposes; (b) whether the settlement and Settlement Agreement should be finally approved as fair,
15 reasonable and adequate; and (c) whether the Court should grant the Class Representatives’ and
16 Class Counsel’s requests for Service Awards and a Fee Award.

17 22. No later than thirty-five (35) calendar days before the Objection Date, Class Counsel
18 and the Class Representatives shall file a Motion for a Fee Award and Service Awards, which shall
19 be posted on the Settlement Website. No later than fourteen (14) calendar days before the Final
20 Approval Hearing and eighteen (18) calendar days after the Objection Date, Class Counsel and
21 Class Representatives shall make a Motion for Final Approval, seeking a final judgment and order
22 approving settlement that grants final approval of this Settlement Agreement and final certification
23 of the Settlement Class; authorizes the Settlement Administrator to administer the Settlement
24 benefits to members of the Settlement Class; authorizes the creation of the qualified Settlement
25 Fund by the Class Administrator to receive payments under this Settlement Agreement; awards a
26 Fee Award and Service Awards; rules on timely objections to this Settlement Agreement (if any);
27 and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

28

1 **VII. OTHER PROVISIONS**

2 23. The Parties are authorized to take all necessary and appropriate steps to establish the
3 means necessary to implement the Settlement Agreement.

4 24. The deadlines set forth in this Order, including, but not limited to, adjourning the
5 Final Approval Hearing, may be extended by Order of the Court, for good cause shown, without
6 further notice to the Class Members – except that notice of any such extensions shall be included
7 on the Settlement Website, www.BarsClassAction.com. Class Members should check the
8 Settlement Website regularly for updates and further details regarding extensions of these
9 deadlines.

10 25. Class Counsel and Defendant’s Counsel are hereby authorized to use all reasonable
11 procedures in connection with approval and administration of the Settlement Agreement that are
12 not materially inconsistent with this Order or the Settlement Agreement, including making, without
13 further approval of the Court, minor changes to the Settlement Agreement, to the form or content
14 of the Class Notice or to any other exhibits that the Parties jointly agree are reasonable or necessary.

15 26. This Court shall maintain continuing jurisdiction over these settlement proceedings
16 to assure the effectuation thereof for the benefit of the Settlement Class.

17 **IT IS SO ORDERED.**

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HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

[PROPOSED] FINAL JUDGMENT

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

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IT IS HEREBY ADJUDGED AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 AS FOLLOWS:

(1) On this date, the Court entered an Order Granting Final Approval of Class Settlement in the above-captioned action; and

(2) Final judgment is entered in accordance with the Order Granting Final Approval of Class Settlement, for the reasons stated therein, and the above-captioned action is dismissed with prejudice.

SO ORDERED this ____ day of _____, 2024.

HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT**

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

1 This matter came on for hearing on _____, 2024, at _____. The Court has considered the
2 Settlement Agreement filed on October 31, 2023 (the “Settlement Agreement”). An opportunity to
3 be heard having been given to all other persons desiring to be heard as provided in the Class Notice
4 and having considered all of the submissions and arguments, and good cause appearing therefore;

5 IT IS HEREBY ORDERED AS FOLLOWS:

6 1. This Final Order incorporates herein and makes a part hereof the Settlement
7 Agreement, including the Exhibits thereto, and incorporates by reference the definitions in the
8 Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the
9 Settlement Agreement unless set forth differently herein.

10 2. The Court has jurisdiction over the subject matter of this Action, and all Parties to
11 the Action for purpose of settlement, including all Settlement Class Members.

12 3. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies the following
13 Settlement Class for settlement purposes, only:

14 All persons who, during the “Class Period” as defined in Section 2.13 of the
15 Settlement Agreement, purchased in the United States, for household use and not
16 for resale or distribution, original Clif Bars in packaging bearing the phrase
17 “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging bearing the
18 Challenged Claims (as identified in the Complaint in the Action).¹

19 4. Pursuant to Federal Rule of Civil Procedure 23(a), the Court finds Plaintiffs Ralph
20 Milan and Elizabeth Arnold are members of the Settlement Class, their claims are typical of the
21 Settlement Class, and they fairly and adequately protected the interests of the Settlement Class
22 throughout their involvement in this action. Accordingly, the Court hereby appoints Ralph Milan
23 and Elizabeth Arnold as Class Representatives for the Settlement Class.

24 5. The Court finds that the Settlement Class meets all requirements of Federal Rules of
25 Civil Procedure 23(a) and (b)(3) for certification of the claims alleged in the Complaint, including:
26 (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class Representatives and Class

27 ¹ Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers
28 including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and
the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the
Settlement Class.

1 Counsel; (e) predominance of common questions of fact and law among the Settlement Class; and
2 (f) superiority.

3 6. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1),
4 the Court makes final its appointment of Fitzgerald Joseph LLP as Class Counsel to represent the
5 Class Members.

6 7. The Court finds that the persons excluded from the Settlement Class because they
7 filed valid Requests for Exclusion (“Opt-Outs”) are identified in Exhibit A to this Order. These
8 Class Members who filed timely, completed Opt-Outs are not bound by this Order and the
9 accompanying Final Judgment or the terms of the Settlement Agreement and may pursue their own
10 individual remedies against Defendant. However, such persons are not entitled to any rights or
11 benefits provided to Class Members by the terms of the Settlement Agreement.

12 8. The Court directed that Class Notice be given to the Class Members pursuant to the
13 Class Notice Program proposed by the Parties and approved by the Court. In accordance with the
14 Court’s Preliminary Approval Order and the Court-approved Class Notice Program, the Settlement
15 Administrator caused the forms of Class Notice to be disseminated as ordered. The Long-form Class
16 Notice advised Class Members of the terms of the Settlement Agreement; the Final Approval
17 Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the
18 Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights;
19 and the binding effect of this Order and accompanying Final Judgment, whether favorable or
20 unfavorable, to the Settlement Class.

21 9. The distribution of the Class Notice pursuant to the Class Notice Program constituted
22 the best notice practicable under the circumstances, and fully satisfies the requirements of Federal
23 Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other
24 applicable law.

25 10. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds after a hearing
26 and based upon all submissions of the Parties and interested persons, the Settlement Agreement
27 proposed by the Parties is fair, reasonable, and adequate. In reaching this conclusion, the Court
28 considered the record in its entirety and heard the arguments of counsel for the Parties and all other

1 persons seeking to comment on the proposed Settlement Agreement. In addition, the Court has
2 considered a number of factors, including: (1) the complexity, expense, and likely duration of the
3 litigation; (2) the reaction of the Class Members to the Settlement Agreement; (3) the stage of the
4 proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the
5 risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the
6 ability of Defendant to withstand a greater judgment; and (8) the reasonableness of the relief
7 provided by the Settlement Agreement in light of the best possible recovery.

8 11. The terms and provisions of the Settlement Agreement are the product of lengthy,
9 arm's length negotiations conducted in good faith and with the assistance of experienced mediators.
10 Approval of the Settlement Agreement will result in substantial savings of time, money and effort
11 to the Court and the Parties, and will further the interests of justice.

12 12. All Class Members who have not timely and validly opted out are Class Members
13 who are bound by this Order and accompanying Final Judgment and by the terms of the Settlement
14 Agreement.

15 13. Nothing in the Settlement Agreement, this Order, the accompanying Final Judgment,
16 or the fact of the settlement constitutes any admission by any of the Parties of any liability,
17 wrongdoing or violation of law, damages, or lack thereof, or of the validity or invalidity of any claim
18 or defense asserted in the Action.

19 14. The Court has considered the submissions by the Parties and all other relevant
20 factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on
21 behalf of the Settlement Class. The efforts of Class Counsel have produced the Settlement
22 Agreement entered into in good faith, and which provides a fair, reasonable, adequate, and certain
23 result for the Settlement Class. Class Counsel have made application for an award of attorneys' fees
24 and reimbursement of expenses in connection with the prosecution of the Action on behalf of
25 themselves. The Fee Award requested is ___ % of the Common Fund. This amount is fair,
26 reasonable, and adequate under the common fund doctrine, the range of awards ordered in this
27 District and Circuit, the excellent results obtained, the substantial risk borne by Class Counsel in
28 litigating this matter, the degree of skill and quality of work performed, the financial burden imposed

1 by the contingency basis of Class Counsel's representation of Plaintiffs and the Class, and the
2 additional work required of Class Counsel to bring this Settlement to conclusion. The Court finds
3 the Fee Award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates
4 of Plaintiffs' Counsel are reasonable, and that the estimated hours expended are reasonable.
5 Accordingly, the Court hereby awards \$ _____ as attorneys' fees to be paid in accordance with
6 the terms of the Settlement Agreement.

7 15. Class Counsel have also made application for reimbursement of litigation expenses.
8 Finding that such expenses were reasonably and necessarily incurred in prosecuting the action on
9 behalf of the Settlement Class, the Court finally approves Class Counsel's request for litigation
10 expenses in the amount of \$ _____, to be paid in accordance with the terms of the Settlement
11 Agreement.

12 16. Further, the Court approves Service Awards of \$ _____ each for Ralph Milan and
13 Elizabeth Arnold. The Class Representatives participated in the Action, acted to protect the
14 Settlement Class, and assisted Class Counsel. These Service Awards, which are fair, reasonable,
15 and justified, are to be paid in accordance with the terms of the Settlement Agreement.

16 17. The Court has considered all relevant factors and hereby approves the Resnick Center
17 for Food Law and Policy at the University of California, Los Angeles, School of Law, and Tufts
18 University Friedman School of Nutrition Science & Policy as the designated *cy pres* recipients of
19 any monies (if any) remaining after the negotiation period of the Cash Payments in accordance with
20 the Agreement.

21 18. The Court hereby dismisses with prejudice this Action, and all Released Claims
22 against each and all Released Parties, and without costs to any of the Parties as against the others.

23 19. Pursuant to the Northern District of California's Procedural Guidance for Class
24 Actions, within twenty-one (21) days after the distribution of the Settlement Fund, the Parties shall
25 file a Post-Distribution Accounting detailing when cash payments were sent to Class Members, the
26 number of Class Members who were sent payments, the total amount of payments paid out to Class
27 Members, the average and median recovery per Class Member, the largest and smallest amounts of
28 cash payments paid to Class Members, the number and value of cashed and uncashed checks, the

1 amount distributed to any *cy pres* recipient, any significant or recurring concerns communicated by
2 Class Members to the Settlement Administrator, Class Counsel, or Defendant’s Counsel since final
3 approval, and any other issues in settlement administration since final approval, and how any
4 concerns or issues were resolved.

5 20. Without affecting the finality of this Order and the Final Judgment, the Court
6 reserves jurisdiction over the implementation, administration, and enforcement of this Order, the
7 Final Judgment and the Settlement Agreement, and all matters ancillary thereto.

8 21. The Court finding that no reason exists for delay in entering this Order and the Final
9 Judgment pursuant to Federal Rule of Civil Procedure, Rule 54(b), the Clerk is hereby directed to
10 enter the Final Judgment forthwith.

11 22. The Parties and the Settlement Administrator are hereby directed and authorized to
12 implement and consummate the Settlement according to the terms and provisions of the Settlement
13 Agreement. In addition, the Parties, without further approval of the Court, are authorized to agree
14 to and adopt such amendments and modifications to the Settlement Agreement so long as they are:
15 (i) consistent in all material respects with this Final Order and the Final Judgment; and (ii) do not
16 limit the rights of the Settlement Class.

17 **IT IS SO ORDERED.**

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HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 4

Attention All Persons Who Purchased Certain Clif Bar & Company Products Since April 2014

**This Notice May Affect Your Rights
Please Read it Carefully**

The United States District Court for the Northern District of California authorized this notice. This is not a solicitation from a lawyer.

Milan v. Clif Bar & Co., No. 18-cv-2354-JD (N.D. Cal.)

You may be a Class Member entitled to monetary compensation if you purchased certain varieties of the following Clif Bar products between April 2014 and March 2023 in California or New York, or between March 2019 and March 2023 in any other State.

Original Clif Bars	Clif Kid ZBars
	

THIS NOTICE CONCERNS YOUR LEGAL RIGHTS, WHICH ARE AFFECTED WHETHER YOU ACT OR DON'T. PLEASE READ IT CAREFULLY.

Summary of Your Legal Rights & Options	
Submit a Claim Form	The only way to get a monetary payment. Claim Forms must be submitted either online at the Settlement Website, www.BarsClassAction , or by mail to the following address: [redacted]. Claims must be submitted or postmarked by [Claim Deadline].
Ask to be Excluded	Get out of this lawsuit. Get no benefits from it. Keep your rights. If you ask to be excluded you will not be bound by what the Court does in this case and will keep any right you might have to sue Clif Bar & Company separately about the same legal claims in this lawsuit. If there is a recovery in this case, including under the proposed Settlement, you will not share in that recovery. You must request to be excluded by [Opt-Out Date].

Summary of Your Legal Rights & Options	
Object	<p>Tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p> <p>You may file a written objection no later than [Objection Date] and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p>
Do Nothing	<p>Stay in this lawsuit. Await the outcome. Give up certain rights.</p> <p>By doing nothing, you will get no cash payment and give up any right you may have to sue Clif Bar & Company separately about the same legal claims in this lawsuit because you will be bound by the Settlement and the Final Judgment.</p>

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.BarsClassAction.com, or by contacting Class Counsel at (619) 215-1741 or jack@fitzgeraldjoseph.com, by accessing the Court docket in this case (for a fee) through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Milan v. Clif Bar & Co.*, No. 16-cv-2354-JD, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

Please read the remainder of this notice for more detailed information about how to exercise your rights. To be excluded, you must act before [Opt-Out Date].

* * *

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Basic Information

1. Why is there a Class Notice?

You have the right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The court in charge of this case is the United States District Court for the Northern District of California (the “Court”), and the case is called *Ralph Milan et al. v. Clif Bar & Co.*, No. 18-cv-2354-JD. The case is assigned to the Honorable James Donato. The individuals who sued are called the Plaintiffs or Class Representatives, and the company they sued, Clif Bar & Company (“Clif Bar”), is called the Defendant in the litigation.

2. What is this lawsuit about?

The lawsuit alleges that Defendant violated certain laws in labeling its Clif Bars and ZBars with claims that made them seem healthy, when Plaintiffs allege they were unhealthy due to their added sugar content. Clif Bar denies any wrongdoing of any kind and maintains that its products are not unhealthy due to added sugar content and that the statements on its Clif Bars’ and ZBars’ labeling are true and not misleading.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Ralph Milan and Elizabeth Arnold), sue on behalf of people who have similar claims, all of whom are a “Class,” or “Class Members.” Bringing a case, such as this one, as a class action allows the adjudication of many similar claims of consumers that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

Clif Bar denies that it did anything wrong. The parties have agreed to a Settlement, which will allow both sides to avoid the risk and cost of further litigation. The Court has not decided in favor of the Class Representatives or Clif Bar.

Who is in the Settlement?

5. How do I know if I am part of the Settlement?

The Settlement Class includes all persons who, during the Class Period, purchased in the United States, for household use and not for resale or distribution, one of the Class Products. Settlement Agreement ¶ 2.7.

“Class Period” means from (i) April 19, 2014 to March 31, 2023 for Class Members in California and New York; and (ii) March 31, 2019 to March 31, 2023 for Class Members outside of California and New York.

“Class Products” means (i) original Clif Bars in labeling or packaging bearing the phrase “Nutrition for Sustained Energy”; and (ii) Clif Kid ZBars in packaging bearing claims such as “No High Fructose Corn Syrup;” “Nourishing Kids in Motion;” “In raising our family, finding nutritious on-the-go snacks for our kids wasn’t easy. That’s why we created Clif Kid – wholesome, delicious snacks made with organic ingredients to help keep kids going, growing, and exploring;” “Blend of carbs, fiber, protein, and fat gives kids energy so they can keep Zipping and Zooming along Keep Kids Going and Growing,” and similar Challenged Claims (as identified in the Complaint in the Action).

6. What if I am still not sure if I am included in the Settlement?

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the Settlement Website, www.BarsClassAction.com, or call the Settlement Administrator toll-free at (xxx) xxx-xxxx.

What are the Terms of the Settlement?

7. What types of relief does the Settlement provide?

The Settlement provides both monetary damages and injunctive relief to all Class Members. Class Members who make valid claims will be entitled to monetary compensation. In addition, Clif Bar has agreed not to use certain statements on the Class Products' labeling for a period of at least two years.

8. What is the Settlement Fund?

As part of the Settlement, Clif Bar has agreed to establish a \$12,000,000 "Settlement Fund" to pay all Settlement expenses, including Class Notice and Administration Expenses, attorneys' fees and costs, Service Awards for the Class Representatives, and cash refunds for Class Members who make claims.

9. What can I get from the Settlement?

Class Members who timely submit a valid approved Claim are entitled to compensation. Each timely, valid claimant will receive a payment based on the type and estimated amount of Class Products purchased during the Class Period.

Class Members, whether or not they provide Proof of Purchase, may receive:

- i. Five dollars (\$5) if they purchased up to 30 bars;
 - ii. Ten dollars (\$10) if they purchased between 31 and 60 bars; and
 - iii. Fifteen dollars (\$15) if they purchased more than 60 bars.
- b. Class Members who provide Proof of Purchase may receive \$15 for the first 60 bars, plus twenty-five cents (\$0.25) for each additional bar up to a maximum recovery of fifty dollars (\$50), (i.e., if there is Proof of Purchase for 75 bars, that claimant may receive $\$15 + 15 \times \$0.25 = \$18.75$).

These amounts are subject to a pro rata increase or decrease if the value of all approved Claims either exceeds or falls short of the amount available to Class Members.

10. What am I giving up to get a payment?

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue Defendant, continue to sue, or be part of any other lawsuit against Defendant for claims released in this Settlement. It also means that all decisions by the Court will bind you. The Released Claims and Released Parties are defined in the Settlement Agreement and describe the legal claims that you give up (or "release") if you stay in the Settlement. The Released Claims relate to the Class Products and issues raised in the Action. The Settlement Agreement is available on the Settlement Website, www.BarsClassAction.com.

11. How do I make a Claim?

Class Members wishing to make a Claim must either (a) visit the Settlement Website, www.BarsClassAction.com, and submit a Claim Form online, or (b) print, fill out, and mail the

Claim Form to the Settlement Administrator at the following address: [redacted]. **The deadline for submitting a claim is [Claim Deadline].**

12. When will I get my cash refund?

Payments will be made to Class Members who submit valid and timely Claim Forms after the Court grants “final approval” to the Settlement, and after any appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain when these appeals will be resolved and resolving them can take time. Please be patient.

13. What injunctive relief does the Settlement provide?

As part of the Settlement, Clif Bar will modify the labels of the Class Products and will commit not to use on the Class Products the labeling statements identified below for a period of 24 months, so long as a Class Product contains more than 10% of calories from added sugar. Beginning no later than 12 months following the date the Judgment becomes final, Clif Bar will not distribute Class Products with labels that contain the specified statements:

Clif Bars: Clif Bar will refrain from using the word “Nutrition” (including “Nutritious”).

Clif Kid ZBars: Clif Bar will refrain from using the word “Nutritious,” and the phrase, “Nourishing Kids in Motion.”

Excluding Yourself from the Settlement

14. How do I get out of the Settlement?

If you do not want to be bound by this Settlement, you must request to be excluded from the Class. If you request to be excluded, you will retain any individual rights you have against Defendant and will not have “released” it from any of the Released Claims. However, you will *not* be eligible to receive compensation under the Settlement, as described above. You also may not object to the Settlement if you request to be excluded.

To exclude yourself (or “opt-out”) from the Settlement, you must submit online, or mail to the Settlement Administrator at the below address a written request to be excluded. Your written request must: (a) contain the name of this lawsuit, *Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD; (b) contain your full name and address; (c) state that you wish to be excluded from the Settlement; and (d) be signed by you or your attorney. Forms are available to submit or print at the Settlement Website, www.BarsClassAction.com. Printed forms should be mailed to the following address:

ADDRESS
ADDRESS
ADDRESS

To be timely, an opt-out form must be submitted online or postmarked on or before [Opt-Out Date].

15. If I don’t exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves (i.e., those claims defined in the Settlement Agreement as the “Released

Claims”). If you have a pending lawsuit against Defendant regarding similar claims, speak to your lawyer in that lawsuit immediately. You may need to exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

16. If I exclude myself, can I still get a Settlement payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not submit a Claim Form asking for benefits.

Objecting to the Settlement

17. How do I tell the Court if I do not like the Settlement?

If you are a Class Member, you can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must contain:

- (a) clear identification of the case name and number (*Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD (N.D. Cal.));
- (b) the objector’s name, address, telephone number and if represented by counsel, the name, address, and telephone number of his/her counsel;
- (c) a statement under oath that the objector is a Class Member;
- (d) a statement of the objection and the specific grounds supporting the objection;
- (e) a statement whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- (f) copies of any papers, briefs, or other documents upon which the objection is based; and
- (g) the objector’s handwritten, dated signature.

Objections must be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, and be filed or postmarked on or before [Objection Date].

18. What is the difference between objecting and excluding myself?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you. Therefore, if you submit both a Request for Exclusion Form and Objection, you will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Request for Exclusion Form will be bound by the terms of the Agreement upon the Court’s final approval of the Settlement.

The Lawyers Representing You

19. Do I have a lawyer in the case?

Yes. The Court has appointed Fitzgerald Joseph LLP as Class Counsel. The lawyers will be compensated from the Settlement Fund, in an amount to be determined by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel spent considerable time and effort prosecuting this matter on a purely contingent fee basis, and advanced the expenses of the litigation, in the expectation that they would receive a fee, and have expenses reimbursed, only if there was a benefit created for the Class.

Class Counsel will file a motion on or before [Fee Motion Deadline] seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$917,584.35, plus any expenses incurred after preliminary approval. Class Counsel will also seek on behalf of the Class Representatives Service Awards of \$5,000 each for Ralph Milan and Elizabeth Arnold. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel’s motion for attorneys’ fees, expenses, and service awards is filed on or before [Fee Motion Deadline], it will be posted on the Settlement Website, www.BarsClassAction.com, and you will have an opportunity to review and comment on the motion via an objection.

Appearing in the Lawsuit

21. Can I appear or speak in this lawsuit regarding the proposed Settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit regarding the proposed Settlement. This is called making an appearance. You can also have your own lawyer appear in court and speak for you, but you will have to pay for the lawyer yourself.

The Court's Final Approval Hearing

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing (sometimes called a “fairness hearing”) on [DATE], at [time], which may be held telephonically or through Zoom videoconference. Prior to the hearing date, the Courtroom Deputy will publish a notice on the case docket explaining how the hearing will be conducted and providing access information for counsel and for members of the public and press. **PLEASE NOTE THAT the date of the Final Approval Hearing may change without further notice to the Class.** It is strongly advised to check the Settlement Website or the Court's PACER site to confirm that the date has not been changed.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to award to Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you filed or mailed your written objection to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

Yes. You may appear and speak at the Final Approval Hearing. Although it is not required, if you intend to appear and speak, you are requested to file with the Court and/or serve on the Parties a “Notice of Intent to Appear,” no later than Seven (7) Calendar Days before the Final Approval Hearing. Persons who opt out, however, may not appear and be heard.

If You Do Nothing

25. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you will not be able to start a lawsuit, or be part of any other lawsuit against Defendant about the claims in this case, ever again.

Final Settlement Approval

26. What is the effect of final Settlement approval?

If the Court grants final approval of the Settlement, all members of the Class who have not excluded themselves will release and forever discharge any and claims that have been, might have been, are now, or could have been brought arising out of or relating to the facts alleged in the Complaint filed in this Action, including the labeling, marketing, advertising, promotion, or distribution of the Class Products at any time during the Class Period.

Getting More Information

27. How can I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement, and available at the Settlement Website, www.BarsClassAction.com. If you have additional questions, you can visit the Settlement Website or contact the Settlement Administrator:

By Mail: [ADDRESS]

By Email: info@BarsClassAction.com

By Phone (Toll Free): (xxx) xxx-xxxx

Updates will be posted at the Settlement Website, as information about the Settlement process becomes available.

You are also welcome to contact Class Counsel with any questions:

By Email: jack@fitzgeraldjoseph.com

By Phone: (619) 692-1741

For a more detailed statement of the matters involved in the litigation or the Settlement, you may review the various documents on the Settlement Website, and/or the other documents filed in this case by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD), between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

* * *

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 5

Legal Notice

If You Purchased Certain Clif Bar & Company Bars Since April 2014 You Could Receive a Cash Payment as Part of a Class Action Settlement.

What is the lawsuit about? The lawsuit contends that Clif Bar & Company (“Clif Bar”) made certain statements on the labels of various original Clif Bars and Clif Kid ZBars (“Class Products”) that are allegedly misleading because the statements suggested the bars are healthy, whereas Plaintiffs allege the bars are unhealthy because of their added sugar. Clif Bar maintains that these products are not unhealthy due to the presence of added sugars, and that the statements on its bars are true and not misleading. The Court has not determined whether Plaintiffs or Clif Bar is correct.

Who is included?

You are a Class Member if you bought one or more of the Class Products for household use, and not for resale or distribution, between April 2014 and March 2023 in California or New York, or between March 2019 and March 2023 in any other State. The Class Products include Original Clif Bars in packaging stating “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging stating “No High Fructose Corn Syrup,” “Nourishing Kids in Motion;” “In raising our family, finding nutritious on-the-go snacks for our kids wasn’t easy. That’s why we created Clif Kid – wholesome, delicious snacks made with organic ingredients to help keep kids going, growing, and exploring;” “Blend of carbs, fiber, protein, and fat gives kids energy so they can keep Zipping and Zooming along,” and similar Challenged Claims (as identified in the Complaint in the Action).

What does the Settlement provide? Clif Bar has agreed to establish a \$12,000,000 “Settlement Fund” to pay all Settlement expenses, including the costs of class notice and administration, attorneys’ fees and costs, service awards for the Plaintiffs, and cash refunds for Class Members who make valid Claims. Your legal rights will be affected if you are a Class Member and do not exclude yourself.

What are your options?

Submit A Claim: To receive Settlement benefits, you must complete and submit a Claim Form. Claim Forms are available at the Settlement Website and can be submitted electronically or mailed to the Class Administrator. A Claim Form must be **submitted online or postmarked by [Claim Deadline]**

Opt-Out or Object: If you opt-out or request exclusion, you will retain your rights to sue Clif Bar separately; however, you will not be eligible to receive any benefits. You must submit a Request for Exclusion, available at the Settlement Website. Request for Exclusions must be **postmarked on or before [Opt-Out Date]**. Detailed instructions are available on the Settlement Website. You may also object to any part of this Settlement. Details about how to object are available at the Settlement Website. Objections must be mailed to the Class Administrator and **postmarked on or before [Objection Date]**.

Do Nothing: If you do nothing, you will not be eligible to receive any benefits and will be bound by the terms of the Settlement Agreement and Final Judgment.

Has the Court approved the Settlement? No. The Court has set a hearing for **[DATE]** to determine whether to approve the Settlement and what attorneys’ fees, expenses, and service payments to award. Class Counsel will file a motion seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$917,584.35, plus any

expenses incurred after entry of the Preliminary Approval Order. Class Counsel will also seek on behalf of the Class Representatives Service Awards of \$5,000 each for Ralph Milan and Elizabeth Arnold. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before **[Fee Motion Deadline]**, it will be posted on the Settlement Website and you will have an opportunity to review and comment on the motion via an objection.

You do not need to appear at the Final Approval Hearing but you may come at your own expense. The Court has appointed Fitzgerald Joseph LLP as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

This is only a summary of the key Settlement terms. A full copy of the Settlement Agreement is available at the Settlement Website or by calling **(xxx) xxx-xxxx**.

www.BarsClassAction.com

(xxx) xxx-xxxx

Exhibit 2

1 JOSEPH W. COTCHETT (SBN 36324)
 jcotchett@cpmlegal.com
 2 ANNE MARIE MURPHY (SBN 202540)
 amurphy@cpmlegal.com
 3 DONALD J. MAGILLIGAN (SBN 257714)
 4 dmagilligan@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
 5 840 Malcolm Road
 Burlingame, California 94010
 6 Telephone: (650) 697-6000
 7 Facsimile: (650) 692-3606

8 *Attorneys for Pennington et al.*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LINDA PARKER PENNINGTON, et al.,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

TETRA TECH, INC.; TETRA TECH EC,
INC.; LENNAR CORPORATION; HPS1
BLOCK 50 LLC; HPS1 BLOCK 51 LLC;
HPS1 BLOCK 53 LLC; HPS1 BLOCK 54
LLC; HPS1 Block 56/57 LLC; HPS
DEVELOPMENT CO.; FIVE POINT
HOLDINGS, LLC; BILL DOUGHERTY;
ANDREW BOLT; EMILE HADDAD; and
DOES 1-100,

Defendants.

Case No. 3:18-cv-05330-JD

DECLARATION OF ANNE MARIE
MURPHY IN SUPPORT OF *PENNINGTON*
PLAINTIFF CLASS COUNSEL’S MOTION
FOR ATTORNEYS’ FEES AND COSTS

Date: October 14, 2021

Time: 10:00

Place: Courtroom 11, 19th Floor

1 I, Anne Marie Murphy, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and admitted
3 to practice in this Court. I am a partner with the law firm of Cotchett, Pitre & McCarthy, LLP
4 (“CPM”) and Counsel for Plaintiffs in this litigation. The matters described herein are based on my
5 personal knowledge, and if called as a witness, I could and would testify competently thereto. I make
6 this declaration pursuant to 28 U.S.C. § 1746.

7 2. I make this Declaration in support of the *Pennington* Plaintiffs’ motion for attorneys’
8 fees and reimbursement of expenses related to their class action settlement with Defendants Lennar
9 Corporation; HPS1 Block 50, LLC; HPS1 Block 51, LLC; HPS1 Block 53, LLC; HPS1 Block 54,
10 LLC; HPS1 Block 56/57, LLC; HPS Development Co.; Five Point Holdings, LLC; and Emile
11 Haddad (collectively, the “Homebuilders.”)

12 3. I have been involved with this litigation since its inception. I am one of the lead
13 attorneys for CPM on this litigation. I am familiar with the tasks performed by CPM’s attorneys and
14 paralegals related to this matter, supervised most of those tasks directly, and have reviewed CPM’s
15 time records related to the work performed on this case.

16 4. I am familiar with the hourly rates CPM charges to its clients and that have been
17 approved by courts in this district and throughout the country in various matters. The rates reflected
18 in this motion are the regular hourly rates charged by CPM’s attorneys during the relevant time
19 periods of this litigation.

20 5. I have practiced law for over twenty years and have been at CPM since 2007. My
21 entire career has been spent as a litigation attorney. At CPM my practice is focused on consumer
22 class actions, financial fraud and elder abuse litigation, however, I have handled a broad range of
23 cases, including antitrust, real estate, trusts and securities.

24 6. In addition to me, **Joseph Cotchett**, senior partner at CPM and **Donald J. Magilligan**,
25 also a partner at CPM provided substantive and necessary work related to this matter. Mr. Cotchett
26 has over 50 years of experience as a trial attorney, including acting as lead trial counsel on lead paint
27 litigation resulting in a verdict requiring paint companies to fund nearly a billion dollars in lead paint
28 abatement in California. Mr. Magilligan has twelve years of litigation experience as an attorney. Mr.

1 Magilligan’s practice is focused on mass torts including Wild Fire litigation against California’s
2 public utilities. Mr. Cotchett’s regular hourly rate is \$950. Mr. Magilligan’s regular hourly rate for
3 the time during which he performed work on this case was \$600, increasing to \$650. My regular
4 hourly rate is \$750.

5 7. **Jason Abbott** and **Jennifer Bloch**, senior paralegals at the firm, performed
6 investigatory and other work related to this matter, as did paralegal **Sean Purcell**, investigator **Nirav**
7 **Engineer**, and law clerks **Andrew Britton** and **Veena Bhatia**. Their rates during the relevant time
8 period ranged from \$175 to \$325 per hour, commensurate with their level of experience.

9 8. CPM’s rates have been approved as reasonable in this district. *See, e.g., In re Apple*
10 *Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2021 WL 1022866, at *8 (N.D. Cal. Mar.
11 17, 2021) (finding CPM’s rates to be “consistent with rates that have been awarded in this District”).

12 9. CPM began investigating this case in the summer of 2018. The first two cases were
13 filed on July 24, 2018 (the *Pennington* and *Ellington* cases) in San Francisco Superior Court. By the
14 following summer, CPM had filed 18 individual complaints on behalf of 44 individuals who
15 collectively own or owned 38 different homes on Parcel A at the Shipyards development. We took
16 this case on a contingency basis and have received no compensation for our time or reimbursement of
17 our expenses.

18 10. Subsequently cases were filed by two other law firms representing plaintiffs with
19 homes on Parcel A: Gibbs Law Group and Bowles & Verna. In late 2019, we began working closely
20 with Bowles and Verna, LLP and the Gibbs Law Group, LLP (together with CPM, “Class Counsel.”)
21 Class Counsel entered into a Joint Prosecution Agreement. In total Class Counsel represent 125
22 individuals who own or owned 85 different units on Parcel A at the Shipyards.

23 11. In preparation for filing this Motion, CPM personnel analyzed our detailed time
24 records from inception through August 14, 2020 when the Motion for Preliminary Approval was
25 filed. CPM personnel had spent 11,751 hours working on this litigation as of the date we filed the
26 motion. **Exhibit 1** is a chart that lists the nine CPM employees who spent at least 150 hours on this
27
28

1 case.¹ The chart includes the number of hours spent on eight different categories of activities related
2 to the action by each biller, together with hourly billing rate information (i.e., the lodestar).

3 12. Of those total hours, an estimated 1,605.8 hours were spent on issues and tasks unique
4 to the litigation against Tetra Tech (the “Tetra Tech Hours”) that did not directly benefit the Class
5 Members in the instant settlement. Excluding the Tetra Tech Hours, CPM spent 10,145 hours on this
6 litigation, and we have classified those hours into seven different work codes as described below.

7 **A. FACTUAL INVESTIGATION**

8 13. CPM had spent 2,308 hours on our factual investigation into the Shipyards as of
9 August 14, 2020.² As we believe the Court knows, this is a very complex litigation given the sheer
10 number of related actions, which run the gamut from criminal prosecutions, to *qui tam* cases to other
11 putative class actions. Class Counsel investigated the history of contamination at the Shipyards dating
12 back to the 1940s and investigated the Homebuilders’ efforts to develop the property dating back to
13 the 1990s.

14 14. We investigated potential claims belonging to Parcel A residents, including those of
15 the Plaintiffs who eventually filed suit. This included many visits to the Shipyards site and meetings
16 with residents at the Shipyards.

17 15. In addition, we investigated the Homebuilders’ and Tetra Tech’s involvement at the
18 site by reviewing the historical records, including documents related to the transfer of Parcel A to the
19 Homebuilders. A portion of the environmental record is online, however, our investigation also
20 included numerous visits to repositories including the San Francisco Public Library and the National
21 Archives in San Bruno.

22 16. We have worked closely with several of the other plaintiff firms to understand
23 Defendants’ arguments, to understand the evidence, and to limit duplication of efforts when possible.
24 This is true both as to the Parcel A case, where we have worked with the two other firms with Parcel
25 A cases pending before this Court (Bowles & Verna and Gibbs Law Group) and as to the litigation as
26

27 ¹ The time spent by employees who worked less than 150 hours are entirely excluded from the fee
28 request.

² This figure does not include hours spent by Bowles & Verna and Gibbs Law Group.

1 a whole (where we have conferred with Walkup, Melodia, Kelly & Schoenberger (“Walkup”),
2 Bonner & Bonner and others).

3 17. Our factual investigation included review of a 2011 report from the Civil Grand Jury
4 that investigated the Shipyards redevelopment project. The Grand Jury found that the City of San
5 Francisco “has placed itself in a potentially compromising situation with Lennar where in essence the
6 wolf is paying the shepherd to guard the flock.” Based on our investigation, we identified Amy
7 Brownell from the San Francisco County Health Department (“SFPDH”) as playing an important role
8 and CPM served SFPDH with California Public Records Act requests for documents related to
9 Brownell. In addition to producing Brownell’s emails, SFPDH produced over 7,700 pages of
10 Brownell’s handwritten journals dating back to 2002. Her journals included dates, attendees, and
11 notes of meetings between the City, the Navy, and the Homebuilders. Of the total hours CPM spent
12 on our factual investigation, over 500 hours were spent investigating Brownell and her connection to
13 the Homebuilders. Reviewing the handwritten journals was tedious but provides a level of detail that
14 is absent from sterilized environmental reports.

15 18. Our factual investigation also included attending meetings of the Hunters Point
16 Shipyard Citizens Advisory Committee (“CAC”). The CAC is comprised of community residents and
17 business owners appointed by the Mayor to review development at the Shipyards. CAC meetings
18 often include presentations by stakeholders in the redevelopment (including the Navy and EPA),
19 community members and subject matter experts (including Dr. Ahimsa Porter Sumchai, the medical
20 director and principal investigator with the Hunters Point Community Biomonitoring Program;
21 Daniel Hirsch, president of the nonprofit Committee to Bridge the Gap and former director of the
22 Program on Environmental and Nuclear Policy at the University of California Santa Cruz; and
23 others).

24 19. Further, our factual investigation included reviewing and analyzing extensive media
25 reports about the Shipyards development dating back to 1995. Media coverage is important in this
26 case because various publications, including the San Francisco Chronicle, have run in depth reporting
27 on the cleanup and ensuing scandal, often bringing to light important details relevant to the litigation.
28

1 20. Our factual investigation also included attending presentations by Navy personnel at
2 the Shipyards, as well as a Navy led tour of the site, as well as resident meetings.

3 **B. DOCUMENT REVIEW**

4 21. CPM spent 3,567.7 hours on document review as of August 14, 2020.

5 22. During our factual investigation, CPM identified thirty-one public agencies involved
6 with the Shipyards.³ Beginning in 2019, we served each agency with a request for documents under
7 the Freedom of Information Act or California Public Records Act. In response to records requests we
8 compiled over 450,000 pages of records, as of the date of the settlement. We retained a vendor to
9 scan the documents, and we assigned a team of paralegals to review the productions and tag relevant
10 documents. Through this process, we identified potential witnesses and documents for which those
11 witnesses are custodians. We also identified documents which were used in our settlement
12 discussions with the Homebuilders. In addition, thousands of pages of original agency materials
13 available on-line were reviewed. In connection with the PRA to the SFDPH we travelled to the San
14 Francisco City Attorneys' Office to inspect hard copies of files. Our efforts to collect and review
15 documents in the public record continue.

16 23. We also looked for ways to conserve costs, which included meeting and conferring
17 with Walkup, O'Melveny & Myers LLP, and Alston & Bird to share some of the cost of processing
18 the SFDPH records.

19 _____
20 ³ Those agencies include the Agency for Toxic Substances and Disease Registry; Department of
21 Homeland Security, Domestic Nuclear Detection Office; Department of Defense; Department of
22 Energy, National Nuclear Security Administration; Environmental Protection Agency; United States
23 Navy; National Oceanic and Atmospheric Administration; Nuclear Regulatory Commission;
24 Occupational Safety and Health Administration; United States Geological Survey; Board for
25 Professional Engineers, Land Surveyors, and Geologists; California's Department of Resources
26 Recycling and Recovery; California Department of Transportation; California Department of Fish
27 and Wildlife; California Department of Public Health; California Department of Toxic Substances
28 Control; California Coastal Commission; Bay Area Air Quality Management District; San Francisco
Bay Conservation and Development Commission; City and County of San Francisco, Real Estate
Division; City and County of San Francisco, Mayor's Office; City and County of San Francisco,
Office of Community Investment and Infrastructure; San Francisco Bay Regional Water Quality
Control Board; City and County of San Francisco, Department of Public Health; City and County of
San Francisco, Department of Public Works; City and County of San Francisco, Fire Department;
City and County of San Francisco, Police Department; San Francisco Public Utilities Commission;
University of California, Berkeley; and University of California, San Francisco.

1 24. Our document review hours were also spent reviewing and analyzing documents
2 shared between our clients and the Homebuilders during the marketing and sales process for the
3 thirty-nine units owned by CPM clients. These documents included plaintiff purchase agreements,
4 disclosure documents, homeowner’s association covenants, conditions and restrictions (“CC&Rs”),
5 and other addenda. By reviewing these documents, we were able to understand the uniformity and
6 deficiency of the Homebuilders’ disclosures, which is the essence of the Class’ case against the
7 Homebuilders.

8 **C. MEDIATION AND SETTLEMENT NEGOTIATIONS**

9 25. CPM spent 1,658.4 hours preparing for mediation and negotiating the settlement with
10 the Homebuilders.

11 26. The Homebuilder Defendants asserted that all claims by the Parcel A homeowners
12 were subject to multiple arbitration agreements and were also subject to mediation. Detailed meet and
13 confer discussions ensued. Ultimately CPM and the Homebuilder Defendants agreed to pursue a
14 mediation process and retained the Honorable Daniel W. Weinstein (Ret.) and Lizbeth Hasse, Esq. of
15 JAMS. A mediation session was held on August 19, 2019, and was attended by CPM, several
16 plaintiffs, and the Homebuilder Defendants.

17 27. CPM staff spent numerous hours identifying the applicable arbitration clauses from
18 each of our clients’ purchase agreements and CC&Rs, comparing those clauses to each other, and
19 researching the legality of the clauses and our potential defenses. Time was also spent meeting and
20 conferring with counsel for the Homebuilders regarding their positions regarding mediation and
21 arbitration.

22 28. We spent weeks negotiating the parameters of mediation with counsel for the
23 Homebuilders before agreeing to an in-person mediation. The Parties retained Hon. Daniel Weinstein
24 and Lizbeth Hasse, Esq. at JAMS in San Francisco. Judge Weinstein was retained because of his
25 proven track record for successfully mediating complex disputes.

26 29. To understand our clients’ damages related to diminution in value and *Mello-Roos*
27 taxes, CPM retained Brett Reynolds, an economist and real estate valuation expert with Kidder
28

1 Mathews Valuation & Advisory Services. CPM spent significant time working with Mr. Reynolds to
2 understand plaintiffs' damages related to diminution in value and payment of *Mello-Roos* taxes.

3 30. At the August 19, 2019 mediation, CPM presented multi-media presentations on
4 liability and damages. A number of CPM clients attended and assisted in the mediation presentations.
5 While settlement terms were not reached at the in-person mediation, the mediation set the framework
6 for the settlement for which we are seeking the Court's approval.

7 31. Just after the mediation session, Bowles & Verna filed its complaint on behalf of
8 Parcel A residents. Bowles & Verna and Gibbs Law Group were brought into the mediation process
9 after the initial August 19, 2019 mediation. Both firms added value to a complicated mediation effort.
10

11 32. On November 18, 2019, Plaintiffs filed a consolidated amended complaint on behalf
12 of a class of all Shipyards homeowners (as a putative class action). Dkt. 64. All three firms (CPM,
13 Bowles & Verna and Gibbs Law Group) worked together on the consolidated complaint in order to
14 streamline the Parcel A litigation. CPM worked with Mr. Reynolds to expand his damages analysis to
15 cover every Parcel A home. The Reynolds analysis became the foundation for the damages model
16 used to allocate the settlement fund among all Class members.
17

18 33. Between August 2019 and February 2020, CPM spent several hundred hours
19 negotiating the terms of the settlement and negotiating the scope of the release with counsel for the
20 Homebuilders and the mediators. We continued to work diligently on a damages model that would be
21 fair to the potential class.

22 34. On February 19, 2020, a general framework for a settlement was agreed upon.

23 35. Between February and August 2020, Class Counsel spent several hundred more hours
24 finalizing the details of the settlement agreement and working with the damages model to allocate the
25 settlement fund among the class members using objective criteria. Our firm, and the other plaintiffs'
26 firms involved, also met with Plaintiffs throughout the settlement process, including one meeting that
27 was so large that it had to be held in the conference center of a non-profit organization to
28

1 accommodate all the Plaintiffs that wished to attend. Communicating with and organizing 125 named
2 Plaintiffs was challenging, but necessary to present the settlement package to the Court for approval.

3 36. The Parties finalized the settlement agreement August 10, 2020.

4 37. As detailed above, the entire mediation/settlement process took nearly one full year
5 between the initial in person mediation and the finalization of the settlement agreement. At all times
6 the process was arm's length.

7 38. CPM, Bowles & Verna, and Gibbs Law Group have been careful to avoid needless
8 duplication of efforts. The firms agreed that CPM would take the lead role but have at all times been
9 responsive and supportive. Notably Bowles & Verna has a significant number of Plaintiffs and has
10 had primary responsibility for communicating with their clients and arranging for support of the
11 settlement within their client group.

12 39. CPM, Bowles & Verna, and Gibbs Law Group have agreed that the mediators will
13 determine the fee/cost allocation between the three firms following a fee and cost award related to the
14 Homebuilder settlement, should the firms not reach consensus. The mediators oversaw the near
15 yearlong settlement effort and are thus familiar with the contributions of the three firms.

16 **D. PLEADINGS AND MOTIONS**

17 40. CPM spent 784.1 hours preparing and filing pleadings and motions as of August 14,
18 2020. Of this total, 450.2 hours were spent drafting and filing complaints, and 333.9 hours were spent
19 researching and filing the Motion for Preliminary Approval of *Pennington* Plaintiffs' Class
20 Settlement with Homebuilder Defendants (hereafter, "MPA"). Dkt. 123.

21 41. CPM filed our first two complaints in San Francisco Superior Court on July 24,
22 2018.⁴ Preparing those complaints for filing required CPM staff to review and summarize
23 voluminous records, to research potential causes of action and damages, and to make tactical
24 decisions about theories and parties to be named.

25 42. CPM filed another sixteen complaints between August 22, 2018 and July 23, 2019.⁵

26 _____
27 ⁴ *Linda Parker Pennington, et al. v. Tetra Tech, Inc, et al.* (CGC-18-568352) and *Theodore Ellington,*
et al. v. Tetra Tech, Inc., et al. (CGC-18-568351).

28 ⁵ *Michael Lin, et al. v. Tetra Tech, Inc., et al.* (CGC-18-569105); *Christine Farrell, et al. v. Tetra*
Tech, Inc., et al. (CGC-18-570979); *Oleksandr Yegorov v. Tetra Tech, Inc., et al.* (CGC-18-571194);

1 43. On August 29, 2018, Tetra Tech EC, Inc. removed the *Pennington* case from Superior
 2 Court to the United States District Court for the Northern District of California. Dkt. 1. Class Counsel
 3 filed a motion to remand the case back to the Superior Court. Dkt. 13. At this time, CPM is not
 4 asking the Court to compensate counsel for the hours spent on the motion to remand. Those hours are
 5 included in the Tetra Tech Hours discussed above. If the claims against the Tetra Tech defendants are
 6 successful a fee application will be made that will include Tetra Tech Hours and hours incurred
 7 following the Homebuilder Settlement.

8 44. On November 18, 2019, Class Counsel filed a Consolidated Amended Complaint in
 9 the Parcel A Litigation. Dkt. 64. This Complaint, unlike the individual superior court complaints,
 10 brought claims on behalf of all current and former owners of units at the Shipyards development. The
 11 Consolidated Amended Complaint benefited from work done by all three law firms. On February 28,
 12 2020, Class Counsel filed a Consolidated Second Amended Complaint in the Parcel A Litigation.
 13 Dkt. 93. This was the operative complaint at the time of the Homebuilder Settlement.

14 45. CPM spent 333.9 hours researching and preparing the Motion for Preliminary
 15 Approval (“MPA”). As previously noted, we worked closely with the real estate appraisal expert to
 16 develop an allocation model that is fair, reasonable, and adequate. We researched the identities of the
 17 Class Members by reviewing public records from the San Francisco Assessor’s Office online
 18 property search tool. Identifying the class members allowed us to develop a procedure where Class
 19 Members would receive settlement checks without having to file claims, which we view as a major
 20 benefit of this settlement. The claims administrator, Hilsoft/Epiq Class Action & Claims Solutions,
 21 Inc. was selected in part because of the firm’s experience with real property settlements. Class
 22
 23

24 *John Wesley Darden, Jr. v. Tetra Tech, Inc., et al.* (CGC-18-571265); *Jason L. Fried v. Tetra Tech,*
 25 *Inc., et al.* (CGC-18-571341); *Thomas Lupton, et al. v. Tetra Tech, Inc., et al.* (CGC-18-571382);
 26 *Karla Bravo v. Tetra Tech, Inc., et al.* (CGC-19-572715); *Jonah S. Hershowitz v. Tetra Tech, Inc., et*
 27 *al.* (CGC-19-575036); *Andrew Kaplan v. Tetra Tech, Inc., et al.* (CGC-19-575289); *Jin Yung, et al. v.*
 28 *Tetra Tech, Inc., et al.* (CGC-19-575372); *Ramiro Castro, et al. v. Tetra Tech, Inc., et al.* (CGC-19-
 575505); *Sean LaRrett, et al. v. Tetra Tech, Inc., et al.* (CGC-19-576309); *Jinpeng Zhu v. Tetra Tech,*
Inc., et al. (CGC-19-576310); *Duan Stefanie Yang, et al. v. Tetra Tech, Inc., et al.* (CGC-19-576683);
Anirvan Raja Datta v. Tetra Tech, Inc., et al. (CGC-19-577876); and *Theresa Duncan v. Tetra Tech,*
Inc., et al. (CGC-19-577874).

1 Counsel worked closely with the expert and the proposed class representative to prepare their
2 declarations in support of the MPA.

3 **E. CASE MANAGEMENT**

4 46. CPM spent 659.7 hours on case management.

5 47. Case management hours include time spent attending case management conferences,
6 preparing case management conference statements, meeting and conferring with defense counsel in
7 the Parcel A cases, creating a protective order for document productions, and addressing different
8 aspects of the discovery process.

9 48. These hours also include CPM's time spent working with other plaintiff firms in the
10 Parcel A litigation to avoid duplication of our efforts, and work with other plaintiff firms in the
11 related cases to coordinate discovery efforts and support the cases as a whole.

12 **F. CASE ADMINISTRATION**

13 49. CPM spent 696.3 hours on case administration.

14 50. In a case of this magnitude—involving no less than twelve related cases, hundreds of
15 thousands of pages of public records, and relevant evidence dating back decades—staying organized
16 is critical. CPM classified hours spent on organization as case administration.

17 51. Case administration hours include time spent organizing and summarizing key
18 documents identified during the earlier document review phase of the litigation and non-privileged
19 documents provided by CPM's clients. This category also includes time spent developing
20 chronologies of events.

21 52. Case administration hours were also spent preparing, serving, and following up on
22 PRA / FOIA requests served on public agencies.

23 53. Case administration hours also include time spent on internal meetings and
24 correspondence to develop our litigation strategy against the Homebuilders, Tetra Tech, and other
25 potentially liable parties.

26 **G. CLIENT MEETINGS AND CORRESPONDENCE**

27 54. CPM spent 471.2 hours on client meetings and correspondence.

28

1 55. Client meetings and correspondence include all privileged communications between
2 CPM and our clients and potential clients.

3 H. THE TETRA TECH HOURS

4 56. Time spent on the foregoing categories of work benefited the settlement class because
5 they allowed Class Counsel to understand the liability and defenses of the Homebuilders and Tetra
6 Tech. That understanding allowed Class Counsel to evaluate the merits of the Homebuilders'
7 settlement offer in light of the Class Members' total damages.

8 57. CPM spent an estimated 1,605.8 hours on work that was more directly related to the
9 Tetra Tech case than the Homebuilder case.

10 58. In preparing this Motion, CPM has analyzed its detailed billing records and made a
11 good faith effort to separate out time that was spent primarily on tasks that relate to the case against
12 Tetra Tech. Class Counsel's request for attorneys' fees does not include hours that we categorized as
13 Tetra Tech Hours.

14 59. Tetra Tech Hours include reviewing, analyzing, and following the related cases at the
15 Shipyards including the four False Claims Act cases,⁶ the Bayview Hunters Point Residents' case,⁷
16 the Building 606 case,⁸ the Treasure Island Case,⁹ Tetra Tech's case against the consultants,¹⁰ the
17 Homebuilders' cases against Tetra Tech and the Navy.¹¹

18 60. Tetra Tech Hours include our review and analysis of the petitions to revoke Tetra
19 Tech's radiological materials handling licenses issued by the California Department of Public Health

20 ⁶ *United States of America ex rel. Arthur R. Jahr, III, et al. v. Tetra Tech EC, Inc., et al.* (3:13-cv-
21 03835-JD);

United States of America ex rel. Anthony Smith v. Tetra Tech EC, Inc., et al. (3:16-cv-01106-JD);

22 *United States of America ex rel. Donald K. Wadsworth, et al. v. Tetra Tech EC, Inc., et al.* (3:16-cv-
23 01107-JD);

United States of America ex rel. Kevin McLaughlin v. Shaw Env'l and Infrastructure, Inc. et al.
24 (4:14-cv-01509-JD).

⁷ *Bayview Hunters Point Residents v. Tetra Tech, EC, Inc., et al.* (3:19-cv-01417-JD).

25 ⁸ *Kevin Abbey, et al. v. Tetra Tech EC, Inc., et al.* (3:19-cv-07510-JD).

26 ⁹ *Treasure Island Former and Current Residents, et al. v. Treasure Island Dev. Authority, et al.*
(3:20-cv-01328-JCS).

¹⁰ *Tetra Tech EC, Inc. v. CH2M Hill, Inc., et al.* (3:20-cv-04704-JD).

27 ¹¹ *CHPH Development, LLC, et al. v. Tetra Tech, Inc., et al.* (3:20-cv-01485-JD);

Five Point Holdings, LLC, et al. v. United States of America (3:20-cv-01480-JD);

28 *Five Point Holdings, LLC, et al. v. Tetra Tech, Inc., et al.* (3:20-cv-01481-JD).

1 and the United States Nuclear Regulatory Commission filed by San Francisco-based non-profit
2 Greenaction for Health and Environmental Justice. Greenaction supported both of their petitions with
3 multiple declarations and other exhibits, which guided our further investigation into Tetra Tech's
4 liability.

5 61. Tetra Tech Hours include time spent researching legal issues specific to the Tetra Tech
6 defendants, including federal enclave jurisdiction, federal officer jurisdiction, and spoliation.

7 62. Tetra Tech Hours include preparing our motion to remand. Dkt. 13.

8 **I. REIMBURSEMENT OF EXPENSES**

9 63. Class Counsel is asking this Court to reimburse \$323,461, which is the amount
10 incurred by Class Counsel through July 10, 2020 (rounded from \$323,460.91).

11 64. As of June 2, 2021, Class Counsel has incurred \$381,195 prosecuting this case.

12 **Exhibit 2** summarizes the categories and amounts of those expenses.

13 65. The total amount includes \$47,536 for taxable costs.

14 66. The taxable costs include \$19,701 for court filing fees, \$290 for transcripts of
15 hearings, and \$27,545 for in-house photocopies.

16 67. The total amount of costs includes \$325,281 for nontaxable costs, as described below.

17 68. CPM paid \$165,758 in costs related to the mediation and settlement. This included
18 \$149,758 in fees to JAMS, and \$16,000 in fees to a vendor who assisted with creating a multi-media
19 presentation for mediation.

20 69. CPM paid \$77,061 in expert fees.

21 70. CPM paid \$50,334 in fees for the document repository which scanned and hosted the
22 half-million pages of documents obtained through the PRA/FOIA requests.

23 71. CPM paid \$17,302 in online legal research fees to Lexis/Nexis and Westlaw as well as
24 fees to PACER.

25 72. CPM paid \$8,296 in fees for postage, Federal Express, and messenger services.

26 73. CPM paid \$1,494 for travel to and from hearings, client meetings, community
27 meetings, meetings with co-counsel, and other case-related trips.

28 74. CPM paid \$2,475 in fees related for conference calls and faxes.

Exhibit 1

SF Shipyards

Hours through August 14, 2020

Excluding: personnel who spent less than 150 hours

HOURS

Work Codes

HOURS

Employee	Title	Work Codes								HOURS	
		Factual investigation	Document review	Mediation & settlement negotiations	Pleadings and motions	Case management	Case administration	Client meetings & correspondence	Tetra Tech	Total	Excluding "Tetra Tech"
Anne Marie Murphy	Partner	194.1	76.1	674.5	171.9	296.8	86.2	80.1	135.6	1,715	1,580
Joseph Cotchett	Partner	184.1	-	199.5	81.1	70.4	47.6	26.2	168.2	777	609
Donald Magilligan	Associate / Partner	197.9	-	351.2	233.3	117.5	31.6	51.5	196.1	1,179	983
Jason Abbott	Paralegal / Sr. Paralegal	503.3	1,910.6	180.4	-	13.8	122.5	31.5	520.2	3,282	2,762
Jennifer Bloch	Paralegal / Sr. Paralegal	427.7	627.3	194.5	287.1	154.2	359.6	279.2	498.8	2,828	2,329
Sean Purcell	Paralegal	462.5	766.2	-	-	7.0	12.6	2.7	3.0	1,254	1,251
Nirav Engineer	Investigator	278.7	-	-	-	-	-	-	11.5	290	279
Andrew Britton	Law clerk	32.3	173.7	-	-	-	27.2	-	8.0	241	233
Veena Bhatia	Law clerk	27.5	13.8	58.3	10.7	-	9.0	-	64.4	184	119
		2,308.0	3,567.7	1,658.4	784.1	659.7	696.3	471.2	1,605.8	11,751	10,145

LODESTAR

Work Codes

LODESTAR

Employee	Rate	Work Codes								LODESTAR	
		Factual investigation	Document review	Mediation & settlement negotiations	Pleadings and motions	Case management	Case administration	Client meetings & correspondence	Tetra Tech	Total	Excluding "Tetra Tech"
Anne Marie Murphy	\$750	145,575	57,075	505,875	128,925	222,600	64,650	60,075	101,723	\$ 1,286,498	\$ 1,184,775
Joseph Cotchett	\$950	174,858	-	189,525	77,045	66,880	45,220	24,890	159,790	738,208	578,418
Donald Magilligan	\$600 / 650	118,740	-	210,720	143,080	70,500	18,960	31,150	117,815	710,965	593,150
Jason Abbott	\$250 / 275	138,408	525,415	49,610	-	3,795	33,688	8,663	143,055	902,633	759,578
Jennifer Bloch	\$275 / 325	129,106	194,658	62,738	80,533	49,610	105,461	82,846	142,170	847,121	704,951
Sean Purcell	\$275	127,188	210,655	-	-	1,925	3,465	743	825	344,800	343,975
Nirav Engineer	\$325	90,578	-	-	-	-	-	-	3,738	94,315	90,578
Andrew Britton	\$175	5,653	30,398	-	-	-	4,760	-	1,400	42,210	40,810
Veena Bhatia	\$175	4,813	2,415	10,203	1,873	-	1,575	-	11,270	32,148	20,878
		\$ 934,917	\$ 1,020,615	\$ 1,028,670	\$ 431,455	\$ 415,310	\$ 277,779	\$ 208,366	\$ 681,785	\$ 4,998,897	\$ 4,317,112

Fee Request	\$ 1,494,135	\$ 1,494,135
Lodestar multiplier	0.299	0.346

Exhibit 2

SF SH P ARDS

Litigation Costs

Class Counsel

	Motion or Prelim Approval	August une	Total Costs
Taxable Costs			
Court costs	\$ 19,701	\$ -	\$ 19,701
Costs of making copies	27,275	270	27,545
ees for transcripts	169	120	290
<i>Subtotal:</i>	\$ 47,145	\$ 391	\$ 47,536
ontaxable Costs			
Mediation costs	\$ 147,542	\$ 18,216	165,758
Expert witnesses / consultants	68,961	8,100	77,061
Docu ent repository fees	25,040	25,294	50,334
Lexis/Nexis / estlaw / Pacer	12,302	4,999	17,302
Postage / edEx / Messenger	8,235	61	8,296
elephone/ ax	1,760	715	2,475
ravel	1,494	-	1,494
ther	2,706	144	2,562
<i>Subtotal:</i>	\$ 268,041	\$ 57,240	\$ 325,281
Su total CPM	\$ 315,186	\$ 57,631	\$ 372,817
Su total	\$ 6,807.73	\$ -	\$ 6,807.73
Su total i s	\$ 1,467.18	\$ 103	\$ 1,570.55
otal Costs	\$ 323,460.91	\$ 57,734.35	\$ 381,195.26

Exhibit 3

Exhibit 6

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11
12 Attorneys for Plaintiffs

13
14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 In re FACEBOOK BIOMETRIC)
 18 INFORMATION PRIVACY LITIGATION)

Master File No. 3:15-cv-03747-JD

) CLASS ACTION

19 _____)
 20 This Document Relates To:)

21 ALL ACTIONS.)

) DECLARATION OF RAFEY S.
) BALABANIAN FILED ON BEHALF OF
) EDELSON PC IN SUPPORT OF
) APPLICATION FOR AWARD OF
) ATTORNEYS' FEES AND
 22) EXPENSES/CHARGES
 23
 24
 25
 26
 27
 28

1 Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

2 1. I am an attorney admitted to practice in California, Illinois, and the United States
3 District Court for the Northern District of California, among others. This declaration is based
4 upon my personal knowledge unless otherwise indicated. If called upon to testify as to the
5 matters stated herein, I could and would competently do so.

6 2. I am the Managing Partner and General Counsel of my law firm, Edelson PC
7 (“Edelson” or the “Firm”), which was retained to represent Class Representative Carlo Licata
8 related to the harvesting of his biometric information by Defendant Facebook. I am one of the
9 attorneys who oversaw and conducted the day-to-day activities in the above-entitled action (the
10 “Litigation”). I am submitting this declaration in support of my Firm’s application for an award of
11 attorneys’ fees, expenses and charges (“expenses”) in connection with the legal services rendered
12 by my Firm in the Litigation.

13 3. The Firm is counsel of record for Plaintiff Licata and is also the Court-appointed
14 Class Counsel in the Litigation, together with Robbins Geller Rudman & Dowd LLP (“RGRD”)
15 and Labaton Sucharow LLP (“Labaton”).

16 4. The information in this declaration regarding the Firm’s time and expenses is taken
17 from time and expense reports and supporting documentation prepared and/or maintained by the
18 Firm in the ordinary course of business. These reports (and backup documentation where necessary
19 or appropriate) were reviewed by me and under my direction, in connection with the preparation
20 of this declaration. The purpose of this review was to confirm both the accuracy of the entries, as
21 well as the necessity for, and reasonableness of, the time and expenses committed to the Litigation.
22 As a result of this review, reductions were made to both time and expenses in the exercise of billing
23 judgment. Based on this review and the adjustments made, I believe that the time reflected in the
24 Firm’s lodestar calculation and the expenses for which reimbursement is sought herein are
25 reasonable and were necessary for the effective and efficient prosecution and resolution of the
26 Litigation. In addition, I believe that the expenses are all of a type that would normally be charged
27 to a fee-paying client in the private legal marketplace.

28

1 5. After the reductions referred to above, the number of hours spent on the Litigation
2 by my Firm is 12,423.10. A breakdown of the lodestar (at current rates, or what the current rate
3 would be for former members of the Firm) is provided in the attached Exhibit A. The lodestar
4 amount for attorney/paralegal/law clerk time based on the Firm's current rates is \$8,379,642.50.
5 The current hourly rates shown in Exhibit A are the usual and customary rates set by the Firm
6 annually for each individual and are the same rates that the Firm charges its hourly paying clients.

7 6. Attached as Exhibit B is a chart reflecting the time of each timekeeper (except with
8 respect to paralegals and law clerks, which are grouped together as one timekeeper) in each of the
9 18 task categories, and also reflecting each timekeeper's individual hours and lodestar at their
10 current rates (or what the current rate would be for former members of the Firm).

11 7. The Firm seeks an award of \$203,043.03 in expenses and charges in connection
12 with the prosecution of the Litigation. Those expenses and charges are summarized by category in
13 the attached Exhibit C.

14 8. The following is additional information regarding certain of these expenses:

15 (a) Filing, Witness & Other Court Fees: \$2,774.43.43. These expenses have
16 been paid to courts for filing fees, to attorney service firms that served the initial complaint,
17 summons, and other initiating documents, courtesy copies in the Litigation, and Court Call fees.
18 The vendors that were paid for these services are set forth in the attached Exhibit D.

19 (b) Transportation, Hotels & Meals: \$18,670.87. In connection with the
20 prosecution of this case, the Firm has paid for work-related transportation and meals, and also
21 travel expenses related to, among other things, attending court hearings, taking or defending
22 depositions, source code review, meetings, the mediations and the legislative work that we did to
23 protect the Illinois Biometric Information Privacy Act ("BIPA"). All first-class airfare has been
24 reduced to economy fares. The date, destination and purpose of each trip is set forth in the attached
25 Exhibit E.

26 (c) eDiscovery Review Platform: \$4,120.00. Kroll Ontrack is an eDiscovery
27 Review Platform that the Firm used to securely house and review documents and other
28

1 electronically stored information produced in the Litigation. The vendor that was paid for these
2 services and the breakdown of these charges by date are set forth in the attached Exhibit F.

3 (d) Messenger/Overnight Delivery: \$350.78. The Firm utilized messenger
4 services for the delivery of same day, overnight or next day deliveries of courtesy copies. A
5 breakdown of these charges by date and vendor is set forth in the attached Exhibit G

6 (e) Court Hearing Transcripts, Deposition Reporting & Videography:
7 \$1,694.55. The vendors that were paid for these services are listed in the attached Exhibit H.

8 (f) Experts/Consultants: \$162,057.39.

9 (i) The Firm contributed \$155,737.39 to a joint Litigation Expense
10 Fund maintained by RGRD for the payment of the majority of the expenses in the Litigation,
11 including the expenses of experts and consultants. The expert/consultant fees that were paid
12 through the Litigation Expense Fund are detailed in Exhibit H of the Declaration of Shawn A.
13 Williams, filed concurrently herewith.

14 (ii) The Firm reimbursed Labaton in the amount of \$6,320.00 for the
15 initial expert fees due to Dr. Joseph Atick. Dr. Joseph Atick is Mathematical Physics PhD and is
16 regarded as a leading expert in the field of biometric identification and facial recognition. He is a
17 co-founder of Visionics, among the early face recognition technology development companies.
18 Dr. Atick is also the co-founder and Director Emeritus of the International Biometrics and
19 Identification Association and Chairman of ID4Africa, a pan-African movement to promote digital
20 identity and its applications for socioeconomic development in Africa. In addition to being an early
21 developer of face recognition technologies, Dr. Atick has also been an advocate for responsible
22 development and use of technology for verifying identity including consultation with developing
23 countries on the socioeconomic, political development and national security impacts of the use of
24 biometric identity technology. Plaintiffs retained Dr. Atick to provide expert consultation on the
25 history and development of facial recognition technology and its potential uses and abuses, as well
26 as to help Plaintiffs better understand Facebook's facial recognition technology.

27 (g) Photocopies/Printing: \$275.01. As a matter of Firm policy, the Firm does
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1 not seek reimbursement for costs incurred in connection with in-house copying or printing. This
2 category includes only copying and printing costs by vendors such as Federal Express or at hotels
3 at which attorneys stayed in connection with the Litigation. A breakdown of these outside charges
4 by date and vendor is set forth in the attached Exhibit I.

5 (h) Graphics Design Fees: \$350.00. The Firm retained Edward Gershon to
6 provide graphics design services as to the notice that was disseminated to Class Members apprising
7 them of the Settlement.

8 (i) Mediation Fees (Jeffrey L. Bleich): \$12,750.00. The parties retained
9 Ambassador Jeffrey L. Bleich to assist them with a renewed effort to reach a negotiated resolution
10 of the Litigation. These are the fees of Ambassador Bleich that were paid by Edelson.

11 9. The expenses pertaining to this case are reflected in the books and records of the
12 Firm. These books and records are prepared from receipts, expense vouchers, check records, credit
13 card statements, and other documents and are an accurate record of the expenses.

14 10. The identification and background of my Firm, its partners, associates,
15 investigators and other staff members is attached hereto as Exhibit J.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 15th day of October, 2020, at San Rafael, California.

19 

20 _____
21 RAFEY S. BALABANIAN

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EXHIBIT A

EXHIBIT A

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC
Inception through September 30, 2020

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Jay Edelson	(P)	1,143.1	\$1,150.00	\$1,314,565.00
Rafey S. Balabanian	(P)	1,376.5	\$875.00	\$1,204,437.50
Benjamin H. Richman	(P)	919	\$775.00	\$712,225.00
Ryan D. Andrews	(P)	490	\$750.00	\$367,500.00
Roger Perlstadt	(P)	61.7	\$750.00	\$46,275.00
Ari J. Scharg	(P)	1,095	\$725.00	\$793,875.00
Christopher L. Dore	(P)	675	\$725.00	\$489,375.00
David I. Mindell	(P)	1,215.6	\$685.00	\$832,686.00
J. Aaron Lawson	(A)	922.8	\$550.00	\$507,540.00
Jacob Wright	(A)	2,200.1	\$525.00	\$1,155,052.50
Alex Tievskv	(A)	305.4	\$500.00	\$152,700.00
Lily Hough	(A)	146.2	\$475.00	\$69,445.00
J. Dominic Larrv	(FA)	319.4	\$550.00	\$175,670.00
Alexander T. Nyugen	(FP)	320.6	\$750.00	\$240,450.00
Richard Campbell	(IHDRA)	589.9	\$250.00	\$147,475.00
Andrew Schmidt	(IHDRA)	314.1	\$250.00	\$78,525.00
Clerks & Paralegals	(C&P)	262	\$250.00	\$65,500.00
Shawn Davis	(FI)	66.7	\$395.00	\$26,346.50
TOTAL		12,423.10		\$8,379,642.50

(P) Partner
(A) Associate
(FP) Former Partner
(FA) Former Associate
(IHDRA) In-House Doc Review Attorney
(FI) Forensic Investigator

EXHIBIT B

EXHIBIT B

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Category Lodestar Chart by Timekeeper

Firm Name: Edelson PC

Reporting Period: Inception through September 30, 2020

Categories:

- | | | | |
|------------------------------------|--|---|---|
| (1) Factual Investigation | (6) Motions to Dismiss | (11) Experts, Consultants & Investigators | (16) Court Appearance & Preparation |
| (2) Legal Research | (7) Class Certification & Notice | (12) Summary Judgment | (17) Client/Class Member/Opposing and Co-Counsel Communications |
| (3) Litigation Strategy & Analysis | (8) Discovery | (13) Settlement Work | (18) Legislative Efforts |
| (4) Initial or Amended Complaint | (9) Document Review | (14) Trial Preparation | |
| (5) Lead Plaintiff Motion | (10) Case Management, Other Pleadings, Briefs and Pretrial Motions | (15) Appeals | |

Timekeeper	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	Total Sum of Hours	Current Rate	Lodestar at Current Rate
Jay Edelson (P)	21.3	35.1	345.8	19.9	32.7	45	78.2	10.1	14.4	37.7	47.9	27.4	143.6	35.8	76.4	7.1	68.5	96.2	1143.1	\$1,150.00	\$1,314,565.00
Rafey S. Balabanian (P)	35.5	76	179.8	32.8	14	79.3	90.8	188	43.9	65.5	59.2	17	198.7	41.2	68.9	35	127.3	23.6	1376.5	\$875.00	\$1,204,437.50
Benjamin H. Richman (P)	19.4	35.1	41	22.5	8.8	29.6	85.3	197.2	58.7	44	57.6	15.2	73.7	57.6	23.2	16.4	128	5.7	919	\$775.00	\$712,225.00
Ryan D. Andrews (P)	6.5	1.9	5.3			17.6	6.4			27.8		3.6	116.2		229.3		75.4		490	\$750.00	\$367,500.00
Roger Perlstadt (P)		5.8				18.6	1.5					1.2	9.4		25.2				61.7	\$750.00	\$46,275.00
Ari J. Scharg (P)																		1095	1095	\$725.00	\$793,875.00
Christopher L. Dore (P)	267																155	253	675	\$725.00	\$489,375.00
David I. Mindell (P)	105.07	50.2	96.57	118		20.8	9.3	221.2	0.5	30.2	5.7	1.6	29.9			5.5	92.8	428.26	1215.6	\$685.00	\$832,686.00
J. Aaron Lawson (A)	18.1	39	3			1.1	127.2	31.7	10.4	41.6	23.1	7.4	111.2	66.2	342.3	2.2	98.3		922.8	\$550.00	\$507,540.00
Jacob Wright (A)																		2200.1	2200.1	\$525.00	\$1,155,052.50
Alex Tievsky (A)	1.2	37.7	1.3			69	22.6			14.5			60.5	10.4	26	19.3	42.9		305.4	\$500.00	\$152,700.00
Lily Hough (A)		11				3	43.2	74.9		5.4	2.7	4	2						146.2	\$475.00	\$69,445.00
Nick Larry (FA)	1	48	9.5	18.2	25	69		51.3		8.9	25.8	16.5	0.5		2.2	6.7	36.1	0.7	319.4	\$550.00	\$175,670.00
Alex Nyguen (FP)	6.4	65.1		18.2	1	34	0.9	69.8		0.4	0.3	75				40.7	8.8		320.6	\$750.00	\$240,450.00
Richard Campbell (IHDRA)									589.9										589.9	\$250.00	\$147,475.00
Andy Schmidt (IHDRA)									314.1										314.1	\$250.00	\$78,525.00
Clerks & Paralegals	14.4	35			9.8	19.6	29.6	77		31.5					18.5	18	8.6		262	\$250.00	\$65,500.00
Shawn Davis (FI)	66.7																		66.7	\$395.00	\$26,346.50
TOTAL:	562.57	439.9	682.27	229.6	91.3	406.6	495	921.2	1,031.90	307.5	222.3	168.9	745.7	211.2	812	150.9	841.7	4,102.56	12,423.10		\$8,379,642.50

- (P) Partner
- (A) Associate
- (FP) Former Partner
- (FA) Former Associate
- (IHDRA) In House Doc Review Attorney
- (FI) Forensic Investigator

EXHIBIT C

EXHIBIT C

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Inception through September 30, 2020

<i>CATEGORY</i>	<i>AMOUNT</i>
Filing, Witness and Other Fees	\$2,774.43
Transportation, Hotels & Meals	\$18,670.87
eDiscovery Review Platform	\$4,120.00
Messenger, Overnight Delivery	\$350.78
Court Hearing Transcripts and Deposition Transcripts and Videography	\$1,694.55
Experts/Consultants: Dr. Joseph Atick	\$6,320.00
Outside Photocopies	\$275.01
Litigation Fund Contributions	\$155,737.39
Graphics Design Services	\$350.00
Mediation Fees: Ambassador Jeffrey L. Bleich	\$12,750.00
TOTAL	\$203,043.03

EXHIBIT D

EXHIBIT D

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Filing, Witness, Court and Other Fees: \$2,774.43

DATE	VENDOR	PURPOSE
4/5/15	Clerk of the Court (Cook County, IL)	Filing of Initial Complaint
4/7/15	Delaware Attorney Services LLC	Service of Complaint and Summons
9/30/15	Clerk of the Court (N.D. Cal.)	Pro Hac Vice Applications - J. Edelson, A. Nguyen, J. Larry
3/2/16	Court Call	Court Appearance
3/2/16	Court Call	Court Appearance
4/1/16	Clerk of the Court (N.D. Cal.)	Pro Hac Vice Application - R. Balabanian
6/2/16	IL Secretary of State	Lobbyist Registration Fee
9/7/16	Clerk of the Court (N.D. Cal.)	Pro Hac Vice Application - B. Richman
10/10/16	Court Call	Court Appearance
1/5/17	Court Call	Court Appearance
1/5/17	Court Call	Court Appearance
2/22/17	Court Call	Court Appearance
10/23/17	Clerk of the Court (N.D. Cal.)	Pro Hac Vice Application - A. Tievsky
12/21/17	Court Call	Court Appearance

DECLARATION ON BEHALF OF EDELSON PC IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND EXPENSES/CHARGES - 3:15-cv-03747-JD

EXHIBIT E

EXHIBIT E

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Transportation, Hotels & Meals: \$18,670.87

NAME	DATE	DESTINATION	PURPOSE
Edelson, J.	7/3/15	Chicago, IL	Meeting with Co-Counsel
Larry, J.	12/15/15 - 12/16/15	San Francisco, CA	Prepare for and attend Court
Nguyen, A.	12/15/15 - 12/16/15	San Francisco, CA	Prepare for and attend Court
Nguyen, A.	2/10/16 - 2/12/16	San Francisco, CA	Prepare for and attend deposition of Facebook 30(b)(6)
Nguyen, A.	2/29/16 - 3/3/16	San Francisco, CA	Prepare for and attend Court for hearing on motion to dismiss and for summary judgment
Scharg, A.	6/1/16 - 6/2/16	Springfield, IL	Prepare for and attend meetings re: legislative changes to the BIPA
Richman, B.	6/13/16 - 6/14/16	New York, NY	Prepare for and attend meetings with potential experts
Larry, J.	6/13/16 - 6/14/16	New York, NY	Prepare for and attend meetings with potential experts
Mindell, D.	6/14/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
Mindell, D.	6/21/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
Mindell, D.	7/25/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
Mindell, D.	9/3/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
Scharg, A.	9/3/16	Chicago, IL	Prepare for and attend meetings with

DECLARATION ON BEHALF OF EDELSON PC IN SUPPORT OF AWARD OF
ATTORNEYS' FEES AND EXPENSES/CHARGES - 3:15-cv-03747-JD

EXHIBIT F

1				legislators re: legislative changes to the BIPA
2	Dore, C.	9/3/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
3				
4				
5	Mindell, D.	10/6/16	Chicago, IL	Prepare for and attend meetings with legislators re: legislative changes to the BIPA
6				
7				
8	Tievsky, A.	10/26/16 - 10/27/16	San Francisco, CA	Prepare for and attend Court for hearing on motion to dismiss
9				
10	Richman, B.	5/18/17 - 5/20/17	Newport Beach, CA	Prepare for and attend mediation
11	Balabanian, R.	5/18/17 - 5/19/17	Newport Beach, CA	Prepare for and attend mediation
12	Tievsky, A.	11/29/17 - 12/1/17	San Francisco, CA	Prepare for and attend hearing on motion to dismiss
13	Tievsky, A.	3/27/18 - 3/29/18	San Francisco, CA	Prepare for and attend hearing on class certification
14				
15	Edelson, J.	5/3/18 - 5/5/18	San Francisco, CA	Prepare for and attend mediation with Magistrate Judge Rvu
16	Richman, B.	5/3/18 - 5/5/18	San Francisco, CA	Prepare for and attend mediation with Magistrate Judge Rvu
17				
18	Lawson, J.	5/6/18 - 5/12/18	San Francisco, CA	Attend sessions with trial consultant (CDS Consulting)
19	Andrews, R.	6/10/19 - 6/12/19	San Francisco, CA	Prepare for and attend Ninth Circuit oral argument
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EXHIBIT F

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

eDiscovery Review Platform: \$4,120.00

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
11/30/16	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
12/21/16	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
1/27/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
2/21/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
3/16/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
5/25/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
6/28/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
7/31/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
8/31/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
9/30/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
11/1/17	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents

DECLARATION ON BEHALF OF EDELSON PC IN SUPPORT OF AWARD OF
ATTORNEYS' FEES AND EXPENSES/CHARGES - 3:15-cv-03747-JD

1	1/1/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
2			
3	1/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
4			
5	3/1/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
6			
7	3/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
8			
9	4/30/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
10			
11	5/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
12			
13	6/30/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
14			
15	7/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
16			
17	8/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
18			
19	9/30/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
20			
21	10/31/18	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
22			
23	3/31/19	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
24			
25	4/30/19	Kroll Ontrack	eDiscovery security and review platform for securely storing and review documents
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DECLARATION ON BEHALF OF EDELSON PC IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND EXPENSES/CHARGES - 3:15-cv-03747-JD

EXHIBIT G

EXHIBIT G

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Messenger, Overnight Delivery: \$350.78

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
11/9/15	First Legal Network Insurance Services LLC	Delivery of courtesy copies of opposition to motion to dismiss
8/5/16	First Legal Network Insurance Services LLC	Delivery of courtesy copies of opposition to motion to dismiss for lack of subject matter jurisdiction
10/17/16	One Hour Delivery Service, Inc.	Delivery of courtesy copies of opposition to motion for leave to file amended answer

EXHIBIT H

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EXHIBIT H

In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Court Hearing Transcripts and Deposition Reporting, Transcripts and Videography: \$1,694.55

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
3/1/16	TSG Reporting	Transcript and video of Initial deposition of Plaintiff Licata
1/8/18	TSG Reporting	Transcript of second deposition of Plaintiff Licata
4/2/18	Katherine Powell Sullivan	Transcript of hearing on 3/29/18

EXHIBIT I

EXHIBIT I

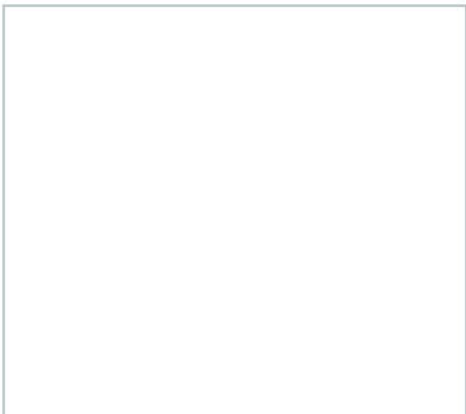
In re Facebook Biometric Information Privacy Litigation, Case No. 3:15-cv-03747-JD
Edelson PC

Outside Photocopies/Printing: \$275.01

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
12/15/15	Westin Hotel	Printing for hearing on motion to dismiss
9/3/16	FedEx	Printing and binding for legislators re: potential legislative changes to the BIPA
10/6/16	FedEx	Printing and binding for legislators re: potential legislative changes to the BIPA
6/26/17	FedEx	Printing of courtesy copies of courtesy copies of opposition to motion to stay
12/11/17	FedEx	Printing of courtesy copies of opposition to motion to dismiss
5/16/18	FedEx	Printing for trial preparation

EXHIBIT J

Edelson



Beyond
the Law.

"National reputation
as a maverick in [its]
commitment to pursuing
big-ticket . . . cases."

—Law360

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Who We Are

Who We Are

EDELSON PC is a law firm concentrating on high-stake's plaintiff's work ranging from class and mass actions to public client investigations and prosecutions. The cases we have litigated -- as either lead counsel or as part of a broader leadership structure -- have resulted in settlements and verdicts totalling over \$20 billion.

- ▶ We hold records for the largest jury verdict in a privacy case (\$925m), the largest consumer privacy settlement (\$650m), and the largest TCPA settlement (\$76m). We also secured one of the most important consumer privacy decisions in the U.S. Supreme Court (*Robins v. Spokeo*). Our class actions, brought against the national banks in the wake of the housing collapse, restored over \$5 billion in home equity credit lines. We served as counsel to a member of the 11-person Tort Claimant's Committee in the PG&E Bankruptcy, resulting in an historic \$13.5 billion settlement. We successfully represented dozens of family members who lost loved ones in the Boeing 737-Max plane crashes in Indonesia and Ethiopia. We are the only firm to have established that online apps can constitute illegal gambling under state law, resulting in settlements that collectively are worth \$200 million. We are co-lead counsel in the NCAA personal injury concussion cases, leading an MDL involving over 300 class action lawsuits. And we are representing, or have represented, regulators in cases involving the deceptive marketing of opioids, environmental cases, privacy cases against Facebook, Uber, Google and others, cases related to the marketing of e-cigarettes to children, and cases asserting claims that energy companies and for-profit hospitals abused the public trust.
- ▶ We have testified before the United States Senate and state legislative and regulatory bodies on class action and consumer protection issues, cybersecurity and privacy (including election security, children's privacy and surreptitious geotracking), sex abuse in children's sports, and gambling, and have repeatedly been asked to work on federal, state, and municipal legislation involving a broad range of issues. We speak regularly at seminars on consumer protection and class action issues, and also routinely lecture at law schools and other graduate programs.

Who We Are

- ▶ We have a “one-of-a-kind” investigation team that sets us apart from others in the plaintiffs’ bar. Our dedicated “internal lab of computer forensic engineers and tech-savvy lawyers” investigate issues related to “fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention,” among numerous other technology related issues facing consumers. Cybersecurity & Privacy Practice Group of the Year, Law360 (January 2019). Instead of chasing the headlines, our case development team is leading the country in both identifying emerging privacy and technology issues, as well as crafting novel legal theories to match. Some examples of their groundbreaking accomplishments include: demonstrating that Microsoft and Apple were continuing to collect certain geolocation data even after consumers turned “location services” to “off”; filing multiple suits revealing mobile apps that “listen” through phone microphones without consent; filing a lawsuit stemming from personal data collection practices of an intimate IoT device; and filing suit against a data analytics company alleging that it had surreptitiously installed tracking software on consumer computers.

As the Hollywood Reporter explained, we are “accustomed to big cases that have lasting legacy.”

Recognition

The firm and our attorneys regularly get recognized for our groundbreaking work. We have been named by Law360 as a Consumer Protection Group of the Year (2017, 2018, 2019), a Class Action Group of the Year (2019), a Plaintiffs Class Action Powerhouse (2017, 2018, 2019), a Cybersecurity and Privacy Group of the Year (2017, 2018, 2019), a “Privacy Litigation Heavyweight” by Law360, a “Cybersecurity Trailblazer” by The National Law Journal (2016) and won sole recognition in 2019 as “Elite Trial Lawyers” in Gaming Law. The National Law Journal also recognized us in 2019 as “Elite Trial Lawyers” in Consumer Protection, Privacy/Data Breach, Mass Torts, and Sports, Entertainment and Media Law. In 2019, we were recognized for the third consecutive year as an “Illinois Powerhouse,” alongside Kirkland & Ellis, Dentons, Schiff Hardin and Swanson Martin; in each year, we were the only plaintiffs’ firm, and the only firm with fewer than one hundred lawyers, recognized.

- ▶ Our founder has been recognized as a “Titan of the Plaintiff’s Bar” by Law360, one of “America’s top trial lawyers” in the mass action arena, LawDragon’s 2020 Leading Plaintiff Financial Lawyers, and one of “Chicago’s Top Ten Startup Founders Over Age 45” by Tech.co – the only law firm founder to win such an award. Our Global Managing Partner was recognized as a top 100 lawyer in California by California Lawyer Magazine.
- ▶ We have also been recognized by courts for our approach to litigation, which led the then-Chief Judge of the United States Court for the Northern District of Illinois to praise our work as “consistent with the highest standards of the profession” and “a model of what the profession should be. . . .” *In re Kentucky Fried Chicken Coupon Mktg. & Sales Practices Litig.*, No. 09-cv-7670, MDL 2103 (N.D. Ill. Nov. 30, 2011). Likewise, in appointing our firm interim co-lead in one of the most high-profile banking cases in the country, a federal court pointed to our ability to be “vigorous advocates, constructive problem-solvers, and civil with their adversaries.” *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill. July 16, 2010).

Plaintiffs' Class and Mass Action Practice

We have several sub-specialties within our plaintiffs'
class and mass action practice:

Mass/Class Tort Cases

We are currently representing, among others, labor unions seeking to recover losses arising out of the Opioid Crisis, classes of student athletes suffering from the long-term effects of concussive and sub-concussive injuries, hundreds of families suffering the ill-effects of air and water contamination in their communities, and individuals damaged by the “Camp Fire” in Northern California.

Representative cases and settlements include:

- ▶ Representing over 1,000 victims of the Northern California “Camp Fire,” allegedly caused by utility company Pacific Gas & Electric. Served as counsel to a member of the 11-person Tort Claimant’s Committee in the PG&E Bankruptcy, resulting in a historic \$13.5 billion settlement.
- ▶ *In re Nat’l Collegiate Athletic Ass’n Single School/Single Sport Concussion Litig.*, No. 16-cv-8727, MDL No. 2492 (N.D. Ill.): Appointed co-lead counsel in MDL against the NCAA, its conferences and member institutions alleging personal injury claims on behalf of college football players resulting from repeated concussive and sub-concussive hits.
- ▶ Representing numerous labor unions and health and welfare funds seeking to recover losses arising out of the Opioid Crisis.
See, e.g., Illinois Public Risk Fund v. Purdue Pharma L.P., et al., No. 2019-CH-05847 (Cir. Ct. Cook Cty., Ill.); *Inter’l Union of Operating Eng’rs, Local 150, et al. v. Purdue Pharma L.P., et al.*, No. 2019-CH-01548 (Cir. Ct. Cook Cty., Ill.); *Village of Addison et al. v. Actavis LLC et al.*, No. 2020-CH-05181 (Cir. Ct. Cook Cty., Ill.).
- ▶ We served as lead negotiators in representing dozens of family members who lost loved ones in the Boeing 737-Max plane crash in Indonesia. The cases settled for confidential amounts. Currently counsel for families who lost loved ones in the Boeing 737-Max plane crash in Ethiopia.

Banking, Lending and Finance

We were at the forefront of litigation arising in the aftermath of the federal bailouts of the banks. Our suits included claims that certain banks unlawfully suspended home credit lines based on pretextual reasons, and that certain banks failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP plans under state law. The court noted that “[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country.” *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements restored billions of dollars in home credit lines to people throughout the country.

Representative cases and settlements include:

- ▶ *In re JP Morgan Chase Bank Home Equity Line of Credit Litig., No. 10-cv-3647 (N.D. Ill.):* Appointed co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between \$3.2 billion and \$4.7 billion in credit to the class.
- ▶ *Hamilton v. Wells Fargo Bank, N.A., No. 09-cv-04152-CW (N.D. Cal.):* Lead counsel in class actions challenging Wells Fargo’s suspensions of home equity lines of credit. Nationwide settlement restored access to over \$1 billion in credit and provides industry leading service enhancements and injunctive relief.
- ▶ *In re Citibank HELOC Reduction Litig., No. 09-cv-0350-MMC (N.D. Cal.):* Lead counsel in class actions challenging Citibank’s suspensions of home equity lines of credit. The settlement restored up to \$653,920,000 worth of credit to affected borrowers.
- ▶ *Wigod v. Wells Fargo, No. 10-cv-2348 (N.D. Ill.):* Obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP plans. Settlement provided class members with permanent loan modifications and substantial cash payments.

Privacy and Data Security

The New York Times has explained that our “cases read like a time capsule of the last decade, charting how computers have been steadfastly logging data about our searches, our friends, our bodies.” Courts have described our attorneys as “pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue.” See *In re Facebook Privacy Litig.*, No. C 10-02389 (N.D. Cal. Dec. 10, 2010) (order appointing us interim co-lead of privacy class action); see also *In re Netflix Privacy Litig.*, No. 11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing us sole lead counsel due, in part, to our “significant and particularly specialized expertise in electronic privacy litigation and class actions”). In *Barnes v. Aрызta*, No. 17-cv-7358 (N.D. Ill. Jan. 22, 2019), the court endorsed an expert opinion finding that we “should ‘be counted among the elite of the profession generally and [in privacy litigation] specifically’ because of [our] expertise in the area.”

Representative cases and settlements include:

- ▶ *In re Facebook Biometric Privacy Litig.*, No. 3:15-cv-03747 (N.D. Cal.): Filed the first of its kind class action against Facebook under the Illinois Biometric Information Privacy Act, alleging Facebook collected facial recognition data from its users without authorization. Appointed Class Counsel in securing adversarial certification of class of Illinois Facebook users. Case settled on the eve of trial for a record breaking \$650m.
- ▶ *Wakefield v. Visalus*, No. 3:15-cv-01857 (D. Ore. Apr. 12, 2019): Lead counsel in class action alleging that defendant violated federal law by making unsolicited telemarketing calls. Obtained jury verdict and judgment equating to more than \$925 million in damages to the class.
- ▶ *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016): Lead counsel in the landmark case affirming the ability of plaintiffs to bring statutory claims for relief in federal court. The United States Supreme Court rejected the argument that individuals must allege “real world” harm to have standing to sue in federal court; instead the court recognized that “intangible” harms and even the “risk of future harm” can establish “standing.” Commentators have called Spokeo the most significant consumer privacy case in recent years.

Privacy and Data Security

- ▶ *Birchmeier v. Caribbean Cruise Line, Inc., et al.*, No. 12-cv-4069 (N.D. Ill.): Co-lead counsel in class action alleging that defendant violated federal law by making unsolicited telemarketing calls. On the eve of trial, the case resulted in the largest Telephone Consumer Protection settlement to date, totaling \$76 million.
- ▶ *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009): Won first ever federal decision finding that text messages constituted “calls” under the TCPA. In total, we have secured text message settlements worth over \$100 million.
- ▶ *Kusinski v. ADP LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cty. Ill.): Secured key victories establishing the liability of time clock vendors under the Illinois Biometric Information Privacy Act and the largest-ever BIPA settlement in the employment context with a time clock vendor for \$25 million.
- ▶ *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The case settled for \$14 million.
- ▶ *Doe v. Ann & Robert H. Lurie Children’s Hosp. of Chi.*, No. 2020-CH-04123 (Cir. Ct. Cook Cty., Ill.): Lead counsel in a class action alleging breach of contract, breach of confidentiality, negligent supervision, and other claims against Lurie Children’s Hospital after employees allegedly accessed medical records without permission.
- ▶ *American Civil Liberties Union et al. v. Clearview AI, Inc.*, No. 2020-CH-04353 (Cir. Ct. Cook Cty., Ill.): Represent the American Civil Liberties Union in lawsuit against Clearview AI for violating the Illinois Biometric Information Privacy act through its collection and storage of Illinois residents’ faceprints.
- ▶ *Consumer Watchdog v. Zoom Video Commc’ns, Inc.*, No. 2020 CA 003516 B (D.C. Super. Ct.): Represent advocacy group Consumer Watchdog in its lawsuit against Zoom Video Communications Inc, alleging the company falsely promised to protect communications through end-to-end encryption.
- ▶ *Mocek v. AllSaints USA Ltd.*, No. 2016-CH-10056 (Cir. Ct. Cook Cty, Ill.): Lead counsel in a class action alleging the clothing company AllSaints violated federal law by revealing consumer credit card numbers and expiration dates. Case settled for \$8 million with class members receiving about \$300 each.

Privacy and Data Security

- ▶ *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against a health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of whether they suffered identity theft.
- ▶ *N.P. v. Standard Innovation (US), Corp.*, No. 1:16-cv-08655 (N.D. Ill.): Brought and resolved first ever IoT privacy class action against adult-toy manufacturer accused of collecting and recording highly intimate and sensitive personal use data. Case resolved for \$3.75 million.
- ▶ *Halaburda v. Bauer Publ'g Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Commc'ns, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Lead counsel in consolidated actions brought under Michigan's Preservation of Personal Privacy Act, alleging unlawful disclosure of subscribers' personal information to data miners. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic \$5,000 award to each aggrieved consumer. Secured a \$30 million in cash settlement and industry-changing injunctive relief.

General Consumer Matters

We have represented plaintiffs in consumer fraud cases in courts nationwide against companies alleged to have been peddling fraudulent software, engaging in online gambling businesses in violation of state law, selling defective products, or engaged in otherwise unlawful conduct.

Representative cases and settlements include:

- ▶ Having secured a watershed Ninth Circuit victory for consumers in *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018), we are now pursuing consumer claims against more than a dozen gambling companies for allegedly profiting off of illegal internet casinos. Settlements in several of these cases total \$200 million.
- ▶ Prosecuted over 100 cases alleging that unauthorized charges for mobile content were placed on consumer cell phone bills. Cases collectively settled for over \$100m. See, e.g., *McFerren v. AT&T Mobility LLC*, No. 08-cv-151322 (Sup. Ct. Fulton Cty., Ga.); *Paluzzi et al. v. mBlox, Inc., et al.*, No. 2007-CH-37213, (Cir. Ct. Cook Cty., Ill.); *Williams et al. v. Motricity, Inc. et al.*, No. 2009-CH-19089 (Cir. Ct. Cook Cty., Ill.).
- ▶ *Edelson PC v. Christopher Bandas, et al.*, No. 1:16-cv-11057 (N.D. Ill.): Filed groundbreaking lawsuit seeking to hold professional objectors and their law firms responsible for, among other things, alleged practice of objecting to class action settlements in order to extort payments for themselves, and the unauthorized practice of law. After several years of litigation and discovery, secured first of its kind permanent injunction against the objector and his law firm, which, inter alia, barred them from practicing in Illinois or asserting objections to class action settlements in any jurisdiction absent meeting certain criteria.
- ▶ Brought numerous cases alleging that defendants deceptively designed and marketed computer repair software. Cases collectively settled for over \$45 million. *Beaton v. SpeedyPC Software*, 907 F.3d 1018 (7th Cir. 2018).
- ▶ *McCormick, et al. v. Adtalem Glob. Educ., Inc., et al.*, No. 2018-CH-04872 (Cir. Ct. Cook Cty., Ill): After students at one of the country's largest for-profit colleges, DeVry University, successfully advanced their claims that the school allegedly induced them to enroll and charged a premium based on inflated job placement statistics, the parties agreed to a \$45 million settlement—the largest private settlement DeVry has entered into regarding the claims.

General Consumer Matters

- ▶ *1050 W. Columbia Condo. Ass'n v. CSC ServiceWorks, Inc.*, No. 2019-CH-07319 (Cir. Ct. Cook Cty., Ill): Representing a class of landlords in securing a multifaceted settlement—including a cash component of up to \$30 million—with a laundry service provider over claims that the provider charged fees that were allegedly not permitted in the parties' contracts. The settlement's unique structure allows class members to choose repayment in the near term, or to lock in more favorable rates for the next decade.
- ▶ *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-4922 (N.D. Cal.): Lead counsel in a complex consumer class action alleging AMD falsely advertised computer chips to consumers as “eight-core” processors that were, in reality, disguised four-core processors. The case settled for \$12.1 million.
- ▶ *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement was valued at over \$30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.
- ▶ *In re Pet Food Prods. Liability Litig.*, No. 07-cv-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided \$24 million common fund and \$8 million in charge backs.

Insurance Matters

We have successfully represented individuals and businesses in a multitude of insurance related actions, including dozens of businesses whose business interruption insurance claims were denied by various insurers in the wake of the COVID-19 crisis. We successfully prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds.

Representative cases and settlements include:

- ▶ *Biscuit Cafe Inc. et al. v. Society Ins., Inc.*, No. 1:20-cv-02514 (N.D. Ill.); *America's Kids, LLC v. Zurich American Ins. Co.*, No. 1:20-cv-03520 (N.D. Ill.); *MAIA Salon Spa and Wellness Corp. et al. v. Sentinel Ins. Co., Ltd. et al.*, No. 1:20-cv-3805 (E.D.N.Y.); *Badger Crossing, Inc. v. Society Ins., Inc.*, No. 2020CV000957 (Cir. Ct. Dane Cty.); and *Sea Land Air Travel, Inc. v. Auto-Owners Inc. Co. et al.*, No. 20-005872-CB (Cir. Ct. Wayne Cty.): In one of the most prominent areas for class action litigation related to the COVID-19 pandemic, we were among the first to file class action lawsuits against the insurance industry to recover insurance benefits for business owners whose businesses were shuttered by the pandemic. We represent an array of small and family-owned businesses—including restaurants and eateries, movie theatres, salons, retail stores, healthcare providers, and travel agencies—in a labyrinthine legal dispute about whether commercial property insurance policies cover business income losses that occurred as a result of business interruptions related to the COVID-19 pandemic. With over 800 cases filed nationwide to date, we have played an active role in efforts to coordinate the work of plaintiffs' attorneys through the Insurance Law Section of the American Association for Justice (AAJ), including by leading various roundtables and workgroups as the State Co-Chairs for Illinois, Wisconsin, and Michigan of the Business Interruption Litigation Taskforce (BILT), a national collaborative of nearly 300 practitioners representing policyholders in insurance claims arising out of the COVID-19 pandemic.
- ▶ *Holloway v. J.C. Penney*, No. 97 C 4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. Case settled, resulting in a multi-million dollar cash award to the class.
- ▶ *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination. Case eventually settled, ensuring that each class member would remain insured.

Public Client Litigation and Investigations

We have been retained as outside counsel by states, cities, and other regulators to handle investigations and litigation relating to environmental issues, the marketing of opioids and e-cigarettes, privacy issues, and general consumer fraud.

Representative cases and settlements include:

- ▶ *State of Idaho v. Purdue Pharma L.P., et al.*, No. CV01-19-10061 (Cir. Ct. Ada Cty., Idaho): We represent the State of Idaho, and nearly 50 other governmental entities—with a cumulative constituency of over three million Americans—in litigation against manufacturers and distributors of prescription opioids.
- ▶ *District of Columbia v. Juul Labs, Inc.*, No. 2019 CA 07795 B (D.C. Super. Ct.): We were appointed to represent the District of Columbia in a suit against e-cigarette giant Juul Labs, Inc. for alleged predatory and deceptive marketing.
- ▶ *State of New Mexico, ex. rel. Hector Balderas v. Google, LLC*, No. 1:20-cv-00143 (D.N.M.): We represent the State of New Mexico in case against Google for violating the Children's Online Privacy Protection Act by collecting data from children under the age of 13 through its G-Suite for Education products and services.
- ▶ *District of Columbia v. Facebook, Inc.*, No. 2018 CA 8715 B (D.C. Super. Ct.) and *People of Illinois v. Facebook Inc., et al.*, No. 2018-CH-03868 (Cir. Ct. Cook Cty., Ill.): We were appointed to represent the District of Columbia as well as the People of the State of Illinois (through the Cook County State's Attorney) in lawsuits against the world's largest social network, Facebook, and Cambridge Analytica—a London-based electioneering firm—for allegedly collecting (or allowing the collecting of) and misusing the private data of 50 million Facebook users.
- ▶ ComEd Bribery Litigation: Representing the Citizens Utility Board, the statutorily-designated representative of Illinois utility ratepayers, in advancing and defending interests of ratepayers amid numerous class actions seeking to hold Commonwealth Edison liable for a multi-year
- ▶ *Village of Melrose Park v. Pipeline Health Sys. LLC, et al.*, No. 19-CH-03041 (Cir. Ct. Cook Cty., Ill.): We successfully represented the Village of Melrose Park in litigation arising from the closure of Westlake Hospital in what has been called “one of the most complicated hospital closure disputes in the state's history.”
- ▶ *In re Marriott Int'l, Inc. Customer Data Security Breach Litig.*, MDL 2879 (D. Md.). We represent the City of Chicago in the ongoing Marriott data breach litigation.
- ▶ *In re Equifax, Inc., Customer Data Security Breach Litig.*, MDL No. 2800 (N.D. Ga.): Successfully represented the City of Chicago in the Equifax data breach litigation, securing a landmark seven-figure settlement under Chicago's City-specific ordinance.
- ▶ *City of Chicago, et al. v. Uber Techs., Inc.*, No. 17-CH- 15594 (Cir. Ct. Cook Cty., Ill.). We were appointed to represent both the City of Chicago and the People of the State of Illinois (through the Cook County State's Attorney) in a lawsuit against tech giant Uber Technologies, stemming from a 2016 data breach at the company and an alleged cover-up that followed.

Mass/Class Tort Cases Environmental Litigation

We have been chosen by courts to handle some of the most complex and significant issues affecting our country today. We represent hundreds of families suffering the damaging effects of ethylene oxide exposure in their communities, consumers and businesses whose local water supply was contaminated by a known toxic chemical, and property owners impacted by the flightpath of Navy fighter planes.

Representative cases and settlements include:

- ▶ We represent hundreds of individuals in numerous locations around the country that are suffering the ill-effects of ethylene oxide exposure (a gas commonly used in medical sterilization processes). We have brought over 100 personal injury and wrongful death cases against EtO emitters across the country, as well as numerous medical monitoring class actions. *Brincks et al. v. Medline Indus., Inc., et al.*, No. 2020-L-008754 (Cir. Ct. Cook Cty., Ill.); *Leslie v. Steris Isomedix Operations, Inc., et al.*, No. 1:20-cv-01654 (N.D. Ill.); *Jackson v. 3M Company, et al.*, No. 2:19-cv-00522 (D.S.C.).
- ▶ We represent hundreds of individuals who have been exposed through their own drinking water and otherwise to PFAS and related "forever chemical" used in various applications. This exposure has allegedly led to serious health issues, including cancer, as well as the devaluation of private property due to, among other things, the destruction of the water supply. In conjunction with our work in this space, we have been appointed to the Plaintiffs' Executive Committee in *In re: Aqueous Film-Forming Foams (AFFF) Prods. Liability Litig.*, 2:18-mn-2873-RMG, MDL No., 2873 (D.S.C.).
- ▶ We represent property owners on Whidbey Island, Washington, whose homes sit directly in the flightpath of dozens of Navy fighter planes. The Navy is alleged to have significantly increased the number of these planes at the bases at issue, as well as the frequency of their flights, to the detriment of our clients' privacy and properties. *Pickard v. USA*, No. 19-1938 (Ct. Fed. Claims); *Newkirk v. USA*, No. 20-628L (Ct. Fed. Claims).
- ▶ Environmental Panel Counsel: our team has been designated as Panel Members on a State Attorney General's Environmental Counsel Panel.

General Commercial Litigation

Our attorneys have also handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to “bet the company” cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations. We have routinely been brought on to be “negotiation” counsel in various high-stakes or otherwise complex commercial disputes.

Our Team

Our Team



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Jay Edelson

Founder and CEO

Considered one of the nation's leading class and mass action lawyers.

Law360 described Jay as a "Titan of the Plaintiff's Bar." The American Bar Association recognized Jay Edelson as one of the "most creative minds in the legal industry." Jay has also been recognized as one of "America's top trial lawyers" in the mass action arena, and was included in LawDragon's 2020 list of Leading Plaintiff Financial Lawyers. Law360 noted that he has "taken on some of the biggest companies and law firms in the world and has had success where others have not." Another publication explained that "when it comes to legal strategy and execution, Jay is simply one of the best in the country." Professor Todd Henderson, the Michael J. Marks Professor of Law at the University of Chicago Law School, opined that when thinking about "who's the most innovative lawyer in the US ... [Jay is] at or near the top of my list."

Of Counsel explained that Jay has made a career out of "battling bullies":

Big banks. Big tech firms. Big Pharma. The big business that is the NCAA. Plaintiff's attorney Jay Edelson wages battle against many of the nation's most fortified institutions. Not only does he refuse to back down to anyone, regardless of their stature or deep pockets, he welcomes the challenge.

Edelson earned a monumental victory in the US Supreme Court in what's been characterized as one of the most important consumer privacy cases of the last several years, *Robins v. Spokeo*. He and his team are leading the charge against the NCAA

in representing former college football players who suffered concussions, and their families. And, on behalf of labor unions and governmental bodies, he's elbow-deep in litigation against pharmaceutical companies and distributors for their pivotal role in the opioid crisis. Simply put, he's a transformational lawyer.

- ▶ Jay has been appointed to represent state and local regulators on some of the largest issues of the day, ranging from opioids suits against pharmaceutical companies, to environmental actions against polluters, to breaches of trust against energy companies and for-profit hospitals, to privacy suits against Google, Facebook, Uber, Marriott, and Equifax.

Jay Edelson

Founder and CEO

- ▶ Jay has received special recognition for his success in taking on Silicon Valley. The national press has dubbed Jay and the firm the “most feared” litigators in Silicon Valley and, according to the New York Times, tech’s “babyfaced ... boogeyman.” Most recently, Chicago Lawyer Magazine dubbed Jay “Public Enemy No. 1 in Silicon Valley.” In the emerging area of privacy law, the international press has called Jay one of the world’s “profilertesten (most prominent)” privacy class action attorneys. The National Law Journal has similarly recognized Jay as a “Cybersecurity Trailblazer”—one of only two plaintiff’s attorneys to win this recognition.
- ▶ Jay has taught class actions and negotiations at Chicago-Kent College of Law and privacy litigation at UC Berkeley School of Law. He has written a blog for Thomson Reuters, called Pardon the Disruption, where he focused on ideas necessary to reform and reinvent the legal industry and has contributed opinion pieces to TechCrunch, Quartz, the Chicago Tribune, Law360, and others. He also serves on Law360’s Privacy & Consumer Protection editorial advisory board. In recognition of the fact that his firm runs like a start-up that “just happens to be a law firm,” Jay was recently named to “Chicago’s Top Ten Startup Founders over 40” by Tech.co.
- ▶ Jay currently serves on Chicago’s 47th Ward Democratic Organization Judicial Recommendation Committee, which is responsible for interviewing, vetting and slating Cook County Judicial Candidates for election.

Our Team



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Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

Appointed lead class counsel in more than two dozen class actions in state and federal courts across the country.

Rafey started his career as a trial lawyer, serving as a prosecutor for the City of Chicago where he took part in dozens of trials. Rafey went on to join a litigation boutique in Chicago where he continued his trial work, before eventually starting with EDELSON in 2008. He is regarded by his peers as a highly skilled litigator, and has been appointed lead class counsel in more than two dozen class actions in state and federal courts across the country. His work has led to groundbreaking results in trial courts nationwide, including a \$925 million jury verdict in *Wakefield v. ViSalus*-- the largest privacy verdict in this nation's history. In 2020, Rafey was recognized as a top 100 lawyer in California by *California Lawyer Magazine*.

- ▶ Rafey has been at the forefront of protecting consumer data, and in 2018 helped lead the effort to obtain adversarial class certification for the first time in the history of the Illinois Biometric Information Privacy Act, on behalf of a class of Illinois users. On the eve of trial, the case settled for a record-breaking \$650 million.
- ▶ Some of Rafey's more notable achievements include nationwide settlements involving the telecom industry, including companies such as AT&T, Google, Sony, Motricity, and OpenMarket valued at more than \$100 million.
- ▶ Rafey has been appointed to represent state Attorneys General and regulators on a variety of issues including the District of Columbia in a suit against Facebook for the Cambridge Analytica Scandal. He also represents labor unions and governmental entities in lawsuits against the drug manufacturers and distributors over the ongoing opioid crisis.
- ▶ Rafey has also been appointed to the Executive Committee in the NCAA concussion cases, considered to be "one of the largest actions pending in the country, a multi district litigation ... that currently include [more than 300] personal injury class actions filed by college football players[.]" And he represents a member of the Tort Claimant's Committee in the PG&E Bankruptcy action, which resulted in a historic \$13.5 billion settlement.
- ▶ Rafey served as trial court counsel in *Robins v. Spokeo, Inc.*, 2:10-cv-05306-ODW-AGR, which has been called the most significant consumer privacy case in recent years.

Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

- ▶ Rafey's class action practice also includes his work in the privacy sphere, and he has reached groundbreaking settlements with companies like Netflix, LinkedIn, Walgreens, and Nationstar. Rafey also served as lead counsel in the case of Dunstan, et al. v. comScore, Inc., No. 11-cv-5807 (N.D. Ill.), where he led the effort to secure class certification of what is believed to be the largest adversarial class to be certified in a privacy case in the history of U.S. jurisprudence.
- ▶ Rafey's work in general complex commercial litigation includes representing clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases.
- ▶ Rafey is a frequent speaker on class and mass action issues, and has served as a guest lecturer on several occasions at UC Berkeley Boalt School of Law. Rafey also serves on the Executive Committee of the Antitrust, Unfair Competition and Privacy Section of the State Bar of California where he has been appointed Vice Chair of Privacy, as well as the Executive Committee of the Privacy and Cybersecurity Section of the Bar Association of San Francisco.
- ▶ Rafey received his J.D. from the DePaul University College of Law in 2005. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

Our Team



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Benjamin H. Richman

Managing Partner, Chicago office

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

Benjamin handles plaintiff's-side class and mass actions, helping employees in the workplace, consumers who were sold deceptive products or had their privacy rights violated, individuals and families suffering the ill-effects of exposure to toxic chemicals, student athletes suffering from the effects of concussions, and labor unions and governmental bodies seeking to recover losses arising out of the opioid crisis. He also routinely represents technology and brick and mortar companies in a wide variety of commercial litigation and other matters. Overall, Ben has been appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases. His suits have recovered hundreds of millions of dollars for his clients.

- ▶ Ben also represents state Attorneys General, counties, and cities in high-stakes litigation and investigations, including the State of Idaho in asserting claims against some of the largest pharmaceutical manufacturers and distributors in the world related to the ongoing opioid epidemic, including in the MDL pending in the Northern District of Ohio. Ben also leads the team representing approximately 50 other governmental entities in opioid litigation; the State of New Mexico in their lawsuit against Google LLC for allegedly collecting data from children under the age of 13 through its G-Suite for Education products and services; the District of Columbia in a suit against e-cigarette giant Juul for alleged predatory and deceptive marketing; and was appointed as a Special Assistant State's Attorney to prosecute Facebook's violations of the Illinois Consumer Fraud Act in the Cambridge Analytica scandal.
- ▶ Ben has been one of the primary forces behind the development of the firm's environmental practice. In the last year alone, Ben led a team representing hundreds of individuals across the country suffering the effects of exposure to ethylene oxide—a carcinogenic chemical compound used in sterilization applications—emitted into the air in their communities, including coordinating litigation across state and federal courts in various jurisdictions; was appointed to the Plaintiffs' Executive Committee overseeing the prosecution of the *In re: Aqueous Film-Forming Foams Prods. Liability Litig.*, No. 18-mn-2873, MDL No. 2873 (D.S.C.) (which includes more than 500 cases against the largest chemical manufacturers in the world, among others); and was designated as a Panel Member on a State Attorney General's Environmental Counsel Panel, which was formed to assist and represent the State in a wide range of environmental litigation.

Benjamin H. Richman

Managing Partner, Chicago office

- ▶ Ben is currently part of the team leading the *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation – Single Sport/Single School (Football)* multidistrict litigation, bringing personal injury lawsuits against the NCAA, athletic conferences, and its member institutions over concussion-related injuries. In addition, Ben has and is currently acting as lead counsel in numerous class actions involving alleged violations of class members' common law and statutory rights (e.g., violations of Alaska's Genetic Privacy Act, Illinois' Biometric Information Privacy Act, the federal Telephone Consumer Protection Act, and others).
- ▶ Some of Ben's notable achievements include acting as class counsel in litigating and securing a \$45 million settlement of claims against for-profit DeVry University related to allegedly false reporting of job placement statistics. He has acted as lead counsel in securing settlements collectively worth \$50 million in over a half-dozen nationwide class actions against software companies involving claims of fraudulent marketing and unfair business practices. He was part of the team that litigated over a half-dozen nationwide class actions involving claims of unauthorized charges on cellular telephones, which ultimately led to settlements collectively worth hundreds of millions of dollars. And he has been lead counsel in numerous multi-million dollar privacy settlements, including several that resulted in individual payments to class members reaching into the tens of thousands of dollars and another that—in addition to securing millions of dollars in monetary relief—also led to a waiver by the defendants of their primary defenses to claims that were not otherwise being released.
- ▶ Ben's work in complex commercial matters includes successfully defending multiple actions against the largest medical marijuana producer in the State of Illinois related to the issuance of its cultivation licenses, and successfully defending one of the largest mortgage lenders in the country on claims of unjust enrichment, securing dismissals or settlements that ultimately amounted to a fraction of typical defense costs in such actions. Ben has also represented startups in various matters, including licensing, intellectual property, and merger and acquisition.
- ▶ Each year since 2015, Ben has been recognized by Super Lawyers as a Rising Star and Leading Lawyers as an Emerging Lawyer in both class action and mass tort litigation.
- ▶ Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the late Honorable John W. Darrah of the United States District Court for the Northern District of Illinois. Ben has also routinely guest-lectured at various law schools on issues related to class actions, complex litigation and negotiation.

Our Team



Ryan D. Andrews

Partner

Appointed class counsel in numerous federal and state class actions nationwide.

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Ryan presently leads the firm's complex case resolution and appellate practice group, which oversees the firm's class settlements, class notice programs, and briefing on issues of first impression.

- ▶ Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over \$100 million in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.); *Ellison v. Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.); *Paluzzi v. Cellco P'ship*, No. 07 CH 37213 (Cir. Ct. Cook Cty., Ill.); and *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.).
- ▶ Representative reported decisions include: *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016); *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018); *Warciak v. Subway Rests., Inc.*, 880 F.3d 870 (7th Cir. 2018), cert. denied, 138 S. Ct. 2692 (2018); *Beaton v. SpeedyPC Software*, 907 F.3d 1018 (7th Cir. 2018), cert. denied, ___ S. Ct. ___ (2019); *Klaudia Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175; *Yershov v. Gannett Satellite Info. Network, Inc.*, 820 F. 3d 482 (1st Cir. 2016); *Resnick v. AvMed, Inc.*, 693 F. 3d 1317 (11th Cir. 2012); and *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009).
- ▶ Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

Our Team



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Christopher L. Dore

Partner

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

Chris focuses his practice on emerging consumer technology and privacy issues, as well as mass tort and mass action matters.

- ▶ Chris oversees the Firm's Case Development & Investigations Group. His team investigates complex technological fraud and privacy related violations, including fraudulent software and hardware, undisclosed tracking of online consumer activity, illegal data retention, and large-scale commercial data breaches. In the privacy space, Chris plays an active role in applying older federal and state statutes to new technologies. He has been appointed class counsel in multiple class actions, including one of the largest settlements under the Telephone Consumer Protection Act, groundbreaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy.
- ▶ Chris also works on mass tort and mass action matters, including representing thousands of former football players suffering from the long-term effects of concussive and sub-concussive hits; hundreds of families who lost their homes, businesses, and even loved ones in the Camp Fire that ravaged Northern California in November 2018; and thousands of consumers exposed to toxic chemical emissions.
- ▶ Chris has been asked to appear on television, radio, and in national publications to discuss consumer protection and privacy issues, as well as asked to lecture at his alma mater on class action practice.
- ▶ Chris received his law degree from The John Marshall Law School, his M.A. in Legal Sociology from the International Institute for the Sociology of Law (located in Onati, Spain), and his B.A. in Legal Sociology from the University of California, Santa Barbara. Chris also serves on the Illinois Bar Foundation, Board of Directors.

Our Team



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David I. Mindell

Partner
Co-Chair, Public Client and Government Affairs group

Counsels governments and state and federal lawmakers on a range of policy issues.

David represents state Attorneys General, counties, and cities in high-stakes litigation and investigations involving consumer protection, information security and privacy violations, the opioid crisis, and other areas of enforcement that protect government interests and vulnerable communities. David also counsels governments and state and federal lawmakers on a range of policy issues involving consumer protection, privacy, technology, and data security.

- ▶ In addition to his Public Client and Government Affairs practice, David helps direct the firm's Investigations team, including the group's internal lab "of computer forensic engineers and tech-savvy lawyers [who study] fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention." Cybersecurity & Privacy Practice Group of the Year, Law360 (Jan. 2019). His team's research has led to lawsuits involving the fraudulent development, marketing and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, unlawful collection and use of biometric information, unlawful collection and use of genetic information, and the Bitcoin industry.
- ▶ David also helps oversee the firm's class and mass action investigations, including claims against helmet manufacturers and the National Collegiate Athletic Association by thousands of former high school, college, and professional football players suffering from the long-term effects of concussive and sub-concussive hits; claims on behalf of hundreds of families and business who lost their homes, businesses, and even loved ones in the "Camp Fire" that ravaged thousands of acres of Northern California in November 2018; and on behalf of survivors of sexual abuse.
- ▶ Prior to joining EDELSON PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.
- ▶ While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.
- ▶ David has spoken to a wide range of audiences about his investigations and practice.

Our Team



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Roger Perlstadt

Partner

Briefed appeals and motions in numerous federal and state appellate courts.

Roger's practice focuses on appeals and critical motions. He has briefed appeals and motions in numerous federal and state appellate courts, including the United States Supreme Court's seminal case of *Spokeo, Inc. v. Robins*, and has argued multiple times before the United States Courts of Appeals for the Sixth, Seventh, Eighth, and Ninth Circuits.

- ▶ Roger has also briefed complex issues at the trial court level in cases throughout the country. These cases generally involve matters of first impression relating to new statutes or novel uses of long-standing statutes, as well as the intersection of privacy law and emerging technologies.
- ▶ Prior to joining EDELSON PC, Roger was a law clerk to United States District Court Judge Elaine E. Bucklo, an associate at a litigation boutique in Chicago, and a Visiting Assistant Professor at the University of Florida Levin College of Law. He has published articles on the Federal Arbitration Act in various law reviews.
- ▶ Roger has been named a Rising Star by Illinois Super Lawyer Magazine four times since 2010.
- ▶ Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

Our Team



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Eve-Lynn Rapp

Partner
Co-Chair, Public Client team

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

Eve focuses her practice on a wide range of consumer protection and privacy class and mass actions, as well as government enforcement litigation, including matters on behalf of various Attorneys General and municipalities and counties across the country. Eve has been appointed class counsel or led the litigation efforts in dozens of matters and has recovered or secured verdicts of over a billion dollars for her clients.

- ▶ Specific to her Public Client and Government Affairs practice, Eve represents the District of Columbia in its litigation against Juul for its deceptive e-cigarette manufacturing and sales, the State of New Mexico in its suit against Google alleging that its G-Suite for Education product and services illegally collected data from New Mexico school children in violation of COPPA, and has helped to represent the State of Idaho and dozens of other government entities in their lawsuits against the pharmaceutical companies relating to the opioid crisis. Eve likewise represented the City of Chicago in the Equifax suit where she secured a landmark seven-figure settlement under Chicago's City-specific ordinance.
- ▶ Eve has also devoted a considerable amount of her practice to consumer technology cases, with a particular emphasis on cell phone telephony and Telephone Consumer Protection Act ("TCPA") cases, consumer fraud cases, and privacy lawsuits. Eve has helped lead approximately 40 TCPA class actions, including *Wakefield v. ViSalus, Inc.*, No. 15-cv-01857, Hon. Michael H. Simon (D. Or.), where, as Class Counsel, she led and coordinated Edelson's litigation efforts, achieved certification of an adversarial TCPA class, and paved the way to a \$925 million jury verdict. She also led Edelson's efforts in *Birchmeier v. Caribbean Cruise Line, Inc. et al.*, No. 12-cv-04069 (N.D. Ill.), where, after obtaining class certification and partial summary judgment, she secured a \$76 million settlement—the largest ever for a TCPA case—four days before trial. Eve likewise served as lead counsel in then one of the few "Do Not Call" TCPA cases to settle, resulting in a multi-million dollar settlement and affording class members with as much as \$5,000 individually, and prosecuted dozens of TCPA cases on an individual basis in arbitrations, winning six-figure settlements.

Eve-Lynn Rapp

Partner
Co-Chair, Public Client team

- ▶ Eve is also responsible for leading one of the first “Internet of Things” cases under the Federal Wiretap Act against a company collecting highly sensitive personal information from consumers, in which she obtained a \$5 million (CAD) settlement that afforded individual class members over one hundred dollars in relief.
- ▶ In addition to her government and privacy work, Eve has led over a dozen consumer fraud cases, against a variety of industries, including e-cigarette sellers, on-line gaming companies, electronic and sport products distributors. Most recently, she led and resolved a case against a well-known national fitness facility for misrepresenting its “lifetime memberships,” which resulted in tens of millions of dollars of relief. She likewise has special expertise in products liability and pharmaceutical litigation—representing over a dozen municipalities in lawsuits against the pharmaceutical companies relating to the opioid crisis. Eve’s victory in the United States Supreme Court in a products liability case involving the All Writs Act paved the way for hundreds of thousands of people to litigate their claims for deceptive marketing.
- ▶ From 2015-2019, Eve was selected as an Illinois Emerging Lawyer by Leading Lawyers.
- ▶ Eve received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, she was an Associate Editor of Loyola’s International Law Review and externed as a “711” at both the Cook County State’s Attorney’s Office and for Cook County Commissioner Larry Suffredin. Eve also clerked for both civil and criminal judges (The Honorable Judge Yvonne Lewis and Plummer Lott) in the Supreme Court of New York. Eve graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

Our Team



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Ari J. Scharg

Partner
Co-Chair, Government Affairs Group

Recognized as one of the leading experts on privacy and emerging technologies.

Ari counsels governmental entities and officials on a range of policy and strategic issues involving consumer protection, privacy, technology, and data security. Known as an aggressive advocate, Ari also leverages his experience litigating hundreds of complex class and mass action lawsuits to help local governments prosecute large-scale cost recovery actions, including those against the pharmaceutical companies responsible for the opioid crisis.

- ▶ Recognized as one of the leading experts on privacy and emerging technologies, Ari serves on the inaugural Executive Oversight Council for the Array of Things Project where he advises on privacy and data security matters, chairs the Illinois State Bar Association's Privacy and Information Security Section, and was recently appointed by the Illinois Senate President to Co-Chair the Illinois Blockchain and Distributed Ledgers Task Force alongside Representative Michael Zalewski (21st Dist.). Ari was selected as an Illinois Rising Star by Super Lawyers (2013 – 2018), and received the Michigan State Bar Foundation's Access to Justice Award (2017) for "significantly advancing access to justice for the poor" through his consumer cases.
- ▶ Ari regularly speaks about data security and technology at law schools and conferences around the country, and has testified before the Michigan House of Representatives Committee on Commerce and Trade about the privacy implications raised by the surging data mining industry and the Nevada Assembly Commerce and Labor Committee about the privacy implications raised by the surreptitious collection and use of geolocation data.
- ▶ Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for The John Marshall Law Review and competed nationally in trial competitions. During law school, he also served as a judicial extern to the Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

Our Team



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Ben Thomassen

Partner
Member, Issues & Appeals Group

Appointed as class counsel in several high profile cases including, *Harris v. comScore, Inc.*, No. 11-cv-5807

Ben regularly litigates complex issues—often ones of first impression—in trial and appellate courts, has been appointed as class counsel for numerous certified federal classes, and has played key roles in industry-changing cases that have secured millions of dollars of relief for consumers. Substantively, Ben's work focuses on issues concerning data privacy/security, technology, and consumer fraud.

- ▶ Ben's work at the firm has achieved significant results for classes of consumers. He has been appointed as class counsel in several high profile cases, including, for example, *Harris v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.) (in case against data analytics company, estimated to be the largest privacy class action certified on adversarial basis and resulted in \$14 million settlement). Ben has also played critical and leading roles in developing, briefing, and arguing novel legal theories on behalf of his clients, including by delivering the winning oral argument to the Eleventh Circuit in the seminal case of *Resnick, et al. v. AvMed, Inc.*, No. 10-cv-24513 (S.D. Fla.) (appointed class counsel in industry-changing data breach case, which obtained a landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred) and recently obtaining certification of a class of magazine subscribers in *Coulter-Owens v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.) (achieved adversarial certification in a privacy case brought by a class of magazine subscribers against a magazine publisher under Michigan's Preservation of Personal Privacy Act). His cases have resulted in millions of dollars to consumers.
- ▶ Ben graduated magna cum laude from Chicago-Kent College of Law, where he also earned a certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. He also served as Vice President of Chicago-Kent's Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts. In 2017, Ben was selected as an Illinois Emerging Lawyer by Leading Lawyers.
- ▶ Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years' experience) for commercial theatres, museums, and educational institutions. Ben received a Master of Arts degree from the University of Chicago and his Bachelor of Arts degree, summa cum laude, from St. Mary's College of Maryland.

Our Team



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Arthur Turner II

Of Counsel

Sponsored legislation to increase economic development and help give loans to small businesses.

Art's practice focuses on consumer and privacy-related class actions and mass tort litigation.

- ▶ After college, Art served as a community organizer and mentor to youth in North Lawndale. He worked as a tax credit analyst and underwriter for the Illinois Housing Development Authority. In 2010, he was elected to serve as the state representative in the 9th House District.
- ▶ As a legislator, Art sponsored legislation to increase economic development and help give loans to small businesses; particularly in areas in need of the greatest economic growth. Art advocated for stronger personal privacy measures to protect consumers and their personal information online. Art's legislative agenda also focused on providing affordable housing for Illinois residents, and access to quality health care for all.
- ▶ Art joined the House Leadership team in 2013 as an Assistant Majority leader. He became Deputy Majority Leader in 2017. Art served as a member of various committees including Executive, Revenue & Finance, Public Utilities, Cybersecurity; Data Analytics & IT, and chairman of the Judiciary – Criminal Law Committee.
- ▶ Art has been recognized for his legislative efforts by a wide variety of advocates and organizations, including being named an Edgar Fellow in 2012.
- ▶ Art graduated with a degree in political science from Morehouse College and received his J.D. from Southern Illinois University School of Law.

Our Team



Theo Benjamin

Associate

Led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws.

Theo's practice focuses on consumer, privacy, tech-related class actions, and mass tort litigation.

- ▶ Theo is a member of Edelson's COVID-19 Legal Task Force and is currently litigating insurance class actions on behalf of businesses nationwide alleging wrongful denial of claims for business interruption insurance coverage resulting from losses sustained due to the ongoing COVID-19 pandemic. Theo is also litigating and represents former college and high school athletes suffering from the harmful effects of concussive and sub-concussive head impacts. Theo's recent work includes litigating and protecting the rights of consumers under state laws like the Illinois Biometric Information Privacy Act (BIPA).
- ▶ Theo received his J.D. from Northwestern Pritzker School of Law, where he served as a Comment Editor for Northwestern's Journal of Criminal Law & Criminology and founded Northwestern's chapter of the International Refugee Assistance Project and helped provide legal aid, representation, and policy research to refugees and asylum seekers undergoing the U.S. resettlement process.

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Our Team



Éviealle Dawkins

Associate

Member of the Charles Hamilton Houston National Moot Court Team at Howard University School of Law.

Éviealle practice focuses on consumer, privacy-related, and tech-related class actions.

- ▶ Éviealle received her J.D. from Howard University School of Law, where she was a member of the Charles Hamilton Houston National Moot Court Team, a student attorney in the Fair Housing Clinic and Alternative Dispute Resolution Consortium and served on the executive board of the Student Bar Association.
- ▶ Prior to becoming a lawyer, Éviealle worked in campaigns and political consulting as an Operations Director and Project Manager. She served as a White House Intern in Spring 2013.

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Our Team



Lily Hough

Associate

A key player in defeating a motion to dismiss claims under the federal Wiretap Act.

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Lily's practice focuses on consumer privacy-related class actions.

- ▶ Lily has extensive experience litigating complex technical issues and novel legal theories in "Internet of Things" privacy cases arising under federal and state laws. For example, in *S.D. v. Hytto, Ltd., d/b/a Lovense*, No. 3:18-cv-00688 (N.D. Cal.), Lily was a key player in defeating a motion to dismiss claims under the federal Wiretap Act in a class action lawsuit alleging that an adult sex toy company collected highly sensitive data on customer usage. During her first year of practice, Lily briefed and argued a successful opposition to a motion to dismiss another class action under the federal Wiretap Act, in which she represented users of the Golden State Warriors' mobile application in *Satchell v. Sonic Notify, Inc. d.b.a. Signal 360 et al.*, No. 3:16-cv-04961 (N.D. Cal.).
- ▶ Lily has also achieved unique victories in efforts to end harassing robocalls to consumers through class action lawsuits under the Telephone Consumer Protection Act ("TCPA"). In 2019, she and co-counsel represented class members in a jury trial that secured a \$925 million verdict in *Wakefield v. Visalus, Inc.*, No. 3:15-cv-01857 (D. Or.). Lily recently defeated a motion to dismiss TCPA claims and successfully litigated challenging questions of statutory interpretation involving whether job offer solicitations constituted "telemarketing" in *Risher v. Adecco, Inc., et al.*, No. 3:19-cv-05602 (N.D. Cal.).
- ▶ In 2020, Lily joined the firm's efforts to litigate claims by survivors of childhood sexual abuse against various entities under California's recently enacted AB 218.
- ▶ Lily received her J.D., cum laude, from Georgetown University Law Center. In law school, Lily served as a Law Fellow for Georgetown's first year Legal Research and Writing Program and as the Executive Editor of the Georgetown Immigration Law Journal. She participated in D.C. Law Students In Court, one of the oldest clinical programs in the District of Columbia, where she represented tenants in Landlord & Tenant Court and plaintiff consumers in civil matters in D.C. Superior Court. She also worked as an intern at the U.S. Department of State in the Office of the Legal Adviser, International Claims and Investment Disputes (L/CID).
- ▶ Prior to law school, Lily attended the University of Notre Dame, where she graduated magna cum laude with departmental honors and earned her B.A. in Political Science and was awarded a James F. Andrews Scholarship for commitment to social concerns. She is also a member of the Pi Sigma Alpha and Phi Beta Kappa honor societies.

Our Team



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J. Aaron Lawson

Associate

Argued in four federal Courts of Appeals and numerous district courts around the country.

Aaron's practice focuses on appeals and complex motion practice. Aaron regularly litigates complex issues in both trial and appellate courts, including jurisdictional issues and class certification. Aaron has argued in four federal Courts of Appeals and numerous district courts around the country. In 2019, Aaron won and successfully defended class certification in a case challenging Facebook's collection of facial recognition data gathered through the platform's photo tagging feature. The case settled on the eve of trial for a record breaking \$650 million.

- ▶ In addition to his work at Edelson PC, Aaron serves on the Privacy Subcommittee of the California Lawyers Association's Antitrust, UCL & Privacy Section, and edits the yearly treatise produced by the subcommittee.
- ▶ Prior to joining EDELSON PC, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit, handling appeals involving a wide variety of subject matter, including consumer-protection law, employment law, criminal law, and federal habeas corpus. While at the University of Michigan Law School, Aaron served as the Managing Editor for the Michigan Journal of Race & Law, and participated in the Federal Appellate Clinic. In the clinic, Aaron briefed a direct criminal appeal to the United States Court of Appeals for the Sixth Circuit, and successfully convinced the court to vacate his client's sentence.

Our Team



Todd Logan

Associate

Led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws.

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Todd focuses his practice on class and mass actions and large-scale governmental suits. He represents Butte County residents who lost their homes and businesses in the Camp Fire, governments and other entities seeking to recover losses arising out of the nationwide opioid epidemic, former NCAA football players suffering from the harmful effects of concussions, consumers seeking compensation for their gambling losses to illegal internet casinos, and consumers who have been defrauded or otherwise suffered damages under state consumer protection laws.

- ▶ In recent years, Todd has led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws. For example, in *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922, 2019 WL 251488, (N.D. Cal. Jan. 17, 2019), Todd briefed and argued a successful motion for nationwide class certification in a complex consumer class action alleging claims under California Law. In *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.), after remand from both the Supreme Court and the Ninth Circuit, Todd led the litigation of the class' claims under the Fair Credit Reporting Act for more than a year before the case entered settlement posture on favorable terms. And in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 15-CH-16694 (Cir. Ct. Cook Cty., Ill.), Todd represented a class of consumers alleging claims under Illinois' Biometric Information Privacy Act (BIPA) and ultimately obtained a seven-figure class action settlement – the first ever BIPA class action settlement.
- ▶ Before becoming a lawyer, Todd built SQL databases for a technology company and worked at various levels in state and local government. Todd received his J.D. cum laude from Harvard Law School, where he was Managing Editor of the *Harvard Journal of Law and Technology*. Todd also assisted Professor William B. Rubenstein with research and analysis on a wide variety of class action issues, and is credited for his work in more than eighty sections of *Newberg on Class Actions*.
- ▶ From 2016-17, Todd served as a judicial law clerk for the Honorable James Donato of the Northern District of California.

Our Team



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Michael Ovca

Incoming Associate

Litigating a half-dozen Telephone Consumer Protection Act cases.

Michael focuses on consumer, privacy-related and technology-related class actions.

- ▶ Michael's recent consumer class action work involves bringing claims on behalf of students suing for-profit colleges that used allegedly-fraudulent advertising to lead them to enroll. Michael's environmental practice involves representing individuals who were exposed to ethylene oxide ("EtO") emitted by medical equipment sterilization and chemical manufacturing plants, as well as those exposed to dangerous "forever" chemicals through tainted groundwater that accumulate in the body, ultimately causing cancer. Michael is also litigating a half-dozen Telephone Consumer Protection Act cases brought by recipients of text messages sent by entertainment venues from around the country. In terms of governmental representation, Michael has worked on cases brought by the City of Chicago against Uber; by various cities and towns in Illinois against opiate manufacturers, distributors, and prescribers; and a village seeking to prevent the closure of its hospital.
- ▶ Michael received his J.D. cum laude from Northwestern University, where he was an associate editor of the *Journal of Criminal Law and Criminology*, and a member of several award-winning trial and moot court teams.
- ▶ Prior to law school, Michael graduated summa cum laude with a degree in political science from the University of Illinois.

Our Team



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Emily Penkowski

Incoming Associate

Cum laude from Northwestern University
Pritzker School of Law

Emily's practice focuses on privacy- and tech-related class actions.

- ▶ Emily received her J.D. cum laude from Northwestern University Pritzker School of Law, where she served as an Associate Editor of Northwestern University Law Review and a Problem Writer for the 2020 Julius Miner Moot Court Board. Emily participated in the Bluhm Legal Clinic's Supreme Court Clinic, where she worked on cases before the Supreme Court including *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 584 (2020). She placed on the Dean's List every semester and served on the student executive boards for the Moot Court Society and the Collaboration for Justice, a justice system reform-oriented student group.
- ▶ Emily spent her law school summers at the Maryland Office of the Attorney General and the U.S. Attorney's Office for the Western District of Washington. In the Western District of Washington, Emily assisted in prosecuting cryptocurrency money laundering, cybercrime, and complex frauds. In Maryland, she wrote criminal appeals briefs for the State in the Maryland Court of Special Appeals.
- ▶ Before entering law school, Emily worked as an intelligence analyst for the National Security Agency, in the Office of Counterintelligence & Cyber (previously the NSA/CSS Threat Operations Center) and the Office of Counterterrorism. She analyzed significant, technical, complex, and short-suspense intelligence in support of law enforcement, military, computer network defense, diplomatic, and other intelligence efforts, while serving as a "reporting expert" for over three hundred analysts on an agency-wide project. She also briefed NSA and military leadership on cyber and counterintelligence threats to the U.S. government and military.
- ▶ As a digital network analyst, Emily increased intelligence coverage on a counterterrorism target through social network analysis, including eigenvector and cluster analysis, used metric databases to manage and prioritize intelligence collection, and worked with collectors to streamline data flows and eliminate duplicative sources of information.
- ▶ Emily received her Bachelor of Science in International Studies, specializing in Security and Intelligence, at Ohio State. She also received minors in Computer and Information Science and Mandarin Chinese. She began learning Mandarin in high school. During college, Emily interned at the National Security Agency, in the Office of Counterproliferation, and at Huntington National Bank, on its Anti-Money Laundering and Bank Secrecy Act team.

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Albert J. Plawinski

Associate
Member, Investigations and Mass Actions teams

Works on the development of the environmental mass tort and mass action cases.

Albert identifies and evaluates potential cases and works with the firm's computer forensic engineers to investigate privacy violations by consumer products and IoT devices. Albert also works on the development of the environmental mass tort and mass action cases, including preparing lawsuits on behalf of (1) victims of the California Camp Fire—the largest and most devastating fire in California's history; (2) individuals exposed to toxic chemicals in their drinking water; and (3) individuals exposed to carcinogenic ethylene oxide.

- ▶ Albert received his J.D. from the Chicago-Kent College of Law. While in law school, Albert served as the Web Editor of the Chicago-Kent Journal of Intellectual Property. Albert was also a research assistant for Professor Hank Perritt for whom he researched various legal issues relating to the emerging consumer drone market—e.g., data collection by drone manufacturers and federal preemption obstacles for states and municipalities seeking to legislate the use of drones. Additionally, Albert earned a CALI award for receiving the highest course grade, in Litigation Technology.
- ▶ Prior to law school, Albert graduated with Highest Distinctions with a degree in Political Science from the University of Illinois at Urbana-Champaign.

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Dan Schneider

Associate

Protects the rights of consumers under state laws.

Dan's his practice focuses on plaintiff-side class action and mass tort litigation. He represents former college and high school athletes suffering from the harmful effects of concussive and sub-concussive head impacts. Dan also protects the rights of consumers under state laws like the Illinois Biometric Information Privacy Act (BIPA) and federal laws like the Telephone Consumer Protection Act (TCPA).

- ▶ Dan received his J.D. summa cum laude from the University of Wisconsin, where he served as an Articles Editor for the Wisconsin Law Review.
- ▶ Prior to law school, Dan graduated magna cum laude with a B.A. in Visual and Media Arts from Emerson College. He worked as a freelance journalist for many years covering economics, activism, and music in the Boston area. His work has appeared in The Atlantic, The Boston Globe, and In These Times, among other outlets.

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Brandt Silver-Korn

Associate

Focuses on class and mass actions and large-scale governmental suits.

Brandt's practice focuses on class and mass actions and large-scale governmental suits. His current clients include families who lost their homes and businesses in the Camp Fire, communities that have been severely impacted by the opioid epidemic, and consumers who have suffered gambling losses to illegal internet casinos.

- ▶ Brandt received his J.D. from Stanford Law School, where he was awarded the Gerald Gunther Prize for Outstanding Performance in Criminal Law, and the John Hart Ely Prize for Outstanding Performance in Mental Health Law. While in law school, Brandt was also the leading author of several simulations for the Gould Negotiation and Mediation Program.
- ▶ Prior to law school, Brandt graduated summa cum laude from Middlebury College with a degree in English and American Literatures.

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Alexander G. Tievsky

Associate

Briefed and argued cases in numerous federal appellate and district court.

Alex concentrates on complex motion practice and appeals in consumer class action litigation.

- ▶ Alex has briefed and argued cases in numerous federal appellate and district courts, and he has successfully defended consumers' right to have their claims heard in a federal forum, including, for example, defeating Facebook's attempt to deprive its users of a federal forum to adjudicate their claims for wrongful collection of biometric information in violation of state privacy statute in *In re Facebook Biometric Info. Privacy Litig.*, 290 F. Supp. 3d 948 (N.D. Cal. 2018), aff'd 932 F.3d 1264 (9th Cir. 2019); winning reversal of summary judgment in Telephone Consumer Protection Act (TCPA) case on the basis that the defendant could be held liable for ratifying the actions of its callers, even though it did not place the calls itself in *Henderson v. United Student Aid Funds, Inc.*, 918 F.3d 1068 (9th Cir. 2019); and winning reversal of district court's dismissal in first-of-its-kind ruling that so-called "free to play" casino apps are illegal gambling, which allows consumers to recover their losses under Washington law. See *Kater v. Churchill Downs, Inc.*, 886 F.3d 784 (9th Cir. 2018)
- ▶ Alex received his J.D. from the Northwestern University School of Law, where he graduated from the two-year accelerated J.D. program. While in law school, Alex was Media Editor of the Northwestern University Law Review. He also worked as a member of the Bluhm Legal Clinic's Center on Wrongful Convictions. Alex maintains a relationship with the Center and focuses his public service work on seeking to overturn unjust criminal convictions in Cook County.
- ▶ Alex's past experiences include developing internal tools for an enterprise software company and working as a full-time cheesemonger. He received his A.B. in linguistics with general honors from the College of the University of Chicago.

Our Team



Schulyer Ufkes

Associate

Currently litigating consumer class actions on behalf of employees under the Illinois Biometric Information Privacy Act

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Schulyer focuses on consumer and privacy-related class actions.

- ▶ Schulyer is currently litigating nearly a dozen consumer class actions on behalf of employees under the Illinois Biometric Information Privacy Act ("BIPA") for their employers' failure to comply with the Act's notice and consent requirements before collecting, storing, and in some instances disclosing their biometric data. Schulyer is also litigating several Telephone Consumer Protection Act cases brought by recipients harassing debt-collection calls as well as spam text messages.
- ▶ Schulyer received his J.D. magna cum laude, and Order of the Coif, from the Chicago-Kent College of Law. While in law school, Schulyer served as an Executive Articles Editor for the Chicago-Kent Law Review and was a member of the Moot Court Honor Society. Schulyer earned five CALI awards for receiving the highest grade in Legal Writing II, Legal Writing III, Pretrial Litigation, Supreme Court Review, and Professional Responsibility.
- ▶ Prior to law school, Schulyer graduated with High Honors from the University of Illinois Urbana-Champaign earning a degree in Consumer Economics and Finance.

Our Team



J. Eli Wade-Scott

Associate

Returned some of the highest per-person relief ever secured in a privacy case.

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Eli's practice focuses on privacy- and tech-related class actions and enforcement actions brought by governments. Eli has been appointed to represent several states, including as a Special Assistant State's Attorney to prosecute Facebook's violations of the Illinois Consumer Fraud Act in the Cambridge Analytica scandal, and by the State of New Mexico to prosecute Google's violations of the Children's Online Privacy Protection Act. In his work representing classes of employees and consumers, Eli has returned some of the highest per-person relief ever secured in a privacy case—resulting in checks for nearly a thousand dollars to be sent directly to entire classes with no need to make a claim.

- ▶ Before joining Edelson, Eli served as a law clerk to the Honorable Rebecca Pallmeyer of the Northern District of Illinois. Eli has also worked as a Skadden Fellow at Legal Aid Chicago, Cook County's federally-funded legal aid provider. There, Eli represented dozens of low-income tenants in affirmative litigation against their landlords to remedy dangerous housing conditions.
- ▶ Eli received his J.D. magna cum laude from Harvard Law School, where he was an Executive Editor on the Harvard Law and Policy Review and a research assistant to Professor Vicki C. Jackson.

Our Team



Jacob Wright

Director of Public Policy

Advises federal, state, county, and local government officials on a variety of issues.

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Jacob is part of the firm's Public Client and Government Affairs Group. Jacob advises federal, state, county, and local government officials on a variety of issues involving consumer protection, data security, privacy, and technology. Jacob's work includes working alongside numerous public interest organizations and non-governmental organizations to defend current law and advocate for the adoption of new laws that better protect consumers.

- ▶ Jacob has testified multiple times before committees in both the Illinois House of Representatives and the Illinois Senate. He has also guest lectured at the Chicago-Kent College of Law and is frequently asked to speak at town halls, public forums, and conferences involving issues such as privacy, net neutrality, data security, and technology.
- ▶ Prior to joining Edelson, Jacob was Assistant Counsel to the Speaker of the Illinois House of Representatives where he was tasked with reviewing and drafting legislation, analyzing bills, providing memoranda and analyses on legislative matters to House leadership, and assisting House members with committee testimony and floor debate.
- ▶ Jacob received his B.A. in Government and Middle Eastern Studies from the University of Texas at Austin, received his MA in International Affairs from the American University School of International Service, and graduated cum laude from American University Washington College of Law. During law school, he clerked for the Honorable Sally D. Adkins of the Maryland Court of Appeals and worked in the Office of U.S. Senator Richard J. Durbin.
- ▶ Jacob is a Member of the Equality Illinois Political Action Committee as well as a Next Generation Board Member of La Casa Norte.

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Shawn Davis

Director of Digital Forensics

Experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill.

Shawn leads a technical team in investigating claims involving privacy violations and tech-related abuse. His team's investigations have included claims arising out of the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through digital devices, unlawful collection, storage, and dissemination of consumer data, large-scale data breaches, receipt of unsolicited communications, and other deceptive marketing practices.

- ▶ Shawn has experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill, and is routinely asked to testify before legislative bodies on critical areas of cybersecurity and privacy, including those impacting the security of our country's voting system, issues surrounding children privacy (with a special emphasis on surreptitious geotracking), and other ways data collectors and aggregators exploit and manipulate people's private lives. Shawn has taught courses on cybersecurity and forensics at the undergraduate and graduate levels and has provided training and presentations to other technology professionals as well as members of law enforcement, including the FBI.
- ▶ Shawn's investigatory work has forced major companies (from national hotel chains to medical groups to magazine publishers) to fix previously unrecognized security vulnerabilities. His work has also uncovered numerous issues of companies surreptitiously tracking consumers, which has led to groundbreaking lawsuits.
- ▶ Prior to joining EDELSON PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.
- ▶ Shawn is an Adjunct Industry Associate Professor for the School of Applied Technology at the Illinois Institute of Technology (IIT) where he has been teaching since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.
- ▶ Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.

Exhibit 4

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11 Attorneys for Plaintiff
12 Brandon Harvey

13
14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

16 BRANDON HARVEY, individually and on
behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 MORGAN STANLEY SMITH BARNEY
20 LLC,

21 Defendant.

Case No. 3:18-cv-02835 WHO

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR ATTORNEYS’
FEES AND COSTS AND CLASS
REPRESENTATIVE ENHANCEMENT
AWARD; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. William H. Orrick
Date: February 5, 2020
Time: 2:00 p.m.
Courtroom: Courtroom 2, 17th Floor

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NOTICE OF MOTION AND MOTION

TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT on February 5, 2020 at 2:00 p.m., or as soon thereafter as counsel may be heard, in the courtroom of the Hon. William H. Orrick, United States District Court for the Northern District of California, located at 450 Golden Gate Ave., San Francisco, California, in Courtroom 2, 17th Floor, Plaintiff Brandon Harvey will and hereby does respectfully move the court for an order to award class counsel attorneys’ fees and reimbursement for litigation expenses and to award payment to Plaintiff for his services as the class representative. This motion is based on the following Memorandum of Points and Authorities, the supporting Declaration of Edward J. Wynne, the supporting Declaration of James F. Clapp, the supporting Declaration of Jeffrey K. Compton, the supporting Declaration of Brandon Harvey, and all other pleadings and papers on file in this action, and such argument as the Court may hear.

Dated: November 14, 2019

WYNNE LAW FIRM

/s/Edward J. Wynne
Edward J. Wynne
Attorneys for Plaintiff

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27

28

1 Plaintiff Brandon Harvey (“Plaintiff”) hereby submits the following memorandum of
 2 points and authorities in support of Plaintiff’s Counsels’ request for attorneys’ fees and costs
 3 and class representative award.

4 **I. INTRODUCTION**

5 From the Gross Settlement Fund of \$10,235,000, Class Counsel hereby requests an
 6 award of \$2,047,000 (20% of the total settlement¹) plus litigation expenses of \$24,506.37.²
 7 Plaintiff also seeks an enhancement award of \$10,000. Class Counsel submits that the fee
 8 request is fair and reasonable under the percentage of recovery method given the overall result;
 9 the benefit provided to the Class; the substantial risks of this litigation; and the complexity of
 10 this case and issues presented. Likewise, Class Counsel submits that using the lodestar method
 11 as a cross-check confirms the fairness and reasonableness of the fee request. As a result, Class
 12 Counsel requests that the fee, cost and enhancement award be approved.

13 **II. CLASS COUNSELS’ ATTORNEYS’ FEES SHOULD BE APPROVED**

14 **A. Plaintiff’s Request for Attorneys’ Fees is Evaluated Under a Deferential Standard**

15 Courts have encouraged litigants to resolve fee issues by agreement. *Hanlon v. Chrysler*
 16 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). This is consistent with the strong public policy of
 17 encouraging and approving non-collusive settlements, including those in class actions, and
 18 avoiding a “second major litigation” arising from a request for attorneys’ fees after the matter
 19 has been resolved. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“Ideally, of course,
 20 litigants will settle the amount of a fee.”); *see also, In re M.D.C. Holdings Sec. Litig.*, No. CV
 21 89-0090, 1990 U.S. Dist. LEXIS 15488, at *12 (S.D. Cal. Aug. 30, 1990) (“Because this Court
 22 believes the parties should be encouraged to settle all their disputes as part of the settlement....
 23

24 _____
 25 ¹ Plaintiff’s Counsel reserves the right to seek the full 25% of the gross settlement amount in
 26 attorney fees per the terms of the Settlement Agreement contingent upon the time, effort and
 27 expense involved in resolving the current and potential additional appeal filed by attempted
 28 intervenors Locadano and Chen. (Decl. of Wynne, ¶ 21.)

² Plaintiff’s Counsels’ current costs are less than the \$35,000 cap per the terms of the Settlement
 Agreement. Should Counsels’ costs increase before this case is finally resolved, Counsel
 reserves the right to seek reimbursement up to the cap amount. (Decl. of Wynne, ¶¶ 22, 32.)

1 including the amount of the fee... if the agreed-to fee falls within a range of reasonableness, it
2 should be approved as part of the negotiated settlement.”).

3 In considering unopposed fee applications, district courts must account for the fact that
4 “the parties are compromising to avoid litigation.” *Laguna v. Coverall North America*, 753
5 F.3d 918, 922 (9th Cir. 2014). Accordingly, “the district court need not inquire into the
6 reasonableness of the fees even at the high end with precisely the same level of scrutiny as
7 when the fee amount is litigated.” *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th
8 Cir. 2003)). Thus, while the court must conduct an independent inquiry into the reasonableness
9 of the fee request, it should give substantial weight to the parties’ agreement as to the
10 reasonableness of the amount of attorneys’ fees.

11 These considerations are particularly appropriate where, as here, the parties conducted
12 their negotiations at arm’s-length through not just one, but two, well-respected mediators in
13 three different sessions. *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
14 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
15 considerably against any inference of a collusive settlement); *In re Atmel Corp. Derivative*
16 *Litig.*, 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same); *D’Amato v. Deutsche*
17 *Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-certification settlement
18 negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).
19 At all times the settlement negotiations were adversarial and non-collusive, and the resulting
20 settlement of attorneys’ fees, as a function of the overall settlement value, is likewise fair,
21 reasonable, and free of collusion.

22 Indeed, this Court has found that the settlement was reached “as a result of intensive,
23 serious and non-collusive negotiations between the Parties facilitated by experienced
24 mediators.” (Dkt. 76, p. 2.) In addition, the Court rejected attempted intervenors’ Tracy Chen
25 and Matthew Lucadano (“Attempted Intervenors”) claims of collusion in their opposition to
26 preliminary approval of this settlement. This Court rejected that charge for “at least” the
27 following reasons: (1) Harvey’s counsel is knowledgeable and experienced; (2) the parties
28 engaged in meaningful settlement prior to settlement; (3) the parties participated in arm’s-

1 length negotiations through well-respected mediators Tripper Ortman and Mark Rudy in three
2 separate mediation sessions; (4) the settlement compares favorably to other recent settlements
3 on behalf of Financial Advisors seeking reimbursement for business expenses; (5) the
4 settlements cited by Attempted Intervenor are not better comparators than the more recent
5 settlements cited by Plaintiff; (6) the PAGA relief is consistent with, or higher than, amounts
6 awarded by other courts; and, (7) the relief to the class and aggrieved employees would be
7 faster and more certain than any potential relief in the Attempted Intervenor's case, *Chen v.*
8 *Morgan Stanley Smith Barney* (Orange County Superior Court Case No. 30-2014-00724866-
9 CU-OE-CXE). (Dkt. 76, Order Granting Preliminary Approval.)

10 Hence, this Court has already rejected any notion of collusion. Plaintiff submits that the
11 resulting settlement of attorneys' fees, as a function of the overall settlement value, is likewise
12 fair, reasonable, and free of collusion.

13 **B. Plaintiff's Request for Attorneys' Fees is Reasonable as a Percentage of the**
14 **Common Fund.**

15 The Supreme Court has consistently recognized that "a litigant or a lawyer who
16 recovers a common fund for the benefit of persons other than himself or his client is entitled to
17 reasonable attorney's fee from the fund as a whole." *Boeing Company v. Van Gemert*, 444 U.S.
18 472, 478 (1980); *Mills v. Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970). The common fund
19 doctrine is a well-recognized exception to the general American rule that a litigant must bear its
20 own attorneys' fees. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 257-58
21 (1975).

22 The common fund doctrine applies when: (1) the class of beneficiaries is sufficiently
23 identifiable; (2) the benefits can be accurately traced; and, (3) the fee can be shifted with some
24 exactitude to those benefitting. *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271
25 (9th Cir. 1989). These criteria are "easily met" where—as here—"each [class member] has an
26 undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
27 on his behalf." *Id.* at 271, citing *Van Gemert, supra*, 444 U.S. at 479.

1 District courts presiding over common fund cases have the discretion to award
2 attorneys' fees based on either the lodestar method or the percentage method proposed here.
3 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291,
4 1296 (9th Cir. 1994). Notwithstanding that discretion, use of the percentage method is the
5 "dominant" approach in common fund cases. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
6 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311
7 (9th Cir. 1990); *Paul, Johnson, Alston, & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989);
8 *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007).

9 The Ninth Circuit has generally established 25% of a common fund as a "benchmark"
10 award for attorney fees. *Vizcaino*, 290 F.3d at 1047. However, the "exact percentage [awarded]
11 varies depending on the facts of the case, and in most common fund cases, the award exceeds
12 that benchmark." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010)
13 (emphasis added). Within the Ninth Circuit, it is generally recognized that "it is common
14 practice to award attorney's fees at a higher percentage than the twenty-five percent (25%)
15 benchmark in cases that involve a relatively small – i.e., under ten million dollar (\$10 Million)
16 – settlement fund. *Greko v. Diesel, U.S.A., Inc.*, 2013 WL 1789602 (N.D. Cal. April 26, 2013).

17 Plaintiff is requesting a fee of 20% at this time notwithstanding that the benchmark for
18 attorney fee awards in common fund cases is 25%. *Six (6) Mexican Workers v. Arizona Citrus*
19 *Growers*, 904 F.2d 1301, 1311 (9th Cir.1990); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
20 (9th Cir. 1998). Indeed, in wage and hour cases such as the one at bar, courts, including this
21 Court, typically award fees above the benchmark. *See, e.g., Wellens v. Sankyo*, No. C 13-00581
22 WHO (DMR), 2016 WL 8115715, at *3 (N.D. Cal. Feb. 11, 2016) (awarding 36% in wage and
23 hour class action settlement); *Blandino v. MCM Constr., Inc.*, No. C 12-1729 WHO, 2014 WL
24 11369763, at *3 (N.D. Cal. Mar. 6, 2014) (awarding 30% in wage and hour class action
25 settlement); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431 (E.D. Cal. July 2, 2013)
26 (awarding one-third percent in wage and hour class action); *Singer v. Becton Dickinson & Co.*,
27 2010 U.S. Dist. LEXIS 53416, at *22-23 (S.D. Cal. Jun. 1, 2010) (noting that the amount of
28 one-third of the common fund for a wage and hour class action settlement "falls within the

1 typical range” of fee awards); *Stuart v. Radioshack Corp.*, 2010 U.S. Dist. LEXIS 92067 (N.D.
2 Cal. Aug. 9, 2010) (awarding one-third of settlement fund in wage and hour class action and
3 noting that “[t]his is well within the range of percentages which courts have upheld as
4 reasonable in other class action lawsuits”); *Bernal v. Davita, Inc.*, No. 5:12-cv-03255-PSG, *1-
5 2 (N.D. Cal. Jan. 14, 2014) (awarding one-third of the settlement fund in wage-and-hour class
6 action). Such awards are likewise routinely upheld by the Ninth Circuit. *See, e.g., In re Mego*
7 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming one-third of the common
8 fund); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming one-
9 third of a \$12 million common fund); *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th
10 Cir.2003) (affirming 33% fee award); *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th
11 Cir.1995) (affirming fee award of 33% of the recovery).

12 The Court’s determination of a fair and reasonable attorney fee must take into account
13 all of the circumstances of the case, including: 1) the result achieved; 2) the risk involved in the
14 litigation; 3) the skilled required and quality of work by counsel; 4) the contingent nature of the
15 fee; and, 5) awards made in similar cases. *Ching v. Siemens Industry, Inc.*, 2014 WL 2926210,
16 at *7 (N.D. Cal., June 27, 2014); *Vizcaino*, 290 F.3d at 1048-50.

17 **1. The Result Achieved**

18 The overall result and benefit to the class from the litigation is generally the most
19 critical factor in granting a fee award. *Ching*, 2014 WL 2926210, at *7. Here, the results
20 achieved are excellent.

21 As found by this Court, this settlement compares very favorably to the most recent
22 similar case, *Tsyn v. Wells Fargo*, N.D. Cal. Case 14-cv-02552-LB, which settled for
23 \$9,500,000 as approved by Magistrate Judge Beeler last year. In *Tsyn*, the plaintiffs alleged
24 virtually identical claims for unreimbursed business expenses under Labor Code § 2802.
25 Indeed, like Harvey, *Tsyn* was a Financial Advisor working for Financial Services firm
26 defendant under a similar compensation plan, challenging a business expense program that was
27 similar to Morgan Stanley’s AFG program and which also involved supplemental support staff
28 compensation. However, the *Tsyn* plaintiffs also alleged they were misclassified as exempt and

1 therefore owed overtime compensation in addition to other derivative claims. Thus, while *Tsyn*
2 involved nearly the same legal and factual issues, the *Tsyn* claims also were broader than the
3 claims alleged here.

4 The *Tsyn* settlement equated to approximately \$72.72 per work month, while the
5 *Harvey* settlement equates to approximately \$80.78 per work month – an increase of over 10%.
6 In terms of total exposure, this settlement is consistent with *Tsyn*. This settlement represents
7 5.28% of MSSB’s total exposure while the settlement in *Tsyn* represented 5.75% of Wells
8 Fargo’s total exposure.

9 This settlement also compares favorably to two other relatively recent cases brought on
10 behalf of California Financial Advisors. In *Brecher v. Citigroup Global Markets, Inc.*, S.D.
11 Cal. Case 09-cv-1344, plaintiffs alleged unlawful forfeiture of benefits and also unreimbursed
12 business expenses under Labor Code § 2802 for payments made to support staff. The court
13 granted final approval of a \$3,700,000 non-reversionary settlement on behalf of a 1,006 person
14 class. Sixty-percent of the settlement was attributed to the expense reimbursement claim.
15 Participating class members received \$3,171 on average – as compared to \$3,595 that is the
16 average on a headcount basis class members on average can expect to receive here. (Dkt. 76, p.
17 5.) In *Litty v. Merrill Lynch & Co.*, L.A. Sup. Ct. Case No. BC582127, the court approved a
18 \$2,465,000 class action settlement reached on behalf of 2,501 FAs employed by Merrill Lynch
19 in California. The *Litty* complaint alleged claims for unreimbursed business expenses under
20 Labor Code § 2802 and derivative claims under the UCL and PAGA. The average settlement
21 in *Litty* was \$1,147 per class member.

22 Thus, the amount received by the Class Members and Aggrieved Employees is
23 significant. Indeed, the amount will likely increase as a result of interest earned on the
24 Settlement Fund in the event the Attempted Intervenors appeal the order granting final
25 approval. (See, Dkt. 48-3, p. 4.) Plaintiff submits that these amounts paid today are fair,
26 reasonable and adequate in light of the uncertainty of future litigation.

27
28

1 **2. The Risk Involved in the Litigation**

2 The risks of litigation in this case were substantial. With respect to the AFG program,
3 Plaintiff is not aware of any court (or administrative body) being asked to decide whether an
4 employer’s representation to the IRS that an expense is tax deductible (“ordinary and
5 necessary” under 26 U.S.C. § 162 (a)) is a binding admission for purposes of the employee’s
6 request for reimbursement under Labor Code § 2802 (a). The lack of any prior rulings or
7 decisions in Plaintiff’s favor on this issue is an argument in support of MSSB’s position that
8 the two standards are not equivalent.

9 MSSB will point out that it successfully defended the AFG program in multi-district
10 putative class action litigation, where a federal district court held under similar law that AFG
11 does not create a deduction from wages, and therefore dismissed deductions claims under the
12 laws of New York, New Jersey, and Connecticut. *See In re Morgan Stanley Smith Barney LLC*
13 *Wage & Hour Litig.*, 2013 WL 6255697 (D.N.J. Dec. 4, 2013), and *In re Morgan Stanley Smith*
14 *Barney LLC Wage & Hour Litig.*, 2014 WL 2101904 (D.N.J. May 20, 2014).

15 MSSB will also argue that AFG does not create a wage deduction because existing case
16 law permits it and FAs to prospectively agree on how the FAs’ incentive compensation rate
17 would be determined. *See Prachasaisoradej v. Ralphs Grocery Co., Inc.*, 42 Cal. 4th 217
18 (2009) (wage rights “derive exclusively from the [compensation] plan itself”); *Schachter v.*
19 *Citigroup*, 47 Cal. 4th 610, 621 (2009) (the employment agreement determines when incentive
20 compensation is earned); *Torres v. Wells Fargo*, 2016 WL 7373856, *4 (C.D. Cal. Oct. 12,
21 2016) (under agreement terms, “Plaintiffs could expect a commission that was subject to a final
22 calculation which included adjustments....[t]his final figure, and this figure only, once
23 calculated, was the amount offered or promised as compensation for labor performed by
24 eligible employees....”) (quoting *Ralphs*, 42 Cal. 4th at 229); *Koehl v. Verio, Inc.*, 142 Cal.
25 App. 4th 1313, 1329-37 (2006) (commissions become earned when conditions precedent have
26 been satisfied). Based on this, Morgan Stanley contends there is no unlawful deduction of any
27 “wages” under AFG because, at the time FAs select their AFG Adjustment, Morgan Stanley
28

1 had not offered or promised Plaintiffs incentive compensation at a particular rate or amount,
2 such that earned wages are not impacted.

3 Defendant also will argue that the expenses submitted to the AFG program were
4 optional and therefore not “reasonable and necessary.” Some courts have found that optional
5 business expenses are not reimbursable. For instance, in *Novak v. The Boeing Company*, 2011
6 WL 9160940 (C.D. Cal. Jul. 20, 2011), the employee sought reimbursement for expenses that
7 certainly were reasonable and job related – the cost of telephone and internet used to perform
8 his job duties from his home office. The court held, however, that the employer was not
9 required to reimburse because the entire “work at home” program was optional, and the
10 employee could instead have come into the office to perform his job duties to avoid expenses.
11 *See also, Aguilar v. Zep, Inc.*, 2014 WL 4245988 (N.D. Cal. Aug. 27, 2014) (partially granting
12 defendant’s motion for summary judgment on plaintiff’s Section 2802 claims finding that some
13 of the business expenses plaintiffs incurred were not required and thus optional).

14 In addition to the strength of Plaintiff’s case, there is also the question of class
15 certification. Some courts have denied certification of Section 2802 claims especially when it
16 has been found that the expenses were optional. *See, e.g., Buchanan v. HomeServices Lending,*
17 *LLC*, 2013 WL 1788579 (S.D. Cal. Apr. 25, 2013) (class certification denied for optional
18 marketing programs); *see also, Morgan v. Wet Seal*, 210 Cal.App.4th 1341, 1356-57 (2012)
19 (class certification denied on Section 2802 claim where individualized issue predominated on
20 whether employees reasonably believed they had to participate in programs to do their jobs);
21 *Drake v. Morgan Stanley & Co.*, 2010 WL 2175819, at *1, 7 (C.D. Cal. Apr. 30, 2010)
22 (denying class certification of claims concerning MSSB’s expense reimbursement practices,
23 including AFG, because “under California law, questions as to whether Defendants were
24 required to reimburse employees’ claimed business expenses involves an individualized factual
25 determination of whether each employee (1) incurred an expense (2) that was necessary (3) and
26 reasonable (4) as a direct consequence of the discharge of his or her duties.”). In *In re RBC*
27 *Dain Rauscher Overtime Litig.*, 703 F. Supp. 2d 910 (D. Minn. 2010), the court denied
28 certification of a similar claim under California law against another brokerage firm, holding

1 that “[t]o determine whether RBC violated § 2802 of the California Labor Code for failure to
2 reimburse employees for necessary expenses, the Court must examine each employee’s alleged
3 expenses and must determine whether they were ‘reasonable.’” *Id.* at 969.

4 Furthermore, certification at the trial court level is no guarantee of success. As set forth
5 in Plaintiff’s Motion for Preliminary Approval, Class Counsel’s personal experience in *Duran*
6 *v. US Bank*, 59 Cal.4th 1 (2014) perhaps best exemplifies the risk inherent in complex
7 litigation. In sum, after getting the case certified and prevailing at trial, the judgment was
8 reversed by the Court of Appeal, affirmed by the Supreme Court, and plaintiffs’ second effort
9 at certification in the Superior Court was denied (and affirmed by the Court of Appeal) after 17
10 years of hard-fought litigation. *Duran v. U.S. Bank Nat’l Assn.*, 19 Cal.App.5th 630 (2018).

11 Plaintiff also expects that MSSB would challenge manageability of the PAGA claims.
12 While Plaintiff believes the claims are manageable, MSSB contends they are unmanageable for
13 the same reasons it would assert regarding class certification. MSSB argues that manageability
14 poses an even greater challenge than class certification because, to recover penalties, a PAGA
15 plaintiff must prove each and every predicate Labor Code violation as to each aggrieved
16 employee for each pay period for which the plaintiff seeks penalties. *See Rope v. Auto-Chlor*
17 *Sys. of Wash., Inc.*, 220 Cal. App. 4th 635, 651 n.7 (2013) (“PAGA requires that the
18 representative plaintiff establish that the employer have committed the Labor Code violations
19 for which recovery is sought against the aggrieved employees.”); *Hibbs-Rines v. Seagate*
20 *Techs., LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009) (“Plaintiff will have to prove
21 Labor Code violations with respect to each and every individual on whose behalf plaintiff seeks
22 to recover civil penalties under PAGA.”). While Plaintiff disagrees with this position, MSSB’s
23 nevertheless presents a risk to Plaintiff’s case.

24 In addition to the risks outline above, there is also the fact that fully 600 FAs out of the
25 approximate 2,800 covered by this settlement have executed releases. Under the proposed
26 settlement, these 600 FAs will receive some compensation today for the amounts they have
27 diverted into AFG. Absent this settlement, they would receive nothing. By way of comparison,
28 in *Tsyn* there was no evidence that class members had executed any releases.

1 Moreover, fully 1,800 FAs have entered into arbitration agreements. For the reasons set
2 forth in the Motion for Preliminary Approval with respect to whether FAs would pursue their
3 individual claims in arbitration, that means that fully 65% of the potential class has no realistic
4 expectation of recovering anything for their legal claims. Again, in *Tsyn* there was no evidence
5 that the class members there had entered into individual arbitration agreements.

6 **3. The Skill Required and Quality of Work by Counsel**

7 This Court has noted that Class Counsel has significant experience litigating class
8 actions alleging wage and hour violations on behalf of employees in the financial services
9 industry and rejected Attempted Intervenor’s claims that Counsel are somehow “ineffectual.”
10 (Dkt. 76, p. 3.)

11 Effective management of this case required – and will continue to require – a high level
12 of skill and superior work-product. As evidenced by the declarations filed by Class Counsel, it
13 is respectfully submitted that Class Counsel has unique skills and qualifications in the area of
14 wage and hour class action litigation and Class Counsel have tried multiple wage and hour
15 class action cases which is extremely rare. (Decl. of Wynne, ¶¶ 4-5; Decl. of Clapp, ¶¶ 3-7;
16 Decl. of Compton, ¶¶ 2-7.) Indeed, the first line of the *Duran* opinion confirms this fact, “*We*
17 *encounter here an exceedingly rare beast: a wage and hour class action that proceeded*
18 *through trial to verdict.” Duran*, 59 Cal. 4th at 1. While *Duran* is unquestionably a significant
19 case in the areas of class certification, trial management, and wage and hour law, another
20 equally significant case, *Sav-On Drug Stores, Inc. v. Sup. Ct.*, 34 Cal. 4th 319 (2004), is also
21 another case prosecuted by Class Counsel herein further highlighting Class Counsel’s skill and
22 experience. (Decl. of Wynne, ¶ 6.)

23 Effective litigation of this case called for significant skill in the area of wage and hour
24 law. The Attempted Intervenor’s case was languishing before Harvey’s counsel filed their
25 action. As this Court recognized at the Motion to Intervene: “[B]ut you’ve had this case for
26 four and a half years. You didn’t settle it.” (Dkt. 58-1, Ex. 1, Rptr. Trans., p. 8:10-11.) The
27 Attempted Intervenor had one mediation in 2016 and did not do so again until Harvey’s
28 counsel insisted as a condition of settlement that Morgan Stanley exercise its best efforts to

1 reach a compromise with Chen’s counsel. The Attempted Intervenor’s never re-evaluated their
2 position and open a dialogue with Morgan Stanley for the benefit of the class. Instead, they
3 decided to expend significant time and energy pursuing tangential and dubious claims. This
4 approach contrasts sharply with the approach Harvey’s counsel took, which was to quickly
5 identify the disputed issues, obtain the necessary information to evaluate Morgan Stanley’s
6 exposure, and move promptly to reach a reasonable settlement. Nevertheless, this case did not
7 settle after one mediation. It took three sessions with two well-respected mediators. In fact, it
8 was only after Harvey got involved did Chen participate in another mediation and begin a
9 dialogue with Tripper Ortman after the hearing on intervention. While ultimately unsuccessful
10 in their attempts to reach a global resolution, the important take-away from this is that Harvey
11 positioned the case to keep Morgan Stanley engaged in settlement negotiations in order to
12 maximize the recovery for the class today. Based on Harvey’s counsel’s experience,
13 qualifications and skill, Harvey’s counsel is extremely confident that this settlement is the best
14 settlement class members could ever receive today.

15 **4. The Contingent Nature of the Fee**

16 Counsel took this case on a contingency fee basis. Courts have long recognized that the
17 public interest is served by rewarding attorneys who assume representation on a contingent
18 basis with an enhanced fee to compensate them for the risk that they might be paid nothing at
19 all for their work. *In Re Washington Public Power Supply System Sec. Litig.*, 19 F.3d 1291,
20 1299 (9th Cir. 1994).

21 The Plaintiff does not have the financial means to pay Counsel on an hourly basis to
22 prosecute this case. Thus, without the willingness of Counsel to take this case on a contingency
23 fee basis, this case would not have been prosecuted and the Class would not have received
24 anything.

25 This lawsuit has been pending for a year and one-half and will likely to take a number
26 of years to finally resolve after the Attempted Intervenor’s appeal(s). So far, Counsel’s offices
27 have put in over 970 hours on behalf of the class without any form of payment. Counsel
28 reasonably expect to invest at least another 300 hours before this matter is finally resolved and

1 Counsel will not be compensated during that time either. (Decl. of Wynne, ¶ 30.) Counsel have
2 had to forego other cases and financial opportunities in order to prosecute this case on behalf of
3 the Class Members and are likely to forego other opportunities in the future. (Decl. of Wynne,
4 ¶ 29.) Class Counsel's efforts to-date and in the future have been, and will be, without
5 compensation of any kind, and the fee has been wholly contingent upon the result achieved.
6 (Decl. of Wynne, ¶ 29.)

7 Class Counsel respectfully submit that given the risk of non-payment; the forfeiture of
8 other business opportunities; and the lack of compensation combined with the complexity of
9 this case, the requested fee in this case is fair and reasonable.

10 **5. Awards Made in Similar Cases**

11 Counsel submit that the request for attorney fees in the amount of 20% of the common
12 fund at this time is extremely reasonable as it is below the benchmark of 25% notwithstanding
13 the complexity, the excellent results obtained, the risks undertaken, and the skill of the
14 prosecution. The requested fee falls below the range acceptable attorney fees in the Ninth
15 Circuit for similar wage and hour class action. *Bautista v. Harvest Mgmt. Sub LLC*, No.
16 CV1210004-FMO-CWX, 2014 WL 12579822, at *13 (C.D. Cal. July 14, 2014) (approving
17 30% fee in pre-certification wage & hour class action settlement); *Ladore v. Ecolab, Inc.*, No.
18 CV 11-9386 FMO (JCX), 2013 WL 12246339, at *11 (C.D. Cal. Nov. 12, 2013) (approving
19 requested 28% fee in wage and hour class action); *Patel v. Trans Union, LLC*, No. 14-CV-
20 00522-LB, 2018 WL 1258194, at *7 (N.D. Cal. Mar. 11, 2018) (approving 33% fee); *Glass v.*
21 *UBS Fin. Serv., Inc.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 26, 2007) (finding settlement of a
22 wage and hour class actions up to 35% of the claimed damages to be reasonable in light of the
23 uncertainties involved in the litigation); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482,
24 491 (E.D. Cal. 2010) (noting that a 33% is within the typical range of acceptable attorney fees
25 in the 9th Circuit); *Linney v. Cellular Alaska P'ship*, 1997 WL 450064 at *6-7 (N.D. Cal.
26 1997) (approving a fee of 33% of fund); *In Re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375
27 (ND. Cal. 1989) (32.8% of fund).

1 **6. No Objection from the Class and Support from the Plaintiff**

2 Per the terms of the Settlement Agreement, Class Members and Aggrieved employees
3 were given notice of this settlement and informed that Counsel may seek a fee of up to 25% of
4 the gross settlement fund. As of this writing, there have been no objections from any Class
5 Member to the potentially requested fee of 25%. (Decl. of Wynne, ¶ 27.)

6 While Counsel expects an objection from the Attempted Intervenor, Counsel submits
7 that the lack of objection from anyone else further demonstrates the reasonableness and
8 fairness of Class Counsel's fee request especially in light of the fact that Counsel is seeking
9 less at this time than what was publicized in the notice. *See, In re Wells Fargo Loan Processor*
10 *Overtime Pay Litigation*, 2011 WL 3352460, at *10 (N.D. Cal., Aug. 2, 2011). In *Ching, supra*,
11 the court commented that "the lack of objection from the class after notice further demonstrates
12 the reasonableness and fairness of Class Counsel's fee request. *Id.* at *8. Finally, as evidenced
13 by his declaration, the Plaintiff strongly supports Class Counsel's Fee Request. (Decl. of
14 Harvey, ¶¶ 18-19.)

15 **C. Plaintiff's Request For Attorneys' Fees Is Reasonable By A Lodestar Cross-Check**

16 Plaintiff's fee request is also reasonable based on the lodestar analysis as a final "cross-
17 check on the percentage method." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
18 1291, 1296-98 (1994). Where the lodestar method is used as a cross-check, it can be performed
19 with a less exhaustive cataloguing and review of counsel's hours. *See In re Rite Aid Corp. Secs.*
20 *Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail
21 neither mathematical precision nor bean-counting."); *In re Immune Response Sec. Litig.*, 497
22 F.Supp.2d 1166 (S.D. Cal. 2007) ("Although counsel have not provided a detailed cataloging
23 of hours spent, the Court finds the information provided to be sufficient for purposes of
24 lodestar cross-check."). The lodestar method is calculated by multiplying "the number of hours
25 reasonably expended on the litigation ... by a reasonable hourly rate." *In re Bluetooth*, 654
26 F.3d 935, 941 (9th Cir. 2011).

1 **1. Class Counsel’s Hourly Rates Have Previously Been Approved**

2 In terms of the hourly rates requested, Counsel have been approved in both federal and
3 state courts for the hourly rates requested herein.

4 **a. Edward J. Wynne:** Edward J. Wynne is requesting an hourly rate of
5 \$820. In *McLeod v. Bank of America*, N.D. Cal. case number 16-cv-03294-EMC, on March 19,
6 2019, Judge Chen approved Counsel’s hourly rate of \$820 which was supported with an expert
7 declaration. (Dkt. 79, N.D. Cal. case 16-cv-03294-EMC.) In *Brinkel v. Westamerica Bank*,
8 Marin County Sup. Ct. Case number CIV 1303112, on March 22, 2019, Judge Chernus
9 likewise approved Counsel’s hourly rate of \$820. (Decl. of Wynne, ¶ 28.)

10 **b. James F. Clapp:** James F. Clapp is requesting an hourly rate of \$850.
11 Mr. Clapp has been approved at \$850 an hour in the following matters: *Tsyn v. Wells Fargo*
12 *Advisors*, Case. No. 14-cv-2552-LB, Judge Laurel Beeler; *Smiles v. Walgreens*, Case No. RG
13 17862495, Alameda, Judge Brad Seligman; *Enombang v. Target Corporation*, Case No.
14 RG17853948, Alameda, Judge Brad Seligman; *Garrett v. Bank of America*, Case No.
15 RG13699027, Alameda, Judge Winifred Smith; *Hall v. Rite Aid Corporation*, Case No. 37-
16 2009-00087938-CU-OE-CTL, San Diego, Judge Joan M. Lewis; and *Reed v. CVS*, Case No.
17 17855592, Alameda, Judge Winifred Smith. (Decl. of Clapp, ¶ 9.)

18 **c. Jeffrey K. Compton and David Markun:** Jeffrey K. Compton and
19 David S. Markun are requesting an hourly rate of \$750. They have been approved at \$750 an
20 hour each in *Tsyn v. Wells Fargo Advisors*, Case. No. 14-cv-2552-LB by Judge Laurel Beeler.

21 **2. Class Counsels’ Lodestar**

22 Class Counsel have worked on this case for a year and one-half. During this time,
23 Counsels’ offices have invested over 970 hours in prosecuting this case on behalf of the Class.
24 Class Counsels’ aggregate lodestar is \$743,207.50 as set forth in more detail below.

25 Class Counsel reasonably expects that all of their offices will need to incur an
26 additional 300 hours in order to carry out all the terms of the settlement. (Decl. of Wynne, ¶
27 30.) Class Counsels’ offices will be spending this time on such activities as: preparing the
28 motion for final approval including legal research; preparing for and attending the hearing on

1 final approval; responding to Attempted Intervenor's potential objection to the settlement;
 2 opposing Attempted Intervenor's appeal of the order denying intervention; opposing Attempted
 3 Intervenor's potential appeal of the order granting final approval and attorney fees; preparing
 4 for and arguing the appeal(s); conferring with the Settlement Administrator and reviewing its
 5 reports; communicating with the Plaintiff; communicating with Class Members prior to and
 6 after final approval on a variety of issues including, but not limited to, the status of the
 7 settlement, status of their claim, explaining the settlement, handling lost checks, and address
 8 updates; communicating with defense counsel; resolving disputes; and, generally carrying out
 9 the terms and conditions of the settlement and performing all other related and ancillary tasks
 10 that will be required to get this case through appeal and to final judgment. (Decl. of Wynne, ¶
 11 30.)

12 The time spent and the fees incurred so far were reasonable and necessary for the
 13 successful prosecution of this case. (Decl. of Wynne, ¶ 30.) Counsel's detailed time records
 14 were kept contemporaneously. (*Id.*) Due to the length of time this case has been pending and
 15 the amount and type of activities that were needed to be performed, not all time was captured in
 16 Counsel's time records. (*Id.*) Class Counsel estimates that up to 5% of his office's time was not
 17 recorded. (*Id.*) A summary of hours and lodestar is set forth below:

WYNNE LAW FIRM LODESTAR SUMMARY			
	Hourly Rate	Total Hours	Total Fees
Edward J. Wynne	\$820.00	377.7	\$309,714.00
George R. Nemiroff	\$525.00	29.7	\$15,592.50
Heidi Hall (Paralegal)	\$250.00	7.25	\$1,812.50
Lesley Amberger (Paralegal)	\$250.00	14.9	\$3,725.00
Janice Berry (Legal Asst.)	\$150.00	1.1	\$165.00
Total		430.65	\$331,009.00

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CLAPP & LAUNGER LLP LODESTAR SUMMARY			
	Hourly Rate	Total Hours	Total
James F. Clapp	\$875.00	191.7	\$167,737.50
Teri Zaayer (Paralegal)	\$250.00	19.1	\$4,775.00
TOTAL:		210.8	\$172,512.50

MARKUN ZUSMAN FRENIERE & COMPTON LLP LODESTAR SUMMARY			
	Hourly Rate	Total Hours	Total
Jeffrey Compton	\$750.00	155.2	\$116,400.00
David Markun	\$750.00	112.8	\$84,600.00
Daria Carlson	\$680.00	5.1	\$3,468.00
Kevin Eng	\$680.00	27.6	\$18,768.00
Nathan Smith	\$500.00	24.7	\$12,350.00
Betty Huynh	\$500.00	8.2	\$4,100.00
TOTAL:		333.6	\$239,686.00

Should the Court require review of Class Counsel’s detailed and contemporaneous billing records, Class Counsel will provide such records for the Court’s review *in camera*.

3. A Multiplier Is Appropriate

In common fund cases, courts frequently apply multipliers to the lodestar to reflect the risks involved, the complexity of the litigation, and other relevant factors. *See Vizcaino*, 290 F.3d at 1051 (courts “routinely enhance[] the lodestar to reflect the risk of non-payment in common fund cases”). Such an enhancement “mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Id.*

Here, Class Counsel bore a particularly high contingent risk. Based on this risk, as well as the other relevant factors, the resulting multiplier of 2.75 on the lodestar cross-check is well-below the range of multipliers that courts, including this Court, regularly approve as fair and

1 reasonable. In *Vizcaino*, the Ninth Circuit affirmed a lodestar multiplier of 3.65, after analyzing
 2 a table of the most commonly applied multipliers. *Vizcaino*, 290 F.3d at 1051. *Van Vranken v.*
 3 *Atlantic Richfield*, 901 F.Supp. 294, 298 (N.D. Cal 1995) (noting that “3-4 range [of] common”
 4 multipliers for sophisticated class actions); *see also*, *Wershba v. Apple Computer, Inc.*, 91
 5 Cal.App.4th 224, 255 (2001) (multipliers can range from 2 to 4 or even higher); *In re Ret.*
 6 *Cases*, 2003 WL 22506555, at *8 (Cal. Ct. App. Nov. 4, 2003) (affirming 4.0 multiplier in
 7 determining statutory fees); *Steiner v. American Broad. Co.*, 248 Fed.Appx. 780, 783 (9th Cir.
 8 2007) (affirming fee award where the lodestar multiplier was 3.65); *Patel v. Trans Union, LLC*,
 9 No. 14-CV-00522-LB, 2018 WL 1258194, at *7 (N.D. Cal. Mar. 11, 2018) (approving 2.09
 10 multiplier).

11 Here, the application of a multiplier of 2.75 is warranted given the significant results
 12 achieved for the Class and the substantial risks and complexity of the litigation. Thus, the
 13 lodestar cross-check demonstrates that the \$2,047,000 fee is fair and reasonable.

14 **III. CLASS COUNSEL’S COSTS SHOULD BE APPROVED**

15 Class Counsel request that the Court grant final approval to Class Counsel’s request for
 16 reimbursement of actual costs incurred in prosecuting this action. Class Counsels’ aggregate
 17 out-of-pocket expenses total \$24,506.37. Counsels’ costs are less than the cap of \$35,000 per
 18 the terms of the Settlement Agreement. Should Counsels’ costs increase before this case is
 19 finally resolved, Counsel reserve the right to seek reimbursement up to the cap amount. (Decl.
 20 of Wynne, ¶ 32.) A summary of costs by type is contained in Counsels’ declarations in support
 21 of this motion. (*Id.*) The requested costs were reasonably incurred and no Class Member has
 22 objected to the requested costs. (*Id.*)

23 **IV. CLASS REPRESENTATIVE ENHANCEMENT AWARD**

24 “Although [the Ninth Circuit] ha[s] approved incentive awards for class representatives
 25 in some cases, [it has instructed] district courts to scrutinize carefully the awards so that they
 26 do not undermine the adequacy of the class representatives.” *Radcliffe v. Experian Info.*
 27 *Solutions Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). Citing *Radcliffe*, the Court has identified
 28 three factors it weighs in considering class representative enhancement awards: (1) declarations

1 from the proposed class representative regarding the time, risk, and burden carried by him in
2 this action; (2) the distribution of payments and the range of award amounts to class members;
3 and (3) whether the incentive payment is conditional on approval to the settlement. (Dkt. 43.)

4 **A. Plaintiff's Contributions and Burden Undertaken**

5 As set forth in the declaration of plaintiff Brandon Harvey, Plaintiff made significant
6 contributions to the prosecution of this action, including, but not limited to, the following: (1)
7 being the plaintiff to initiate this action against MSSB; (2) prior to the initiation of litigation, I
8 researched my files, provided documents to my counsel, and reviewed the files with counsel;
9 (3) having in-person meetings and discussions via telephone and email with my counsel about
10 facts relevant to the case; (4) responding to written discovery demands; (5) appearing at and
11 participating in a mediation session and being available via telephone and email for the other
12 two mediation sessions; (6) talking to other FAs about the case and encouraging them to speak
13 with my counsel; and (7) staying in contact with counsel in order to get case updates and other
14 relevant information. (Harvey Decl., ¶ 8.) Plaintiff estimates that he expended at least 20 hours
15 in assisting counsel with prosecution of this action. (Harvey Decl., ¶ 9.)

16 Plaintiff has also undertaken significant burdens and given up substantive rights that
17 class members are not similarly asked to forego. For instance, Plaintiff is executing a general
18 release of claims and has agreed to forego future employment at MSSB. (Dkt., 48-3, p. 12;
19 Harvey Decl., ¶ 14.) These are significant rights and opportunities Plaintiff is foregoing for the
20 benefit of the class that absent class members are not similarly being asked to sacrifice.

21 Plaintiff has suffered reputational harm as a result of prosecuting this case on behalf of
22 the class. Plaintiff has been publically embarrassed and ridiculed by other Advisors in a public
23 setting and in front of other Advisors. (Harvey Decl., ¶ 11.) He has been contacted by MSSB
24 Advisors who expressed their dissatisfaction with the news of the lawsuit because they thought
25 it might adversely affect MSSB stock price. (Harvey Decl., ¶ 12.) He has lost an employment
26 opportunity to join a larger team at his current employer which he believes is for no other
27 reason than this lawsuit. (Harvey Decl., ¶ 13.)

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1 Furthermore, Plaintiff also faced significant exposure as the named plaintiff. Should
2 Plaintiff not have prevailed at trial, he may have been personally responsible for Defendant's
3 costs of suit which could have been significant. (Harvey Decl., ¶ 10.) Plaintiff shouldered this
4 risk for the benefit of the class. No absent class member assumed such responsibility and risk.

5 **B. Distribution of Payments and Range of Award Amounts to Class**

6 As set forth in the Motion for Preliminary Approval, on a simple head-count basis, the
7 average net recovery per class member is approximately \$3,595. (Dkt. 76, p. 5.) Viewed from
8 the perspective of a work month basis, the net recovery amounts to \$80.78 per work month or
9 over \$5,150 for a class member who was employed as an FA during the statutory coverage of
10 the action. (*Id.*) These are *minimum* amounts because the gross settlement fund will earn
11 interest at 5% per annum should the Attempted Intervenors appeal the final judgment.

12 Plaintiff is asking the Court to award \$10,000 as an enhancement award. Plaintiff's
13 request is less than two times greater than estimated maximum award of \$5,150 and is less than
14 one-tenth of one percent of the total settlement value (.0009%). This Court and other courts
15 have approved enhancements many multiples greater than what is being asked here. See, e.g.,
16 *Alvarez v. Farmers Ins. Exch.*, No. 3:14-CV-00574-WHO, 2017 WL 2214585, at *1 (N.D. Cal.
17 Jan. 18, 2017) (approving enhancement of \$10,000 to each named plaintiff representing 2.3
18 times maximum award and representing two-tenths of one percent of total settlement value
19 (.002%)); *Carter v. XPO Logistics, Inc.*, No. 16-CV-01231-WHO, 2019 WL 5295125, at *4
20 (N.D. Cal. Oct. 18, 2019) (approving enhancement of \$20,000 to each named plaintiff
21 representing 1.3 times average payout and representing one-tenth of one percent of total
22 settlement value (.001%)); *Bautista v. Harvest Mgmt. Sub LLC*, No. CV1210004-FMO-CWX,
23 2013 WL 12125768, at *15 (C.D. Cal. Oct. 16, 2013) (preliminarily approving award that was
24 37 to 94 times greater than average recovery); *Torres v. Pick-A-Part Auto Wrecking*, No. 116-
25 CV-01915 DAD (BAM), 2018 WL 306287, at *5 (E.D. Cal. Jan. 5, 2018) (approving
26 enhancement that is "16 times the maximum amount that a class member could expect to
27 receive in this litigation."); *Chambers v. Whirlpool Corp.*, 214 F.Supp.3d 877, 905 (C.D. Cal.
28 2016), *judgment entered*, No. SACV 111733 FMO (MLGx), 2016 WL 5921765 (C.D. Cal.

1 Oct. 11, 2016) (granting final approval and awarding enhancement approximately 20 to 13.33
2 times greater than average class member monetary recovery of \$200-\$300); *Wannemacher v.*
3 *Carrington Mortg. Servs., LLC*, No. SACV 122016 FMO (ANx), 2014 WL 12586117 (C.D.
4 Cal. Dec. 22, 2014) (granting final approval and awarding enhancement 7.7 times greater than
5 average class member recovery of \$259); *In re Toys R Us-Delaware, Inc.--Fair & Accurate*
6 *Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 472 (C.D. Cal. 2014) (final approval
7 granted and awarding enhancements 166 to 1,000 times greater than value of \$5, \$15, and \$30
8 vouchers); *Bautista v. Harvest Mgmt. Sub LLC*, No. CV 1210004 FMO (CWx), 2013 WL
9 12125768, at *15 (C.D. Cal. Oct. 16, 2013) (granting preliminary approval and preliminarily
10 finding requested award reasonable between estimated 9.2 and 18.5 times greater than recovery
11 of majority of class estimated to be between \$270 and \$539).

12 Also, as an absolute figure, the requested award is in line with awards in other cases
13 including those before this Court. *Wellens v. Sankyo*, No. C 13-00581 WHO (DMR), 2016 WL
14 8115715, at *3 (N.D. Cal. Feb. 11, 2016) (approving \$25,000 award); *Carter v. XPO Logistics,*
15 *Inc.*, No. 16-CV-01231-WHO, 2019 WL 5295125, at *4 (N.D. Cal. Oct. 18, 2019) (approving
16 enhancement of \$20,000); *Ladore v. Ecolab, Inc.*, No. CV 11-9386 FMO (JCX), 2013 WL
17 12246339, at *8 (C.D. Cal. Nov. 12, 2013) (approving awards of \$25,000 and \$15,000 in wage
18 and hour class action); *see also, Hughes v. Microsoft Corp.*, 2001 U.S. Dist. LEXIS 5976, at
19 *36-38 (W.D. Wash. 2001) (approving incentive awards of \$7,500, \$20,000, and \$40,000);
20 *Bogosian v. Gulf Oil Corp.*, 621 F.Supp. 27, 32 (E.D.Pa.1985) (stating “the propriety of
21 allowing modest compensation to class representatives seems obvious,” and awarding \$20,000
22 to two named class representatives); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)
23 (approving \$25,000 service award); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-
24 02509-LHK, 2015 WL 5158730, at *17-*18 (N.D. Cal. Sept. 2, 2015) (granting service awards
25 ranging from \$80,000-\$120,000 after previously being granted \$20,000 each in service awards
26 and noting awards are 14 to 21 greater than average class member recovery); *Fulford v.*
27 *Logitech, Inc.*, 2010 WL 807448, *3 n. 1 (N.D. Cal. 2010) (collecting cases awarding incentive
28 payments ranging from \$5,000 to \$40,000).

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C. The Award is not Conditioned on the Settlement

The incentive award is not conditioned on the Plaintiff’s support of the Settlement. (Decl. of Harvey, ¶15.) No provision of the Settlement Agreement gives the Plaintiff the ability to withdraw from the Settlement if the Court reduces or denies the award. See, *Bautista*, 2013 WL 12125768, at *16 (“the Settlement Agreement does not explicitly or implicitly condition the incentive awards on the class representatives' support for the settlement.”).

V. CONCLUSION

In light of the forgoing, Plaintiff respectfully request that the Court award the requested attorney fees in the amount of \$2,047,000 (20% of the total settlement) plus litigation expenses of \$24,506.37. Plaintiff also respectfully requests that the Court award an enhancement award of \$10,000.

Dated: November 14, 2019

WYNNE LAW FIRM

/s/ Edward J. Wynne
Edward J. Wynne
Class Counsel

Exhibit 5

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BRANDON HARVEY, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

MORGAN STANLEY SMITH BARNEY
LLC,

Defendant.

Case No. 3:18-cv-02835-WHO

**DECLARATION OF JAHAN C. SAGAFI
IN SUPPORT OF MOTION TO
INTERVENE AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS**

Judge: Hon. William H. Orrick
Date: February 5, 2020
Time: 2:00 p.m.
Room: Courtroom 2, 17th Floor

1 I, Jahan C. Sagafi, declare as follows:

2 1. I am a partner with Outten & Golden LLP (“O&G”), which, in addition to the
3 Law Office of Laura Sullivan and Haber Polk Kabat (collectively, “*Chen* counsel”), is one of the
4 firms serving as counsel for Tracy Chen and Matthew Lucadano (“the *Chen* Plaintiffs”) in *Chen*
5 *v. Morgan Stanley Smith Barney, LLC*, No. 30-2014-00724866-CU-OE-CXC (Orange Cty.
6 Super. Ct. filed May 27, 2014), and in this action. I make these statements based on personal
7 knowledge and would so testify if called as a witness at trial.

8 2. I am a member in good standing of the bars of the State of California and this
9 District.

10 3. I submit this declaration in support of the Motion to Intervene and Motion for
11 Award of Attorneys’ Fees, Costs, and Service Awards filed by the *Chen* Plaintiffs and *Chen*
12 counsel.

13 **O&G’s General Expertise**

14 4. O&G is an approximately 70 attorney firm with offices in San Francisco, New
15 York, Chicago, and Washington, D.C., representing plaintiffs in a wide variety of employment
16 matters, including individual and class action litigation involving wage and hour, discrimination,
17 and harassment claims, as well as contract and severance negotiations. O&G was named a
18 “Practice Group of the Year” in employment law by Law 360 in 2016, 2017 and 2018.

19 5. O&G has represented plaintiffs in hundreds of class and collective actions
20 asserting employment rights on behalf of workers in California and around the country. For
21 example, in a recent wage and hour settlement approval order, Judge Chhabria found that “Class
22 Counsel have capably and effectively represented the Settlement Class Members’ interests,” and
23 praised us for our “outstanding work on this case.” *Zamora v. Lyft, Inc.*, No. 16-cv-02558-VC,
24 2018 WL 4657308 (N.D. Cal. Sept. 26, 2018) (Chhabria, J.). O&G attorneys “have . . .
25 extensive experience and expertise in prosecuting wage-and-hour class actions and collective
26 actions.” *Galeener v. Source*, No. 13-cv-4960-VC, ECF No. 131 (N.D. Cal. Mar. 13, 2015)
27 (Chhabria, J.) (\$10 million settlement); *Lillehagen v. Alorica*, No. 13-cv-0092, ECF No. 262
28

1 (C.D. Cal. May 31, 2016) (finding that O&G has “extensive experience and expertise in
2 prosecuting wage-and-hour class actions and collective actions”); *Yuzary v. HSBC Bank USA,*
3 *N.A.*, No. 12-cv-3693, 2013 WL 1832181, at *4 (S.D.N.Y. Oct. 2, 2013) (appointing O&G as
4 class counsel, finding that O&G attorneys “have substantial experience prosecuting and settling
5 employment class actions, including wage and hour class actions[,] and are well-versed in wage
6 and hour and class action law”); *Johnson v. Brennan*, No. 10-cv-4712, 2011 WL 1872405, at *2
7 (S.D.N.Y. May 17, 2011) (same); *accord Ballinger v. Advance Magazine Publishers, Inc.*, No.
8 13-cv-4036, 2014 WL 7495092, at *7 (S.D.N.Y. Dec. 29, 2014) (appointing O&G as class
9 counsel, explaining that “[b]ased on the firm’s performance before me in this and other cases and
10 its work in the foregoing and other cases, I have no question that it will prosecute the interests of
11 the class vigorously”); *Perez v. Allstate Ins. Co.*, No. 11-cv-1812, 2014 WL 4635745, at *25
12 (E.D.N.Y. Sept. 16, 2014) (appointing O&G as class counsel and noting that “O & G has the
13 requisite experience in handling class actions . . . , are well versed in the applicable law, and
14 have the resources necessary to represent the NYLL Class fairly and adequately”); *Capsolas v.*
15 *Pasta Res., Inc.*, No. 10-cv-5595, 2012 WL 1656920, at *2 (S.D.N.Y. May 9, 2012) (O&G
16 attorneys “have years of experience prosecuting and settling wage and hour class actions, and are
17 well-versed in wage and hour law and in class action law”); *Alli v. Boston Mkt. Corp.*, No. 10-cv-
18 4, 2011 WL 6156938, at *2 (D. Conn. Dec. 9, 2011) (O&G counsel are “qualified and
19 experienced in the issues raised in” wage and hour overtime litigation); *McMahon v. Olivier*
20 *Cheng Catering & Events, LLC*, No. 08-cv-8713, 2010 WL 2399328 at *6 (S.D.N.Y. Mar. 3,
21 2010) (O&G “are experienced employment lawyers with good reputations among the
22 employment law bar . . . [and] have prosecuted and favorably settled many employment law
23 class actions, including wage and hour class actions”); *Damassia v. Duane Reade, Inc.*, 250
24 F.R.D. 152, 158 (S.D.N.Y. 2008) (O&G lawyers have “an established record of competent and
25 successful prosecution of large wage and hour class actions, and the attorneys working on the
26 case are likewise competent and experienced in the area”).

1 **My Background and Experience**

2 6. **Education.** I graduated *magna cum laude* from Harvard College in 1994, where I
3 concentrated in Social Studies. I graduated from Harvard Law School in 2001 and throughout
4 my practice have specialized in class actions, with a focus on employment class actions.

5 7. **Clerkship.** For the first year after I graduated from law school, I clerked for the
6 Honorable William W Schwarzer, Senior Judge of the United States District Court for the
7 Northern District of California.

8 8. **Lieff Cabraser.** Immediately thereafter, in 2002, I joined Lieff, Cabraser,
9 Heimann & Bernstein, LLP, where I became a partner in January 2008. My practice consisted
10 primarily of representing class members in employment class actions (including wage and hour,
11 employment discrimination, and other employment-related disputes), as well as significant work
12 representing plaintiffs in consumer class actions and appeals of consumer and product liability
13 cases in the Ninth Circuit and other appellate courts.

14 9. **Outten & Golden.** In fall 2013, I left Lieff Cabraser to help open O&G's San
15 Francisco office. Here, my practice has consisted almost exclusively of representing workers in
16 employment class actions (including wage and hour, employment discrimination, and other
17 employment-related disputes).

18 10. **Current employment cases.** Currently, I represent plaintiffs asserting
19 employment claims in representative actions in this District, other federal districts, and
20 California state court.

21 a. Ongoing wage and hour class actions in this District. Currently, I
22 represent plaintiffs and proposed class members asserting wage and hour claims in several class
23 and collective action cases, including in this District: *Whitworth v. SolarCity Corp.*, No. 16-cv-
24 1540-JSC (N.D. Cal.) (off-the-clock and meal break claims on behalf of installers); *Harriman v.*
25 *DoorDash, Inc.*, No., 19-cv-06411-LB (N.D. Cal.) (independent contractor misclassification
26 claims by delivery person).

1 b. Ongoing discrimination class actions in this District. Currently, I
2 represent plaintiffs and proposed class members asserting employment discrimination claims in
3 several class and collective action cases in this District, including: *del Toro Lopez v. Uber*
4 *Technologies, Inc.*, No. 17-cv-06255-YGR (N.D. Cal.) (nationwide gender and race
5 discrimination class action on behalf of software engineers); *Rabin v. PricewaterhouseCoopers*
6 *LLP*, No. 16-cv-2276-JST (N.D. Cal.) (nationwide age discrimination class action on behalf of
7 applicants for introductory accountant positions).

8 c. Ongoing employment class actions in other districts. I also represent
9 plaintiffs and proposed class members asserting employment claims in several federal class and
10 collective action cases in other Districts, including: *Strauch v. Computer Sciences Corp.*, No. 14
11 Civ. 956 (D. Conn.) (unanimous jury verdict for plaintiffs on classwide basis, with willfulness
12 finding, in December 2017) (technical support worker exemption misclassification claims);
13 *Delnoce v. GlobalTranz Enterprises*, No. 17 Civ. 01278-MHB (D. Ariz.) (misclassification
14 claims on behalf of sales representatives and freight brokers). *Strauch* is one of a handful of
15 employment class actions that have been successfully tried to verdict.

16 d. Ongoing employment class actions in California state courts. I also
17 represent plaintiffs asserting employment-related claims in class actions in California state court:
18 *Borrego v. Raley's Family of Fine Stores*, 34-2015-00177687 (Sacramento Cty. Super. Ct.)
19 (pregnancy discrimination); *Chen v. Morgan Stanley Smith Barney LLC*, 30-2014-00724866-
20 CU-OE-CJC (Orange Cty. Super. Ct.) (PAGA claims on behalf of Financial Advisors regarding
21 reimbursement of business expenses); *Lee v. The Hertz Corp.*, No. CGC-15-547520 (San
22 Francisco Cty. Super. Ct.) (Fair Credit Reporting Act claims based on employment application
23 process); *Beilke v. Uber Technologies, Inc.*, No. CGC-17-560916 (San Francisco Cty. Super. Ct.)
24 (claims by drivers for miscalculation of fees contractually owed).

25 11. **Past employment cases.** During my career, I have represented plaintiff classes
26 and collectives in many employment class actions.

1 a. Past wage and hour class actions in this District. In the past, I have
2 successfully represented plaintiff classes in other wage and hour class and/or collective actions in
3 this District, including: *Godhigh v Savers*, No. 16-cv-2874-WHO (N.D. Cal.) (\$750,000
4 settlement for overtime misclassification claims of retail store assistant managers in 2018); *Wolf*
5 *v. Permanente Medical Group, Inc.*, No. 17-cv-05345-VC (N.D. Cal.) (\$2,950,000 settlement for
6 off-the-clock claims of telephone service representatives in 2018); *Zamora v. Lyft, Inc.*, No. 16-
7 cv-02558-VC (N.D. Cal.) (\$1,950,000 settlement for claims of drivers asserting that Lyft used
8 deceptive language in explaining how Prime Time Premiums would be paid to drivers; Lyft
9 eliminated the challenged language during the litigation); *Walton v. AT&T Servs., Inc.*, No. 15-
10 cv-03653-VC (N.D. Cal.) (\$2,750,000 settlement for overtime misclassification claims of
11 deliverers and designers of corporate trainings in 2018); *Armstrong v. Concentrix Corp.*, No. 16-
12 cv-05363-WHO (N.D. Cal.) (\$320,000 settlement for off-the-clock claims of at-home customer
13 service representatives in 2018); *Brown v. Permanente Medical Group, Inc.*, No. 16-cv-05272-
14 VC (N.D. Cal.) (\$6,255,000 settlement for off-the-clock claims of advice nurses in 2017); *Zajonc*
15 *v. Morgan Stanley & Co. LLC*, No. 14 Civ. 5563 (N.D. Cal.) (\$5,995,000 settlement as part of
16 multi-case settlement) (Final Analyst trainee off-the-clock wage and hour claims); *Zaborowski v.*
17 *MHN Gov't Servs.*, No. 12 Civ. 5102 (N.D. Cal.) (FLSA conditional collective action
18 certification granted; arbitration motion defeated and affirmed on appeal, 601 F. App'x 461 (9th
19 Cir. 2014); settled on nationwide class basis for over \$12.7 million) (military base counselor
20 independent contractor misclassification claims); *Buccellato v. AT&T, Inc.*, No. 10 Civ. 463
21 LHK (N.D. Cal.) (\$12.5 million settlement of overtime misclassification claims for technical
22 support workers in 2011); *Lewis v. Wells Fargo & Co.*, No. 08 Civ. 2670 CW (N.D. Cal.) (\$6.72
23 million settlement for overtime misclassification claims for technical support workers in 2011);
24 *Higazi v. Cadence Design Systems, Inc.*, No. 07 Civ. 2813 JW (N.D. Cal.) (\$7.7 million
25 settlement overtime misclassification claims for technical support workers in 2008); *Adams v.*
26 *Inter-Con Security Services, Inc.*, No. 06 Civ. 5428 MHP (N.D. Cal.) (\$4 million settlement of
27 wage and hour off-the-clock work class and collective action on behalf of security officers in
28

1 2008); *Rosenburg v. Int'l Bus. Machines Corp.*, No. 06 Civ. 430 SBA (N.D. Cal.) (\$65 million
2 settlement in 2007 for overtime misclassification claims for technical support workers); *Gerlach*
3 *v. Wells Fargo & Co.*, No. 05 Civ. 585 CW (N.D. Cal.) (\$12.8 million settlement in 2007 for
4 overtime misclassification claims for business systems consultants).

5 b. Past discrimination class actions in this District. In the past, I have
6 represented plaintiff classes in employment discrimination class actions, including: *Wynne v.*
7 *McCormick & Schmick's Seafood Restaurants, Inc.*, No. 06 Civ. 3153 CW (N.D. Cal.)
8 (\$2.1 million settlement of race discrimination class action in 2008); *Gonzalez v. Abercrombie &*
9 *Fitch Stores, Inc.*, Case No. 03 Civ. 2817 SI (N.D. Cal.) (\$50 million settlement of race and
10 gender discrimination class action in 2005).

11 c. Past wage and hour cases outside this District. I have also successfully
12 represented plaintiff classes in other wage and hour class and/or collective actions in other
13 federal and state courts, including: *Bush v. GlobalTranz Enterprises, Inc.*, No. 15-cv-0536-DJH
14 (D. Ariz.) (\$640,000 settlement for inside salespeople's misclassification claims); *Lillehagen v.*
15 *Alorica, Inc.*, No. 13 Civ. 92 (C.D. Cal.) (nationwide class action settlement) (call center worker
16 off-the-clock claims); *Sherrill v. Premera Blue Cross*, No. 10 Civ. 590 (W.D. Wash.) (\$1.45
17 million settlement in 2011 for 133 class members in overtime misclassification case); *Danieli v.*
18 *Int'l Bus. Machines Corp.*, No. 08 Civ. 3688 (S.D.N.Y.) (\$7.5 million settlement of overtime
19 misclassification claims in 2010); *In re Farmers Ins. Group Claims Reps. Overtime Litigation*,
20 MDL Docket No. 1439 (D. Or.) (\$8 million settlement of overtime misclassification class and
21 collective action on behalf of insurance claims adjusters in 2010); *Giannetto v. CSC Corp.*, No.
22 03 Civ. 8201 (C.D. Cal.) (\$24.0 million settlement in 2005 for overtime misclassification
23 claims); *Barnett v. Wal-Mart*, No. 01-2-24553-8 (King Cty. Sup. Ct.) (\$35 million settlement of
24 wage and hour off-the-clock class action in 2009).

25 12. **Appellate work.** In addition, I have represented plaintiffs in various appeals.

26 a. Representation of plaintiffs. I have represented plaintiffs at oral argument
27 in *Marsh v. J. Alexander's LLC*, No. 15-15791 (9th Cir. en banc 2018) (validity of DOL's 20%

1 rule from Field Operations Handbook, interpreting 29 C.F.R. § 531.56e (dual jobs regulation));
 2 *Guess?, Inc. v. Russell*, No. 15-56870 (9th Cir. 2017) (delegation of class arbitrability to the
 3 arbitrator); *Zaborowski v. MHN Government Services, Inc.*, No. 13-15671 (9th Cir. 2014)
 4 (unconscionability analysis of arbitration clause); *Taragan v. Nissan North America, Inc.*, No.
 5 11-15664 (9th Cir. 2012) (consumer deception regarding defective automobile design);
 6 *Degelmann v. Advanced Medical Optics Inc.*, No. 10-15222 (9th Cir. 2011-12) (medical device
 7 preemption); *Integon Corp. v. Gordon*, No. 1D05-3187 (Fla. 1st DCA 2007) (class certification
 8 of consumer claims asserting insurance pricing deception).

9 b. Amicus briefing. I have also volunteered to write amicus briefs in the
 10 Ninth Circuit and other appellate courts, including:

- 11 • *HomeAway.com v. City of Santa Monica*, No. 18-55367 (9th Cir. 2018) (limitations
- 12 • *New Prime, Inc. v. Oliveira*, No. 17-340 (U.S. S. Ct. 2018) (limitations on
- 13 • *Mohamed v. Uber Technologies, Inc.*, No. 15-16178, 15-16181, 15-16250 (9th Cir.
- 14 • *Meyer v. Kalanick*, No. 16-2750 (2d Cir. 2016) (internet contract formation)
- 15 • *Williams v. Superior Court*, No. S227228 (Cal. S. Ct. 2015) (plaintiffs' right to
- 16 • *Braun v. Wal-Mart Stores, Inc.*, No. 32 EAP 2012 (Pa. S. Ct. 2013) (plaintiffs' class
- 17 • *Mazza v. American Honda Motor Co.*, No. 09-55376 (9th Cir. 2012) (consumer class
- 18 • *Duran v. U.S. Bank National Ass'n.*, No. S200923 (Cal. S. Ct. 2012) (use of
- 19 • *DeLodder v. Aerotek, Inc.*, No. 10-56755 (9th Cir. 2011) (Rule 23 class certification
- 20 • *Russell v. Wells Fargo & Co.*, No. 07-cv-03993 (N.D. Cal. 2009) (limitations on
- 21 • *Gutierrez v. Johnson & Johnson*, No. 07-8025 (3rd Cir. 2007) (employment
- 22 • *Ledbetter v. The Goodyear Tire & Rubber Co.*, No. 05-1074 (U.S. S. Ct. 2006)
- 23 • *Dukes v. Wal-Mart Stores, Inc.*, Nos. 04-16688 & 04-16720 (9th Cir. 2005)
- 24 • *Dukes v. Wal-Mart Stores, Inc.*, Nos. 04-16688 & 04-16720 (9th Cir. 2005)
- 25 • *Dukes v. Wal-Mart Stores, Inc.*, Nos. 04-16688 & 04-16720 (9th Cir. 2005)
- 26 • *Dukes v. Wal-Mart Stores, Inc.*, Nos. 04-16688 & 04-16720 (9th Cir. 2005)

26 13. **Community involvement.** In addition to being an active litigator, I have been
 27 involved in many educational and legal groups.

a. Those include the following **bar organizations and committees**:

- Attorney Representative for the Northern District of California to the Ninth Circuit Judicial Conference (selected by the judges of the District) (2020-22)
- The Civil Local Rules Attorney Advisory Committee for the Northern District of California (appointed by the Chief Judge of the District) (2020-22)
- The American Bar Association (“ABA”): Labor & Employment Law (“LEL”) Section
- The State Bar of California: Litigation Section Executive Committee (2006-07), CACI Civil Jury Instructions committee (2004-07), and Administrative of Justice Committee (2004-07)
- The Bar Association of San Francisco (“BASF”) Judicial Evaluations Committee member (2013-15) and volunteer attorney fee dispute arbitrator (2009-15)
- The National Employment Lawyers Association (“NELA”): frequent speaker
- The American Association for Justice (“AAJ”): Co-Chair of the Wage and Hour Litigation Group (2016-present) and frequent speaker
- California Employment Lawyers Association (“CELA”): Member of two task forces on preserving access to justice
- The Consumer Attorneys of California (“CAOC”)

b. Those include the following **nonprofits and advocacy groups**:

- Legal Aid at Work: Board of Directors (2019-present)
- People’s Parity Project: Board of Advisors (2019-present)
- American Constitution Society (“ACS”) Bay Area Lawyer Chapter: Chair of the Executive Board (2009-11) and member of the Advisory Board (2014-present)
- The Berkeley Center on Comparative Equality and Anti-Discrimination Law (2019-present)
- Alliance for Justice (“AFJ”): Board of Directors (2014-19)
- Public Advocates, Inc. (Board of Governors, 2012-15)
- The American Civil Liberties Union (“ACLU”) of Northern California: Board of Directors (2006-11), Chair of the Legal Committee (2010-11), Vice Chair of the Board (2010-11), and member of the Board’s Executive Committee (2009-11)

14. **Articles, speeches, and presentations.** I regularly write articles and give speeches and presentations at conferences, primarily on employment law and representative action issues.

15. **Awards.** I have also received various awards, including the following:

- Top 100 lawyers in all fields in Northern California (*Super Lawyers*) (2015-19)
- Top 75 Labor & Employment Lawyers in California (*The Daily Journal*) (2015-19)
- 500 Leading Plaintiff Employment Lawyers in the United States (*Lawdragon*) (2018-19)
- California “Super Lawyer” (*Super Lawyers*) (2014-19)
- Northern California “Rising Star” (*Super Lawyers*) (2009-11)
- “Top 20 California Lawyers Under 40” (*The Daily Journal*) (2011)
- Community Justice Award (Centro Legal de la Raza) (2008) (for my work on behalf

1 of the class in the *Gonzalez v. Abercrombie & Fitch Stores, Inc.* race and gender
discrimination class action, described above)

2 **The Outten & Golden Team’s Background and Experience**

3 16. **Michael J. Scimone** is Counsel at O&G. He represents employees in class and
4 collective actions, focusing primarily on wage and hour litigation. Mr. Scimone received his
5 B.A. from Vassar College in 2001 and received his J.D. from the City University of New York
6 School of Law in 2009. In addition to this case, Mr. Scimone has worked with me on *Strauch v.*
7 *Computer Sciences Corp.*, No. 14 Civ. 00956 (D. Conn.), where a jury found the defendant liable
8 for overtime exemption misclassification of over 1,000 current and former system
9 administrators.

10 17. **Daniel S. Stromberg** is E-Discovery Counsel at O&G. Prior to joining O&G in
11 July 2015, he received his B.A. from the University of Rochester in 2004 and his J.D. from The
12 George Washington University Law School in 2007.

13 18. **Relic Sun** is an associate at Outten & Golden LLP in San Francisco, where she
14 represents employees and individuals in class actions asserting race, gender, and alienage-based
15 discrimination, wage and hour, and other claims. Prior to joining the firm in 2015, she clerked
16 for the Honorable Lisa Margaret Smith, United States Magistrate Judge of the Southern District
17 of New York. Ms. Sun received her B.A., summa cum laude, from the University of California at
18 Los Angeles (UCLA), and her J.D., cum laude, from the New York University School of Law,
19 where she was a Root-Tilden-Kern Public Interest Scholar.

20 19. **Christopher M. McNerney** is an associate at O&G. He represents employees in
21 class and collective actions, focusing primarily on wage and hour litigation and discrimination
22 class actions. Before joining O&G in 2013, he clerked with the Honorable Sarah Netburn of the
23 Southern District of New York. Mr. McNerney received his B.A., *cum laude*, from Macalester
24 College in 2005, and his J.D., cum laude, from New York University School of Law in 2012.
25 Mr. McNerney was named one of the 2017 Trial Lawyers of the Year by Public Justice. In
26 addition to this case, Mr. McNerney has also worked with me on cases including *Galeener v.*

1 *Source Refrigeration & HVAC, Inc.*, No. 13-cv-4960-VC (N.D. Cal. Oct. 24, 2013) and
2 *Zaborowski v. MHN Gov't Servs.*, No. 12-cv-5109-SI (N.D. Cal.).

3 20. **Pooja Shethji** is an associate at O&G. She represents employees in class and
4 collective action wage and hour and discrimination cases. Before joining the firm in 2018, Ms.
5 Shethji clerked for the Honorable Theodore D. Chuang on the U.S. District Court for the District
6 of Maryland and the Honorable Joseph A. Greenaway, Jr., on the U.S. Court of Appeals for the
7 Third Circuit. She received her B.A. from Yale College in 2012 and her J.D., cum laude, from
8 New York University School of Law, where she was a Root-Tilden-Kern Public Interest Scholar,
9 in 2016.

10 21. **Molly J. Frandsen** is an associate at O&G, and a member of the firm's Class
11 Action Practice Group. Prior to joining the firm in 2018, Ms. Frandsen clerked for the
12 Honorable Chief Justice Mark Recktenwald of the Hawaii State Supreme Court. Ms. Frandsen
13 received her B.A. from the University of California, Santa Barbara in 2011, and her J.D. from the
14 University of California, Berkeley School of Law in 2017, where she served as Co-Editor in
15 Chief of the Berkeley Journal of Employment and Labor Law.

16 22. **Katrina L. Eiland** was an associate at O&G from May 2014 to February 2017.
17 Prior to joining O&G, she completed a clerkship with the Honorable Keith P. Ellison of the
18 United States District Court for the Southern District of Texas and served as a Civil Rights
19 Fellow and associate at Goldstein, Borgen, Dardarian & Ho. She received her undergraduate
20 degree from the University of California, Los Angeles in 2003 and her J.D. from Stanford Law
21 School in 2010.

22 23. **Julia Rabinovich** was an associate at O&G from October 2014 to January 2017.
23 Prior to joining O&G in October 2014, Ms. Rabinovich clerked for the Honorable Richard A.
24 Paez of the Ninth Circuit Court of Appeals and the Honorable Keith P. Ellison of the United
25 States District Court for the Southern District of Texas. Ms. Rabinovich received her J.D. from
26 Stanford Law School and her B.A., magna cum laude, from Columbia University. Ms.

1 Rabinovich is a member of the California State Bar and is admitted to practice in the United
2 States District Court for the Northern District of California.

3 24. **Rebecca Sobie** is a staff attorney at O&G, and has been practicing law since
4 1995. Prior to joining O&G in September 2014, Ms. Sobie was Of Counsel to the Genie
5 Harrison Law Firm in Los Angeles, California, and an Associate and Of Counsel with Smith &
6 Associates in Austin, Texas. Ms. Sobie previously worked as an Associate Attorney and Of
7 Counsel for other law firms in California, and also served as a Research Attorney for the
8 Superior Court of California, County of Los Angeles. Ms. Sobie was admitted to the bar of the
9 State of California in 1995, the bar of the State of New York in 2014, and the bar of the State of
10 Texas in 2008 (currently on inactive status with good standing in Texas). She is also admitted to
11 the bars of the United States District Courts for the Central, Eastern, Northern and Southern
12 Districts of California, the Eastern District of Texas, and the Southern District of New York.
13 Ms. Sobie is a member in good standing of each of these bars. Ms. Sobie earned her B.A. from
14 the University of Southern California in 1992, and her J.D. from Pace University School of Law
15 in 1995. She also attended the University of San Diego School of Law as a Visiting Student from
16 1994 to 1995.

17 25. **Christopher McCall** was a staff attorney with O&G from March 2016 to
18 February 2017. Prior to joining O&G, Mr. McCall worked as a litigation associate at Friedman
19 Kaplan Seller & Adelman LLP. He received his B.A. from the University of Wisconsin in 2002
20 and his J.D., summa cum laude, from Fordham University School of Law in 2007.

21 26. **Danica Li** was a staff attorney at O&G until February 2019. Prior to joining
22 O&G in March 2016, Ms. Li worked for several law firms and nonprofit organizations in the Bay
23 area where she represented employees in litigating wage and hour and discrimination class and
24 individual actions. Danica received her B.A. from the University of California, Berkeley and her
25 J.D. from the University of California, Berkeley School of Law.

26 27. **Morgan Marshall-Clark** was a staff attorney at O&G until December 2018.
27 Prior to joining O&G in 2014, she was COO and General Counsel for an equestrian startup,
28

1 World Equestrian Directory. She also consulted for a legal startup, Alt Legal (formally
2 Plainlegal), was the Business Manager for DK-USA Sporthorse, LLC, and a Research
3 Associate/Consultant for Indepth Research Corp. Ms. Marshall-Clark received her B.A. from the
4 University of North Carolina at Chapel Hill in 2005, and her J.D. from New York Law School in
5 2012.

6 28. **Jennifer Smith** was as a staff attorney at O&G from October 2016 to June 2017.
7 Prior to joining O&G, Ms. Smith worked as a litigation associate at Beranbaum Menken LLP.
8 She received her B.A. from McGill University and her J.D. from New York University School of
9 Law.

10 **The Chen Litigation and the Contributions of the Chen Plaintiffs**

11 29. On May 27, 2014, Tracy Chen filed *Chen v. Morgan Stanley Smith Barney, LLC*,
12 No. 30-2014-00724866-CU-OE-CXC (Cal. Super. Ct. filed May 27, 2014), in her capacity as an
13 aggrieved employee under the Private Attorneys General Act (“PAGA”), California Labor Code
14 §§ 2698-2699.5, on behalf of all aggrieved Morgan Stanley employees, including financial
15 advisors. Chen amended her complaint on November 17, 2017 to add Matthew Lucadano as an
16 additional representative plaintiff.

17 30. *Chen* alleges under PAGA that Morgan Stanley unlawfully: (1) shifts costs to
18 employees in violation of multiple sections of the California Labor Code; (2) fails to timely pay
19 all wages owed to its employees; and (3) provides inaccurate wage statements. Intervenors’
20 claims on behalf of Aggrieved Employees span from April 23, 2013, through the present, and
21 Intervenors seek to recover penalties for that entire time period.

22 31. *Chen* has been intensively litigated. To date, the *Chen* Plaintiffs and Morgan
23 Stanley have litigated motions including Morgan Stanley’s unsuccessful effort to remove the
24 case to federal court, motions for a stay, motions to strike/for judgment on the pleadings, motions
25 to compel, and cross-motions for summary adjudication.

26 32. Extensive discovery has taken place in *Chen*, as further detailed in the Declaration
27 of Laura Sullivan.

1 33. Ms. Chen and Mr. Lucadano have both been integral to the litigation.

2 34. Ms. Chen has (a) participated in countless discussions with her counsel in person,
3 by phone, and electronically to help them understand Morgan Stanley’s policies and practices,
4 identify documents and information to seek in discovery, and determine legal strategy; (b)
5 pursued her rights in a FINRA arbitration in May 2014 through September 2015; (c) participated
6 in discovery, including responding to document requests, responding to interrogatories; (d) sat
7 for two days of depositions, and (e) participated in the May 2016 mediation and settlement
8 strategy discussions throughout the litigation.

9 35. Mr. Lucadano joined the case as an additional plaintiff in 2017, also participated
10 actively in helping craft litigation and settlement strategy, was active in affirmative discovery
11 and responding to Morgan Stanley’s discovery requests, and sat for a deposition.

12 36. Both Ms. Chen and Mr. Lucadano faced potential retaliation and other negative
13 consequences based on being publicly associated with the case. A Google search for “Matthew
14 Lucadano” yields the litigation in multiple search results, and a Google search for “Tracy Chen
15 Morgan Stanley” does as well.

16 37. Throughout the litigation, though, the *Chen* Plaintiffs have been open to a
17 reasonable settlement. In May 2016, the *Chen* parties mediated unsuccessfully with Mark Rudy.
18 Although the mediation did not result in settlement, the *Chen* Plaintiffs continued to explore
19 settlement through Mr. Rudy, checking in regularly to express interest in continuing settlement
20 talks.

21 38. During 2018, Morgan Stanley never informed *Chen* counsel of its interest in
22 settlement talks, let alone a possible settlement with Harvey, even though Morgan Stanley and
23 *Chen* counsel plaintiffs were often in daily contact in their discovery and trial preparation.

24 39. As late as Friday, January 18, 2019, the *Chen* Plaintiffs and Morgan Stanley were
25 making final preparations for the first phase of a 10-day bench trial, focusing on the two named
26 plaintiffs, which was scheduled to begin on January 22, 2019 (with the second phase of trial,
27 focusing on all Aggrieved Employees, to follow shortly thereafter). The *Chen* Plaintiffs and
28

1 Morgan Stanley exchanged witness and exhibit lists, and there are currently approximately 1,047
2 exhibits and 35 witnesses on those lists. Trial briefs and motions *in limine* were filed in advance
3 of a Trial Readiness Conference that took place on January 4, 2019.

4 40. The *Chen* Plaintiffs additionally made logistical preparations for trial by renting
5 and assembling an on-site office in Orange County, flying in out-of-town members of the legal
6 team, finalizing trial exhibits, preparing witnesses, confirming witness availability, drafting
7 direct- and cross-examination outlines, doing test-runs of courtroom technology, finalizing
8 stipulations with Morgan Stanley, and otherwise putting the final touches on trial logistics,
9 tactics, and strategy.

10 41. On January 18, 2019, Morgan Stanley electronically submitted correspondence
11 informing the *Chen* court of a final settlement in *Harvey*. The *Chen* court held a telephonic
12 status conference to determine how to proceed, at the conclusion of which Judge Claster vacated
13 the trial date and continued trial indefinitely.

14 **The Harvey Settlement**

15 42. In the midst of preparing for the *Chen* trial, on December 13, 2018, *Chen* counsel
16 learned that Harvey had reached a settlement with Morgan Stanley in a mediation with Francis J.
17 “Tripper” Ortman III regarding the core AFG claims being tried this month. This was the first
18 any of us had heard of any plans Harvey or Morgan Stanley had to engage in settlement talks,
19 and the first any of us had heard of any desire Morgan Stanley might have to switch mediators
20 from our existing mediator, Mark Rudy, to someone else.

21 43. Based on communications with Harvey’s counsel, *Chen* counsel understand that
22 the initial, signed memorandum of understanding provided for a settlement that would release all
23 PAGA and non-PAGA claims from May 2014 onward for \$8,000,000 plus a fund of
24 approximately \$1,700,000 from which financial advisors could seek reimbursement for certain
25 costs going forward.

26 44. During my December 13, 2018 phone call with Mr. Wynne, he also explained to
27 me that he understood that Morgan Stanley was willing to pay approximately \$500,000 to Ms.
28

1 Chen to settle the year of liability covered by *Chen* but not by *Harvey*, plus attorneys' fees in the
2 seven figures (i.e., between \$1,000,000 and \$9,999,999).

3 45. At Morgan Stanley's suggestion, the *Chen* Plaintiffs agreed to postpone the trial
4 commencement from January 14 to January 22, to allow for mediation between all the parties
5 under the supervision of highly experienced mediator Mark Rudy on January 17, 2019. Both Mr.
6 Rudy (who had overseen *Chen* settlement talks for the past two and a half years) and Mr. Ortman
7 (who had overseen the December 2018 *Harvey* settlement talks) attended. The mediation did not
8 resolve the *Chen* litigation.

9 46. On January 18, 2019, less than one business day before the start of trial, Morgan
10 Stanley electronically submitted correspondence notifying the *Chen* court that the *Harvey* parties
11 "have now reached an agreement which covers *all claims in [Chen]*." Sagafi Decl. in Support of
12 Plaintiff-Intervenors' Motion to Intervene ¶ 33, ECF No. 29. During the January 18, 2019
13 telephonic status conference with the *Chen* court, Morgan Stanley informed *Chen* counsel and
14 the court that the parties signed a new Memorandum of Understanding that provides for a total
15 settlement amount of approximately \$10,235,000 to cover all claims at issue in *Chen* as well as
16 *Harvey*.

17 **Chen Counsel's Lodestar and Costs**

18 47. O&G has invested substantial time and maintained significant expenses to
19 prosecute this case.

20 48. Through January 18, 2019, O&G has devoted over 5,525.88 hours to the
21 prosecution of this action, with a lodestar value of approximately \$2,397,510 (excluding work
22 performed by individuals who worked fewer than 10 hours on the matter).

23 49. All O&G attorneys and staff kept contemporaneous records of their time in this
24 matter. O&G made every effort to have work performed by the attorney or paralegal with the
25 lowest hourly rate that was able to perform the work effectively.

26 50. O&G ordinarily and regularly bills clients on an hourly fee basis, based upon each
27 attorney's standard hourly rate. Currently, O&G's rates range from \$500 to \$1,250 per partner's
28

hour, \$550 to \$900 per counsel's hours, \$315 to \$575 per associate's hour, \$265 to \$600 per staff or contract attorney's hour, \$250 per law clerk's hour, and \$250 to \$290 per paralegal's hour. The firm's clients regularly accept and pay O&G's hourly rates.

51. The rates are commensurate with those prevailing in the applicable market for attorneys with comparable skill and experience litigating complex wage and hour class and collective actions.

52. *Chen* counsel took this matter on a pure contingency basis. Prosecution of this litigation precluded *Chen* counsel from accepting other fee-generating matters, with this litigation consuming significant percentages of Class Counsel's attorney and staff time.

53. Attached as **Exhibit 1** are summaries of the time spent by each attorney, paralegal, and support staff member through January 18, 2019. These summaries exclude work performed by individuals who worked 10 hours or fewer on the matter.

54. Through January 18, 2019, O&G has paid approximately \$173,445.20 in out-of-pocket costs and will incur additional costs through the conclusion of this matter. These costs include discovery costs, filing fees, payment to the mediator, photocopying, telephone conference calls, mailing expenses, travel, and other reasonable litigation-related costs. All of these costs were necessary in connection with the prosecution of the litigation and were incurred for the benefit of the Aggrieved Employees.

55. Attached as **Exhibit 2** is a true and correct summary of the costs incurred by our firm in this matter. My firm has not received any reimbursement for any of the monies expended to cover costs incurred.

56. The table below summarizes the hours, lodestar, and costs of each firm.

Lodestar and Costs of All Firms Through January 18, 2019

Firm	Hours	Lodestar	Costs
Outten & Golden	5,525.88	\$2,397,510	\$173,445.20
Law Office of Laura Sullivan	2,603.4	\$1,822,380	\$4,498.93
Haber Polk Kabat	812	\$609,000	\$8,659.12
Total	8,941.28	\$4,828,890	\$186,603.25

