

BURSOR & FISHER, P.A.
L. Timothy Fisher (State Bar No. 191626)
1990 North California Blvd., 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ltfisher@bursor.com

GUCOVSKI ROZENSHTEYN, PLLC
Adrian Gucovski
140 Broadway, Fl. 46
New York, NY 10005
Telephone: (212) 884-4230
Facsimile: (212) 884-4230
E-Mail: adrian@gr-firm.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANNE MOULTON, individually and on behalf
of all other persons similarly situated,

Plaintiff,

v.

UNITED DOMINION REALTY, L.P., UDR,
INC., AND DOES 1-100, inclusive,

Defendants.

Case No. CIVSB 2123480

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES, COSTS, AND
EXPENSES, AND INCENTIVE
AWARD; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 2, 2025

Time: 1:30 p.m.

Dept.: S17

Hon. Joseph T. Ortiz

PUBLIC REDACTED VERSION

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on **April 2, 2025**, at **1:30 p.m.**, or as soon thereafter as this
3 matter may be heard in Department S-17 of the above captioned Court, located at 247 West Third
4 Street, Department S-17, San Bernardino, CA 92415, Plaintiff Anne Moulton (“Plaintiff” or “Class
5 Representative”) will move, and hereby does move, for an award of attorneys’ fees to Class
6 Counsel in the amount of \$1,000,000, and costs and expenses in the amount of \$27,804.47, and
7 \$5,000 as incentive payment to the Class Representative.

8 This motion is made on the grounds that the attorneys’ fees, costs, and expenses were
9 reasonably incurred, and that the legal requirements for an award of fees, costs, expenses and
10 incentive award have been satisfied.

11 The Motion is based on this Notice of Motion, the accompanying Memorandum of Points
12 and Authorities, the Declarations of Anne Moulton, L. Timothy Fisher and Adrian Gucovschi, and
13 the exhibits attached thereto, including the Stipulation of Settlement (“Settlement” or “SA”); and
14 the pleadings and papers on file in this action, and such other evidence and argument as may
15 subsequently be presented to the Court.

16 Dated: February 14, 2025

BURSOR & FISHER, P.A.

17 By: 2 Timothy Fisher

18 L. Timothy Fisher (State Bar No. 191626)
19 1990 North California Blvd., 9th Floor
20 Walnut Creek, CA 94596
21 Telephone: (925) 300-4455
22 Facsimile: (925) 407-2700
23 E-mail: ltfisher@bursor.com

GUCOVSKI ROZENSHTEYN, PLLC

24 Adrian Gucovschi
25 140 Broadway, Suite 4667
26 New York, NY 10005
27 Telephone: (212) 884-4230
28 Facsimile: (212) 884-4230
E-Mail: adrian@gr-firm.com

*Attorneys for Plaintiff Anne Moulton
and the Proposed Settlement Class*

TABLE OF CONTENTS

PAGE(S)

I. INTRODUCTION8

II. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF REASONABLE FEES 11

 A. Defendants Are Contractually Obligated to Pay Attorneys’ Fees to Class Counsel 11

 B. Class Counsel Are Entitled to Attorneys’ Fees Under the CLRA..... 12

III. THE AMOUNT OF FEES PROVIDED FOR IN THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED..... 13

 A. The Amount of the Fees Is Appropriate Under the Percentage of the Benefit Approach..... 13

 B. Alternatively, the Amount of the Fee Award Is Appropriate Under the Lodestar-and-Multiplier Approach..... 13

 1. Class Counsel Spent a Reasonable Number of Hours on this Litigation 14

 2. Class Counsel’s Hourly Rates Are Reasonable..... 15

 3. It Is Appropriate to Apply a Positive Multiplier to Class Counsel’s Lodestar 16

IV. LITIGATION COSTS AND EXPENSES WERE REASONABLY INCURRED.....20

V. THE PROPOSED INCENTIVE AWARD TO THE CLASS REPRESENTATIVE IS REASONABLE AND SHOULD BE APPROVED.....21

VI. CONCLUSION22

TABLE OF AUTHORITIES

PAGE(S)

CASES

Andrews v. Equinox Holdings, Inc.,
(N.D. Cal. 2021) 570 F. Supp. 3d 803..... 15

Broughton v. Cigna Healthplans,
(1999) 21 Cal.4th 1066..... 12

Chavez v. Netflix, Inc.,
(2008) 162 Cal.App.4th 43..... 9, 13, 17, 19, 20

Davis v City of San Diego,
(2003) 106 Cal.App.4th 893..... 15

Dragu v Motion Picture Indus. Health Plan,
(N.D. Cal 2016) 159 F. Supp. 3d 1121..... 14

Elder v. Hilton Worldwide Holdings, Inc.,
(N.D. Cal. Feb. 4, 2021) 2021 WL 4785936..... 16

Gates v. Deukmejian,
(9th Cir. 1992) 987 F.2d 1393..... 16

Graham v. DaimlerChrysler Corp.,
(2004) 34 Cal.4th 553..... 13, 19

Harris v. Marhoefer,
(9th Cir. 1994) 24 F.3d 16..... 20

Hensley v. Eckerhart,
(1983) 461 U.S. 424..... 16

Horsford v. Board of Trustees,
(2005) 132 Cal.App.4th 359..... 14

In re Activision Sec. Litig.,
(N.D. Cal. 1989) 723 F. Supp. 1373..... 9

In re Animation Workers Antitrust Litig.,
(N.D. Cal. Nov. 11, 2016) 2016 WL 6663005..... 16

In re Cellphone Fee Termination Cases,
(2010) 186 Cal. App. 4th 1380..... 21

1	<i>In re Consumer Privacy Cases,</i>	
2	(2009) 175 Cal.App.4th 545	11, 13
3	<i>In re Domestic Air Transportation Antitrust Litigation,</i>	
4	(N.D. Ga. 1993) 148 F.R.D. 297	21
5	<i>In re Dun & Bradstreet Credit Services Customer Litigation,</i>	
6	(S.D. Ohio 1990) 130 F.R.D. 366.....	21
7	<i>In re High-Tech Employee Antitrust Litig.,</i>	
8	(N.D. Cal. Sept. 2, 2015) 2015 WL 5158730.....	15, 16
9	<i>In re Merry-Go-Round Enters., Inc.,</i>	
10	(Bankr. D.Md. 2000) 244 B.R. 327	17
11	<i>In re Nat'l Collegiate Athletic Assoc. Athletic Grant-in-Aid Cap Antitrust Litig.,</i>	
12	(N.D. Cal. Dec. 6, 2017) 2017 WL 6040065	19
13	<i>In re Oral Sodium Phosphate Solution-Based Prods. Liab. Action,</i>	
14	(N.D. Ohio Dec. 6, 2010) 2010 WL 5058454	17
15	<i>In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.,</i>	
16	(N.D. Ohio 2003) 268 F. Supp. 2d 907	17
17	<i>Kaupelis v. Harbor Freight ToolsUSA., Inc.,</i>	
18	(C.D. Cal. Jan. 12, 2022) 2022 WL 2288895.....	16
19	<i>Kerkeles v City of San Jose,</i>	
20	(2015) 243 Cal.App.4th 88.....	14
21	<i>Ketchum v. Moses,</i>	
22	(2001) 24 Cal.4th 1122.....	13
23	<i>Kim v. Euromotors West/The Auto Gallery,</i>	
24	(2007) 149 Cal.App.4th 170.....	12
25	<i>Lafitte v. Robert Half Intern. Inc.,</i>	
26	(Cal.Super. Apr. 10, 2013) 2013 WL 9973202	9
27	<i>Laffitte v. Robert Half Internat. Inc.,</i>	
28	(2016) 1 Cal.5th 480.....	9, 13
	<i>Lealao v. Benefit Cal.,</i>	
	(2000) 82 Cal.App.4th 19	11, 13
	<i>Loretz v. Regal Stone, Ltd.,</i>	
	(N.D. Cal. 2010) 756 F. Supp. 2d 1203.....	16
	<i>Ludlow v. Flowers Foods, Inc.,</i>	
	(S.D. Cal. Mar. 18, 2024) 2024 WL 1162049	10

1 *Melendres v. City of Los Angeles*,
2 (1975) 45 Cal.App.3d 267 12

3 *Morales v. City of San Rafael*,
4 96 F.3d 359 (9th Cir. 1996)..... 16

5 *Nitsch v. DreamWorks Animation SKG Inc.*,
6 (N.D. Cal. June 5, 2017) 2017 WL 2423161..... 15, 16

7 *Nozzi v. Hous. Auth. for the City of Los Angeles*,
8 (C.D. Cal. Feb. 15, 2018) 2018 WL 1659984 15

9 *Perez v. Rash Curtis & Associates*,
10 (N.D. Cal. Apr. 17, 2020) 2020 WL 1904533..... 16, 17

11 *PLCM Grp. v. Drexler*,
12 (2000) 22 Cal. 4th 1084..... 13

13 *Rainbow Bus. Solutions v. MBF Leasing LLC*,
14 (N.D. Cal. Dec. 5, 2017) 2017 WL 6017844 16

15 *Roos v. Honeywell Internat., Inc.*,
16 (2015) 241 Cal.App.4th 1472 9

17 *Serrano v. Priest*,
18 (1977) 20 Cal.3d 25 11, 18, 20

19 *Spicer v. Chicago Board Options Exchange, Inc.*,
20 (N.D. Ill. 1993) 844 F. Supp. 1226..... 21

21 *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*,
22 (E.D. Pa. May 19, 2005) 2005 WL 1213926..... 17

23 *Vizcaino v. Microsoft Corp.*,
24 (9th Cir. 2002) 290 F.3d 1043 17, 20

25 *Wershba v. Apple Computer*,
26 (2001) 91 Cal.App.4th 224 11, 20

27 *West Shield Investigations and Sec. Consultants v. Superior Court*,
28 (2000) 82 Cal.App.4th 935 12

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

STATUTES

Cal. Civ. Code § 1671 8, 10, 18, 19

Cal. Civ. Code § 1780(d)..... 12

Cal. Civ. Proc. Code § 1021 12

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Anne Moulton (the “Class Representative” or the “Plaintiff”), through her counsel
4 Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC (“Class Counsel”), respectfully submits
5 this memorandum of points and authorities in support of her motion for approval of an award of
6 attorneys’ fees, costs, and expenses and incentive award in connection with the class-wide
7 settlement of this action.¹ On October 24, 2024, the Court granted preliminary approval to the
8 Settlement, which has a total cash value of \$3,000,000. *See* Declaration of L. Timothy Fisher
9 (“Fisher Decl.”), Ex. 1 (Settlement Agreement) ¶¶ 5, 8; *see also* SA § III.A.1.

10 Class Counsel, through three years of hard-fought litigation, and after undertaking
11 significant discovery, and participating in two full-day mediations, achieved this Settlement that
12 provides Class Members with likely far more than they could have achieved even if they prevailed
13 at trial. Pursuant to the terms of the agreement, Defendants United Dominion Realty, L.P. and
14 UDR, Inc. (“UDR” or “Defendants”) have agreed to make available \$3,000,000 (the “Settlement
15 Fund”) to the approximately 43,500 current and former tenants who, from August 12, 2017,
16 through October 24, 2024 (“Settlement Class Period”), paid unlawful late fees that are void and
17 unenforceable under Civil Code § 1671 (hereinafter, “Late Fees”), with each Settlement Class
18 Member eligible to receive a *pro rata* share of the Settlement Fund. *See* Fisher Decl. ¶ 5; *see also*
19 SA § III.A.

20 Specifically, under the terms of the Settlement, Defendants will establish a non-
21 reversionary, **all-cash** “common fund” in the amount of \$3,000,000, which, after the payment of
22 attorneys’ fees, costs and expenses for the litigation, and notice and claims administration, will be
23 distributed on a *pro rata* basis to (1) all Current Tenants of UDR and (2) all Former Tenants of
24 UDR who submit valid claims. *See* SA § III.A.8-9. No portion of the amount earmarked for this
25 Settlement Fund will revert to Defendants. *Id.* at § III.A.1. In addition, all class members who are
26

27 ¹ All capitalized terms herein that are not otherwise defined have the definitions set forth in the
28 Settlement.

1 current tenants will receive payment without having to submit a claim. The Settlement also
2 requires Defendants to pay the costs of Notice and Administration. *Id.* at § III.A.5. The notice
3 includes direct notice via e-mail to current and former Tenants who paid Late Fees. *Id.* at § IV.F.

4 The Settlement further requires Defendants to pay Class Counsel’s attorneys’ fees in an
5 amount up to one-third of the Settlement Fund, as awarded by the Court. *Id.* at § III.A.6. The
6 \$1,000,000 attorneys’ fees, and \$27,804.47 in costs and expenses, requested by Class Counsel
7 readily meet the applicable standards. Plaintiff asks the Court to approve them. As explained
8 below, both the percentage of the benefit method and the lodestar method confirm that the amount
9 of attorneys’ fees is fair, reasonable, and supported by the law of this State. *See infra.* The
10 requested fee award represents one-third of the monetary award to the Settlement Class, an amount
11 that is well within the accepted range of attorney fee awards in class settlements in California and
12 across the nation. Typically, attorneys’ fees in similar class actions represent on average “around
13 one-third” of the overall value of the settlement.² Fisher Decl. ¶ 21. A lodestar cross-check
14 confirms the reasonableness of the requested fees. Class Counsel collectively worked 556.16 hours
15 on this case for a total lodestar, at current billing rates, of approximately \$497,813.50. Fisher Decl.
16 ¶ 22. Thus, the fees requested represent a reasonable multiplier of 2.01 over counsel’s lodestar –
17 well within the standards approved by California case law to account for the substantial risks they
18 undertook in their representation of the class in this matter, the excellent results achieved, and the
19 quality of the work performed. *Id.* Indeed, numerous California courts have held that “multipliers
20 can range from 2 to 4 or even higher.” *Chavez*, 162 Cal.App.4th at 66 (citations omitted).
21 Similarly, “[t]he Ninth Circuit has recognized that multipliers typically can range up to 4” and
22

23
24
25
26
27
28

² *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Using the percentage of the
benefits to class claimants as a benchmark, class counsel’s ... final fee award was 27.9 percent of
the benefits. This is not out of line with class action fee awards calculated using the percentage-of-
the-benefit method: ‘Empirical studies show that, regardless whether the percentage method or the
lodestar method is used, fee awards in class actions average around one-third of the recovery.’”)
(citation omitted); *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495 (affirming
33.33% fee award); *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1495-96
(affirming a 37.5 percent fee award); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377
(N.D. Cal. 1989) (approving 32.8% fee award after stating that “nearly all common fund awards
range around 30%”).

1 courts “often apply multipliers that far exceed that range.” *Ludlow v. Flowers Foods, Inc.* (S.D.
2 Cal. Mar. 18, 2024) 2024 WL 1162049, at *8. *Id.*

3 Plaintiff also seeks an incentive award of \$5,000 for her time and effort in bringing this
4 case for the benefit of Class Members and pursuing the Class’s interests for three years. *See* SA at
5 § III.A.7. The incentive award is justified and is consistent with or below the amounts typically
6 awarded in similar litigation. Defendants have agreed to pay the attorneys’ fees, costs and
7 expenses and incentive award if the Court awards them. *Id.* at § III.A.6-7.

8 The creation of a \$3,000,000 Settlement Fund is an excellent recovery for Class Members
9 and came with significant risks. The heart of Plaintiff’s claim is that Defendants’ \$100 Late Fees
10 for their tenants’ late payment of rent are unlawful liquidated damage provisions pursuant to Cal.
11 Civ. Code § 1671. During the Class Period, Defendants collected millions of dollars in Late Fees.
12 Fisher Decl. ¶¶ 6, 14. But Defendants sought to limit the class to only those tenants in the
13 apartment complex in Rancho Cucamonga where Plaintiff Moulton lived. If Defendants had
14 prevailed on that argument, the size of the class would have been dramatically reduced.
15 Furthermore, Defendants sought to offset any recovery for Plaintiff and the Class by seeking the
16 recovery of their costs to collect late payments from their tenants. Defendants argued those offsets
17 likely equaled or exceeded the amounts collected during the Class Period. Fisher Decl. ¶ 15.
18 Indeed, a virtually identical case has seen those issues vigorously contested for approximately **8**
19 **years** and is currently awaiting a bench trial verdict. *See Munguia-Brown v. Equity Residential*,
20 Northern District of California Case No. 16-cv-01225-JSW. *Id.* Considering those risks, when the
21 Parties thought that there was potential for resolution, they sought the assistance of a well-
22 respected mediator. That is, rather than put Defendants’ arguments to the test at the class
23 certification and summary judgment stages, Plaintiff elected to achieve meaningful, immediate
24 relief for her fellow Class Members. The instant settlement was only reached with the assistance
25 of an experienced mediator, Jill R. Sperber of Judicate West, after two full-day mediation sessions
26 on September 27, 2023, and January 18, 2024, and months of follow-up settlement discussions. By
27 settling, Plaintiff avoided the risks explained above as well as the risk of trial and an appeal (and
28

1 incurring additional costs and attorneys' fees) and thereby ensured **immediate relief** for all Class
2 Members. Thus, obtaining the exceptional settlement relief did not come easily.

3 The Settlement, Class Counsel's request for an award of attorneys' fees, costs and
4 expenses, and Plaintiff's request for an incentive award have the overwhelming approval of the
5 Class Members. To date, not a single Class Member has filed an objection to the Settlement or the
6 request for fees and expenses identified in the Class Notice. *See* Fisher Decl. ¶ 9. The Court
7 should grant Plaintiff's Motion for Attorneys' Fees, Costs and Expenses, and the Plaintiff's
8 Incentive Award.

9 **II. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF REASONABLE FEES**

10 The requested award for attorneys' fees, costs, and expenses of \$1,027,804.47 is reasonable
11 and should be approved in full.

12 When a class action case results in relief for the class, whether by settlement or by
13 contested judgment, class counsel are entitled to a reasonable fee for services rendered, as
14 approved by the Court and expenses reasonably incurred in obtaining the relief. *In re Consumer*
15 *Privacy Cases* (2009) 175 Cal.App.4th 545, 552; *Wershba v. Apple Computer* (2001) 91
16 Cal.App.4th 224, 254-255; *Lealao v. Benefit Cal.* (2000) 82 Cal.App.4th 19, 26-34; *Serrano v.*
17 *Priest* (1977) 20 Cal.3d 25, 34-48. The Settlement requires Defendants to pay Class Counsel
18 attorneys' fees awarded by the Court, up to \$1,000,000. SA at § III.A.6. Class Counsel are
19 entitled to an award of fees as a matter of law. The Court should direct Defendants to pay Class
20 Counsel the full amount of attorneys' fees, costs and expenses. Class Counsel are entitled to an
21 award of attorneys' fees as a matter of contract under the Stipulation of Settlement and pursuant to
22 the statutory fee-shifting provisions of the California Consumers Legal Remedies Act, §§ 1750 *et*
23 *seq.* (the "CLRA").

24 **A. Defendants Are Contractually Obligated to Pay Attorneys' Fees**
25 **to Class Counsel**

26 As discussed above, Defendant is contractually obligated to pay attorneys' fees and
27 expenses. *See* SA § III.A.6. The promise to pay attorneys' fees was negotiated at arm's length
28

1 with the assistance of Ms. Sperber, a respected, independent mediator, only *after* the other
2 substantive settlement terms had been resolved. Fisher Decl. ¶¶ 4, 19. California courts
3 traditionally defer to fee agreements between parties if the agreement is otherwise valid.
4 *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 282-83 (“...absent any legal factors
5 voiding such agreement, or overriding equitable reasons that would have the same effect, when the
6 parties do contract for fees it should govern the court’s decision.”); Cal. Civ. Proc. Code § 1021
7 (fees may be “left to the agreement” of the parties).

8
9 **B. Class Counsel Are Entitled to Attorneys’ Fees Under the CLRA**

10 Plaintiff also brought claims against Defendants under the CLRA. An award of fees to a
11 plaintiff who prevails on CLRA claims is mandatory under Civil Code § 1780(d), which provides:
12 “The court shall award court costs and attorneys’ fees to a prevailing plaintiff in litigation filed
13 pursuant to this section.”

14 The word ‘shall’ is usually deemed mandatory, unless a mandatory
15 construction would not be consistent with the legislative purpose
16 underlying the statute.” (*West Shield Investigations and Sec. Consultants*
17 *v. Superior Court* (2000) 82 Cal.App.4th 935, 949, 98 Cal.Rptr.2d 612.)
18 Our Supreme Court has observed that “the availability of costs and
19 attorneys fees to prevailing plaintiffs is integral to making the CLRA an
20 effective piece of consumer legislation, increasing the financial feasibility
21 of bringing suits under the statute.” (*Broughton v. Cigna Healthplans*
22 (1999) 21 Cal.4th 1066, 1085, 90 Cal.Rptr.2d 334, 988 P.2d 67.) Thus, a
23 mandatory construction of the word “shall” in section 1780(d) is
24 consistent with the legislative purpose underlying the statute.

25 *Kim v. Euromotors West/The Auto Gallery* (2007) 149 Cal.App.4th 170, 178.

26 In this case, the Class has recovered \$3 million in benefits for the Class. Indisputably, the
27 Class is the “prevailing party.” Therefore, a fee award to Class Counsel is mandatory under the
28 CLRA.

1 **III. THE AMOUNT OF FEES PROVIDED FOR IN THE SETTLEMENT IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 **A. The Amount of the Fees Is Appropriate Under the Percentage of**
4 **the Benefit Approach**

5 Where class benefits are readily valued in monetary terms, a percentage of those benefits is
6 an appropriate measure of a reasonable fee. *Laffitte*, 1 Cal. 5th at 506 (“[t]he percentage of fund
7 method survives in California class action cases, and the trial court did not abuse its discretion in
8 using it[.]”) (quotation omitted). “Regardless of whether attorneys’ fees are determined using the
9 lodestar method or awarded based on a percentage-of-the-benefit analysis under the common fund
10 doctrine, the ultimate goal ... is the award of a reasonable fee to compensate counsel for their
11 efforts, irrespective of the method of calculation.” *In re Consumer Privacy Cases*, 175
12 Cal.App.4th at 557-58 (quotation omitted). Typically, “fee awards in class actions average around
13 one-third of the recovery.” *Chavez*, 162 Cal.App.4th at 66, fn. 11 (citation omitted); *Laffitte*, 1
14 Cal.5th at 495 (affirming 33.33% fee award); *Roos*, 241 Cal.App.4th at (affirming a 37.5 percent
15 fee award).

16 Here, the total value of the Settlement benefits is \$3 million. The amount of fees counsel
17 seeks is \$1,000,000 plus \$27,804.47 in costs and expenses. An award of that total fee would
18 represent one-third of the Settlement benefits. That percentage falls well within the range of
19 reasonable attorneys’ fees awarded in other cases involving similar recoveries in California and
20 across the nation. *See Chavez*, 162 Cal.App.4th at 66, fn. 11.

21 **B. Alternatively, the Amount of the Fee Award Is Appropriate**
22 **Under the Lodestar-and-Multiplier Approach**

23 The other method used by California courts to determine the amount of fees is the
24 “lodestar” method. *Graham v. DaimlerChrysler Corp.*, (2004) 34 Cal.4th 553, 579; *Ketchum v.*
25 *Moses* (2001) 24 Cal.4th 1122, 1134; *PLCM Grp. v. Drexler* (2000) 22 Cal. 4th 1084, 1097.
26 Under this approach, an initial “lodestar” is calculated by multiplying the reasonable hours
27 expended in the action by a reasonable hourly rate for each attorney expending that time. *Lealao*,
28 82 Cal.App.4th at 26.

1 Once the court has calculated the lodestar, it may increase or decrease it by applying a
2 positive or negative “multiplier” to take into account a variety of other factors, including the
3 quality of the representation, the novelty and complexity of the issues, the results obtained, and the
4 contingent risk presented. Richard M. Pearl, *California Attorney Fee Awards* (3d ed.2017) § 10.3.

5 Here, the hours worked and lodestar fee of Class Counsel are set forth in the Fisher and
6 Gucovschi declarations, submitted herewith. They can be summarized as follows:
7

Firm	Hours	Lodestar
Bursor & Fisher, P.A.	414.1	\$396,167.50
Gucovschi Rozenshteyn, PLLC	142.06	\$101,646.00
Total	556.16	\$497,813.50

8
9
10
11 **1. Class Counsel Spent a Reasonable Number of Hours on**
12 **this Litigation**

13 The starting point for the determination of the reasonable number of hours meriting
14 compensation is, of course, evidence of the actual number of hours spent on the litigation.
15 *Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 396. “The line between over- and
16 under-preparation is difficult to police, and so the Ninth Circuit has cautioned against second-
17 guessing a winning attorney's judgment about the time necessary to present a winning case.”
18 *Dragu v Motion Picture Indus. Health Plan* (N.D. Cal 2016) 159 F. Supp. 3d 1121, 1129 (citation
19 omitted); *see also Kerkeles v City of San Jose* (2015) 243 Cal.App.4th 88. An attorney from each
20 firm has attested as to the time spent and that the time was reasonably and necessarily incurred for
21 the benefit of the Class. Fisher Decl. ¶¶ 20-25; Gucovschi Decl. ¶ 7. The number of hours spent
22 was not only reasonable but was efficient given the complexity of this case, the hard-fought nature
23 of the litigation, and the difficulties involved. *See* Fisher Decl. ¶¶ 12-25 (describing the history of
24 the litigation and the complexity of the legal and factual issues involved).

25 Class Counsel’s declarations describe the extensive work performed in connection with this
26 litigation over the past few years. The two firms (Bursor & Fisher, P.A., and Gucovschi
27 Rozenshteyn, PLLC) carefully coordinated their work throughout this litigation to avoid any
28 duplication of effort. Fisher Decl. ¶ 25. Class Counsel worked very efficiently and submitted their

1 detailed daily billing records showing what work was done and by whom. Fisher Decl. ¶ 25;
2 Gucovschi Decl. ¶ 7. Defendants were represented by very able counsel. Plaintiff was able to
3 obtain critical information through discovery to put the case in the best position to succeed.
4 Settlement was reached only after two full-day mediations, and extensive negotiations amongst
5 counsel. Given the complexity of the case, the nature of the litigation and discovery, and the
6 difficulty of the settlement negotiations, the number of hours Class Counsel spent was reasonable.

7 **2. Class Counsel's Hourly Rates Are Reasonable**

8 The hourly rates for each of the lawyers who staffed the case, which are set forth in the
9 accompanying declarations and exhibits thereto, are reasonable and commensurate with rates
10 approved in other class actions litigated in this County. Fisher Decl. ¶ 23 (“Based on my
11 knowledge and experience, the hourly rates charged by my firm are within the range of market
12 rates charged by attorneys of equivalent experience, skill, and expertise.”).

13 In general, California law requires less documentation of comparable rates than federal law.
14 *See Davis v City of San Diego* (2003) 106 Cal.App.4th 893, 903 (affirming rate awarded even
15 though no evidence other than counsel's own statements presented; rejecting federal standard in
16 favor of more lenient California standard). Here, Class Counsel's rates are well within the local
17 market's range of reasonableness. *See* Fisher Decl. ¶ 23. California courts have repeatedly held
18 rates commensurate with Class Counsel's rates to be fair and reasonable. *See, e.g., Andrews v.*
19 *Equinox Holdings, Inc.* (N.D. Cal. 2021) 570 F. Supp. 3d 803, 808 (approving lead counsel rate of
20 \$1,250); *Nozzi v. Hous. Auth. for the City of Los Angeles* (C.D. Cal. Feb. 15, 2018) 2018 WL
21 1659984, at *7 (at 2017 rates, rates of \$1,150, \$750 and \$765 for senior attorneys in private law
22 firm approved); *Nitsch v. DreamWorks Animation SKG Inc.* (N.D. Cal. June 5, 2017) 2017 WL
23 2423161, at *9 (finding rates for senior attorneys of between \$870 to \$1200 per hour to be
24 reasonable); *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015) 2015 WL
25 5158730, at *9 (approving billing rates of \$490 to \$975 for partners, \$310 to \$800 for non-partner
26 attorneys, and \$190 to \$430 for paralegals, law clerks, and litigation support staff).

1 Indeed, California courts have routinely found the rates of Class Counsel fair and
2 reasonable. *See, e.g., Perez v. Rash Curtis & Associates* (N.D. Cal. Apr. 17, 2020) 2020 WL
3 1904533, at *20 (finding Bursor & Fisher’s hourly rates to be reasonable); *Kaupelis v. Harbor*
4 *Freight ToolsUSA., Inc.* (C.D. Cal. Jan. 12, 2022) 2022 WL 2288895, at *9 (finding Bursor &
5 Fisher’s “rate range from \$700-\$1000 for partners, \$315-\$450 for associates, and \$350-\$300 for
6 paralegals ... are reasonable compared to other awards in California courts”); *Elder v. Hilton*
7 *Worldwide Holdings, Inc.* (N.D. Cal. Feb. 4, 2021) 2021 WL 4785936, at *9 (finding Bursor &
8 Fisher’s rates reasonable).³

9
10 **3. It Is Appropriate to Apply a Positive Multiplier to Class Counsel’s Lodestar**

11 The lodestar analysis is not limited to the initial mathematical calculation of class counsel’s
12 base fee. *See Morales v. City of San Rafael* (9th Cir. 1996) 96 F.3d 359, 363-64. Rather, Class
13 Counsel’s actual lodestar may be enhanced according to those factors that have not been
14 “subsumed within the initial calculation of hours reasonably expended at a reasonable rate.”
15 *Hensley v. Eckerhart* (1983) 461 U.S. 424, 434 n.9 (citation omitted); *see also Morales*, 96 F.3d at
16

17 ³ The more pertinent legal market may be the Bay Area, where Class Counsel practices. Where a
18 local market does not have counsel willing to take on a particular case, rates from counsel’s local
19 practice area may be employed instead. *See Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1393,
20 1405 (“[R]ates, other than those of the forum, may be employed if local counsel was unavailable,
21 either because they are unwilling or unable to perform because they lack the degree of experience,
22 expertise, or specialization required to handle properly the case.”). Here, Defendants’ Late Fee
23 practices went unchallenged for at least a decade, and it is evident that Class Counsel was the only
24 firm willing to take on this litigation. Accordingly, Bay Area rates should be used here.
25 Decreasing Class Counsel’s customary rates purely based on the location of the courthouse would
26 disincentivize highly skilled attorneys from bringing meritorious, complex cases in this Court and
27 needlessly penalize Class Counsel. Class Counsel’s rates are unquestionably commensurate with
28 litigators specializing in class actions in the Bay Area. *See, e.g., In re Animation Workers Antitrust Litig.* (N.D. Cal. Nov. 11, 2016) 2016 WL 6663005, at *6 (finding rates of senior attorneys of between \$845 to \$1,200 per hour to be reasonable); *Nitsch*, 2017 WL 2423161, at *9 (finding rates for senior attorneys of between \$870 to \$1200 per hour to be reasonable); *Loretz v. Regal Stone, Ltd.* (N.D. Cal. 2010) 756 F. Supp. 2d 1203, 1211 (approving billing rates ranging from \$900 per hour (partners) to \$150 per hour (law clerks) for Bay Area plaintiff’s counsel in complex civil litigation); *In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730, at *9 (approving billing rates of \$490 to \$975 for partners, \$310 to \$800 for non-partner attorneys, and \$190 to \$430 for paralegals, law clerks, and litigation support staff); *Rainbow Bus. Solutions v. MBF Leasing LLC* (N.D. Cal. Dec. 5, 2017) 2017 WL 6017844, at *1-2 (finding rates between \$275 to \$950 per hour to be reasonable). In any case, Bay Area rates are comparable to the Orange County/Los Angeles area.

1 364. In a historical review of numerous class action settlements, the Ninth Circuit found that
2 lodestar multipliers normally range from 0.6 to 19.6. *See Vizcaino v. Microsoft Corp.* (9th Cir.
3 2002) 290 F.3d 1043, 1051 n.6. State and federal courts often approve multipliers of greater than
4 4. *Chavez*, 162 Cal.App.4th at 66 (“multipliers can range from 2 to 4 or even higher”) (citations
5 omitted). For instance, Judge Yvonne Gonzalez Rogers of the Northern District of California
6 explicitly approved a multiplier of between 13.4 to 18.5 in a case where Bursor & Fisher was also
7 class counsel. *See Perez*, 2020 WL 1904533, at *20-21; *see also Perera v. Chiron Corp.* (N.D.
8 Cal. 1999, 2000) Civ. No. 95-20725-SW (approving multiplier of 9.14; cited in California Class
9 Actions and Coordinated Proceedings § 15.05); *In re Sulzer Hip Prosthesis & Knee Prosthesis*
10 *Liab. Litig.* (N.D. Ohio 2003) 268 F. Supp. 2d 907, 938 (approving lodestar multiplier of 19.8);⁴
11 *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.* (E.D. Pa. May 19, 2005) 2005 WL
12 1213926, at *18 (awarding 20% of a \$100 million settlement fund in attorneys’ fees, which
13 represented a multiplier of 15.6); *In re Merry-Go-Round Enters., Inc.* (Bankr. D.Md. 2000) 244
14 B.R. 327, 335 (approving 19.6 lodestar multiplier).

15 As shown below, the amount sought is reasonable considering the procedural and
16 substantive issues raised by this litigation, the defense mounted by Defendants, and the contingent
17 risks borne by Class Counsel in prosecuting the case with no assurance of any compensation.

18 Factors generally considered in applying a multiplier include: (1) the time and labor
19 required; (2) the novelty and difficulty of the questions presented; (3) the requisite legal skill
20 necessary; (4) the preclusion of other employment due to acceptance of the case; (5) the customary
21 fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the
22 circumstances; (8) the amount at controversy and the results obtained; (9) the experience,
23 reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and
24

25 ⁴ *See also In re Oral Sodium Phosphate Solution-Based Prods. Liab. Action* (N.D. Ohio Dec. 6,
26 2010) 2010 WL 5058454, at *4 (summarizing that the court in *Sulzer* “applied different multipliers
27 to each applicant’s lodestar figure, taking into account the importance of the attorney’s common
28 benefit work, the amount of contingent fees he would also receive and so on; these multipliers
ranged as high as 19.8”); *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.* (N.D. Ohio
June 12, 2003) Case No. 1:01-cv-9000, ECF No. 738-1 (awarding \$2.7 million in fees to the law
firm of Mithoff & Jacks after determining that the firm’s reasonable lodestar was \$136,400.00).

1 length of the professional relationship with the client; and (12) awards in similar cases. *See*
2 *generally Serrano*, 20 Cal.3d at 49.

3 Many of these factors are present in this case and support the award of a multiplier. This
4 case required considerable time, skill, and labor, as described in the declarations of Class Counsel
5 filed herewith. Class Counsel undertook large risks in filing and pursuing this case. Class Counsel
6 represented Plaintiff and the Class on a full contingent fee basis. Class Counsel have not received
7 any compensation for their services to date, have spent \$27,804.47 in out-of-pocket expenses on
8 the prosecution of the case, and have litigated it from inception without any assurance of
9 compensation for their work.

10 Class Counsel devoted substantial time to the prosecution of this case. In the three years
11 this action was pending, Class Counsel (1) extensively investigated the claims, both prior to and
12 after filing the initial complaint; (2) researched underlying issues of law and drafted the initial
13 complaint; (3) overcame Defendants' demurrer; (4) drafted an amended complaint; (5) drafted
14 Plaintiff's discovery requests; (6) participated in meet and confer sessions related to obtaining
15 discovery; (7) reviewed Defendants' six document productions consisting of 5,009 pages of
16 documents; (8) conducted depositions of Defendants' persons most knowledgeable; (9)
17 participated in two full-day mediation sessions and prepared a Mediation Statement for them; (10)
18 negotiated the Settlement; (11) drafted the Settlement Agreement; (12) contracted with the claims
19 administrator after soliciting multiple quotes; (13) drafted notice documents; (14) drafted and
20 supplemented Plaintiff's Motion for Preliminary Approval and supporting declarations; (15)
21 attended the preliminary approval hearing; (16) oversaw the notice and administration work
22 performed by the Settlement Administrator and (17) communicated with class members regarding
23 the settlement. These substantial efforts naturally precluded Class Counsel from the pursuit of
24 additional employment.

25 Litigation under Civil Code § 1671 presents difficult questions. Counsel must be well-
26 versed in the law and prepared to deal with the unusual aspects of such litigation to successfully
27 prosecute a case like this one. Class Counsel are highly experienced class-action attorneys, with
28

1 particular expertise in class actions challenging late fees and other claims based on Civ. Code §
2 1671. *See, e.g.*, Fisher Decl. ¶ 11; Gucovschi Decl. ¶ 3.

3 A multiplier is also appropriate because of the contingent risk Class Counsel assumed. The
4 risk of non-payment in a case handled on a contingent basis justifies augmentation of a lodestar.
5 Indeed, the Supreme Court has noted it as “one of the most common fee enhancers[.]” *Graham*,³⁴
6 Cal. 4th at 579. For this reason, positive multipliers in these circumstances are frequently granted.
7 *Chavez*, 162 Cal.App.4th at 66 (2.5 multiplier).

8 In assessing the risks Class Counsel assumed, the Court must also consider the resources,
9 quality and tenacity of the opposition. Here, Class Counsel litigated against UDR, the 19th largest
10 owner of apartments in the United States and the 30th largest apartment property manager in the
11 United States⁵, with vast resources at their disposal, and represented by able counsel from the
12 nationally recognized firm Snell & Wilmer LLP. Despite the risks and obstacles facing them,
13 Class Counsel negotiated a settlement that confers substantial benefits on an enormous class. This
14 is an outstanding result given the nature of this case.

15 Most critically, a multiplier is appropriate because of the results achieved. *See In re Nat’l*
16 *Collegiate Athletic Assoc. Athletic Grant-in-Aid Cap Antitrust Litig.* (N.D. Cal. Dec. 6, 2017) 2017
17 WL 6040065, at *7 (“Foremost among these considerations, however, is the benefit obtained for
18 the class.”). The Settlement Fund permits Class Members to recover a significant portion of the
19 Late Fees paid to Defendants. Over the class period, Defendants collected ██████████ in Late
20 Fees from Class Members. The \$3 million Settlement is therefore an outstanding recovery,
21 especially considering Defendants’ offset defense, which risked eliminating any recovery for
22 Plaintiff and the Class Members. Fisher Decl. ¶¶ 6, 15. Class Counsel achieved these results
23 despite Defendants being represented by very skilled counsel.

24 Class Counsel expended hundreds of hours of work and incurred \$27,804.47 in out-of-
25 pocket costs since 2021 with no assurance of *any* compensation. Fisher Decl. ¶ 20. A risk
26

27 _____
28 ⁵ National Multifamily Housing Council, 2024 NMHC 50, <https://www.nmhc.org/research-insight/the-nmhc-50/>

1 multiplier is clearly warranted here. The lodestar of Class Counsel is \$497,813.50 and the
2 requested fee award is \$1,000,000.00. Fisher Decl. ¶ 22. This represents a multiplier of 2.01 over
3 Counsel’s lodestar. *Id.* As noted in *Wershba*, a multiplier can range “up to 4 or even higher.” 91
4 Cal.App.4th at 255; *see also Chavez*, 162 Cal.App.4th at 66 (citing *Wershba* with approval);
5 *Vizcaino*, 290 F.3d at 1051 (percentage award that crosschecked with a multiplier of 3.65 upheld).
6 Despite the excellent results achieved on behalf of the Class and the support of the factors
7 discussed above, Class Counsel seeks only a modest multiplier of 2.01 – such a multiplier is proper
8 and should be approved.

9 **IV. LITIGATION COSTS AND EXPENSES WERE REASONABLY INCURRED**

10 To date, Class Counsel incurred out-of-pocket costs and expenses in the aggregate amount
11 of \$27,804.47 in prosecuting this litigation on behalf of the class. Fisher Decl. ¶ 26. Those costs
12 and expenses are itemized in the Fisher declaration submitted to the Court herewith. The Court
13 should authorize their reimbursement from the Settlement Fund.

14 California law allows recovery of pre-settlement litigation costs and expenses in the context
15 of a class action settlement fund. *See Serrano*, 20 Cal. 3d at 35. Class Counsel is entitled to
16 reimbursement for standard out-of-pocket costs and expenses that an attorney would ordinarily bill
17 a fee-paying client. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. The costs and
18 expenses incurred include mediation fees, deposition costs, court filing fees, courier charges, travel
19 costs, postage fees, and other related costs. *See Fisher Decl. ¶ 24, Ex. 4* (an itemized listing of each
20 out-of-pocket expense incurred by Bursor & Fisher in connection with this case). Of Plaintiff’s
21 costs and expenses, more than half is for the cost of two mediations. Plaintiff’s payments to
22 Judicate West amounted to \$18,750. Those payments were necessary to resolve the case, and Class
23 Counsel incurred those costs and expenses with no guarantee of repayment.

24 In sum, Class Counsel’s costs and expenses were necessarily and reasonably incurred to
25 bring this case to a successful conclusion, and they reflect market rates for the various categories of
26 expenses incurred.

1 **V. THE PROPOSED INCENTIVE AWARD TO THE CLASS REPRESENTATIVE IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 The Settlement provides that, subject to the Court’s approval, Plaintiff Anne Moulton will
4 receive an incentive award in the amount of \$5,000. The class representative in this case merits
5 this award, and Class Counsel recommends its approval. *See* Fisher Decl. ¶ 26 (discussing
6 Plaintiff’s contributions to the case); *see also* Moulton Decl. ¶¶ 3-10.

7 Incentive awards for class representatives are common in class actions, where the class
8 representative’s personal claims alone would never justify the effort required to prosecute complex
9 litigation. *See, e.g., In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-
10 95 (approving \$10,000 incentive payments to class representatives); *In re Domestic Air*
11 *Transportation Antitrust Litigation* (N.D. Ga. 1993) 148 F.R.D. 297 (\$142,500 awarded out of a
12 cash settlement fund of \$50 million); *In re Dun & Bradstreet Credit Services Customer Litigation*
13 (S.D. Ohio 1990) 130 F.R.D. 366 (\$215,000 awarded out of a settlement fund of \$18 million);
14 *Spicer v. Chicago Board Options Exchange, Inc.* (N.D. Ill. 1993) 844 F. Supp. 1226 (\$20,000
15 awarded out of settlement fund of \$10 million). Incentive awards compensate the class
16 representatives for actual costs in time, money and the disruption of life incurred in the prosecution
17 of the litigation. Such awards also encourage future plaintiffs to come forward and vindicate the
18 rights of other injured parties despite having little to gain personally from their claims. *In re*
19 *Cellphone Fee Termination Cases*, 186 Cal.App.4th at 1394-95.

20 In this case, Plaintiff has been required to devote efforts for *three years* on behalf of the
21 Class. Moulton Decl. ¶¶ 3-10. In the opinion of Class Counsel, Ms. Moulton has performed those
22 duties in an exemplary manner. Fisher Decl. ¶ 26 She was cooperative and responsive while
23 investigating her claims, during discovery, provided information and was consulted during the
24 drafting of her complaint and the process of mediating and negotiating the settlement, and has
25 remained engaged and committed as the named class representative throughout this protracted
26 litigation. *Id.* Notably, no Class Members have objected to Plaintiff’s receipt of this award to date.
27 *Id.*

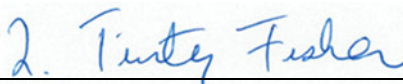
1 The Class therefore requests, and Class Counsel recommends, that the Court approve the
2 payment of an incentive award in the amount of \$5,000 to Plaintiff Moulton.

3
4 **VI. CONCLUSION**

5 For the foregoing reasons, the Court should approve the provisions of the Settlement
6 authorizing an award of attorneys' fees to Class Counsel in the amount of \$1,000,000 and costs and
7 expenses in the amount of \$27,804.47, and an award of \$5,000 as an incentive award to the Class
8 Representative. The award of these amounts is reasonable considering the skill and persistence
9 displayed by Class Counsel, the risk and delay undertaken because of counsel's contingent
10 representation of the class, and the benefits conferred by the Settlement on the Class Members.

11 Dated: February 14, 2025

BURSOR & FISHER, P.A.

12 By: 
13 L. Timothy Fisher

14 L. Timothy Fisher (State Bar No. 191626)
15 1990 North California Blvd., Suite 940
16 Walnut Creek, CA 94596
17 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ltfisher@bursor.com

18 **GUCOVSKI ROZENSHTEYN, PLLC**

19 Adrian Gucovski
20 140 Broadway, Fl. 46
New York, NY 10005
21 Telephone: (212) 884-4230
Facsimile: (212) 884-4230
E-Mail: adrian@gr-firm.com

22 *Attorneys for Plaintiff Anne Moulton*
23 *and the Proposed Settlement Class*