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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 JAVANNI MUNGUIA-BROWN, ANGELINA
MAGAÑA, NORMA RODRIGUEZ, DAVID
17 BONFANTI, and SHANNAH SMITH individually
and on behalf of others similarly situated,

18 Plaintiffs,
19 vs.

20 EQUITY RESIDENTIAL, a real estate investment
trust, ERP OPERATING LIMITED
21 PARTNERSHIP, a partnership, EQUITY
RESIDENTIAL MANAGEMENT, L.L.C., EQR-
22 WOODLAND PARK A LIMITED
PARTNERSHIP, and EQR-WOODLAND PARK
23 B LIMITED PARTNERSHIP,

24 Defendants.

CLASS ACTION

Case No.: 4:16-cv-01225-JSW-TSH

**NOTICE OF MOTION AND PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Date: February 6, 2026
Time: 9:00 a.m.
Dept: Courtroom 5
Before: Hon. Jeffrey S. White

Trial Date: June 8, 2023

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on February 6, 2026 at 9:00 a.m., or as soon thereafter as the Court is available, in the Courtroom of Honorable Jeffrey S. White of the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Plaintiffs Javanni Munguia-Brown; Angelina Magaña, Norma Rodriguez, David Bonfanti, and Shannah Smith (“Plaintiffs”) will and hereby do move the Court, in accordance with Federal Rule of Civil Procedure 23, for an Order:

- a. Granting preliminary approval of the Parties’ proposed class action settlement, including the amount of the settlement and the method of distributing monetary relief to the class;
- b. Extending the class recovery period for the Standard Late Fee Class to April 30, 2024;
- c. Approving the Parties’ proposed form of notice and notice distribution program, as set forth in the Settlement Agreement (**Exhibit A** to the Declaration of Linda M. Dardarian in Support of Plaintiffs’ Motion for Preliminary Approval (“Dardarian Decl.”)), appointing CPT Group as settlement administrator, and directing that notice be disseminated pursuant to such program;
- d. Setting a date for the Fairness Hearing and hearing on Plaintiffs’ Motions for Attorneys’ Fees, Expenses and Costs and Class Representative Service Awards;
- e. Pending the Fairness Hearing, staying all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of this Settlement and the Preliminary Approval Order.

Plaintiffs’ motion is based on this Notice, the accompanying memorandum of points and authorities, the declaration of Linda M. Dardarian and all exhibits thereto, the argument of counsel, all papers and records on file in this case, and such other matters as the Court may consider.

Dated: December 31, 2025

Respectfully submitted,

DARDARIAN HO KAN & LEE

/s/ Linda M. Dardarian

Linda M. Dardarian

Attorneys for Plaintiffs and the Certified Classes

I. INTRODUCTION

1
2 Plaintiffs, on behalf of themselves and two certified classes, seek preliminary approval of a
3 proposed class action settlement that provides Class Members nearly the full value of the late-fee
4 reimbursements sought in this case. The terms of the Settlement are fully set forth in the Settlement
5 Agreement (“Settlement”), attached as **Exhibit A** to the Dardarian Declaration.

6 This Settlement was reached after over a decade of extensive and hard-fought litigation,
7 including an 8-day bench trial and post-trial briefing, which resulted in Plaintiffs prevailing on nearly
8 every issue in this matter, including the Court holding that Equity’s late fees violate California law.
9 After several failed earlier attempts, the Parties reached this settlement just prior to Plaintiffs’ deadline
10 to submit a proposed final judgment, which Equity intended to appeal. Balanced against the delay,
11 costs, and risks of litigating an appeal, the relief provided by the settlement is fair, reasonable, and
12 adequate within the meaning of Federal Rule of Civil Procedure 23(e), and satisfies all the criteria for
13 preliminary settlement approval.

14 Plaintiffs respectfully request that the Court: (i) preliminarily approve the settlement; (ii)
15 extend the class recovery period for the Standard Late Fee Class to April 30, 2024; (iii) approve the
16 proposed form of the class notice and the notice distribution plan; (iv) set a fairness hearing; and (v)
17 stay all proceedings in this action pending the Fairness Hearing.

18 II. FACTUAL AND PROCEDURAL BACKGROUND

19 Plaintiffs are current and former tenants who challenged the late fees that Defendant Equity
20 Residential, (“Equity”) charged to Equity’s residential tenants in California since September 3, 2010
21 through April 30, 2024 for late payment of rent. Specifically, Plaintiffs challenged Equity’s Standard
22 Late Fee of the greater of \$50 or 5% of monthly rent and other outstanding balances (the “Standard
23 Late Fee”), which Equity charged to over 190,000 of its California tenants. Plaintiffs also challenged
24 the \$50 late fee that Equity charged to over 1,100 tenants of its Woodland Park property in East Palo
25 Alto, California (“Woodland Park \$50 Late Fee”). Dardarian Decl. ¶ 2.

1 **A. History of Munguia-Brown v. Equity Residential**

2 Plaintiffs Javanni Munguia-Brown, Angelina Magaña, and Norma Rodriguez¹ filed this class
 3 action in Alameda County Superior Court on September 3, 2014, on behalf of themselves and all
 4 Equity tenants in California who had been charged or paid Equity’s late fee of \$50 or more, alleging
 5 that Equity’s late fee was an unlawful liquidated damages provision under California Civil Code
 6 section 1671(d) (“Section 1671(d)”) and an unlawful business act and practice under the California
 7 Unfair Competition Law (“UCL”), California Business and Professions Code section 17200.
 8 Dardarian Decl. ¶ 5. In 2016, Equity removed the action to this Court. *Id.* ¶ 6.

9 **1. Fact Discovery**

10 Fact discovery in this case was extensive and hard fought. In total, Plaintiffs propounded 100
 11 special interrogatories,² 118 requests for production, 115 substantive requests for admission, and 751
 12 requests for admission regarding the genuineness of documents. Dardarian Decl. ¶ 8. Equity produced
 13 12,366 pages of documents, millions of lines of data from its electronic tenant ledger and property
 14 management database (including information that Equity had represented in 2015 to only be available
 15 in hardcopy tenant files), and millions of lines of data from its personnel databases. *Id.* Plaintiffs
 16 deposed 32 witnesses over 38 days of fact and expert depositions. *Id.* ¶ 8. Plaintiffs also defended
 17 four Named Plaintiff depositions and eight days of deposition for their five expert witnesses. *Id.*

18 Equity vigorously fought and resisted responding to Plaintiffs’ discovery requests. Dardarian
 19 Decl. ¶¶ 10-13. As a result, in total, Plaintiffs filed 14 letter briefs related to discovery in federal court,
 20 in addition to a motion to compel filed in state court prior to removal. *Id.* ¶ 14. Plaintiffs’ discovery
 21 motions were primarily successful, resulting in orders requiring Equity to produce witnesses for
 22 depositions, to produce documents including internal emails regarding its adoption of the Standard
 23 Late Fee in 2008, and to produce data necessary to identify Class Members, calculate restitution, and

24
 25
 26 ¹ In 2017, Plaintiffs filed a Second Amended Complaint to add Plaintiff David Bonfanti because he
 27 had standing at that time to assert injunctive relief claims. Because Mr. Bonfanti moved out of his
 28 Equity apartment in June 2017, prior to Plaintiffs’ initial class certification motion, Plaintiffs filed a
 Third Amended Complaint to add Plaintiff Shannah Smith because she had standing to assert
 injunctive relief claims, and to add an injunctive relief class. Dardarian Decl. ¶ 6.

² Plaintiffs also propounded California state court form interrogatories to each of the Defendants.

1 test Equity's claim for offset damages. *Id.* ¶ 15.

2 **2. Expert Discovery**

3 Given the complexity of the underlying evidence and the multiple categories of actual damages
4 that Equity claimed were caused by tenants' late rent collection, expert testimony was vital to the
5 claims and defenses in this action. Plaintiffs hired and paid for five expert witnesses: a database
6 expert, a forensic accountant to calculate restitution and interest and address other issues, an expert
7 accountant to opine on a 1990s study touted by Equity as supporting its late fee, and two experts
8 dedicated to rebutting Equity's damages expert. Dardarian Decl. ¶ 16. The Parties exchanged 19
9 expert reports prior to trial (including supplemental reports as the data regarding late fee charges and
10 payments and Equity's claimed costs of late rent collection continued to be updated or corrected) and
11 held two rounds of expert depositions. Expert discovery also entailed document production disputes,
12 as Equity simply refused to produce its expert's back up files until after Plaintiffs moved to compel
13 production of those documents. *Id.* ¶ 17.

14 **3. Motion Practice**

15 In addition to the discovery motions and letter briefs, this highly contentious case entailed
16 extensive motion practice, including motions for class certification and decertification, motions to
17 amend the complaint, and summary judgment motions. Dardarian Decl. ¶ 18.

18 On October 23, 2017, the Court certified two classes pursuant to Federal Rule of Civil
19 Procedure 23(b)(3): the Standard Late Fee Class and the Woodland Park \$50 Late Fee Class. Equity
20 subsequently filed a Rule 23(f) petition for permission to appeal the class certification order as well as
21 a motion to stay the proceeding pending an appeal, both of which were denied. *Id.* ¶ 19. In October
22 2020, Plaintiffs moved to certify a Standard Late Fee injunctive relief class and expand membership in
23 the Rule 23(b)(3) class. *Id.* ¶ 20. The Court granted Plaintiffs' motion in October 2021. ECF No. 315.
24 Equity continued to oppose class certification, filing a motion to decertify the Rule 23(b)(3) classes in
25 March 2022, which the Court denied in January 2023. *Id.* ¶ 20.

26 The Parties also contested summary judgment motions. In January 2019, Plaintiffs moved for
27 partial summary judgment on liability, certain categories of offset damages, and many of Equity's
28 affirmative defenses. Dardarian Decl. ¶ 21. In August 2019, the Court denied summary judgment on

1 liability, determining that much of the case needed to be tried, but Plaintiffs obtained dismissal of
2 several of Equity’s affirmative defenses and a Court ruling articulating important limits on the
3 damages Equity could claim against the restitution owed to the classes. *Id.* ¶ 21. In October 2020,
4 Equity filed a motion for summary judgment contending that Plaintiff Bonfanti had voluntarily paid
5 the late fees at issue, which the Court denied in October 2021. *Id.* ¶ 22. In addition, Plaintiffs
6 defeated Equity’s motion for leave to assert counterclaims against over 120,000 Class Members and to
7 exclude Equity employees from membership in the classes. *Id.* ¶ 23. Plaintiffs also filed a *Daubert*
8 motion to exclude opinion testimony of Equity’s damages expert, Mark Hosfield, and Plaintiffs filed
9 and briefed multiple motions *in limine* in preparation for trial. *Id.* ¶ 24. Consistent with the Court’s
10 “open approach to the evidence,” it denied Plaintiffs’ *Daubert* motion and motions *in limine*, except
11 for Plaintiffs’ motion to exclude evidence of Class Members’ unrelated debts to Equity, which it
12 granted upon Plaintiffs’ motion for reconsideration. *Id.*

13 **4. Trial and Post-Trial Briefing**

14 The Parties commenced trial on June 8, 2023. Over the course of the eight trial days, the
15 Parties called three of the five named Plaintiffs, all seven expert witnesses (some with multiple days of
16 testimony), four property-level personnel, and four corporate fact witnesses. *Id.* ¶ 25.

17 Following trial, the Parties filed proposed findings of fact and conclusions of law and submitted
18 post-trial briefs. *Id.* ¶ 26. In April 2024, the Court issued its findings of fact and conclusions of law
19 resolving nearly every issue in the case in Plaintiffs’ favor. ECF No. 546. The Court concluded that
20 “[T]he Standard Late Fee is invalid because it is not the result of a reasonable endeavor by Equity to
21 estimate its costs actually incurred as a result of late rent.” *Id.* at COL ¶ 18. Regarding the Woodland
22 Park \$50 Late Fee, the Court made the same conclusion about the absence of any cost analysis but also
23 invalidated the late fee because the Woodland Park Plaintiffs did not agree in writing to the \$50 Late
24 Fee, which is a requirement under Section 1671(d), and because the fee was not proportionate to the
25 costs Equity actually incurred from late rent. *Id.* at COL ¶¶ 23-25. The Court granted declaratory
26 relief, holding “that the Standard Late Fee provision in Equity’s residential leases in California is null
27 and void under Section 1671(d),” and that “Equity has engaged in an unlawful business practice” in
28 violation of the Unfair Competition Law.” ECF No. 546 at No. 61-62. The Court also ordered the

1 Parties to further brief injunctive relief and update their restitution and offset damages analyses. ECF
2 No. 547.

3 In September 2025, the Court ultimately denied Plaintiffs' request for a permanent injunction
4 because Equity had discontinued its Standard Late Fee and started reversing and crediting the accounts
5 of tenants who had been assessed a late fee but not paid it. ECF No. 578 at 1-2; Dardarian Decl. ¶¶ 29-
6 30. The Court also ruled that the Standard Late Fee Class was not entitled to post-trial restitution, as
7 recovery from a judgment was limited by the class recovery periods set by the class certification
8 orders. ECF No. 578 at 2. Consequently, the Court ordered further briefing on the measure of
9 restitution up until 75 days before trial, *i.e.*, March 25, 2023. *Id.* at 2-3. In October 2025, Plaintiffs
10 submitted their calculation of class restitution through March 25, 2023 (ECF No. 580-1), and
11 Defendants responded (ECF No. 584), noting Equity's position that Plaintiffs could not recover
12 restitution incurred after March 25, 2023, but, confirming that Equity did not object to Plaintiffs'
13 calculation of restitution through March 25, 2023. Dardarian Decl. ¶¶ 31-33. Plaintiffs then prepared
14 a proposed final judgment and joint proposed distribution plan to file on November 14, 2025, but the
15 Parties instead settled the case and so notified the Court. *Id.* ¶ 33.

16 **B. History of Van Cott v. Equity Residential**

17 Class Counsel here are also settlement class counsel in *Van Cott v. Equity Residential, et al.*
18 ("*Van Cott*"). Plaintiff Courtney Van Cott lived at an Equity Residential property and was assessed
19 and paid the Standard Late Fee in September 2023. Because Ms. Van Cott's first and only late fee had
20 been charged after the *Munguia-Brown* Standard Late Fee Monetary Relief Class definition closed on
21 October 28, 2022, Ms. Van Cott is not entitled to restitution in this case. Dardarian Decl. ¶ 34.

22 Consequently, Ms. Van Cott filed a separate action on January 16, 2025 in Alameda Superior
23 Court, seeking to represent a class defined as:

24 All Equity Residential tenants in the State of California who, from October 29, 2022
25 through April 30, 2024, were first charged one or more late fee(s) under Equity
26 Residential's standard late fee provision: 5% of the outstanding balance owed (capped
at 5% of the total amount of monthly recurring charges or \$50, whichever is greater.

27 *See Van Cott*, No. 4:25-cv-02358-JSW, ECF No. 1-1, Compl. ¶ 21. On March 7, 2025, Defendants
28 removed that action to the United States District Court for the Northern District of California under

1 CAFA, *Van Cott*, ECF No. 1, and the case was related to the *Munguia-Brown* action and reassigned to
 2 this Court. The Parties reached a settlement of that case on a class basis, which the Court has
 3 preliminarily approved and set for a Fairness Hearing on January 9, 2026. That settlement provides the
 4 approximately 21,800 class members with a total of \$2,934,620 in restitution of Standard Late Fees,
 5 representing the amount of all Standard Late Fees the class paid to Equity from October 29, 2022
 6 through April 30, 2024, minus the \$31.98 per late fee that Plaintiffs' expert Andrew Schwarz
 7 calculated in *Munguia-Brown* as the average cost to Equity per late fee of collecting late rent during
 8 that class period, or credits to their tenant accounts based on the same formula for Class Members who
 9 had been charged but not paid the Standard Late Fee. Dardarian Decl. ¶¶ 36-37.

10 III. SUMMARY OF PROPOSED SETTLEMENT

11 A. The Class

12 The Court Certified two classes in this case. The **Standard Late Fee Class** is defined as:

13 All Equity Residential tenants in California who were charged one or more late fee(s)
 14 under Equity Residential's standard late fee provision: 5% of the outstanding balance
 15 owed (capped at 5% of the total amount of monthly recurring charges) or \$50, whichever
 is greater, from September 3, 2010 through October 28, 2022. *Id.* ¶¶ 39-40.³

16 The **Woodland Park Preexisting Lease Class** is defined as:

17 All Equity Residential tenants in the Woodland Park Property from December 1, 2011
 18 until Defendant sold the property in February 2016 who were charged one or more late
 19 fee(s) of \$50 under Equity Residential's policy of charging a flat \$50 late fee to tenants
 on pre-existing non-EQR leases. *Id.* ¶ 41.

20 The restitution period for the Standard Late Fee Class was cut off on March 25, 2023, which is
 21 75 days before the start of trial. *Id.* ¶ 43. For the purposes of this settlement and by agreement of the
 22 Parties, the Plaintiffs move the Court to extend the Standard Late Fee Class's recovery period to April
 23 30, 2024, because Equity stopped charging the Standard Late Fee on May 1, 2024.⁴ *Id.*

24 B. Class Monetary Relief

25 Equity has agreed to pay \$22,707,238.38 in restitution to the nearly 200,000 Class Members,
 26 _____

27 ³ The Parties stipulated in September 2022 to limit the Standard Late Fee class membership period to
 28 October 28, 2022, based on the then-scheduled trial date. Dardarian Decl. ¶ 42.

⁴ Plaintiffs have previously calculated net restitution through April 2024. *Id.* ¶ 45.

1 reasonable attorneys' fees and costs of \$17,227,761.62, and service award payments of \$25,000 for
2 each of the five class representatives (totaling \$125,000). Settlement ¶ 36. The Settlement
3 Administrator will automatically distribute funds to the Class Members without any need to submit a
4 claim form or supporting documentation. Each Class Member will receive around 87% of the
5 restitution owed to them as determined by Plaintiffs' experts, who calculated restitution as the amount
6 of the Standard Late Fees or Woodland Park \$50 Late Fees paid by that Class Member, according to
7 Equity's tenant-ledger data, minus Equity's cost-per-late-fee. Dardarian Decl. ¶ 48. Because late fees
8 were assessed based on tenancies, which may include multiple residents, restitution will be divided
9 evenly among the residents that are part of that tenancy. Settlement ¶ 37.

10 In addition to restitution, Equity has agreed to credit accounts for Class Members who were
11 charged a Standard Late Fee or Woodland Park \$50 Late Fee on their account balance but who did not
12 pay the fee before April 30, 2024. *Id.* ¶ 41. Equity will credit these Class Members with the net
13 amount of the fee minus \$22.51 for any late fee charged prior to May 1, 2022 and \$31.98 for any late
14 fee charged on or after May 1, 2022. *Id.* These numbers are based on Plaintiffs' expert's calculation
15 of Equity's average cost of collecting late rent for these two time periods. Dardarian Decl. ¶ 53.
16 Equity began this process after Plaintiffs won declaratory relief invalidating the late fees. *Id.* The
17 Settlement memorializes these credits and ensures their completion by 42 days after the effective date.
18 The credits, which total approximately \$2,876,933, are **separate from** the \$22,707,238.38 Equity has
19 agreed to pay for restitution, and Equity has nearly completed the process of issuing these credits,
20 based on its reasonable best efforts. Dardarian Decl. ¶¶ 52-53.

21 Additionally, Equity will pay for Settlement Administration separately, which will cost no
22 more than \$300,000. Dardarian Decl. ¶ 56. Class Counsel has also secured additional valuable
23 benefits to the class outside of the Settlement Agreement. After the Plaintiffs won declaratory relief in
24 April 2024, Equity ceased charging its Standard Late Fee. *Id.* ¶ 55. This change was a direct result of
25 Plaintiffs' efforts in this case and represents a savings to Class Members of approximately \$5.8 million
26 to date, plus at least an additional \$9.3 million of value going forward. *Id.*⁵

27 _____
28 ⁵ In support of their motion for attorneys' fees, Plaintiffs will submit a declaration with an updated

1 In sum, the value Plaintiffs have won for the Classes from their litigation and this settlement is
 2 over \$58.36 million to date including the \$40.06 million spelled out in the Settlement, credits to Class
 3 Members' accounts, the value of the settlement administration, and value of Equity's cessation of its
 4 unlawful fee. *Id.* ¶ 57.

5 **C. Release of Class Claims**

6 In exchange for the monetary relief proposed in the Settlement, the Plaintiffs and Class
 7 Members agree to release all known and unknown claims (including a related Section 1542 waiver) up
 8 to the Notice Date that were or could have been asserted in this Action that arise out of or are related to
 9 Equity Residential charging or collecting the Standard Late Fee or Woodland Park \$50 Late Fee
 10 (except to the extent they are at issue in any unlawful detainer action). Settlement ¶¶ 20-23. The
 11 released claims are limited to those in the operative complaint, aside from an extension of the class
 12 relief period to April 30, 2024. No other cases are affected by the release in this settlement. Dardarian
 13 Decl. ¶ 60; Settlement Guidelines ¶ 4.

14 **D. Class Notice and Settlement Administration Procedures**

15 Equity has retained or will shortly retain CPT Group to administer the settlement after
 16 soliciting and comparing five total competing bids. *See* Dardarian Decl. ¶ 61.⁶ Class Counsel has
 17 worked with CPT Group in eight other cases in the last two years. *Id.*

18 The Parties' negotiated Settlement Agreement describes the notice plan and attaches the
 19 proposed long-form, email, and post-card notices. Settlement § VI; & Exs. 3 & 4. To summarize,
 20 prior to the Preliminary Approval Hearing, Class Counsel will provide the estimated amount of each
 21 Class Member's award based on the Plaintiffs' experts' restitution calculations through April 30, 2024,
 22 after applying a 13% discount to each resident's restitution amount, as well as the estimated amount of
 23 credits that have been or will be applied to each Class Member's associated tenant account. *Id.* ¶ 54.
 24 Within ten days of preliminary approval, Equity will provide updated Class lists, which shall include
 25 the Class Member's name, ResidentID, and updated mailing addresses, e-mail addresses, and last

26 _____
 27 estimate of the value of the economic harm avoided by Equity's ceasing the Standard Late Fee.

28 ⁶ CPT Group's information security practices are described in their curriculum vitae. *See* Dardarian
 Decl. Ex. L at 19-25; Settlement Guidelines ¶ 2.

1 known phone numbers (to the extent such information is in Equity’s existing records). *Id.* ¶ 53.

2 Within twenty-eight days of Preliminary Approval, the Settlement Administrator will
 3 disseminate e-mail notice to Class Members whose email addresses Equity has available in its tenant
 4 data, updated through an industry-standard email change of address database. *Id.* ¶ 45; Exs. 3 & 4.
 5 The email notice will provide a summary of the Settlement, the estimated amount of the Class
 6 Member’s restitution award, information regarding any credits that have been or will be applied to
 7 Class Member accounts, and a link to the long-form notice and the Settlement website to be
 8 maintained by the Settlement Administrator.⁷ *Id.* Ex. 3 & 4. For Class Members who have no e-mail
 9 address, the Settlement Administrator will send via U.S. Mail the postcard notice to the Class
 10 Member’s mailing address in Equity’s tenant records, after any updating based on the National Change
 11 of Address database. *Id.* ¶ 56. The Settlement Administrator will mail post-card notice to any Class
 12 Member whose email is returned as undeliverable. The Administrator will conduct skip tracing to find
 13 addresses for any Class Member who does not have an email or mailing address in Equity’s tenant
 14 records, and for any Class Member whose post-card notice is returned as undeliverable. *Id.* ¶¶ 56-57.

15 Class Members will have forty-five days from notice issuance to submit an objection to the
 16 Court, whether in person, via mail, or electronically. *See* Settlement ¶ 85; *see generally* Settlement
 17 Guidance ¶¶ 4-5. Although Class Members already had opportunities to opt out of the classes when
 18 they were first certified and when the Standard Late Fee Class definition was extended in 2020, Class
 19 Members who are receiving restitution will have forty-five days to opt out.⁸ Settlement ¶ 88-89;
 20 Dardarian Decl. ¶ 68. Class Members cannot opt out of receiving account credits. *Id.*

21 Plaintiffs will file their motions for attorneys’ fees and costs and class representative service
 22 awards at least 35 days before the deadline for objections. *See* Settlement Guidance ¶ 9.

23 **E. Class Action Fairness Act**

24 CAFA Notice is required here and will be given by the Settlement Administrator within ten
 25 _____

26 ⁷ The Settlement-specific website will contain key documents for Class Members to review, including
 27 the Complaint, the Settlement Agreement, Preliminary Approval briefing and Order. *See* Settlement ¶
 49.

28 ⁸ If Class Members opt out, their restitution will be redistributed on a pro-rata basis to remaining Class
 Members. Settlement ¶ 37.

1 days of Plaintiffs' filing of the instant motion. *See* Settlement ¶ 44 (citing 28 U.S.C. § 1715);
2 Settlement Guidance ¶ 10. No other substantive requirements of CAFA are relevant here.

3 **F. Unclaimed Funds**

4 Any Class Member award amount remaining after uncashed checks have gone stale will be
5 transferred to the state of California's Unclaimed Property program, which will permit Class Members
6 to claim those funds at any time. *See* Settlement ¶¶ 40, 43(e); *see also* Settlement Guidance ¶ 1.

7 **G. Class Representative Service Awards**

8 Subject to Court approval upon Plaintiffs' separate motion, Plaintiffs will request that a total of
9 \$125,000 be awarded in the amount of \$25,000 to each of the five named Plaintiffs in recognition of
10 the time and effort they expended on behalf of the Class. This amount is separate from and will not be
11 paid out of Class restitution. Settlement ¶ 62; Dardarian Decl. ¶ 71.

12 **H. Reasonable Attorneys' Fees, Expenses and Costs.**

13 Pursuant to Federal Rule of Civil Procedure 23(h), Plaintiffs will move separately for an award
14 of reasonable attorneys' fees, expenses, and costs in an amount not to exceed \$17,227,761.62.
15 Settlement ¶ 58; Dardarian Decl. ¶ 73; *see also* Settlement Guidance ¶ 6.

16 **IV. ARGUMENT**

17 Settlement approval involves "a two-step process" in which the Court "first determines whether
18 class action settlement deserves preliminary approval and then, after notice is given to class members,
19 whether final approval is warranted." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1121-22
20 (N.D. Cal. 2016); *see also* Manual for Complex Litigation (Fourth) §§ 21.632-634 (2004). To grant
21 preliminary approval, the Court must determine that the settlement is fair, reasonable, and adequate.
22 Fed. R. Civ. P. 23(e)(2), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025-26 (9th Cir. 1998). Where a
23 court previously certified classes it, "need not find anew that the settlement class[es] meet[] the
24 certification requirements." *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 974 (E.D. Cal.
25 2012). Here the Court twice previously certified two classes, but preliminary approval will require the
26 Court to extend the class recovery period for the Standard Late Fee Class.

1 **A. The Standard Late Fee Class Period Should Be Extended to Include Restitution Through**
2 **April 30, 2024.**

3 “In order for the Court to modify [a] Class Certification Order, the modified class must meet
4 the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a),” as well as the
5 requirements for certification under Rule 23(b). *Lyon v. U.S. Immigration & Customs Enf’t*, 308
6 F.R.D. 203, 210-11 (N.D. Cal. 2015). Under Rule 23(b)(3), class certification is appropriate if (1) the
7 questions of law or fact common to class members predominate over any questions affecting only
8 individual members, and (2) a class action is superior to other available methods for fairly and
9 efficiently adjudicating the controversy.

10 On October 23, 2017, the Court certified the “Standard Late Fee Class,” which included all
11 tenants charged the Standard Late Fee through the date of class certification. ECF No. 91. In so
12 doing, the Court concluded “that the common questions regarding Equity’s liability and right to offset
13 the potential restitution of late fee charges predominate over questions of individual class members
14 under Section 1671(d) and the attendant Section 17200 analysis.” *Id.* On October 25, 2021, because
15 Equity continued to impose its Standard Late Fee, the Court granted Plaintiffs’ motions to file a third
16 amended complaint and modify the class certification order to extend the Standard Late Fee class
17 definition to 75 days before trial. ECF No. 315 at 5. In its order, the Court found that the “extension
18 for compensation due to the continued implementation of the [late fee] policy does not change the
19 central theme of this case.” ECF No. 315 at 5. The Parties then stipulated to cutoff the class
20 membership period on October 28, 2022, based on the then-scheduled trial date. ECF No. 388 at 5. In
21 its post-trial orders, the Court limited restitution to the class period set by its class certification order,
22 resulting in a restitution cutoff date of March 25, 2023, the date 75 days before the June 8, 2023
23 commencement of trial. ECF No. 578 at 3. For the Settlement, the Parties agreed to extend the class
24 recovery period and provide restitution through April 30, 2024, the date that Equity ceased charging
25 the Standard Late Fee, and to use the same method of calculating net restitution and the same 13%
26 discount that will apply to the rest of the class period. Dardarian Decl. ¶ 74.

27 Extending the Standard Late Fee Class recovery period to April 30, 2024 does not alter the
28 Court’s prior Rule 23 analysis. The extension does not change the number or identity of Standard Late

1 Fee Class Members but only extends the period for which they will be compensated for having been
2 charged and paid unlawful late fees. The modified class recovery period continues to satisfy Rule
3 23(a) requirements. The Class is still numerous, as it consists of the same nearly 200,000 Class
4 Members previously certified. Commonality is satisfied because the extension addresses Equity’s
5 continued use of the identical Standard Late Fee provision through to April 30, 2024; the central legal
6 determinations regarding Equity’s liability under Section 1671(d) and right to offset certain damages
7 remain common to all Class Members. Typicality is met because the named Plaintiffs’ claims continue
8 to arise from the same late fee provision and legal theory as all Class Members’ claims. Adequacy
9 remains satisfied as the Class Representatives and Class Counsel continue to have no conflicts with
10 Class Members and have vigorously prosecuted this action. Dardarian Decl. ¶¶ 76-79.

11 The proposed modification also continues to satisfy Rule 23(b)(3). Predominance is met
12 because the extension of the Standard Late Fee Class recovery period does not alter the common
13 questions of law and fact that the Court found to predominate. The extension does not introduce any
14 new individual issues—it merely allows existing Class Members to recover restitution for additional
15 payments of the same unlawful fee during a later time period. A class action remains the superior
16 method for adjudicating these claims, and an extension of the class recovery period avoids the need to
17 institute separate litigation to recover late fees charged during the period between March 26, 2023 and
18 April 30, 2024. Dardarian Decl. ¶¶ 80-81.

19 **B. The Settlement Is Fair, Reasonable, and Adequate and Should Be Approved.**

20 The Ninth Circuit has affirmed the “strong judicial policy that favors settlements, particularly
21 where complex class action litigation is concerned.” *Briseño v. Henderson*, 998 F.3d 1014, 1031 (9th
22 Cir. 2021) (internal quotations and citations omitted). Preliminary approval is appropriate if the
23 proposed settlement is “fair, reasonable, and adequate” under Rule 23(e)(2). *See In re Bluetooth*
24 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2021). Rule 23(e)(2) requires the Court to
25 consider whether (1) the class representatives and class counsel have adequately represented the class;
26 (2) the proposal was negotiated at arm’s length; (3) the relief provided for the class is adequate; and (4)
27 the proposal treats class members equitably relative to each other. In addition, under Ninth Circuit
28 caselaw, courts consider the following factors for preliminary approval:

1 [T]he strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration
 2 of further litigation; the risk of maintaining class action status throughout the trial; the
 3 amount offered in settlement; the extent of discovery completed and the stage of the
 4 proceedings; the experience and views of counsel; the presence of a governmental
 5 participant; and the reaction of the class members to the proposed settlement.⁹

6 *Id.*; see also *Briseño*, 998 F.3d at 1023 (holding that courts must apply the *Bluetooth* factors in
 7 evaluating post-class certification settlements under Rule 23(e)(2)).

8 **1. The Settlement Represents an Excellent Result for the Classes.**

9 “In determining whether the Settlement Agreement ‘falls within the range of possible
 10 approval,’ the Court must focus on ‘substantive fairness and adequacy’ and ‘consider [P]laintiffs’
 11 expected recovery balanced against the value of the settlement offer.’” *Uschold v. NSMG Shared*
 12 *Servs., LLC*, 333 F.R.D. 157, 171 (N.D. Cal. 2019) (quoting *In re Tableware Antitrust Litig.*, 484 F.
 13 Supp. 2d 1078, 1080 (N.D. Cal. 2007)). This analysis assesses whether “the relief provided for the
 14 class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the
 15 effectiveness of any proposed method of distributing relief to the class, including the method of
 16 processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including
 17 timing of payment, and (iv) any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ.
 18 P. 23(e)(2)(C). “[P]erhaps the most important factor” for preliminary approval is “plaintiffs’ expected
 19 recovery balanced against the value of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930,
 20 935 (N.D. Cal. 2016) (internal quotation omitted); accord Settlement Guidance ¶ 1(c).

21 The relief offered by the Settlement is outstanding: it provides 87% of the late-fee
 22 reimbursement that Plaintiffs sought for Class Members after trial. It also extends the Standard Late
 23 Fee Class period through April 30, 2024, reimbursing Class Members at the same 87% rate for net late
 24 fees Equity collected after the prior class recovery deadline and through the date that Equity stopped
 25 charging the Standard Late Fee. In their post-trial submissions, Plaintiffs calculated that the full
 26 restitution owed to the classes through March 25, 2023, based on the method of calculation sanctioned

27 _____
 28 ⁹ There is no government participant in the case, and Plaintiffs will address the reaction of class
 members in their motion for final approval of this settlement.

1 by the Court, totaled \$25,050,651.74 (comprising \$116,064.90 for the Woodland Park Class and
2 \$24,934,586.84 for the Standard Late Fee Class). ECF No. 580-1 at 3. Plaintiffs also noted that
3 ending the class period on March 25, 2023 deprived the Standard Late Fee Class of \$1,049,441.62 in
4 restitution for late fees overpaid through April 30, 2024. ECF No. 580-1 at 2 n.3.

5 The Settlement provides \$22,707,238.38 in total restitution, broken down as follows:
6 \$21,794,067.24 for late fees charged through March 25, 2023, and \$913,171.14 for the “gap” period
7 from March 26, 2023 through April 30, 2024. Dardarian Decl. ¶ 84. Notably, this gap-period
8 restitution would not have been recoverable through a Court judgment, as the Court already ruled that
9 Class restitution would be cut off on March 25, 2023. *Id.* Equity will also provide nearly three million
10 dollars in credits to class members. *Id.* ¶ 85.

11 This result is particularly remarkable considering the extensive time and resources and delay
12 that litigating an appeal of the Court’s judgment would have entailed. *Id.* ¶ 86. Equity has repeatedly
13 signaled its intent to appeal the Court’s final judgment to the Ninth Circuit. *Id.* This would likely
14 include, at least, appeals of the Court’s rulings on class certification, its summary judgment ruling
15 eliminating many of Equity’s affirmative defenses and cabining the categories of damages Equity
16 could claim against restitution, the Court’s post-trial ruling that Equity’s Late Fees violated California
17 law, and its adoption of Plaintiffs’ experts’ analysis of Equity’s costs of late rent collection for
18 determining Equity’s offset from class restitution. *Id.* ¶ 86. Equity likely would have pursued its
19 appeal to the Supreme Court of the United States. *Id.* Consistent with how vigorously Equity has
20 litigated this case, it has already petitioned the Ninth Circuit for interlocutory review of issues twice.
21 *Id.* ¶ 87. While Plaintiffs are confident that they would prevail on appeal, appellate litigation would
22 require significant additional attorneys’ fees and costs and would delay Class recovery for years. *Id.*

23 Funds will be allocated to Class Members such that they will receive 87% of the difference
24 between the late fee they paid and the offset cost that Plaintiffs’ expert calculated for the Class
25 Member’s late rent payment. Dardarian Decl. ¶ 82. The funds will also automatically be sent to all
26 Class Members without the need to make a claim, and there is no reversion to Defendants. *Id.* ¶ 47.
27 The average class member award is about \$116.59 and the highest award about \$8,545. *Id.* ¶ 88.

28 In exchange for the substantial reimbursement of net restitution owed, the Class Members are

1 releasing only their claims for relief relating to the Standard Late Fee or the Woodland Park \$50 Late
2 Fee that were or could have been brought in this action. *See* Settlement ¶ 21. The release complies
3 with Ninth Circuit precedent limiting a class release to claims that are certified for class treatment and
4 that are “based on the identical factual predicate” alleged in the operative complaint. *See, e.g., Hesse*
5 *v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2009); *Taylor v. W. Marine Prods., Inc.*, No. 3:13-cv-
6 04916-WHA, 2014 WL 4683926, at *13 (N.D. Cal. Sept. 19, 2014).

7 The Settlement’s benefits thus strongly weigh in favor of granting the motion for preliminary
8 approval. Considering the risks of an appeal, the immense additional time and expense that would be
9 incurred for additional litigation, and the loss of use of the restitution awards pending appeal, the
10 Settlement is an outstanding result that is in the Settlement Class’s best interests.

11 **2. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class,**
12 **and Their Experience and Views Support Approval.**

13 Rule 23(e)(2)(A) asks whether the plaintiffs and their counsel have adequately represented the
14 classes. As the Court found when it granted class certification, the Plaintiffs are adequate
15 representatives because they have no conflicts of interest with the Classes. ECF No. 91 at 9. They
16 have protected the Classes’ interests in securing nearly the full value of the late-fee reimbursement
17 sought by the lawsuit. *See Hanlon*, 150 F.3d at 1020; *Bluetooth*, 654 F.3d at 946. The Plaintiffs and
18 Class Counsel vigorously and diligently litigated the case for over a decade, including through trial and
19 significant post-trial briefing, and participated in multiple mediation attempts before reaching this
20 settlement.

21 Moreover, “[g]reat weight’ is accorded to the recommendation of counsel, who are most
22 closely acquainted with the facts of the underlying litigation.” *Nat’l Rural Telecommunications Coop.*
23 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (citation omitted). “[P]arties represented by
24 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
25 party’s expected outcome in litigation.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 967 (9th Cir.
26 2009) (citation omitted). Class Counsel have extensive experience litigating class actions and are
27 uniquely qualified to evaluate the merits of the Settlement based on litigating this case through trial
28 and on multiple prior mediation sessions. As the Court noted in its order preliminarily approving the

1 settlement in the related *Van Cott* case, Class Counsel has “significant knowledge and experience”
 2 gained from over 11 years of litigating this case. *Van Cott* Prelim. Approval Order, ECF No. 25.
 3 Based on that unmatched experience, Class Counsel believe that the Settlement is fair, reasonable, and
 4 adequate – and would not have accepted it had they thought they could achieve a better outcome by
 5 litigating the inevitable appeal. *See* Dardarian Decl. ¶¶ 89-92.

6 **3. The Settlement Was Reached at Arm’s Length, After Long-Standing and Highly-**
 7 **Contested Litigation and Multiple Attempts at Settlement, and With the**
 8 **Necessary Information to Value the Claims.**

9 Rule 23(e)(2)(B) assesses whether the proposed settlement was reached at arm’s length, rather
 10 than in the absence of information necessary to illuminate the value of the claims. *See Hanlon*, 150
 11 F.3d at 1027. The Court may apply a presumption of fairness where, as here, the settlement results
 12 from arms-length negotiation by competent counsel. *See Stemple v. RingCentral, Inc.*, No. 18-CV-
 13 04909-LB, 2019 WL 3842091, at *5 (N.D. Cal. Aug. 15, 2019); *Nat’l Rural Telecommunications*
 14 *Coop.*, 221 F.R.D. at 528 (“A settlement following sufficient discovery and genuine arms-length
 15 negotiation is presumed fair.”).

16 The long history of this case demonstrates the highly adversarial nature of the litigation and
 17 lack of collusion in the settlement process. *See* Section II, *supra*; *see also Rodriguez*, 563 F.3d at 965
 18 (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated
 19 resolution...”). Because the Parties reached this Settlement after two class certifications and a rejected
 20 decertification motion, it is not subject to the heightened scrutiny of pre-certification suits. *Cf.*
 21 *Bluetooth*, 654 F. 3d at 946-47. However, it would easily withstand that scrutiny. The Ninth Circuit
 22 has identified three “subtle signs” that may indicate collusion.

23 (1) when counsel receive a disproportionate distribution of the settlement, or when the
 24 class receives no monetary distribution but class counsel are amply rewarded; (2) when
 25 the parties negotiate a ‘clear sailing’ arrangement providing for the payment of
 attorneys’ fees separate and apart from class funds . . . ; and (3) when the parties
 arrange for fees not awarded to revert to defendants rather than be added to the class
 fund.

26 *Id.* (citation omitted). The mere presence of *Bluetooth* indicia does not foreclose settlement approval.
 27 Where “the fee award is clearly reasonable as viewed through the appropriate application of either the
 28 lodestar or percentage-of-recovery methods, the chance of collusion narrows to a slim possibility.”

1 *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 925 (9th Cir. 2014) (vacated after appeal dismissed).
2 Moreover, “it is sufficient that a district court recognizes and balances potentially collusive provisions .
3 . . . against the other terms of the settlement agreement.” *Id.*

4 Here, the first of the *Bluetooth* indicia is not present. Classes will receive a significant
5 monetary distribution, credits to their accounts, as well as continued benefits from Equity’s cessation
6 of its Standard Late Fee. Class Counsel’s attorneys’ fee and cost recovery will not come out of the
7 class fund and in no way diminishes Class Members’ awards. Additionally, Class Counsel’s attorneys’
8 fee request represents approximately 29% of the full benefits won for the class and is not
9 disproportionate. Dardarian Decl. ¶ 102. The second *Bluetooth* indicium is present: the Settlement
10 contains a “clear sailing” provision. Settlement ¶ 58. However, this provision does not indicate
11 collusion. Class Counsel will move separately for attorneys’ fees, and will justify the amount sought
12 based on Class Counsel’s actual lodestar, for which Class Counsel will be taking a significant
13 deduction, despite the excellent results won for the class and the prolonged, complex, and difficult
14 litigation Class Counsel undertook. Dardarian Decl. ¶ 95. The Classes will receive nearly full
15 restitution of their late fees regardless of the outcome of the attorneys’ fee request. When the clear
16 sailing provision is viewed within the context of the Settlement as a whole, and given the fact that this
17 Settlement was reached after class certification, trial, and multiple attempts at mediation, it is obvious
18 that this provision is not collusive. The Settlement’s substantial benefits and the long, contentious
19 history of this litigation, show that Class Counsel’s interests did not “infect the negotiations.”
20 *Bluetooth*, 654 F.3d at 947. Finally, no Class Member awards will revert to Defendant but will instead
21 remain available for Class Members to claim through California’s Unclaimed Property program. *See*
22 Dardarian Decl. ¶¶ 50, 70.

23 Although the Parties negotiated this settlement without a mediator, they previously participated
24 in five mediation sessions with four different experienced mediators, including a post-trial mediation in
25 December 2024. These sessions did not result in a settlement, but the Parties continued to negotiate
26 until they reached a settlement shortly after Plaintiffs submitted their proposed restitution figures and
27 just before Plaintiffs submitted their proposed final judgment to the Court. *Id.* ¶ 93.

28 Because the Settlement was reached after over a decade of litigation and after trial, post-trial

1 briefing, multiple mediations, and full analysis of possible relief, Class Counsel had all information
2 necessary to value the claims and the benefit of reaching a settlement without further delay. *Id.* ¶ 94.

3 **4. The Settlement Treats Class Members Equitably Relative to Each Other.**

4 The Settlement does not provide preferential treatment to any subset of the Classes. All Class
5 Members will receive restitution of 87% of the value of the late fees they paid in the class period
6 minus Equity's actual cost per late fee. The Plaintiffs' restitution awards under the settlement will be
7 determined using the same methodology as that for all other Class Members. Equity has also applied
8 or will apply credits for unpaid late fees to Class Members and Plaintiffs using the same methodology
9 (the amount of the late fee charged, minus \$22.51 for any late fee charged prior to May 1, 2022 and
10 \$31.98 for any late fee charged on or after May 1, 2022). The differences between the method of
11 calculating restitution and credits are appropriate and equitable. The 13% discount to Class Members'
12 restitution reflects the risks of an appeal of a judgment awarding restitution, whereas Equity's
13 application of credits to tenant accounts in light of the Court's declaratory judgment could not be
14 undone on appeal. Additionally, although Class Members's restitution awards are subject to a 13%
15 discount, these awards reflect individualized offset calculations based on data about the cost of
16 collecting each of their late fees (meaning that Class Members who paid only slightly late will have
17 small offsets), while Class Members receiving credits have their offsets calculated using an average
18 cost-per-late-fee.

19 The Plaintiffs' proposed service awards do not make the Settlement inequitable. In the Ninth
20 Circuit, service awards are routinely granted and do not render class action settlements unfair or
21 unreasonable. *See Staton v. Boeing Co.*, 327 F.3d 938, 976 (9th Cir. 2003). The \$25,000 award per
22 class representative that Plaintiffs will seek here recognizes the considerable time and effort they
23 expended on behalf of the Classes, including more than a decade of litigation, sitting for depositions,
24 and testifying at trial against the current or former owner of their homes. Dardarian Decl. ¶ 71.
25 Plaintiffs will move separately for Court approval of these awards, which will not be paid from Class
26 restitution. *Id.* ¶ 73.

27 **5. Plaintiffs Are Entitled to Their Reasonable Attorneys' Fees and Costs.**

28 Plaintiffs' motion for attorneys' fees, expenses, and costs, to be filed at least 35 days before the

1 end of the class notice period, will seek \$17,227,761.62 in fees and costs and will detail why this
2 amount is reasonable. Plaintiffs will seek attorneys' fees under the lodestar method as authorized by
3 California Civil Code section 1021.5, which applies to cases conferring a significant benefit on behalf
4 of the public. *See Bluetooth*, 654 F.3d at 941; *Hanlon*, 150 F.3d at 1029; *see generally Indep. Living*
5 *Ctr. of S. Cal., Inc. v. Kent*, 909 F.3d 272, 283 (9th Cir. 2018). Plaintiffs are also entitled to and will
6 seek their lodestar attorneys' fees and costs based on Equity's Standard Lease.

7 The requested amounts for attorneys' fees and costs are reasonable based on Class Counsel's
8 lodestar and their litigation costs to date. While Class Counsel are not requesting a multiplier, a
9 multiplier would be justified given the outstanding result achieved for the class, the difficulty and
10 complexity of the litigation, the preclusion of other employment, and the significant contingency risks
11 assumed by counsel. Dardarian Decl. ¶ 97. Class Counsel estimate that they have spent more than
12 27,309.85 hours in litigating this case to date, incurring approximately \$22,096,398.50 in fees,
13 \$349,000 in non-expert costs. Counsel will spend additional time and costs through the Fairness
14 Hearing. *Id.* ¶¶ 98-101. These costs figures do not include expert costs Class Counsel have expended
15 to date, which amount to \$1.7 million. *Id.* ¶ 99. Plaintiffs' attorneys' fee request represents an
16 approximately a 23.6% deduction from their lodestar to date. *Id.* ¶ 100.

17 The Ninth Circuit "do[es] not require courts employing the lodestar method to perform a
18 'crosscheck' using the percentage method." *In re Hyundai & Kia Econ. Litig.*, 926 F.3d 539, 571 (9th
19 Cir. 2019) (citations omitted). However, a cross-check here further supports Plaintiffs' request for
20 attorneys' fees. Accounting for the value of restitution under the Settlement, the agreed-upon amounts
21 of service awards and attorneys' fees and costs, the additional substantial benefits to the Standard Late
22 Fee Class from the declaratory relief, which led to the cessation of the unlawful fee in April 2024, the
23 additional value of the credits to Class Member accounts, and the settlement administration fees for
24 which Equity is paying separately, Plaintiffs' request for fees amounts to 29% of the total value of the
25 constructive common fund. Dardarian Decl. ¶ 102. *See, e.g., Staton*, 327 F.3d at 974 (value of
26 injunctive relief can be considered as part of common fund); *Nevarez v. Forty Niners Football Co.,*
27 *LLC*, 474 F. Supp. 3d 1041, 1052 (N.D. Cal. 2020) (same).

28 Plaintiffs' request is in the range of the benchmark 25% that courts in the Ninth Circuit apply to

1 common fund cases. *See Bluetooth*, 654 F.3d at 942. The benchmark is not rigid, but rather “a starting
 2 point for analysis.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). An upward
 3 departure may be justified by a non-exhaustive list of factors, including the results achieved for the
 4 class, the risk class counsel undertook, the benefits achieved beyond the cash settlement fund, and “the
 5 burdens class counsel experienced while litigating the case.” *See In re Optical Disk Drive Prods.*
 6 *Antitrust Litig.*, 959 F.3d 922, 930 (9th Cir. 2020). The record here justifies a higher percentage,
 7 particularly because this case settled after trial, Class Counsel shouldered considerable costs and risks
 8 of the case by litigating on a contingency basis for over a decade, won an outstanding result for the
 9 class, and benefited the public by winning a ruling that a percentage-based late fee violated California
 10 law. Dardarian Decl. ¶ 103; *see, e.g., Carlin v. Dairy Am., Inc.*, 380 F. Supp. 3d 998, 1023 (E.D. Cal.
 11 2019) (attorneys’ fees of 33⅓% of \$40,000,000 common fund were reasonable “given the complexity
 12 of [the] case, its lengthy procedural history, and the extraordinary results achieved for the class.”);
 13 *Kanawi v. Bechtel Corp.*, No. 3:06-cv-05566-CRB, 2011 WL 782244, at *1 (N.D. Cal. Mar. 1, 2011)
 14 (awarding 30% of \$18.5 million fund); *In re Heritage Bond Litig.*, No. 2:02-ML-1475 DT, 2005 WL
 15 1594403, at *18 (C.D. Cal. June 10, 2005) (33 ⅓% of \$27,783,000 common fund awarded).

16 **6. The Settlement Is an Especially Excellent Result Compared to Similar Outcomes.**

17 **Exhibit C** to the Dardarian Declaration summarizes comparable class settlements,
 18 underscoring the excellent result provided for Class Members here. *See* Settlement Guidance ¶ 11.

19 The Settlement here compares favorably to the settlement preliminarily approved in the related
 20 *Van Cott* case. *See* Dardarian Decl. Exs. D (*Van Cott* Prelim. Approval Order, ECF No. 25). That
 21 case resulted in \$2,272,224 in restitution to Settlement Class Members who were first charged and paid
 22 the Standard Late Fee between October 29, 2022 and April 30, 2024, as well as \$662,396 in account
 23 credits to reduce late fees that Class Members were charged but had not paid as of April 3, 2025, and
 24 which remained as debts on their tenant ledgers. These amounts represented the full value of late-fee
 25 reimbursements sought in that lawsuit. Dardarian Decl. Ex. F, Dardarian Decl. in Supp. of Final
 26 Approval Mot., *Van Cott v. Equity Residential, et al.*, No. 4:25-cv-02358-JSW (N.D. Cal. Nov. 10,
 27 2025), ECF No. 31-1). The Court has found that the *Van Cott* settlement fell “within the range of
 28 possible approval as fair, adequate, and reasonable to all potential Settlement Class Members.” *Van*

1 *Cott* Prelim. Approval Order, ECF No. 25 at 5. Although Class Members here will receive a slightly
2 lower percentage of the total restitution here than the full value awarded in *Van Cott*, that case was not
3 litigated through trial and therefore does not feature the same appellate risk and risk of delay present
4 here. The Court also approved the class notice and notice procedures in that case, which are nearly
5 identical to those proposed here, and should similarly be approved. *See id.* ¶¶ 9-13.

6 Early this year, the Honorable Edward M. Chen in this District granted final approval of a class
7 action settlement in a case that challenged landlord Greystar’s \$100 late fee under California Civil
8 Code section 1671(d). *See* Dardarian Decl. Exs. C (Table) & F (*Zeff* Final Approval Order).¹⁰ The
9 settlement consisted of a \$2,467,238.40 settlement fund for 21,898 class members, with a gross
10 recovery per class member of \$112.67. *See* Dardarian Decl. Ex. G (Pl.’s Suppl. Br. in Supp. of Final
11 Approval Mot., *Zeff*, No. 3:20-cv-07122-EMC (N.D. Cal. Dec. 16, 2024), ECF No. 153). After
12 attorneys’ fees and costs, the service award, and settlement administration expenses, the class
13 recovered \$1,742,429 of the Settlement, or approximately \$79.57 per class member; counsel estimated
14 the class’s net recovery to represent approximately 50% of the total late fees collected by Greystar.
15 *See* Dardarian Decl. Ex. H (Pl.’s Mem. of P. and A. in Supp. of Mot. for Prelim. Approval of Class
16 Action Settlement Thereof, *Zeff*, No. 3:20-cv-07122-EMC (N.D. Cal. May 9, 2024), ECF No. 131 at
17 13). The class also secured non-monetary relief in the form of Greystar recommending to its client
18 property-owners that they include late fees of no more than \$50 in their leases (Greystar itself did not
19 control the late fees in the leases). *See id.*

20 Judge Chen found that settlement to be “fair, reasonable, and adequate in all respects.” *See*
21 Dardarian Decl. Ex. F at 1, 3-4 (*Zeff* Final Approval Order). Judge Chen also approved class notice,
22 which, like here, consisted of email notices linking to a settlement website. *See id.* at 2. The Court
23 should likewise preliminarily approve the Settlement here, as it secures a larger percentage of the late
24 fee exposure and each of the terms compares favorably to the settlement in *Zeff*.

25 The Settlement also compares favorably to two other recent Section 1671(d) settlements. First,
26

27
28 ¹⁰ One of Class Counsel’s firms was Settlement Class Counsel in that matter. *See* Decl. of Craig
Nicholas in Supp. of Mot. for Prelim. Approval, *Van Cott v. Equity Residential, et al.*, No. 4:25-cv-
02358-JSW (N.D. Cal. June 27, 2025) (“Nicholas Decl.”) ECF 16-3 ¶ 15.

1 on January 5, 2024 in *Seltzer v. Palmer, et al.*, a case challenging a residential landlord’s policy and
2 practice of charging a fee of \$75 for the late payment of rent under California Civil Code Section
3 1671(d), the Honorable Stuart M. Rice of the Los Angeles County Superior Court granted final
4 approval to a class action settlement which provided \$1,050,357.04 to 24,706 class members
5 (approximately \$42.51 per class member), \$583,333.33 in attorney’s fees and costs (33% of the gross
6 settlement fund), a \$5,000 service award, and \$131,797.43 in administration expenses. *See* Dardarian
7 Decl. Exs. C (Table) & I (Final Approval Order, *Seltzer v. Palmer, et al.*, No. 18STCV07828 (L.A.
8 Cnty. Super. Ct. Jan. 5, 2024)). Counsel estimated that the maximum recovery for the class would be
9 \$4,470,615.46, such that class members ultimately recovered approximately 25% of the total exposure.
10 *See id.* Ex. J (Mem. of P. and A. in Supp. of Mot. for Prelim. Approval, *Seltzer v. Palmer, et al.*, No.
11 18STCV07828 (L.A. Cnty. Super. Ct. Oct. 28, 2022)).

12 Second, in *McCumber*,¹¹ a case challenging landlord Invitation Homes’ excessive late fees, a
13 Texas District Court approved a settlement on behalf of 150,690 class members over 18 objections,
14 where the gross settlement fund totaled \$7.5 million, including \$1,875,000 in debt relief
15 (approximately \$12.44 per class member), \$2.25 million in attorneys’ fees (30% of the total recovery),
16 up to \$30,000 in litigation costs, and \$5,000 each to the 11 named plaintiffs. *See id.* Exs. C (Table) &
17 K (Final Approval Order, *McCumber, et al. v. Invitation Homes, Inc.*, No. 3:21-cv-02194-B (N.D. Tex.
18 July 30, 2024), ECF No. 125). Class members recovered approximately \$32.92 each (\$47.80 gross).
19 Counsel estimated the total exposure to be approximately \$84 million before any offset, so the class’s
20 recovery was approximately 6% of the total potential recovery. *See* Nicholas Decl. ¶ 15.

21 The settlement here secures a much higher percentage of late fee exposure available in contrast
22 to the more-limited relief in *Zeff, Seltzer* and *McCumber*. The Court can confidently grant preliminary
23 approval to this excellent result.

24 **7. The Settlement Allows Class Members Another Opportunity to Opt-Out.**

25 Where class members have already received notice and an opportunity to opt-out, due process
26 does not require that they receive another opportunity to opt out of a class-wide settlement, and the
27

28 ¹¹ Nicholas & Tomasevic is also Settlement Class Counsel in *McCumber*. Nicholas Decl. ¶ 15.

1 Court has discretion to approve settlement without a second opt out. *See Low v. Trump Univ., LLC*,
2 881 F.3d 1111, 1114 (9th Cir. 2018). Here, although Class Members already had opportunities to opt
3 out after class certification, the Settlement allows Class Members who are receiving restitution the
4 ability to exclude themselves. Class Members who have or will receive credits to their accounts are
5 not allowed to opt out, because the credit process already began prior to this Settlement as part of
6 Equity’s changes in policy resulting from the Court’s declaration that the Standard Late Fee was null
7 and void. ECF No. 578 at 1-2 (noting that injunctive was moot in part because Equity had already
8 begun reversing late fee charges). The Settlement remains fair, reasonable, and adequate with these
9 opt-out provisions, which allow Class Members the opportunity to bring a separate case for restitution
10 if they are unsatisfied with the Settlement.

11 **C. The Proposed Notice Satisfies Due Process and Should Be Approved.**

12 Rule 23(c)(2)(B) requires that notice of a settlement be “the best notice that is practicable under
13 the circumstances, including individual notice to all members who can be identified through reasonable
14 effort.” Under Rule 23(e)(1), the “court must direct notice in a reasonable manner to all class members
15 who would be bound by the proposal.” Due process requires that notice be reasonably calculated
16 under the circumstances to apprise interested parties of the pendency of the action and afford them an
17 opportunity to present their objections. *See Mullane v. Cen. Hanover Bank & Tr. Co.*, 339 U.S. 306,
18 314 (1950). Notice is satisfactory “if it ‘generally describes the terms of the settlement in sufficient
19 detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’”
20 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citation omitted).

21 The proposed notice here is the “best notice . . . practicable under the circumstances,” (Fed. R.
22 Civ. P. 23(c)(2)(B)), is “reasonable,” (Fed. R. Civ. P. 23(e)(1)), and is consistent with the Northern
23 District of California’s Procedural Guidance for Class Action Settlements as well as the class notice
24 authorized by this Court on multiple occasions earlier in this case and the notice in the *Van Cott* case.
25 The content of the proposed Class Notice documents, including notice of Plaintiffs’ intended motions
26 for attorneys’ fees and costs and class representative service awards, is “reasonably calculated, under
27 all the circumstances, to apprise interested parties of the pendency of the action and afford them an
28 opportunity to present their objections.” *Mullane*, 339 U.S. at 314; accord Fed. R. Civ. P. 23(h)(1).

D. The Court Should Approve the Proposed Schedule.

Once a court grants preliminary approval and notice is provided, it conducts a “fairness hearing,” at which interested parties have an opportunity to be heard, and the court determines if the settlement is “fundamentally fair, adequate, and reasonable.” *See Officers for Justice v. Civ. Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Parties propose the following schedule:

Case Event	Date
Deadline for Equity to provide Class List to Settlement Administrator and Class Counsel	Ten (10) days after preliminary approval is granted
Deadline for Class Counsel to provide estimated Class Member payments to parties	Prior to preliminary approval hearing
Deadline for Administrator to Disseminate Class Notice	Twenty-eight (28) days after preliminary approval is granted
Deadline for Plaintiffs to file Motions for Attorneys’ Fees, Expenses, and Costs, and for Service Awards to Class Representatives	Thirty-eight (38) days after preliminary approval is granted
Deadline for Class Members to Object or Opt-Out of the Settlement	Forty-five (45) days after notice is issued
Deadline for Plaintiff to file Motion for Final Approval of Settlement	Twelve (12) weeks after preliminary approval is granted
Fairness Hearing	Eighteen (18) weeks after preliminary approval is granted

V. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court: (i) preliminarily approve the settlement; (ii) extend the Standard Late Fee Class’s recovery period to April 30, 2024; (iii) approve the proposed form of the class notice and the notice distribution plan; (iv) set a fairness hearing approximately eighteen weeks after the date of preliminary approval; and (v) stay all proceedings pending the fairness hearing.

Dated: December 31, 2025

Respectfully submitted,

DARDARIAN HO KAN & LEE

/s/ Linda M. Dardarian

Linda M. Dardarian

Attorneys for Plaintiffs and the Certified Classes