

EXHIBIT 5

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABDUL NEVAREZ, et al.,
Plaintiffs,
v.
FORTY NINERS FOOTBALL
COMPANY, LLC, et al.,
Defendants.

Case No. 16-CV-07013-LHK

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; GRANTING
MOTION FOR SERVICE AWARDS;
AND GRANTING MOTION FOR
ATTORNEY’S FEES, COSTS, AND
EXPENSES**

Re: Dkt. No. 394, 395, 396, 408

Before the Court are Plaintiffs’ (1) motion for final approval of a class action settlement, ECF No. 395; (2) motion for service awards, ECF No. 394; and (3) motion for reasonable attorney’s fees, costs, and expenses, ECF No. 408.¹ Having considered the parties’ briefs, the relevant law, and the record in this case, the Court GRANTS Plaintiffs’ motion for final approval, Plaintiffs’ motion for service awards, and Plaintiffs’ motion for attorney’s fees, as set forth below. The Court considers each motion in turn.

¹ Plaintiffs originally filed the motion for attorney’s fees on May 25, 2020, ECF No. 396, but Plaintiffs refiled their motion on June 25, 2020 to correct a number of errata, ECF No. 408.

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I. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs have moved the Court for an order granting final approval of the class action Settlement Agreement and Release of Claims (“Settlement Agreement”), ECF No. 395, which was filed with the Court at ECF Nos. 375-2; 391. The Court preliminarily approved the Settlement Agreement in this action by order entered on March 9, 2020. *See* ECF No. 392 (“Preliminary Approval Order”). On July 16, 2020 the Court held a Final Approval hearing to consider final approval of the Settlement Agreement and to determine, among other things, whether the settlement is fair, reasonable, and adequate. Having considered the motions, the oral arguments, the relevant law, and the record in this case, the Court GRANTS the Plaintiffs’ motion for final approval of the class action settlement as follows:

1. All terms used herein, unless otherwise defined, shall have the same meanings as set forth in the Settlement Agreement.

2. The Court finds that the Parties complied with the Notice procedures set forth in the Court’s Preliminary Approval Order and Settlement Agreement by disseminating the Court-approved long-form Notice (ECF No. 390-3) and Claim Form (ECF No. 390-3) to Class Members by mail and email; providing the long-form Notice to the agreed-upon membership and/or service organizations for individuals with mobility disabilities; posting the Court-approved short-form Notice (ECF No. 390-1) at conspicuous locations throughout Levi’s Stadium and on websites controlled by Defendants; and creating and maintaining a Settlement website, email address, and toll-free telephone number. The Court further finds that these methods:

a. constituted the best practicable notice to members of the Plaintiff Classes under the circumstances of the Action;

b. constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and

c. constituted notice that met all applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due Process Clause of the United States Constitution,

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and any other applicable law, as well as this District’s Procedural Guidance for Class Action Settlements.

3. The Court finds that the Claim Form distributed to the Damages Class met all applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due Process Clause of the United States Constitution, and any other applicable law. The Court further finds that the Claims Process set forth in the Settlement Agreement provides Damages Class Members with a full and fair opportunity to submit claims for damages, an effective method of distributing monetary relief to the Damages Class, and provides for an equitable plan of allocation of money damages between Damages Class Members. *See* Rule 23(e)(2)(A)(ii), (D).

4. On March 9, 2020, the Court preliminarily certified the following classes for settlement purposes under Fed. R. Civ. P. 23(a) and (b)(3):

Injunctive Relief Class: All persons with mobility disabilities who use wheelchairs, scooters, or other mobility aids who will attempt to purchase accessible seating for a public event at Levi’s Stadium and who will be denied equal access to the Stadium’s facilities, services, accessible seating, parking, amenities, and privileges, including ticketing, from December 7, 2013 through the date of the Court’s Order Granting Preliminary Approval of Class Action Settlement.

Companion Injunctive Relief Class: All persons who are companions of persons with mobility disabilities who use wheelchairs, scooters or other mobility aids and who have used or will use companion seating for public events located at Levi’s Stadium from December 7, 2013 through the date of the Court’s Order Granting Preliminary Approval of Class Action Settlement.

Damages Class: All persons with mobility disabilities who use wheelchairs, scooters or other mobility aids who have purchased, attempted to purchase, or for whom third parties purchased accessible seating and who have been denied equal access to Levi’s Stadium’s facilities, services, accessible seating, parking, amenities, and privileges at an event controlled by the Forty Niners Football Company, LLC; Forty Niners SC Stadium Company, LLC; or Forty Niners Stadium Management Company, LLC, from April 13, 2015 through the date of the Court’s Order Granting Preliminary Approval of Class Action Settlement.

See ECF No. 392.

5. The Court finds that the Plaintiff Classes continue to meet the requirements for

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class certification under Federal Rule of Civil Procedure 23 and all other applicable laws and rules.

6. The Injunctive Relief Class and Companion Injunctive Relief Class are finally certified under Fed. R. Civ. P. 23(b)(2). The Court concludes that: (a) joinder of all Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion; (b) there are questions of law and fact common to the Plaintiff Classes; (c) Plaintiffs' claims are typical of the claims of the Plaintiff Classes that they seek to represent for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Classes and will continue to do so; (e) Plaintiffs and the Plaintiff Classes are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions, including those involving the sort of practices alleged in the Complaint; and (f) Defendants acted or refused to act on grounds that apply to the Injunctive Relief Class and Companion Injunctive Relief Class as a whole.

7. The Damages Class is finally certified under Fed. R. Civ. P. 23(b)(3). The Court concludes that: (a) joinder of all Damages Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion; (b) there are questions of law and fact common to the Damages Class; (c) Plaintiff Abdul Nevarez's claims are typical of the claims of the Damages Class that he seeks to represent for purposes of settlement; (d) Plaintiff Abdul Nevarez has fairly and adequately represented the interests of the Damages Class and will continue to do so; (e) Plaintiff Abdul Nevarez and the Damages Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions, including those involving the sort of practices alleged in the Complaint; (f) questions of law or fact common to the Damages Class predominate over any questions affecting only individual members; and (g) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

8. Class certification is therefore an appropriate method for protecting the interests of the Plaintiff Classes and resolving the common issues of fact and law arising out of the Plaintiffs'

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1 claims while also eliminating the risk of duplicative litigation. Accordingly, the Court hereby
2 makes final its earlier certification of the Plaintiff Classes and confirms its appointment of
3 Plaintiffs Abdul Nevarez and Sebastian DeFrancesco as Injunctive Relief Class Representatives;
4 Plaintiff Priscilla Nevarez as the Companion Injunctive Relief Class Representative; Plaintiff
5 Abdul Nevarez as the Damages Class Representative; and Guy Wallace of Schneider Wallace
6 Cottrell Konecky LLP, Linda M. Dardarian of Goldstein Borgen Dardarian & Ho, and Adam Wolf
7 of Peiffer Wolf Carr & Kane as Class Counsel.

8 9. The Court grants final approval of the Settlement and finds that it is fair,
9 reasonable, adequate, and in the best interests of the Plaintiff Classes as a whole. First, the
10 Settlement offers Class Members significant injunctive relief regarding all of the claims in the
11 Fourth Amended Complaint, including Defendants' failure to provide physical access and
12 Defendants' failure to make reasonable modifications in policy and practice to ensure equal access
13 to the Stadium's facilities and services. Second, the non-reversionary damages fund offers
14 substantial monetary relief to Damages Class Members. Third, as set forth below, the Court finds
15 that Plaintiffs' requested attorneys' fees, costs, and expenses, and Class Representative service
16 awards are reasonable and supported by applicable law, as modified by the Court. Finally, the
17 absence of any objections or exclusions further supports final approval of the Settlement. In sum,
18 when considered against the potential risks, expense, complexity and duration of further litigation,
19 and the importance of the accessibility of the Stadium and its related facilities to the Class
20 Members, the Court finds the relief secured by the Settlement to be more than adequate. *See* Fed.
21 R. Civ. P. 23(e)(2)(C).

22 10. The Parties and Settlement Administrator are hereby directed to implement and
23 consummate the Settlement according to its terms and provisions and the Court's Preliminary
24 Approval Order. Class Counsel and Defendants shall take all steps necessary and appropriate to
25 provide the Plaintiff Class Members with the benefits to which they are entitled under the terms of
26 the Settlement.

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1 11. The Plaintiffs and all Plaintiff Class Members (and their respective heirs, assigns,
2 successors, executors, administrators, agents and representatives) are conclusively deemed to have
3 released and forever discharged the Released Parties from all released claims as set forth in
4 Section XIII of the Settlement Agreement. All members of the Injunctive Relief Class and
5 Companion Injunctive Relief Class are bound by this Order. All members of the Damages Class,
6 except for those individuals who filed valid and timely Opt-Outs, are bound by this Order.
7 Damages Class Members who submitted timely and valid Opt-Out requests are neither permitted
8 to share in the benefits of the damages fund nor bound by this Final Order and Judgment as to
9 claims for Unruh Act statutory minimum damages against the Forty Niners Defendants. Damages
10 Class Members who did not opt out of the case at the class certification stage were afforded a new
11 opportunity to do so. *See* Fed. R. Civ. P. 23(e)(4). Throughout the Term of the Settlement
12 Agreement, Plaintiff Class Members are enjoined from asserting or prosecuting any claims that are
13 released by the Settlement Agreement.

14 12. The Settlement Agreement and this Order are not admissions of liability or fault by
15 Defendants or other Released Parties, or a finding of the validity of any claims in this action or of
16 any wrongdoing or violation of law by Defendants or other Released Parties. The Settlement
17 Agreement is not a concession by the Parties and, to the fullest extent permitted by law, neither
18 this Order, nor any of its terms or provisions, nor any of the negotiations connected with it, shall
19 be offered as evidence or received in evidence in any pending or future civil, criminal, or
20 administrative action or proceeding to establish any liability of, or admission by Defendants or
21 other Released Parties. Notwithstanding the foregoing, nothing in this Order shall be interpreted
22 to prohibit the use of this Order to consummate or enforce the Settlement Agreement or Order, or
23 to defend against the assertion of Released Claims in any other proceeding, or as otherwise
24 required by law.

25 13. Within 21 days after the distribution of the settlement funds and payment of
26 attorneys’ fees, expenses and costs, the Parties are ordered to file a Post-Distribution Accounting,

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1 which provides the following information in accordance with the Northern District’s Procedural
2 Guidance for Class Action Settlements: The total settlement fund, the total number of class
3 members; the total number of class members to whom notice was sent and not returned as
4 undeliverable; the number and percentage of claim forms submitted; the number and percentage of
5 opt-outs; the number and percentage of objections; the average and median recovery per claimant;
6 the largest and smallest amounts paid to class members; the methods of notice and the methods of
7 payment to class members; the number and value of checks not cashed; the amounts distributed to
8 each *cy pres* recipient; the administrative costs; the attorneys’ fees and costs; and the benefit
9 conferred on the classes by the injunctive relief obtained. Within 21 days after the distribution of
10 the settlement funds and award of attorneys’ fees, the Parties should post the Post-Distribution
11 Accounting, including an easy-to-read chart that allows for quick comparisons with other cases, on
12 the settlement website. The Court may hold a hearing following submission of the parties’ Post-
13 Distribution Accounting.

14 14. In accordance with the terms of the Settlement Agreement, the Court shall maintain
15 continuing jurisdiction over Plaintiffs, the Class Members, Defendants, and the Settlement
16 Agreement throughout the term of the Settlement Agreement, for the purpose of supervising the
17 implementation, enforcement, construction, and interpretation of the Settlement Agreement and
18 this Order, through the term of the Settlement Agreement. In that regard, any challenges to the
19 Settlement Agreement’s terms or implementation, whether under state or federal law, shall be
20 subject to the exclusive and continuing jurisdiction of this Court.

21 15. This Action is hereby dismissed on the merits and with prejudice as to the Released
22 Claims, without fees or costs to any Party except as otherwise provided in the Court’s Order on
23 Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs and Expenses, and the Settlement
24 Agreement.

25 **II. MOTION FOR SERVICE AWARDS**

26 In addition, Plaintiffs filed a motion for service awards, ECF No. 394. The motion

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1 requests \$5,000 in service awards for each of three class representatives: Abdul Nevarez, Priscilla
2 Nevarez, and Sebastian DeFrancesco. *Id.* at 1. The motion is unopposed, and no Class members
3 have filed objections to the Settlement Agreement.

4 In order to evaluate the reasonableness of the size of a service award, the Ninth Circuit
5 looks to “the number of named plaintiffs receiving incentive payments, the proportion of the
6 payments relative to the settlement amount, and the size of each payment.” *In re Online DVD-*
7 *Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015) (internal quotation marks omitted).
8 Here, the three class representatives, Abdul Nevarez, Priscilla Nevarez, and Sebastian
9 DeFrancesco, seek Service Awards of \$5,000 each. ECF No. 394. The contemplated Service
10 Awards total to \$15,000 out of the \$24,000,000 Plaintiffs’ settlement, which is less than .1% of the
11 \$24 million Damages Fund. The number of service awards requested and the respective amounts
12 fall well below the levels that the Ninth Circuit has scrutinized in the past. *Id.* at 948 (finding
13 service awards to be reasonable in part because there were “nine class representatives” and
14 because “the \$45,000 in incentive awards ma[de] up a mere .17% of the total settlement”).
15 Moreover, the requested amount of \$5,000 is considered “presumptively reasonable” in this
16 district. *See Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
17 5878390, at *7 (N.D. Cal. Nov. 21, 2012).

18 Thus, having considered the motion, Plaintiffs’ declarations and exhibits thereto, the
19 arguments of counsel, and all files, records, and proceedings in this action, the Court finds that
20 good cause exists to approve the motion. All three Plaintiffs have diligently fulfilled their duties
21 as Class Representatives. All have expended significant effort and made personal sacrifices in
22 order to obtain an excellent result for the Classes they represent. The class representatives
23 participated in numerous aspects of the litigation, including responding to written discovery,
24 drafting declarations, preparing and sitting for depositions, advising counsel on factual
25 investigation and settlement, and class outreach. ECF No. 394 at 7–8. Over the course of over
26 three years, “Mr. Nevarez estimates that he has spent at least 72 hours working on this case; Ms.

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1 Nevarez estimates at least 90 hours; and Mr. DeFrancesco estimates at least 52 hours.” ECF No.
2 394 at 7.

3 Accordingly, Plaintiffs’ motion is GRANTED. The Court hereby approves: a service
4 award to Plaintiff Abdul Nevarez in the amount of \$5,000; a service award to Plaintiff Priscilla
5 Nevarez in the amount of \$5,000; and a service award to Plaintiff Sebastian DeFrancesco in the
6 amount of \$5,000.

7 **III. MOTION FOR ATTORNEY’S FEES, COSTS, AND EXPENSES**

8 Finally, Plaintiffs also filed a motion for reasonable attorney’s fees, costs, and expenses.
9 ECF No. 408. Specifically, Plaintiffs move for \$1,199,148.87 in out-of-pocket litigation costs and
10 expenses, and \$12,258,003.53 in attorney’s fees, which together amounts to the \$13,457,152.40
11 cap on attorney’s fees, costs, and expenses set forth in Section XIV.A of the Settlement
12 Agreement. The motion is unopposed, and no Class members have filed objections to the
13 Settlement Agreement. Below, the Court first considers the costs and expenses, before
14 considering the reasonableness of Plaintiffs’ request for attorney’s fees.

15 As the prevailing parties, Plaintiffs are entitled to recover their reasonable attorneys’ fees,
16 costs and expenses. *See* 42 U.S.C. § 12205 (ADA) and Cal. Civ. Code § 52(a) (Unruh Civil
17 Rights Act). A party that obtains a judicially enforceable settlement agreement that provides
18 some of the relief sought is a “prevailing party” for purposes of fee-shifting statutes. *See, e.g., La*
19 *Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th Cir.
20 2010); *Folsom v. Butte County Assn. of Govts.*, 32 Cal.3d 668, 671 (1982). Here, Plaintiffs have
21 prevailed under both federal and state law by achieving a global settlement that resolves all
22 federal and state law claims. The Settlement provides comprehensive injunctive relief to both
23 injunctive relief classes under both federal and state law and establishes a damages fund for the
24 damages class under California law. The factual and legal issues that were litigated would
25 reasonably be attributed to both federal and state law claims. Accordingly, both federal and state
26 law apply to Plaintiffs’ application for fees, costs and litigation expenses.

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A. Costs and Expenses

Plaintiffs’ costs and out-of-pocket expenses, including expert witness fees, are recoverable. *See* 42 U.S.C. § 12205; *Lovell v. Chandler*, 303 F.3d 1039, 1058 (9th Cir. 2002). Through May 15, 2020, Class Counsel incurred \$1,199,148.87 in litigation costs and expenses. Plaintiffs’ costs and out-of-pocket expenses are well-documented. The Court finds that the declarations of Class Counsel and accompanying exhibits and the record in this case demonstrate that these costs and expenses were reasonable and necessary for the prosecution of this litigation. Accordingly, the Court GRANTS Class Counsel \$1,199,148.87 in costs and out-of-pocket expenses.

B. Attorney’s Fees

As discussed above, Section XIV.A of the Settlement Agreement caps Plaintiffs’ request for attorney’s fees, costs, and expenses at \$13,457,152.40. Because Plaintiffs seek \$1,199,148.87 in costs and expenses, which the Court awarded in full, Plaintiffs request the remaining \$12,258,003.53 of the cap in attorney’s fees. Although the Court grants Plaintiffs the full \$12,258,003.53 amount in attorney’s fees below, the Court’s calculation of attorney’s fees differs from that of Plaintiffs. The Court first discusses Plaintiffs’ lodestar calculation before turning to the requested lodestar multiplier.

1. Lodestar Calculation

Plaintiffs state that their lodestar in the instant case is \$11,605,473. ECF No. 408 at 13. The Court finds that the lodestar is reasonable and fair, with the exception of the hourly rate billed for contract attorneys, which the Court discusses below.

Specifically, Plaintiffs argue that their lodestar in the instant case was initially \$12,994,251, which was then reduced by approximately 10.69% through the exercise of billing judgment² to arrive at the lodestar of \$11,605,473. *See* ECF No. 408 at 20. The Court has reviewed the hours spent by Plaintiffs in litigating this case over the course of three-and-a-half years and finds that the hours

² Specifically, Plaintiffs explain that they “removed from their lodestar all time spent by attorneys and staff who billed less than 30 hours on the case . . . [and] exercised additional billing judgment as set forth in the declarations of counsel.” ECF No. 408 at 20.

1 expended are reasonable. This case involved over three years of contentious and extensive
2 litigation, including the following:

- 3 • Three motions to dismiss filed by Defendants, which this Court largely denied;
- 4 • Eighteen joint discovery letters—for many of which the Court granted Plaintiffs full relief;
- 5 • Thirteen sets of document requests and interrogatories, fifteen sets of requests for
6 admission, and propounding six sets of subpoenas for documents;
- 7 • Production of 3,400,000 pages of documents by Defendants and third parties;
- 8 • Fourteen days of inspections of the Stadium, parking lots, and connecting pedestrian rights
9 of way, from which Plaintiffs identified over 2,600 physical barriers to access at the
10 Stadium;
- 11 • 48 depositions, including depositions of 16 experts;
- 12 • Two sets of cross-motions for partial summary judgment;
- 13 • Eight formal mediations; and
- 14 • Many informal settlement discussions, several in-person with all counsel.

15 Thus, Plaintiffs’ hours are amply justified in light of the extensive litigation that has occurred to date
16 over the course of three and a half years.

17 Moreover, the Court has reviewed the billing rates for the attorneys, paralegals, and litigation
18 support staff at each of the firms representing Plaintiffs and the Certified Classes in this case. The
19 Court finds that these rates are reasonable in light of prevailing market rates in this district and
20 that counsel for Plaintiffs have submitted adequate documentation justifying those rates, with the
21 exception of the hourly rates billed by Schneider Wallace Cottrell Konecky LLP (“Schneider
22 Wallace”) for the use of staff attorneys.

23 However, as to the staff attorneys, the Court notes that Schneider Wallace requests a rate of
24 \$625 per hour for each of three staff attorneys. *See* ECF No. 408-1 (“Wallace Decl.”) ¶ 117.

25 However, at the July 16, 2020 Final Approval hearing, Mr. Wallace acknowledged that these
26 attorneys are paid at an hourly rate substantially less than \$625 per hour, which constitutes a markup

1 of \$595 per staff attorney per hour. Schneider Wallace requests \$625 per hour for each of these three
 2 staff attorneys for a total of 1,811.9 hours of work, which the Court estimates to constitute a markup
 3 of \$1,078,080.50 or about 15% of Schneider Wallace’s lodestar. *See id.* Although the Court has
 4 historically declined to apply a “categorical rule that contract and staff attorneys must be billed at
 5 cost,” the Court has previously rejected such a high markup on a contract attorney’s hourly rate and
 6 instead awarded an hourly rate of \$240.00. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-
 7 02617-LHK, 2018 WL 3960068, at *18–20 (N.D. Cal. Aug. 17, 2018). As in the Court’s decision in
 8 *In re Anthem, Inc. Data Breach Litigation*, the Court will adopt the \$240.00 hourly rate for Schneider
 9 Wallace’s staff attorneys based on precedent and in the absence of any argument to justify a different
 10 markup on the staff attorney rate. *See id.* at *20 (“In future cases, the Court is willing to receive
 11 documentation justifying a lower or higher rate, but for purposes of the rough lodestar calculation
 12 here, the Court finds that \$240.00 per hour for contract and staff attorney time is a reasonable rate.”).
 13 At the July 16, 2020 Final Approval hearing, Mr. Wallace stated that he did not oppose the Court’s
 14 adoption of the \$240 hourly rate for these three staff attorneys. After adjusting Schneider Wallace’s
 15 staff attorney rate to \$240.00 per hour, the Court finds that the total lodestar of \$11,605,473 is
 16 reduced to \$10,907,891.50.

17 **2. Lodestar Multiplier**

18 Next, Plaintiffs argue that they are entitled to a positive lodestar multiplier of up to 1.5.
 19 However, the actual requested lodestar multiplier is significantly lower due to the \$13,457,152.40
 20 cap on attorney’s fees, costs, and expenses. Specifically, to arrive at the requested attorney’s fees
 21 amount of \$12,258,003.53 from the lodestar of \$10,907,891.50, Plaintiffs need only be entitled to a
 22 lodestar multiplier of approximately 1.124, which is a factor of four times less than the 1.5 lodestar
 23 multiplier they request.

24 The Court agrees that Plaintiffs are entitled to a lodestar multiplier of at least 1.124 in
 25 consideration of the following factors (1) contingent risk to counsel, (2) novelty and difficulty of
 26 the questions involved, (3) skill required to perform the legal service properly, (4) preclusion of

1 other employment by the attorneys, and (5) the result obtained and the importance of the lawsuit
2 to the public. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001); *Serrano v. Priest*, 20 Cal.
3 3d 25, 49 (1977).

4 In particular, the Court notes the outstanding result obtained for the class and the
5 importance of the lawsuit to the public. Specifically, the Settlement Agreement “will remediate
6 more than 2,600 barriers in [Levi’s Stadium], the parking lots and the pedestrian rights of way
7 that serve the Stadium,” which is “over 99% of the barriers identified by Plaintiffs.” ECF No.
8 408 at 23. Such relief will bring Levi’s Stadium “into compliance with the 2010 [Americans with
9 Disability Act Standards] or the 2019 [California Building Code], whichever provides greater
10 access, thus dramatically improving accessibility and usability for person with mobility
11 disabilities and their nondisabled companions.” *Id.* The costs to remediate the over 2,600
12 barriers is estimated to cost Defendants at least \$12.2 million. ECF No. 408-6 ¶ 67.

13 Moreover, the Settlement Agreement provides for a \$24 million non-reversionary
14 damages fund, which Plaintiffs believe to be “the largest such fund ever achieved in a case
15 alleging claims under the public facilities and accommodations provisions of the ADA.” *Id.* The
16 Settlement Agreement prompted a participation rate of almost 94%. There were an estimated
17 5,779 potential Damages Class Members, and 5,418 claim forms were submitted. *See* ECF No.
18 395 at 5. Furthermore, there were no opt-outs and no objections. *See* ECF No. 411 at 2. At the
19 July 16, 2020 Final Approval hearing, Plaintiffs estimated that the average recovery for each
20 Damages Class Member would be at least \$4,000, and on average over \$4,400. The Court finds
21 that the Settlement achieved by Plaintiffs’ counsel provides considerable and substantial relief to
22 the class members, which therefore justifies a lodestar multiplier of at least 1.124.

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

24 To guard against an unreasonable result, the Ninth Circuit generally encourages district
25 courts to “cross-check[] their calculations against a second method.” *In re Bluetooth Headset*
26 *Prods. Liab. Litig.*, 654 F.3d 935, 944 (9th Cir. 2011). However, the Ninth Circuit has explained

1 that in cases vindicating civil rights, “the relief sought—and obtained—is often primarily
2 injunctive in nature and thus not easily monetized.” *See id.* at 941.

3 In this case, the Court likewise finds that it would be difficult to monetize the extensive
4 injunctive relief, which remediates over 2,600 access barriers at Levi’s Stadium. Nonetheless, if
5 the Court assumes that the approximately \$12.2 million expected Stadium remediation cost is a
6 good substitute to monetize the increased accessibility for the Stadium’s patrons, ECF No. 408-6
7 ¶ 67, the amount of attorney’s fees, including the 1.124 multiplier, would constitute about 24.7%
8 of a “constructive common fund” in this case, which would be comprised of the \$24 million
9 Damages Fund, the approximately \$12.2 million cost of injunctive relief, the \$15,000 service
10 awards, \$12,258,003.53 attorney’s fees, and \$1,199,148.87 costs. *See In re Bluetooth*, 654 F.3d
11 at 945 (calculating an analogous percentage-of-recovery using a “constructive common fund”).
12 This result of 24.7% of the total recovery is below the 25% benchmark percentage and confirms
13 that the requested \$12,258,003.53 in attorney’s fees is a reasonable amount. *See id.* at 945 (“If
14 the lodestar amount overcompensates the attorneys according to the 25% benchmark standard,
15 then a second look to evaluate the reasonableness of the hours worked and rates claimed is
16 appropriate.”) (quoting *In re Coordinated Pretrial Proceedings*, 109 F.3d 602, 607 (9th
17 Cir.1997)).

18 Accordingly, based on the factors considered above and the applicable law, the Court
19 finds that a lodestar multiplier of 1.124 is reasonable and justified.

20 **4. Total Attorney’s Fees**

21 The Court finds that Plaintiffs are entitled to a lodestar of \$10,907,891.50 and a multiplier of
22 1.124. Accordingly, the Court GRANTS Plaintiffs’ full requested amount of \$12,258,003.53 in
23 attorney’s fees.

24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court GRANTS Plaintiffs’ motion for final approval of the
26 proposed class action settlement, GRANTS Plaintiffs’ motion for service awards, and GRANTS

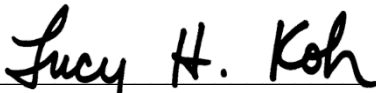
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Plaintiffs’ motion for attorneys’ fees, costs, and expenses as follows:

- \$15,000 in service awards, comprised of \$5,000 for each of three class representatives: Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco;
- \$12,258,003.53 in attorneys’ fees to Class Counsel; and
- \$1,199,148.87 in costs and expenses to Class Counsel.

IT IS SO ORDERED.

Dated: July 23, 2020



 LUCY H. KOH
 United States District Judge

United States District Court
Northern District of California