

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 ADRIAN J. BARRIO, #219266
4 GIANELLI & MORRIS, A Law Corporation
5 550 South Hope Street, Suite 1645
6 Los Angeles, CA 90071
7 Tel: (213) 489-1600; Fax: (213) 489-1611
8 rob.gianelli@gmlawyers.com
9 joshua.davis@gmlawyers.com
10 adrian.barrio@gmlawyers.com

11 Attorneys for Plaintiff
12 MARY CALDWELL,
13 on behalf of herself and all others
14 similarly situated

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 MARY CALDWELL, on behalf of herself and)
18 all others similarly situated,)
19 Plaintiff,)

20 v.)

21 UNITEDHEALTHCARE INSURANCE)
22 COMPANY; UNITED HEALTHCARE)
23 SERVICES, INC.,)
24 Defendants.)

25 Case No.: 3:19-cv-02861-WHA
26 Assigned to Hon. William H. Alsup
27 COURTROOM 12, 19th Floor

28 **PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AWARD OF ATTORNEY
FEES AND LITIGATION COSTS**

Date: November 16, 2023
Time: 11:00 a.m.
Place: Courtroom 12

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 16, 2023 at 11:00 a.m. in Courtroom 12 of the
3 above-entitled Court, located at Phillip Burton Federal Building & United States Courthouse, 450
4 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff Mary Caldwell will move the Court under
5 Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, and 29 U.S.C. section 1132(g)(1),
6 for an order: (1) awarding attorney fees in the amount of **\$1,005,170.62** and (2) litigation costs in the
7 amount of **\$125,677.96**.

8 This motion is based on this notice, the attached memorandum of points and authorities; the
9 Declaration of Joshua S. Davis; the Court's files and records in this action; and upon such other
10 matters as may be presented at the hearing.

11
12 DATED: August 15, 2023

GIANELLI & MORRIS

13 By: /s/ Adrian J. Barrio

14 ROBERT S. GIANELLI
15 JOSHUA S. DAVIS
16 ADRIAN J. BARRIO
Attorneys for Plaintiff
17 MARY CALDWELL
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TABLE OF CONTENTS

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

	<i>Page</i>
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. HISTORY OF THE LITIGATION AND SETTLEMENT.....	2
A. Relevant procedural history.....	2
B. Investigation and Discovery.....	5
III. THE SETTLEMENT CONFERS SUBSTANTIAL BENEFITS TO THE CLASS.....	7
IV. THE COURT SHOULD AWARD THE FULL AMOUNT OF ATTORNEY’S FEES AND COSTS PERMITTED BY LAW.....	8
A. The requested fee award is reasonable under the lodestar method.....	9
1. The number of hours that Class Counsel expended prosecuting this case is reasonable.....	10
2. Class Counsel’s hourly rates are reasonable.....	12
B. Class Counsel’s expenses were reasonably and necessarily incurred to achieve the Settlement.....	13
V. CONCLUSION.....	14

TABLE OF AUTHORITIES

<i>Cases</i>	<i>Page(s)</i>
<i>Blackwell v. Foley</i> , 724 F.Supp.2d 1068 (N.D. Cal. 2010).....	10
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	9
<i>Couch v. Cont’l Cas. Co.</i> , 2008 WL 131198 (E.D. Ky. Jan. 11, 2008).....	11
<i>Donachie v. Liberty Life Ass. Co. of Boston</i> , 745 F.3d 41 (2nd Cir. 2014).....	8
<i>Estiverne v. Esernio-Jenssen</i> , 908 F.Supp.2d 305 (E.D.N.Y. 2012).....	11
<i>Guillidge v. Hartford Life & Accid. Ins. Co.</i> , 501 F.Supp.2d 1280 (C.D. Cal. 2007).....	9
<i>Hanley v. Kodak Ret. Income Plan</i> , 663 F.Supp.2d 216 (W.D.N.Y. 2009).....	8
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994).....	14
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	9
<i>Morales v. City of San Rafael</i> , 96 F.3d 359 (9th Cir. 1997).....	9
<i>Operating Eng’rs Pension Trusts v. B & E Backhoe, Inc.</i> , 911 F.2d 1347 (9th Cir.1990).....	8,9
<i>S.A. McElwaine v. U.S. West, Inc.</i> , 176 F.3d 1167 (9th Cir. 1999).....	9
<i>Sierra Club v. U.S. Environmental Protection Agency</i> , 625 F.Supp.2d 863 (N.D. Cal. 2007).....	9
<i>United Steelworkers of Am. v. Phelps Dodge Corp.</i> , 896 F.2d 403 (9th Cir. 1990).....	9

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Statutes

29 U.S.C.
 § 1132.....1,2,8

Federal Rules of Civil Procedure
 Rule 23.....1,8

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This ERISA class action arises out of the practice of Defendants United Healthcare Services, Inc. and United Healthcare Insurance Company (collectively, “United”) to categorically deny coverage for liposuction to treat lipedema (“Lipedema Surgery”) on the ground it is “unproven.” After more than four years of hard-fought litigation, the parties reached a settlement of this case (hereinafter, “the Settlement”), which provides substantial benefits for the Class. Indeed, the Settlement will provide even more relief than requested in the First Amended Complaint.

United has agreed that it will cover Lipedema Surgery for all class members, whether or not they meet United’s medical necessity criteria, with no cap on reimbursement amounts. Class members who seek reimbursement for out-of-pocket payments will only need to fill out a simple claim form, and provide evidence of payment and medical records that indicate they had Lipedema Surgery. United will also cover future surgeries for class members who have not yet had Lipedema Surgery, even if they are no longer United members, so long as their surgeon verifies that the earlier pre-service request was for medically necessary Lipedema Surgery.

To compensate them for the benefits conferred upon the Class, Class Counsel requests an award of **\$1,005,170.62** in fees and **\$125,677.96** for litigation costs. This amount, which includes a 25% reduction in Class Counsel’s lodestar, is fair and reasonable, and adequately compensates Class Counsel for their substantial efforts. Class Counsel vigorously prosecuted this case, fought numerous discovery battles, and engaged in extensive expert consultation and discovery on the detailed medical issues presented by this case. This case has been aggressively litigated from the start, and Class Counsel has not received any compensation. Their fee has been wholly contingent upon obtaining a favorable result for the Class. Class Counsel has also advanced all litigation costs in this case.

The attorney fees and costs requested are authorized under Rule 23(h) of the Federal Rules of Civil Procedure and 29 U.S.C. section 1132(g)(1). Notably, the attorney fees and costs requested are separate from class settlement benefits. Thus, any fee and expense award will not affect the class relief.

1 In the absence of Class Counsel’s assiduous efforts, the significant class relief could not have
2 been achieved. To compensate them for their efforts, the Court should award them the requested fees
3 and expenses.

4 **II. HISTORY OF THE LITIGATION AND SETTLEMENT**

5 This ERISA class action challenged the practice of United to deny all requests for Lipedema
6 Surgery as “unproven” and not medically necessary. Prior to January 1, 2020, United’s medical
7 directors applied the position of its research arm (MTIS) to deny claims for Lipedema Surgery on this
8 basis. Effective January 1, 2020, United relied on its internal written Omnibus coverage guideline,
9 which included the position that “[l]iposuction for lipedema is unproven and not medically necessary
10 due to insufficient evidence of safety and/or efficacy.” (See Order for Class Certification [Dkt. 114]
11 at pp. 2-3.).

12 The operative First Amended Complaint (FAC) asserts class claims for declaratory and
13 injunctive relief on behalf of the class pursuant to 29 U.S.C. § 1132(a)(1)(B) for denial of plan
14 benefits under an ERISA plan and for clarification of rights and 29 U.S.C. § 1132(a)(3) for breach of
15 fiduciary duty and equitable relief under an ERISA plan. Ms. Caldwell sought an injunction requiring
16 United to reverse its coverage position, provide notice to members who have had requests for
17 Liposuction Surgery denied by United as “unproven,” re-review the denied claims under the proper
18 standard, and make payment where appropriate. (Dkt. 43 at ¶ 53.)

19 The firm of Gianelli & Morris undertook this class action case on a contingency basis. (Davis
20 Decl., ¶ 7.) The nature of the case—questioning a health plan’s determination that a relatively new
21 treatment for a disease was “Unproven”, i.e., ineffective “due to insufficient and inadequate clinical
22 evidence from well-conducted randomized controlled trials or cohort studies in the prevailing
23 published peer-reviewed medical literature,” involved complicated medical issues, and extensive
24 investigation, discovery, research, law and motion work and expert consultations.

25 **A. Relevant procedural history.**

26 Plaintiff’s original Complaint was filed on May 24, 2019. (Dkt 1.) United subsequently filed
27 a Rule 12(b)(6) motion to dismiss the Complaint on July 22, 2019. (Dkt. 25.) The Court granted the
28 motion in part holding Plaintiff’s Complaint did not allege the plan provision under which United

1 covered liposuction. (Dkt. 35.) Plaintiff subsequently filed the operative FAC on October 7, 2019 that
2 added more detailed allegations on the pertinent plan provisions. (Dkt. 43.)

3 After the parties conducted extensive discovery (discussed *infra* at section II.B), Plaintiff filed
4 a motion for class certification on September 10, 2020. (Dkt. 76.) United filed its opposition on
5 October 1, 2020, in which it argued that Plaintiff had failed to meet virtually all class elements,
6 including commonality, typicality, numerosity and ascertainability. (Dkt. 81.) Plaintiff filed her reply
7 brief on October 15, 2020. (Dkt. 84.) A hearing was held on November 5, 2021, and the Court took
8 the matter under submission.

9 On November 25, 2020, United filed a motion for summary judgment which argued, among
10 other things, that the undisputed facts showed United did not abuse its discretion. (Dkt. 102.) On
11 December 15, 2020, Plaintiff filed her opposition, which included detailed expert declarations from
12 leading surgeons and biostatisticians on Lipedema Surgery and the medical literature. (Dkt. 107.)

13 On December 29, 2020, the Court entered an order granting certification of the following
14 class:

15 All persons covered under ERISA health plans, self-funded or fully insured, that
16 are administered by United and whose claims for specialized liposuction for
17 treatment of their lipedema were denied as unproven between January 1, 2015 and
18 December 31, 2019.

18 A damages subclass will be created for members denied solely on the grounds
19 that liposuction is “unproven” for the treatment of lipedema.

19 (Dkt. 114 at p. 11.)

20 On January 27, 2021, the Court denied United’s motion for summary judgment. (Dkt. 125.)

21 On February 8, 2021, the Court modified the damages subclass as follows:

22 A damages subclass will be created for members denied solely on the grounds
23 that liposuction is “unproven” for the treatment of lipedema and who paid for the
24 surgery themselves.

25 (Dkt. 128.)

26 Following class certification and the denial of summary judgment, the parties engaged in
27 intensive settlement discussions and attended four settlement conferences with Magistrate Judge
28 Thomas Hixon at which they entered into a proposed settlement. (Davis Decl., ¶ 15.) The parties

1 subsequently sought preliminary approval of this first settlement, which was denied by this Court on
2 October 12, 2021, due in part to concerns it could not adequately evaluate the medical necessity
3 criteria in United's new medical policy on Lipedema Surgery, without its own expert, whose
4 appointment United had objected to. (Dkt. 206.)

5 Plaintiff subsequently engaged in further settlement discussions with United to address the
6 Court's concerns, but were unable to reach an agreement. (Davis Decl., ¶ 16.) On July 29, 2022, the
7 parties filed a joint statement requesting a new trial date. (Dkt. 213.) The Court set a new trial date for
8 March 7, 2023 (Dkt. 216.) Plaintiff then resumed trial preparation while continuing to attempt to
9 negotiate a class resolution. The Parties finally entered into a revised settlement agreement on
10 February 17, 2023, 12 days before the final pretrial conference and after spending significant time
11 preparing for trial. (Dkt. 219).

12 Plaintiff filed a renewed motion for preliminary approval which explained how the revised
13 agreement addressed the Court's concerns in the prior denial. (Dkt. 220.) Among other things, United
14 had agreed to cover past and future Lipedema Surgery for class members without regard to United's
15 medical necessity criteria.

16 The Court held a hearing on the renewed motion on April 13, 2023, in which it denied
17 preliminary approval, requesting that additional changes be made to the release and removing
18 language that could be construed to require that past surgeries take place in the United States or in a
19 network facility as a condition for reimbursement. (Dkt. 233-4.) The Court also ordered United to
20 produce the names and addresses for Class Members so that Plaintiff could attempt to contact them
21 and determine their status, i.e., how many had already paid for Lipedema Surgery out of pocket, and
22 who still needed and wanted Lipedema Surgery. (*Id.*)

23 Plaintiff subsequently contacted all but three Class Members and submitted a report on May
24 11, 2023. (Dkt. 226.) The Court then ordered the parties to submit a revised settlement for approval
25 by June 27, 2023 or it would re-set the case for trial. (Dkt. 229.) Plaintiff continued settlement
26 negotiations with United but again was unable to obtain United's agreement to the Court's requested
27 revisions by the deadline set by the Court, and so advised the Court on June 27, 2023. (Dkt. 230.) On
28 June 29, 2023, the Court set this case for a bench trial to commence on July 24, 2023. (Dkt. 231.)

1 Plaintiff then resumed preparing this case for trial, while also continuing to negotiate with
2 United. Finally, on July 11, 2023, Plaintiff filed notice that the parties had entered into a further
3 revised settlement that addressed the concerns expressed by the Court at the April 13, 2023 hearing.
4 (Dkt. 233.) Specifically, the settlement: (1) revised the Release to provide that Class Members only
5 release claims if they receive full reimbursement or accept partial reimbursement, or receive
6 authorization for future Lipedema Surgery; and (2) omitted from Section 4(b) the requirement Class
7 Members have had their Lipedema Surgery in a “setting” covered under their plan to qualify for
8 reimbursement, and added language clarifying they only need coverage at the time of the original
9 denial. (*Id.* at 2-5.)

10 On July 13, 2023, the Court set a preliminary approval hearing for the revised settlement to
11 take place on July 20, 2023. (Dkt. 236.) However, the Court indicated that the bench trial would
12 remain on calendar for July 24, 2023 and would not be vacated unless and until the revised settlement
13 was approved at the July 20, 2023 preliminary approval hearing. (*Id.*) The Court vacated “current
14 deadlines regarding motions in limine,” (*id.*), but the deadlines for other pre-trial filings remained on
15 calendar per the Court’s Guidelines for Trial and Final Pretrial Conference in Civil Bench Cases.

16 On July 17, 2023, per the Court’s Guidelines for Trial and Final Pretrial Conference in Civil
17 Bench Cases, the parties filed a Joint Proposed Final Pretrial Order. (Dkt. 241.) Plaintiff also filed a
18 Trial Brief, Proposed Findings of Fact and Conclusions of Law, and Notice of Filing Plaintiff’s FRCP
19 Rule 26(a)(3) Disclosures and Objections to Defendant’s Disclosures. (Dkt. Nos. 242, 243, 244.)

20 On July 20, 2023, the Court granted preliminary approval of the revised settlement agreement,
21 set a Final Approval Hearing for November 16, 2023, and vacated the trial date. (Dkt. 245.)

22 **B. Investigation and Discovery.**

23 The parties’ settlement occurred after four years of litigation, and four days before trial was
24 set to commence, and was well informed by the extensive discovery and investigation completed up
25 to that point. (Davis Decl., ¶ 25.)

26 At the time of the Settlement, United had produced about 14,965 pages of documents on class
27 and merits issues. (Davis Decl., ¶ 26.) For their part, Plaintiff produced nearly 1,900 pages of
28 information supportive of her position that United’s policies and practices are amenable to class

1 treatment and that Lipedema Surgery is safe and effective. (*Id.*) Plaintiffs served four sets of requests
2 for production of documents. Plaintiff also served interrogatories and requests for admissions, and
3 responded to written discovery served by United. (*Id.*)

4 In addition, Plaintiff deposed 12 United witnesses, traveling to Washington, D.C. and Phoenix
5 for several depositions. (Davis Decl., ¶ 27.) These witnesses included: (1) two depositions of Dr.
6 Upasana Bhatnagar, a United senior medical director and team lead for the clinical writers of United's
7 medical policy team, who testified as United's 30(b)(6) witness on, among other things, the
8 conclusions and basis for conclusions that Lipedema Surgery was "Unproven," all research
9 conducted, and United's policies and procedures for handling Lipedema Surgery claims; (2) Dr. Anne
10 Cramer, a United Senior Medical Director who was in charge of the member appeals and was the
11 plastic surgeon subject matter expert on United's policy that Lipedema Surgery was unproven; (3) Dr.
12 Donald Stepita, a United Senior Medical Director who handled plastic surgery appeals including both
13 of Plaintiff's appeals; (4) Caron Ory, a United medical management consultant who researched and
14 drafted United's medical policy on Lipedema Surgery; (5) Lisa Nelson, another United policy writer
15 who also conducted research on Lipedema Surgery for United; (6) Jayne Cappiello, United's Director
16 of Prior Authorization, who testified as United's 30(b)(6) witness on United's pre-authorization data
17 and records, (7) Jason Schoonover, who testified as United's 30(b)(6) witness on post-service claims
18 data; (8) Dr. William Utley, a United medical director who testified as United's 30(b)(6) witness on
19 United's handling of Plaintiff's 2019 request for Lipedema Surgery; and (9) Dr. Ash Chabra, a United
20 Medical Director who testified as United's 30(b)(6) witness on the handling of Plaintiff's 2017
21 request for Lipedema Surgery. (*Id.*) United also took depositions of Plaintiff and Angela Blaikie,
22 Plaintiff's physical therapist. (*Id.*)

23 It was through this extensive discovery that Plaintiff was able to uncover United's practice as
24 evidenced by the MTIS document, and develop the evidence needed to challenge United's coverage
25 position as not just wrong, but an abuse of its discretion. (Davis Decl., ¶ 28.)

26 Like every other aspect of this case, discovery was hard fought and contested. (Davis Dec., ¶
27 29.) Several discovery disputes arose that required Court assistance. Plaintiff filed three discovery
28 letter briefs, which resulted in three discovery conferences and two discovery orders. (*Id.*, See also,

1 Dkt. Nos. 51, 53, 56, 66, 70.)

2 Class Counsel supplemented formal discovery with their own investigation and research.
3 (Davis Dec., ¶ 30.) Class Counsel engaged in extensive investigation and research regarding the
4 safety and effectiveness of Lipedema Surgery and retained and extensively worked with renowned
5 experts on lipedema, reconstructive surgery, and the body of medical literature addressing it. (*Id.*)
6 These included Drs. Dung Nguyen and Stanley Rockson from Stanford University and Dr. Branko
7 Kopjar, a biostatistician from the University of Washington. (*Id.*) The parties exchanged expert
8 reports on December 21, 2021 and rebuttal reports on January 21, 2022. (*Id.*)

9 **III. THE SETTLEMENT CONFERS SUBSTANTIAL BENEFITS TO THE CLASS**

10 United has agreed to cover Lipedema Surgery for all class members, with no cap on
11 reimbursement amounts.

12 Class Members who paid out of pocket for Lipedema Surgery will get reimbursed by filling
13 out a simple claim form, and providing evidence of payment and medical records that indicate they
14 had Lipedema Surgery. (Revised Settlement, ¶ 4(B); Dkt. 233-2 at 9.) For Class Members who have
15 not yet had Lipedema Surgery, so long as the Class Member's surgeon verifies that their earlier pre-
16 service request was for medically necessary Lipedema Surgery, United will cover their future
17 surgery. (Revised Settlement, ¶ 5(D)-(E); Dkt. 233-2 at 11-12.) United will provide coverage for
18 future surgeries for Class Members who are no longer United members, as long as they were covered
19 by United at the time of the original denial. (Revised Settlement, ¶ 4(B); Dkt. 233-2 at 9.)

20 Class Counsel has agreed to assist class members in submitting their reimbursement and
21 reprocessing requests. (Revised Settlement, ¶ 6. Dkt. 233-2 at 16.) United has also agreed to assist
22 class members who submit reimbursement and reprocessing requests when additional information is
23 needed to perfect a claim. United will advise class members in writing of what specific additional
24 information it needs, and offer a peer to peer telephone conference with a medical director within 60
25 days of receiving a claim submission or reprocessing request. (*Id.*)

26 If Class Members' reimbursement and/or reprocessing requests are denied for any reason, the
27 Revised Settlement does away with the need for new lawsuits, by providing a streamlined appeal
28 process to a special master. (Revised Settlement, ¶ 7, Dkt. 233-2 at 13.) If a Class Member receives

1 an unfavorable decision, Class Counsel and United’s Counsel will meet and confer and attempt to
2 resolve the dispute. If they are unable to resolve it, Class Counsel and United’s Counsel will
3 jointly and concisely present the matter to the special master for final resolution. (*Id.*)

4 The Revised Settlement has no cap on the amount that United will pay as part of any
5 reimbursements for Lipedema Surgery. The only reductions will be the cost-share (deductible or co-
6 insurance) the Class Members would have paid under their contract with United. (Revised Settlement,
7 ¶¶ 4(b) and 5(E), Dkt. 233-2 at 10 and 12.)

8 The Revised Settlement’s Release provides that Class Members release claims only if they
9 receive full reimbursement or accept partial reimbursement, or receive authorization for future
10 Lipedema Surgery. In addition, the Release is narrow and applies only to the certified claims in this
11 lawsuit, in accordance with this Court’s Standing Order on Class Action Settlements. (Revised
12 Settlement, Definition O and ¶ 10; Dkt. 233-2 at 7 and 14.)

13 In addition to the class benefits from the Settlement, this litigation has also resulted in major
14 coverage changes by United as to Lipedema Surgery. As a direct result of this litigation, United
15 eliminated its “Unproven” coverage position on Lipedema Surgery from its Omnibus medical
16 policy and no longer denies Lipedema Surgery as “unproven.” (Davis Decl., ¶ 32.) This will result
17 in hundreds of covered surgeries over the next five years, that would otherwise have been denied as
18 unproven.

19 **IV. THE COURT SHOULD AWARD THE FULL AMOUNT OF ATTORNEYS’ FEES**
20 **AND COSTS PERMITTED BY LAW**

21 This is not a common fund class action certified under FRPC 23(b)(3), but a declaratory and
22 injunctive relief class action certified under FRCP 23(b)(2). Accordingly, Plaintiff is seeking ERISA
23 statutory fees and costs pursuant to the fee-shifting statute, 29 U.S.C. section 1132(g)(1). ERISA’s fee
24 provisions in particular are intended to encourage beneficiaries to enforce their statutory rights,
25 *Donachie v. Liberty Life Ass. Co. of Boston*, 745 F.3d 41, 45-46 (2nd Cir. 2014), and “to encourage
26 attorneys to take on such cases, which are often time consuming and complex,” *Hanley v. Kodak Ret.*
27 *Income Plan*, 663 F.Supp.2d 216, 219 (W.D.N.Y. 2009). The Ninth Circuit has rejected the rule that
28 ERISA fees be proportional to the underlying benefit provided. *Operating Eng’rs Pension Trusts v. B*

1 & *E Backhoe, Inc.*, 911 F.2d 1347, 1355 (9th Cir.1990) (rejecting a proportionality rule). ERISA fees
2 must be determined using the lodestar method. *S.A. McElwaine v. U.S. West, Inc.*, 176 F.3d 1167,
3 1173 (9th Cir. 1999) (held ERISA fees must be calculated using the lodestar method).

4 Pursuant to ERISA’s fee-shifting statute, Plaintiff respectfully requests a fee award in the
5 amount of **\$1,005,170.62** and a cost award in the amount of **\$125,677.96**. As set forth below, the
6 requested fee amounts include a 25% reduction in Class Counsel’s lodestar, and represent time and
7 costs reasonably and necessarily incurred to achieve a resolution of this matter and are therefore
8 authorized under ERISA.

9 **A. The requested fee award is reasonable under the lodestar method.**

10 “The customary method of determining fees ... is known as the lodestar method.” *Morales v.*
11 *City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1997). The lodestar fee is determined by multiplying
12 the number of hours reasonably expended by a reasonable hourly rate. *Id.* The inquiry as to whether
13 the hours expended are reasonable is made in view of the ultimate result of the litigation, not a
14 hindsight examination of each discrete step along the way. So long as the hours expended were
15 reasonably incurred in pursuit of that ultimate result and were spent on the type of work that would be
16 billed to a paying client, they are properly included in the lodestar calculation. *Hensley v. Eckerhart*,
17 461 U.S. 424, 431, 434 (1983). The calculation properly includes time expended in pre-litigation
18 activity (interviewing the client, investigating the facts and law, developing litigation strategy, and
19 drafting the pleadings); time expended during litigation, including appellate proceedings; and time
20 expended to apply for a fee award. *Sierra Club v. U.S. Environmental Protection Agency*, 625
21 F.Supp.2d 863, 869-871 (N.D. Cal. 2007).

22 A reasonable hourly rate is determined by reference to the prevailing market rate, in the
23 relevant legal market, for attorneys of comparable experience, expertise, and skill in comparably
24 complex work. *Blum v. Stenson*, 465 U.S. 886, 895, fn. 11 (1984). Counsel’s declarations, prior fee
25 awards, and fees for other comparably qualified counsel performing comparable work in the market
26 are factors to consider. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th
27 Cir. 1990) (noting plaintiffs’ counsel’s affidavits and affidavits of other attorneys are satisfactory
28 evidence regarding prevailing rates); *Guillidge v. Hartford Life & Accid. Ins. Co.*, 501 F.Supp.2d

1 1280, 1282-83 (C.D. Cal. 2007) (basing fee award on prior award for comparably complex work in
2 same judicial district).

3 Applying the lodestar formula, the total lodestar amount in this case is \$1,340,227.5 (Davis
4 Decl., ¶ 31.) As set forth below, the key factors in computing the lodestar—the amount of hours
5 worked by Class Counsel and Class Counsel’s hourly rates—are reasonable. Further, Class Counsel
6 request for fees in the amount **\$1,005.170.62**, incorporates a 25% reduction in the total lodestar
7 sought, making the requested fees sought more than reasonable.

8 **1. The number of hours that Class Counsel expended prosecuting this case is**
9 **reasonable.**

10 Plaintiff and the Class were represented by the law firm of Gianelli & Morris, ALC. As set
11 forth in the attorney declaration of Joshua S. Davis, Class Counsel has spent an aggregate of 1,976.2
12 attorney hours investigating and prosecuting this case.¹ (Davis Decl., ¶¶ 36-42, 53.) “An attorney’s
13 sworn testimony that, in fact, he took the time claimed ... is evidence of considerable weight on the
14 issue of the time required.” *Blackwell v. Foley*, 724 F.Supp.2d 1068, 1081 (N.D. Cal. 2010).

15 This case was settled after over four years of litigation, on the eve of trial. United fought
16 Plaintiff at each step of the way. United challenged the pleadings under Rule 12(b)(6), vigorously
17 opposed class certification, and filed a motion for summary judgment. Extensive trial preparation,
18 including the preparation of pre-trial documents, was required before the parties were able to reach
19 settlement.

20 The scope and depth of discovery further supports Class Counsel’s estimate of the time spent
21 prosecuting this case. At the time of settlement, United had produced nearly 15,000 pages of
22 information concerning the class and merits issues. (Davis Dec., ¶ 26.) For their part, Plaintiffs
23 produced nearly 1,900 pages of information supportive of their position that United’s policies and
24 practices are amenable to class treatment and that Lipedema Surgery is safe and effective. (*Id.*)

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¹ As set forth in the Declaration of Joshua S. Davis, the total hours spent are broken down by category of activity, in accordance with this district’s procedural guidance. *See* Procedural Guidance, Final Approval ¶ 2 (“Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed.”).

1 Plaintiffs served four sets of requests for production of documents. Plaintiff also served
2 interrogatories and requests for admissions. (*Id.*) In addition, Plaintiff took 12 depositions of United
3 employees and doctors, traveling to Washington, D.C. and Phoenix for several depositions, and
4 prepared for and defended the deposition of Plaintiff’s witnesses. (*Id.*, ¶ 27.) The parties also
5 engaged in expert discovery, exchanging expert reports and rebuttal expert reports. (*Id.*, ¶ 30.)

6 Several discovery disputes arose that required Court assistance. Plaintiff filed three discovery
7 letter briefs, which resulted in three discovery conferences and two discovery orders. (*Id.*, ¶ 29; *see*
8 *also*, Dkt. Nos. 51, 53, 56, 66, 70.)

9 Class Counsel supplemented formal discovery efforts with their own investigation and
10 research. (Davis Dec., ¶ 30.) Class Counsel engaged in extensive investigation and research regarding
11 the safety and effectiveness of Lipedema Surgery and retained and extensively worked with
12 renowned experts on lipedema, reconstructive surgery, and the body of medical literature addressing
13 it. (*Id.*)

14 The time spent negotiating the settlement—which necessitated a review of the pertinent
15 coverage documents, the class and merits issues, the outstanding discovery issues, working with
16 experts and drafting settlement documents—was also reasonable and necessary to achieve the
17 settlement. (Davis Decl. at ¶ 39.) *Couch v. Cont’l Cas. Co.*, 2008 WL 131198 at *5 (E.D. Ky. Jan. 11,
18 2008) (awarding attorneys’ fees for time spent in settlement negotiations, in an ERISA action,
19 because “settlement discussions are an ordinary part of the litigation process”); *Estiverne v. Esernio-*
20 *Jenssen*, 908 F.Supp.2d 305, 310 (E.D.N.Y. 2012) (disallowing attorney's fees for even unsuccessful
21 settlement negotiations would chill attorneys' pre-trial settlement efforts).

22 In sum, in litigating the case and negotiating the Settlement, Class Counsel endeavored to
23 work efficiently and minimize duplication of efforts. The attorney hours spent on this case were
24 necessary to achieve the Settlement and were thus reasonably incurred.

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2. Class Counsel’s hourly rates are reasonable.

The following are the billing rates for the Gianelli & Morris attorneys who performed work on this case:

Robert S. Gianelli	\$900 per hour
Joshua S. Davis	\$700 per hour
Adrian J. Barrio	\$675 per hour
Loring Rose	\$500 per hour

(Davis Decl., ¶ 43.)

Each of these rates has already been found reasonable and awarded in other class action cases for each of the billers. The rate sought for Mr. Gianelli was found reasonable and awarded in *Atzin, et al. v. Anthem, Inc.*, (C.D. Cal.) Case No. 2:17-CV-06816-ODW (PLAx); *Trujillo v. UnitedHealth Group, Inc.* (C.D. Cal.) Case No. ED CV 17-2547-JFW (KKx) (“*Trujillo*”); *Hill v. UnitedHealthcare Insurance Company* (C.D. Cal.) Case No. SACV15-00526 DOC (RNBx) (“*Hill*”); *GBodner v. California Physicians’ Service dba Blue Shield of California Life and Health Insurance Company*, Los Angeles Superior Court Case No. BC516868 (“*Bodner*”), *Dion v. Kaiser Foundation Health Plan, Inc.*, Alameda County Superior Court Case No. RG14718903 (“*Dion*”); *Bradford v. Anthem, Inc., et al.*, United States District Court (C.D. Cal.), Case No. 2:17-CV-5098-AB (“*Bradford*”); *Voshall v. Metropolitan Life Insurance Company*, Los Angeles Superior Court, Case No. BC5779832 (“*Voshall*”); *Akmal, et al. v. California Physicians’ Service dba Blue Shield of California*, Los Angeles Superior Court, Case No. BC540033 (“*Akmal*”); *Escalante v. California Physicians Service dba Blue Shield of California*, United States District Court (C.D. Cal.), Case No. 2:14-CV-3021 (“*Escalante*”); *Gallimore v. Kaiser Foundation Health Plan, Inc.*, Superior Court of Alameda County, Case No. RG12616206 (“*Gallimore*”); *Vaccarino, et al. v. Midland National Life Ins. Co.*, United States District Court (C.D. Cal.), Case No. 11 CV 5858 CAS (MANx) (“*Vaccarino*”); *Arce v. Kaiser Foundation Health Plan, Inc.*, Los Angeles Superior Court, Case No. BC388689 (“*Arce*”); and *Glick v. Anthem Blue Cross Life & Health Ins. Co.*, Los Angeles Superior Court, Case No. BC393528 (“*Glick*”). (Davis Decl. at ¶ 44.)

1 Similarly, the rate sought for Mr. Davis was previously found reasonable and awarded in
2 *Atzin, Trujillo, Hill, Bodner, Dion, Bradford, Vaccarino, Gallimore, Escalante, and Akmal*, and for
3 Mr. Barrio in *Atzin, Trujillo, Hill, Bodner, Dion, Bradford, Gallimore, Escalante, Akmal*, and
4 *Voshall*, and for Mr. Rose in *Goolsby*. (*Id.* at ¶ 45.)

5 The hourly rates sought here for Gianelli and Morris are previously approved Bay Area
6 market rates. Gianelli & Morris' attorney's hourly rates were established through a contested fee
7 application in 2016, following a successful class action trial that took place in Alameda Superior
8 Court in Oakland, California in the matter entitled *Gallimore v. Kaiser Foundation Health Plan, Inc.*,
9 Case No. RG12616206. (Davis Decl., ¶ 46.) In *Gallimore*, Gianelli & Morris successfully obtained a
10 judgment against Kaiser requiring it to provide insurance coverage for excess skin surgery for a class
11 of bariatric patients. (*Id.*) In granting Plaintiff's fee motion, the court held that Class Counsel's
12 requested hourly rates were within the range of reasonableness for the San Francisco Bay Area.

13 Having reviewed the competing reports of the parties' respective fee experts and
14 the materials upon which their opinions are based, including the various trial court
15 orders in other cases, the court, in its discretion, concludes that the opinions
16 expressed by Plaintiffs fee expert, that the rates advanced by GM for each of its
17 attorneys are reasonable, are consistent with the authorities cited and the court's
18 own experience, while the opinions of Kaiser's fee expert are not. The rates of
19 \$900/hr. for Robert S. Gianelli, \$700/hr. for Joshua Davis, ... \$675/hr. for Adrian
20 Barrio, are within the range of rates appropriate to the community of attorneys
21 with comparable skill, expertise and experience in class action litigation in the
22 San Francisco Bay Area and are hereby approved.

(Order Granting Fees in *Gallimore*, p. 8, (Exhibit 1).) A copy of the two expert declarations of Gary
Greenfield filed in support of the *Gallimore* fee application, which explains why the requested rates
were within the range of reasonableness for the Bay Area market, are attached as Exhibits 2 and 3.

23 The same hourly rates were again approved in another Bay Area class action involving mental
24 health benefits entitled *Dion v. Kaiser Foundation Health Plan, Inc.*, Case No. RG 14718903, which
25 was also venued in Alameda Superior Court in Oakland, California. (Davis Decl., ¶ 49.)

26 **B. Class Counsel's expenses were reasonably and necessarily incurred to achieve the Settlement.**

27 Class Counsel has submitted a declaration setting forth the litigation expenses incurred, and
28 attesting to their accuracy. (Davis Decl., ¶¶ 56-58.) Class Counsel incurred costs on experts and

1 consultants, discovery, electronic research, transcripts, and photocopies. (*Id.*, ¶ 58.) The total amount
2 of costs incurred by Class Counsel is \$125,677.96. (*Id.*)

3 All of the expenses itemized in Class Counsel’s declarations are typically billed by attorneys
4 to fee-paying clients. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). And all of these costs were
5 necessary and reasonably incurred to achieve the settlement. (*Id.*)

6 **V. CONCLUSION**

7 In light of the services rendered and the substantial benefits obtained under the Settlement,
8 Plaintiff and the Class respectfully request that the Court award Class Counsel attorney fees in the
9 amount of **\$1,005,170.62** and litigation costs in the amount of **\$125,677.96**.

10
11 DATED: August 15, 2023

GIANELLI & MORRIS

12
13 By: /s/ Adrian J. Barrio
14 ROBERT S. GIANELLI
15 JOSHUA S. DAVIS
16 ADRIAN J. BARRIO
17 Attorneys for Plaintiff
18 MARY CALDWELL
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27
28

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 ADRIAN J. BARRIO, #219266
4 GIANELLI & MORRIS, A Law Corporation
5 550 South Hope Street, Suite 1645
6 Los Angeles, CA 90071
7 Tel: (213) 489-1600; Fax: (213) 489-1611
8 rob.gianelli@gmlawyers.com
9 tim.morris@gmlawyers.com
10 joshua.davis@gmlawyers.com
11 adrian.barrio@gmlawyers.com

12 Attorneys for Plaintiff
13 MARY CALDWELL,
14 on behalf of herself and all others
15 similarly situated

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18 MARY CALDWELL, on behalf of herself and)
19 all others similarly situated,)
20 Plaintiff,)

21 v.)

22 UNITEDHEALTHCARE INSURANCE)
23 COMPANY; UNITED HEALTHCARE)
24 SERVICES, INC.,)
25 Defendants.)

Case No.: 3:19-cv-02861-WHA
Assigned to Hon. William H. Alsup
COURTROOM 12, 19th Floor

**DECLARATION OF JOSHUA S. DAVIS IN
SUPPORT PLAINTIFF'S MOTION FOR
AWARD OF ATTORNEY FEES AND
LITIGATION COSTS**

Date: November 16, 2023
Time: 11:00 a.m.
Place: Courtroom 12

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28

1 I, Joshua S. Davis, declare:

2 1. I am an attorney licensed in California and duly admitted to practice law before this
3 Court. I am an attorney in the law firm of Gianelli & Morris, attorneys of record for Plaintiff Mary
4 Caldwell (“Caldwell”) and the class in this case. I submit this declaration in support of Plaintiff’s
5 motion for attorney fees and litigation costs. I have been involved in all aspects of litigating this
6 action and I have first-hand knowledge of all matters stated in this declaration. If called upon to
7 testify, I could competently do so.

8 2. The law firm of Gianelli & Morris (“Gianelli & Morris” or “Class Counsel”) has
9 specialized in representing aggrieved consumers in complex insurance class action and unfair
10 business practices (Business & Professions Code section 17200) litigation for over thirty (30) years.
11 I have been a practicing attorney for over twenty years. During this time, I have handled the
12 investigation, preparation, trial, and appeals of numerous consumer class actions, in both state and
13 federal courts.

14 3. Gianelli & Morris has been appointed class counsel in a number of significant
15 consumer class actions, including: *Atzin v. Anthem, Inc., et al.* (C.D. Cal.); *Bradford v. Anthem,*
16 *Inc., et al.* (C.D. Cal.) Case No. 2:17-CV-5098-AB (KSx); *Trujillo v. UnitedHealth Group, Inc.*
17 (C.D. Cal.) Case No. ED CV 17-2547-JFW (KKx); *Goolsby v. Anthem, Inc., et al.* (C.D. Cal.); *Hill*
18 *v. UnitedHealthcare Insurance Company* (C.D. Cal.) Case No. SACV15-00526 DOC (RNBx);
19 *Sanchez v. Allianz Life Insurance Company of North America*, Los Angeles Superior Court Case
20 No. BC594715, *Bodner v. California Physicians’ Service dba Blue Shield of California Life and*
21 *Health Insurance Company*, Los Angeles Superior Court Case No. BC516868, *Dion v. Kaiser*
22 *Foundation Health Plan, Inc.*, Alameda County Superior Court Case No. RG14718903; *Akmal v.*
23 *California Physicians’ Service dba Blue Shield of California*, Los Angeles Superior Court Case No.
24 BC 540033; *Escalante v. California Physicians Service dba Blue Shield of California Life and*
25 *Health Insurance Company* (C.D. Cal.) Case No. 2:14-CV-3021; *Gallimore v. Kaiser Foundation*
26 *Health Plan, Inc.*, Alameda Superior Court, Case No. RG12616206; *Vaccarino v. Midland National*
27 *Life Ins. Co.* (C.D. Cal.) Case No. 11 CV-5858 CAS; *Arce v. Kaiser Foundation Health Plan, Inc.*,
28 Los Angeles Superior Court, Case No. BC388689; *Bath v. Blue Shield of California*, San Luis

1 Obispo Superior Court, Case No. CV070360; *Ticconi v. Blue Shield Life & Health Ins. Co.*, Los
2 Angeles Superior Court, Case No. BC330989; *Peterman v. North American Co. for Life and*
3 *Health*, Los Angeles Superior Court, Case No. BC357194; *Stephens v. American Equity Investment*
4 *Life Insurance Company*, San Luis Obispo Superior Court, Case No. CV040965; *Iorio v. Allianz*
5 *Life Ins. Co. of North America* (S.D. Cal.) Case No. 05-CV-0633 IEG; *Chastain v. Union Security*
6 *Life Insurance Company* (C.D. Cal.) Case No. 06-CV-5885 ABC; and *Kavruck v. Blue Cross of*
7 *California*, Los Angeles Superior Court, Case No. BC160180.

8 4. Gianelli & Morris has represented the insureds in a number of significant, published
9 consumer law decisions, including: *Hendricks v. Aetna Life Insurance Company*, 339 F.R.D. 143
10 (C.D. Cal. 2021); *Escalante v. California Physicians Service dba Blue Shield of California*, 309
11 F.R.D. 612 (C.D. Cal. 2015); *Myers v. State Board of Equalization*, 240 Cal.App.4th 722 (2015);
12 *Broberg v. The Guardian Life Insurance Co.*, 171 Cal.App.4th 912 (2009); *Rodriguez v. Blue Cross*
13 *of California*, 162 Cal.App.4th 330 (2008); *Kavruck v. Blue Cross of California*, 108 Cal.App.4th
14 773 (2003); *State Farm Mutual Auto. Ins. Co. v. Superior Court (Hill)*, 114 Cal.App.4th 434
15 (2003); *IT Corp. v General American*, 107 F.3d 1415 (9th Cir. 1997); *American States Ins. Co. v.*
16 *Borbor*, 826 F.2d 888 (9th Cir. 1987); and *Hansen v. Blue Cross*, 891 F.2d 1384 (9th Cir. 1989);
17 and *Allstate v. Overton*, 160 Cal.App.3d 84 (1984).

18 5. This ERISA class action challenged the practice of Defendants United Healthcare
19 Insurance Company's ("UHIC") and United Healthcare Services, Inc. ("UHS") (collectively,
20 "United") to categorically deny all requests for liposuction to treat lipedema ("Lipedema Surgery")
21 as "unproven" and not medically necessary. Prior to January 1, 2020, United's medical directors
22 applied the position of its research arm (MTIS) to deny claims for Lipedema Surgery on this basis.
23 Effective January 1, 2020, United relied on its internal written Omnibus coverage guideline, which
24 included the position that "[l]iposuction for lipedema is unproven and not medically necessary due
25 to insufficient evidence of safety and/or efficacy." (See Order for Class Certification (Dkt. 114) at
26 pp. 2-3.).

27 6. The operative First Amended Complaint (FAC) asserts class claims for declaratory
28 and injunctive relief on behalf of the class pursuant to 29 U.S.C. § 1132(a)(1)(B) for denial of plan

1 benefits under an ERISA plan and for clarification of rights and 29 U.S.C. § 1132(a)(3) for breach
2 of fiduciary duty and equitable relief under an ERISA Plan. Ms. Caldwell sought an injunction
3 requiring United to reverse its coverage position, provide notice to members who have had requests
4 for Liposuction Surgery denied by United as “unproven,” re-review the denied claims under the
5 proper standard, and make payment where appropriate.

6 7. The firm of Gianelli & Morris undertook this class action case on a contingency
7 basis. The nature of the case—questioning a health plan’s determination that a treatment for a
8 disease was “Unproven”, i.e. ineffective “due to insufficient and inadequate clinical evidence from
9 well-conducted randomized controlled trials or cohort studies in the prevailing published peer-
10 reviewed medical literature,” involved complicated medical issues, and extensive investigation,
11 discovery, research, law and motion work and expert consultations.

12 8. Plaintiff’s original Complaint was filed on May 24, 2019. United subsequently filed
13 a Rule 12(b)(6) motion to dismiss the Complaint on July 22, 2019. The Court granted the motion in
14 part holding Plaintiff’s Complaint did not allege the plan provision under which United covered
15 liposuction. Plaintiff subsequently filed the operative FAC on October 7, 2019 that added more
16 detailed allegations on the pertinent plan provisions.

17 9. After the parties conducted extensive discovery, Plaintiffs filed a motion for class
18 certification on September 10, 2020. United filed its opposition on October 1, 2020, in which it
19 argued that Plaintiff had failed to meet virtually all class elements, including commonality,
20 typicality, numerosity and ascertainability. Plaintiff filed her reply brief on October 15, 2020. A
21 hearing was held on November 5, 2021, and the Court took the matter under submission.

22 10. On November 25, 2020, United filed a motion for summary judgment which argued,
23 among other things, that the undisputed facts showed United did not abuse its discretion.

24 11. On December 15, 2020, Plaintiff filed her opposition, which included detailed expert
25 declarations from leading surgeons and biostatisticians on Lipedema Surgery and the medical
26 literature.

27 12. On December 29, 2020, the Court entered an order granting certification of
28 following class:

1 All persons covered under ERISA health plans, self-funded or fully insured, that are
2 administered by United and whose claims for specialized liposuction for treatment of their
lipedema were denied as unproven between January 1, 2015 and December 31, 2019.

3 A damages subclass will be created for members denied solely on the grounds that
4 liposuction is “unproven” for the treatment of lipedema. (Dkt. 114 at p. 11.)

5 13. On January 27, 2021, the Court denied United’s motion for summary judgment.

6 14. On February 8, 2021, the Court modified the damages subclass as follows:

7 A damages subclass will be created for members denied solely on the grounds that
8 liposuction is “unproven” for the treatment of lipedema and who paid for the surgery
themselves. (Dkt. 128.)

9 15. Following class certification and the denial of summary judgment, the parties
10 engaged in intensive settlement discussions and attended four settlement conferences with
11 Magistrate Judge Thomas Hixon at which they entered into a proposed settlement. The parties
12 subsequently sought preliminary approval of this first settlement, which was denied by this Court
13 on October 12, 2021, due in part to concerns it could not adequately evaluate the medical necessity
14 criteria in United’s new medical policy on Lipedema Surgery without its own expert, whose
15 appointment United had objected to.

16 16. Class Counsel subsequently engaged in further settlement discussions with United to
17 address the Court’s concerns, but were unable to reach an agreement. On July 29, 2022 the Parties
18 filed a joint statement requesting a new trial date. The Court set a new trial date for March 7, 2023.

19 17. Class Counsel then resumed trial preparation while continuing to attempt to
20 negotiate a class resolution. The Parties finally entered into a revised settlement agreement on
21 February 17, 2023, 12 days before the final pretrial conference and after spending significant time
22 preparing for trial.

23 18. Plaintiff filed a renewed motion for preliminary approval which explained how the
24 revised agreement addressed the Court’s concerns in the prior denial. Among other things, United
25 had agreed to cover past and future Lipedema Surgery for class members without regard to United’s
26 medical necessity criteria.

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1 19. The Court held a hearing on the renewed motion on April 13, 2023, in which it
2 denied preliminary approval, requesting that additional changes be made to the release and
3 removing language that could be potentially construed to require that past surgeries take place in
4 the United States or in a network facility as a condition for reimbursement. The Court also ordered
5 United to produce the names and addresses of all absent Class Members so that Plaintiff could
6 attempt to contact them and determine their status, i.e., how many had already paid for Lipedema
7 Surgery out of pocket, and who still needed and wanted Lipedema Surgery.

8 20. Class Counsel subsequently contacted all but three Class Members and submitted a
9 report on May 11, 2023. The Court then ordered the Parties to submit a revised settlement for
10 approval by June 27, 2023 or it would re-set the case for trial. Class Counsel continued settlement
11 negotiations with United but again was unable to obtain United's agreement to the Court's
12 requested revisions by the deadline set by the Court, and so advised the Court on June 27, 2023. On
13 June 29, 2023, the Court set this case for a bench trial to commence on July 24, 2023.

14 21. Class Counsel then resumed preparing this case for trial, while also continuing to
15 negotiate with United. Finally, on July 11, 2023, Plaintiff filed notice that the parties had entered
16 into a further revised settlement that addressed the concerns expressed by the Court at the April 13,
17 2023 hearing. Specifically, the settlement: (1) revised the Release to provide that Class Members
18 only release claims if they receive full reimbursement or accept partial reimbursement, or receive
19 authorization for future Lipedema Surgery; and (2) omitted from Section 4(b) the requirement Class
20 Members have had their Lipedema Surgery in a "setting" covered under their plan to qualify for
21 reimbursement, and added language clarifying they only need coverage at the time of the original
22 denial.

23 22. On July 13, 2023, the Court set a preliminary approval hearing for the revised
24 settlement to take place on July 20, 2023. However, the Court indicated that the bench trial would
25 remain on calendar for July 24, 2023 and would not be vacated unless and until the revised
26 settlement was approved at the July 20, 2023 preliminary approval hearing. The Court vacated
27 current deadlines regarding motions in limine, but the deadlines for other pre-trial filings remained
28 on calendar per the Court's Guidelines for Trial and Final Pretrial Conference in Civil Bench Cases.

1 23. On July 17, 2023, per the Court’s Guidelines for Trial and Final Pretrial Conference
2 in Civil Bench Cases, the parties filed a Joint Proposed Final Pretrial Order. Plaintiff also filed a
3 Trial Brief, Proposed Findings of Fact and Conclusions of Law, and Notice of Filing Plaintiff’s
4 FRCP Rule 26(a)(3) Disclosures and Objections to Defendant’s Disclosures.

5 24. On July 20, 2023, the Court granted preliminary approval of the revised settlement
6 agreement, set a Final Approval Hearing for November 16, 2023, and vacated the trial date.

7 25. The parties’ settlement occurred after four years of litigation, and four days before
8 trial was set to commence, and was well informed by the extensive discovery and investigation
9 completed up to that point.

10 26. At the time of the Settlement, United had produced about 14,965 pages of
11 documents on class and merits issues. For their part, Plaintiff produced nearly 1,900 pages of
12 information supportive of her position that United’s policies and practices are amenable to class
13 treatment and that Lipedema Surgery is safe and effective. Plaintiff served four sets of requests for
14 production of documents. Plaintiff also served interrogatories and requests for admissions and
15 responded to written discovery propounded by United.

16 27. In addition, Class Counsel deposed 12 United witnesses, traveling to Washington,
17 D.C. and Phoenix for several depositions. These witnesses included: (1) two depositions of Dr.
18 Upasana Bhatnagar, a United senior medical director and team lead for the clinical writers of
19 United’s medical policy team who testified as United’s 30(b)(6) witness on, among other things, the
20 conclusions and basis for conclusions that Lipedema Surgery was “Unproven,” all research
21 conducted by United, and United’s policies and procedures for handling Lipedema Surgery claims;
22 (2) Dr. Anne Cramer, a United Senior Medical Director who was in charge of the member appeals
23 and was the plastic surgeon subject matter expert on United’s policy that Lipedema Surgery was
24 unproven; (3) Dr. Donald Stepita, a United Senior Medical Director who handled plastic surgery
25 appeals including Plaintiff’s appeals; (4) Caron Ory, a United medical management consultant who
26 researched and drafted United’s medical policy on Lipedema Surgery; (5) Lisa Nelson, another
27 United policy writer who also conducted research on Lipedema Surgery for United; 6) Jayne
28 Cappiello, United's Director of Prior Authorization, who testified as United’s 30(b)(6) witness on

1 United's pre-authorization data and records, (7) Jason Schoonover, who testified as United's
2 30(b)(6) witness on post-service claims data; (8) Dr. William Utley, a United medical director who
3 testified as United's 30(b)(6) witness on United's handling of Plaintiff's 2019 request for Lipedema
4 Surgery; and (9) Dr. Ash Chabra, a United Medical Director who testified as United's 30(b)(6)
5 witness on the handling of Plaintiff's 2017 request for Lipedema Surgery. United also took
6 depositions of Plaintiff and Angela Blaikie, Plaintiff's physical therapist.

7 28. It was through this extensive discovery that Plaintiff was able to uncover United's
8 practice as evidenced by the MTIS documents, and develop the evidence needed to challenge
9 United's coverage position as not just wrong, but an abuse of its discretion.

10 29. Like every other aspect of this case, discovery was hard fought and contested.
11 Several discovery disputes arose that required Court assistance. Plaintiff filed three discovery letter
12 briefs, which resulted in three discovery conferences and two discovery orders.

13 30. Class Counsel supplemented formal discovery with their own investigation and
14 research. Class Counsel engaged in extensive investigation and research regarding the safety and
15 effectiveness of Lipedema Surgery and retained and extensively worked with renowned experts on
16 lipedema, reconstructive surgery, and the body of medical literature addressing it. These included
17 Dr. Dung Nguyen and Dr. Stanley Rockson from Stanford University, and Dr. Branko Kopjar, a
18 leading biostatistician from the University of Washington. The Parties exchanged expert reports on
19 December 21, 2021 and rebuttal reports on January 21, 2022.

20 31. The relief afforded the Class is set forth in detail in section III of Plaintiff's
21 concurrently-filed motion for fees and litigation costs.

22 32. In addition to the class benefits from the Settlement, this litigation has also resulted
23 in major coverage position changes by United as to Lipedema Surgery. As a direct result of this
24 litigation, United eliminated its "Unproven" coverage position on Lipedema Surgery from its
25 Omnibus medical policy and no longer denies Lipedema Surgery on that basis.

26 33. Pursuant to ERISA's fee-shifting statute, Plaintiff respectfully requests a fee award
27 in the amount \$1,005,170.62 and litigation costs in the amount of \$125,677.96.

28

1 34. Under the lodestar method, a reasonable attorneys' fee is determined by the number
2 of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate.

3 35. As set forth below, the requested fee amounts include a 25% reduction in Class
4 Counsel's lodestar, and represent time and costs reasonably and necessarily incurred to achieve a
5 resolution of this matter and therefore authorized under ERISA.

6 36. Class Counsel spent an aggregate of 1,976.2 attorney hours investigating and
7 prosecuting this case. The actual time records reflecting the time spent will be made available to the
8 Court upon request and will be brought to the hearing on this Motion.

9 37. This case was settled after over four years of litigation on the eve of trial. United
10 fought Plaintiff at each step of the way. United challenged the pleadings under Rule 12(b)(6),
11 vigorously opposed class certification, and filed a motion for summary judgment. Extensive trial
12 preparation, including the preparation of pre-trial documents and witnesses, and preparation of
13 video deposition testimony had to be completed before the parties were able to reach settlement.

14 38. The scope and depth of discovery discussed above further supports Class Counsel's
15 estimate of the time spent prosecuting this case.

16 39. The time spent negotiating the settlement—which necessitated a review of the
17 pertinent coverage documents, the class and merits issues, the outstanding discovery issues,
18 working with experts and drafting and redrafting settlement documents to address the Court's
19 concerns—was also reasonable and necessary to achieve the settlement.

20 40. Below is a detailed chart that shows how each attorney spent time on this case
21 broken down into specific categories, through the date that the Court approved the Settlement of
22 this case on July 20, 2023. I did not include any time for drafting this fee motion, even though
23 recoverable under federal ERISA law, or time Class Counsel will spend in the future monitoring the
24 Settlement and assisting Class Members with their reimbursement and reprocessing requests as well
25 as any appeals, which could be considerable.

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TASK	Robert S. Gianelli	Joshua S. Davis	Adrian J. Barrio	Loring Rose
Pre-suit Investigation/Drafting Initial and Amended Complaints	12.1		5.5	
Discovery – depositions		268.8	12.5	
Discovery – interrogatories and requests for admission	3	29.1	1.9	.6
Discovery – Doc Prod and review	2.2	76.3	4.4	
Discovery - Expert	4.2	41.5		
Discovery – Other (Rule 26 Disclosures and informal investigations)		.5	12	
Law and Motion - Motion to dismiss complaint	18.2	1.3	43	
Law and Motion – Motions to Compel including meet and confers		26		
Law and Motion – Class Certification	21.3	78.5	213	
Law and Motion – Summary Judgment	40.6	49.7	147.1	
Law and Motion – Other (e.g. re Scheduling)	6.4	31.8		
Law and Motion – Motions for Preliminary Approval and Supp briefing	7.1	60.6		
Litigation Strategy/Analysis	24.7	46.5	17.7	
Research		10.4	80.3	
Settlement	28.9	99.9		
Trial Preparation		208.6	104.3	68.6
TOTAL	168.7	1,029.5	641.7	69.2

41. The information in the above chart regarding the Gianelli & Morris firm's time is taken from the time reports prepared and maintained by my firm in the ordinary course of business.

42. I am the attorney who oversaw and conducted the day-to-day activities in the litigation and reviewed these reports (and backup documentation where necessary and appropriate). The purpose of my reviews was to confirm the accuracy of the entries and the necessity for, and

1 reasonably, of the time committed to the litigation. As a result of my reviews, I believe that the
 2 time reflected in the firm's lodestar calculation, as set forth in the above chart, is reasonable in
 3 amount and was necessary for the effective and efficient prosecution and resolution of the case.

4 43. The following are the billing rates for the Gianelli & Morris attorneys who
 5 performed work on this case:

6	Robert S. Gianelli	\$900 per hour
7	Joshua S. Davis	\$700 per hour
8	Adrian J. Barrio	\$675 per hour
9	Loring Rose	\$500 per hour

10 44. Each of these rates has already been found reasonable and awarded in other class
 11 action cases over the last seven years for the various billers. The rate sought for Mr. Gianelli was
 12 found reasonable and awarded in *Atzin, et al. v. Anthem, Inc.*, (C.D. Cal.) Case No. 2:17-CV-06816-
 13 ODW (PLAx) ("Atzin"); *Trujillo v. UnitedHealth Group, Inc.* (C.D. Cal.) Case No. ED CV 17-
 14 2547-JFW (KKx) ("Trujillo"); *Hill v. UnitedHealthcare Insurance Company* (C.D. Cal.) Case No.
 15 SACV15-00526 DOC (RNBx) ("Hill"); *Goolsby v. Anthem, Inc., et al.* (C.D. Cal.) ("Goolsby");
 16 *Sanchez v. Allianz Life Insurance Company of North America*, Los Angeles Superior Court Case
 17 No. BC594715 ("Sanchez"); *Bodner v. California Physicians' Service dba Blue Shield of*
 18 *California Life and Health Insurance Company*, Los Angeles Superior Court Case No. BC516868
 19 ("Bodner"); *Dion v. Kaiser Foundation Health Plan, Inc.*, Alameda County Superior Court Case
 20 No. RG14718903 ("Dion"); *Bradford v. Anthem, Inc., et al.*, United States District Court (C.D.
 21 Cal.), Case No. 2:17-CV-5098-AB ("Bradford"); *Voshall v. Metropolitan Life Insurance Company*,
 22 Los Angeles Superior Court, Case No. BC5779832 ("Voshall"); *Akmal, et al. v. California*
 23 *Physicians' Service dba Blue Shield of California*, Los Angeles Superior Court, Case No.
 24 BC540033 ("Akmal"); *Escalante v. California Physicians Service dba Blue Shield of California*,
 25 United States District Court (C.D. Cal.), Case No. 2:14-CV-3021; *Gallimore v. Kaiser Foundation*
 26 *Health Plan, Inc.*, Superior Court of Alameda County, Case No. RG12616206 ("Gallimore");
 27 *Vaccarino, et al. v. Midland National Life Ins. Co.*, United States District Court (C.D. Cal.), Case
 28 No. 11 CV 5858 CAS(MANx) ("Vaccarino"); *Arce v. Kaiser Foundation Health Plan, Inc.*, Los

1 Angeles Superior Court, Case No. BC388689 ("*Arce*"); and *Glick v. Anthem Blue Cross Life &*
2 *Health Ins. Co.*, Los Angeles Superior Court, Case No. BC393528 ("*Glick*").

3 45. Similarly, the rate sought for the remaining billers have previously been found
4 reasonable and awarded: for myself in *Atzin, Trujillo, Hill, Sanchez, Bodner, Dion, Bradford,*
5 *Vaccarino, Gallimore, Escalante, Akmal, and Goolsby*, for Mr. Barrio in *Atzin, Trujillo, Hill,*
6 *Bodner, Dion, Bradford, Gallimore, Escalante, Akmal, Voshall and Goolsby*; and for Mr. Rose in
7 *Goolsby*.

8 46. Further, the hourly rates sought here for the following timekeepers, \$900/hr. for
9 Robert Gianelli, \$700/hr. for Joshua S. Davis and \$675/hr. for Adrian Barrio, are all previously
10 litigated and approved Bay Area market rates. Each of the attorney's hourly rates were established
11 through a contested fee application in 2016, following a successful class action trial that took place
12 in Alameda Superior Court in Oakland, California in the matter entitled *Gallimore v. Kaiser*
13 *Foundation Health Plan, Inc.*, Case No. RG12616206. In *Gallimore*, Gianelli & Morris
14 successfully obtained a judgment against Kaiser requiring it to provide insurance coverage for
15 excess skin surgery for a class of bariatric patients. Attached as Exhibit 1 is a true and correct copy
16 of the Order Re Attorneys' Fees from the *Gallimore* action.

17 47. Attached as Exhibit 2 is a true and correct copy of the declaration of Gary Greenfield
18 filed in support of the motion for an award of attorney fees in the *Gallimore* action.

19 48. Attached as Exhibit 3 is a true and correct copy of the supplemental declaration of
20 Gary Greenfield filed in support of the motion for an award of attorney fees in the *Gallimore* action.

21 49. The same hourly rates were again approved in another Bay Area class action
22 involving mental health benefits entitled *Dion v. Kaiser Foundation Health Plan, Inc.*, Case No. RG
23 14718903, which was also venued in Alameda Superior Court in Oakland, California.

24 50. Lead Class Counsel, Robert S. Gianelli, has served as an Adjunct Professor of
25 Insurance Law at Whittier Law School and La Verne University College of Law. He is a
26 Contributing Editor to The Rutter Group publication, *California Practice Guide: Insurance*
27 *Litigation*. In 2015, he received a "California Lawyers Attorney of the Year" award, also known as
28 a CLAY Award, from California Lawyer magazine, for his work as lead counsel in two class action

1 cases concerning the denial of treatment for children with autism, *Arce v. Kaiser Foundation Health*
2 *Plan, Inc., supra*, and *Glick v. Anthem Blue Cross Life & Health Ins. Co.*, Los Angeles Superior
3 Court Case No. BC393528. He was also a Finalist for the 2014 Consumer Attorney of the Year for
4 the Consumer Attorneys of California for his work as lead counsel in *Arce*. Also in 2015, he was
5 lead counsel in a class action trial that resulted in a judgment in favor of a class of approximately
6 10,000 Kaiser members, *Gallimore v. Kaiser Foundation Health Plan, Inc., supra*. He was a
7 Finalist for the 2011 Consumer Attorney of the Year for the Consumer Attorneys of California for
8 his work as lead counsel for plaintiffs in a senior citizen deferred annuity class action, *Stephens v.*
9 *American Equity Investment Life Insurance Company, supra*. In *Stephens*, plaintiffs were victorious
10 after a month-long, phase-one trial in securing an award of \$15.4 million, which ultimately resulted
11 in a \$47 million settlement on behalf of a class of approximately 8,600 senior citizens. In 2020, he
12 was a recipient of the Consumer Attorneys of California “Street Fighter of the Year” award for
13 representing a class of amputees seeking health insurance benefits in the *Trujillo* matter.

14 51. I graduated from the University of Southern California Law School in 1997, where I
15 served as an Executive Editor of the University of Southern California Law Review. From October
16 1997 to September 1999, I worked as an associate at Orrick, Herrington & Sutcliffe LLP in its
17 business litigation department, where my practice emphasized class action defense. From October
18 1999 to December 2005, I was an associate at Gaims, Weil, West & Epstein LLP, where my
19 business litigation practice included class actions and unfair business practices. From January 2006
20 to August 2013, I worked as a Senior Associate at Sedgwick, LLP in its Insurance Practices
21 department, where my litigation practice emphasized insurance coverage disputes and professional
22 liability. Since September 2013, I have worked at Gianelli & Morris on the firm's consumer class
23 action cases. In 2020, I was a recipient of the Consumer Attorneys of California “Street Fighter of
24 the Year” award for representing a class of amputees seeking health insurance benefits in the
25 *Trujillo* matter.

26 52. Mr. Barrio graduated from the University of Illinois College of Law in 1997, where
27 he served on the Board of Editors of the University of Illinois Law Review. From August 1997 to
28 September 1998, Mr. Barrio served as a judicial law clerk in the chambers of the Honorable

1 Rebecca R. Pallmeyer, U.S. District Judge for the Northern District of Illinois. Following his
 2 clerkship, Mr. Barrio worked as an Assistant Attorney General in the Criminal Appeals Division of
 3 the Illinois Office of Attorney General. Mr. Barrio subsequently relocated to California and began
 4 work as an Associate at Franscell, Strickland, Roberts & Lawrence in October 2002, handling civil
 5 appeals on behalf of governmental entities in civil rights and employment cases. From September
 6 2004 to June 2014, Mr. Barrio worked as a Senior Associate at Murchison & Cumming, where his
 7 litigation practice included class actions and unfair business practices. Since July 2014, Mr. Barrio
 8 has worked at Gianelli & Morris on the firm's consumer class action cases.

9 53. Mr. Rose graduated *cum laude* from Loyola Law School in 2007. While at Loyola,
 10 Mr. Rose was a member of the *Loyola of Los Angeles Law Review*, and was a member of the Scott
 11 Moot Court Honors Board. From September 2007 to August 2010, he worked as a litigation
 12 associate at Glaser, Weil, Fink, Howard, Avchen, & Shapiro, LLP, where his practice included title
 13 insurance litigation, entertainment litigation, real estate litigation, and general business litigation.
 14 From August 2010 to December 2018, he worked as an associate (later a senior associate) in the
 15 commercial litigation department of Davis Wright Tremaine LLP, where his practice included
 16 healthcare litigation, franchise litigation, real estate litigation, and general business litigation. Mr.
 17 Rose joined Gianelli & Morris in December 2018.

18 54. The non-reduced lodestar amount for my firm is \$1,340,227.50. The breakdown of
 19 this amount is as follows:

Name	Hours	Rate	Lodestar
Robert S. Gianelli		\$900/hr	\$151,830
Joshua S. Davis		\$700/hr	\$720,650
Adrian J. Barrio		\$675/hr	\$433,147.50
Loring Rose		\$500/hr	\$34,600
TOTAL:			\$1,340,227.5

26
 27 55. Class Counsel is requesting fees in the amount **\$1,005.170.62**, a 25% reduction in the
 28 total lodestar sought, making the requested fees sought more than reasonable.

[EXHIBIT 01]

**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 25 2016

CLERK OF THE SUPERIOR COURT
By BRENDA HIVES
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

WENDY GALLIMORE, et al.,

Plaintiffs,

vs.

**KAISER FOUNDATION HEALTH PLAN,
et al.,**

Defendants.

No. RG12-616206

ORDER RE ATTORNEYS' FEES

The Motion of plaintiff Wendy Gallimore ("Plaintiff") For An Award Of Attorney Fees And Service Award For Plaintiff Wendy Gallimore ("Motion") came on for hearing on November 20, 2015 in Department 21, the Honorable Wynne S. Carvill presiding. Appearances are reflected in the minutes recorded that day. The court now rules.

The court issued its Statement of Decision (“SOD”) on September 24, 2015, after trial to the bench, and judgment was entered thereon on October 13, 2015. Recovery by Plaintiff on behalf of the certified class was in the form of injunctive relief only. Plaintiff now moves for attorney fees under Code of Civil Procedure (“CCP”) section 1021.5.

Plaintiff seeks to recover fees for attorney time incurred by the members of the Gianelli & Morris firm (“GM”) in the total amount of \$8,894,281.13, based on a lodestar of \$3,918,052.50 with a 2.25 multiplier. This includes fees incurred to and including the instant Motion, but does not include any of the fees that will be incurred in dealing with post-judgment matters. Plaintiff also seeks a service award for herself in the amount of \$25,000.00.

Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser”) does not contest that Plaintiff is entitled to recover fees under CCP section 1021.5. Accordingly, the court finds that the judgment obtained by Plaintiff resulted in the enforcement of an important right affecting the public interest. Kaiser does argue, however, that the amount of fees requested by Plaintiff is substantially excessive. In Kaiser’s view, the appropriate attorney fees award would be \$2,211,942.50. In arriving at this figure, Kaiser attacks (a) the total hours billed, (b) the hourly rates claimed by Plaintiff’s counsel and (c) the 2.25 multiplier.

THE DISPUTE OVER HOURS CLAIMED

Plaintiffs assert that GM has expended 5,348.15 hours to date in prosecuting this case, and has submitted copies of GM’s billing records, with attorney client and attorney work product information redacted. (Replacement Exhibit 1 to Declaration of Robert S. Gianelli, filed on December 23, 2015.) The Gianelli declaration also includes a detailed history of the litigation.

Plaintiffs' fee expert does not offer any opinion regarding whether the number of hours spent is reasonable, having only been asked to opine on the reasonableness of the rates being sought.

In opposition, Kaiser challenges the number of hours submitted by GM by asserting that the GM billing records include both vague and block-billed time entries. Kaiser's fee expert includes a summary of such time entries, in chart form, as Exhibit E to his declaration. Based on its fee expert's opinion, Kaiser argues that the court should apply a 20 percent discount to all of the time entries included in his summary. The court disagrees.

As correctly argued by Plaintiff in her reply, California law does not require detailed billing records to establish the reasonableness of attorney time expended. (*Syers Properties III, Inc.* (2014) 226 Cal.App.4th 691, 698.) GM's recorded time and Gianelli's description of the history of the litigation are consistent with the court's memory and its independent review of the record and are sufficiently detailed to support the court's conclusion that the overall number of hours recorded is reasonable.

Kaiser also asserts that Plaintiff is not entitled to reimbursement for time billed to unsuccessful claims and issues, specifically her declaratory relief cause of action and her claim that subsection (e)(2) of the statute mandates automatic referral to a plastic surgeon. These issues, however, do not constitute separate and unrelated claims for which allocation and reduction of fees would be required. The declaratory relief claim was dismissed because it was duplicative, and the subsection (e)(2) issue is properly viewed as an unsuccessful "theory" as opposed to an unsuccessful "claim." The relationship between this theory and the overall scope of injunctive relief sought by Plaintiff is clear, and the modification to the injunctive relief actually obtained on behalf of the class resulting from Plaintiff's lack of success on this theory does not change the fact that Plaintiff achieved the primary goal of the litigation, i.e., the

overhaul of Kaiser's practices to require that all excess skin surgeries are reviewed under statutorily compliant criteria and that all communications with patients also conform with those criteria. (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2010) 190 Cal.App.4th 217, 238-239.)

Kaiser also attempts to characterize Plaintiff's failure "to prove any actual denial of covered surgery by Kaiser as to any class member" as an unsuccessful claim. Such proof, however, was neither attempted by Plaintiff nor necessary to the class claims.

THE DISPUTE REGARDING RATES

GM sets its rates at \$900/hr. for Robert S. Gianelli, \$700/hr. for Joshua Davis, \$675/hr. for Jully Pae, \$625/hr. for Lotte Colbert, \$675/hr. for Adrian Barrio, and \$500/hr. for Richard R. Fruto, asserting that these rates have been approved by other courts (with the exception of Barrio), specifically the Los Angeles Superior Court in *Arce v. Kaiser Foundation Health Plan, Inc.*, Case No. BC388689 ("*Arce*") and *Glick v. Anthem Blue Cross Life & Health Ins. Co.*, Case No. BC393528 ("*Glick*") and the Central District of California Court in *Vaccarino, et al. v. Midland National Life Ins. Co.*, Case No. 11 CV 5858 CAS(MANx) ("*Vaccarino*"). In further support of the reasonableness of these rates Plaintiff has presented the Declaration of Gary Greenfield, a self-described consultant specializing in legal and expert fee analysis ("Plaintiff's fee expert"), and a Request for Judicial Notice of several documents from this court's files in *Dalao v Lifehouse Holdings, Inc.*, RG12660602. Judicial notice is GRANTED, but only as to the existence of the subject documents.

Kaiser argues that the appropriate rates would be \$650/hr. for Gianelli, \$450/hr. for Davis, \$400/hr. for Richard Frutto and Lotte Colbert, \$375/hr. for Adrian Barrio, and \$350/hr.

for July Pae. The reasonableness of these rates is supported by the Declaration of Grant D. Stiefel, a self-described consultant and expert in the field of attorneys' fees ("Kaiser's fee expert"). Kaiser has also submitted a Request For Judicial Notice of several documents from *Arce*, *Glick* and *Vaccario*, contending that these document show that Plaintiff's reliance on what was done in those cases is misplaced, as well as documents from another Los Angeles Superior Court case, *Woelk v. Blue Cross of California*, Case No. BC391522 ("*Woelk*") in which the final fee award reflected a reduction of GM's lodestar in that case. Judicial notice is GRANTED, but only as to the existence of the subject documents.

With her reply Plaintiff submitted additional evidence, drawing both evidentiary objections and a sur-reply from Kaiser. Having reviewed Plaintiff's reply evidence, and considered Kaiser's sur-reply, the court concludes that the Supplemental Declaration of Gary Greenfield [Plaintiff's fee expert], paragraphs 1-11 and 20 of the Supplemental Declaration of Robert S. Gianelli, Exhibit 18 to the Supplemental Declaration of Robert S. Gianelli and Exhibit 31 to the [Reply] Declaration of Joshua Davis (which replaced Exhibit 19 to the supplemental Gianelli declaration), all of which are directly responsive to arguments and evidence relied upon by Kaiser in its opposition, were properly included with Plaintiff's reply and have been considered. Kaiser's broadly framed evidentiary objections to this evidence are OVERRULED.

Paragraphs 12-19 of, and Exhibits 20-29 to the supplemental Gianelli declaration, and the Supplemental Request For Judicial Notice, however, are unnecessary to the court's analysis. This applies equally to Plaintiff's attempt in her Reply to discredit Kaiser's fee expert by trying to show that his testimony in a different case is somehow in conflict with his testimony in this case. It was this argument that compelled Kaiser to file its sur-reply, together with a Supplemental Declaration of Grant D. Stiefel [Kaiser's fee expert]. The court views this entire exercise as a

waste of resources, both judicial and private. While the court has reviewed these materials (judicial notice granted for this purpose only), none are included in the evidentiary basis for its ruling on this Motion. Accordingly, the court will not rule on the specific evidentiary objections of Kaiser to Exhibit 29 to the supplemental Gianelli declaration and Plaintiff's Supplemental Request For Judicial Notice, or Plaintiff's specific evidentiary objections to the supplemental Stiefel declaration.

Kaiser did not file specific evidentiary objections to the portions of, and exhibits to, the supplemental Gianelli declaration concerning Plaintiff's attempt to obtain Kaiser's billing records. It did argue in its sur-reply, however, that the attorney fees incurred by Kaiser are not relevant in this context. While this is not an entirely accurate statement of California law (see, e.g., *In re Tobacco I* (2013) 216 Cal.App.4th 570, 584-585 [“In a contest over what time was reasonably and necessarily spent in the preparation of a case, it is obvious that the time that the opposition found necessary to prepare its case would be probative. Each party must prepare to question the same witnesses, must review the same documents and other evidence, and must anticipate a presentation by the opposition of a complexity related to the facts in issue. Similarly, work on pretrial motions would reflect what volume of work opposing attorneys deemed reasonable.” (Citations)”), Plaintiff here has not submitted any direct evidence of the rates charged or hours billed by Kaiser's attorneys. Rather, Plaintiff only suggests that an inference can and should be drawn from the fact that Kaiser was unwilling to share such information. Plaintiff has offered no authority to support this suggestion, and the court declines to draw any such inference. Kaiser did, however, submit a short Supplemental Declaration of Mark Palley (one of Kaiser's counsel in this case) stating simply that “[t]he hourly rates that Kaiser pays for this case, for partners and associates, are far less than the hourly rates [GM] requests here for its

partners and associates.” Plaintiff’s evidentiary objections to the Palley declaration are OVERRULED.

In the court’s view, the competing declarations of the fee experts provide the most probative evidence of the reasonableness of the respective “reasonable” rates advanced by each party. However, neither of the approaches taken by the experts is without certain weaknesses. For example, in compiling lists of comparators (Exhibits 8-13 to the opening Greenfield declaration) based on years of experience, Plaintiff’s fee expert apparently chose firms that handle complex class action litigation in the Bay Area, but did not differentiate between litigators and transactional attorneys within those firms. While Mr. Greenfield explains in his supplemental declaration, correctly, that the most important comparison criterion is experience level, the inclusion of non-litigators in the “Range of Rates” charts gives some credence to Kaiser’s characterization of Greenfield’s comparators as “cherry-picked.” Nevertheless, Greenfield also clarifies in his supplemental declaration that his opinions in his opening declaration are based not only on the charts, but also on his considerable experience and knowledge of rates charged and awarded for work in class action litigation in the San Francisco Bay Area.

For his part, Kaiser’s fee expert, in addition to criticizing Greenfield’s conclusions, argues that the standard to be applied in determining appropriate reimbursement rates in this context is “the rate charged by reasonably competent counsel, and not counsel of unusual skill or experience” and/or “what rate is sufficient ‘to entice competent counsel’ to take on this sort of work locally.” As an extension of this argument, Stiefel relies in substantial part on the TyMetrix/CEB 2014 Real Rate Report (Stiefel declaration, Exhibit B.) This report, however, which is based on data regarding rates actually paid by clients, does not take experience or

expertise into account. Furthermore, the authority cited by Stiefel in support of asserted “competent counsel” standard, *Yahoo!, Inc. v. Net Games, Inc.* (N.D.Cal. 2004) 329 F.Supp.2d 1179, 1183, is not persuasive in this context. That case addressed a different issue, i.e., whether the rate that a prevailing party client agrees to pay its counsel in a trademark infringement case is necessarily a reasonable rate for purposes of a fee award against the losing party.

For purposes of fee awards, the reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1085 [*“PLCM Group”*].) As correctly argued by Plaintiff, the “similar work” analysis embraces the concepts of comparable skill, expertise and experience, none of which are reflected in the Real Rate Report.

Having reviewed the competing reports of the parties’ respective fee experts and the materials upon which their opinions are based, including the various trial court orders in other cases, the court, in its discretion, concludes that the opinions expressed by Plaintiff’s fee expert, that the rates advanced by GM for each of its attorneys are reasonable, are consistent with the authorities cited and the court’s own experience, while the opinions of Kaiser’s fee expert are not. The rates of \$900/hr. for Robert S. Gianelli, \$700/hr. for Joshua Davis, \$675/hr. for Jully Pae, \$625/hr. for Lotte Colbert, \$675/hr. for Adrian Barrio, and \$500/hr. for Richard R. Fruto, are within the range of rates appropriate to the community of attorneys with comparable skill, expertise and experience in class action litigation in the San Francisco Bay Area and are hereby approved.

THE MULTIPLIER ISSUE

Inherent in the court’s conclusion regarding the reasonableness of the rates ascribed by Plaintiff to the various GM attorneys is the recognition that those rates are consistent with the

rates of plaintiff-side class action attorneys. That is to say, these rates already reflect the contingency risks and other factors that Plaintiff advances in support of her request for a multiplier. (See, e.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138 [“a trial court should not consider those factors to the extent they are already encompassed with the lodestar”]¹.) While Kaiser’s counsel, Mr. Palley, declined to offer evidence of the actual hourly rate he and his colleagues charge Kaiser, the court has no reason to doubt his declaration that Kaiser does not pay for its defense services at the same or comparable rates as those sought by Plaintiff here.² Importantly, none of the GM attorneys have offered proof that they bill their clients at the same rates in non-contingent matters. (*Ibid.*)

Plaintiff also asserts that the recovery to the class can and should be given an economic value of \$156.5 million for purposes of cross checking the lodestar analysis, including the requested multiplier, against a “percentage of recovery” analysis. This value is based on what Plaintiff characterizes as “reasonable estimates” of the number of Kaiser members who need and want excess skin surgeries, adjusted by estimates of how many of those Kaiser members will achieve a Body Mass Index (“BMI”) that would or might qualify them for the surgery. The latter adjustments are supported by the Declaration of Gareth James, an expert in statistics. The numbers of surgeries are then multiplied by the costs of the various excess skin surgeries, with offsets for surgeries that were performed, plus the value of additional surgeries that will occur over the next 10 years, with a discount rate applied to arrive at a present value.

¹ At oral argument the court noted that, in an earlier class action case where it had allowed a 1.2 multiplier, that award was vacated by the appellate court for exactly this reason. At the hearing, Plaintiff was unable to explain why those considerations do not apply here. Importantly, this is not a case where the rates included in the lodestar were based on what petitioning counsel routinely charges and collects from hourly rate clients in the ordinary course of business as opposed to contingent fee class actions.

² Had Mr. Palley introduced his rates and/or the rates of other non-class action plaintiffs’ attorneys with similar experience, the court could have attempted to construct a lodestar on that basis; however, under those circumstances the court would also have had to approach the multiplier issue differently.

Kaiser argues that Plaintiff's cross check analysis is flawed because it relies on both unsupported assumptions and speculation. The court agrees. The economic value of the injunctive relief obtained on behalf of the class has not been established by Plaintiff with a level of certainty that would be of any real use in the fee analysis generally and does not serve to support the multiplier request in any way. Further, based on the testimony in the case, the court seriously doubts that the relief obtained by Plaintiff will result in any where near the number of additional surgeries suggested by Plaintiff's statistician. It was clear from the testimony that a large proportion of the class will not qualify for excess skin removal surgery due to uncontested medical criteria such as BMI restrictions, the non-smoker requirement, etc.

INCENTIVE PAYMENT

Kaiser does not dispute the propriety of an incentive award to Plaintiff, but argues that the award should be limited to \$15,000.00. The court disagrees. Where, as here, Plaintiff has not only submitted to discovery but the case has proceeded to trial where she testified and had the details of her medical history made a matter of record, an award of \$25,000.00 is reasonable. Indeed, that amount pales in comparison to cost bill she would have been potentially liable for had she lost.

RULING

Plaintiff shall recover attorneys' fees from Kaiser at the rates and for the number of hours requested, i.e., the lodestar of **\$3,918,052.50**. This number is taken directly from paragraph 40 of the Gianelli declaration. The court has not attempted to duplicate Gianelli's calculations or to

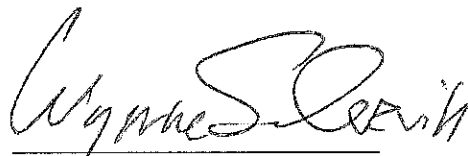
cross check his totals against the time records themselves but assumes that Kaiser has done so.

For the reasons articulated above, the lodestar will not be adjusted.

Plaintiff shall also recover a service/incentive award from Kaiser in the amount of
\$25,000.00.

IT IS SO ORDERED.

Dated: January 25, 2016



Judge Wynne Carvill

[EXHIBIT 02]

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 ADRIAN J. BARRIO, #219266
4 GIANELLI & MORRIS, A Law Corporation
5 550 South Hope Street, Suite 1645
6 Los Angeles, CA 90071
7 Tel: (213) 489-1600; Fax: (213) 489-1611

ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

8 Attorneys for Plaintiff
9 WENDY GALLIMORE, on behalf of herself
10 and all others similarly situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF ALAMEDA

13 WENDY GALLIMORE, on behalf of herself)
14 and all others similarly situated,)

15 Plaintiff,)

16 v.)

17 KAISER FOUNDATION HEALTH PLAN,)
18 INC.; and DOES 1 through 20, Inclusive)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: RG12616206

Assigned to Hon. Wynne Carvill Dept. 21

**DECLARATION OF GARY GREENFIELD
IN SUPPORT OF MOTION FOR AN
AWARD OF ATTORNEY FEES AND
SERVICE AWARD FOR WENDY
GALLIMORE**

Date: November 19, 2015

Time: 8:30 a.m.

Dept: 21

R1675882

Filed Concurrently with Motion for an Award of Attorney Fees and Award Service Award, Request for Judicial Notice, Declaration of Robert S. Gianelli, Declaration of Wendy Gallimore, and Declaration of Declaration of Gareth James

1 I, Gary Greenfield, declare:

2 1. I am making this Declaration in support of the Motion for Attorneys' Fees
3 ("Motion") by plaintiff ("plaintiff") in this action. I have personal knowledge of the matters set
4 forth in this Declaration, and, if called upon to testify, I could and would competently testify
5 thereto.

6 2. I have been retained by plaintiff in this action to provide my analysis and opinion
7 regarding the rates being sought for counsel for plaintiff on this Motion.

8 **Background**

9 3. I am the founder of Litigation Cost Management (LCM), based in Oakland,
10 California. LCM commenced business in 1991. LCM is in the business of consulting regarding
11 legal fee-related issues. As part of our business, we regularly conduct analyses of both legal
12 and expert witness fees in litigation with regard to the reasonableness and appropriateness of the
13 hours and rates billed or being sought on motions or applications for fees. We also consult with
14 clients regarding how to manage their outside litigation more effectively and efficiently. LCM
15 works with both law firms and clients of law firms in undertaking its analyses and consulting
16 about effective litigation management.

17 4. Prior to starting LCM in January, 1991, I was a partner in the law firm of Shartsis,
18 Friese & Ginsburg in San Francisco, California, where I was a litigator for fifteen years, having
19 become a partner in the firm in 1981. During my career at my former law firm, I handled
20 general commercial litigation, from pre-filing preparation and negotiations through trials and
21 appeals. I handled litigation of varying types, including breach of contract, constitutional law,
22 securities, fraud, bankruptcy litigation, intellectual property, unfair competition, business
23 dissolution disputes and civil rights litigation. I represented both plaintiffs and defendants. I
24 handled both contingency cases and cases where we were compensated on an hourly basis. I
25 graduated from the Boalt Hall School of Law in 1975 and received my undergraduate degree
26 from Stanford University in 1971. A copy of my Resume is attached hereto as Exhibit 6.

27 ///

1 5. Since LCM was founded, I have conducted several hundred analyses of the legal
2 and expert witness fees and expenses in cases of various types and sizes. These have included
3 individual actions, multi-party suits and class actions. The cases have included the full range of
4 civil litigation, such as patent, copyright, trademark, real property, False Claims Act, ERISA,
5 bankruptcy, tax, breach of contract, securities, antitrust, unfair competition, environmental,
6 insurance coverage and bad faith, discrimination, disability, civil rights, constitutional law,
7 inverse condemnation, personal injury and products liability cases. I have myself been
8 personally involved in, conducted analysis in and supervised each of these analyses. As part of
9 my work on these projects, I have prepared and submitted numerous reports on attorneys' fees
10 issues, both on behalf of parties opposing fee applications and on behalf of law firms or clients
11 seeking to recover their fees.

12 6. I have qualified and testified previously as an expert witness in litigation
13 regarding legal and expert witness fees on a number of occasions, again both on behalf of
14 parties seeking to recover their attorneys' fees and parties opposing requests for attorneys' fees.

15 7. I was appointed a Special Master to analyze and report to the San Francisco
16 Superior Court regarding the fees and expenses of various law firms and experts in an insurance
17 company conservation proceeding before that Court.

18 8. As part of my work, I also consult with law firms and clients of law firms
19 regarding law firm billing practices, effective litigation management, and legal bill analysis and
20 auditing procedures. I have lectured and conducted seminars for clients and law firms in each
21 of these areas.

22 9. I have taught or been a speaker at a number of programs regarding analysis of
23 legal fees, legal bill auditing and litigation management. I am an instructor for the National
24 Association of Legal Fee Analysis.

25 10. For purposes of my analyses in these various cases and my consulting work, we
26 have received and I have analyzed the time entries, billing rates and expenses billed in many
27
28

1 hundreds of cases, involving law firms and law firm offices across the country.¹ We also
2 maintain the rate information from the bills and time entries I review as well as from various
3 databases which contain rates billed to and paid by fee-paying clients. I also regularly review
4 judicial decisions and articles dealing with attorneys' fees, billing rates and litigation
5 management issues, surveys and articles regarding billing rates being charged in the legal
6 industry and have attended seminars (including where I have been an instructor) where issues
7 relating to attorneys' fees and litigation management issues have been the topic. As a result, I
8 am familiar with typical and commonly accepted billing practices among law firms, as well as
9 the rates typically charged by lawyers of various experience levels, practice areas and expertise
10 both nationally and in various parts of the United States.

11 **The litigation**

12 11. This litigation was brought as a class action against defendant Kaiser Foundation
13 Health Plan, Inc. ("Kaiser" or "defendant") with causes of action for violation of California
14 Business & Professions Codes Section 17200 and declaratory relief. Defendant vigorously
15 opposed allowing the case to proceed as a class action, but the Court granted the Motion for
16 Class Certification on December 23, 2013. After a 15-day court trial, the Court found in favor
17 of the plaintiff.

18 12. Plaintiff has filed this Motion to recover attorneys' fees, and I have been asked to
19 provide my opinions and conclusions regarding the reasonableness of the rates being sought.

20 **Analysis**

21 13. The test for determining the reasonableness (or "appropriateness") of rates on a
22 motion of this type is whether the rates being sought are within the range of rates for
23 comparable lawyers, in terms of reputation, experience and expertise, doing comparable work in
24 the market.² I have reviewed the rates being sought for counsel for the plaintiff on this Motion.

25
26
27 ¹ I receive and review bills and rate information in many cases beyond those I work on as an expert in litigation,
including for clients for whom I do consulting work, and I also receive and review compilations of rates from various
sources which I consider reliable indicators of rates in various markets.

28 ² There is no one rate which is the only appropriate and reasonable rate for a biller in the market. Rather, the question
is whether the rate sought is within the range of rates for comparable billers doing comparable work in the market.

1 Based on my knowledge and familiarity regarding rates both from my work in reviewing legal
2 bills on a regular basis in numerous cases, including many class actions, and from my review of
3 various sources of rate information (including databases of rates of lawyers actually billed to
4 and paid by fee-paying clients, surveys and judicial decisions), in my opinion, the rates being
5 sought on this Motion are reasonable and appropriate for each of the billers, given their
6 experience, expertise and the nature of their work on this case.

7 14. First, the rates sought on this Motion have already been found reasonable and
8 been awarded in other cases for five of the six billers in this case (Mr. Gianelli, Ms. Pae, Ms.
9 Colbert, Mr. Davis and Mr. Fruto.)³

10 15. Second, when assessing rates, one must determine the rates of comparable billers
11 for comparable work in the market. This was a class action, and the rates being charged and
12 awarded for class action work are at the top of the rate scale in today's litigation.

13 16. Among the main factors for assessing the rates to be awarded in a case of this type
14 are the experience and expertise of counsel. I have been involved in the analysis of fees and
15 rates in a number of class actions. The overwhelming majority of class actions settle once the
16 class certification decision is reached, and class actions are rarely tried to a verdict, let alone a
17 successful verdict for the plaintiff. In this case, not only did plaintiff successfully certify a class
18 over defendant's vigorous opposition, but plaintiff prevailed at trial. The fact that plaintiff
19 prevailed against a large, well-financed opponent, not only on the class action aspect of the case
20 but on the merits after a trial as well, ⁴ indicates a level of both experience and expertise with
21 this type of litigation, as well as a quality of work, that support rates in the upper echelon of

22 ///

23 _____
24 ³ The rate sought for Mr. Gianelli was found reasonable and awarded in *Arce v. Kaiser Foundation Health Plan, Inc.*,
25 Los Angeles Superior Court, Case No. BC388689 ("*Arce*"), *Glick v. Anthem Blue Cross Life & Health Ins. Co.*, Los
26 Angeles Superior Court, Case No. BC393528 ("*Glick*") and *Vaccarino, et al. v. Midland National Life Ins. Co.*, United
States District Court, CD Cal. Case No. 11 CV 5858 CAS(MANx) ("*Vaccarino*"); for Mr. Davis in *Vaccarino*; for Ms.
Pae in *Vaccarino*, *Arce* and *Glick*; for Ms. Colbert in *Vaccarino*; and for Mr. Fruto in *Vaccarino*.

27 ⁴ A study by the Office of Court Research of the Judicial Council of California determined that nearly 90% of cases
28 where a class is certified settle, that less than 1% (.7%) go to verdict, that of the nearly 1300 cases studied only 2 cases
with certified classes went to verdict (less than .2%), and that "[o]verall, it is extremely uncommon for certified class
actions to reach a trial verdict in California." H. Hehman, "Highlights from the Study of California Class Action
Litigation," DataPoints, November 2009, p. 3, a copy of which is attached hereto as Exhibit 7.

1 billing rates for class action litigation and for complex litigation in general. I also considered
2 Gianelli & Morris' substantial experience handling complex class actions and consumer
3 insurance litigation. Gianelli & Morris has been appointed class counsel in a number of
4 significant consumer class actions, including: *Vaccarino v. Midland National Life Insurance*
5 *Company* (C.D. Cal.) Case No. 11-CV-5858 CAS; *Escalante v. California Physicians' Service*
6 (C.D. Cal.) Case No. 14-CV-3021 DDP; *Arce v. Kaiser Foundation Health Plan, Inc.*, Los
7 Angeles Superior Court, Case No. BC388689; *Ticconi v. Blue Shield Life & Health Ins. Co.*,
8 Los Angeles Superior Court, Case No. BC330989; *Peterman v. North American Co. for Life*
9 *and Health*, Los Angeles Superior Court, Case No. BC357194; *Clark v. National Western Life*
10 *Insurance Company*, Los Angeles Superior Court, Case No. BC321681; *Stephens v. American*
11 *Equity Investment Life Insurance Company*, San Luis Obispo Superior Court, Case No.
12 CV040965 ("Stephens"); *Iorio v. Allianz Life Ins. Co. of North America* (S.D. Cal.) Case No.
13 05-CV-0633 IEG; *Chastain v. Union Security Life Insurance Company* (C.D. Cal.) Case No.
14 06-CV-5885 ABC; *Kavruck v. Blue Cross of California, Los Angeles Superior Court*, Case No.
15 BC160180. Gianelli & Morris has also represented the insureds in a number of significant
16 consumer law decisions, including: *Myers v. State Board of Equalization* (2015) ___
17 Cal.Rptr.3d ___, WL 565612; *Broberg v. The Guardian Life Insurance Co.* (2009) 171
18 Cal.App.4th 912; *Rodriguez v. Blue Cross of California* (2008) 162 Cal.App.4th 330; *Kavruck*
19 *v. Blue Cross of California* (2003) 108 Cal.App.4th 773; *State Farm Mutual Auto. Ins. Co. v.*
20 *Superior Court (Hill)* (2003) 114 Cal.App.4th 434; *IT Corp. v General American* (9th Cir.
21 1997) 107 F.3d 1415; *American States Ins. Co. v. Borbor* (9th Cir. 1987) 826 F.2d 888; *Hansen*
22 *v. Blue Cross* (9th Cir. 1989) 891 F.2d 1384; and *Allstate v. Overton* (1984) 160 Cal.App.3d
23 843.

24 17. As stated above, the rates being sought on this Motion have been found
25 reasonable and awarded in prior cases for five of the six billers who worked on this case for
26 plaintiff, and, based on my familiarity with the rates in the Bay Area for class action
27 practitioners, the rates being sought here are appropriate and reasonable rates for the work done.

28 ///

1 However, in order to further evaluate the rates being sought on the Motion, I had a database
2 created which combined the rates from various legal fee analyses I have done with rates from
3 other sources which collect rates actually billed to and paid by clients.⁵ In most litigation
4 where fees are at issue, the rates to be applied are the rates being billed for comparable lawyers
5 doing comparable work in the forum of the litigation. I thus looked at the rates being charged
6 by firms active in handling class action litigation (both prosecuting and defending class actions)
7 located in the San Francisco Bay Area or which were approved by Courts in litigation in the San
8 Francisco Bay Area.⁶ The experience of the billers is one of the factors to be looked at in
9 determining the rates to be applied, and the number of years of experience of the lawyers, based
10 on their year of admission to the Bar, was the starting point of my analysis. However, rates
11 among comparable lawyers doing comparable types of work vary by size of firm, type of
12 litigation, and other factors in addition to one's number of years as a lawyer, so I used a range
13 of years of experience in my analyses to take those other factors into account. Finally, it is the
14 common and accepted practice in fee applications to use the last year of the litigation (which
15 here is 2015) to identify the appropriate rates to be awarded in a post-trial or post-settlement fee
16 application.⁷ Here, in order to expand the sample of available rate information, I used rates for
17 2012 through 2015 (the period of the litigation) which is a "conservative" approach because it
18 would have the effect of reducing the rates to be awarded since rates in general have gone up
19 since 2012. For each biller in the case, I have attached a schedule as an Exhibit showing the
20 rates that I used to evaluate the reasonableness of the rate sought for that particular biller. The
21 ///

23 ⁵ For my analysis, I only used rates from cases where the rates being sought either were actually billed to and paid by
24 fee-paying clients or had been approved by courts. I did not use rates which were simply being sought in a case or
25 which counsel opined were reasonable rates for their work unless the court had approved the particular rate in that case.

26 ⁶ I used rates from the San Francisco Bay Area in general, rather than just Alameda County (the forum), because firms
27 from all over the Bay Area handle cases in Alameda County, and the rates being charged by firms handling class
28 actions do not vary to any significant degree based on the specific county in the Bay Area the litigation is located in.
Thus, the "market" for an analysis of class action litigation in this case would be the San Francisco Bay Area, not just
Alameda County.

⁷ The alternative is to use the rates charged in each year of the litigation and add interest and, while that approach can
be used, at the option of the party seeking fees, using the last year of the litigation (and not adding interest) is far more
commonly used, in part because it simplifies the process.

1 rates sought range from the 20th to the 87th percentile of the rates in the database for firms
2 handling class action litigation and are plainly within the range of reasonableness for a case of
3 this type, given the experience and expertise of the billers in class action litigation and the fact
4 that the rates are not just current rates but go back to 2012. I address each of the billers below.

5 18. The lead lawyer for plaintiff in the litigation was Robert Gianelli. Mr. Gianelli
6 was admitted to the Bar in 1978. He has practiced almost exclusively in the field of insurance
7 law, representing insurance policyholders in numerous successful insurance-related class
8 actions involving insurance benefits and other insurance-related issues. He is a Contributing
9 Editor for the California Practice Guide, Insurance Litigation, published by The Rutter Group,
10 and has been an Adjunct Professor of Insurance Law at Whittier Law School and at the La
11 Verne University College of Law. He has been appointed class counsel in numerous class
12 actions and has litigated a number of important cases resulting in published opinions. He was a
13 finalist in 2011 for the Attorney of the Year award of the Consumer Attorneys of California for
14 his work as lead counsel in a class action on behalf of senior citizens against an annuity
15 company. He has been a speaker at numerous ALI/ABA and Rutter Group programs. In March
16 of this year, he received a "California Lawyers Attorney of the Year," award also known as a
17 CLAY Award, from California Lawyer magazine, for his work as lead counsel in two cases
18 concerning denial of treatments by health plans, as in this case, *Arce* and *Glick*. He was also a
19 Finalist for the 2014 Consumer Attorney of the Year for the Consumer Attorneys of California
20 for his work as lead counsel in *Arce*. In addition, he was a Finalist for the 2011 Consumer
21 Attorney of the Year for the Consumer Attorneys of California for his work as lead counsel in
22 *Stephens*, a senior citizen deferred annuity class action. Plaintiff is seeking \$900 per hour for
23 his work. After a certain number of years in practice, rates are not heavily dependent on the
24 number of years one has been a lawyer. Thus, in evaluating Mr. Gianelli's rate, I looked at all
25 lawyers in the database who were admitted to the Bar in 1990 or earlier (i.e., who have been in
26 practice twenty-five or more years). The range of rates in the database for lawyers with
27 twenty-five or more years of experience is set forth on Exhibit 8. \$900 per hour is at
28

1 approximately the 87th percentile of that range. That is an appropriate and reasonable rate for
2 Mr. Gianelli's work in this case.

3 19. Joshua Davis was responsible for the day-to-day handling of this case after class
4 certification through trial and post-trial proceedings, including depositions, written discovery,
5 motion practice, expert depositions, pre-trial preparation, including motions in limine, and post-
6 trial briefing and motion practice. Mr. Davis second-chaired the trial of this matter. He is a
7 1997 graduate of the University of Southern California Law School, where he was Executive
8 Editor of the Law Review. He thus has eighteen years of experience as a lawyer. From October
9 1997 to September 1999, he was an associate at Orrick, Herrington & Sutcliffe focusing on
10 class action defense; from October 1999 to December 2005, he was an associate at Gaims, Weil,
11 West and Epstein where his practice included class actions and unfair business practices; from
12 January 2006 to August 2013, he was a senior associate at Sedgwick in the Insurance Practices
13 Department; and since September 2013, he has worked at Gianelli & Morris on class action
14 cases. I looked at rates for Mr. Davis based on a range of thirteen to twenty-three years of
15 experience, which is set forth on Exhibit 9 hereto. The rate being sought for his work is \$700
16 per hour, which is at approximately the 57th percentile of that range. That is a reasonable and
17 appropriate rate for his work on the case.

18 20. Jully Pae was an associate at Gianelli & Morris during the litigation. She was
19 admitted to the Bar in 2004, and thus has eleven years of experience. Before joining Gianelli &
20 Morris, Ms. Pae was a research attorney at the Los Angeles Superior Court. Ms. Pae was
21 primarily responsible for research and motion practice in the case until she left the firm in July
22 2014. I looked at rates for her based on a range of six to sixteen years of experience, which is
23 set forth on Exhibit 10 hereto. The rate being sought for her work is \$675 per hour, which is at
24 approximately the 82nd percentile of that range in the database. That is a reasonable and
25 appropriate rate for her work on the case.

26 21. Lotte Colbert was an associate at Gianelli & Morris, and was responsible for the
27 day-to-day handling of this case prior to class certification, including depositions, written
28 discovery and motion practice. She was admitted to the Bar in 2000 and thus has fifteen years

1 of experience. In addition to other experience, she spent approximately five and one-half years
2 as staff counsel in the California Department of Managed Health Care, dealing with, among
3 other things, enforcement of the statutes governing health plans, such as the statute at issue in
4 this litigation. I looked at rates for her based on a range of ten to twenty years of experience,
5 which is set forth on Exhibit 11 hereto. The rate being sought for her work is \$625 per hour,
6 which is at approximately the 51st percentile of that range in the database. That is a reasonable
7 and appropriate rate for her work on the case.

8 22. Adrian Barrio is an associate at Gianelli & Morris and a 1997 graduate from the
9 University of Illinois College of Law, where he served on the Board of Editors of the University
10 of Illinois Law Review. After law school, he clerked for the Honorable Rebecca R. Pallmeyer,
11 United States District Judge for the Northern District of Illinois. After his clerkship, Mr. Barrio
12 worked as an Assistant Attorney General in the Criminal Appeals Division of the Illinois Office
13 of Attorney General. In October, 2002, he became an associate at Franscell, Strickland, Roberts
14 & Lawrence in Los Angeles, handling civil appeals on behalf of governmental entities in civil
15 rights and employment cases. From September 2004 to June 2014, Mr. Barrio worked as a
16 Senior Associate at Murchison & Cumming, where his litigation practice included class actions
17 and unfair business practices. Since July 2014, Mr. Barrio has worked at Gianelli & Morris on
18 the firm's consumer class action cases. Mr. Barrio was responsible for research and motion
19 practice on this case. I looked at rates for Mr. Barrio based on a range of thirteen to twenty-
20 three years of experience, which is set forth on Exhibit 12 hereto. The rate being sought for his
21 work is \$675 per hour, which is at approximately the 52nd percentile of that range. That is a
22 reasonable and appropriate rate for his work on the case.

23 23. Richard R. Fruto is also an associate at Gianelli & Morris. He was admitted to the
24 Bar in 1998. Since joining Gianelli & Morris in 2001, he has worked almost exclusively in
25 insurance-related consumer class actions. He was involved primarily in research and law and
26 motion practice for this case, and assisted during the trial. I looked at rates for Mr. Fruto based
27 on a range of twelve to twenty-two years of experience, set forth on Exhibit 13 hereto. The
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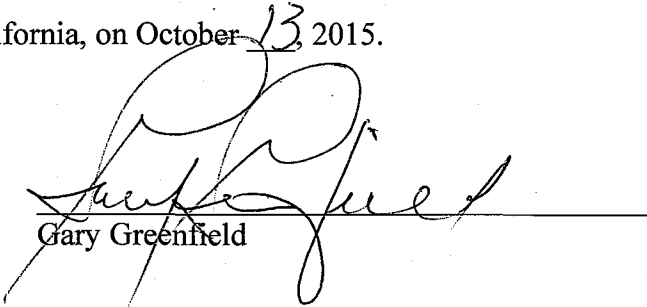
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rate being sought for his work is \$500 per hour, which is at approximately the 20th percentile of that range. That is a reasonable and appropriate rate for his work on the case.

24. Based on the foregoing, it is my opinion that the rates being sought on the Motion are reasonable and appropriate rates for each of the billers, consistent with rates awarded in prior cases, and reflective of the experience, expertise and quality of their work.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Alameda County, California, on October 13, 2015.



Gary Greenfield

[EXHIBIT 06]

RESUME

GARY GREENFIELD

PROFESSIONAL EXPERIENCE

LITIGATION COST MANAGEMENT

January 1, 1991 to date--Founder of Litigation Cost Management, a consulting firm which specializes in legal and expert fee analysis and consulting with clients respecting improving the management of their litigation.

Special Master

Appointed Special Master by San Francisco Superior Court to analyze fees and expenses of lawyers and expert witnesses

Expert consultant/witness

Qualified and testified in numerous court proceedings and arbitrations regarding attorneys' fees issues

Litigation management/auditing training and consulting

Consulting and training for both clients and law firms in litigation management and cost control and legal bill auditing and analysis

OTHER LEGAL EXPERIENCE

October 1, 1975 to December 31, 1990--Litigator in San Francisco law firm of Shartsis, Friese & Ginsburg. Handled complex litigation of various types, covering all stages of cases including trials in state and federal courts. Became partner on January 1, 1981.

EDUCATION

University of California at Berkeley (Boalt Hall)--J.D., 1975. Member, California Law Review. Order of the Coif.

Stanford University--B.A., 1971. Phi Beta Kappa. Degree with Distinction.

RESUME (Page 2)

ARTICLES

"An Auditor Speaks to Law Firms," The Recorder, August 16, 1991

"Audits Often Signal a Management Failure," Illinois Legal Times, September, 1991

"Five Early Warning Signs of Potential Overbilling," The Recorder, October 24, 1991

"Estimating the Cost of a Case," Corporate Legal Times, January, 1992

"Litigation Management: It's All in the Mind," Committee on Corporate Counsel Newsletter (ABA Section of Litigation), February, 1992

"Keep High Litigation Costs Off Your Case," Public Risk, February, 1992

"How One Company Uses In-House Audits," Corporate Legal Times, June, 1992

"Litigation Management: What Law School Never Taught You," California Lawyer, July, 1992

"Harnessing the Cost of Legal Bills," Risk Management, January, 1993

"Strategies for Reducing Your Legal Bills," Small Business Reports, June, 1993

"Efficient Litigation: An Ethical Imperative?" The American Lawyer, April, 1994

"Fee Fight (Using A Legal Fee Auditor in Billing Disputes)," Los Angeles/San Francisco Daily Journal, February 28, 1997

"Legal Bill Auditing—Problems and Perspectives," Law Governance Review, Autumn, 1997

RESUME (Page 3)

SEMINARS AND WORKSHOPS CONDUCTED

American Management Association--Two-day seminars in effective litigation management

Western Bankers' Association--Multiple workshops across California on effective litigation management

Continuing Professional Education, Inc.--Seminars in legal bill auditing and litigation management for financial professionals

OTHER SPEAKING ENGAGEMENTS

National Association of Legal Fee Analysis (NALFA)

ABA National Litigation Institute ("Applying TQM in Litigation")

Practising Law Institute ("Litigation Management Supercourse")

Los Angeles County Bar Association ("All About Fees")

National Association of Government Guaranteed Lenders

California Redevelopment Association

Public Risk Management Association

[EXHIBIT 07]



NOVEMBER 2009

HIGHLIGHTS FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION

By Hilary Hehman

DataPoints is produced by the AOC Office of Court Research to inform the court community about empirical trends in the California judicial branch.

For additional information on class action litigation in California:
www.courtinfo.ca.gov/reference/caclassactlit.htm



Judicial Council of California
 Administrative Office of the Courts
 Office of Court Research
 455 Golden Gate Avenue
 San Francisco, California 94102-3688
research@jud.ca.gov
www.courtinfo.ca.gov

Class action lawsuits are often the focus of policy and practice discussions due to their controversial nature and impact on court workload. Unfortunately, even basic information on class action litigation in California is difficult to acquire because data specific to these cases are not collected in trial court case management systems.

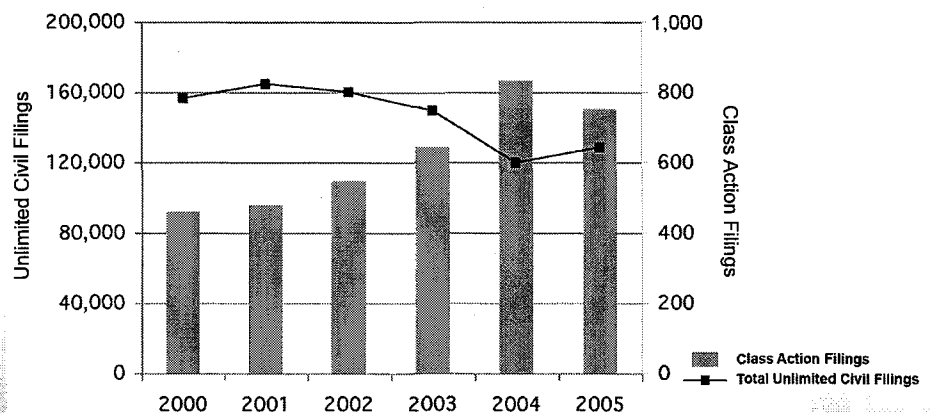
The Office of Court Research initiated the Study of California Class Action Litigation to overcome this lack of data and contribute to a more rounded dialogue about class action litigation and its effect on the court system. Through the study, data from over 1,500 class action cases filed between 2000 and mid-2006 were compiled through case-file review, resulting in the most comprehensive examination of California class action litigation to date.

This release of DataPoints provides highlights from the first interim report on class action litigation. Further detail about the Study of California Class Action Litigation and the full report on which this summary is based can be found at www.courtinfo.ca.gov/reference/caclassactlit.htm.

Filings Analysis

Study courts reported a total of 3,711 class action cases filed between 2000 and 2005. Filings steadily increased by 81% in the first five years of the study. However, the number of filings fell 9.8% between 2004 and 2005, which may be attributable to changes instituted by the Class Action Fairness Act of 2005. It will be necessary to update the data for the ensuing years to determine if the filings decline continued after 2005.

Figure 1. While total unlimited civil filings declined during the study period, the subset of class action filings increased by 63 percent



The increase in the number of class action cases filed from 2000 to 2005 stands in sharp contrast to the trend in unlimited civil filings during the same period, which show an overall decrease. Total unlimited civil filings decreased 17.8% between 2000 and 2005 in comparison to the 63.3% increase in class action filings.

Case Type Analysis

Employment and business tort cases are the most frequently filed class action case types in California, comprising more than half of all cases reviewed. Employment cases represented a yearly average of 29.3% of all class actions cases. Business tort cases represented a yearly average of 27.4% of filings during the same period.

Employment filings showed the most growth, increasing by 313.8% between 2000 and 2005. In contrast, business torts filings increased during the first two years of the study before declining in 2002.

Primary Claim Base Analysis

As part of the case-file review, the data collection captured the claims listed in the block caption on the face of each class action complaint. These claim bases list any statutory violations and other foundations for suit and offer a means of analyzing the general statutory base or legal theory at play in the case.

Over half of employment cases cited violations of the California Labor Code relating to overtime pay and general wage violations. On average, 31.5% of the cases referred to violations of the California Labor Code Section 1194 and 20.7% referred to a generalized wage violation. The analysis also shows that usage of California Labor Code Section 512 relating to meal and rest breaks greatly increased in 2003 following the successful use of this claim base in a series of cases against Wal-Mart Stores starting in 2002. 10.5% of employment class action cited this code section as a primary claim base in 2003 in comparison to zero in 2002.

Figure 2. Employment

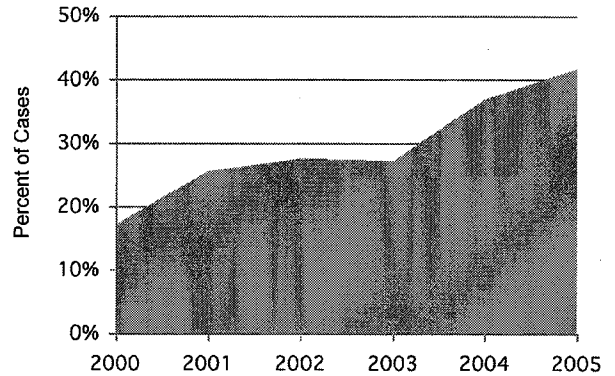
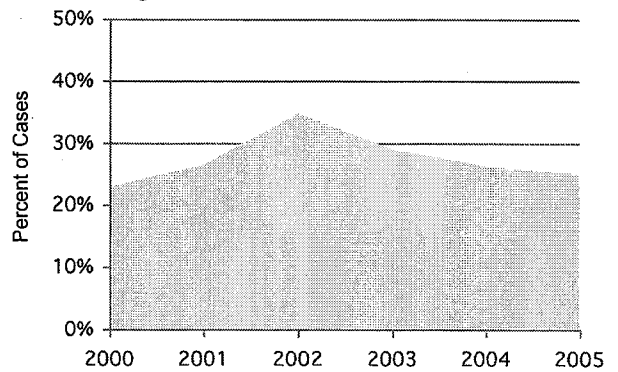
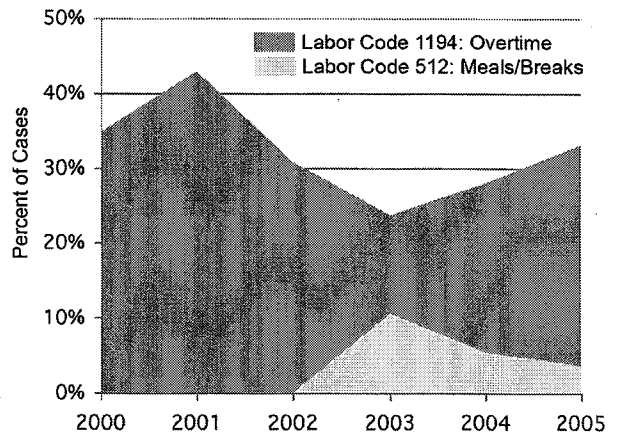


Figure 3. Business Torts



Combined, Employment and Business Tort cases represent over half of all class action cases filed in the study courts

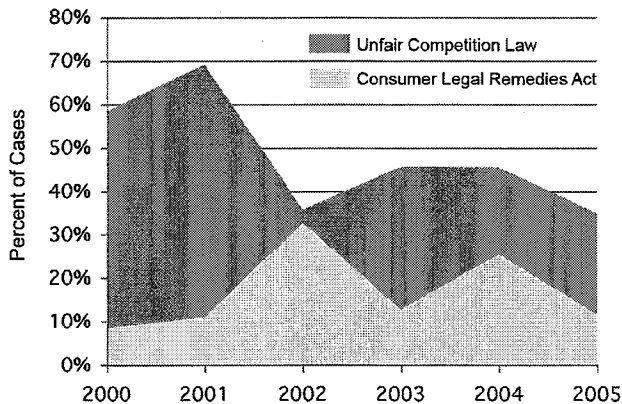
Figure 4. Primary Claim Base Cited in Cases Filed as Employment



The California Business and Professions Code Section 17200 et seq., also known as the Unfair Competition Law (UCL) was the most commonly-cited claim base in class action cases filed as business tort. On average, the UCL was used in 45.6% of all business tort cases filed in the study sample. This percentage reached a peak in 2001 wherein 69.1% of all business torts filed cited the UCL as the primary claim base of the suit.

Use of the Unfair Competition Law decreased sharply in 2002 and again between 2004 and 2005 after California Proposition 64 changed the law to include more stringent standing requirements for suit. Although Proposition 64, passed in 2004, was intended to curb the use of the UCL, it appears that Attorney General action against the misuse of the UCL in 2004 actually led to a substantial decline in its use prior to the passage of Proposition 64. Plaintiffs appear to have substituted the Consumers Legal Remedies Act as the primary claim base for the UCL in 2002 and 2004.

Figure 5. Primary Claim Base Cited in Cases Filed as Business Torts



31.9% of cases filed as class actions in the study settled.
89.2% of the cases that had a certified class settled.

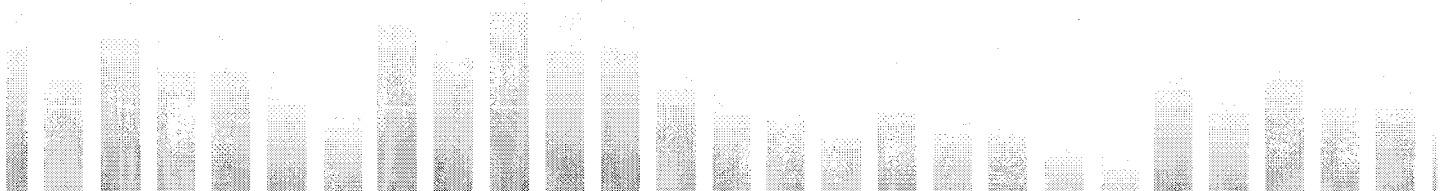
Disposition Analysis

Table 1. Frequency of Dispositions for all Disposed Class Action Cases in the Sample

Dispositions	n	% of Total Dispositions
Settlement	413	31.9%
Dismissed with prejudice	217	16.8%
Dismissed without prejudice	163	12.6%
Coordinated	141	10.9%
Removed to federal court	121	9.4%
Consolidated with another case	120	9.3%
Summary judgment for defendant	50	3.9%
Transferred	40	3.1%
Other disposition	12	0.9%
Trial verdict	9	0.7%
Stayed	6	0.5%
Interlocutory appeal	2	0.2%
All Disposed Cases	1,294	100.0%

Settlements were the most common type of disposition in study cases, representing 31.9% of all dispositions in cases filed as class actions. However, the settlement rate skyrockets to 89.2% if the disposition analysis is confined to cases that had a certified class. Class action cases rarely proceed through trial to a verdict. Only 9 study cases ended in a verdict after trial and only 2 of these reached verdicts with a certified class. Overall, it is extremely uncommon for certified class actions to reach a trial verdict in California.

Construction defect, employment, and securities litigation class actions have the highest settlement rate with percentages that are well above the overall average for all casetypes combined.



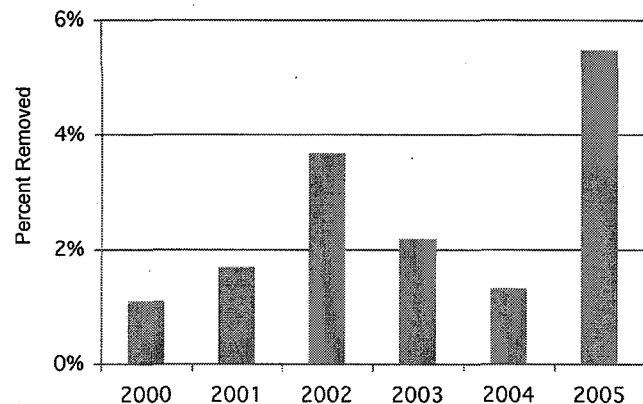
Impact of Class Action Fairness Act

41 cases were permanently removed to federal court in 2005 after CAFA took effect as compared to only 11 cases removed in 2004. The overall removal rate in California prior to CAFA was 6.6%. Post-CAFA, this removal rate increased to 19.2%. However, the post-CAFA removal rate increase does not significantly affect the class action caseload in California as the absolute number of cases removed to federal court remains low as a percentage of the statewide total.

The study also highlights that class action litigation does not lend itself to a traditional trend and long-term behavior analysis that is common for other types of litigation, for several reasons. First, class actions are relatively rare, and a small change in absolute numbers in this area translates to a large variation in the overall percentage in an analysis. Second, the field of class action practitioners is small and active which cultivates rapid change in the data as attorneys chase the latest successful claims, case outcomes, or litigation strategies.

Lastly, the trends and tendencies that do exist in class action data often exist on a local level, and a statewide analysis of class action data can obscure some of the more interesting behavior.

Figure 6. Cases permanently removed to federal court, as a percent of yearly class action filings



Business intelligence is the merger of data and analysis in support of organizational goals. The Office of Court Research produces business intelligence for the California judicial branch to inform strategic planning, policy development, and program evaluation. For more information, visit us at www.courtinfo.ca.gov/reference/resandstats.htm.

OFFICE OF COURT RESEARCH STAFF

DAG MACLEOD
Manager

STATISTICS & INFORMATION UNIT

BARRY LYNCH
Supervising Analyst

CHRIS BELLOLI
Senior Research Analyst

TARA AGNESE
Research Analyst

HUONG BUI
Research Analyst

JENNIFER CHOW
Research Analyst

CECILIA IGNACIO
Staff Analyst

CHERYL KING
Staff Analyst

RESEARCH & ANALYSIS

RON PI
Supervising Analyst

HILARY HEHMAN
Senior Research Analyst

KEVIN O'CONNELL
Senior Research Analyst

LEAH ROSE-GOODWIN
Senior Research Analyst

DAVID A. SMITH
Senior Research Analyst

KAREN VISCIA
Senior Research Analyst

SHAUNESE HENDERSON
Administrative Coordinator

JUDICIAL ADMINISTRATION LIBRARY

GARY KITAJO
Judicial Administration Librarian

BERNADINE GONSALEZ
Assistant Judicial Administration Librarian

PAUL ZOLLI
Administrative Coordinator

[EXHIBIT 08]

Litigation Cost Management

Range of Rates -- Robert Gianelli

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Leader-Picone, Malcolm	Bartlett, Leader-Picone And Young	1982	2012	375
Swanson, Ralph	Berliner Cohen	1975	2012	450
Gebhard, Robert	Sedgwick LLP	1986	2012	450
Christianson, Shawn	Buchalter Nemer	1984	2012	490
Thompson, Robert	Sheppard Mullin Richter & Hampton LLP	1969	2012	490
Kleiner, Gregg	McKenna Long & Aldridge LLP	1988	2012	495
Moell, John	McKenna Long And Aldridge LLP	1975	2013	500
Kleiner, Gregg	McKenna Long And Aldridge LLP	1988	2013	510
Fillerup, Jeffrey	McKenna Long & Aldridge LLP	1982	2012	520
Isaacs, Michael	McKenna Long & Aldridge LLP	1981	2012	520
Maher, Charles	McKenna Long & Aldridge LLP	1986	2012	520
Milgrom, Barry	McKenna Long & Aldridge LLP	1981	2012	520
Belgum, Karl	Nixon Peabody	1981	2012	520
Melchior, Kurt	Nossaman, Guthner, Knox & Elliott	1951	2012	525
Fillerun, Jeffrev	McKenna Long And Aldridge LLP	1990	2013	540
Hill, Richard	Littler Mendelson P.C.	1978	2012	565
Lederman, Henry	Littler Mendelson	1975	2012	575
Lederman, Henry	Littler Mendelson P.C.	1974	2012	575
Egan, Pamela	Pachulski Stang Young & Jones LLP	1989	2012	575
Tom Burke	Davis Wright Tremaine	1989	2012	585
Tom Burke	Davis Wright Tremaine	1989	2013	585
MacDonnell, GJ	Littler Mendelson P.C.	1973	2012	585
Tichy, George	Littler Mendelson P.C.	1967	2012	585
Pulgram, Laurence	Fenwick & West	1984	2012	600
Manierre, William	Sheppard Mullin Richter & Hampton LLP	1975	2012	635
Anderson, James	DLA Piper	1989	2012	650
Hungerford, Charles	Jones Day	1975	2012	650
Oliner, Aron	Duane Morris LLP	1990	2012	655
Boddy, James	Morrison & Foerster LLP	1975	2012	660
Sacks, Steven	Sheppard Mullin Richter & Hampton LLP	1980	2012	670
Reddy, Thomas	Bingham McCutchen LLP	1973	2012	675
Rockett, James	Bingham McCutchen LLP	1969	2012	690
David Leo Huard	Manatt	1983	2012	695
Livingston, Andrew	Orrick, Herrington & Sutcliffe LLP	1990	2012	695
Stumpf, Robert	Sheppard Mullin	1976	2012	700
Goodwin, David	Covington & Burling	1982	2012	716
David Leo Huard	Manatt	1983	2013	720
Ford, Robert	Jones Day	1975	2012	725
Telfer, James	DLA Piper	1986	2012	740
Lapallo, Francis	Manatt, Phelps & Phillips, LLP	1977	2012	740
Fiero, John	Pachulski Stang Young & Jones LLP	1988	2012	745
Fiero, John	Pachulski Stang Ziehl & Jones LLP	1988	2013	745
Dempsey, Karen	Orrick, Herrington & Sutcliffe LLP	1988	2012	760
Mitchell, Thomas	Orrick, Herrington & Sutcliffe LLP	1985	2012	760

Litigation Cost Management

Range of Rates -- Robert Gianelli

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Brown, Kenneth	Pachulski Stang Young & Jones LLP	1981	2012	765
Eisenbach, Robert	Cooley LLP	1985	2012	770
Keller, Tobias	Jones Day	1990	2012	775
Roger Cook	Kilpatrick Townsend & Stockton LLP	1964	2012	775
Lenard G. Weiss	Manatt	1963	2012	780
Eisenbach, Robert	Cooley LLP	1985	2013	790
Bolding, Grady	Orrick, Herrington & Sutcliffe LLP	1977	2012	790
Timothy Moore	Cooley	1985	2012	795
Timothy Moore	Cooley	1985	2013	795
Goodwin, David	Covington & Burling	1982	2012	795
Hobel, Lawrence	Covington & Burling LLP	1976	2012	795
Engel, G.	Morrison & Foerster LLP	1972	2012	795
Murphy, David	Morrison & Foerster LLP	1974	2012	800
Kevane, Henry	Pachulski Stang Young & Jones LLP	1986	2012	815
Gross, David	DLA Piper	1978	2012	820
Plewa, David	DLA Piper	1987	2012	825
Benvenuti, Peter	Jones Day	1974	2012	825
Hoxie, Timothy	Jones Day	1985	2012	825
Colker, David	DLA Piper	1978	2012	845
Clowes, Howard	DLA Piper	1982	2012	850
Schrotenboer, Ronald	Fenwick & West	1980	2012	850
Berry, William	Orrick, Herrington & Sutcliffe LLP	1972	2012	850
Hoffman, William	DLA Piper	1989	2012	860
Mayer, Steven	Arnold & Porter LLP	1974	2012	875
Kevane, Henry	Pachulski Stang Ziehl & Jones LLP	1986	2015	895
Gordon Atkinson	Cooley	1986	2012	920
Bush, Philip	Baker & McKenzie LLP	1974	2012	925
Denwood, Peter	Baker & McKenzie LLP	1990	2012	925
Mitchell, Emery	Baker & McKenzie LLP	1989	2012	925
Penner, Michael	Baker & McKenzie LLP	1990	2012	925
Schultz, Matthew	Baker & McKenzie LLP	1984	2012	925
Kennedy, David	Gibson, Dunn & Crutcher LLP	1982	2012	955
Gordon Atkinson	Cooley	1986	2013	975
Guernsey, Kenneth	Cooley LLP	1978	2013	1,020
Silverman, Karen	Latham And Watkins LLP	1988	2012	1,035

[EXHIBIT 09]

Litigation Cost Management

Range of Rates -- Joshua Davis

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Palazzolo, Laura	Berliner Cohen	2000	2012	320
Hayes, Jennifer	McKenna Long & Aldridge LLP	1994	2012	370
Coleman, Jennifer	Hopkins & Carley	2000	2012	370
Herman, Diana	McKenna Long & Aldridge LLP	1997	2012	390
Waggoner, Anne-Marie	Littler Mendelson P.C.	1994	2012	395
Gibson, Steve	DLA Piper	2002	2012	395
Francois, Matthew	Sedgwick LLP	1996	2012	395
Payson, Kenneth	Davis Wright Tremaine LLP	1996	2012	428
Herman, Diana	McKenna Long And Aldridge LLP	1997	2013	445
Guillou, Celine	Pachulski Stang Young & Jones LLP	1998	2012	450
Greer, Julie	Coblentz Patch Duffy & Bass, LLP	1999	2012	460
Picone, John	Hopkins & Carley	1996	2012	465
Stimeling, Kathleen	Schiff Hardin LLP	2000	2012	490
Gehrke, Michele	Sheppard Mullin Richter & Hampton LLP	2001	2012	495
Miller, Ann	DLA Piper	2002	2012	510
Heaton, Geoffrey	Duane Morris LLP	1999	2012	515
Barrett, Michelle	Littler Mendelson P.C.	1998	2012	535
Barmak Sani	Kilpatrick Townsend & Stockton LLP	1997	2012	540
Porter, Scott	Orrick, Herrington & Sutcliffe LLP	1997	2012	555
Bartlett, Jason	Morrison & Foerster LLP	1998	2012	559
Kurlekar, Amit	Akin Gump Strauss Hauer & Feld LLP	2001	2012	560
Khatiblou, Miriam	Pachulski Stang Young & Jones LLP	1995	2012	575
Rivas, Carlos	DLA Piper	2001	2012	580
Hung, Richard	Morrison & Foerster LLP	1998	2012	582
Greenwood, Gail	Pachulski Stang Young & Jones LLP	1993	2012	595
Thorpe, Andrew	Morrison & Foerster LLP	1999	2012	595
Joiner, Scott	Cooley Godward	2002	2012	600
Mazza, Mia	Morrison & Foerster LLP	1996	2012	605
Gershon, David	Bingham McCutchen LLP	1992	2012	620
Brynda, Janel	Baker & McKenzie LLP	2000	2012	625
Terri Forman	Cooley	1999	2012	630
Joiner, Scott	Cooley Godward	2002	2012	630
Aronson, Jeffrey	DLA Piper	1996	2012	650
Sikes, David	Jones Day	2002	2012	650
Ferreira, G.	Greenberg Traurig LLP	1995	2012	655
Lange, Barbara	Orrick, Herrington & Sutcliffe LLP	1994	2012	660
Andrew Bassak	Manatt	1992	2012	665
Benjamin Gross Shatz	Manatt	1992	2012	665
Schwaab, Andrew	DLA Piper	1998	2012	665
Terri Forman	Cooley	1999	2013	670
Andrew Bassak	Manatt	1992	2013	690
McDaniels, Keith	Cooley LLP	1996	2013	695
Griebe, Benjamin	DLA Piper	1999	2012	695
Agenbroad, Aaron	Jones Day	1997	2012	700

Litigation Cost Management

Range of Rates -- Joshua Davis

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Sheen, Raymond	Jones Day	1997	2012	700
Lee, Victoria	DLA Piper	1993	2012	725
Yamashita, Brent	DLA Piper	1997	2012	725
Keegan, Christopher	Kirkland & Ellis LLP	2002	2012	725
Litvak, Maxim	Pachulski Stang Young & Jones LLP	1997	2012	725
Wit, Terry	Quinn Emanuel	2002	2012	730
Briggs, Todd	Quinn Emanuel	2000	2012	735
Adelson, Eliot	Kirkland & Ellis LLP	1999	2012	745
Paz, Stacy	DLA Piper	2002	2012	750
Limbach, Alan	DLA Piper	1994	2012	755
Lohse, Timothy	DLA Piper	1994	2012	755
McKane, Mark	Kirkland & Ellis LLP	1997	2012	765
McKane, Mark E.	Kirkland & Ellis LLP	1997	2012	765
Huibonhoa, Katherine	Paul Hastings	1998	2012	765
Tang, John	Jones Day	1996	2012	775
McKitterick, Nate	DLA Piper	1994	2012	790
McKitterick, Nathaniel	DLA Piper	1994	2012	790
Bertenthal, David	Pachulski Stang Ziehl & Jones LLP	1993	2012	795
Maroulis, Victoria	Quinn Emanuel	1996	2012	815
Doolittle, Patrick	Quinn Emanuel	2000	2012	895
Eandi, Susan	Baker & McKenzie LLP	1997	2012	925
Flores, Victor	Baker & McKenzie LLP	1998	2012	925
Derek L. Shaffer	Quinn	2001	2014	930
Robert W. Stone	Quinn	1992	2012	955
Robert W. Stone	Quinn	1992	2013	955
Travers, Mischa	Davis Polk & Wardwell LLP	1996	2012	985
Simon, Spencer	Sullivan & Cromwell LLP	1999	2012	990
Robert W. Stone	Quinn	1992	2014	995
Brian Cannon	Quinn	1997	2014	995
Brian Cannon	Quinn	1997	2015	995
Robert W. Stone	Quinn	1992	2015	1,015
Charles K. Verhoeven	Quinn	1994	2013	1,075
Mousavi, Nader	Sullivan & Cromwell LLP	1997	2012	1,150

[EXHIBIT 10]

Litigation Cost Management

Range of Rates -- July Pae

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Mason, Tracy	Bryan Cave LLP	2008	2012	225
Amanda Levin	Quinn	2009	2013	290
Keller, Ivo	Buchalter Nemer	2006	2012	310
Magaline, Nicole	Schiff Hardin LLP	2007	2012	310
Palazzolo, Laura	Berliner Cohen	2000	2012	320
Vorhis, James	Nossaman, Guthner, Knox & Elliott	2006	2012	325
Huynh, Doe	Orrick, Herrington & Sutcliffe LLP	2009	2012	330
McConnell, Kathleen	Coblentz Patch Duffy & Bass, LLP	2005	2012	335
Webb, Clifford	Fenwick & West	2008	2012	345
Coleman, Jennifer	Hopkins & Carley	2000	2012	370
Kim, Esther	Morrison & Foerster LLP	2008	2012	372
Mahoney, Patrick	Schiff Hardin LLP	2004	2012	375
Gibson, Steve	DLA Piper	2002	2012	395
Johnson, Jennifer	Fenwick & West	2007	2012	395
Obaro, Bambo	Weil Gotshal	2009	2012	395
Colosi, Peter	Cooley Godward	2007	2012	405
Kushner, Dina	Morrison & Foerster LLP	2009	2012	405
Barnard, Justin	Quinn Emanuel	2008	2012	420
Sabri, Nathan	Morrison & Foerster LLP	2007	2012	424
Eric Hutchins	Kilpatrick Townsend & Stockton LLP	2006	2012	425
So, Andrew	Kirkland & Ellis LLP	2009	2012	430
Robert Tadlock	Kilpatrick Townsend & Stockton LLP	2005	2012	450
Lee, Jacqueline	Jones Day	2006	2012	450
White, Martin	Sheppard Mullin	2007	2012	455
Greer, Julie	Coblentz Patch Duffy & Bass, LLP	1999	2012	460
Ordikhani, Naghmeh	Morrison & Foerster LLP	2009	2012	465
Stimeling, Kathleen	Schiff Hardin LLP	2000	2012	490
Largent, Craig	Kilpatrick Townsend & Stockton LLP	2004	2012	490
Flaherty, Jason	Orrick, Herrington & Sutcliffe LLP	2003	2012	495
Gehrke, Michele	Sheppard Mullin Richter & Hampton LLP	2001	2012	495
Holbrook, Adam	Kirkland & Ellis LLP	2009	2012	495
Guerra, Marcelo	Morrison & Foerster LLP	2004	2012	498
Scullion, Alyssa	Jones Day	2007	2012	500
Jack Stoddard	Manatt	2006	2012	500
Lauter, Michael	Sheppard Mullin Richter & Hampton LLP	2006	2012	505
Sacks, Michael	Sheppard Mullin Richter & Hampton LLP	2006	2012	505
Miller, Ann	DLA Piper	2002	2012	510
Tara Seshadri Kaushik	Manatt	2004	2012	510
Heaton, Geoffrey	Duane Morris LLP	1999	2012	515
Christopher Aaron Rheinhe	Manatt	2007	2013	525
Jack Stoddard	Manatt	2006	2013	525
Kelly Lynn Knudson	Manatt	2006	2013	525
Susanna Lynn Chenette	Manatt	2008	2013	525
Hiensch, Kristin	Morrison & Foerster LLP	2006	2012	525

Litigation Cost Management

Range of Rates -- July Pae

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Chitbangonsyn, Joybell	Dechert LLP	2007	2012	535
Kurlekar, Amit	Akin Gump Strauss Hauer & Feld LLP	2001	2012	560
Kevin Dwight	Manatt	2005	2012	560
Hollman, Hugh	Jones Day	2005	2012	575
Kiernan, Kelli	Jones Day	2005	2012	575
Kiernan, Killi	Jones Day	2005	2012	575
Rivas, Carlos	DLA Piper	2001	2012	580
Kevin Dwight	Manatt	2005	2013	580
Darren Pluth	Quinn	2009	2012	580
Nokes, Casey	Kirkland & Ellis LLP	2005	2012	585
Hinderliter, Justine	Locke Lord LLP	2006	2012	586
Thorpe, Andrew	Morrison & Foerster LLP	1999	2012	595
Lucas, John	Pachulski Stang Ziehl & Jones LLP	2004	2014	595
Joiner, Scott	Cooley Godward	2002	2012	600
Appelbaum, Mark	Jones Day	2003	2012	600
Novak, Vincent	Morrison & Foerster LLP	2004	2012	610
Kacprowski, Nickolas	Kirkland & Ellis LLP	2004	2012	620
Belytschko, Justine	Baker & McKenzie LLP	2007	2012	625
Brynda, Janel	Baker & McKenzie LLP	2000	2012	625
Goulding, Matthew	Kirkland And Ellis	2009	2012	625
Terri Forman	Cooley	1999	2012	630
Joiner, Scott	Cooley Godward	2002	2012	630
Kroupa, Lesley	Cooley LLP	2006	2013	640
Mitchell, Jeffrey	DLA Piper	2003	2012	650
Sikes, David	Jones Day	2002	2012	650
Unger, Sean	Paul Hastings	2004	2012	655
Terri Forman	Cooley	1999	2013	670
Kelleher, Brendan	Latham And Watkins LLP	2007	2012	675
Griebe, Benjamin	DLA Piper	1999	2012	695
Zaltzman, Haim	Latham And Watkins LLP	2005	2012	725
Keegan, Christopher	Kirkland & Ellis LLP	2002	2012	725
Wit, Terry	Quinn Emanuel	2002	2012	730
Briggs, Todd	Quinn Emanuel	2000	2012	735
Adelson, Eliot	Kirkland & Ellis LLP	1999	2012	745
Paz, Stacy	DLA Piper	2002	2012	750
Puri, Vanita	Latham And Watkins LLP	2005	2012	895
Amy Candido	Quinn	2005	2012	895
Amy Candido	Quinn	2005	2013	895
Doolittle, Patrick	Quinn Emanuel	2000	2012	895
Malm, Kirsten	Baker & McKenzie LLP	2004	2012	925
Derek L. Shaffer	Quinn	2001	2014	930
Amy Candido	Quinn	2005	2014	935
Simon, Spencer	Sullivan & Cromwell LLP	1999	2012	990

[EXHIBIT 11]

Litigation Cost Management

Range of Rates -- Lotte Colbert

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Palazzolo, Laura	Berliner Cohen	2000	2012	320
McConnell, Kathleen	Coblentz Patch Duffy & Bass, LLP	2005	2012	335
Coleman, Jennifer	Hopkins & Carley	2000	2012	370
Mahoney, Patrick	Schiff Hardin LLP	2004	2012	375
Herman, Diana	McKenna Long & Aldridge LLP	1997	2012	390
Gibson, Steve	DLA Piper	2002	2012	395
Francois, Matthew	Sedgwick LLP	1996	2012	395
Payson, Kenneth	Davis Wright Tremaine LLP	1996	2012	428
Herman, Diana	McKenna Long And Aldridge LLP	1997	2013	445
Guillou, Celine	Pachulski Stang Young & Jones LLP	1998	2012	450
Robert Tadlock	Kilpatrick Townsend & Stockton LLP	2005	2012	450
Greer, Julie	Coblentz Patch Duffy & Bass, LLP	1999	2012	460
Picone, John	Hopkins & Carley	1996	2012	465
Stimeling, Kathleen	Schiff Hardin LLP	2000	2012	490
Largent, Craig	Kilpatrick Townsend & Stockton LLP	2004	2012	490
Flaherty, Jason	Orrick, Herrington & Sutcliffe LLP	2003	2012	495
Gehrke, Michele	Sheppard Mullin Richter & Hampton LLP	2001	2012	495
Guerra, Marcelo	Morrison & Foerster LLP	2004	2012	498
Miller, Ann	DLA Piper	2002	2012	510
Tara Seshadri Kaushik	Manatt	2004	2012	510
Heaton, Geoffrey	Duane Morris LLP	1999	2012	515
Barrett, Michelle	Littler Mendelson P.C.	1998	2012	535
Barmak Sani	Kilpatrick Townsend & Stockton LLP	1997	2012	540
Porter, Scott	Orrick, Herrington & Sutcliffe LLP	1997	2012	555
Bartlett, Jason	Morrison & Foerster LLP	1998	2012	559
Kurlekar, Amit	Akin Gump Strauss Hauer & Feld LLP	2001	2012	560
Kevin Dwight	Manatt	2005	2012	560
Khatiblou, Miriam	Pachulski Stang Young & Jones LLP	1995	2012	575
Hollman, Hugh	Jones Day	2005	2012	575
Kiernan, Kelli	Jones Day	2005	2012	575
Kiernan, Killi	Jones Day	2005	2012	575
Rivas, Carlos	DLA Piper	2001	2012	580
Kevin Dwight	Manatt	2005	2013	580
Hung, Richard	Morrison & Foerster LLP	1998	2012	582
Nokes, Casey	Kirkland & Ellis LLP	2005	2012	585
Thorpe, Andrew	Morrison & Foerster LLP	1999	2012	595
Lucas, John	Pachulski Stang Ziehl & Jones LLP	2004	2014	595
Joiner, Scott	Cooley Godward	2002	2012	600
Appelbaum, Mark	Jones Day	2003	2012	600
Mazza, Mia	Morrison & Foerster LLP	1996	2012	605
Novak, Vincent	Morrison & Foerster LLP	2004	2012	610
Kacprowski, Nickolas	Kirkland & Ellis LLP	2004	2012	620
Brynda, Janel	Baker & McKenzie LLP	2000	2012	625
Terri Forman	Cooley	1999	2012	630

Litigation Cost Management

Range of Rates -- Lotte Colbert

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Joiner, Scott	Cooley Godward	2002	2012	630
Aronson, Jeffrey	DLA Piper	1996	2012	650
Mitchell, Jeffrey	DLA Piper	2003	2012	650
Sikes, David	Jones Day	2002	2012	650
Ferreira, G.	Greenberg Traurig LLP	1995	2012	655
Unger, Sean	Paul Hastings	2004	2012	655
Schwaab, Andrew	DLA Piper	1998	2012	665
Terri Forman	Cooley	1999	2013	670
McDaniels, Keith	Cooley LLP	1996	2013	695
Griebe, Benjamin	DLA Piper	1999	2012	695
Agenbroad, Aaron	Jones Day	1997	2012	700
Sheen, Raymond	Jones Day	1997	2012	700
Zaltzman, Haim	Latham And Watkins LLP	2005	2012	725
Yamashita, Brent	DLA Piper	1997	2012	725
Keegan, Christopher	Kirkland & Ellis LLP	2002	2012	725
Litvak, Maxim	Pachulski Stang Young & Jones LLP	1997	2012	725
Wit, Terry	Quinn Emanuel	2002	2012	730
Briggs, Todd	Quinn Emanuel	2000	2012	735
Adelson, Eliot	Kirkland & Ellis LLP	1999	2012	745
Paz, Stacy	DLA Piper	2002	2012	750
McKane, Mark	Kirkland & Ellis LLP	1997	2012	765
McKane, Mark E.	Kirkland & Ellis LLP	1997	2012	765
Huibonhoa, Katherine	Paul Hastings	1998	2012	765
Tang, John	Jones Day	1996	2012	775
Maroulis, Victoria	Quinn Emanuel	1996	2012	815
Puri, Vanita	Latham And Watkins LLP	2005	2012	895
Amy Candido	Quinn	2005	2012	895
Amy Candido	Quinn	2005	2013	895
Doolittle, Patrick	Quinn Emanuel	2000	2012	895
Malm, Kirsten	Baker & McKenzie LLP	2004	2012	925
Eandi, Susan	Baker & McKenzie LLP	1997	2012	925
Flores, Victor	Baker & McKenzie LLP	1998	2012	925
Derek L. Shaffer	Quinn	2001	2014	930
Amy Candido	Quinn	2005	2014	935
Travers, Mischa	Davis Polk & Wardwell LLP	1996	2012	985
Simon, Spencer	Sullivan & Cromwell LLP	1999	2012	990
Brian Cannon	Quinn	1997	2014	995
Brian Cannon	Quinn	1997	2015	995
Mousavi, Nader	Sullivan & Cromwell LLP	1997	2012	1,150

[EXHIBIT 12]

Litigation Cost Management

Range of Rates -- Adrian Barrio

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Palazzolo, Laura	Berliner Cohen	2000	2012	320
Hayes, Jennifer	McKenna Long & Aldridge LLP	1994	2012	370
Coleman, Jennifer	Hopkins & Carley	2000	2012	370
Herman, Diana	McKenna Long & Aldridge LLP	1997	2012	390
Waggoner, Anne-Marie	Littler Mendelson P.C.	1994	2012	395
Gibson, Steve	DLA Piper	2002	2012	395
Francois, Matthew	Sedgwick LLP	1996	2012	395
Payson, Kenneth	Davis Wright Tremaine LLP	1996	2012	428
Herman, Diana	McKenna Long And Aldridge LLP	1997	2013	445
Guillou, Celine	Pachulski Stang Young & Jones LLP	1998	2012	450
Greer, Julie	Coblentz Patch Duffy & Bass, LLP	1999	2012	460
Picone, John	Hopkins & Carley	1996	2012	465
Stimeling, Kathleen	Schiff Hardin LLP	2000	2012	490
Gehrke, Michele	Sheppard Mullin Richter & Hampton LLP	2001	2012	495
Miller, Ann	DLA Piper	2002	2012	510
Heaton, Geoffrey	Duane Morris LLP	1999	2012	515
Barrett, Michelle	Littler Mendelson P.C.	1998	2012	535
Barmak Sani	Kilpatrick Townsend & Stockton LLP	1997	2012	540
Porter, Scott	Orrick, Herrington & Sutcliffe LLP	1997	2012	555
Bartlett, Jason	Morrison & Foerster LLP	1998	2012	559
Kurlekar, Amit	Akin Gump Strauss Hauer & Feld LLP	2001	2012	560
Khatiblou, Miriam	Pachulski Stang Young & Jones LLP	1995	2012	575
Rivas, Carlos	DLA Piper	2001	2012	580
Hung, Richard	Morrison & Foerster LLP	1998	2012	582
Greenwood, Gail	Pachulski Stang Young & Jones LLP	1993	2012	595
Thorpe, Andrew	Morrison & Foerster LLP	1999	2012	595
Joiner, Scott	Cooley Godward	2002	2012	600
Mazza, Mia	Morrison & Foerster LLP	1996	2012	605
Gershon, David	Bingham McCutchen LLP	1992	2012	620
Brynda, Janel	Baker & McKenzie LLP	2000	2012	625
Terri Forman	Cooley	1999	2012	630
Joiner, Scott	Cooley Godward	2002	2012	630
Aronson, Jeffrey	DLA Piper	1996	2012	650
Sikes, David	Jones Day	2002	2012	650
Ferreira, G.	Greenberg Traurig LLP	1995	2012	655
Lange, Barbara	Orrick, Herrington & Sutcliffe LLP	1994	2012	660
Andrew Bassak	Manatt	1992	2012	665
Benjamin Gross Shatz	Manatt	1992	2012	665
Schwaab, Andrew	DLA Piper	1998	2012	665
Terri Forman	Cooley	1999	2013	670
Andrew Bassak	Manatt	1992	2013	690
McDaniels, Keith	Cooley LLP	1996	2013	695
Griebe, Benjamin	DLA Piper	1999	2012	695
Agenbroad, Aaron	Jones Day	1997	2012	700

Litigation Cost Management

Range of Rates -- Adrian Barrio

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Sheen, Raymond	Jones Day	1997	2012	700
Lee, Victoria	DLA Piper	1993	2012	725
Yamashita, Brent	DLA Piper	1997	2012	725
Keegan, Christopher	Kirkland & Ellis LLP	2002	2012	725
Litvak, Maxim	Pachulski Stang Young & Jones LLP	1997	2012	725
Wit, Terry	Quinn Emanuel	2002	2012	730
Briggs, Todd	Quinn Emanuel	2000	2012	735
Adelson, Eliot	Kirkland & Ellis LLP	1999	2012	745
Paz, Stacy	DLA Piper	2002	2012	750
Limbach, Alan	DLA Piper	1994	2012	755
Lohse, Timothy	DLA Piper	1994	2012	755
McKane, Mark	Kirkland & Ellis LLP	1997	2012	765
McKane, Mark E.	Kirkland & Ellis LLP	1997	2012	765
Huibonhoa, Katherine	Paul Hastings	1998	2012	765
Tang, John	Jones Day	1996	2012	775
McKitterick, Nate	DLA Piper	1994	2012	790
McKitterick, Nathaniel	DLA Piper	1994	2012	790
Bertenthal, David	Pachulski Stang Ziehl & Jones LLP	1993	2012	795
Maroulis, Victoria	Quinn Emanuel	1996	2012	815
Doolittle, Patrick	Quinn Emanuel	2000	2012	895
Eandi, Susan	Baker & McKenzie LLP	1997	2012	925
Flores, Victor	Baker & McKenzie LLP	1998	2012	925
Derek L. Shaffer	Quinn	2001	2014	930
Robert W. Stone	Quinn	1992	2012	955
Robert W. Stone	Quinn	1992	2013	955
Travers, Mischa	Davis Polk & Wardwell LLP	1996	2012	985
Simon, Spencer	Sullivan & Cromwell LLP	1999	2012	990
Robert W. Stone	Quinn	1992	2014	995
Brian Cannon	Quinn	1997	2014	995
Brian Cannon	Quinn	1997	2015	995
Robert W. Stone	Quinn	1992	2015	1,015
Charles K. Verhoeven	Quinn	1994	2013	1,075
Mousavi, Nader	Sullivan & Cromwell LLP	1997	2012	1,150

[EXHIBIT 13]

Litigation Cost Management

Range of Rates -- Richard Fruto

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Palazzolo, Laura	Berliner Cohen	2000	2012	320
Hayes, Jennifer	McKenna Long & Aldridge LLP	1994	2012	370
Coleman, Jennifer	Hopkins & Carley	2000	2012	370
Herman, Diana	McKenna Long & Aldridge LLP	1997	2012	390
Waggoner, Anne-Marie	Littler Mendelson P.C.	1994	2012	395
Gibson, Steve	DLA Piper	2002	2012	395
Francois, Matthew	Sedgwick LLP	1996	2012	395
Payson, Kenneth	Davis Wright Tremaine LLP	1996	2012	428
Herman, Diana	McKenna Long And Aldridge LLP	1997	2013	445
Guillou, Celine	Pachulski Stang Young & Jones LLP	1998	2012	450
Greer, Julie	Coblentz Patch Duffy & Bass, LLP	1999	2012	460
Picone, John	Hopkins & Carley	1996	2012	465
Stimeling, Kathleen	Schiff Hardin LLP	2000	2012	490
Flaherty, Jason	Orrick, Herrington & Sutcliffe LLP	2003	2012	495
Gehrke, Michele	Sheppard Mullin Richter & Hampton LLP	2001	2012	495
Miller, Ann	DLA Piper	2002	2012	510
Heaton, Geoffrey	Duane Morris LLP	1999	2012	515
Barrett, Michelle	Littler Mendelson P.C.	1998	2012	535
Barmak Sani	Kilpatrick Townsend & Stockton LLP	1997	2012	540
Porter, Scott	Orrick, Herrington & Sutcliffe LLP	1997	2012	555
Bartlett, Jason	Morrison & Foerster LLP	1998	2012	559
Kurlekar, Amit	Akin Gump Strauss Hauer & Feld LLP	2001	2012	560
Khatiblou, Miriam	Pachulski Stang Young & Jones LLP	1995	2012	575
Rivas, Carlos	DLA Piper	2001	2012	580
Hung, Richard	Morrison & Foerster LLP	1998	2012	582
Greenwood, Gail	Pachulski Stang Young & Jones LLP	1993	2012	595
Thorpe, Andrew	Morrison & Foerster LLP	1999	2012	595
Joiner, Scott	Cooley Godward	2002	2012	600
Appelbaum, Mark	Jones Day	2003	2012	600
Mazza, Mia	Morrison & Foerster LLP	1996	2012	605
Brynda, Janel	Baker & McKenzie LLP	2000	2012	625
Terri Forman	Cooley	1999	2012	630
Joiner, Scott	Cooley Godward	2002	2012	630
Aronson, Jeffrey	DLA Piper	1996	2012	650
Mitchell, Jeffrey	DLA Piper	2003	2012	650
Sikes, David	Jones Day	2002	2012	650
Ferreira, G.	Greenberg Traurig LLP	1995	2012	655
Lange, Barbara	Orrick, Herrington & Sutcliffe LLP	1994	2012	660
Schwaab, Andrew	DLA Piper	1998	2012	665
Terri Forman	Cooley	1999	2013	670
McDaniels, Keith	Cooley LLP	1996	2013	695
Griebe, Benjamin	DLA Piper	1999	2012	695
Agenbroad, Aaron	Jones Day	1997	2012	700
Sheen, Raymond	Jones Day	1997	2012	700

Litigation Cost Management

Range of Rates -- Richard Fruto

Gallimore v. Kaiser

Name	Firm	Bar Date	Rate Year	Actual Rate
Lee, Victoria	DLA Piper	1993	2012	725
Yamashita, Brent	DLA Piper	1997	2012	725
Keegan, Christopher	Kirkland & Ellis LLP	2002	2012	725
Litvak, Maxim	Pachulski Stang Young & Jones LLP	1997	2012	725
Wit, Terry	Quinn Emanuel	2002	2012	730
Briggs, Todd	Quinn Emanuel	2000	2012	735
Adelson, Eliot	Kirkland & Ellis LLP	1999	2012	745
Paz, Stacy	DLA Piper	2002	2012	750
Limbach, Alan	DLA Piper	1994	2012	755
Lohse, Timothy	DLA Piper	1994	2012	755
McKane, Mark	Kirkland & Ellis LLP	1997	2012	765
McKane, Mark E.	Kirkland & Ellis LLP	1997	2012	765
Huibonhoa, Katherine	Paul Hastings	1998	2012	765
Tang, John	Jones Day	1996	2012	775
McKitterick, Nate	DLA Piper	1994	2012	790
McKitterick, Nathaniel	DLA Piper	1994	2012	790
Bertenthal, David	Pachulski Stang Ziehl & Jones LLP	1993	2012	795
Maroulis, Victoria	Quinn Emanuel	1996	2012	815
Doolittle, Patrick	Quinn Emanuel	2000	2012	895
Eandi, Susan	Baker & McKenzie LLP	1997	2012	925
Flores, Victor	Baker & McKenzie LLP	1998	2012	925
Derek L. Shaffer	Quinn	2001	2014	930
Travers, Mischa	Davis Polk & Wardwell LLP	1996	2012	985
Simon, Spencer	Sullivan & Cromwell LLP	1999	2012	990
Brian Cannon	Quinn	1997	2014	995
Brian Cannon	Quinn	1997	2015	995
Charles K. Verhoeven	Quinn	1994	2013	1,075
Mousavi, Nader	Sullivan & Cromwell LLP	1997	2012	1,150

PROOF OF SERVICE
GALLIMORE V. KAISER
CASE NO. RG12616206

**STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 S. Hope Street, Suite 1645, Los Angeles, CA 90071.

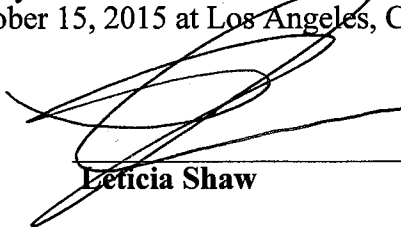
On October 15, 2015, I served the foregoing document described as **DECLARATION OF GARY GREENFIELD IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND SERVICE AWARD FOR WENDY GALLIMORE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

BRIAN S. LEE
MARK PALLEY
MARION'S INN LLP
1611 Telegraph Ave., Ste 707
Oakland, CA 94612
Tel: (510) 451-6770
Fax: (510) 451-1711
Email: bl@marionsinn.com
Email: mp@marionsinn.com

COUNSEL FOR DEFENDANT
KAISER FOUNDATION HEALTH PLAN, INC.

(By Federal Express) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence or packages for the delivery via Federal Express. Under that practice it would be deposited in a box or other facility regularly maintained by Federal Express or delivered to an authorized Federal Express courier authorized by Federal Express to receive documents on that same day, with delivery fees paid, addressed to the person on whom it is to be served, at the last office address as given by that person on the last documents filed in the cause and served on this office, or at that person's place of residence.

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 15, 2015 at Los Angeles, California.



Leticia Shaw

[EXHIBIT 03]

COPY

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 GIANELLI & MORRIS, A Law Corporation
4 550 South Hope Street, Suite 1645
5 Los Angeles, CA 90071
6 Tel: (213) 489-1600; Fax: (213) 489-1611

ENDORSED
FILED
ALAMEDA COUNTY
2015 NOV 12 PM 12:42
CLERK OF THE SUPERIOR COURT
H. SALCIDO, DEPUTY

7 Attorneys for Plaintiff
8 WENDY GALLIMORE, on behalf of herself
9 and all others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 WENDY GALLIMORE, on behalf of herself)
13 and all others similarly situated,)

14 Plaintiff,)

15 v.)

16 KAISER FOUNDATION HEALTH PLAN,)
17 INC.; and DOES 1 through 20, Inclusive)

18 Defendants.)
19)
20)

CASE NO.: RG12616206
Assigned to Hon. Wynne Carvill Dept. 21

**SUPPLEMENTAL DECLARATION OF
GARY GREENFIELD IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEY FEES AND A SERVICE
AWARD FOR WENDY GALLIMORE**

**Date: November 19, 2015
Time: 8:30 a.m.
Dept: 21**

R1675882

[Filed Concurrently with Reply Brief in Support
of Motion for an Award of Attorney Fees;
Supplemental Request for Judicial Notice;
Supplemental Declaration of Robert S. Gianelli;
and Objections to Defendant's Evidence]

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 GIANELLI & MORRIS, A Law Corporation
4 550 South Hope Street, Suite 1645
5 Los Angeles, CA 90071
6 Tel: (213) 489-1600; Fax: (213) 489-1611

7 Attorneys for Plaintiff
8 WENDY GALLIMORE, on behalf of herself
9 and all others similarly situated
10

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14

15 WENDY GALLIMORE, on behalf of herself)
16 and all others similarly situated,)

17 Plaintiff,)

18 v.)

19 KAISER FOUNDATION HEALTH PLAN,)
20 INC.; and DOES 1 through 20, Inclusive)

21 Defendants.)

CASE NO.: RG12616206
Assigned to Hon. Wynne Carvill Dept. 21

**SUPPLEMENTAL DECLARATION OF
GARY GREENFIELD IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEY FEES AND A SERVICE
AWARD FOR WENDY GALLIMORE**

Date: November 19, 2015
Time: 8:30 a.m.
Dept: 21

R1675882

[Filed Concurrently with Reply Brief in Support
of Motion for an Award of Attorney Fees;
Supplemental Request for Judicial Notice;
Supplemental Declaration of Robert S. Gianelli;
and Objections to Defendant's Evidence]

1 I, Gary Greenfield, declare:

2 1. I am making this Declaration in support of the Motion for Attorneys' Fees
3 ("Motion") by plaintiff Wendy Gallimore ("plaintiff") in this action. I have personal knowledge
4 of the matters set forth in this Declaration, and, if called upon to testify, I could and would
5 competently testify thereto. I filed a Declaration in support of the Motion (the "Original
6 Declaration"). I have been asked to respond to various of the statements in the Declaration of
7 Grant D. Stiefel filed in support of the Opposition to the Motion ("Stiefel Declaration").

8 2. First, I want to clarify that my opinions regarding the reasonableness of the rates
9 being sought for plaintiff's counsel on this Motion were not based simply or even primarily on the
10 rate analyses attached as Exhibits to my original Declaration in support of the Motion. My
11 opinions are based on my experience and knowledge of the rates charged and awarded for work in
12 class action litigation in the San Francisco Bay Area based on my having received, reviewed and
13 analyzed rates in hundreds of cases involving various types of litigation during the course of my
14 work covering the last twenty-four years. These have involved individual cases, multi-party cases
15 and class actions, but, in the last two years alone, I have reviewed fees and rates as a consultant or
16 expert witness in at least ten cases involving class actions. Based on that work, as well as my
17 review of articles, cases, surveys and databases of rates (as explained in my Original Declaration),
18 I am extremely familiar with the rates billed and awarded in class action litigation, and my
19 opinions in the Original Declaration are based on that knowledge and experience. The purpose of
20 the Exhibits attached to my Original Declaration was to show the range of rates charged by firms
21 handling class action litigation based on the cases I had worked on and in publicly available rate
22 data, and that the rates being sought on this Motion fell within that range. (All of the firms in the
23 Exhibits handle class action work, either or both as plaintiffs' lawyers or defense counsel.)

24 3. Mr. Stiefel's critique that there were "a number" of unspecified non-litigators in
25 the rates analysis is misplaced. As I explained in my original declaration, I used hourly rates of
26 law firms that handle complex class action litigation in the Bay Area. These include many large
27 law firms that handle both litigation and transactional work for their clients. While there is some
28 variation by specialty, the hourly rates of these law firms generally follow experience level, and

1 the rates of attorneys from these law firms, regardless of department, generally indicate the hourly
2 rates of other lawyers in other departments of similar experience level. In any event, in the Bay
3 Area, the rates billed for class action litigation is at the higher end of the rate structure for these
4 firms.

5 4. Mr. Stiefel also criticizes my Original Declaration on the grounds that there are
6 numerous duplicate entries in the analysis. We have reviewed those analyses. To the extent that
7 Mr. Stiefel is referring to the same biller who charged a different rate in a different year, those are
8 not duplicates. They are appropriately included just as would the rate of a different biller who
9 charged the same rate in the “second” year. However, we identified a few “true” duplicates in the
10 analysis (which would happen because sometimes names were spelled differently and would not
11 be caught in a search or for other reasons.) The impact of removing them from the analysis was
12 minimal. The percentile that each biller’s rate reflected of the rates in the Exhibits to the Original
13 Declaration were as follows: Mr. Gianelli’s rate moved from the 86th percentile to the 87th
14 percentile; Mr. Davis’s rate moved from the 57th percentile to the 58th percentile; Ms. Pae
15 remained at the 82nd percentile; Mr. Barrio’s rate moved from the 52nd percentile to the 53rd;
16 Ms. Colbert’s rate remained at the 51st percentile; and Mr. Fruto’s rate moved from the 20th
17 percentile to the 21st percentile.

18 5. Throughout Mr. Stiefel’s Declaration, he criticizes how I define the market of
19 rates to use against which to evaluate the rates sought on the Motion. He states, for example, that
20 the rates I used “do not actually reflect the prevailing market rate for competent litigators in the
21 Bay Area” (Stiefel Declaration, para. 20), “do not reflect the average market rate in the local legal
22 community as a whole” (Stiefel Declaration, para. 21) and are not “rates typically charged by
23 most Bay Area litigators” (Stiefel Declaration, para. 23). However, the market to be looked at are
24 not the rates of “competent” litigators, “the average market rate in the local legal community as a
25 whole,” or the rates charged “by most Bay Area litigators.” The rates to be looked at are the rates
26 charged by lawyers of comparable skill, experience, and reputation in the market. If one were
27 looking at the average rates in the market, or the rates of “competent” lawyers, or the rates
28

1 typically charged by “most Bay Area litigators,” the type of work would be irrelevant, as would
2 the skill, experience, and reputation of the lawyers.

3 6. Much of the work on this case was done by Robert Gianelli and Joshua Davis and
4 I want to further address in particular the appropriateness of the rates being sought for them on
5 this Motion.

6 7. Mr. Gianelli is a highly regarded expert in the field of both complex insurance
7 litigation and class actions. His expertise and skill is demonstrated by plaintiff’s prevailing not
8 only in the hard fought class action aspects of the case but in the trial. Moreover, reputation is
9 one of the elements in assessing rates, and Mr. Gianelli is widely recognized for his expertise and
10 skill as demonstrated by the honors he has won as described in my Original Declaration. There
11 are many highly skilled, excellent litigators handling class action work in the Bay Area who bill
12 and are paid \$900 per hour, but who do not have Mr. Gianelli’s reputation.

13 8. Mr. Davis is a lawyer with 18 years of experience and substantial expertise and
14 experience in both insurance litigation and class actions, the two major areas of this litigation.
15 The fact that he is not a “partner” in the Gianelli firm is irrelevant to a rate analysis (as discussed
16 in more detail below.) The Gianelli firm is not a structured law firm that accords titles to its
17 attorneys. Mr. Davis handled major aspects of this complex case on day-to-day level in the
18 manner that a “partner” at a big law firm would handle the case, including depositions (including
19 expert depositions), motions and second-chairing the trial. The rate of \$700 per hour is well
20 within the range of rates for lawyers of his skill experience and reputation in the Bay Area, as
21 demonstrated in my Original Declaration.

22 9. Mr. Stiefel’s basic criticism is that the rates are drawn heavily from large law
23 firms, but that ignores the fact that, in the Bay Area (which is a major center for class action
24 litigation), class action litigation has become the province of various large firms and smaller
25 highly skilled firms that charge equivalent rates. That is the “market” of firms handling class
26 action litigation. While smaller firms, such as the Gianelli firm, also handle class action
27 litigation, they are commonly awarded rates that are commensurate with the rates charged by
28 class action litigators at large firms (as the awards to the Gianelli firm in other litigation

1 demonstrates.) Moreover, in undertaking a rate analysis for determining market rates in fee-
2 shifting litigation, the size of the law firms whose rates are being looked at (either because they
3 are seeking fees or because they are part of the market being analyzed) is irrelevant. Courts do
4 not penalize lawyers who are comparable to lawyers in large firms and doing comparable work
5 just because they choose to practice in small firms. The fact that large law firms may charge
6 higher rates in part because of a higher overhead structure (Stiefel Declaration, para. 35) is not
7 considered relevant to a rate analysis in this type of case. Courts have rejected the notion of
8 having to analyze the overhead and other aspects of the cost structure of various firms in trying to
9 determine what rates to apply in fee-shifting cases, in part because of the enormous complexities
10 it would inject into the process for each case. One is supposed to look at the rates of comparable
11 lawyers handling comparable work in the market, regardless of the size of firm.

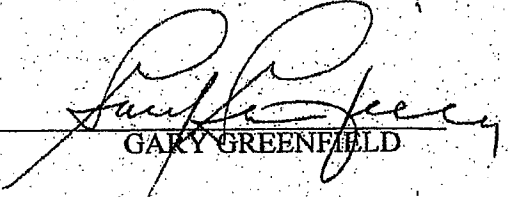
12 10. Mr. Stiefel does a rate analysis by dividing lawyers into partners and associates
13 and then attempting to determine rates based on that dichotomy (presumably because the
14 Tymetrix data he attaches to his Declaration has no experience information other than using
15 partners and associates.) However, there are a number of problems with this approach. First,
16 dividing the world of law firm lawyers up into partners and associates does not provide a viable
17 method of assessing rates. Two lawyers with four years of experience who open their own law
18 firm may decide to be “partners,” but that does not mean they have the equivalent experience of
19 an 18-year lawyer such as Mr. Davis, let alone a 37-year lawyer such as Mr. Gianelli. Yet, under
20 Mr. Stiefel’s approach, the 4-year lawyers would be “grouped” with Mr. Gianelli. “Partner” and
21 “associate” may be a meaningful term within a particular firm, but they are not useful terms as the
22 only method of determining the rates in the legal market. For this reason, one has to look at
23 actual experience, not labels.

24 11. In addition, Mr. Stiefel attempts to use the rates in Mr. Pearl’s Declaration to
25 support his analysis by stating that the median rates for partners and associates are in line with
26 what he is suggesting is appropriate, but there is no way to identify the partners and associates in
27 Mr. Pearl’s analysis with respect to a number of the firms so it is not apparent how Mr. Stiefel
28

1 arrives at his conclusions. Mr. Pearl's information on firms' hourly rates were by years of
2 experience as in my analysis.

3 12. Mr. Stiefel attempts to use a few pages from a Tymetrix report to support his
4 analysis. However, the Tymetrix data does not address levels of experience (other than the
5 partner/associate distinction discussed above), nor the reputation or skill of the lawyers, nor the
6 areas of litigation being analyzed, except, in one analysis, all work other than insurance defense
7 and, in the second analysis, general liability, insurance defense and intellectual property.

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct and that this declaration was executed this 11th day of November 2015 at New
11 York, New York.

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13 
14 GARY GREENFIELD
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