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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TODD HALL and GEORGE ABDELSAYED individually and on behalf of all others similarly situated,
Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.,
a Delaware corporation,
Defendant.

Case No. 3:19-cv-01715-JO-AHG

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL REIMBURSEMENT OF LITIGATION COSTS AND SERVICE AWARDS

Date: July 10, 2024
Time: 9:30 A.M.
Ctrm: 4C
Judge: Hon. Jinsook Ohta

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion comes before the Court pursuant to Fed. R. Civ. Proc. 23(h) and
4 54(d) and the Court’s Order Granting Preliminary Approval of Class Action
5 Settlement entered on May 17, 2024. ECF No. 282. The Court should, respectfully,
6 approve the payment by Defendant of the total sum of \$75,000 for partial
7 reimbursement to Class Counsel¹ of Litigation costs and service awards to Plaintiffs as
8 further set forth below.

9 In the interest of settling the matter, Plaintiffs and Class Counsel agreed to a total
10 payment by Defendant of \$75,000 inclusive of Litigation costs and service awards.²
11 This sum includes \$65,000 towards the partial reimbursement of Litigation costs which
12 total in excess of \$250,000, and not more than \$5,000 for each of the named Plaintiffs
13 as service awards. See declarations of Robert Teel (“Teel Decl.”), Timothy Fisher
14 (“Fisher Decl.”), and Ronald Marron (“Marron Decl.”) filed concurrently herewith in
15 support of this motion. Collectively referred to herein as “Class Counsels’ Decl.”

16 An analysis of Class Counsel’s lodestar, while evidence of their zealous
17 prosecution of this Action, is not necessary to guide the Court because no portion of
18 the amount being paid by Defendant is for attorneys’ fees (*i.e.*, a negative multiplier
19 on the attorney time spent of 100%). Nonetheless, even a cursory review of the docket
20 makes clear that a significant amount of time, effort, and expense was required to
21 litigate this case and obtain the behavioral remedies required by the Settlement which
22 eliminate virtually any risk that Class Members and the public will continue to suffer
23 the injuries that led Plaintiffs to pursue this Litigation in the first place. Class Counsels’
24

25 ¹ Capitalized terms shall have the same meaning as set forth in the Class Action
26 Settlement Agreement attached as Exhibit 1 to the declaration of Robert Teel in support
of Plaintiffs’ motion for preliminary approval (ECF No. 279-3) unless otherwise noted.

27 ² There is no allocation to attorneys’ fees since the total Litigation costs incurred and
28 paid by Class Counsel exceed the sum of \$250,000.

1 cost reimbursement is supported by statute and only includes costs reasonably
2 necessary to successfully prosecute this action. *See* Class Counsels’ Decl.

3 Plaintiffs devoted a substantial amount of time and effort to successfully
4 prosecuting this Action understanding that it was necessary not only to protect the
5 rights of California consumers and the public, but also to level the playing field in the
6 California hotel marketplace in order for those hotels who do not charge resort fees to
7 compete fairly with hotels that charged resort fees using hidden pricing. Service
8 awards encourage individuals to come forward and represent other members of the
9 public in important public interest class action cases such as this. In light of the extra-
10 ordinary collateral risks and the harm manifested by those risks in this case, and the
11 successful efforts of the Plaintiffs in litigating this Action, the requested payments are
12 in line with Ninth Circuit precedent and should be awarded.

13 For the reasons set forth in the moving papers and in their declarations, Plaintiffs
14 respectfully request the Court award them \$5,000 per Class Representative for their
15 service and the efforts made in successfully prosecuting this Action and incentivizing
16 the Defendant to settle by executing a general release. Plaintiffs and Class Counsel
17 also respectfully request the Court award the sum of \$65,000 as partial reimbursement
18 of Class Counsel’s Litigation costs incurred and paid in prosecuting this Action.

19 **II. THE LEGAL STANDARDS**

20 In a certified class action, the court may award “nontaxable costs that are
21 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). In order to do
22 so, the Court must make an independent determination that the requested costs are
23 reasonable. *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 941
24 (9th Cir. 2011). The decision to award litigation costs “is committed to the sound
25 discretion” of the court and should be based on “the unique contours of the case.”
26 *Manual for Complex Litig.*, Fourth § 14.121 (2004).

27 In a class action, the court follows Rule 23(h) to award attorneys their litigation
28 costs. Fed. R. Civ. P. 23(h). The “fundamental focus [of Rule 23(h)] is the result

1 actually achieved for class members.” *Manual for Complex Litig.*, Fourth § 21.71
2 (citing Fed. R. Civ. P. 23(h) committee note). The decision to allow reimbursement of
3 costs under Rule 23(h) must describe the bases for the Court’s order, including findings
4 of fact and conclusions of law. *See id.* § 14.232; Fed. R. Civ. P. 52(a), 54(d)(2)(C),
5 58(a)(3) (a separate judgment for fees is not required).

6 Notice to the class of a motion for litigation costs and service awards is required,
7 which is ordinarily accomplished in a settlement class by including information about
8 the hearing and motion within the class notice itself and as was done in this case. *See*
9 Fed. R. Civ. P. 23(e)(1)(C). Counsel for the class may also move for costs either as in
10 this case by agreement of the parties (Fed. R. Civ. Proc. 23(h)), and/or if they are a
11 prevailing party (Fed. R. Civ. P. 54(d)(1)).

12 **III. THE REQUESTED COSTS ARE FAIR AND REASONABLE AND**
13 **PLAINTIFFS ARE ENTITLED TO THEIR PARTIAL**
14 **REIMBURSEMENT UNDER THE AGREEMENT AND THE LAW**

15 Class Counsel is entitled to reimbursement of reasonable out-of-pocket
16 expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
17 1994) (holding that attorneys may recover reasonable expenses that would typically be
18 billed to paying clients in non-contingency matters); *Van Vranken v. Atl. Richfield Co.*,
19 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs in class action
20 settlement). Costs compensable under Rule 23(h) include “nontaxable costs that are
21 authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h). *Taylor v.*
22 *Shutterfly, Inc.*, 5:18-cv-00266-BLF, 2021 WL 5810294, at *24 (N.D. Cal. Dec. 7,
23 2021).

24 In addition, to an authorization of nontaxable costs under Fed. R. Civ. Proc.
25 23(h), counsel for the class may also pursue reimbursement of taxable expenses in
26 federal litigation governed by 28 U.S.C § 1920 and move for costs if they are a
27 prevailing party under Fed. R. Civ. P. 54(d)(1). *In re Media Vision Tech. Sec. Litig.*,
28 913 F. Supp. 1362, 1365-66 (N.D. Cal. 1996).

1 California state substantive law also authorizes counsel for the class to move for
 2 costs under Cal. Code Civ. Proc. (“CCP”) §§ 1032, 1033.5.³ *Champion Produce, Inc.*
 3 *v. Ruby Robinson Co.*, 342 F.3d 1016, 1024 (9th Cir. 2003) (citation omitted). “The
 4 task of a federal court in a diversity action is to approximate state law [regarding
 5 attorneys’ awards] as closely as possible in order to make sure that the vindication of
 6 the state right is without discrimination because of the federal forum.” *Farmers Ins.*
 7 *Exch. v. Sayas*, 250 F.3d 1234, 1236 (9th Cir. 2001) (quoting *Gee v. Temeco, Inc.*, 615
 8 F.2d 857, 861 (9th Cir. 1980)). Accordingly, Plaintiffs may avail themselves of
 9 California substantive law when determining the availability and amount of an award
 10 of litigation costs in a diversity case. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556
 11 F.3d 815, 829 (9th Cir. 2009) (citation omitted); *see also Parkinson v. Hyundai Motor*
 12 *Am.*, 796 F. Supp. 2d 1160, 1169 (C.D. Cal. 2010) (“[T]he Court, sitting in diversity
 13 adjudicating state law claims, turns to applicable California law.”).

14 Pursuant to CCP § 1033.5 (a)(1) and (4), a prevailing party may recover costs
 15 for court fees and service of process fees. In situations where a party recovers other
 16 than monetary relief, “the ‘prevailing party’ shall be as determined by the court, and
 17 under those circumstances, the court, in its discretion, may allow costs or not and, if
 18 allowed, may apportion costs between the parties on the same or adverse sides pursuant
 19 to rules adopted under Section 1034.” CCP § 1032. Here the Parties have authorized
 20 an apportionment of the Litigation costs under the Settlement Agreement.

21 Under California law, a specific cost item not identified in section 1033.5 may
 22 still be awarded in the trial court’s discretion, provided it satisfies the further statutory
 23 requirement that it was reasonably necessary to the conduct of the litigation. *See also*
 24 CCP § 1033.5(c)(2) and (4); *accord Seever v. Copley Press, Inc.*, 141 Cal.App.4th 1550,
 25 1558 (2006); *see also Sanford v. Rasnick*, 246 Cal.App.4th 1121, 1132 (2016)

26 _____
 27 ³ *See also* CCP § 1021 “Except as attorney’s fees are specifically provided for by statute,
 28 the measure and mode of compensation of attorneys and counselors at law is left to the
 agreement, express or implied, of the parties; but parties to actions or proceedings are
 entitled to their costs, as hereinafter provided.”

1 (awarding mediators' fees and attorney service charges for court filings and deliveries);
 2 *Page v. Something Weird Video*, 960 F. Supp. 1438, 1447 (1996) (awarding travel
 3 expenses incurred by attorney for attending court hearings).

4 Class Counsel has incurred over \$250,000 in Litigation costs reasonably
 5 necessary to conduct this Action (*see* Class Counsels' Decl.), and a payment by
 6 Defendant in connection therewith is appropriate whether under Fed. R. Civ. Proc.
 7 23(h) or 54(d) or CCP §§ 1032 or 1033.5 because the costs have been apportioned and
 8 agreed to under the Settlement Agreement. All of Class Counsel's expenses being
 9 reimbursed under the Agreement were reasonable and necessary for the successful
 10 prosecution of this case. Accordingly, the Court should grant Class Counsel's request
 11 for approval of the partial reimbursement payment in the amount of \$65,000 for
 12 Litigation costs.

13 **IV. THE SERVICE AWARDS ARE FAIR AND REASONABLE**

14 Here, in addition to the Settlement Agreement, Plaintiffs' service as private
 15 attorneys general (*see e.g.*, CCP § 1021.5), support of their request for approval of the
 16 Service Awards. Under California law a private attorney general is "a party who
 17 secures a significant benefit for many people by enforcing an important right affecting
 18 the public interest." *Serrano v. Stefan Merli Plastering Co.*, 52 Cal. 4th 1018, 1020
 19 (2011). CCP § 1021.5, which codifies California's common law private attorney
 20 general doctrine, was enacted to encourage suits effectuating fundamental public
 21 policies by awarding substantial payments to those who successfully bring such
 22 actions. *Lindelli v. Town of San Anselmo*, 139 Cal.App.4th 1499, 1508 (2006); *accord*
 23 *Robinson v. City of Chowchilla*, 202 Cal.App.4th 382, 390 (2011) (citing *Olson v.*
 24 *Automobile Club of Southern California*, 42 Cal.4th 1142, 1147 (2008)). In accordance
 25 with the statute's underlying policies public-interest litigants "who are successful in
 26 such cases" may be granted awards, thereby incentivizing "representation of interests
 27 of similar character in future litigation." *Serrano v. Priest*, 20 Cal.3d 25, 44 (1977);
 28 *see also Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) ("[P]rivate

1 enforcement of civil rights legislation relies on the availability of fee awards[.]”). “The
2 ‘significant benefit’ required by [section 1021.5] need not be tangible or concrete but
3 may be recognized from the effectuation of a fundamental policy.” *Indio Police*
4 *Command Unit Assoc. et al., v. City of Indio*, 230 Cal.App.4th 521, 543 (2014) (citation
5 omitted).

6 An award is authorized when: (a) a significant benefit, whether pecuniary or
7 nonpecuniary has been conferred on the general public or a large class of persons, (b)
8 the necessity and financial burden of private enforcement are such as to make the award
9 appropriate, and (c) an award should not, in the interest of justice, be paid out of the
10 recovery, if any. *Indep. Living Ctr. of Southern California, Inc. v. Kent*, 909 F.3d 272,
11 283 (9th Cir. 2018) (quoting *Maria P. v. Riles*, 43 Cal.3d 1281, 1288 (1987)). “The
12 key question is ‘whether the financial burden placed on the party [claiming an award]
13 is out of proportion to its personal stake in the lawsuit.’” *Heston v. Taser Int’l, Inc.*,
14 431 Fed. Appx. 586, 589 (9th Cir. 2011) (quoting *Lyons v. Chinese Hosp. Ass’n*, 136
15 Cal. App. 4th 1331, 1352 (2006).

16 Here, the behavioral remedies required by the Settlement benefits both Class
17 Members and the general public because it will not only level the playing field for
18 highly competitive California hotel marketplace, but also eliminate virtually all risk
19 that Class Members will be deceived about the Total Room Price of a stay at a Marriott
20 Hotel, thereby protecting the consumer rights of the Class and the public now and into
21 the future. This is a significant benefit because it will safeguard and protect the Class
22 Members’ and public’s consumer rights under the law.

23 Moreover, it is highly unlikely that such relief would have been obtained without
24 the Settlement. Defendant has changed its business practices to include their resort
25 fees in the price for a stay in the immediate search results in the *booking flow* on its
26 website. However, Defendant did *not* change its practices to include the extra fees in
27 the price on the *calendar view* which precedes a consumer’s entry into the booking
28 flow of its website, and as of the date of filing this motion Defendant still has not

1 changed the calendar view. The Settlement requires Defendant make that change
2 within six months of the Settlement’s Effective Date.

3 In addition, the Settlement requires, without limitation, that Defendant promptly
4 modify and fix all known instances in which an amenity advertised as complimentary
5 or free is included as a Resort Fee amenity. And to ensure compliance with the
6 Settlement’s requirements, Defendant is required to serve on Class Counsel a
7 declaration twelve (12) months after the Effective Date describing its compliance in
8 connection with the terms of the Settlement.

9 Defendant has steadfastly denied that the business practices required to be
10 changed by the Settlement are likely to deceive consumers, and has not voluntarily
11 modified the business practices required to be changed by the Settlement Agreement,
12 even with Senate Bill 478 (SB 478), also known as the “Hidden Fees Statute” (SB 478
13 amending the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et*
14 *seq.*) going into effect on July 1, 2024. And unlike the Attorneys’ General of Texas,
15 Colorado, Pennsylvania, and the District of Columbia, the California Attorney General
16 has not taken any enforcement action to hold Defendant accountable for its allegedly
17 fraudulent advertising practices. Therefore, private enforcement and the resulting
18 financial burden were and still are necessary to prevent further injury to members of
19 the Class and the public at large. Plaintiffs have acted as true attorneys general.

20 **A. Plaintiffs Successfully Achieved the Objectives of the Litigation**

21 “In order to effectuate” the policy underlying CCP § 1021.5, and consistent with
22 the construction of comparable statutes, the California Supreme Court has “taken a
23 broad, pragmatic view of what constitutes a ‘successful party.’” *Graham v.*
24 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004). “[A] party need not prevail on
25 every claim to be considered a successful party within the meaning of the statute.”
26 *Grodensky v. Artichoke Joe’s Casino*, 171 Cal. App. 4th 1399, 1437 (2009) (citation
27 omitted). “[T]he critical fact is the impact of the action, not the manner of its
28

1 resolution.” *Indep. Living Ctr. of Southern California, Inc. v. Kent*, 909 F.3d 272, 282
 2 (9th Cir. 2018) (quoting *Maria P. v. Riles*, 43 Cal.3d 1281, 1291 (1987)).

3 Plaintiffs are successful parties because: (1) the change in business practices
 4 called for in the Settlement Agreement eliminates virtually all risk that Class Members
 5 will be deceived about (a) the Total Room Price of a stay at a Marriott Hotel, and (b)
 6 which amenities are included in that price and which are not, thereby protecting the
 7 consumer rights of the Class as well as the public; and (2) the Settlement avoids the
 8 considerable risks, delays, and the expense of further litigation. *See Settlement*
 9 *Agreement*, Article III., D. The behavioral relief provides an important societal benefit
 10 aimed at preventing the very injury that led to this Class Action. Plaintiffs were
 11 successful under CCOP § 1021.5 in achieving the objectives of the litigation. *See Hall*
 12 *Decl.*, ¶ 9.

13 **B. The Settlement Agreement Itself Provides for Partial Reimbursement**
 14 **of Costs and Service Awards and is Warranted Under the Law**

15 A request for reimbursement of Litigation costs “should not result in a second
 16 major litigation. Ideally . . . litigants will settle the amount of a fee.” *Hensley v.*
 17 *Eckerhart*, 461 U.S. 426, 437 (1983). This is what the parties have done in the
 18 Settlement Agreement. Defendant has agreed to pay \$75,000 for partial reimbursement
 19 of Litigation costs and service awards, inclusive. This sum includes a payment of
 20 \$65,000 in partial reimbursement of the over \$250,000 paid by Class Counsel in
 21 Litigation costs, and up to \$5,000 per Class representative. Settlement Agreement,
 22 Article III., E.

23 Settlements such as these “are highly favored,” in part because they promote
 24 efficient resolution of disputes, and therefore interpretation ought to be made in favor
 25 of enforcement wherever possible. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th
 26 273, 277-78 (1992) (discussing how our civil litigation system favors settlements); *see*
 27 *also Nicholson v. Barab*, 233 Cal. App. 3d 1671, 1683 (1991) (“[T]here is a well-
 28 established policy in the law to discourage litigation and favor settlement. Pretrial

1 settlements are highly favored because they diminish the expense of litigation.”) (citing
 2 *People ex rel. Dept. Pub. Wks v. Douglas* 15 Cal. App. 3d 814, 820 (1971) and *Hastings*
 3 *v. Matlock* 171 Cal. App. 3d 826, 837 (1985)). Here, the parties have agreed, subject
 4 to the Court’s approval, on an acceptable amount of payment to partially reimburse
 5 Class Counsel for necessary Litigation costs in obtaining the behavioral relief.

6 Where, as here, the parties negotiated an arms’ length settlement with the help
 7 of experienced professional mediators, “[a] court should refrain from substituting its
 8 own value for a properly bargained-for agreement.” *In re Apple Computer, Inc.*
 9 *Derivative Litig.*, No. C-06-4128-JF(HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov.
 10 5, 2008). Where there is no evidence of collusion and no detriment to the parties,
 11 courts “should give substantial weight to a negotiated fee amount, assuming that it
 12 represents the parties’ best efforts to understandingly, sympathetically, and
 13 professionally arrive at a settlement as to attorneys’ fees.” *Ingram v. Coca-Cola Co.*,
 14 200 F.R.D. 685, 695 (N.D. Ga. 2001) (citation omitted).

15 In this case, the behavioral relief nature of the settlement was negotiated with
 16 the assistance of the Hon. Peter D. Lichtman (Ret.) and Magistrate Judge Allison H.
 17 Goddard. The \$75,000 amount for total costs and service awards was negotiated
 18 separately and only after the parties had reached agreement on the behavioral relief.
 19 *See Teel Decl.*, ¶ 6; *see also In re Apple Computer, Inc. Derivative Litig.*, No. C-06-
 20 4128-JF(HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008). Lastly, the parties’
 21 decision to not allow a reversion of any portion of the payment to Defendant is further
 22 evidence that there was no collusion.⁴

23
 24
 25 ⁴ A Service Award materially less than \$5,000 to each Plaintiff or an award of costs
 26 and expenses materially less than \$65,000 will void the Settlement. *See Settlement*
 27 *Agreement*, Article VI, C. at ECF No. 279-3, pg. 19. If the Settlement is void, the
 28 parties will have to proceed to (a) a jury trial on the Court’s first available trial date,
 and (b) a determination of Plaintiffs’ motion to remand the State Case to the Superior
 Court where they can pursue their public injunctive relief claims.

1 Service awards are “fairly typical in class action cases,” *Rodriguez v. W. Publ’g*
2 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), and “serve an important function in
3 promoting class action settlements.” *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, No.
4 94-CV-0403(JG), 2002 WL 2003206, at *5 (E.D. N.Y. Aug. 1, 2002). Service awards
5 for class representatives are routinely provided to encourage individuals to undertake
6 the responsibilities of representing the class and recognize the time and effort spent in
7 the case. *See In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 369
8 (D.D.C. Feb. 1, 2002). Such awards “are intended to compensate class representatives
9 for work done on behalf of the class, to make up for financial or reputational risk and
10 other collateral harm undertaken in bringing the action, and, sometimes, to recognize
11 their willingness to act as a private attorney general.” *Rodriguez v. W Publ’g Corp.*,
12 563 F.3d 948, 958 (9th Cir. 2009).

13 As a baseline, incentive awards of \$5,000 have been found to be presumptively
14 reasonable. *See Vikram v. First Student Management, LLC*, No. 17-cv-04656-KAW,
15 2019 WL 4168992, *5-6 (N.D. Cal. Sept. 3, 2019). But incentive awards beyond
16 \$5,000 have also been found to be reasonable under certain circumstances, including
17 cases involving financial and reputational risk and harm. For instance, in
18 *Bellinghausen v. Tractor Supply Company*, 306 F.R.D. 245, 267 (N.D. Cal. 2015), the
19 court awarded a \$10,000 incentive award to the named plaintiff who in addition to
20 spending 73 hours on the case lost job opportunities due to his role as class
21 representative as multiple prospective employers sent him letters rejecting his
22 application because of his part in the pending litigation. Likewise, in *Edwards v. First*
23 *American Corp.*, No. CV-07-03796-SJO(FFMx), 2016 WL 8999934 (C.D. Cal. Oct. 4,
24 2016), the court awarded the named plaintiff \$10,000 where the named plaintiff
25 “demonstrated . . . enthusiastic and active involvement in the case since 2007, [made]
26 efforts to make herself available during work hours for mediation, and travel[ed] at her
27 own expense from Cleveland, Ohio to attend oral argument before the Supreme Court.”
28 *But see Vikram*, 2019 WL 4168992, at *6 (court rejected a \$10,000 incentive award

1 request, instead awarding \$5,000 due in part because the named plaintiff’s counsel
2 “*acknowledged that there was nothing extraordinary about the work Plaintiff*
3 *performed in this case*” (emphasis added).

4 “Numerous courts in the Ninth Circuit and elsewhere have [also] approved
5 incentive awards of \$20,000 or more where, as here, the class representative has
6 demonstrated a strong commitment to the class.” *Id.* (citing *Garner v. State Farm Mut.*
7 *Auto. Ins. Co.*, No. CV-08-01365 CW, 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr.
8 22, 2010) (collecting cases approving incentive awards of \$25,000 to named plaintiffs
9 who were deposed; \$35,000 to \$55,000 award in estimated \$18,000,000 settlement
10 action; \$20,000 award in estimate \$4,000,000 settlement action)). In *Garner*, the court
11 awarded \$20,000 to the named plaintiff over the objections of a member of the class
12 where the plaintiff “made herself available for deposition on two separate occasions,
13 wherein she was subjected to questioning regarding her personal financial affairs and
14 other sensitive subjects; met with Class Counsel on six separate occasions; attended
15 the full-day Court-ordered appraisal hearing; spoke with Class Counsel and their staff
16 on many occasions; reviewed all major pleadings; and repeatedly responded to
17 interrogatories and document requests.” 2010 WL 1687832, at *17. *See also Carter*
18 *v. XPO Logistics, Inc.*, No. 16-cv-01231-WHO, 2019 WL 5295125, at *4 (N.D. Cal.
19 Oct. 18, 2019) (awarding \$20,000 to each of the five named plaintiffs, where named
20 plaintiffs cumulatively “spent between 602 and 721 hours assisting in the preparation,
21 prosecution and settlement of this case” and whose “assistance to counsel in
22 interpreting the class member discovery and data[] was uniquely significant given the
23 claim asserted and the lack of data available from defendants”).

24 Incentive awards are committed to the sound discretion of the trial court and
25 should be awarded based upon the court’s consideration of: (1) the actions the class
26 representatives took to protect the interests of the class; (2) the degree to which the
27 class benefited from those actions; and (3) the amount of time and effort the class
28 representatives expended in pursuing the litigation. *See, e.g., Cook v. Niedert*, 142 F.3d

1 1004, 1016 (7th Cir. 1998). These factors, as applied to this Action, demonstrate the
2 reasonableness of the requested Service Awards.

3 Plaintiffs here not only devoted their time and effort to successfully prosecuting
4 this case,⁵ but also endured threats of financial harm and adverse collateral
5 employment consequences as a direct result of serving as Class Representatives. *See*
6 Hall Decl., ¶¶ 5 and 7 and Abdelsayed Decl., ¶ 5. While it may be difficult to put a
7 price on the worry, concern, and anxiety caused by Defendant’s threats to hold
8 Plaintiffs financially liable for “irreparable harm” as well as its other questionably
9 aggressive litigation tactics directly attributed to Plaintiffs’ involvement in this case as
10 Class Representatives, Plaintiffs assert it exceeds \$5,000 when considering the time
11 spent as well.

12 Despite the collateral harms that Plaintiffs incurred as a result of serving as Class
13 Representatives, Plaintiffs stayed the course and successfully prosecuted this Litigation.
14 Plaintiffs even gave a general release which includes any claims for these harms as
15 well as their right to damages under the CLRA and common law. Plaintiffs are the
16 *only* members of the Class who executed a release, nonetheless a general release, of
17 their claims against Defendant. Settlement Agreement, Article IV.

18 The rest of the likely hundreds of thousands of similarly situated Class Members
19 and consumers involved in this Action are free to pursue damages claims against
20 Defendant. Plaintiffs would not have agreed to the Settlement if the rest of the Class
21 Members had been required to give a release. Hall Decl., ¶ 12; Abdelsayed Decl., ¶ 9.
22 Plaintiffs made the effort and sacrifices to settle this case because Plaintiffs understood
23 they were obligated to protect the rights of Class Members and consumers. Plaintiffs
24 believe they have fulfilled these obligations. Hall Decl., ¶ 8; Abdelsayed Decl., ¶ 6.

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26
27 ⁵ Plaintiff Todd Hall directly spent 52.7 hours on this case (Hall Decl., ¶ 11) and
28 Plaintiff Abdelsayed spent approximately a dozen hours on this case (Abdelsayed Decl.,
¶ 9).

1 Without the Plaintiffs' strong commitment, efforts, and sacrifices in successfully
2 prosecuting this Action, it is highly unlikely Defendant would have changed its
3 business practices in the manner required by the Settlement. The behavioral remedies
4 relief is designed to prevent the risk that the Class and other consumers will be deceived
5 about the Total Room Price of a stay at a Marriott Hotel and what amenities are and
6 are not included in that price, a result which Plaintiffs believe is a highly favorable
7 outcome and is clearly in the best interests of the Class and the public at large. In light
8 of the foregoing, the request of \$5,000 for each Plaintiff as a service award for their
9 efforts and sacrifices, and the collateral harms suffered as the direct result of serving
10 as Class Representatives, is reasonable and squarely in line with Ninth Circuit case law.

11 To determine the reasonableness of an incentive award request, courts consider
12 "(1) the risk to the class representative in commencing suit, both financial and
13 otherwise; (2) the notoriety and personal difficulties encountered by the class
14 representative; (3) the amount of time and effort spent by the class representative; (4)
15 the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by
16 the class representative as a result of the litigation." *Edwards v. First American*
17 *Corporation*, No. CV-07-03796-SJO-(FFMx), 2016 WL 8999934 (C.D. Cal. 2016)
18 (quoting *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

19 Here, Plaintiffs not only devoted their time, but also risked significant financial
20 and reputational risks and suffered collateral harm. As discussed above, these risks in
21 fact did manifest as a direct result of serving as Class Representatives. Further, in the
22 interest of settling the matter, Plaintiffs gave a general release of their rights to pursue
23 claims against Defendant, including the damages that resulted from the financial and
24 reputational harms and their compensatory and punitive damages claims. Plaintiffs
25 each value their releases to be worth over \$5,000. Significantly, Plaintiffs are the only
26 class members to give such a release and would not have agreed to the Settlement had
27 the rest of the class members' been required to give such releases. In light of the
28

1 foregoing, Plaintiffs' request of \$5,000 per Class Representative as service awards is
2 reasonable.

3 **V. THE WORK PERFORMED BY CLASS COUNSEL**

4 Under California law, the primary method for determining the reasonableness of
5 the legal work performed in a case like this is the lodestar method. *McCrary v. Elations*
6 *Co., LLC*, No. EDCV130242JGBSPX, 2016 WL 769703, at *10 (C.D. Cal. Feb. 25,
7 2016); *see also Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010). Moreover, "the
8 'lodestar method' is appropriate in class actions brought under fee-shifting statutes . . .
9 where the legislature has authorized the award of fees to ensure compensation for
10 counsel undertaking socially beneficial litigation." *In re Bluetooth*, 654 F.3d at 941;
11 *see also* Manual for Complex Litigation, Fourth, § 21.7 at p. 334-35 ("Statutory awards
12 are generally calculated using the lodestar method.").

13 As discussed above, even though the Settlement Agreement calls for a 100
14 percent negative multiplier, to the extent the Court feels it needs any analysis of Class
15 Counsel's work the lodestar method is the appropriate standard. "The lodestar is
16 calculated by multiplying the number of hours reasonably expended by counsel by a
17 reasonable hourly rate." *McCrary*, 2016 WL 769703, at *10. "A court may increase
18 or decrease that amount by applying a positive or negative multiplier based on, among
19 other factors, the quality of representation, the novelty and complexity of the issues,
20 the results obtained, and the contingent risk presented." *Id.*

21 Here, Class Counsel has a lodestar of at least \$2,501,839.50. But after weighing
22 the benefits against the risks to the Class of continuing the litigation, Class Counsel
23 recommended the Settlement as being in the best interest of the Class because, as the
24 Court noted, even if Plaintiffs prevailed on liability at trial there would be little
25 motivation for Class Members to pursue individual damages claims given that
26 Marriott's resort fees range from \$9 to \$95. ECF No. 180, 42:9-11. Only Class
27 Counsels' interest in retaining the right to seek and obtain attorneys' fees and costs
28 would be served by continued protracted litigation of the Class's liability-only claims

1 to a final judgment, as opposed to the Class’s interests which are being served now by
2 eliminating virtually all risk that Class Members will continue to be deceived about the
3 Total Room Price of a stay at a Marriott Hotel. *See* Teel Decl., ¶ 10.

4 Therefore, after weighing the benefits against the risks to the Class of continuing
5 the litigation, Class Counsel agreed to forego litigating its right to seek and obtain its
6 full lodestar because obtaining the significant benefits from the Settlement accruing to
7 not only the Class, but also to the public at large, was in the best interests of Plaintiffs,
8 the Class, and the public. *See* Teel Decl., ¶ 21. Without the Settlement, Defendant
9 would have no incentive to change or monitor its business practices as it is required to
10 do under the Settlement during the years of protracted litigation that was certain to
11 ensue, win or lose at the April 22, 2024 jury trial.

12 **VI. CONCLUSION**

13 For the reasons stated above, Plaintiffs respectfully request the Court grant the
14 motion for final approval filed in conjunction herewith and enter an order substantially
15 in the form of the proposed order lodged concurrently herewith: (1) confirming the
16 Class for purposes of the Settlement; (2) confirming the appointment of Todd Hall and
17 George Abdelsayed as Class Representatives; (3) confirming the appointment of
18 Bursor & Fisher, P.A., the Law Offices of Ronald A. Marron, APLC, and the Law
19 Office of Robert L. Teel as Class Counsel; (4) granting final approval of the proposed
20 Settlement; (5) granting approval of the \$65,000 payment to Class Counsel for partial
21 reimbursement of Litigation costs and \$5,000 to each Plaintiff as a service award for
22 serving as Class Representative; and (6) dismissing the Action and State Case with
23 prejudice as to Plaintiffs only.

24 Dated: July 3, 2024

Respectfully submitted,

26 By: /s/ Robert L. Teel

Robert L. Teel

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