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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CURTIS MARKSON, MARK
MCGEORGE, CLOIS MCCLENDON,
and ERIC CLARK, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CRST INTERNATIONAL, INC., CRST
EXPEDITED, INC.; C.R. ENGLAND,
INC., WESTERN EXPRESS, INC.,
SCHNEIDER NATIONAL CARRIERS,
INC., SOUTHERN REFRIGERATED
TRANSPORT, INC., COVENANT
TRANSPORT, INC., PASCHALL
TRUCK LINES, INC., STEVENS
TRANSPORT, INC., and DOES 1-10,
inclusive,

Defendants.

CASE NO. 5:17-cv-01261-SB (SPx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES & COSTS**

Judge: Hon. Stanley Blumenfeld, Jr.
Date: July 29, 2022
Time: 8:30 a.m.
Location: Courtroom 6C
350 West 1st Street
Los Angeles, CA 90012

Discovery Cutoff Date: 7/2/2021
Pretrial Conference Date: TBD
Trial Date: TBD

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs CURTIS MARKSON, MARK MCGEORGE, CLOIS MCCLENDON,
4 and ERIC CLARK settled with a group of Defendants PASCHALL TRUCK LINES, INC.
5 (“PTL”), SCHNEIDER NATIONAL CARRIERS, INC. (“SNC”), COVENANT
6 TRANSPORT, INC, (“CT”), SOUTHERN REFRIGERATED TRANSPORT, INC.
7 (“SRT”), WESTERN EXPRESS, INC. (“WE”), and STEVENS TRANSPORT, INC.
8 (“ST”) (the “Settling Defendants”). Collectively, the Settling Defendants will pay
9 \$9,750,000. These Settlements are an excellent result for the Class where Class Counsel
10 conducted extensive but targeted discovery into the key factual and legal issues
11 surrounding the case, especially in a case in which the Court ultimately denied class
12 certification against the Non-Settling Defendants. Class Members will be paid directly,
13 with no requirement that they submit claim forms and no money will revert to the Settling
14 Defendants. Class Members will be paid *pro rata* based on their weeks worked during the
15 Class Period.

16 Class Counsel is limiting their fee request to 25% of the \$9.75 million cash fund, or
17 \$2,437,500, viewed in isolation of and without accounting for the non-monetary benefits
18 provided for in the settlement which are substantial. Accordingly, Class Counsel’s fee
19 request is actually less than 25% of the total gross value of the settlements. *See Fleisher v.*
20 *Phoenix Life Ins. Co.*, Nos. 11-cv-8405 (CM), 14-cv-8714 (CM), 2015 WL 10847814, at
21 *15 (S.D.N.Y Sept. 9, 2015) (“In calculating the overall settlement value for purposes of
22 the ‘percentage of the recovery’ approach, Courts include the value of the both the
23 monetary and non-monetary benefit conferred on the Class.”) (citing cases). Twenty-five
24 percent is the Ninth Circuit’s benchmark for attorneys’ fees. *See, In re Pac. Enterprises*
25 *Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (“Twenty-five percent is the ‘benchmark’ that
26 district courts should award in common fund cases.”).

27 The requested fees are further justified here by the excellent results obtained for the
28 Class, and the extensive worked performed on behalf of the Class, in light of the many risk

1 factors faced, including the fact that this Court did not certify the Class with respect to the
2 Non-Settling Defendants. A lodestar cross-check further confirms the reasonableness of
3 the fee request, as the requested award amounts to *far less* than Class Counsel’s actual
4 lodestar. See Ackermann Fee Decl., ¶¶ 15-16; Wasserman Fee Decl., ¶ 19; Melmed Fee
5 Decl., ¶ 16; Sklaver Fee Decl., ¶ 6 (anticipated lodestar expended through final approval
6 will be \$7,547,108.08).¹ Class Counsel’s litigation cost reimbursement request of
7 \$2,895,543.98 million is also reasonable. Ackermann Fee Decl., ¶¶ 19-20.

8 The requested Class Representative service awards, representing approximately 1%
9 of the total Settlement Amounts, are also reasonable and should be approved because of
10 the risks Plaintiffs assumed, efforts made on behalf of the Class, and the fact that this case
11 has been litigated for nearly five years, and a higher-than-average award might be justified
12 based on Plaintiffs’ involvement. *See, Van Vracken v. Atl. Richfield., Co.*, 901 F. Supp. 294,
13 299 (N.D. Cal. 1995).

14 This Motion will be heard at the same time as Plaintiffs’ forthcoming Motion for
15 Final Approval of the Class Action Settlements in this Case. Plaintiffs file this Motion in
16 advance of the filing deadline so as to provide Class Members with an opportunity to
17 review it before their deadline to opt-out or object, pursuant to the Ninth Circuit’s ruling
18 in the case of *Mercury Interactive Corp. Sec. Lit v. Mercury Interactive Corp.*, 618 F.3d
19 988, 994-95 (9th Cir. 2010) (fee motions in class actions should be filed before the
20 objection deadline).

21 **II. PLAINTIFFS’ COUNSEL HAVE EARNED A 25% FEE AWARD**

22 **A. Summary of Facts Leading Up to Preliminary Approval**

23 Plaintiffs set forth a detailed account of all relevant facts in their Motions for
24 Preliminary Approval of Class Action Settlements (“PAMs”) and will therefore avoid
25

26 ¹ All references to the declarations submitted in support of Plaintiff’s Motion for
27 *Preliminary Approval* shall be cited herein as “[*Declarant’s last name*] PAM Decl.”, and
28 those in support of this Motion for Attorneys’ Fees shall be cited as “[*Declarant’s last name*] Fee Decl.”

1 belaboring all of the facts and procedural backgrounds set forth therein, which are hereby
2 incorporated herein by reference. *See* PAMs § II. Instead, the following is a brief summary
3 of the key facts of the case and new developments pertinent to this Fees and Costs motion
4 since Plaintiffs’ filing of the PAM.

5 Plaintiffs moved for preliminary approval of the Settlement, and on February 24,
6 2022 and on April 1, 2022, respectively, the Court entered orders preliminarily approving
7 the Settlements with the Settling Defendants (the “PA Orders”) (Docs. 562 and 590). In
8 the February 24, 2022 PA Order, the Court stated, “the settlement appears fair, reasonable,
9 and appropriate . . . and in the best interests of the class.” (Doc. 562). In the April 1, 2022
10 PA Order, the Court stated, “the settlement appears fair, reasonable, and appropriate . . .
11 and in the best interests of the class.” (Doc. 590).

12 Plaintiffs moved for class certification of Plaintiffs’ antitrust and California Labor
13 Code allegations on August 27, 2021 (Docs. 482 and 483) against the non-Settling
14 Defendants. On February 24, 2022, the Court issued its Order Denying Motions for Class
15 Certification. (the “Certification Order”) (Doc. 561). The Court’s Certification Order
16 further underscores the reasonableness of the Settlements here. Moreover, the April 1,
17 2022 PA Order further stated, “[c]onsidering the expense, uncertainty, and risk of
18 continued litigation—particularly in light of the Court’s denial of class certification as to
19 the non-settling Defendants—the settlement amount seems fair and favorable to the
20 Class.” (Doc. 590).

21 In sum, the Court preliminarily approved the Settlements and scheduled a final
22 fairness hearing. The information regarding whether the attorneys’ fees and costs to Class
23 Counsel are reasonable is submitted herewith, and by and through the declarations of Class
24 Counsel.

25 On April 5, 2022, Class Counsel moved for approval of the proposed plan for
26 disseminating notice to the Class for the Settlements and approval of JND Legal
27 Administration as a third-party settlement administrator. (Doc. 598). On April 11, 2022,
28 the Court issued its Order Granting Plaintiffs’ Motion for Approval of Notice to

1 Settlement Class Members and Appointment of Settlement Administrator (the “Notice
2 Order”) (Doc. 602) approving “as to form and content, the postcard, email and long form
3 Notice,” “direct[ing] dissemination of the postcard and email noticed by first class mail
4 and email, respectively,” “find[ing] that the proposed notice plan meets the requirements
5 of due process and provides the best notice practicable under the circumstances,” and
6 “appoint[ing] JND Class Action Administration as the Settlement Administrator.”

7 The Court-approved postcard, email, and long form Notice was mailed and emailed
8 out by the Settlement Administrator to all Class Members and Class Members have the
9 opportunity to respond to the settlement, including requesting exclusion or objecting
10 thereto. Ackermann Fee Decl., ¶ 4. Class Counsel has received reports from the Settlement
11 Administrator that, as of the date of this filing, there have been six opt-outs and no
12 objections. *Id. See also* Ackermann Fee Decl., ¶ 22; Exhibit C. Upon the expiration of the
13 response deadline, the Settlement Administrator will submit a declaration summarizing
14 the results of Settlement administration and whether any responses or objections were
15 received. *Id.* That information will be included with Plaintiffs’ motion for final approval.

16 **B. Plaintiffs’ Counsel Conducted Extensive Discovery**

17 To further illustrate the efforts Class Counsel expended on behalf of the Class, a
18 detailed summary of the work performed by Class Counsel over the last five years has been
19 provided below:

- 20 • Served 173 requests for production of documents, 96 requests for admission,
21 and 122 interrogatories among the Defendants
- 22 • Reviewed approximately 330,225 pages of documents produced by all
23 Defendants and third parties;
- 24 • Took no less than forty-three depositions (more than thirty of which were
25 taken by Plaintiffs’ Counsel) supported by more than 1,000 exhibits, and
26 defended four class representative depositions;
- 27 • Assisted in the preparation of six detailed expert reports (three of which
28 occurred before all of the settlements were finalized) on topics ranging from

1 certification to damages;

- 2 • Engaged in substantial motion practice, including four motions to dismiss,
3 nine motions to compel, and a motion for protective order for delaying
4 depositions; and
- 5 • Participated in intensive settlement negotiations conducted under the
6 supervision of Barbara Reeves, which included multiple meetings with
7 Defendants' counsel as well as numerous telephone conferences.
- 8 • Prepared two rounds of class certification briefing totaling more than seventy
9 pages supported by more than 80 exhibits. Sklaver Fee Decl., ¶ 4.

10 Class Counsel expended significant time on the aforementioned tasks with no
11 guarantee of any recovery. For this, and other reasons, Plaintiffs' Counsel respectfully
12 moves this Court for an award of attorneys' fees equal to 25% of the settlement amounts.
13 This request is will within the range approved by Courts, and is warranted by the excellent
14 settlements achieved for the Class through the efforts of Class Counsel, and the enormous
15 risks taken and overcome in litigation that lasted more than five years brought entirely on
16 a contingency fee basis.

17 **III. THE REQUESTED ATTORNEYS' FEE AWARD IS REASONABLE**

18 In "common fund" cases, such as this, the Court has the discretion to award
19 attorneys' fees as either a percentage of the common fund, or by using the lodestar method.
20 *See In re High-Tech Emp. Litig.*, Case No. 11-cv-02509 LKH, 2015 WL 5158730, at *6
21 (N.D. Cal. Sept. 2, 2015) ("*High-Tech Fees Order*") (citing *In re Bluetooth Headset*
22 *Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)); *In re Wachovia Corp. "Pick-A-*
23 *Payment" Mortg. Mktg. & Sales Practices Litig. ("Wachovia")*, No. 5:09-md-02015,
24 2011 U.S. Dist. LEXIS 55351, at *23-*24 (N.D. Cal. May 17, 2011).

25 As the Ninth Circuit has explained, however, "the primary basis of the fee
26 award remains the percentage method," while "the lodestar may provide a useful
27 perspective on the reasonableness of a given percentage award." *Vizcaino v. Microsoft*
28 *Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("*Vizcaino II*"); *see also Six (6) Mexican*

1 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (approving
2 calculation of attorney’s fees in common fund class action based on percentage of the total
3 fund). Many courts and commentators have recognized that the percentage of the available
4 fund analysis is the preferred approach in common-fund fee requests “because it more
5 closely aligns the interests of [class] counsel and the class, i.e., class counsel directly
6 benefit from increasing the size of the class fund and working in the most efficient
7 manner.” *Aichele v. City of L.A.*, No. CV 12–10863–DMG (FFMx), 2015 WL 5286028,
8 at *5 (C.D. Cal. Sept. 9, 2015) (citing cases). “[A] number of salutary effects can be
9 achieved by this procedure, including removing the inducement to unnecessarily increase
10 hours, prompting early settlement, reducing burdensome paperwork for counsel and the
11 court and providing a degree of predictability to fee awards.” *In re Activision Sec. Litig.*,
12 723 F. Supp. 1373, 1376 (N.D. Cal. 1989).

13 In the Ninth Circuit, the “benchmark” award in common fund cases is 25 percent
14 of the recovery obtained, although awards of 30 percent or more of the common fund are
15 not uncommon. *See, e.g., High Tech Fees Order*, 2015 WL 5158730, at *6; *Vizcaino v.*
16 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The court may also apply the
17 lodestar method to determine a reasonable attorney’s fee by multiplying the number of
18 hours reasonably expended by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461
19 U.S. 424, 433 (1983). The fee amount calculated under the lodestar method is
20 presumptively reasonable, and in appropriate circumstances can be enhanced by a
21 multiplier. *See High-Tech Fees Order*, 2015 WL 5158720, at *9 (quoting *Bluetooth*, 654
22 F.3d at 941-42). In common fund cases, the lodestar method may also be used as a cross-
23 check of the percentage-of-fund method. *See Wachovia*, 2011 U.S. Dist. LEXIS 55351, at
24 *24.

25 Class Counsel here seek an award of \$2,437,500 for attorneys’ fees. Plaintiffs’ fee
26 request represents 25 percent of the \$9.75 million settlement fund and is well within the
27 range approved by the Ninth Circuit. Additionally, Class Counsel are not seeking
28 attorneys’ fees based on the value of the non-cash relief provided in the Settlements.

1 Further, the reasonableness of plaintiffs’ fee request is confirmed when crosschecked
2 against their lodestar, which through the filing of this Motion is \$7,547,108.08, resulting
3 in a negative multiplier of 0.32.² Accordingly, under either the percentage of the common
4 fund or lodestar approach, plaintiffs’ requested fee award is reasonable

5 **A. Plaintiffs’ Fee Request is Reasonable Under the “Common Fund”**
6 **Percentage of Recovery Analysis**

7 Plaintiffs seek an award of 25 percent of the settlement fund, squarely in line with
8 the Ninth Circuit’s benchmark. *See Vizcaino*, 290 F.3d at 1047. Courts routinely award
9 attorneys’ fees and expenses totaling 25 percent or more of the common fund provided
10 under the settlement. *See, e.g., Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir.
11 2003) (affirming fee award of 33 percent of settlement fund); *Singer v. Beckton Dickinson*
12 *& Co.*, No. 08- CV-821, 2010 WL 2196104, at *20-24 (S.D. Cal. June 1, 2010) (fee award
13 of 33.3 percent of settlement fund); *Wachovia*, 2011 U.S. Dist. LEXIS 55351, at *24 (fee
14 award of one-third of settlement fund); *In re Nuvelo, Inc. Secs. Litig.*, No. C 07-04056,
15 2011 WL 2650592, at *10 (N.D. Cal. July 6, 2011) (fee award of 30 percent of settlement
16 fund); *Thieriot v. Celtic Ins. Co.*, No. C 10-04462, 2011 WL 1522385, at *15 (N.D. Cal.
17 Apr. 21, 2011) (fee award of 33 percent of settlement fund); *see also Glass v. UBS Fin.*
18 *Servs.*, 331 Fed. Appx. 456, 457 (9th Cir. 2009) (noting that district court’s calculation of
19 25 percent of total award rather than 25 percent of amount actually collected by the class
20 was proper and in line with Ninth Circuit precedent). A 25% fee award is “presumptively
21 reasonable.” *High-Tech Fees Order*, 2015 WL 5158730, at *6-11.

22 Plaintiffs’ fee request is also supported by the particular circumstances of this case.
23 In *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015), the Ninth Circuit
24

25 ² Insofar as this case is still being litigated against the Non-Settling Defendants, Class
26 Counsel have endeavored to excise the hours worked which clearly relate only to the Non-
27 Settling Defendants (in particular to the California wage and hour claims) and / or to the
28 time period after the briefing of Plaintiffs’ motions for class certification (e.g., work done
in conjunction with Plaintiffs’ Expert Reports). Wasserman Fee Decl. ¶ 19; Ackermann
Fee Decl. ¶ 15; Melmed Fee Decl. ¶ 16; Sklaver Fee Decl., ¶ 6.

1 outlined a number of factors that courts may consider in setting an appropriate fee,
2 including:

3 [1] The extent to which class counsel “achieved exceptional
4 results for the class,” [2] whether the case was risky for class
5 counsel, [3] whether counsel's performance “generated benefits
6 beyond the cash settlement fund,” [4] the market rate for the
7 particular field of law (in some circumstances), [5] the burdens
8 class counsel experienced while litigating the case (e.g., cost,
duration, foregoing other work), and [6] whether the case was
handled on a contingency basis.

9 *Id.* at 954-55. Taking all the relevant circumstances and factors into account, Plaintiffs’
10 request for fees is reasonable and appropriate.

11 First, Class Counsel achieved an exceptional result on behalf of the Plaintiffs and
12 Class. The Settlements negotiated by Class Counsel provide valuable financial and
13 valuable non-monetary benefits, including agreements by the Settling Defendants to refrain
14 from their allegedly anti-competitive conduct. Moreover, the Settlements were reached
15 before the Court’s denial of class certification, which may have resulted in substantially
16 lower settlement amounts or no settlements at all.

17 Second, Class Counsel assumed a high degree of risk in bringing and pursuing this
18 action. A recovery in this litigation was far from certain when counsel initially decided to
19 bring these claims, and indeed, Plaintiffs’ complaints were subject to several rounds of
20 motions to dismiss from the Settling and non-Settling Defendants alike. Nonetheless, each
21 firm committed its resources, including the outlay of significant expert costs that each
22 might not recover unless successful, to vigorously pursue these claims before knowing the
23 potential for significant recovery for the Class. Additionally, Class Counsel faced an uphill
24 certification battle which Class Counsel ultimately lost as to the non-Settling Defendants.

25 Third, Class Counsel’s performance generated benefits beyond the cash settlement
26 fund. Specifically, the Settlements included non-monetary relief including agreements by
27 the Settling Defendants to refrain from their allegedly anticompetitive conduct.

28 Fourth, Class Counsel undertook a notable burden in pursuing this case. As

1 recounted above, Class Counsels' lodestar through the filing of this motion stands at more
2 than \$7 million, and they have incurred an in excess of \$2.8 million in unreimbursed
3 litigation and expert expenses. Class Counsel incurred this expense without any guarantee
4 of being compensated.

5 Fifth, and relatedly, Class Counsel accepted this case on a purely contingent basis,
6 with no ability to recoup their costs without an approved settlement or judgment from this
7 Court. "It must be kept in mind that lawyers are not likely to spend unnecessary time on
8 contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to
9 both the result and the amount of the fee." *Moreno v. City of Sacramento*, 534 F.3d 1106,
10 1112 (9th Cir. 2008).

11 **B. Plaintiffs' Fee Request is Reasonable Under the Lodestar Cross-Check**
12 **Method**

13 Plaintiffs' Fee request of \$2,437,500 for attorneys' fees is also reasonable when
14 cross-checked using the lodestar method. *See Wachovia*, 2011 U.S. Dist. LEXIS 55351, at
15 *7. Under the lodestar method, a presumptively reasonable fee award can be determined
16 by multiplying the number of hours expended by Plaintiffs' Counsel by their reasonable
17 hourly rate. *See High-Tech Fees Order*, 2015 WL 5158720, at *9 (quoting *Bluetooth*, 654
18 F.3d at 941-42).

19 As set forth in the supporting declarations, Plaintiffs' Counsel have collectively
20 spent 10,672.36 hours of attorney and litigation support time on this action. *See Ackermann*
21 *Fee Decl.*, ¶ 12 (483.78 hours); *Wasserman Fee Decl.*, ¶ 19 (1,315.28 hours); *Melmed Fee*
22 *Decl.*, ¶ 16 (116.7 hours); *Sklaver Fee Decl.*, ¶ 6 (8,756.6 hours). The number of hours that
23 Plaintiffs' Counsel have devoted to pursuing this litigation is appropriate and reasonable,
24 given: (1) the extensive pre-complaint investigation; (2) the large number of documents
25 produced by the Defendants; (3) the extensive factual and legal research and analysis
26 involved in filing a second, third, and fourth amended complaint, as well as no less than
27 six oppositions to Defendants' motions to dismiss and no less than eight motions to compel
28 discovery responses; (4) substantial briefing at the class certification stage; (5) the number

1 and breadth of expert reports; (6) the depositions of Plaintiffs; (7) moving for preliminary
2 approval of the Settlements; and (8) and moving for approval of the Parties' notice plan.
3 In addition, Class Counsel have spent numerous hours working with the notice and
4 settlement administrator to answer the questions of Class Members, launching the
5 settlement website, addressing issues regarding notice, and identifying Class Members.

6 Furthermore, Class Counsel's responsibilities regarding these settlements will not
7 end with final approval. Class Counsel will assist class members with inquiries and
8 continue to work with the notice and settlement administrator and Defendants on any issues
9 that may arise with respect to the settlement. Class counsel may also expend further time
10 and effort to resolve any objections that are lodged, and litigate any appeals that result
11 therefrom. Past experience shows that this ongoing work will add significant time to the
12 work already undertaken in this case. Ackermann Fee Decl., ¶ 17.

13 While the hours above are numerous, Class Counsel have been efficient and
14 judicious in how they invest their resources on behalf of the Class. In sum, the hours that
15 Plaintiffs' Counsel devoted to this action were reasonable and necessary. Counsels' hard
16 work and commitment ultimately paid off, resulting in a comprehensive settlement
17 agreement that provides substantial monetary and non-monetary relief to the Class.

18 *1. Plaintiffs' Counsel's Hourly Rates are Reasonable*

19 The hourly rates of Class Counsel as detailed in their declarations are also fair and
20 reasonable. Under the lodestar method, counsel's reasonable hourly rates are determined
21 by the "hourly rates charged by comparable attorneys for similar work," which are the rates
22 of a lawyer of comparable skill, experience and reputation could command in the relevant
23 community. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008). An
24 attorney's actual billing rate is presumptively appropriate to use as the lodestar market rate.
25 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the
26 community, and rate determinations in other cases, particularly those setting a rate for the
27 plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United*
28 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

1 Declarations from Class Counsel establish that the hourly rates are fair, reasonable,
2 and market-based, particularly for the “relevant community” in which counsel work.
3 Ackermann Fee Decl., ¶ 18; Wasserman Fee Decl., ¶ 18; Melmed Fee Decl., ¶ 16; Sklaver
4 Fee Decl., 6. Class Counsel are highly-respected members of the bar with extensive
5 experience in prosecuting complex litigation, including class actions, and this Court
6 appointed them Class Counsel under the criteria of Federal Rule of Civil Procedure 23(g).
7 See PA Orders (Docs. 562 and 590). Overall, the rates charged by Class Counsel here are
8 comparable to the fees approved by other state and federal Courts.

9 2. Plaintiffs’ Request Fee is Reasonable Considering the Time and
10 Labor Required, Novelty and Complexity of the Litigation, Counsel’s
11 Skill and Experience and the Results Obtained

12 Multiplying the hours spent by Plaintiffs’ Counsel on the litigation by their
13 respective hourly rates yields a lodestar calculation of \$7,547,108.08. The requested
14 \$2,437,500 is substantially below the lodestar, and results in a negative multiplier of 0.32.
15 This is markedly lower than the range of multipliers accepted by the Ninth Circuit and
16 district courts throughout the country. See *Vizcaino*, 290 F.3d at 1051 n.6 (surveying class
17 actions settlements nationwide, and noting 54 percent of lodestar multipliers fell within the
18 1.5 to 3.0 range, and that 83 percent of multipliers fell within the 1.0 to 4.0 range); *Van*
19 *Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (3.6 multiplier).
20 Furthermore, Class Counsel’s fees request only requests 25 percent of the value of the
21 settlements without attributing any value to the significant non-monetary relief provided
22 by the settlements.

23 In deciding an appropriate fee under the lodestar method, district courts may
24 consider a number of factors, including the time and labor required, novelty and complexity
25 of the litigation, skill and experience of counsel, contingent nature of the case, and the
26 results obtained. See *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984). All of these factors
27 weigh heavily in favor of granting the \$2,437,500 in fees here.

28 ///

1 a) Plaintiffs' Counsel Invested Significant Amount of Time and
2 Resources Into This Case

3 To date, Plaintiffs' Counsel have expended more than 10,000 hours, totaling more
4 than \$7 million in lodestar, and have incurred in excess of \$2.8 million in out-of-pocket
5 expenses in prosecuting the action for the benefit of the Class. Ackermann Fee Decl., ¶¶
6 16, 20; Wasserman Fee Decl., ¶¶ 19, 22-23; Melmed Fee Decl., ¶¶ 16, 20; Sklaver Fee
7 Decl., ¶¶ 6-7. Class Counsel vigorously litigated this action and were challenged by
8 aggressive, skilled, and well-funded defense counsel every step of the way.

9 To effectively prosecute this large and complex class action, class counsel had to
10 commit a significant amount of time, personnel, and expenses to this litigation purely on a
11 contingency basis with no guarantee of being compensated in the end. Such efforts
12 included, but were not limited to: (1) investigating the factual and legal claims and filing
13 this action; (2) amending the complaint three times over while fending off several rounds
14 of motions to dismiss from Defendants; (3) filing a factually robust motion for class
15 certification and reply in support of the same; (4) actively engaging in discovery, including
16 the taking and defending of depositions, written discovery, and reviewing documents from
17 Defendants; (5) retaining and working with an expert economist to develop a damages
18 model and explain the impact on class members of Defendants' alleged conspiracy; (6)
19 disseminating notice after the Settlements to tens of thousands of Class Members; (7)
20 answering inquiries from class members regarding the litigation, settlements, and other
21 matters concerning their claims; and (8) assisting the Settlement Administrator with the
22 settlement website and class notice issues. Despite the significant risks and uncertainty,
23 Class Counsel obtained an excellent result on behalf of the Class.

24 b) The Litigation Features Complex Legal and Factual Issues

25 Plaintiffs faced a number of complex legal and factual issues in this litigation,
26 including overcoming Defendants' arguments that Plaintiffs would be unable to certify the
27 Class which ultimately occurred as to the non-Settling Defendants.

28 ///

1 c) Plaintiffs' Counsel are Highly Skilled and Experience

2 The Court may also consider the experience, skill and reputation of Plaintiffs'
3 Counsel. *See In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475,
4 2005 U.S. Dist. LEXIS 13627, at *38 (C.D. Cal. June 10, 2005). Here, Class Counsel are
5 well-respected leaders in complex class action litigation, as detailed below.

6 **Susman Godfrey L.L.P.**

7 Since the firm's founding in 1980, Susman Godfrey has served as lead counsel in
8 hundreds of antitrust class actions and other complex commercial disputes in courts
9 throughout the country. The firm has represented clients in some of the largest and most
10 complex cases ever litigated and earned a reputation for handling those cases effectively
11 and efficiently. Susman Godfrey has tried more than a dozen significant antitrust cases to
12 a jury, yielding over \$1 billion in verdicts, and has been appointed to serve as lead or co-
13 lead counsel in numerous antitrust class actions and other class actions. See Seltzer
14 Antitrust Decl., Exhibit 1 (Doc. 483-40).

15 **Mayall Hurley, P.C.**

16 The lead attorneys at Mayall Hurley, P.C. on this case have successfully tried to
17 verdict nearly 50 cases in the areas of employment law, public entity defense, personal
18 injury, business litigation and probate. The firm has also shepherded thousands of
19 employment cases from start to finish. The firm has secured numerous six-figure and
20 seven-figure verdicts and settlements for plaintiffs alleged violations of the California labor
21 Code, Private Attorneys General Act, Federal Labor Standards Act, Fair Employment and
22 Housing Act, California Family Rights Act, and Family Medical Leave Act. The firm has
23 also been approved as class counsel in many wage-and-hour class actions and have
24 obtained class and/or conditional certification in a number of cases. See Wasserman Fee
25 Decl., ¶¶ 5-13.

26 **Ackermann & Tilajef, P.C.**

27 Since Ackermann & Tilajef, P.C.'s founding in 2004, the firm has handled nearly
28 300 class action cases and has been appointed as class counsel in approximately ten cases

1 where contested class certification motions were fully briefed, and class certification was
2 granted. The firm has also tried several employment cases in verdict in the Central District.
3 See Ackermann Antitrust Decl., ¶¶ 5-8 (Doc. 483-48).

4 **Melmed Law Group P.C.**

5 Since Melmed Law Group P.C.'s founding in 2015, the firm has represented and
6 continues to represent thousands of employees in wage and hour class actions, and other
7 employment-related matters. The firm has also represented numerous individual
8 employees in cases brought under various state and federal statutes, including the
9 California Labor Code and California Fair Employment and Housing Act and has obtained
10 favorable results in many of their individual cases. Melmed Antitrust Decl., ¶¶ 4-6.

11 The reputation, experience and skill of class counsel were essential to the success in
12 this litigation. From the outset, Class Counsel used their expertise and skill to obtain
13 maximum recovery for the class, given the particular factual and legal complexities of this
14 litigation. Had the parties not reached a settlement, they would have continued to litigate
15 complex legal issues before this Court, some of which Class Counsel subsequently lost
16 including class certification. At no time have the Defendants conceded liability, the
17 appropriateness of certification other than for settlement purposes, or the existence of
18 damages. Given the significant risks and uncertainty associated with this complex class
19 action, it is a testament to class counsel's skill, creativity and determination that they were
20 able to negotiate an excellent settlement providing substantial economic relief.

21 The quality of opposing counsel should also be considered. *See, e.g., In re Equity*
22 *Funding Corp. of Am. Secs. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here, defense
23 counsel for the Settling Defendants are all nationally recognized firms. Class counsel
24 vigorously litigated, and defense counsel vigorously defended against, the class wide
25 claims asserted by Plaintiffs. Indeed, virtually every point in this litigation was relentlessly
26 disputed by Defendants' zealous counsel.

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1 d) Class Counsel Obtained Outstanding Settlements for Class
2 Members

3 In light of the looming risks and uncertain outcome of the litigation, the results
4 obtained for the class are exceptional. Class Counsel have negotiated and achieved
5 meaningful settlements that provide direct payments to Class Members on a pro rata basis
6 as well as significant non-monetary relief.

7 e) Plaintiffs' Fee Request is Reasonable in Light of the Contingent
8 Nature of the Fee and Class Counsel's Ongoing Work

9 Class Counsel's fee request is reasonable in light of the future work and expenses that
10 will be incurred by Class Counsel under the settlements, which are not included in the
11 current lodestar and reported expenses. This includes all pre- and post-approval work such
12 as overseeing settlement administration, communications with Class Members, disputes
13 over claims, appeals, and any other issues that may arise under the settlements. This future
14 work may be substantial and could last for many months. This additional future work
15 underscores the reasonable and fair nature of Plaintiffs' fees request

16 **IV. CLASS COUNSEL'S EXPENSES ARE REASONABLE, WERE**
17 **NECESSARILY INCURRED AND SHOULD BE APPROVED**

18 Plaintiffs also seek an award of \$2,895,543.98 million in expenses necessarily
19 incurred in connection with the prosecution of this action. The Ninth Circuit allows
20 recovery of pre-settlement litigation costs in the context of class action settlements. *See*
21 *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). All expenses that are typically
22 billed by attorneys to paying clients in the marketplace are compensable. *Harris v.*
23 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). With this motion, Plaintiffs provide an
24 accounting of the expenses by their counsel. *See* Ackermann Fee Decl., ¶¶ 20-21;
25 Wasserman Fee Decl., ¶¶ 22-23; Melmed Fee Decl., ¶ 20 Sklaver Fee Decl., ¶ 7. The
26 primary expense in this case was for experts, which accounts for nearly \$2.3 million, or
27 about 79 percent, of the total. Several additional categories amount for the remainder,
28 including filing fees, travel expenses, costs of court and deposition transcripts, and

1 computer research expenses. *Id.* All of these costs were necessarily and reasonably
2 incurred to achieve these settlements, and they reflect market rates for the various
3 categories of expenses incurred. *Id.* Further, Plaintiffs’ Counsel advanced these necessary
4 expenses without assurance that they would even be recouped. Plaintiffs’ request for
5 expenses is reasonable. Notably, Plaintiffs’ Counsel has subtracted all litigation expenses
6 incurred prior to the filing of the Third Amended Complaint – when the anti-trust claims
7 were first brought – which clearly relate only to the Non-Settling Defendants (in particular
8 to the California wage and hour claims against CRST only) *See* Ackermann Fee Decl., ¶
9 19; Sklaver Fee Decl., ¶ 7; Wasserman Fee Decl., ¶ 23; Melmed Fee Decl., ¶ 20..

10 **V. PLAINTIFFS REQUEST SERVICE AWARDS IN THE AMOUNT OF**
11 **\$25,000 EACH**

12 Plaintiffs also request that the Court approve the service awards in the amount of
13 \$25,000 for each of the four named Plaintiffs, to be deducted from the total settlement fund.
14 Service awards for class representatives are routinely provided to encourage individuals to
15 undertake the responsibilities and risks of representing the class and to recognize the time
16 and effort spent in the case. “Incentive awards are fairly typical in class action cases.”
17 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *Glass v. UBS Fin.*
18 *Servs.*, 15 Wage & Hour Cas. 2d (BNA) 1330 at *52 (N.D. Cal. Jan. 26, 2007) (finding
19 “requested payment of \$25,000 to each of the named plaintiffs is appropriate”); *Louie v.*
20 *Kaiser Found. Health Plan, Inc.*, 2008 WL 4473183 at *18 (S.D. Cal. Oct. 6, 2008)
21 (approving “\$25,000 incentive award for each Class Representative”). In the Ninth Circuit,
22 service awards “compensate class representatives for work done on behalf of the class, to
23 make up for financial or reputational risk undertaken in bringing the action, and,
24 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*,
25 at 958-99. Courts have discretion to approve service awards based on, *inter alia*, the
26 amount of time and effort spent, the duration of the litigation, and the personal benefit (or
27 lack thereof) as a result of the litigation. *See Van Vracken*, 901 F. Supp. at 299. Here, the
28 four named representatives have spent a significant amount of time assisting in the

1 litigation of this case. Each plaintiff participated actively throughout the 5 year litigation
2 by responding to discovery, producing documents relating to their claims; reviewing the
3 complaints and other substantive pleadings, being deposed, participating in negotiations,
4 and reviewing and approving the settlements. Markson Decl. ¶¶ 4-10; McClendon Decl. ¶¶
5 4-9; McGeorge Decl. ¶¶ 4-10 ; Clark Decl. ¶¶ 4-10.

6 Service award have already been preliminarily approved by this Court provided each
7 Plaintiff provides a declaration in support of final approval detailing their active
8 participation and the services provided to the Class. (Doc. 562) Specifically, the Court held
9 that service awards are reasonable and appropriate in an amount to be determined by the
10 Court and here a higher-than-average award might be justified based on Plaintiffs'
11 involvement in a case that has been litigated for nearly five years. *Id.*

12 **VI. CONCLUSION**

13 For the foregoing reasons, it is respectfully requested that, in its Order finally
14 approving the Settlements, the Court include an award granting Class Counsel
15 **\$2,437,500.00** in attorneys' fees, constituting 25% of the total settlement fund obtained for
16 the Class; an award granting Class Counsel **\$2,895,543.98 million** for reimbursement of
17 the actual litigation costs incurred; and **\$25,000** for each of the named Plaintiffs as a service
18 award.

19
20 Respectfully submitted,

21 Dated: June 14, 2022

By: /s/ Craig J. Ackermann

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