

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

Case No. 11-CV-02509-LHK

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS FOR
ATTORNEY’S FEES,
REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARDS**

Before the Court are motions for attorney’s fees, reimbursement of expenses, and service awards arising out of the class action settlement between individual and representative plaintiffs Michael Devine, Mark Fichtner, Siddharth Hariharan, and Daniel Stover, and the Class they represent (collectively, “Plaintiffs”), and Adobe Systems, Incorporated, Apple Inc., Google Inc., and Intel Corporation (collectively, “Defendants”). One motion is brought on behalf of the law firms Lieff, Cabraser, Heimann & Bernstein, LLP (“LCHB”), the Joseph R. Saveri Law Firm, Inc. (“JSLF”), Berger & Montague, P.C. (“B&M”), and Grant & Eisenhofer PA (“G&E”)

1 (collectively, “Class Counsel”). ECF No. 1075¹ (“Class Counsel Mot.”). Another motion is
 2 brought by JSLF and joined by B&M. ECF No. 1072 (“JSLF Mot.”). A third motion requesting
 3 attorney’s fees separately from Class Counsel is brought by counsel for plaintiff Michael Devine,
 4 Girard Gibbs LLP (“GG” or “Devine Counsel”). ECF No. 1068 (“Devine Counsel Mot.”).

5 Having considered the submissions of the parties, the arguments made at the July 9, 2015
 6 final approval hearing, the relevant law, and the record in this case, the Court hereby GRANTS in
 7 part and DENIES in part the motions for attorney’s fees, reimbursement of expenses, and service
 8 awards.

9 I. BACKGROUND

10 From 2009 to 2010, the U.S. Department of Justice’s (“DOJ”) Antitrust Division
 11 investigated the employment and recruitment practices of various Silicon Valley technology
 12 companies, including Defendants. *See In re High-Tech Emp. Litig.*, 856 F. Supp. 2d 1103, 1109
 13 (N.D. Cal. 2012). DOJ filed its complaint against Defendants on September 24, 2010. *Id.*
 14 Defendants stipulated to proposed final judgments in which they agreed that DOJ’s complaint had
 15 stated claims under federal antitrust law and agreed to be “enjoined from attempting to enter into,
 16 maintaining or enforcing any agreement with any other person . . . to refrain from soliciting, cold
 17 calling, recruiting, or otherwise competing for employees of the other person.” *Id.* at 1109-10.
 18 The D.C. District Court entered the stipulated proposed final judgments on March 17, 2011. *Id.* at
 19 1110.

20 On May 4, 2011, LCHB filed a class action in Alameda County Superior Court on behalf
 21 of individual and representative plaintiff Siddharth Hariharan. ECF No. 2, Ex. A (“Compl.”). The
 22 complaint, which was removed to federal court on May 23, 2011, *see* ECF No. 1, charged that the
 23 alleged bilateral agreements were part of a common understanding among Defendants to fix and
 24 suppress employee compensation and to restrict employee mobility, *see* Compl. ¶¶ 48-85. Upon
 25

26 ¹ All “ECF” references are to the docket of Case No. 11-CV-02509-LHK in the Northern
 27 District of California.

1 investigating the similar claims of Mark Fichtner, Daniel Stover, Brandon Marshall, and Michael
2 Devine, LCHB filed four additional cases, and invited B&M and G&E to participate in the case on
3 behalf of Plaintiffs. These cases were reassigned to the undersigned judge on August 5, 2011,
4 ECF No. 60, and consolidated on September 12, 2011, ECF No. 64. The following day, Plaintiffs,
5 with LCHB as interim lead counsel, filed a Consolidated Amended Complaint. ECF No. 65.
6 After Mr. Saveri departed LCHB and founded JSLF, JSLF joined the case as co-lead counsel in
7 May 2012. ECF No. 136.

8 On October 13, 2011, Defendants jointly moved to dismiss Plaintiffs' Consolidated
9 Amended Complaint. ECF No. 79. In addition, defendant Lucasfilm filed a separate motion to
10 dismiss on October 17, 2011. ECF No. 83. On April 18, 2012, the Court granted in part and
11 denied in part the joint motion to dismiss and denied Lucasfilm's separate motion to dismiss. ECF
12 No. 119.

13 On October 1, 2012, Plaintiffs filed a motion for class certification. ECF No. 187. The
14 motion sought certification of a class of all of Defendants' salaried employees or, in the
15 alternative, a narrower class of Defendants' technical employees. *Id.* at 1. On April 5, 2013, after
16 full briefing and a hearing, the Court denied class certification with leave to amend. ECF No. 382.
17 On May 10, 2013, Plaintiffs filed their amended class certification motion, seeking to certify only
18 the narrower class of technical employees. ECF No. 418.

19 On July 12 and 30, 2013, while the amended class certification motion was pending,
20 Plaintiffs settled with Pixar, Lucasfilm, and Intuit for \$20 million. ECF Nos. 453, 489. The Court
21 granted Plaintiffs' motion for preliminary approval of those settlements on October 30, 2013.
22 ECF No. 540. The Court held a fairness hearing on May 1, 2014, ECF No. 913, and granted final
23 approval of the settlements with Pixar, Lucasfilm, and Intuit as well as the accompanying requests
24 for attorneys' fees, expenses, and service awards over five objections on May 16, 2014, ECF Nos.
25 915, 916. The Court awarded Class Counsel \$5 million (or 25%) in attorney's fees and
26 \$3,699,844.31 in expenses. ECF No. 916 at 5. The class members received approximately

1 \$173.73 per person as a result of the settlements with Pixar, Lucasfilm, and Intuit. Judgment was
2 entered as to Pixar, Lucasfilm, and Intuit on June 20, 2014. ECF No. 947.

3 After Pixar, Lucasfilm, and Intuit had settled, the Court certified a class of technical
4 employees on October 24, 2013. ECF No. 531. Defendants petitioned the Ninth Circuit to review
5 that order under Rule 23(f) of the Federal Rules of Civil Procedure. After full briefing, including
6 the filing of an amicus brief by the U.S. and California Chambers of Commerce and the National
7 Association of Manufacturing urging the Ninth Circuit to grant review, the Ninth Circuit denied
8 review on January 14, 2014. ECF No. 594.

9 While the Rule 23(f) appeal was pending, Defendants filed a total of five motions for
10 summary judgment, ECF Nos. 554, 556, 560, 561, 564, and filed motions to strike and to exclude
11 the testimony of Plaintiffs' principal expert on antitrust impact and damages, Dr. Edward Leamer,
12 who had opined that the total damages to the class exceeded \$3 billion in wages class members
13 would have earned in the absence of the anti-solicitation agreements, ECF Nos. 557, 570. The
14 Court denied four of the summary judgment motions on March 28, 2014, ECF No. 771, and on
15 April 4, 2014, denied the fifth summary judgment motion, denied the motion to exclude Dr.
16 Leamer, and denied in large part the motion to strike Dr. Leamer's testimony, ECF No. 788.

17 On April 24, 2014, counsel for Plaintiffs and counsel for Defendants sent a joint letter to
18 the Court indicating that the parties had reached a settlement. ECF No. 900. This settlement, in
19 the amount of \$324.5 million, was reached two weeks before the final pretrial conference and one
20 month before the trial was set to commence. *See* ECF No. 904. On May 22, 2014, in accordance
21 with the schedule set by the Court, Plaintiffs filed their motion for preliminary approval. ECF No.
22 920. Class Counsel sought up to \$81,125,000 (or 25% of the settlement) in attorney's fees. *Id.* at
23 21. Plaintiff Michael Devine ("Mr. Devine") objected that the settlement was too low and,
24 represented by GG, filed an opposition to preliminary approval on June 5, 2014. ECF No. 934.
25 The other named plaintiffs filed a reply on June 12, 2014. ECF No. 938. The Court held a
26 hearing on June 19, 2014, ECF No. 940, and denied preliminary approval on August 8, 2014, ECF

1 No. 974.

2 As a result, the parties resumed litigation of pretrial matters. Plaintiffs filed a reply in
3 support of their motion for application of the per se standard, ECF No. 988, and Defendants
4 requested leave to file a supplemental opposition, ECF Nos. 990, 990-1, which Plaintiffs opposed,
5 ECF No. 992. Plaintiffs also filed a motion to unseal all papers associated with their motion to
6 compel, ECF No. 991, which Defendants opposed, ECF No. 994; *see also* ECF No. 1029.

7 Meanwhile, on September 4, 2014, Defendants filed a petition for a writ of mandamus with
8 the Ninth Circuit, seeking an order vacating the Court's denial of preliminary approval and
9 directing the Court to preliminarily approve the \$324.5 million settlement. 9th Cir. Case No. 14-
10 72745, Dkt. ("9th Cir. Dkt.") 1. On September 22, 2014, the Ninth Circuit issued an order stating
11 that Defendants' "petition for a writ of mandamus raises issues that warrant a response," ordered
12 Plaintiffs to file a response, set a date for Defendants' reply, and ordered that upon completion of
13 briefing the matter be placed on the next available merits panel calendar for oral argument. 9th
14 Cir. Dkt. 2; ECF No. 993. Plaintiffs (and Mr. Devine separately) opposed Defendants' petition,
15 9th Cir. Dkts. 4, 6, and Defendants filed a reply, 9th Cir. Dkt. 10. Putative amici curiae U.S. and
16 California Chambers of Commerce and economic scholars filed motions for leave to file amicus
17 briefs in support of the petition, 9th Cir. Dkts. 8, 9, which the Ninth Circuit referred to the panel to
18 be assigned to hear the merits of the petition, 9th Cir. Dkt. 15. Plaintiffs (and Mr. Devine
19 separately) opposed the motions for leave to file amicus briefs. 9th Cir. Dkts. 13, 16. The Ninth
20 Circuit scheduled oral argument on the petition for March 13, 2015. 9th Cir. Dkt. 19.

21 On January 15, 2015, Plaintiffs filed a second motion for preliminary approval, this time
22 asking the Court to approve a settlement with Defendants in the amount of \$415 million. ECF No.
23 1032. Mr. Devine joined in the motion. ECF No. 1041. In light of the settlement with Plaintiffs,
24 Defendants filed an unopposed motion to dismiss the mandamus petition on January 30, 2015. 9th
25 Cir. Dkt. 23. The Ninth Circuit granted the motion to dismiss on February 2, 2015. 9th Cir. Dkt.
26 24.

1 At the time the current settlement was reached, the following motions remained pending:
2 Defendants' motion to exclude Dr. Matthew Marx's testimony; Plaintiffs' motion to exclude
3 Defendants' experts' testimony; Plaintiffs' motion for application of the per se standard; and
4 Defendants' motions in limine. In addition, Plaintiffs and Defendants continued to exchange
5 pretrial disclosures and hold discussions regarding trial exhibits, witnesses, the joint pretrial
6 statement, the authentication of business records, and potential depositions related thereto. *See*
7 ECF No. 1033 ¶¶ 12, 14.

8 A hearing was held on March 2, 2015, ECF No. 1051, and the Court granted preliminary
9 approval of the \$415 million settlement on March 3, 2015, ECF No. 1054. The Court-approved
10 Notice, which was mailed to class members on April 6, 2015, indicated that Class Counsel would
11 "ask the Court to approve at the Fairness Hearing payment from the Settlement Fund of out-of-
12 pocket costs not to exceed \$1,200,000"; that Class Counsel would "ask the Court to approve
13 payment of attorneys' fees of up to approximately 19.54% percent (or \$81,125,000) of the
14 Settlement Fund"; that "the law firm of Girard Gibbs LLP, counsel for Class Representative
15 Michael Devine, [would] seek a fee of up to approximately 1.09% of the Settlement Fund (or
16 \$4,523,500) for its participation in the settlement approval process and the negotiation of the \$415
17 million settlement"; and that Class Counsel would "ask the Court to approve at the Fairness
18 Hearing payments of up to \$160,000 to each of the individual Class Representatives, as well as a
19 payment of up to \$160,000 to the estate of former Class Representative Brandon Marshall," who
20 passed away in December 2013. ECF No. 1086-1 at 8.

21 On May 7, 2015, the instant motions for attorney's fees, reimbursement of expenses, and
22 service awards were filed. *See* Class Counsel Mot.; JSLF Mot.; Devine Counsel Mot. Class
23 Counsel requested the same \$81,125,000 that had been requested in connection with the rejected
24 settlement but that now amounts to about 19.5% of the settlement fund. Class Counsel Mot. at 1.
25 Class Counsel also requested \$1,184,810.98 in unreimbursed expenses and up to \$160,000 in
26 service awards for each of the class representatives, including the estate of Brandon Marshall. *Id.*

1 at 2. JSLF filed a separate motion indicating its support for Class Counsel’s request for fees and
2 service awards. JSLF Mot. at 1-2. JSLF asked separately for its unreimbursed expenses. *Id.* at
3 13. Devine Counsel, for its part, requested \$4,523,500 in attorney’s fees, equal to roughly 5% of
4 the \$90.5 million increase between the rejected settlement and the current settlement. Devine
5 Counsel Mot. at 23. Devine Counsel also sought a service award of \$160,000 for Mr. Devine. *Id.*
6 Devine Counsel did not seek to recover \$16,603.06 in expenses on top of its fee request. *Id.* at 19.

7 On May 21, 2015, Mr. Saveri submitted a supplemental declaration in support of JSLF’s
8 motion for attorney’s fees, reimbursement of expenses, and service awards. ECF No. 1085,
9 Supplemental Declaration of Joseph R. Saveri (“Saveri Supp. Decl.”). The declaration explained
10 JSLF’s timekeeping practices and revised JSLF’s lodestar amount and request for unreimbursed
11 expenses. *Id.* ¶¶ 5-14. Specifically, JSLF deleted 245.93 hours in incorrectly billed time and thus
12 reduced JSLF’s lodestar by \$189,204.80. *Id.* ¶ 5. JSLF also urged the Court to award to Class
13 Counsel the full \$1,200,000 in unreimbursed expenses listed in the Notice, \$589,194.94 of which
14 would be for JSLF’s expenses. *Id.* ¶ 14.

15 On June 15, 2015, Plaintiffs filed their motion for final approval, ECF No. 1087, which
16 Mr. Devine joined, ECF No. 1091. Plaintiffs’ supporting documentation indicated that of the
17 64,466 class members, 56 of them had opted out of the settlement, while eleven had objected to
18 the settlement. ECF No. 1089, Supplemental Declaration of Kenneth Jue (“Jue Supp. Decl.”)
19 ¶¶ 2-3. Of the eleven objectors, three lodged objections regarding the requests for attorney’s fees
20 or service awards: David D. Hsu, Eric Veach, and Mark Zavislak (“Mr. Zavislak”). *Id.*, Exs. C, L-
21 N.

22 On June 29, 2015, Devine Counsel filed a reply in support of its motion for attorney’s fees,
23 reimbursement of expenses, and service awards. ECF No. 1092. Class Counsel did so as well.
24 ECF No. 1093 (“Class Counsel Reply”).

25 On July 9, 2015, the Court held a fairness hearing on Plaintiffs’ motion for final approval
26 of the \$415 million settlement with Defendants. ECF No. 1096. Of the three class members who

1 objected on the basis of attorney’s fees or service awards, only Mr. Zavislak attended the hearing.
2 Mr. Zavislak stated his objections in open court, and the Court entertained responses to those
3 objections from the parties. ECF No. 1101, Final Approval Hearing Transcript (“Final Approval
4 Tr.”) at 15:10-30:21. The Court also heard argument from Class Counsel and Devine Counsel in
5 support of their respective motions for attorney’s fees, reimbursement of expenses, and service
6 awards.

7 At the July 9 hearing, the Court became aware for the first time of the nature of the dispute
8 between LCHB and JSLF—co-lead Plaintiffs’ counsel—regarding Class Counsel’s lodestar
9 amount. LCHB’s motion, purportedly brought on behalf of Class Counsel, had asked the Court to
10 use a lodestar of \$14,279,278.50, *see* Class Counsel Mot. at 20, while JSLF had asked for a Class
11 Counsel lodestar of \$20,594,097.75, *see* Saveri Supp. Decl. ¶ 5. The reason for this discrepancy,
12 the Court was informed at the hearing, was because LCHB and G&E were concerned about the
13 reliability of JSLF’s timekeeping practices and, therefore, the accuracy of JSLF’s billing records.
14 Final Approval Tr. at 37:15-38:27. Consequently, the lodestar LCHB had submitted on behalf of
15 Class Counsel did not include the lodestar of JSLF. *Id.* at 38:13-16. Mr. Saveri, speaking on
16 behalf of JSLF, disputed LCHB’s allegations and vouched for the reliability of his firm’s
17 timekeeping practices. *Id.* at 39:7-13.

18 In light of this discrepancy,² the Court ordered co-lead Plaintiffs’ counsel to meet and
19 confer regarding JSLF’s timekeeping records. In particular, the Court ordered co-lead Plaintiffs’
20 counsel to go through JSLF’s billing records, entry by entry, and indicate to the Court in a joint
21 filing which entries LCHB disputed and why. Final Approval Tr. at 66:15-25. Based on that joint
22 filing, due by July 16, 2015, *id.* at 67:28-68:5, the Court would be able to identify an appropriate
23 lodestar for Class Counsel, taking into account the contributions of all four firms that comprise

24
25 ² As suggested above, there was another discrepancy in Class Counsel’s filings with the
26 Court. Namely, LCHB requested \$1,184,810.98 in unreimbursed expenses for Class Counsel, *see*
27 Class Counsel Mot. at 2, while JSLF requested \$1,200,000 for the same, *see* Saveri Supp. Decl.
28 ¶ 14.

1 Class Counsel in this case.

2 Following a brief extension requested by co-lead Plaintiffs' counsel, ECF No. 1104, co-
 3 lead Plaintiffs' counsel submitted a joint filing on July 20, 2015, indicating their agreement on a
 4 total lodestar amount for Class Counsel, ECF No. 1105. To arrive at the agreed-upon figure, co-
 5 lead Plaintiffs' counsel decided that JSLF's lodestar, as reported in Mr. Saveri's supplemental
 6 declaration of May 21, 2015, should be further reduced by \$2,338,000 (from \$6,314,819.25 to
 7 \$3,976,819.25³). ECF No. 1105 ¶ 10. That reduction was based on "the following adjustments:
 8 (i) disregard all time reported and billed by Mr. Saveri (\$2,059,344), and (ii) reduce of [sic] the
 9 remainder of JSLF reported time by a total of \$278,656." *Id.* In addition, although Class
 10 Counsel's total unreimbursed expenses exceed the \$1,200,000 figure stated in the Notice by
 11 \$31,276.66, co-lead Plaintiffs' counsel agreed to "seek only the \$1,200,000 in costs reflected in
 12 the Notice provided to the Class." *Id.* ¶ 12.

13 After reviewing co-lead Plaintiffs' counsel joint statement, the Court found that it still
 14 lacked "an adequate basis for calculating JSLF's lodestar." ECF No. 1107 at 2. This was so, the
 15 Court explained, because co-lead Plaintiffs' counsel had not provided the Court with JSLF's
 16 revised billing records indicating "the total number of hours spent by JSLF attorneys on this
 17 litigation, the JSLF attorneys' individual billing rates, and justifications for such rates." *Id.*
 18 Accordingly, the Court ordered co-lead Plaintiffs' counsel to provide that information to the Court
 19 "no later than July 24, 2015." *Id.*

20 On July 24, 2015, Mr. Saveri filed a second supplemental declaration providing the Court
 21 with the requested information. ECF No. 1108, Second Supplemental Declaration of Joseph R.
 22 Saveri ("Saveri Second Supp. Decl."). In so doing, JSLF, with no objection from LCHB, *id.* ¶ 3,
 23 further reduced its lodestar by \$54,310.25 due to "a calculation error," *id.* ¶ 5 n.1. JSLF's revised
 24

25 ³ It appears co-lead Plaintiffs' counsel incorrectly listed JSLF's revised lodestar as
 26 "\$3,979,819.25," ECF No. 1105 ¶ 10, which would represent a reduction of only \$2,335,000 from
 27 JSLF's previous lodestar of \$6,314,819.25.

1 lodestar, factoring in the further deduction of attorney time, is \$3,922,509. *Id.* ¶¶ 5-6. Class
 2 Counsel’s final revised lodestar, which is the sum of the lodestars for each of the four firms, is
 3 \$18,201,787.50.⁴ *Id.* ¶ 6, Ex. 2.

4 The Court granted final approval of the \$415 million settlement with Defendants on
 5 September 2, 2015. ECF No. 1111.

6 **II. DISCUSSION**

7 The instant motions contain specific requests for attorney’s fees, reimbursement of
 8 expenses, and service awards. The Court addresses each in turn.

9 **A. Attorney’s Fees**

10 **1. The Appropriate Method: Lodestar v. Percentage-of-Recovery**

11 Under Ninth Circuit law, “the choice between lodestar and percentage calculation depends
 12 on the circumstances, but . . . ‘either method may . . . have its place in determining what would be
 13 reasonable compensation for creating a common fund.’” *Six Mexican Workers v. Ariz. Citrus*
 14 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (second ellipsis in original) (quoting *Paul, Johnson,*
 15 *Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989)). “Where,” as here, “a settlement
 16 produces a common fund for the benefit of the entire class, courts have discretion to employ either
 17 the lodestar method or the percentage-of-recovery method.” *In re Bluetooth Headset Prods. Liab.*
 18 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). To guard against an unreasonable result, the Ninth
 19 Circuit encourages district courts to “cross-check[] their calculations against a second method.”
 20 *Id.* at 944; *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (applying
 21 a lodestar cross-check to ensure the percentage-of-recovery method yielded a reasonable result).

22 Where the percentage-of-recovery method is employed, it is well established that 25% of a
 23 common fund is a presumptively reasonable amount of attorney’s fees. *See, e.g., In re Bluetooth,*
 24

25 ⁴ Broken down by law firm, the lodestars are: \$11,476,957.50 (LCHB); \$3,922,509.00
 26 (JSLF); \$1,429,225.50 (G&E); \$1,373,095.50 (B&M). ECF No. 1105 ¶ 10; Saveri Second Supp.
 27 Decl. ¶ 6, Ex. 2.

1 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable
2 fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a
3 departure.”); *Six Mexican Workers*, 904 F.2d at 1311 (“[W]e established 25 percent of the fund as
4 the ‘benchmark’ award that should be given in common fund cases.”). That said, “[t]he 25%
5 benchmark rate, although a starting point for analysis, may be inappropriate in some cases.”
6 *Vizcaino*, 290 F.3d at 1048. For instance, “where awarding 25% of a ‘megafund’ would yield
7 windfall profits for class counsel in light of the hours spent on the case, courts should adjust the
8 benchmark percentage or employ the lodestar method instead.” *In re Bluetooth*, 654 F.3d at 942.
9 Whatever decision a court reaches, that decision “must be supported by findings that take into
10 account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

11 Here, Class Counsel and Devine Counsel advocate applying the percentage-of-recovery
12 method. Specifically, Class Counsel ask for 19.5% of the \$415 million settlement (i.e.,
13 \$81,125,000). *See* Class Counsel Mot. at 1. Devine Counsel, on the other hand, asks for 5% of
14 the \$90.5 million (i.e., \$4,523,500) difference between the rejected settlement and the instant
15 settlement. *See* Devine Counsel Mot. at 23. Combining the two requests, counsel for Plaintiffs in
16 this case seek a total of 20.6% of the \$415 million settlement (i.e., \$85,648,500) in attorney’s fees.
17 Adding the \$5 million in attorney’s fees already awarded to Class Counsel in the earlier
18 settlements with Pixar, Lucasfilm, and Intuit, counsel for Plaintiffs in this case would be seeking a
19 total of 20.8% of the \$435 million settlements (i.e., \$90,648,500) in attorney’s fees.

20 “The most appropriate way,” Class Counsel contend, “to calculate a reasonable fee where,
21 as here, contingency fee litigation has produced a common fund, is the percentage-of-the-fund
22 method.” Class Counsel Mot. at 14 (citing *Vizcaino* and *Six Mexican Workers*). According to
23 Class Counsel, the percentage-of-recovery method “comports with the legal marketplace in other
24 contingency fee cases, where counsel’s fee is typically based upon a percentage of any recovery,”
25 and it best “aligns class counsel’s interests with those of the class,” incentivizing counsel “to push
26 for the best result that can be achieved for the class.” *Id.* In contrast, Class Counsel argue, the

1 lodestar method “encourages counsel to bill time and to create opportunities to bill time.” *Id.* at
2 14-15; *see* ECF No. 1079, Declaration of Prof. Brian T. Fitzpatrick (“Fitzpatrick Decl.”) ¶¶ 8-10.
3 Applying the percentage-of-recovery method, according to Class Counsel, “rewards class counsel
4 for assuming the risks of this case and efficiently prosecuting it.” Class Counsel Mot. at 15.

5 Nonetheless, the Ninth Circuit has made clear that in “megafund” cases, such as this one,
6 courts may “employ the lodestar method instead” if rote application of the 25% benchmark
7 “would yield windfall profits for class counsel in light of the hours spent on the case.” *In re*
8 *Bluetooth*, 654 F.3d at 942. For example, in *In re Washington Public Power Supply System*
9 *Securities Litigation* (“WPPSS”), 19 F.3d 1291, 1297-98 (9th Cir. 1994), the Ninth Circuit held
10 that the district court “acted well within the bounds of its discretion” in applying the lodestar
11 method, rather than the percentage-of-recovery method, to an attorney’s fees request arising out of
12 a \$687 million settlement fund. Class counsel in WPPSS had asked the district court for 13.6% of
13 the fund, well below the “circuit’s 25 percent benchmark figure,” but the district court found that
14 request to be “arbitrary” because class counsel “could just as easily have requested 3.6 percent or
15 36.1 percent.” *Id.* (internal quotation marks omitted). In upholding the district court’s decision,
16 the Ninth Circuit explained: “With a fund this large, picking a percentage without reference to all
17 the circumstances of the case, including the size of the fund, would be like picking a number out
18 of the air.” *Id.* “Because a court must consider the fund’s size in light of the circumstances of the
19 particular case,” the Ninth Circuit continued, “we agree with the district court that the 25 percent
20 ‘benchmark’ is of little assistance in a case such as this.” *Id.* Just as there was “nothing inherently
21 reasonable about an award of 13.6 percent of a [\$687 million] fund” in WPPSS, *id.* at 1298, the
22 Court finds nothing inherently reasonable in Plaintiffs’ counsel’s total request here for 20.6% of
23 the \$415 million settlement (or 20.8% of \$435 million if the settlements with Pixar, Lucasfilm,
24 and Intuit are included). *See also* *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA,
25 2015 WL 2438274, at *4 (N.D. Cal. May 21, 2015) (rejecting class counsel’s request to apply the
26 percentage-of-recovery method to a \$203 million restitution award and opting for the lodestar

1 method instead because “blindly adopting the 25-percent benchmark . . . would result in a windfall
2 to class counsel”).

3 Having overseen this case for four years, the Court finds that justice would be best served
4 by applying the lodestar method—i.e., tying the fee awards for Class Counsel and Devine Counsel
5 to the actual hours they reasonably expended on this litigation and then selecting a multiplier. The
6 Court so concludes for several reasons. First, even though Class Counsel’s proposed percentage
7 recovery of 19.5% is below the Ninth Circuit’s 25% benchmark, an award of 19.5% (or
8 \$81,125,000) in attorney’s fees would yield a lodestar multiplier of 4.46. Saveri Second Supp.
9 Decl. ¶ 6. Factoring in the \$5 million in attorney’s fees already awarded to Class Counsel in the
10 settlements with Pixar, Lucasfilm, and Intuit, Class Counsel’s multiplier would increase to 4.73.⁵
11 Devine Counsel’s lodestar multiplier is even higher: 8.7. Devine Counsel Mot. at 18. Combining
12 Class Counsel’s lodestar with Devine Counsel’s, and taking the prior \$5 million fees award into
13 account, the total multiplier Plaintiffs’ counsel ask for in this case is 4.8. These multipliers, in the
14 Court’s judgment, are simply too high for a settlement of this size and would result in “windfall
15 profits for class counsel in light of the hours spent on the case.” *In re Bluetooth*, 654 F.3d at 942;
16 *see also Allen v. Bedolla*, 787 F.3d 1218, 1224 n.4 (9th Cir. 2015) (cautioning that district courts
17 “should not calculate fees using a mechanical or formulaic approach that results in an
18 unreasonable reward” (internal quotation marks omitted)). The following chart summarizes the
19 instant attorney’s fees requests of Plaintiffs’ counsel and does not include the \$5 million in
20 attorney’s fees already requested and awarded in the settlements with Pixar, Lucasfilm, and Intuit:

Firms	Hours	Rate	Lodestar	Multiplier	Fees Request	Pct.
Class Counsel	36,215.00	\$502.60	\$18,201,787.50	4.46	\$81,125,000.00	19.5%
Devine Counsel	916.20	\$566.38	\$518,919.50	8.72	\$4,523,500.00	1.09%

23 Class Counsel argue that “[a] multiplier in that range is well-justified under the
24 circumstances here.” Class Counsel Mot. at 21. In support of their argument, Class Counsel

25
26
27 ⁵ $(81,125,000 + 5,000,000) \div 18,201,787.50 = 4.73$

1 include in their motion a table of settlements with multipliers ranging between 6.0 and 19.6. *Id.*
 2 Of the seven settlement amounts listed, however, only one involved a settlement greater than or
 3 equal to \$415 million. *See In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D.
 4 Ohio 2007) (allowing an 18% attorney’s fees recovery on a \$600 million settlement, even though
 5 that award resulted in a “lodestar multiplier of six”). Only one other involved a settlement greater
 6 than \$127 million. *See New England Carpenters Health Benefits Fund v. First Databank, Inc.*,
 7 No. CIV.A. 05-11148PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (allowing a 20%
 8 attorney’s fees recovery on a \$350 million settlement, even though that award resulted in “a
 9 multiplier of about 8.3 times lodestar”). The remaining five of the seven settlement amounts listed
 10 in Class Counsel’s motion were for \$4.9 million, \$25.4 million, \$72.5 million, \$100 million, and
 11 \$127 million, *see* Class Counsel Mot. at 21-22, all significantly less than the \$415 million
 12 settlement amount at issue here. In fact, three of the settlement amounts were less than the amount
 13 of attorney’s fees requested by Class Counsel in their instant motion.

14 Although Class Counsel can point to some “megafund” cases allowing large multipliers,
 15 that is far from the norm. In *Vizcaino*, the Ninth Circuit conducted a survey of attorney’s fees
 16 awards in common fund cases ranging from \$50-200 million between 1996 and 2001. *See* 290
 17 F.3d at 1052-54. In the vast majority of cases (20 of 24, or 83%), the multiplier ranged from 1.0-
 18 4.0. *Id.* at 1051 n.6. In a “bare majority” of cases (13 of 24, or 54%), the multiplier was in the
 19 1.5-3.0 range.⁶ *Id.* Thus, allowing a multiplier of 4.46 would be unusual for a \$415 million
 20 settlement. Even more unusual would be a multiplier of 4.8, which is what the combined Class
 21 Counsel and Devine Counsel multiplier would be when factoring in the \$5 million in attorney’s
 22 fees already awarded to Class Counsel in the settlements with Pixar, Lucasfilm, and Intuit. These
 23 facts counsel against rigid reliance on the percentage-of-recovery approach.

24
 25
 26 ⁶ The survey actually included 34 settlements, but multipliers are not listed for 10 of them.
 27 *See Vizcaino*, 290 F.3d at 1052-54.

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1 A second reason to use the lodestar method is because doing so would allow the Court to
 2 examine Class Counsel’s and Devine Counsel’s “presumptively reasonable” lodestar figures, and
 3 if suitable, adjust them “by an appropriate . . . multiplier reflecting a host of reasonableness
 4 factors, including the quality of representation, the benefit obtained for the class, the complexity
 5 and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at
 6 941-42 (citations and internal quotation marks omitted). In a case with such a large settlement
 7 fund and such a great disparity between the fees requested and the average recovery of individual
 8 class members, the Court finds the lodestar method preferable to blind acceptance of percentages
 9 that seem largely untethered to the results achieved in this litigation. *See WPPSS*, 19 F.3d at
 10 1297-98. Indeed, if the Court were to accept Plaintiffs’ counsel’s requests for more than \$85
 11 million in total fees (which does not even take into account the \$5 million in fees already awarded
 12 to Class Counsel in the Pixar, Lucasfilm, and Intuit settlements), class members would on average
 13 recover about \$5,071.53 per person, *see* Class Counsel Reply at 4, which is roughly 11% of their
 14 average per person estimated damages.⁷ *See also Gutierrez*, 2015 WL 2438274, at *4 (finding
 15 class counsel’s high multiplier under the percentage-of-recovery method unjustified “especially
 16 since counsel estimate that their full fee award would reduce the average class member’s
 17 restitution from approximately \$179 to \$134”). As such, the Court concludes that using the
 18 lodestar method with a percentage-of-recovery cross-check would achieve the fairest and most
 19 reasonable result in this case.

20 **2. Lodestar Method**

21 Under the lodestar method, a “lodestar figure is calculated by multiplying the number of
 22 hours the prevailing party reasonably expended on the litigation (as supported by adequate
 23 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”
 24 *In re Bluetooth*, 654 F.3d at 941 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)).

25
 26
 27 ⁷ $(5,071.53 \div (3,065,184,307 \div (64,466 - 56))) \times 100 = 10.65\%$
 28 15

1 Although “the lodestar figure is ‘presumptively reasonable,’ the court may adjust it upward or
 2 downward by an appropriate positive or negative multiplier reflecting a host of reasonableness
 3 factors.” *Id.* at 941-42 (citations and internal quotation marks omitted).

4 **a. Billing Rates**

5 Having reviewed the billing rates for the attorneys, paralegals, and litigation support staff
 6 at each of the firms representing Plaintiffs in this case, the Court finds that these rates are
 7 reasonable in light of prevailing market rates in this district and that counsel for Plaintiffs have
 8 submitted adequate documentation justifying those rates. *See, e.g., Gutierrez*, 2015 WL 2438274,
 9 at *5 (approving the same ranges of rates for LCHB); *see also* ECF No. 1073-1, Declaration of
 10 Prof. William B. Rubenstein (“Rubenstein Decl.”) ¶¶ 29-30 (graphs showing rates charged by
 11 Class Counsel here are similar to prevailing market rates from fee awards in this district).

12 In addition, the billing rates submitted vary appropriately based on experience.
 13 Specifically, the billing rates for partners range from about \$490 to \$975. *See* ECF No. 1069,
 14 Declaration of Daniel C. Girard (“Girard Decl.”) ¶ 45 (GG partner rates); ECF No. 1074,
 15 Declaration of Eric L. Cramer (“Cramer Decl.”) ¶ 13 (B&M partner rates); ECF No. 1081,
 16 Declaration of James J. Sabella (“Sabella Decl.”), Ex. 2 (G&E partner rates); ECF No. 1083,
 17 Declaration of Kelly M. Dermody (“Dermody Decl.”), Ex. 11 (LCHB partner rates). The billing
 18 rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and
 19 staff attorneys, range from about \$310 to \$800, with most under \$500. *See* Girard Decl. ¶ 45 (GG
 20 non-partner attorney rates); Cramer Decl. ¶ 13 (B&M non-partner attorney rates); Sabella Decl.,
 21 Ex. 2 (G&E non-partner attorney rates); Dermody Decl., Ex. 11 (LCHB non-partner attorney
 22 rates); Saveri Second Supp. Decl., Ex. 3 (JSLF non-partner attorney rates). The billing rates for
 23 paralegals, law clerks, and litigation support staff range from about \$190 to \$430, with most in the
 24 \$300 range. *See* Girard Decl. ¶ 45 (GG paralegal and staff rates); Cramer Decl. ¶ 13 (B&M
 25 paralegal and staff rates); Sabella Decl., Ex. 2 (G&E paralegal and staff rates); Dermody Decl.,
 26 Ex. 11 (LCHB paralegal and staff rates); Saveri Second Supp. Decl., Ex. 3 (JSLF paralegal and

1 staff rates).

2 **b. Hours**

3 Having reviewed the billing records for the attorneys, paralegals, and litigation support
4 staff at each of the firms representing Plaintiffs in this case, the Court finds that these records
5 adequately reflect the amount of time reasonably spent on this litigation. *See* Rubenstein Decl.
6 ¶ 33 (graphs showing hours spent by Class Counsel here are comparable to those logged in other
7 “megafund” cases).

8 The final billing records Class Counsel submitted to the Court reflect a total of 36,215
9 hours spent on this litigation. Broken down by law firm: LCHB spent 23,458.20 hours on this
10 litigation, *see* Dermody Decl., Ex. 11; JSLF spent 8,023.30 hours on this litigation, *see* Saveri
11 Second Supp. Decl., Ex. 3; G&E spent 2,488.70 hours on this litigation, *see* Sabella Decl., Ex. 2;
12 and B&M spent 2,244.80 hours on this litigation, *see* Cramer Decl. ¶ 13. In light of the
13 subsequent hour reductions submitted by JSLF, *see* Saveri Supp. Decl. ¶ 5; Saveri Second Supp.
14 Decl. ¶¶ 5-6, Class Counsel’s final figure of 36,215 hours is nearly 3,000 hours less than the
15 39,124 figure Prof. Rubenstein found to be reasonable compared to other “megafund” cases, *see*
16 Rubenstein Decl. ¶¶ 33-34. Accordingly, JSLF’s subsequent reductions only support the Court’s
17 ultimate finding of reasonableness.

18 Furthermore, the Court finds that 36,215 hours is a reasonable amount of time for Class
19 Counsel to have spent on this litigation. In the more than four years that this case has been
20 pending, Class Counsel (1) identified the alleged conspiracy to fix and suppress employee
21 compensation in the tech industry; (2) met with their clients and secured retainer agreements; (3)
22 prepared and filed multiple complaints against Defendants; (4) survived two motions to dismiss;
23 (5) undertook considerable discovery, including taking 93 depositions and defending 14 others,
24 serving 75 document requests, reviewing the resulting 325,000 documents (over 3.2 million
25 pages), serving 28 subpoenas on third parties, reviewing 8,809 pages of documents from those
26 third parties, producing over 31,000 pages of documents in response to Defendants’ document

1 requests, and responding to and reviewing 34 subpoenas served by Defendants on third parties; (6)
 2 retained four experts to assist in analyzing over 15 gigabytes of employment-related compensation
 3 and recruiting data; (7) worked with the experts to produce multiple expert reports; (8) filed a
 4 consolidated class action complaint; (9) litigated two rounds of class certification; (10) opposed a
 5 Rule 23(f) appeal to the Ninth Circuit; (11) survived five summary judgment motions; (12)
 6 prepared for trial; (13) negotiated three settlements; and (14) opposed mandamus in the Ninth
 7 Circuit. *See* Rubenstein Decl. ¶ 34 (listing Class Counsel’s efforts in this litigation). Having
 8 presided over this case for four years, and having examined the voluminous billing records of each
 9 of the four firms comprising Class Counsel, the Court concludes that those records reflect the
 10 work performed in this case and that 36,215 hours is a reasonable amount of time to have spent on
 11 this litigation.

12 Devine Counsel, for its part, claims to have spent 916.20 hours on this litigation. Girard
 13 Decl. ¶ 45. Having carefully examined Devine Counsel’s billing records, the Court finds this
 14 amount of time to be high but not unreasonable. Devine Counsel entered this litigation on May
 15 13, 2014, when Devine Counsel first met with Mr. Devine to discuss Mr. Devine’s opposition to
 16 the proposed \$324.5 million settlement with Defendants. *See* Girard Decl., Ex. 3. In representing
 17 Mr. Devine from May 13, 2014, to March 2, 2015—less than ten months in total—Devine
 18 Counsel has performed the following work: (1) filed an opposition to the \$324.5 million proposed
 19 settlement; (2) attended the June 19, 2014 preliminary approval hearing; (3) reviewed pending
 20 pretrial motions after the Court rejected the proposed settlement and conferred with Mr. Devine on
 21 how best to proceed; (4) opposed Defendants’ mandamus petition in the Ninth Circuit; (5)
 22 opposed two motions for leave to file amicus briefs in support of Defendants’ mandamus petition;
 23 (6) conferred regularly with Class Counsel and Mr. Devine while settlement negotiations were
 24 pending; and (7) attended the March 2, 2015 preliminary approval hearing. Girard Decl. ¶¶ 14-37;
 25 *see also id.*, Ex. 3. At the July 9, 2015 final approval hearing, Devine Counsel admitted that
 26 Devine Counsel did not directly participate in the settlement negotiations with Defendants. Final
 27

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1 Approval Tr. at 73:8-17. Nonetheless, the Court finds the 916.20 hours reported by Devine
2 Counsel to be adequately supported by the documentation submitted. *See* Girard Decl., Ex. 3.

3 For the foregoing reasons, the Court concludes that there is no cause in this case to disturb
4 the “presumptively reasonable” lodestar figures submitted by counsel for Plaintiffs. *In re*
5 *Bluetooth*, 654 F.3d at 941. Accordingly, the Court accepts the following lodestar figures:
6 \$18,201,787.50 for Class Counsel and \$518,919.50 for Devine Counsel.

7 **c. Multipliers**

8 As indicated above, the Court may “adjust” the lodestar figures “upward or downward by
9 an appropriate positive or negative multiplier reflecting a host of ‘reasonableness’ factors,
10 ‘including the quality of representation, the benefit obtained for the class, the complexity and
11 novelty of the issues presented, and the risk of nonpayment.’” *In re Bluetooth*, 654 F.3d at 941-42
12 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)). “Foremost among these
13 considerations, however, is the benefit obtained for the class.” *Id.* at 942. For the reasons stated
14 below, the Court concludes that a positive multiplier of 2.2 is appropriate for Class Counsel, and
15 that a positive multiplier of 1.5 is appropriate for Devine Counsel.

16 As for Class Counsel, the Court recognizes that Class Counsel engaged in years of
17 litigation against well-financed, large technology companies. The issues presented in the case
18 were sufficiently complex and novel that Class Counsel assumed a risk of nonpayment. Class
19 Counsel achieved significant benefits for the class, namely survival of two motions to dismiss,
20 five motions for summary judgment, multiple *Daubert* challenges as well as certification of the
21 class, an earlier \$20 million settlement, and now a \$415 million settlement. Moreover, as
22 indicated previously, Class Counsel devoted considerable time and effort litigating this case over a
23 period of four years. In particular, Class Counsel (1) identified the alleged conspiracy to fix and
24 suppress employee compensation in the tech industry; (2) met with their clients and secured
25 retainer agreements; (3) prepared and filed multiple complaints against Defendants; (4) survived
26 two motions to dismiss; (5) undertook considerable discovery, including taking 93 depositions and

1 defending 14 others, serving 75 document requests, reviewing the resulting 325,000 documents
2 (over 3.2 million pages), serving 28 subpoenas on third parties, reviewing 8,809 pages of
3 documents from those third parties, producing over 31,000 pages of documents in response to
4 Defendants' document requests, and responding to and reviewing 34 subpoenas served by
5 Defendants on third parties; (6) retained four experts to assist in analyzing over 15 gigabytes of
6 employment-related compensation and recruiting data; (7) worked with the experts to produce
7 multiple expert reports; (8) filed a consolidated class action complaint; (9) litigated two rounds of
8 class certification; (10) opposed a Rule 23(f) appeal to the Ninth Circuit; (11) survived five
9 summary judgment motions; (12) prepared for trial; (13) negotiated three settlements; and (14)
10 opposed mandamus in the Ninth Circuit. *See* Rubenstein Decl. ¶ 34. Class Counsel did all of
11 these things, the Court notes, on a purely contingent basis. *See* Class Counsel Mot. at 17. In so
12 doing, Class Counsel litigated this action without pay for several years, even though recovery was
13 uncertain. Class Counsel also advanced millions of dollars in out-of-pocket expenses, including
14 expert fees, in order to prosecute this action. For these reasons, the Court finds it appropriate to
15 adjust Class Counsel's lodestar with a positive multiplier.

16 Considering all the facts and circumstances of this case, the Court finds further that a
17 multiplier of 2.2 is appropriate for Class Counsel. As stated above, the Ninth Circuit in *Vizcaino*
18 conducted a survey of attorney's fees awards in megafund cases. *See* 290 F.3d at 1052-54. This
19 survey involved common fund cases ranging from \$50-200 million between 1996 and 2001. *See*
20 *id.* In 83% of the settlements (20 of 24), the multiplier ranged from 1.0-4.0, and in 54% of the
21 settlements (13 of 24), the multiplier was in the 1.5-3.0 range. *Id.* at 1051 n.6. A multiplier of 2.2
22 would therefore be in line with the vast majority of megafund settlements such as this one and
23 would adequately reward Class Counsel for the work performed in this litigation. As a result, the
24 Court multiplies Class Counsel's lodestar by 2.2 and awards Class Counsel \$40,043,932.50 in
25 attorney's fees.

26 Factoring in the \$5 million in attorney's fees Class Counsel has already received from the

1 settlements with Pixar, Lucasfilm, and Intuit, Class Counsel's multiplier jumps to 2.5,⁸ which is
 2 right in the middle of the 1.0-4.0 range encompassing 83% of the settlements surveyed in
 3 *Vizcaino*. See 290 F.3d at 1051 n.6. Specifically, the Ninth Circuit in *Vizcaino* listed 24
 4 settlements with the following multipliers: 4.5-8.5, 1.4, 19.6, 2.0, 1.8, 3.0, 2.5, 2.4, 2.5, 3.3, 2.5-
 5 4.0, 2.1, 0.6, 3.0, 3.6, 2.5, 3.6, 2.1, 6.2, 1.7, 2.3, 1.0, 1.4, and 1.2. *Id.* at 1052-54. It is clear, then,
 6 that a total multiplier of 2.5 for Class Counsel is wholly consistent with the megafund multipliers
 7 cited by the Ninth Circuit.

8 As for Devine Counsel, the Court recognizes that Devine Counsel's representation of Mr.
 9 Devine contributed to securing an additional \$90.5 million for the class. Mr. Devine assumed
 10 personal risk by objecting to the proposed settlement, and Devine Counsel presented cogent
 11 arguments to this Court and to the Ninth Circuit on Mr. Devine's behalf. In particular, Devine
 12 Counsel (1) filed an opposition to the \$324.5 million proposed settlement; (2) attended the June
 13 19, 2014 preliminary approval hearing; (3) reviewed pending pretrial motions after the Court
 14 rejected the proposed settlement and conferred with Mr. Devine on how best to proceed; (4)
 15 opposed Defendants' mandamus petition in the Ninth Circuit; (5) opposed two motions for leave
 16 to file amicus briefs in support of Defendants' mandamus petition; (6) conferred regularly with
 17 Class Counsel and Mr. Devine while settlement negotiations were pending; and (7) attended the
 18 March 2, 2015 preliminary approval hearing. Girard Decl. ¶¶ 14-37; see also *id.*, Ex. 3. Devine
 19 Counsel also represented Mr. Devine on contingency. Girard Decl. ¶ 40. For these reasons, the
 20 Court finds it appropriate to adjust Devine Counsel's lodestar with a positive multiplier.

21 Considering all the facts and circumstances of this case, the Court finds that a multiplier of
 22 1.5 is appropriate for Devine Counsel. In the Court's judgment, this multiplier adequately rewards
 23 Devine Counsel for the work performed in this case from May 13, 2014, to March 2, 2015. Girard
 24 Decl., Ex.3. The Court awards Devine Counsel a smaller multiplier than Class Counsel for several
 25

26 ⁸ $(40,043,932.50 + 5,000,000) \div 18,201,787.50 = 2.47$

1 reasons. First, Devine Counsel joined this case in May 2014, which was after discovery had
2 concluded, a class had been certified, the Ninth Circuit had declined review of class certification,
3 and the Court had denied five summary judgment motions and multiple *Daubert* motions. Devine
4 Counsel thus had no involvement in taking 93 depositions, defending 14 depositions, serving 75
5 document requests, serving 28 subpoenas on third parties, producing over 31,000 pages of
6 documents, retaining four experts to assist in analyzing over 15 gigabytes of employment-related
7 compensation and recruiting data, and working with the experts to produce multiple expert reports.
8 Devine Counsel also had no involvement in the two motions to dismiss, the two motions for class
9 certification, the five motions for summary judgment, the myriad *Daubert* motions, and Plaintiffs'
10 settlements with Pixar, Lucasfilm, and Intuit. As far as motion practice, Devine Counsel filed
11 three opposition briefs: one opposing preliminary approval, a second opposing mandamus, and a
12 third opposing leave to file two amicus briefs in support of mandamus. Devine Counsel also
13 attended two preliminary approval hearings. The issues presented in Devine Counsel's three
14 opposition briefs and at the preliminary approval hearings were much less complex and novel than
15 the issues faced by Class Counsel in the two motions to dismiss, two rounds of class certification,
16 five summary judgment motions, and multiple *Daubert* motions.

17 Second, unlike Class Counsel, Devine Counsel did not advance any of the millions of
18 dollars in expenses, including expert fees, in this litigation. Nor did Devine Counsel assume the
19 same risk of nonpayment as Class Counsel, which had been litigating this case for several years
20 with no certainty of payment. Indeed, by the time Devine Counsel entered the case, Pixar,
21 Lucasfilm, and Intuit had already settled with Plaintiffs for \$20 million and the remaining
22 Defendants had already settled for \$324.5 million.

23 Lastly, Devine Counsel did not directly participate in the negotiations with Defendants that
24 resulted in the class obtaining the additional \$90.5 million. In fact, Defendants' counsel
25 communicated with only Class Counsel during the mediation process that resulted in the
26 additional \$90.5 million. *See* Final Approval Tr. at 72:25-27. As a result, the Court multiplies

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1 Devine Counsel’s lodestar by 1.5 and awards Devine Counsel \$778,379.25 in attorney’s fees.

2 Combining the \$40,043,932.50 award for Class Counsel and the \$778,379.25 award for
3 Devine Counsel, the Court awards a total of \$40,822,311.75 in attorney’s fees. When added to the
4 \$5 million in attorney’s fees the Court already awarded Class Counsel for the settlements with
5 Pixar, Lucasfilm, and Intuit, counsel for Plaintiffs will receive a grand total of \$45,822,311.75 for
6 litigating this case. Furthermore, the Court notes that by awarding a total of \$40,822,311.75 in
7 attorney’s fees in connection with the instant \$415 million settlement, rather than the requested
8 total of \$85,648,500, the average recovery for the 64,410 class members who did not opt out
9 should increase from roughly \$5,071.53 per person to roughly \$5,770 per person,⁹ a difference of
10 about \$700 per class member.

11 **3. Percentage-of-Recovery Cross-Check**

12 The reasonableness of the Court’s fee awards under the lodestar method is supported by
13 cross-checking those awards with the percentage-of-recovery method. *See In re Bluetooth*, 654
14 F.3d at 944 (encouraging courts to “cross-check[] their calculations against a second method”).
15 Combining the awards for Class Counsel and Devine Counsel, the total amount of attorney’s fees
16 is about 9.8%¹⁰ of the \$415 million settlement. Adding the \$5 million in attorney’s fees the Court
17 already awarded for the settlements with Pixar, Lucasfilm, and Intuit, the percentage increases to
18

19
20 ⁹ The Court arrived at this figure through the following calculations. First, the Court had
21 to calculate the remainder based on the requests for attorney’s fees, reimbursement of expenses,
22 and service awards submitted by Plaintiffs’ counsel and the estimated per class member recovery
23 provided by Plaintiffs’ counsel: Remainder = 415,000,000 - ((5,071.53 × (64,466 - 56)) +
24 81,125,000 + 4,523,500 + 1,200,000 + (160,000 × 5)) = \$694,252.70. The Court then subtracted
25 this remainder, along with the Court’s awards for attorney’s fees, expenses, and service awards,
26 from the \$415 million settlement to arrive at the total amount of the settlement that would go to
27 the class: Amount to Class = 415,000,000 - 40,822,311.75 - 1,200,000 - 120,000 - (80,000 × 4) -
28 694,252.70 = \$371,843,435.55. The Court then divided this figure by the 64,410 class members
who did not opt out of the settlement to arrive at an estimate for the average recovery per class
member: Amount Per Class Member = \$371,843,435.55 ÷ (64,466 - 56) = \$5,773.07.

¹⁰ (40,822,311.75 ÷ 415,000,000) × 100 = 9.84%

1 10.5%.¹¹ Although the benchmark in the Ninth Circuit for common fund cases is 25%, a
2 percentage recovery of 9.8% or 10.5% is far from unreasonable for a settlement of this size.

3 Indeed, Class Counsel’s own attorney’s fees expert, Prof. Brian Fitzpatrick, explained that
4 federal courts typically “award[] lower percentages in cases where settlements were larger.”
5 Fitzpatrick Decl. ¶ 21. In Prof. Fitzpatrick’s empirical study, which analyzed the largest federal
6 class action settlements from 2006 to 2007, Prof. Fitzpatrick found “that settlement size had a
7 statistically significant but inverse relationship with the fee percentages awarded by federal
8 courts.” *Id.* (citing Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their*
9 *Fee Awards*, 7 J. Empirical Legal Stud. 811, 838, 842-44 (2010)). In addition, Prof. Fitzpatrick’s
10 study showed that “the mean and median fee percentages awarded in the eight percentage-of-the-
11 fund settlements in my dataset between \$250 million and \$500 million were 17.8% and 19.5%,
12 respectively.” *Id.* (citing Fitzpatrick, *Empirical Study, supra*, at 839 tbl.11). These empirical
13 findings are consistent with the Ninth Circuit’s statement that, in “megafund” cases, courts may
14 apply the percentage-of-recovery method while “adjust[ing] the benchmark percentage”
15 downward to a more appropriate figure where failing to do so “would yield windfall profits for
16 class counsel.” *In re Bluetooth*, 654 F.3d at 942.

17 Furthermore, in Prof. Rubenstein’s declaration, prepared at the request of JSLF, he
18 indicates in a footnote that “[t]he other leading study,” which reviewed large common fund
19 settlements between 1993 and 2008, “found a 12% mean award.” Rubenstein Decl. ¶ 27 n.16
20 (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action*
21 *Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 265 tbl.7 (2010)). In addition to the 12%
22 mean, Eisenberg & Miller found that the median award was only 10.2%. *See Eisenberg & Miller*,
23 *Attorney Fees, supra*, at 265 tbl.7; *see also Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956,
24 958 (7th Cir. 2013) (describing Eisenberg & Miller’s findings); *Craftwood Lumber Co. v. Interline*

26 ¹¹ $((40,822,311.75 + 5,000,000) \div 435,000,000) \times 100 = 10.53\%$

1 *Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at *3 (N.D. Ill. Mar. 23, 2015) (explaining that
2 for “settlements greater than \$175.5 million,” the Eisenberg & Miller study found “the median
3 attorney’s fee dropped all the way to 10.2% and the mean to 12%”).

4 The Court finds the Eisenberg & Miller study more persuasive than the Fitzpatrick study
5 for at least two reasons. First, the Eisenberg & Miller study spanned 16 years, from 1993 to 2008,
6 while the Fitzpatrick study spanned just two years, 2006 to 2007. Second, and relatedly, the
7 sample size of settlements in the Eisenberg & Miller study is 68, while the sample size in the
8 Fitzpatrick study is only eight. Although the Eisenberg & Miller study did lump all settlements
9 higher than \$175.5 million into one category, while the Fitzpatrick study considered settlements
10 within a more precise range (i.e., between \$250 and \$500 million), the length and large sample
11 size of the Eisenberg & Miller study suggest that its results are entitled to greater weight. *See In*
12 *re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 652 (E.D. La. 2010) (finding that “[t]he
13 Eisenberg and Miller studies are helpful for providing concrete evidence for the relationship
14 between the amount recovered and the attorneys’ fee award”). Thus, accepting that the median
15 attorney’s fees award in a sample of 68 “megafund” class action settlements over a 16-year period
16 was 10.2%, an award here of 9.8% is reasonable.

17 This percentage is all the more reasonable when one considers that Class Counsel was
18 already awarded the 25% benchmark in attorney’s fees for the \$20 million settlements with Pixar,
19 Lucasfilm, and Intuit. ECF No. 916 at 5. Class Counsel received 25%—or \$5 million—in the
20 earlier settlements even though class members there recovered only about \$173.73 per person. *See*
21 *Class Counsel Reply* at 4. Factoring in the \$5 million fees award from the settlements with Pixar,
22 Lucasfilm, and Intuit, counsel for Plaintiffs in this case will ultimately obtain 10.5% of the
23 combined \$435 million from all settlements. Again, compared to the 10.2% median figure in
24 “megafund” cases over a 16-year period, the percentage award in this case is reasonable.

1 For these reasons, the Court is satisfied that a percentage-of-recovery cross-check reveals
2 that fee awards of \$40,043,932.50 to Class Counsel and \$778,379.25 to Devine Counsel are fair
3 and reasonable in this case.

4 **4. Objections**

5 Three class members objected to the attorney's fees sought by Class Counsel and Devine
6 Counsel in this case: David D. Hsu ("Dr. Hsu"), Eric Veach ("Dr. Veach"), and Mr. Zavislak. Jue
7 Supp. Decl., Exs. C, L-N. Of those three, only Mr. Zavislak attended the final approval hearing on
8 July 9, 2015. *See* Final Approval Tr. at 15:10-30:21.

9 To begin, the Court's decision to reduce Class Counsel's attorney's fees request by more
10 than half (from \$81,125,000 to \$40,043,932.50) and Devine Counsel's attorney's fees request by
11 more than 80% (from \$4,523,500 to \$778,379.25) adequately addresses the objectors' concerns
12 regarding the total amount of attorney's fees. For example, Dr. Hsu's only objection to the
13 attorney's fees requests was that the "attorneys receive too much of the settlement." Jue Supp.
14 Decl., Ex. C. Dr. Veach, for his part, said that "[i]f the Class Counsel fees were reduced modestly,
15 for example to \$40 million (plus the \$5 million already paid, for a total of \$45 million), the gap
16 [between counsel's recovery and that of class members] would be considerably reduced." *Id.*, Ex.
17 M at 2. Mr. Zavislak, who labeled the requested fees "astronomical," *id.*, Ex. N at 2, agreed at the
18 July 9, 2015 hearing on final approval that an attorney's fees award of around \$40 million would
19 be reasonable in this case, *see* Final Approval Tr. at 16:10-12. By reducing the attorney's fees to a
20 total of \$40,822,311.75, the Court's decision satisfies these concerns. In addition, this amount, as
21 explained above, is below the 25% benchmark typically awarded in the Ninth Circuit but is
22 consistent with fee awards for megafund settlements. The Court's decision to award a total of
23 \$40,822,311.75 in attorney's fees in connection with the instant \$415 million settlement, rather
24 than the requested total of \$85,648,500, should also increase the average class member recovery
25 by about \$700 per person (from roughly \$5,071.53 per person to roughly \$5,770 per person).

1 In adopting the lodestar method with a percentage-of-recovery cross-check, the Court also
2 addresses Dr. Veach's objection that the percentage-of-recovery method is "inappropriate for large
3 common funds." Jue Supp. Decl., Ex. L ¶¶ 4-5 (citing *WPPSS*, 19 F.3d at 1297). Further, by
4 combining Class Counsel's and Devine Counsel's awards for purposes of the percentage-of-
5 recovery cross-check, the Court addresses Dr. Veach's objection to treating Plaintiffs' counsel
6 separately for percentage purposes. *Id.*, Ex. M at 1.

7 In addition, Dr. Veach and Mr. Zavislak object because Defendants agreed to a so-called
8 "clear sailing" provision in the settlement—i.e., Defendants agreed not to comment on or oppose
9 Class Counsel's fee request "so long as the request for fees is no greater than \$81,125,000
10 (approximately 19.54%) of the \$415 million Settlement Fund." See ECF No. 1033-1, Settlement
11 Agreement, Part VII.A.5. As the Ninth Circuit has explained, however, a "clear sailing" provision
12 "does not signal the possibility of collusion" where, as here, Class Counsel's fee will be awarded
13 by the Court from the same common fund as the recovery to the class. *Rodriguez v. West Publ'g*
14 *Corp.*, 563 F.3d 948, 961 n.5 (9th Cir. 2009). Indeed, Class Counsel did not negotiate fees
15 separate and apart from class funds, nor did Class Counsel agree that any portion of the \$415
16 million common fund could revert back to Defendants. See, e.g., *In re Easysaver Rewards Litig.*,
17 921 F. Supp. 2d 1040, 1054 (S.D. Cal. 2013) (overruling objection to "clear sailing" provision
18 where the settlement was the result of arms-length negotiations, funds for attorney's fees were not
19 held separate from class funds, and no settlement funds would revert back to defendants). This
20 objection is therefore overruled.

21 Lastly, the Court overrules the objection by Dr. Veach and Mr. Zavislak that the class had
22 inadequate notice under Rule 23(h) of the Federal Rules of Civil Procedure because the motions
23 for attorney's fees were not posted on the lawsuit's website, even though the motions were all
24 publicly filed, in a timely manner, on the case's public electronic docket. Jue Supp. Decl., Ex. M
25 at 3; *id.*, Ex. N at 3-6. The case relied on by the objectors says only that a class counsel's fee
26 motion must be filed *before* the objection deadline. See *In re Mercury Interactive Corp. Sec.*

1 *Litig.*, 618 F.3d 988, 992-93 (9th Cir. 2010). This is precisely what happened here: the objection
 2 deadline was May 21, 2015, and the attorney’s fees motions were all timely filed on the public
 3 docket on May 7, two weeks prior to that deadline.¹²

4 Moreover, Judge Illston has overruled the very same objection in a prior case. *See In re*
 5 *TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL 7575004, at *2
 6 (N.D. Cal. Dec. 27, 2011). Relying on *In re Mercury Interactive*, Judge Illston explained that
 7 “[t]he Ninth Circuit grants wide discretion to each district court to determine how far in advance
 8 Class Counsel must file the fee motion,” so long as the deadline for objections is “on a date *after*
 9 the motion and documents supporting it have been filed.” *Id.* (quoting *In re Mercury Interactive*,
 10 618 F.3d at 993). “Nothing in the *Mercury Interactive* decision,” concluded Judge Illston,
 11 “requires a motion for attorneys’ fees to be posted on a class action website.” *Id.* The Court
 12 agrees.

13 Furthermore, even if having plaintiffs’ lawyers upload their attorney’s fees motions to the
 14 case website is a good idea going forward, neither Dr. Veach nor Mr. Zavislak can show prejudice
 15 in this instance. Immediately upon reviewing the objections, Class Counsel emailed their fee
 16 requests and supporting declarations directly to Dr. Veach on May 21, 2015, and to Mr. Zavislak
 17 (and also, out of an abundance of caution, to Dr. Hsu) on May 22, 2015. *See* ECF No. 1094,
 18 Supplemental Declaration of Dean M. Harvey (“Harvey Supp. Decl.”) ¶¶ 5-7. Class Counsel
 19 informed Dr. Veach and Mr. Zavislak that Class Counsel would not oppose an extension for them
 20

21 ¹² Although the motions themselves were timely filed, several of Class Counsel’s
 22 supporting declarations were, as Mr. Zavislak points out, filed after midnight on May 8, 2015. *Jue*
 23 *Supp. Decl.*, Ex. N at 3 n.4. Nonetheless, these declarations were all filed well in advance of the
 24 May 21, 2015 deadline to object and thus comply with *In re Mercury Interactive*.

25 It is also true that Mr. Saveri’s supplemental declaration was filed on May 21, 2015, the
 26 date of the objection deadline. *See* Saveri Supp. Decl. However, the Court finds no prejudice to
 27 the class because Mr. Saveri’s supplemental declaration did not change Class Counsel’s total
 28 request for \$81,125,000 in attorney’s fees. Rather, the declaration merely informed the Court that
 JSLF’s lodestar was *lower* than what had been previously represented. *See id.* ¶ 5. The same is
 true for Mr. Saveri’s second supplemental declaration filed on July 24, 2015, which reduced
 JSLF’s lodestar even further. *See* Saveri Second Supp. Decl. ¶¶ 5-6.

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1 to review and comment on the materials. *Id.* Dr. Veach accepted Class Counsel’s invitation and
2 submitted a supplemental objection on June 1, which Class Counsel included among the timely
3 objections received. *See* Jue Supp. Decl., Ex. M. Mr. Zavislak, on the other hand, declined to
4 supplement his comments in writing, even though he received the same invitation. *See* Harvey
5 Supp. Decl., Ex. E. What’s more, the Court notes that neither Dr. Veach nor Mr. Zavislak ever
6 actually requested to view the attorney’s fees motions prior to the objection deadline, even though
7 the Notice provided contact information for Class Counsel to answer any questions class members
8 may have had. *Id.* ¶ 3. Indeed, hundreds of class members contacted Class Counsel with
9 questions, and Class Counsel responded accordingly. *Id.* ¶ 2.

10 As a result, none of the above objections requires the Court to modify its attorney’s fees
11 awards to Class Counsel or Devine Counsel.

12 **5. Conclusion: Attorney’s Fees Award**

13 In sum, the Court awards \$40,043,932.50 in attorney’s fees to Class Counsel and
14 \$778,379.25 in attorney’s fees to Devine Counsel, for a total attorney’s fees award of
15 \$40,822,311.75 (or 9.8%) arising out of the instant \$415 million settlement. Taking into account
16 the \$5 million in attorney’s fees already awarded to Class Counsel in the settlements with Pixar,
17 Lucasfilm, and Intuit, counsel for Plaintiffs in this action will receive a grand total of
18 \$45,822,311.75 (or 10.5%) of the \$435 million combined settlements.

19 **B. Expenses**

20 In common fund cases, the Ninth Circuit has stated that the reasonable expenses of
21 acquiring the fund can be reimbursed to counsel who has incurred the expense. *See Vincent v.*
22 *Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *accord Wininger v. SI Mgmt. L.P.*, 301
23 F.3d 1115, 1121 (9th Cir. 2002).

24 Having reviewed the submissions of Class Counsel, the Court finds that their requests for
25 unreimbursed expenses are reasonable. Class Counsel submitted declarations and invoices
26 reflecting the nearly \$5 million in out-of-pocket costs they incurred in this action, including

1 \$1,231,276.66 in unreimbursed expenses. *See* Cramer Decl., Ex. C (B&M expenses); Sabella
 2 Decl., Ex. 4 (G&E expenses); Dermody Decl., Ex. 3 (LCHB expenses); Saveri Supp. Decl., Ex. 3
 3 (JSLF expenses). \$1,231,276.66 of Class Counsel’s nearly \$5 million in expenses remain
 4 unreimbursed to this point because the Court previously awarded \$3,699,844.31 in expenses to
 5 Class Counsel in connection with the settlements with Pixar, Lucasfilm, and Intuit. ECF No. 916
 6 at 5. However, Class Counsel limit their instant request for reimbursement of expenses to the
 7 \$1,200,000 provided in the Notice to class members. ECF No. 1105 ¶ 12. These costs include:
 8 (1) expert witness fees; (2) mediators’ fees; (3) a document vendor to host the over 3.2 million
 9 pages of documents produced; (4) court reporting and videographer services for the 93 depositions
 10 taken by Plaintiffs in this case; (5) electronic research; (6) copying, mailing, and serving
 11 documents; and (7) case-related travel for Plaintiffs, witnesses, experts, and counsel. No class
 12 member has objected to the amount of these expenses or to Class Counsel being reimbursed for
 13 these expenses. Accordingly, the Court awards Class Counsel \$1,200,000 in unreimbursed
 14 expenses.

15 Devine Counsel did not seek reimbursement for expenses. *See* Devine Counsel Mot. at 19.
 16 As a result, the Notice did not inform the class that Devine Counsel would seek reimbursement of
 17 costs. The Court therefore does not award Devine Counsel any costs for Devine Counsel’s
 18 \$16,603.06 in expenses. *See* Girard Decl., Ex. 4 (GG expenses).

19 C. Service Awards

20 In evaluating whether class representatives are entitled to reasonable service awards,¹³
 21 district courts “must evaluate their awards individually, using ‘relevant factors including the
 22 actions the plaintiff has taken to protect the interests of the class, the degree to which the class has
 23 benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing
 24 the litigation . . . and reasonabl[e] fear[s] of workplace retaliation.’” *Staton*, 327 F.3d at 977

25
 26
 27 ¹³ Service awards are known alternatively as “incentive awards” or “incentive payments.”
 30

1 (alterations in original) (quoting *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998)). Here, there are
2 five class representatives: Mr. Devine, Siddharth Hariharan (“Mr. Hariharan”), Mark Fichtner
3 (“Mr. Fichtner”), Daniel Stover (“Mr. Stover”), and the Estate of Brandon Marshall (“Mr.
4 Marshall’s Estate”). The class representatives have each filed declarations with the Court in
5 support of their service award requests. ECF No. 1070 (“Devine Decl.”); ECF No. 1076
6 (“Hariharan Decl.”); ECF No. 1077 (“Fichtner Decl.”); ECF No. 1078 (“Stover Decl.”); ECF No.
7 1082 (“Marshall Estate Decl.”).

8 In connection with the settlements with Pixar, Lucasfilm, and Intuit, each class
9 representative received a \$20,000 service award. ECF No. 916 at 5. In the instant settlement,
10 Devine Counsel seeks \$160,000 for Mr. Devine. Devine Counsel Mot. at 22. In their preliminary
11 approval motion, Class Counsel sought \$80,000 for each of the remaining named plaintiffs. ECF
12 No. 1032 at 10. At the hearing on preliminary approval, however, Class Counsel sought the
13 Court’s permission to seek up to \$160,000 per class representative. ECF No. 1059, Preliminary
14 Approval Hearing Transcript (“Preliminary Approval Tr.”) at 11:13-22. The Court granted
15 permission, *see id.* at 25:19-22, and Class Counsel now seek up to \$160,000 per class
16 representative, *see* Class Counsel Mot. at 23 & n.14.

17 Importantly, a court need not award all named plaintiffs the same incentive payment. *See,*
18 *e.g., In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D.
19 Md. Dec. 13, 2013) (awarding \$125,000 to one class representative and \$25,000 to the other two
20 class representatives); *see also Slipchenko v. Brunel Energy, Inc.*, No. CIV.A. H-11-1465, 2015
21 WL 338358, at *15 (S.D. Tex. Jan. 23, 2015) (“Courts recognize that a differentiation among class
22 representatives based upon the role that each played may be proper in given circumstances.”
23 (brackets and internal quotation marks omitted)).

24 In light of the class representatives’ declarations, and considering the factors outlined in
25 *Staton*, the Court finds the following service awards reasonable in this case:

Class Representative	Service Award
Mr. Devine	\$120,000
Mr. Hariharan	\$80,000
Mr. Fichtner	\$80,000
Mr. Stover	\$80,000
Mr. Marshall's Estate	\$80,000

Factoring in the \$20,000 service awards each class representative has already received as part of the settlements with Pixar, Lucasfilm, and Intuit, Mr. Hariharan, Mr. Fichtner, Mr. Stover, and Mr. Marshall's Estate will each receive a total of \$100,000 in service awards. Mr. Devine will receive a total of \$140,000 in service awards.

In arriving at these amounts, the Court notes that each of the class representatives has taken actions to protect the interests of the class. Specifically, each of the named Plaintiffs states that he has been actively involved in the litigation by maintaining close contact with Class Counsel and providing advice regarding the settlements. *See* Devine Decl. ¶¶ 8-27; Hariharan Decl. ¶¶ 7-8; Fichtner Decl. ¶¶ 7-8; Stover Decl. ¶¶ 7-8; Marshall Estate Decl. ¶¶ 8-9. Moreover, each class representative has spent hundreds of hours working on this case over the past four years, including meeting with counsel, preparing the complaint, reviewing drafts of documents, gathering documents for discovery, preparing interrogatory responses, reviewing Defendants' documents, reviewing expert work, sitting for a deposition, preparing for the deposition, reviewing deposition transcripts, discussing strategy, and communicating with counsel. As a result of these actions, the class has received a substantial benefit in the form of a \$415 million settlement. Lastly, each of the class representatives risked significant workplace retaliation by serving as a named plaintiff in this high-profile lawsuit. *See* Devine Decl. ¶¶ 29-30; Hariharan Decl. ¶ 9; Fichtner Decl. ¶ 9; Stover Decl. ¶ 9; Marshall Estate Decl. ¶ 10. At the very least, it is likely that Plaintiffs, except for Mr. Marshall who is deceased, may be viewed as "troublemakers" within the tech industry. *See Cook*, 142 F.3d at 1016 (approving \$25,000 service award where class representative "reasonably feared workplace retaliation").

1 Mr. Devine's concern, as an objector to the prior settlement, is particularly acute in this
2 regard. Mr. Devine's objection received considerable media coverage, with his picture appearing
3 in the *New York Times*. See David Streitfeld, *Plaintiff Maligns Deal in Silicon Valley Suit*, N.Y.
4 Times, May 12, 2014, at B1. As a result, Mr. Devine will likely have an even more difficult time
5 becoming employed in the tech industry again. See Devine Decl. ¶¶ 29-30. Accordingly, the
6 Court finds that Mr. Devine is entitled to a heightened award in this case.

7 Moreover, service awards of \$120,000 and \$80,000 are in line with awards in other
8 "megafund" cases. See, e.g., *Marchbanks Truck Serv. v. Comdata Network, Inc.*, Case No. 07-
9 CV-1078, Dkt. 713 at 2, 8 (E.D. Pa. July 14, 2014) (approving \$130 million class action
10 settlement, including service award of \$150,000 to one class representative and service awards of
11 \$75,000 to two other class representatives); *In re Titanium Dioxide*, 2013 WL 6577029, at *1
12 (awarding \$125,000 to lead class representative out of \$163.5 million settlement); *Velez v.*
13 *Novartis Pharm. Corp.*, No. 04 CIV 09194 CM, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov.
14 30, 2010) (awarding \$125,000 to named plaintiffs from \$175 million settlement).

15 Nor is the ratio between the service awards and the average class member recovery
16 unreasonable. The Ninth Circuit has cautioned that where there is a "very large differential in the
17 amount of damage awards between the named and unnamed class members," that differential must
18 be justified by the record. *Staton*, 327 F.3d at 978. Taking into account the Court's reductions of
19 the amounts requested for attorney's fees and service awards, the average class member recovery
20 from the instant settlement should increase from roughly \$5,071.53 per person to roughly \$5,770
21 per person. The resulting ratio between service awards and class member recovery is about 21 for
22 Mr. Devine and 14 for the remaining class representatives. These ratios are justified by the record
23 detailed above, including the "hundreds of hours" each class representative spent on this high-
24 profile litigation and their reasonable fears of "workplace retaliation." *Cook*, 142 F.3d at 1016.
25 The ratios are also within the range of reasonableness. Compare *Staton*, 327 F.3d at 948, 975-78
26 (rejecting settlement where 29 class representatives could receive up to \$50,000 compared to

1 \$1,000 for unnamed class members); *Wallace v. Countrywide Home Loans, Inc.*, No. 8:08-1463-
2 JLS MLGX, 2014 WL 5819870, at *4 (C.D. Cal. Apr. 14, 2014) (rejecting settlement where
3 service awards were “33 times greater than *the maximum* possible recovery of other individual
4 class members” (emphasis added)); *Kaufman v. Am. Exp. Travel Related Servs. Co.*, 264 F.R.D.
5 438, 448 (N.D. Ill. 2009) (disapproving \$2,500 service awards because they were “125 times
6 greater than the \$20 maximum that any similar Class member could recover”), *with In re Capital*
7 *One Tel. Consumer Prot. Act Litig.*, — F. Supp. 3d —, 2015 WL 605203, at *19 (N.D. Ill. Feb.
8 12, 2015) (approving \$5,000 service awards where class members who made timely claims were
9 entitled to “at least \$39.66”); *Lemus v. H&R Block Enters. LLC*, No. C 09-3179 SI, 2012 WL
10 3638550, at *5-6 (N.D. Cal. Aug. 22, 2012) (approving \$15,000 service awards where the average
11 class recovery was about \$1,200).

12 There was one objection to the requested service awards by Mr. Zavislak. Jue Supp. Decl.,
13 Ex. N at 6-7. He contends that the requested amounts are excessive, and argues that the fact that
14 Class Counsel seek the same service award for each class representative somehow demonstrates
15 improper collusion among the class representatives. *Id.* at 7. He also objects to the increase in the
16 requested service awards from \$80,000 in Class Counsel’s preliminary approval motion to
17 \$160,000 in Class Counsel’s instant motion for attorney’s fees, reimbursement of expenses, and
18 service awards. *Id.* at 6. As to the latter objection, the Court notes that Devine Counsel has
19 sought \$160,000 for Mr. Devine from the beginning, *see* ECF No. 1041 at 2, and that the Court
20 gave Class Counsel permission at the preliminary approval hearing to seek up to \$160,000 for
21 each of the other class representatives, *see* Preliminary Approval Tr. at 25:19-22. In addition, the
22 Court’s decision to award \$80,000 to Mr. Hariharan, Mr. Fichtner, Mr. Stover, and Mr. Marshall’s
23 Estate renders that objection moot. Moreover, Mr. Zavislak is incorrect to suggest that awarding
24 identical amounts to class representatives establishes improper collusion. Doing so is standard
25 practice in class action settlements, and each of the class representatives who will receive an
26 award of \$80,000 declared that he was not promised any amount of money to serve as a class

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1 representative, or in connection with his approval of this settlement or any prior settlement in this
2 action. *See* Hariharan Decl. ¶ 4; Fichtner Decl. ¶ 4; Stover Decl. ¶ 4; Marshall Estate Decl. ¶ 7;
3 *see also Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013) (rejecting
4 settlement that “explicitly condition[ed] the incentive awards on the class representatives’ support
5 for the settlement”).

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court hereby GRANTS in part and DENIES in part the
8 motions for attorney’s fees, reimbursement of expenses, and service awards. The Court awards as
9 follows:

- 10 • \$40,043,932.50 in attorney’s fees to Class Counsel;
- 11 • \$778,379.25 in attorney’s fees to Devine Counsel;
- 12 • \$1,200,000 in unreimbursed expenses to Class Counsel;
- 13 • \$120,000 service award to Mr. Devine; and
- 14 • \$80,000 service awards each to Mr. Hariharan, Mr. Fichtner, Mr. Stover, and
15 Mr. Marshall’s Estate.

16 **IT IS SO ORDERED.**

17
18 Dated: September 2, 2015



LUCY H. KOH
United States District Judge