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17
18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
FOR THE COUNTY OF LOS ANGELES

19 RONALD CHINITZ, STEVIE HEMPHILL,
20 *and LINDA GOMEZ, individually and on*
behalf of all others similarly situated,

21 Plaintiffs,

22 v.

23 TELECOM EVOLUTIONS, LLC, *a*
24 *California limited liability company, and*
25 *QUALITY SPEAKS LLC, a California*
limited liability company,

26 Defendants.

Case No. 18STCV08068

CLASS ACTION

**PLAINTIFFS STEVIE HEMPHILL'S
AND LINDA GOMEZ'S NOTICE OF
MOTION AND MOTION FOR AWARD
OF ATTORNEYS' FEES AND COSTS
AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 20, 2023

Time: 11:00 a.m.

Judge: Honorable Lawrence P. Riff

Place: Department 7

Action filed: December 12, 2018

1 **TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 20, 2023, at 11:00 a.m., or as soon thereafter
3 as this matter may be heard, in Department 7 of the above-entitled court, before the Honorable
4 Lawrence P. Riff, Plaintiffs Stevie Hemphill and Linda Gomez, on behalf of themselves and the
5 conditionally certified Class,¹ will and hereby do respectfully move this Court for an award of
6 attorneys' fees and costs in the total amount of \$300,000, which includes \$35,977.63 in
7 reimbursement for costs and expenses, as well as Service Awards in the amount of \$1,500 each
8 for Class Representatives Hemphill and Gomez, for a total of \$3,000.²

9 Plaintiffs base the motion on the following documents: this Notice of Motion and Motion;
10 the accompanying Memorandum of Points and Authorities; the pleadings, record, and other filings
11 in the case; the accompanying Declaration of George V. Granade and Exhibits 1 through 6 thereto;
12 the accompanying Declaration of Susan M. Coler and Exhibits 1 and 2 thereto; and such other oral
13 and written points, authorities, and evidence as the parties may present at the time of the hearing
14 on the motion.

15
16 Date: December 7, 2022

Respectfully submitted,

17 By: /s/ George V. Granade

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26 ¹ Unless otherwise indicated, capitalized terms have the meanings ascribed to them in the Second
Amended Settlement Agreement and Release, attached as Exhibit 1 to the Declaration of George
V. Granade (filed concurrently herewith).

27 ² As stated in the Settlement Agreement made available to all Class Members, Class Counsel have
a joint prosecution agreement with a fee split agreement. That agreement is that attorneys' fees
and costs, if approved by the Court, will be split as follows: \$200,000 to Reese LLP and \$100,000
28 to Halunen Law. *See* Second Am. Stlmt Agmt & Release § IV.C.3.

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*Counsel for Plaintiffs Stevie Hemphill and Linda
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11		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 Through this motion, Plaintiffs¹ and Class Counsel move the Court to approve an award of
4 attorneys' fees and costs in the amount of \$300,000, and for Service Awards in the amount of
5 \$1,500 each for Class Representatives Hemphill and Gomez.

6 The Settlement Agreement, which this Court preliminarily approved effective May 27,
7 2022, provides that Class Counsel may seek up to \$300,000 in attorneys' fees and costs; that
8 Defendants agree not to oppose said request; and that Defendants have agreed to pay the amount
9 the Court approves separate and apart from the money made available to the Settlement Class and
10 for payment of the costs and fees of the Settlement Administrator. §§ IV.B.5, IV.C.1-2, V.A. The
11 Settlement Agreement also contemplates that Mr. Hemphill and Ms. Gomez may petition the Court
12 for Service Awards in the amount of \$1,500 each, and that Defendants will pay the Service Awards
13 approved by the Court separate and apart from the money made available to the Settlement Class
14 and for payment of the Settlement Administrator. *Id.*

15 In light of the excellent relief attained and the substantial work performed by Class
16 Counsel—who dedicated over 1,000 hours of attorney time over nearly four years of hard-fought
17 litigation on a contingency basis with no guarantee of payment—and the significant contributions
18 to this matter by Mr. Hemphill and Ms. Gomez, the attorneys' fees and costs and the Service
19 Awards sought in this motion are reasonable. The \$300,000 in attorneys' fees and costs that Class
20 Counsel request represents a lodestar multiplier of 0.29 or less on Class Counsel's lodestar of
21 \$1,040,580, and represents less than 15% of the total constructive value of the Settlement. The
22 \$1,500 Service Awards sought for Mr. Hemphill and Ms. Gomez are reasonable, considering the
23 time, effort, and contributions of both Plaintiffs to this case, including reviewing pleadings,
24 reviewing and approving the Settlement Agreement, and submitting declarations in support of
25 preliminary approval.

26 _____
27 ¹ Unless otherwise indicated, capitalized terms have the meanings ascribed to them in the Second
28 Amended Settlement Agreement and Release, attached as Exhibit 1 to the Declaration of George
V. Granade (filed concurrently herewith). And unless otherwise specified, all section (§) references
are to sections of the Settlement Agreement.

1 **II. Factual and Procedural Background**

2 To challenge Defendants’ practice of marketing their TrueStream internet service as “fiber
3 optic” when it was, allegedly, provided via copper DSL lines, former plaintiff Ronald Chinitz
4 initiated a class action lawsuit in this Court on December 12, 2018, bringing claims on behalf of a
5 putative California state class for violation of California’s Consumers Legal Remedies Act, CAL.
6 CIV. CODE § 1750 *et seq.* (“CLRA”), False Advertising Law, CAL. BUS. & PROF. CODE § 17500 *et*
7 *seq.* (“FAL”), and Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.* (“UCL”),
8 for intentional misrepresentation, and for unjust enrichment. *See generally* Compl.

9 Before filing the original Complaint, Class Counsel investigated the potential claims
10 against Defendants. Decl. Granade ¶ 9. Class Counsel’s pre-suit investigation included, but was
11 not limited to: interviewing Mr. Chinitz; obtaining and reviewing Defendants’ marketing of the
12 TrueStream internet service; conducting research regarding the characteristics and delivery
13 mechanisms of various types of internet service, including DSL service and fiber optic service;
14 obtaining and reviewing relevant legal precedent regarding similar false and misleading
15 representations; obtaining and reviewing relevant financial information regarding the TrueStream
16 service, including pricing for various TrueStream packages and approximate sales figures;
17 extensive legal research to evaluate the prospective merits and weaknesses of the case; and analysis
18 of potential class-wide damages. *Id.*

19 On October 25, 2017, Class Counsel sent a demand letter on Mr. Chinitz’s behalf to
20 Defendants pursuant to the CLRA, which led to extensive pre-suit negotiations with Defendants
21 regarding potential settlement of the case. Decl. Granade ¶ 10. Over the course of the next year,
22 the parties exchanged numerous phone calls, emails, and lengthy single-spaced letters discussing
23 in depth the facts and the parties’ legal positions related to both Mr. Chinitz’s individual claim and
24 the class allegations, in an attempt to resolve the matter. *Id.* at ¶ 11. Pre-suit settlement negotiations
25 did not result in settlement, however. *Id.* at ¶ 12.

26 After Mr. Chinitz filed the Complaint on December 12, 2018, Defendants demurred on
27 March 8, 2019, and the parties fully briefed the demurrer. Decl. Granade ¶ 14. On April 17, 2019,
28 the Court overruled the demurrer in full. *Id.* at ¶ 15. On April 26, 2019, Mr. Chinitz served his first

1 requests for admission, requests for production of documents, form interrogatories, and special
2 interrogatories on each Defendant. *Id.* at ¶ 16. Defendants answered the Complaint on May 17,
3 2019. *Id.* at ¶ 17. On July 2, 2019, the parties filed a stipulation to temporarily stay discovery to
4 allow the parties to participate in settlement negotiations, and on July 5, 2019, the Court granted
5 the stipulation. *Id.* at ¶ 18. On August 12, 2019, Defendants served requests for production of
6 documents and special interrogatories on Mr. Chinitz, and on August 14, 2019, Defendants served
7 form interrogatories and requests for admission on Mr. Chinitz. *Id.* at ¶ 19. On the settlement front,
8 the parties agreed to mediate. *Id.* at ¶ 20. Although discovery was stayed, to facilitate an effective
9 mediation, the parties provided responses to the outstanding discovery requests and produced
10 responsive documents on September 13 and 14, 2019. *Id.*

11 On September 16, 2019, the parties attended a full day mediation before Honorable
12 Jonathan Cannon (Ret.) of JAMS. Decl. Granade ¶ 21. While the case did not settle, the parties
13 were able to reach agreement on many of the substantive issues and agreed to conduct a follow-up
14 session on November 25, 2019. *Id.* On October 3, 2019, the parties filed a stipulation to temporarily
15 stay discovery, which the Court granted on October 7, 2019. *Id.* at ¶ 22. On November 25, 2019,
16 the parties attended a second full day mediation with Judge Cannon. *Id.* at ¶ 23. While the case
17 again did not settle, the two mediation sessions with Judge Cannon set the foundation for the
18 Settlement. *Id.*

19 On December 12, 2019, the Court lifted the discovery stay as to class certification. Decl.
20 Granade ¶ 24. On the same day, Defendants served on Mr. Chinitz a second set of requests for
21 production of documents and a second set of special interrogatories. *Id.* at ¶ 25. Mr. Chinitz served
22 responses to the second requests for production and second special interrogatories on January 21,
23 2020. *Id.* at ¶ 26. On February 7, 2020, Mr. Chinitz served a second set of special interrogatories
24 on Defendants. *Id.* at ¶ 27. On February 24, 2020, Mr. Chinitz produced documents responsive to
25 Defendants' document requests, and on March 2, 2020, Mr. Chinitz served supplemental responses
26 to Defendants' second special interrogatories. *Id.* at ¶ 28.

27 After an Informal Discovery Conference ("IDC") with the Court on March 11, 2020, the
28 parties entered into several more months of hard-fought discovery. Decl. Granade ¶ 29. Defendants

1 served responses to the second special interrogatories on March 13, 2020. *Id.* at ¶ 30. Defendants
2 served supplemental responses to Mr. Chinitz’s first requests for production of documents and first
3 special interrogatories on March 31, 2020, and produced additional documents. *Id.* at ¶ 31. On
4 June 3, 2020, Mr. Chinitz served second sets of requests for admission and requests for production
5 of documents, and Defendants served responses thereto on July 7, 2020. *Id.* at ¶ 32.

6 On July 7, 2020, the parties held a second IDC with the Court in which it was agreed that
7 Defendants would provide supplemental responses by July 28, 2020, the parties would send
8 *Belaire-West* notice to 400 randomly selected putative class members for whom Defendants would
9 provide contact information, and for 100 of whom Defendants would produce technical data
10 related to their internet service. Decl. Granade ¶ 33; *see* Stip. Extend Case Schedule, Sept. 9, 2020.
11 Mr. Chinitz served amended second requests for admission on July 15, 2020, and Defendants
12 responded on August 20, 2020. Decl. Granade ¶ 34. On July 28, 2020, Defendants served
13 supplemental responses to Mr. Chinitz’s second set of special interrogatories. *Id.* at ¶ 35. On
14 September 21, 2020, *Belaire-West* notice was sent to 400 randomly selected putative class
15 members. *Id.* at ¶ 36. However, because the parties stayed the action pending settlement
16 negotiations, the technical data on the 100 putative class members was never provided. *Id.*

17 In October 2020, the parties began months of earnest negotiations in an attempt to seek
18 resolution. Decl. Granade ¶ 37. After several months of negotiations—with frequent calls between
19 counsel—on February 8, 2021, the parties reached resolution on the material points of a settlement,
20 memorialized in a non-binding Memorandum of Understanding. *Id.* at ¶ 38; *see* Decl. Murphy
21 Supp. Defs.’ Mot. Prelim. Approval Class Action Stlmt, Ex. A (filed Apr. 1, 2021). With the
22 material points agreed to, counsel turned to dealing with the details, exchanging drafts of a detailed
23 settlement agreement to be filed with the Court. Decl. Granade ¶ 38.

24 On March 17, 2021, without the knowledge or consent of Class Counsel, Mr. Chinitz
25 attempted to negotiate a class settlement with Defendants. Decl. Granade ¶ 39. On March 31, 2021,
26 Defendants served a Motion for Preliminary Approval, which counsel opposed. *Id.* at ¶ 40. On
27 April 20, 2021, Class Counsel moved to be relieved as Mr. Chinitz’s counsel and for leave to
28 amend the pleading to substitute Mr. Hemphill and Ms. Gomez as the named Plaintiffs. *Id.* at ¶ 41.

1 On May 12, 2021, the Court granted Plaintiffs' motions and vacated the hearing on Defendants'
2 Motion of Preliminary Approval.² *Id.* at ¶ 42. On August 20, 2021, Plaintiffs filed a corrected
3 version of the First Amended Complaint, which included Mr. Chinitz's name in the caption
4 pursuant to an instruction by the Court, along with Mr. Hemphill and Ms. Gomez. *Id.* at ¶ 44.

5 Shortly after the Court granted Plaintiffs' motions to be relieved as counsel for Mr. Chinitz,
6 the Parties entered a final round of intensive settlement negotiations, which culminated in the
7 original Settlement Agreement and Release, which the Parties, Class Counsel, and Defendants'
8 Counsel fully executed on October 29, 2021. Decl. Granade ¶ 45.

9 On November 1, 2021, Plaintiffs moved for preliminary approval of the Settlement. Decl.
10 Granade ¶ 46. On March 7, 2022, the Court entered a Minute Order which rescheduled the hearing
11 on preliminary approval, attached a checklist, and ordered further briefing on the items listed on
12 the checklist. *Id.* at ¶ 47. On May 2, 2022, to comply with the Court's instructions in the checklist,
13 the Parties executed an Amended Settlement Agreement and Release. *Id.* at ¶ 48. On May 3, 2022,
14 Plaintiffs filed a 20-page supplemental brief in support of preliminary approval, which attached
15 the Amended Settlement Agreement and Release as well as 17 other exhibits and addressed the
16 items that the Court had identified in the checklist. *Id.* at ¶ 49.

17 On May 18, 2022, the Court held a hearing and entered an order on preliminary approval,
18 in which it expressed that it would grant preliminary approval, effective May 27, 2022, if the
19 Parties agreed to and executed by May 24, 2022, a small number of revisions to the Amended
20 Settlement Agreement and Release, including changes to the language of the release and
21 elimination of language referring to a dismissal of the class claims. Decl. Granade ¶ 50; *see* Order
22 Granting Mot. Prelim. Approval on Conditions, May 18, 2022, at 19, 27-28. On May 24, 2022, the
23 Parties fully executed the operative Second Amended Settlement Agreement and Release, and
24 Class Counsel filed a declaration attesting that the Parties made the Court's requested changes to
25 the Agreement. Decl. Granade ¶ 51. Consequently, Preliminary Approval became effective on
26 May 27, 2022.

27 _____
28 ² On September 22, 2021, Mr. Chinitz filed a request for voluntary dismissal of his individual
claims. Decl. Granade ¶ 43.

1 **III. Argument**

2 **A. Legal Standard**

3 In California courts, Service Awards for Class Representatives “are fairly typical in class
4 action cases.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (quoting
5 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). These awards are
6 “discretionary,” and “are intended to compensate class representatives for work done on behalf of
7 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
8 sometimes, to recognize their willingness to act as a private attorney general.” *Id.* at 1393-94.
9 “Since without a named plaintiff there can be no class action, such compensation as may be
10 necessary to induce him to participate in the suit could be thought the equivalent of the lawyers’
11 nonlegal but essential case-specific expenses, such as long-distance phone calls, which are
12 reimbursable.” *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). “[T]he
13 rationale for making enhancement or incentive awards to named plaintiffs is that they should be
14 compensated for the expense or risk they have incurred in conferring a benefit on other members
15 of the class.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1394. “[C]riteria courts may
16 consider in determining whether to make an incentive award include: 1) the risk to the class
17 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal
18 difficulties encountered by the class representative; 3) the amount of time and effort spent by the
19 class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
20 enjoyed by the class representative as a result of the litigation.” *Id.* at 1394-95. Incentive awards
21 to class representatives must not be disproportionate to the amount of time and energy expended
22 in pursuit of the lawsuit. *Id.* at 1395.

23 As to attorneys’ fees, in cases like this where monetary relief is made available to class
24 members on a claims-made basis (no common fund), California courts default to analyzing an
25 attorneys’ fee request and issue an award based on the lodestar method. *Lealao v. Beneficial*
26 *California, Inc.*, 82 Cal. App. 4th 19, 37-39 (2000); accord *Laffitte v. Robert Half Internat. Inc.*, 1
27 Cal. 5th 480, 502 (2016) (discussing *Lealao*); see also *Norton v. LVNV Funding, LLC*, No. 18-cv-
28 05051-DMR, 2021 WL 3129568, at *11 (N.D. Cal. July 23, 2021) (“For claims-made settlements,

1 like the one in this case, the lodestar method is appropriate.”). Courts, in their discretion, may then
2 apply a “percentage of the fund” analysis as a cross-check to confirm the reasonableness of the fee
3 award. *Lealao*, 82 Cal. App. 4th at 49-50. However, “a fee award may not be justified solely as a
4 percentage of the recovery when that award will not come from the settlement fund.” *Consumer*
5 *Priv. Cases*, 175 Cal. App. 4th 545, 557 (2009).

6 Finally, as to litigation expenses and costs, courts typically approve reimbursement of all
7 reasonable out-of-pocket expenses and costs incurred in prosecution of the claims and in obtaining
8 a settlement. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Vincent v. Hughes Air W.*,
9 *Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

10 **B. Service Awards**

11 Class Counsel seek a \$1,500 Service Award for each Class Representative, Stevie
12 Hemphill and Linda Gomez, in recognition of their contributions on behalf of the Settlement Class,
13 and Defendants have agreed to pay Service Awards in this amount. §§ IV.C.1-2. Not only did Mr.
14 Hemphill and Ms. Gomez publicly attach their names to this class action case against a prominent
15 business in their community, but they devoted significant time and effort in bringing this case to a
16 timely resolution. Each Plaintiff performed an important and valuable service for the benefit of the
17 Settlement Class. Both Mr. Hemphill and Ms. Gomez: (1) participated in numerous interviews by
18 Class Counsel, including to discuss their experiences with Defendants’ “fiber optic” TrueStream
19 internet service, and provided personal information concerning the Action; (2) corresponded and
20 had conversations with Class Counsel before the filing of the First Amended Complaint, including
21 conversations regarding the actions of former plaintiff Ronald Chinitz and the conflict of interest
22 Mr. Chinitz created by attempting to negotiate a class settlement directly with Defendants without
23 Class Counsel’s knowledge or approval; (3) reviewed the First Amended Complaint before it was
24 filed; (4) kept apprised of the progress of the litigation to the best of their abilities; (5) discussed,
25 reviewed, and signed the original Settlement Agreement and Release, the Amended Settlement
26 Agreement and Release, and the operative Second Amended Settlement Agreement and Release
27 before each was filed with the Court; (6) reviewed, discussed, and helped determine the actions to
28 be taken, and the decisions to be made, in the case on behalf of all class members; (7) were willing

1 to participate in all aspects of litigation if called upon to do so; and (8) in support of the motion
2 for preliminary approval of the settlement, after discussions with Class Counsel, submitted
3 declarations regarding their adequacy as class representatives and regarding their lack of interest
4 in National Consumer Law Center, the non-profit organization designated to receive any
5 unclaimed funds from the parties' class action settlement under California Code of Civil Procedure
6 section 384. Decl. Hemphill ¶¶ 6-14 (Exhibit 2 to the Declaration of George V. Granade); Decl.
7 Gomez ¶¶ 6-14 (Exhibit 3 to the Declaration of George V. Granade); Decl. Granade ¶¶ 54-55.

8 Plaintiffs' actions have benefitted the Settlement Class to a significant degree, including
9 by culminating in the Settlement. Under these circumstances, a modest \$1,500 service award for
10 each of Mr. Hemphill and Ms. Gomez is justified. *See Wong v. Arlo Techs., Inc.*, No. 5:19-cv-
11 00372-BLF, 2021 WL 1531171, at *12 (N.D. Cal. Apr. 19, 2021) (stating that "[i]ncentive awards
12 typically range from \$2,000 to \$10,000" and approving award of \$5,000).

13 Moreover, the requested service awards are in line with amounts approved for other class
14 representatives in California courts. *See, e.g., Cabiness v. Educ. Fin. Sols., LLC*, No. 16-cv-01109-
15 JST, 2019 WL 1369929, at *8 (N.D. Cal. Mar. 26, 2019) (approving \$5,000 service award for
16 class representative); *Vandervort v. Balboa Cap. Corp.*, 8 F. Supp. 3d 1200, 1208 (C.D. Cal. 2014)
17 (approving "a combined \$10,000 incentive award" for two plaintiffs). Consistent with these cases,
18 and in recognition of the time, effort, and risk taken on behalf of the Settlement Class, Mr.
19 Hemphill and Ms. Gomez request that the Court approve the requested Service Awards.

20 **C. The Fee Request**

21 As discussed above, for claims made settlements, like the one in this case, the lodestar
22 method is appropriate. *Lealao*, 82 Cal. App. 4th at 37-39. "The lodestar method, or more accurately
23 the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably
24 expended by counsel by a reasonable hourly rate.'" *Laffitte*, 1 Cal. 5th at 489. "Once the court has
25 fixed the lodestar, it may increase or decrease that amount by applying a positive or negative
26 'multiplier' to take into account a variety of other factors, including the quality of the
27 representation, the novelty and complexity of the issues, the results obtained, and the contingent
28 risk presented." *Id.* Here, Class Counsel have incurred a lodestar of \$1,040,580, reflecting 1,003.2

1 hours of work on this matter. Both the hourly rates and the number of hours expended on this
2 complex, hard-fought case establish that this total lodestar amount is reasonable.³

3 **i. Class Counsel’s Hourly Rates Are Reasonable**

4 As attested to in Class Counsel’s declarations, Class Counsel’s rates are the prevailing rates
5 in the appropriate legal market and are reasonable. Decl. Granade ¶¶ 59-63; Decl. Coler ¶¶ 6-7.

6 “The reasonable hourly rate is that prevailing in the community for similar work,” *PLCM*
7 *Grp. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000), charged by “private attorneys in the community
8 conducting *noncontingent* litigation of the same type,” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133
9 (2001); accord *Glaviano v. Sacramento City Unified Sch. Dist.*, 22 Cal. App. 5th 744, 751 (2018)
10 (“The reasonable hourly rate is that prevailing for private attorneys in the community conducting
11 non-contingent litigation of the same type.”). The “reasonable hourly rate [used to calculate the
12 lodestar] is the product of a multiplicity of factors . . . the level of skill necessary, time limitations,
13 the amount to be obtained in the litigation, the attorney’s reputation, and the undesirability of the
14 case.” *Ketchum*, 24 Cal. 4th at 1139.

15 The rates charged by Reese LLP have been deemed reasonable in connection with the
16 approval of their fee applications in other recent cases, including cases in California. The prior
17 Reese LLP rates that have been approved by courts for litigation that ended in 2022 were \$1,150
18 per hour for Michael R. Reese; \$1,000 for George V. Granade; and \$850 for Charles D. Moore.
19 See *Mitchell v. Intero Real Estate*, No. 5:18-cv-05623-BLF (N.D. Cal. Oct. 28, 2022) (order
20 granting fee request based on Reese LLP 2022 rates); see also *In re fairlife Milk Products*
21 *Marketing and Sales Practices Litigation*, MDL No. 2909, Lead Case No. 1:19-cv-03924-RMD-
22 MDW (N.D. Ill. Sept. 28, 2022) (order granting fee award based on Reese LLP 2022 rates); *In re*
23 *Hill’s Pet Nutrition, Inc. Dog Food Products Liability Litig.*, No. 2:19-md-02887-JAR-TJJ (D.
24 Kan. July 30, 2021) (granting fee award based upon Reese LLP then hourly rate of \$975 for
25 Michael Reese and then hourly rate of \$875 for George Granade); *Lashambae v. Capital One*

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28 ³ In the Settlement Agreement, Class Counsel have disclosed that they have a fee split agreement,
under which Reese LLP will receive \$200,000 and Halunen Law will receive \$100,000 (subject to
Court approval of the requested attorneys’ fees and costs). § IV.C.3.

1 *Bank, N.A.*, No. 1:17-cv-06406-VMS (E.D.N.Y. Oct. 1, 2020) (granting fee award based upon
2 Reese LLP then hourly rate of \$950 for Michael Reese). *See* Decl. Granade ¶ 62. Reese LLP now
3 seeks approval of 2023 rates of \$1,300 for managing partner Michael R. Reese, \$1,100 for partner
4 George V. Granade, and \$950 for senior counsel Charles D. Moore. *See id.* at ¶ 59. Halunen Law
5 seeks approval of similar rates based on its skilled work in this complex class action based in Los
6 Angeles, in the amount of \$1,200 for partner Christopher J. Moreland and \$900 for senior associate
7 Charles D. Moore. *See* Decl. Coler ¶¶ 6-7.

8 Reese LLP and Halunen Law are seeking hourly rates in line with that billed by attorneys
9 of comparable experience and skill and hourly rates in the Los Angeles legal market. *See* Decl.
10 Granade ¶¶ 59-63; Decl. Coler ¶¶ 6-7. For example, in *Morgan v. United States Soccer Federation,*
11 *Inc.*, No. 19-cv-01717 (C.D. Cal.), which is pending in federal court in Los Angeles, Winston &
12 Strawn LLP recently filed a fee application in which its most senior partner bills at \$1,795 per
13 hour, of counsel at \$1,050 per hour, and senior associates at \$875 per hour. Decl. Granade ¶ 63 &
14 Ex. 5. Additionally, these hourly rates are similar to those charged by the defense bar in complex
15 litigation. *See* National Association of Legal Fee Analysis, July 23, 2018 *available at*
16 <https://www.thenalfa.org/blog/law-s-1-000-plus-hourly-rate-club> (“Kirk A. Radke [from]
17 Kirkland & Ellis LLP in New York had an hourly fee of \$1,250 [as early as 2010] . . . lawyer John
18 M. Reiss, from White & Case in New York, started billing \$1,100 an hour last year [2017]”).

19 Finally, to be sure, that Halunen Law is based in Minnesota does not lead to the conclusion
20 that Halunen Law’s hourly rates must vary from local Los Angeles rates. To the contrary, “[t]he
21 general rule is ‘[t]he relevant “community” is that where the court is located.’” *Marshall v.*
22 *Webster*, 54 Cal. App. 5th 275, 285 (2020); *accord Syers Properties III, Inc. v. Rankin*, 226 Cal.
23 App. 4th 691, 700 (2014) (“The determination of the ‘market rate’ is generally based on the rates
24 prevalent in the community where the court is located.”). Indeed, in *Altavion, Inc. v. Konica*
25 *Minolta Systems Laboratory, Inc.*, the court rejected an argument that attorneys who practiced in
26 localities outside of the forum community were not allowed “a fee award based on *higher local*
27 *rates*,” and instead affirmed the use of local hourly rates, stating that, “the rule that fee awards
28 generally should be based on reasonable local hourly rates presupposes that an attorney’s *actual*

1 rates may be different for any number of reasons—because, for example, the attorney normally
2 charges higher or lower rates, works on a contingency basis, or is in-house counsel.” *Altavion, Inc.*
3 *v. Konica Minolta Sys. Lab’y, Inc.*, 226 Cal. App. 4th 26, 72 (2014).

4 For all these reasons, Class Counsel’s requested hourly rates are reasonable.

5 **ii. Class Counsel Reasonably Spent a Significant Amount of Time**
6 **Litigating This Complex and Hard Fought Class Action Case**

7 The number of hours Class Counsel devoted to litigating this hotly contested case is also
8 reasonable given the length of the litigation, the complexity of the case, the intransigency of
9 Defendants, and the relief recovered for the Settlement Class Members. As stated in their
10 respective firms’ declarations, Class Counsel have logged 1,003.2 hours in uncompensated time
11 in order to achieve the Settlement in this case, which multiplied by their respective current hourly
12 rates equals \$1,040,580 in attorneys’ fees billed to date. Decl. Granade ¶ 59 & Ex. 4; Decl. Coler
13 ¶ 7 & Coler Ex. 1.

14 While substantial, this lodestar reflects the significant effort that Class Counsel put into
15 litigating this case. *See supra* § II. Class Counsel’s efforts to date include, without limitation:

- 16 • Pre-filing investigation;
- 17 • Drafting and sending a pre-suit CLRA demand letter;
- 18 • Extensive pre-filing settlement negotiations and communications with Defendants
19 regarding the factual and legal merits of the case over the course of a year;
- 20 • Drafting and filing a Class Action Complaint;
- 21 • Briefing and defeating in full Defendants’ demurrer to the Complaint;
- 22 • Preparing and serving two sets of requests for production of documents (46 total
23 requests), two sets of requests for admission (41 total requests), two sets of special
24 interrogatories (50 total special interrogatories), and form interrogatories, and
25 reviewing Defendants’ responses and supplemental responses to the foregoing,
26 including document productions;
- 27 • Responding to extensive discovery requests served on the original named plaintiff,
28 Ronald Chinitz, including 62 requests for production of documents, 66 special
interrogatories, 43 form interrogatories, and 15 requests for admission, and
producing responsive documents;
- Engaging in numerous meet-and-confer calls and lengthy correspondence with
Defendants’ counsel regarding discovery deficiencies;

- 1 • Conducting two IDCs before the Court;
- 2 • Preparing, negotiating, and sending *Belair-West* notice to 400 randomly selected
- 3 putative class members, with the assistance of a notice administrator;
- 4 • Drafting and litigating a successful motion to amend the pleading to substitute new
- 5 class representative Plaintiffs, Stevie Hemphill and Linda Gomez, after the former
- 6 class representative, Mr. Chinitz, improperly engaged in ex-parte class-wide
- 7 settlement negotiations with Defendants without informing Class Counsel;
- 8 • Drafting and filing an opposition to Defendants’ motion for preliminary approval
- 9 of the attempted settlement with Mr. Chinitz;
- 10 • Filing a successful motion to be relieved as Mr. Chinitz’s counsel;
- 11 • Vetting the new class representatives, Mr. Hemphill and Ms. Gomez;
- 12 • Drafting and filing a First Amended Class Action Complaint;
- 13 • Drafting a comprehensive mediation statement, as well as a subsequent
- 14 supplemental mediation statement, and participating in two full day mediations
- 15 before Honorable Jonathan Cannon (Ret.) of JAMS;
- 16 • Engaging in extensive, ongoing settlement negotiations, including before and after
- 17 the parties’ mediations with Judge Cannon, as well as throughout the period from
- 18 October 2020 to the signing of the original Settlement Agreement in October 2021,
- 19 including months of negotiations with frequent calls between the Parties’ counsel;
- 20 • Negotiating and drafting the original Settlement Agreement and Release, along
- 21 with supporting documents, including claim form, summary notice, and long-form
- 22 notice, and negotiating and editing the Amended Settlement Agreement and
- 23 Release and the operative Second Amended Settlement Agreement and Release in
- 24 response to orders by the Court;
- 25 • Drafting and filing the successful motion for preliminary approval and supporting
- 26 documents, including a 20-page supplemental brief;
- 27 • Supervising the work of the Settlement Administrator and engaging in substantial
- 28 discussions with the Settlement Administrator and Defendants’ counsel regarding
- notice and claims administration questions; and
- Preparing the instant motion and supporting documentation.

23 Decl. Granade ¶ 52.

24 Further, Class Counsel anticipate expending additional time and effort through final

25 approval to respond to inquiries from Settlement Class Members, respond to any potential

26 objectors, prepare final approval papers, review claims, and advocate on behalf of the Settlement

27 Class Members in the event a claim is wrongfully denied. Decl. Granade ¶ 53. Class Counsel

28 estimate that approximately no less than 70 hours of work will be required to see this matter to

1 completion, assuming no objections are filed. *Id.* These additional hours will almost certainly
2 increase the lodestar. Thus, it is likely that by the time this matter is closed, the total lodestar will
3 be approaching, if not exceeding, \$1,100,000.

4 **iii. A Negative Multiplier Confirms the Reasonableness of the Fee Request**

5 Although Class Counsel’s lodestar is currently \$1,040,580, this motion seeks only
6 \$300,000 as compensation for both Class Counsel’s attorneys’ fees *and* their litigation costs and
7 expenses. To date, Class Counsel’s litigation costs total \$35,977.63. Decl. Granade ¶ 64 & Ex. 6;
8 Decl. Coler ¶ 8 & Coler Ex. 2. After subtracting these litigation costs from the \$300,000 figure,
9 Class Counsel’s request is properly interpreted as a request for an award of attorneys’ fees in the
10 amount of \$264,022.37. This amount reflects a *negative* lodestar multiplier of approximately 0.25.⁴

11 In contingency fee cases such as this, California courts often award positive multiples of
12 Class Counsel’s lodestar. *See, e.g., Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 359
13 (2021) (affirming award based on multiplier of 1.25); *Sonoma Land Tr. v. Thompson*, 63 Cal. App.
14 5th 978, 986 (2021) (affirming award reflecting a multiplier of 1.4); *Chavez v. Netflix, Inc.*, 162
15 Cal. App. 4th 43, 66 (2008) (affirming award based on multiplier of 2.5 and stating that
16 “multipliers can range from 2 to 4 or even higher”).

17 A negative lodestar multiplier provides a strong indication that Class Counsel’s fee request
18 is reasonable. *Kuraica v. Dropbox, Inc.*, No. 19-cv-06348-BLF, 2021 WL 5826228, at *7 (N.D.
19 Cal. Dec. 8, 2021) (“A negative multiple ‘strongly suggests the reasonableness of [a] negotiated
20 fee.”); *Norton*, 2021 WL 3129568, at *11 (“Given that contingency cases may warrant a positive
21 multiplier, the negative multiplier weighs in favor of reasonableness.”); *Chun-Hoon v. Mckee*
22 *Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (reasoning that a negative multiplier
23 suggests a reasonable and fair valuation of the services provided by class counsel).

24 Moreover, the factors that California courts may consider when contemplating a lodestar
25 multiplier actually favor an *increase* in the amount of fees awarded here, yet Class Counsel are
26 seeking the opposite—a negative multiplier. *See Laffitte*, 1 Cal. 5th at 489 (factors include “the
27

28 ⁴ Even if litigation costs and expenses were not excluded from the calculation, an award of
\$300,000 would still reflect a negative multiplier of less than 0.29.

1 quality of the representation, the novelty and complexity of the issues, the results obtained, and
2 the contingent risk presented”). Here, Class Counsel have provided thorough, quality
3 representation in the face of numerous complex challenges and defenses raised by Defendants. *See*
4 *supra* § III.C.ii (describing Class Counsel’s successes throughout the litigation and extensive work
5 in discovery). Class Counsel also faced a real risk of non-payment, as they litigated this case
6 entirely on a contingency basis. *See* Decl. Granade ¶ 52; *see also Ketchum*, 24 Cal. 4th at 1138;
7 *Sonoma Land Tr.*, 63 Cal. App. 5th at 986 (“In contingent fee cases, a fee enhancement
8 compensates the lawyer for having taken the case despite the risk of receiving no payment in the
9 event of a loss or the risk of a delayed payment in the event of a victory.”). Finally, Class Counsel
10 obtained an excellent result. As memorialized in the Agreement, starting in September 2020,
11 Defendants stopped referring to TrueStream as “fiber optic.” § IV.A.2. Moreover, the Settlement
12 provides for injunctive relief that will bar Defendants from representing that TrueStream provides
13 a “fiber optic” connection in the future unless they can ensure that TrueStream customers are
14 connected via fiber optic cable between the central office and their home, § IV.A.3—which is
15 precisely the injunctive relief Plaintiffs sought to achieve in the Action. And Defendants are
16 providing robust monetary relief, paying Class Members who submit timely, valid Claims between
17 \$5 and \$13 per month, depending upon the TrueStream Package they purchased (768 kbps, 1.5
18 mb, 3.0 mb, or 6.0 mb), for each month they had active TrueStream service until the date of
19 Preliminary Approval. § IV.B.1.b.

20 As the amount requested in fees here is less than Class Counsel’s actual lodestar, and the
21 reasonableness factors would support an increase over the actual lodestar amount, the Court should
22 find the fees requested reasonable and approve an award of \$300,000 to Class Counsel for
23 attorneys’ fees and costs.

24 **iv. A “Percentage of the Fund” Cross-Check Confirms the Reasonableness**
25 **of Class Counsel’s Fee Request**

26 In a claims made settlement, the lodestar-multiplier fee can “properly be enhanced through
27 a multiplier based on a percentage of the benefit obtained, employing ‘the common federal practice
28 of “cross-checking” the lodestar against the value of the class recovery.’” *Laffitte*, 1 Cal.5th at 502;

1 *see also Consumer Priv. Cases*, 175 Cal. App. 4th at 557. Such a percentage cross-check is made
2 against the “constructive fund” of relief made available to the Settlement Class. *See Broomfield v.*
3 *Craft Brew All., Inc.*, No. 17-cv-01027-BLF, 2020 WL 1972505, at *16 (N.D. Cal. Feb. 5, 2020)
4 (“The constructive fund to conduct this cross-check may include settlement administration costs,
5 litigation expenses, and the allotment for attorneys’ fees in its valuation of a constructive fund for
6 its percentage of recovery cross-check analysis because this is the ‘total amount defendants were
7 willing to spend to settle the case.’”). Here, the “constructive fund” includes more than \$1,700,000
8 available to the Settlement Class,⁵ the full amount of notice and administrative costs, and the full
9 amount of the attorneys’ fees and costs, \$300,000, for a total exceeding \$2,000,000. Thus, the
10 requested \$300,000 for attorneys’ fees and costs accounts for less than 15% of the total
11 constructive value of the Settlement, which is well within the range of reasonableness. *See Schulz*
12 *v. Jeppesen Sanderson, Inc.*, 27 Cal. App. 5th 1167, 1176 (2018) (stating that “[s]ome California
13 courts” have found the Ninth Circuit’s benchmark of 25% of the total recovery pool as a reasonable
14 guideline in class action settlements); *see also Chavez*, 162 Cal. App. 4th at 66 n.11 (“[F]ee awards
15 in class actions average around one-third of the recovery” regardless of “whether the percentage
16 method or the lodestar method is used.”).

17 CONCLUSION

18 For all of these reasons, Plaintiffs and Class Counsel respectfully request that the Court
19 approve Service Awards to Mr. Hemphill and Ms. Gomez in the amount of \$1,500 each and
20 approve an award of \$300,000 to Class Counsel for attorneys’ fees and costs.

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22
23 ⁵ As discussed in more detail in the supplemental brief in support of preliminary approval filed on
24 May 3, 2022, Class Counsel have reviewed data Defendants provided in discovery which shows
25 that during the period from March 1, 2015, to July 14, 2017, TrueStream subscribers purchased
26 approximately 16,000 months of subscriptions to the 768 kbps TrueStream package, 20,000
27 months of subscriptions to the 1.5 mb TrueStream package, 43,200 months of subscriptions to the
28 3.0 mb TrueStream package, and 71,400 months of subscriptions to the 6.0 mb TrueStream
package. *See* Suppl. Brief. Supp. Mot. Prelim. Approval 7-8. Multiplying the number of months
within the Class Period for each service level by the Settlement recovery amount for that service
level, *see* § IV.B.1.b, and then adding the four numbers together shows the total available monetary
recovery for the Class exceeds \$1.7 million (16,000 times \$5 (\$80,000) plus 20,000 times \$8
(\$160,000) plus 43,200 times \$13 (\$561,600) plus 71,400 times \$13 (\$928,200)).

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Date: December 7, 2022

Respectfully submitted,

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