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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

KIMBERLY BANKS and CAROL CANTWELL, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

R.C. BIGELOW, INC., a corporation; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 2:20-cv-06208-DDP (RAOx)

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

Date: July 28, 2025
Time: 10:00 a.m.
Place: Courtroom 9C
350 W 1st Street
Los Angeles, CA 90012

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I. INTRODUCTION

Two weeks ago, the jury returned a verdict finding that Defendant R.C. Bigelow, Inc. ("Bigelow") violated the California Consumers Legal Remedies Act ("CLRA"), breached an express warranty, and committed fraud, and awarded $2,360,744 in compensatory damages to the Class. In other words, Kimberly Banks and Carol Cantwell ("Plaintiffs") prevailed on their central claims. Now, after five years of hard-fought litigation, Plaintiffs respectfully seek reasonable compensation for the work they performed and the results they achieved on behalf of the Class. Specifically, Plaintiffs request attorneys' fees in the amount of $4,662,724.80, which represents a modest 1.2 multiplier on Class Counsel's lodestar, and which is justified under California and Ninth Circuit law based on the present facts and circumstances. Plaintiffs request reimbursement of out-of-pocket litigation costs in the amount of $1,088,761.27 ($551,605.90 shall be paid to the administrator for class notice and administration costs), and which were and are reasonable and necessary to the successful litigation of this case. Lastly, Plaintiffs request service awards of $30,000 each for the integral role they played—most notably testifying at trial—in obtaining a successful jury verdict on the Class's behalf. For these reasons, explained in greater detail below, the Court should grant this Motion.

II. PLAINTIFFS WILL SUPPLEMENT THIS MOTION AND NOTICE WILL BE PROVIDED TO THE CLASS

Plaintiffs intend to move for entry of judgment that includes prejudgment interest and provides for the entry of post-judgment interest. Plaintiffs also intend to move for approval of a plan for distribution of the judgment to the Class. The precise timeframe for approval and completion of this distribution process is uncertain, and therefore, Plaintiffs have noticed this Motion for July 28, 2025, although the hearing date can be continued or advanced depending on the timing of the completion of the distribution plan. A copy of this Motion will be posted on the

case website and discussed in supplemental notice. Thus, even though the attorneys' fees, costs, and service awards will be borne by Bigelow, Class members will still be informed of the relief requested in this Motion, along with their ability to claim their portion of the Judgment. The Class's response will be provided to the Court before it rules on this Motion. In addition, only a "fair estimate of the amount of fees sought" is required at the time an initial fee motion is filed under Fed. R. Civ. P. 54. *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 676–77 (9th Cir. 2017). Class Counsel intends to supplement their declarations after a further review of their lodestar and costs and will do so well before Bigelow's opposition brief is due and supplemental notice to the Class is provided. Although no judgment has been entered, Plaintiffs are filing this Motion now in an abundance of caution.

III. PLAINTIFFS ARE ENTITLED TO ATTORNEYS' FEES

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.[1] Fed. R. Civ. P. 23(h). Plaintiffs move for attorneys' fees pursuant to the CLRA and Cal. Civ. Code § 1021.5.

A. Plaintiffs Are the Prevailing Party and They Achieved Their Litigation Goals on the Class's Behalf

"[I]n deciding prevailing party status under [the CLRA], the court should adopt a pragmatic approach, determining prevailing party status based on which party succeeded on a practical level." *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 150 (2006). Here, the jury found that Bigelow violated the CLRA, and it awarded $2,360,744 in compensatory damages, so there is no doubt that Plaintiffs are the prevailing party. Thus, Plaintiffs are entitled to an award of

[1] Because class action trials are so rare, throughout this brief Plaintiffs cite cases in the class action settlement context. If anything, fees, costs, and service awards should be increased after a jury verdict, as opposed to negotiated settlement terms, because of the additional risk and time incurred.

reasonable attorneys' fees pursuant to the CLRA. Cal. Civ. Code § 1780(e) ("The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section.").

Plaintiffs are also entitled to attorneys' fees under Cal. Civ. Code § 1021.5, as they achieved a "substantial benefit" to a large class of persons. "It is well settled that attorney fees under section 1021.5 may be awarded for consumer class action suits benefiting a large number of people." *Graham v. DaimlerChrysler Corp*., 34 Cal.4th 553, 578 (2004), as modified (Jan. 12, 2005). This is so even "[w]hen California plaintiffs prevail in federal court on California claims…" *Klein v. City of Laguna Beach*, 810 F.3d 693, 701 (9th Cir. 2016); *Mendoza v. Hyundai Motor Co., Ltd*, No. 15-CV-01685-BLF, 2017 WL 342059, at *14 (N.D. Cal. Jan. 23, 2017) (holding that "Class Counsel is entitled to an award of attorneys' fees" under the CLRA and Cal. Civ. Code § 1021.5).

Relatedly, and although unnecessary to support the fee award sought here, Plaintiffs could also recover fees under a catalyst theory. Plaintiffs are a "successful party" in this context because "the lawsuit was a catalyst," it achieved its catalytic effect by "threat of victory, not by dint of nuisance and threat of expense," and Plaintiffs "reasonably attempted to settle the litigation prior to filing the lawsuit" or "a prelitigation demand would have been futile." *Henderson v. J.M. Smucker Co.*, No. 10-cv-4524-GHK (VBKx), 2013 WL 3146774, at *4, 10 (C.D. Cal. June 19, 2013). Indeed, Bigelow stopped using the challenged claim as a direct result of this lawsuit. Bigelow Resp. to Pl. Stat. of Gen. Disp. of Mat. Fact No. 79 (ECF No. 124-2 at p. 66) (Undisputed: "Bigelow removed the *Manufactured in USA bug* in direct response to this action."). "If plaintiff's lawsuit induced defendant's response or was a material factor or contributed in a significant way to the result achieved then the plaintiff has shown the necessary causal connection." *Californians for Responsible Toxics Mgmt. v. Kizer*, 211 Cal. App. 3d 961, 967 (1989) (citations omitted). Moreover, this case achieved its catalytic effect by threat of victory, as demonstrated

by Plaintiffs' success on the merits of their claims. *Henderson*, 2013 WL 3146774, at *9 (concluding the case was not frivolous based on draft motion for summary judgment).

Lastly, Plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit, as in their initial complaint, they only sought injunctive relief under the CLRA. ECF No. 1 ¶ 77 ("Under Cal. Civ. Code § 1780(a), Plaintiffs and Class members seek injunctive relief only for Bigelow's violations of the CLRA. On July 13, 2020, Plaintiffs sent a notice letter by certified mail to Bigelow of their intent to pursue claims under the CLRA, and an opportunity to cure, consistent with Cal. Civ. Code § 1782."). Plaintiffs filed an amended complaint for damages, 38 days later, after Bigelow provided no response during the statutory allotted period. ECF No. 11 ¶ 78 ("Because Bigelow has failed to fully rectify or remedy the damages caused after waiting more than the statutorily required 30 days after Bigelow received the foregoing notice and demand letter, Plaintiffs are timely filing this First Amended Complaint for damages as permitted under Cal. Civ. Code § 1782(d)."). The CLRA expressly contemplates and permits this procedure. *Morgan v. AT&T Wireless Servs.*, 177 Cal. App. 4th 1235, 1260 (2009) (the purpose of notice under Cal. Civ. Code § 1782(d) is to "allow a defendant to avoid liability for damages if the defendant corrects the alleged wrongs within 30 days after notice, or indicates within that 30-day period that it will correct those wrongs within a reasonable time."). In any event, Bigelow's recalcitrance in resolving this case is evidence that a prelitigation demand would have been futile. Declaration of Aubry Wand ("Wand Decl.") ¶¶ 5-6, Ex. A.

B. Fees Should be Awarded Under the Lodestar Method

"Under a fee-shifting statute, the court 'must calculate awards for attorneys' fees using the lodestar method.'" *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003) (quotation omitted); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("The 'lodestar method' is appropriate in class actions

brought under fee-shifting statutes....”). “So strong is the Court’s devotion to the lodestar method that it has held that the lodestar calculation ‘yields a fee that is presumptively sufficient to achieve [fee-shifting’s] objective.’ What that means is that a court’s failure to utilize the lodestar method in a fee-shifting case may constitute reversible error.” 5 Newberg and Rubenstein on Class Actions § 15:38 (6th ed. 2022) ((footnote omitted)). “Fees awarded pursuant to [Cal. Civ. Code] § 1021.5 are determined under the lodestar method.” *Seebrook v. The Children’s Place Retail Stores, Inc*., No. 11-837-CW, 2013 WL 6326487, at *2 (N.D. Cal. Dec. 4, 2013).

There is no reason to cross-check the lodestar figure against a percentage of the common fund where, as here, fees are paid separate from and in addition to the Class’s recovery. *Glasser v. Volkswagen Of Am., Inc*., 645 F.3d 1084, 1088 (9th Cir. 2011) (“[T]here is no common-fund settlement in this case... [because defendant] is liable for [p]laintiff’s attorneys’ fees pursuant to a fee order that is independent of the settlement agreement and the class recovery.”). Put differently, the implicit purpose of a cross-check is not served because there is no risk “that either party has reduced the settlement award to the class in anticipation of sizable attorneys’ fees.” *Pike v. Cnty. Of San Bernardino*, 2020 WL 1049912, at *4 (C.D. Cal. Jan. 27, 2020). In any event, a percentage of the fund crosscheck is never required. *In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 571 (9th Cir. 2019) (“[W]e do not require courts employing the lodestar method to perform a ‘crosscheck’ using the percentage method. This would make ‘little logical sense’ because ‘the lodestar method yields a fee that is presumptively reasonable.’”) (cleaned up) (citation omitted).

Even if the Court were inclined to compare the attorneys’ fees sought here to the Class’s recovery, California courts have long acknowledged that it does not matter if fees exceed the amount of the recovery in a CLRA action. In *Graciano*, the California Court of Appeal held:

> The legislative policy to allow prevailing plaintiffs reasonable attorney's fees [in actions under the CLRA] is clear. Section 1780 provides remedies for consumers who have been victims of unfair or deceptive business practices. [Citations.] The provision for recovery of attorney's fees allows consumers to pursue remedies in cases as here, where the compensatory damages are relatively modest. To limit the fee award to an amount less than that reasonably incurred in prosecuting such a case, would impede the legislative purpose underlying section 1780.

144 Cal. App. 4th at 150. In other words, "because this matter involves an individual plaintiff suing under consumer protection statutes involving mandatory fee-shifting provisions, the legislative policies are in favor of [plaintiff's] recovery of all attorney fees reasonably expended, without limiting the fees to a proportion of her actual recovery." *Id.* at 164 (citing *Riverside v. Rivera*, 477 U.S. 561, 578 (1986)); *see also Sobel v. Hertz Corp.*, 53 F. Supp. 3d 1319, 1330 (D. Nev. 2014) (recognizing that a fee-shifting statute "governs what the non-prevailing party must, by law, pay the prevailing party in attorney's fees…").

C. Class Counsel's Lodestar is Reasonable

The lodestar method yields a presumptively reasonable fee. Under this approach, the Court multiplies the number of hours reasonably expended by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). Class Counsel has devoted approximately 4,265.80 hours to this litigation and has a total lodestar to date of $3,885,604.00, based on their customary hourly rates, as detailed in Class Counsel's declarations, and as summarized in the following chart:

Attorney/Paralegal	Hourly Rate	Hours	Lodestar
Todd M. Schneider	$1,350.00	102.20	$137,970.00
Peter B. Schneider	$1,350.00	164.70	$222,345.00
Jason H. Kim	$1,295.00	571.70	$740,351.50
Raymond Levine	$775.00	206.70	$160,192.50
Kelle Winter (par.)	$450.00	206.70	$93,015.00

Aubry Wand	$850.00	2,813.80	$2,391,730.00
Future Work	$700.00	200.00	$140,000.00
Total		4,265.80	$3,885,604.00

1. The Work Performed by Class Counsel is Reasonable

Class Counsel has devoted thousands of hours of their time to this litigation over the course of five years. Detailed time records are unnecessary because "trial courts need not, indeed should not, become green-eyeshade accountants" in reviewing fee requests. *Fox v. Vice*, 563 U.S. 826, 838 (2011). *See also Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1169 (2010) ("in California an attorney need not submit contemporaneous time records in order to recover attorney fees."). This is especially true given the Court's familiarity with the work Class Counsel devoted to this case. *Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC), 2012 WL 5392159, at *7, *21 (S.D. Cal. Nov. 5, 2012) ("Although counsel has not provided the Court with detailed time sheets, such detailed time sheets are not necessary given the Court's intimate familiarity with this case and the sheer amount of work and effort it took for the case to proceed to this point."). Regardless, Class Counsel submits (or will submit) detailed timesheets documenting their work. Wand Decl. ¶ 24, Ex. B; Declaration of Jason H. Kim ("Kim Decl.") ¶¶ 10-11. *See also Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (holding "[a]n attorney's sworn testimony that, in fact, it took the time claimed '. . . is evidence of considerable weight on the issue of the time required…'") (citation omitted).

The reasonableness of Class Counsel's work is also evidenced by their success at every major point in the litigation—first at the pleadings stage, next at the class certification stage, then obtaining partial summary judgment, and finally winning a jury verdict finding that Bigelow violated the CLRA, breached an express warranty, and committed fraud. These results did not come easily. Bigelow litigated

this matter aggressively, requiring Plaintiffs to brief numerous motions, including *inter alia*, a largely unsuccessful motion to dismiss, a motion to decertify the class, largely unsuccessful *Daubert* motions, and an unsuccessful motion for summary judgment. On this record, it is appropriate for the Court to "defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

Moreover, Class Counsel balanced vigorous litigation of this case with the benefits of minimizing unnecessary work, with the goal of achieving the best possible result for the Class. For example, despite encountering discovery disputes, Class Counsel deftly avoided unnecessary motions practice. Wand Decl. ¶ 25. This efficiency is reflected in the docket, where only essential filings were made. Class Counsel also worked cooperatively to divide tasks based on skillset, ensure efficient case management, and avoid duplicative work. By way of example, lead trial counsel Todd and Peter Schneider performed minimal work on this case until trial was imminent (such pre-trial time has not been charged). *Id.* ¶ 26; Kim Decl. ¶ 12.

In short, Class Counsel did not undertake extraneous work nor was there an incentive to do so. *Moreno*, 534 F.3d at 1112 ("It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). On the contrary, Class Counsel litigated this case in the face of considerable risk that a class might not be certified or that they could lose at summary judgment or at trial. They had no incentive to devote unnecessary time to this matter. Wand Decl. ¶¶ 28-30; Kim Decl. ¶ 12.

Class Counsel's lodestar includes an estimate of additional time that will be spent on, *inter alia*, filing forthcoming motions for entry of judgment and pre- and post-judgment interest and approval of a distribution plan to the Class, and working with the administrator to distribute funds to the Class. If there are appeals, the scope

of post-judgment work could be far more extensive. Therefore, at an hourly rate of $700, and based on at least 200 hours of additional work, Class Counsel conservatively estimates a future lodestar of $140,000.[2] Wand Decl. ¶ 31; *see also Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV 13-02529-MMM-VBKx, 2015 WL12732462, at *50 (C.D. Cal. May 29, 2015) (supplementing lodestar with "one hundred hours of junior attorney time" based on future work class counsel would need to spend through the settlement process).

2. Class Counsel's Hourly Rates are Reasonable

In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895, n.11 (1984). The relevant community is the community in which the court sits. *Schwarz v. Sec. of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). "The lodestar should be computed …using an hourly rate that reflects the prevailing rate as of the date of the fee request, to compensate class counsel for delays in payment inherent in contingency-fee cases …." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). As explained below, Class Counsel's hourly rates are reasonable and appropriate.

Class Counsel are experienced and qualified class action practitioners who are deserving of their requested hourly rates. Wand Decl. ¶¶ 7-21, 32-39; Kim Decl. ¶¶ 4-8, 13-14. *See also United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) ("Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determination in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate.").

[2] Class Counsel may provide updated lodestar information as appropriate. If a judgment is entered before then, and to the extent necessary, the judgment can be amended.

The Court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson*, 796 F. Supp. 2d at 1172. Class Counsel's rates are within the ranges charged by attorneys in the Los Angeles area with comparable background and experience in complex civil litigation. Last year, this Court recognized that hourly rates of partners ranging from $848 to $1,364.70 in an analogous Lanham Act case were reasonable. *N.T.A.A. v. Nordstrom, Inc.*, No. 2:21-cv-00398 DDP-AGRx, 2024 WL 1723524, at *4 (C.D. Cal. Apr. 19, 2024) (Pregerson, J.). Other courts in this District are in accord. *See, e.g.*, *Alghanim v. Alghanim*, No. CV 23-10196-MWF (JDEx), 2024 WL 3055692, at *2 (C.D. Cal. May 8, 2024) (approving hourly rates between $1,110-$1,270 for partners); *Yuga Labs, Inc. v. Ripps*, No. CV 22-04355-JFW (JEMx), 2024 WL 489248, at *2–4 (C.D. Cal. Jan. 11, 2024) (approving hourly rates between $1,240 to $1,410 for partners and $640 to $1,185 for associates); *AECOM Energy & Constr., Inc. v. Topolewski*, No. CV17-5398-RSWL (AGRx), 2022 WL 1469501, at *4 (C.D. Cal. May 9, 2022) (approving hourly rates of $1,116 for partner and between $550 to $876 for associates).

3. A Modest 1.2 Multiplier is Appropriate

Although the lodestar figure is "presumptively reasonable," the "district court may then adjust the resulting [lodestar] figure upward or downward to account for various factors, including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Hyundai*, 926 F.3d at 570-71 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F. 2d 67, 70 (9th Cir. 1975)) (cleaned up).[3] A modest 1.2 multiplier on Class Counsel's lodestar is appropriate for the following reasons.

[3] Additional *Kerr* factors that overlap with the lodestar analysis need not be subsumed within the multiplier framework. *Kelly*, 822 F.3d at 1099.

The "benefit obtained for the class" is the "[f]oremost" factor when considering the propriety of a multiplier. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942. Here, Plaintiffs achieved nearly all the relief they sought in this action. The jury found Bigelow liable for fraud, and it awarded 72% of the maximum recoverable compensatory damages—an excellent reconvey that supports a multiplier by any measure. As discussed above, the Court should also credit Plaintiffs and Class Counsel with the label changes that Bigelow made in response to this case, which was the other central goal of this litigation. Courts routinely include the value of injunctive relief in valuing the overall recovery in the settlement context. *See, e.g.*, *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013 WL 3790896, at *1 (N.D. Cal. July 18, 2013) ("The court may properly consider the value of injunctive relief obtained as a result of settlement in determining the appropriate fee."). Here, the value of the label change is roughly equal to the jury verdict, as the change prevented collection of an unjustified price premium from approximately 2022 through the present.[4]

The complexity of the issues involved, and the skill necessary to adequately manage these issues, also support the requested multiplier. *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (the "prosecution and management of a complex national class action requires unique legal skills and abilities" that are to be considered when evaluating fees) (internal quotation marks omitted). This case required a high degree of skill and experience that featured an array of complex motions practice and evidentiary issues. *Norris v. Mazzola*, No. 15-CV-04962-JSC, 2017 WL 6493091, at *13 (N.D. Cal. Dec. 19, 2017) (noting

[4] That the label change does not lend itself easily to a precise monetary figure is another reason to analyze the fee request under lodestar method with an appropriate upward adjustment. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (affirming choice of lodestar method where calculation of value of common fund was uncertain).

that the skill required in extensive motion practice and discovery as well as the quality of work performed by highly experienced counsel supported the fee award).

This case also involved a trial, which is rare in any context, and especially so in the consumer class action context. Class Counsel's dedication to litigating this case to and through trial stands out from other class action litigation. *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 998-99 (N.D. Cal. 2017) (finding that because case went to trial, the complexity of the action weighed in favor of a greater fee award, and awarding $12,983,324.25, or a 2.0 multiplier on counsel's lodestar).

Moreover, Class Counsel achieved this result in the face of Bigelow's aggressive litigation strategy funded by a sophisticated defendant, which is a testament to Class Counsel's skill. *See, e.g., Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (C.D. Cal. 2013) ("The quality of opposing counsel is important in evaluating the quality of Class Counsel's work."); *Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (the "risks of class litigation against an able defendant well able to defend itself vigorously" support an upward adjustment in the award of fees).

It is also an "established practice in the private legal market of rewarding attorneys for the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002). Here, Class Counsel shouldered considerable risk in the form of substantial outlays of time and advanced costs without the guarantee of any recovery. This risk supports a multiplier. *White v. City of Richmond*, 559 F. Supp. 127, 133 (N.D. Cal. 1982) ("When [such an] action is successful, therefore, the attorneys must be rewarded, not only for the hours reasonably expended in prosecuting the action, but also for the risk that no fee would ever be forthcoming."); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015) ("When counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment…justifies a significant fee award.").

Lastly, for wholly contingent consumer class actions like this one, the Ninth Circuit has recognized that multipliers "ranging from one to four are frequently awarded when the lodestar method is applied." *See, e.g.*, *Vizcaino*, 290 F. 3d at 1051 n.6 (cleaned up); *In re Hyundai*, 926 F.3d at 572 (holding that a 1.5521 multiplier was "modest or in-line with others we have affirmed."). Thus, courts routinely approve larger multipliers in similar consumer class action cases. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig*., No. 2672 CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) ("'Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.'") (quotation omitted); *Gergetz v. Telenav, Inc.*, No. 16-CV-04261-BLF, 2018 WL 4691169, at *7 (N.D. Cal. Sept. 27, 2018) (approving 2.625 multiplier in consumer class action settlement). In sum, the requested modest multiplier is in line with California and Ninth Circuit law and should be awarded.

IV. CLASS COUNSEL ARE ENTITLED TO RECOVER COSTS

Class Counsel are entitled to reimbursement of their out-of-pocket expenses. Fed. R. Civ. P. 23(h); *Mendoza*, 2017 WL 342059, at *14 (holding that costs are compensable under the CLRA and Cal. Civ. Code § 1021.5). This includes standard out-of-pocket expenses that an attorney would ordinarily bill a fee-paying client. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *In re Omnivision Tech., Inc*., 559 F. Supp. 2d at 1048 (approving reimbursement of costs for photocopying, printing, postage and messenger services, court costs, legal research, experts and consultants, and the costs of travel as "[a]ttorneys routinely bill clients for all of these expenses,…").

Plaintiffs are requesting reimbursement of $537,155.37 in costs. These costs were incurred for, *inter alia*, mediation fees, filing and service fees, expert witness fees, document storage fees, deposition and other transcript fees, trial related expenses (such as the services of a trial technician, copying costs for exhibits, and hotel expenses for Plaintiffs, witnesses, and counsel), and travel and miscellaneous

expenses, all of which were reasonable and necessary to litigate this complex class action through trial. Wand Decl. ¶¶ 40-41; Kim Decl. ¶¶ 15-16.[5] *See also In re Yahoo! Inc. Customer Data Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *42 (N.D. Cal. Jul. 22, 2020) (approving reimbursement of expenses related to expert witness fees, case-related travel, transcript fees, document management, copying, mailing, and serving documents, operation of a call center to respond to Settlement Class Member inquiries, electronic research, and filing and court fees).

Costs of providing notice and administering payments to the Class must also be paid by Bigelow, as the general requirement that a plaintiff pays for class notice does not apply after a defendant has been found liable, as is the case here. *Hunt v. Imperial Merch. Servs., Inc*., 560 F.3d 1137, 1143-44 (9th Cir. 2009) (describing how district courts generally shift costs after liability has been determined). JND's costs for the original class notice are $101,605.90. Declaration of Heather Follensbee ¶ 5. JND estimates actual costs of $342,350, and submits a capped quote of $450,000, for providing supplemental notice and administering the claims process (i.e., distributing the judgment to Class members). *Id.* ¶¶ 6-7. Thus, Plaintiffs seek a total of $551,605.90 to be paid to JND, and any costs that are not incurred by JND for the anticipated claims notice administration will be returned to Bigelow.

V. PLAINTIFFS ARE ENTITLED TO SERVICE AWARDS

The Court should issue a class representative service award of $30,000 to each of the two Plaintiffs. Class representative service awards "are fairly typical in class action cases," *Rodriguez v. West Publ'n Corp*., 563 F.3d 948, 958 (9th Cir. 2009), and such awards are "intended to compensate class representatives for work done on behalf of the class [and] make up for financial or reputational risk

[5] As noted in the Kim Declaration, expenses relating to the trial are still being gathered and reviewed, and Class Counsel intends to submit a supplemental declaration with additional and/or modified expenses.

undertaken in bringing the action and…to recognize their willingness to act as a private attorney general." The Court can consider the following criteria: "1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (1995). These factors support the requested service awards.

First, Plaintiffs lent their name to this matter for the Class's benefit, despite the potential unwanted notoriety it would entail. Declaration of Kimberly Banks ("Banks Decl.") ¶ 8; Declaration of Carol Cantwell ("Cantwell Decl.") ¶ 7. *See also Guippone v. BH S & B Holdings LLC*, No. 09 Civ. 1029 (CM), 2011 WL 5148650, *7 (S.D.N.Y. Oct. 28, 2011) ("Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members" and recognizing "the fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person."). Second, Plaintiffs were actively engaged in this action over the course of five years.[6] Third, among other things, Plaintiffs provided invaluable information to Class Counsel, reviewed pleadings and other documents, searched for and produced documents, sat for deposition, and attended trial. Plaintiffs devoted over 100 hours of time to these activities. Banks Decl. ¶¶ 4-7; Cantwell Decl. ¶¶ 4-6.

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[6] The length of this case also militates in favor of the service award. *See, e.g., Jacob v. Pride Transp., Inc.*, No. 16-cv-06781-BLF, 2018 WL 1411136, at *6-7 (N.D. Cal. Mar. 21, 2018) ("[T]he Court concludes that the requested $10,000 service awards are appropriate" in a class action when the representatives "worked on the case for more than a year, provid[ed] valuable documents and information to Class Counsel" and their efforts aided Class Counsel in providing "significant benefit to the class in the form of cash payments to class members[.]").

Finally, while a case that settles quickly generally merits a service award of approximately $5,000, extraordinary efforts and results justify a significant upward departure from the Ninth Circuit's benchmark. *See, e.g., del Toro Lopez v. Uber Techs., Inc.*, No. 17-cv-6255, 2018 WL 5982506, at *3 (N.D. Cal. Nov. 14, 2018) (awarding $50,000 and $30,000 to class representatives on a $10 million recovery in settlement context). Most significantly, Plaintiffs testified at trial. This involved extensive trial preparation and then attending the trial over the course of six days. Plaintiffs' extraordinary efforts should be recognized. For example, in *Perez v. Rash Curtis & Associates*, the court approved a $25,000 service award for a representative who did not even attend the entire trial: "Perez left during the first break on the second day of trial and never returned." No. 4:16-cv-03396-YGR, 2020 WL 1904533, at *23 (N.D. Cal. Apr. 17, 2020). Here, Plaintiffs not only attended the trial, but they also put in weeks of preparation. Given Plaintiffs' more extensive participation in this case, a service award of $30,000 each is justified.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court award Class Counsel $4,662,724.80 in attorneys' fees and $1,088,761.27 in costs (of which $551,605.90 shall be paid to JND for class notice and administration costs) and a $30,000 service award to Plaintiff Banks and to Plaintiff Cantwell.

DATED: April 22, 2025

Respectfully submitted,

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The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 5,282 words, which complies with the word limit of L.R. 11-6.1.

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