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Class Counsel

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JONATHAN SPIRO and SIMONE
KAPLAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

TRINITY MANAGEMENT SERVICES,
1188 MISSION STREET LP, 1890
CLAY STREET LP, 2240 GOLDEN
GATE AVE LLC, CRYSTAL TOWER
PARTNERS LLC, SANGIACOMO
FAMILY LP, TRINITY G2 HOLDING
LLC, JAMES SANGIACOMO, SUSAN
SANGIACOMO, and DOES 1-50,
inclusive,

Defendants.

Case No. CGC-17-562293

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD
OF ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARDS**

Date: July 20, 2023
Time: 10:00 a.m.
Place: Department 613

The Honorable Andrew Y.S. Cheng

SEEGER DEVINE LLP

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TABLE OF CONTENTS

- I. INTRODUCTION AND SUMMARY 1
- II. FACTUAL AND PROCEDURAL BACKGROUND..... 1
- III. LEGAL ARGUMENT 5
 - A. The Requested Attorneys’ Fees Are Reasonable 5
 - 1. The Percentage of Fund Is Appropriate 6
 - 2. A Lodestar Cross-Check Results In A Negative Multiplier,
Confirming The Reasonableness Of The Fee Request 10
 - B. Plaintiffs’ Litigation Costs Are Reasonable and Should Be Reimbursed..... 13
 - C. The Incentive Award Should Be Approved..... 14
- IV. CONCLUSION 15

TABLE OF AUTHORITIES

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 No. 11-cv-05807-CRB (N.D. Cal., 2018) 11-12

Cazares v. Saenz
 208 Cal. App. 3d 279 (1989) 9

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 186 Cal. App. 4th 1380 (2010) 14-15

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 716 F.Supp.2d 848 (N.D. Cal. 2010) 10

Concepcion v. Amscan Holdings, Inc.
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 24 Cal. 4th 1122 (2001) 9

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 1 Cal.5th 480 (2016) 5-7, 10-11

Stewart v. Kaiser Foundation Health Plan, Inc.
 Case No. CGC-21-590566 15

Syers Properties III, Inc. v. Rankin
 226 Cal.App.4th 691 (2014) 11

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 91 Cal.App.4th 224 (2001) 11

Statutes and Ordinances

S.F. Admin Code §37.11A..... 14

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I. INTRODUCTION AND SUMMARY

1
2 After five years of hard-fought litigation, the completion of the first phase of a
3 bifurcated trial, and settlement negotiations with the Court-appointed mediator, Judge Mary Wiss,
4 that spanned over four years (including two in-person mediations and several remote mediation
5 sessions), the parties reached a proposed settlement that provides a common fund of **\$3.15**
6 **million**, representing more than 76 percent of the total amount that Plaintiffs allege Trinity
7 illegally charged Class Members for water and trash bills. Additionally, Trinity's change in
8 business practices will save its tenants an estimated **\$85,000 to \$100,000 each month** going
9 forward.

10 The settlement provides substantial and immediate cash benefits to Class
11 Members. Class Members who resided in a Trinity apartment for a year or more will receive an
12 average of at least \$1,000 per apartment and the largest award will exceed \$3,300. Additionally,
13 all Class Members who still reside in a Trinity apartment will never have to pay Trinity for water
14 and trash services for the duration of their lease.

15 This settlement was the result Class Counsel spending more than 1,800 hours on
16 this case, prevailing on a novel legal theory against a large and well-financed landlord that
17 defended itself with a team of some of the best lawyers in San Francisco. To compensate them
18 for this effort, Class Counsel requests that this Court approve attorneys' fees in the amount of
19 \$1,260,000, which represents 40 percent of the common fund and reflects a downward
20 multiplier, reimbursing Class Counsel for only about 70 percent of their lodestar.

21 Plaintiffs also request that this Court approve an incentive award in the amount of
22 \$10,000 to be paid to each of the two Class Representatives to compensate them for the
23 significant personal risk that they took in bringing this case against Trinity, despite the fact that
24 the San Francisco Rent Ordinance has a "loser pays" attorneys' fees provision.

II. FACTUAL AND PROCEDURAL BACKGROUND

25
26 Plaintiffs Jonathan Spiro and Simone Kaplan ("Plaintiffs") filed this lawsuit
27 against Defendant Trinity Management Services ("Trinity") in November 2017. Over the next
28

1 five years, the parties engaged in extensive and hard-fought litigation. This Court has presided
2 over numerous proceedings in this case, including a hearing on class certification (February
3 2020), phase one of a bifurcated bench trial (November 2021), two informal discovery
4 conferences (June 2022 and October 2022), motions to amend the complaint and for a writ of
5 attachment (November 2022), and several Case Management Conferences.

6 This case is the first and only case that has ever litigated the question of whether a
7 landlord violates the San Francisco Rent Ordinance (“SFRO”) when it passes on variable water
8 and trash costs to its tenants. Class Counsel, therefore, conducted the groundbreaking legal
9 research and analysis that was used to prove that Trinity’s conduct was illegal. Succeeding in this
10 case required a deep understanding of the SFRO—which is far from a model of clarity—and
11 required the skills necessary to litigate complex intertwined issues including administrative law,
12 contract law, corporate structure and asset location.

13 Class Counsel litigated this novel, complex, and risky case against a formidable
14 and well-financed defendant. Trinity is one of San Francisco’s largest landlords and it manages
15 thousands of apartments in dozens of buildings across the city. This case was high-stakes
16 litigation for Trinity: millions of dollars were at stake and Trinity was continuing to charge
17 tenants more than a million dollars every year in allegedly illegal water and trash allocations. Not
18 surprisingly, Trinity responded by assembling a defense team consisting of some of the best
19 lawyers in San Francisco. Trinity retained Andrew Wiegel, who is one of the most well-respected
20 real estate lawyers in California and who co-authored one of the leading treatises on California
21 landlord-tenant law. (Wiegel, A., et al., “*California Landlord-Tenant Practice*,” Continuing
22 Education of the Bar.) Trinity also retained the world-class law firm Farella Braun + Martel to
23 handle the class action aspects of the case. Over the years, Trinity’s defense team consisted of
24 five different lawyers at these two firms (Andrew Weigel, Alexander Weigel, Stephen Lowenthal,
25 Hilary Kruse, and Richard Van Duzer). Trinity’s top-notch legal team mounted a vigorous
26 defense. Over the course of five years, the parties engaged in extensive and hard-fought litigation.
27 For example:
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- **Developing Novel Legal Theory** – No case has ever confronted the issue at the heart of this case: whether the SFRO prohibits a landlord from passing on estimated portions of building-wide water and trash bills to tenants. (Declaration of Brian Devine, filed and served concurrently herewith, “Devine Dec.” at ¶2.) After Plaintiffs first contacted them, Class Counsel spent a significant amount of time researching the SFRO, the accompanying regulations, and the Rent Board’s interpretation of the SFRO as stated in various publications and Rent Board hearings. (*Id.* at ¶3.) It was only through this hard work that Class Counsel was able to prove—for the first time—that a landlord’s lease violated the SFRO because it impermissibly passed on water and trash charges in addition to the agreed-upon “base rent.” (*Id.*)
 - **Discovery**: Both parties engaged in significant discovery throughout this case. Plaintiffs served Trinity with four sets of requests for production (consisting of 61 requests), special and form interrogatories, and requests for admission. (*Id.* at ¶4). Plaintiffs also responded to Trinity’s discovery consisting of 120 special interrogatories. (*Id.*) To obtain responses to their discovery, Plaintiffs had to engage in extensive efforts to meet-and-confer and had to engage the Court in two Informal Discovery Conferences (in June 2022 and October 2022) and negotiate and implement a Protective Order. (*Id.*) Through this discovery, Plaintiffs were able to determine and prove the amount of water and trash charges that Trinity illegally billed Class Members, and they were able to evaluate Trinity’s ability to pay a judgment in this case and identify related parties that needed to be added to this lawsuit. (*Id.* at ¶5.) Class Counsel also prepared a final round of extensive discovery that would have been served if this case had not settled, including discovery directed toward the newly added parties and establishing alter ego relationships. (*Id.*)
 - **Initial Class Certification and Notice** – Class Counsel requested, and this Court approved, class certification in March 2020. (*Id.* at ¶6.) Class Counsel provided the initial Court-approved notice to the Class in 2021 and updated the Court regarding the notice campaign and the response by Class Members. (*Id.*)
 - **Phase One Trial** – After extensive briefing and argument about how to resolve the complex legal issues in this case, this Court scheduled a bifurcated trial in November 2021. In preparation for trial, both Plaintiffs and Trinity extensively briefed the key legal issues. (*Id.* at ¶7.) Each party filed an opening trial brief, and each party also filed a responsive trial brief. After trial was concluded, the Court issued a Proposed Statement of Decision and invited additional briefing by the parties. (*Id.*) Class Counsel provided additional briefing supporting the Court’s proposed decision and responding to Trinity’s objections to the Court’s proposed Statement of Decision. (*Id.*)
 - **Preparing For Writ of Mandate and Appeal** – Although Plaintiffs prevailed on the liability issue at trial, Trinity notified the Court that it intended to seek a Writ of Mandate against this Court. (Trinity’s Response and Objection to Proposed Statement of Decision, 2/25/2022 at 5:17-22.) Class Counsel objected to Trinity seeking a Writ of Mandate, and they preemptively drafted a

1 brief that would have been filed with the Court of Appeal if Trinity followed
2 through with its threat to file a Petition for Writ of Mandate against this Court.
3 Trinity also stated numerous times that it planned to appeal this Court's
4 decision. (Devine Dec. at ¶8.) With the knowledge that this case likely would
5 be subjected to appellate scrutiny, Class Counsel undertook meticulous
6 research and analysis to ensure that this Court's decisions were well-supported,
7 procedurally correct, and would be affirmed by the Court of Appeal. (*Id.*)

- 8 • **Writ of Attachment** – Following trial, Class Counsel became aware that
9 Trinity had sold its only asset (an apartment building worth \$13.3 million), and
10 they became concerned that Trinity might be moving or hiding its assets so that
11 it would not have the resources to satisfy a judgment in this case. (*Id.* at ¶9.)
12 After trying to informally resolve these concerns with Trinity's counsel, Class
13 Counsel saw no other option than to attach Trinity's assets to ensure a fund
14 was available to pay Class Member's damages. (*Id.*) Class Counsel
15 successfully petitioned this Court for a Writ of Attachment, and they worked
16 with the Sheriff's office to execute the Writ. (*Id.*) Class Counsel then worked
17 with Trinity's counsel to informally implement the Writ of Attachment to
18 secure funds for Class Members. (*Id.*) Later, Class Counsel had to navigate
19 several issues related to the attachment, including an emergency transfer of the
20 attached funds just prior to the collapse of First Republic Bank. (*Id.*)
- 21 • **Alter Ego Investigation and Amending Complaint** – Following its discovery
22 that Trinity sold its only asset and that it might not have the resources to pay a
23 judgment in this case, Class Counsel spent a significant amount of time
24 investigating a vast web of Trinity's related limited liability companies,
25 partnerships, and trusts through which it held ownership of most of the assets
26 of the operation. (*Id.* at ¶10.) This included a detailed and painstaking
27 investigation of property ownership records at the San Francisco Recorder's
28 Office and cross-referencing the ostensible "owners" of those properties to
untangle and reveal the true owners of the properties. (*Id.*) Plaintiffs then
successfully moved this Court for an Order allowing the amendment of the
Complaint to add these new related parties. (*Id.*) Within weeks after the
Amended Complaint was filed and the Writ of Attachment was executed, the
parties were able to resolve this case through settlement. (*Id.*)
- **Preparing For Trial Phase Two** – Class Counsel spent significant time
preparing for the second phase of the bifurcated trial, which was scheduled to
begin on March 9, 2023. (*Id.* at ¶11.) For example, Class Counsel compiled
documents proving damages (which, as produced, were more than 26,000
pages) into a manageable format that could be presented to the Court for
determination. (*Id.*) Class Counsel also researched and began briefing several
legal issues that they anticipated would be in contention at trial and drafted
extensive discovery that would have been served if this case had not settled.
(*Id.*)
- **Settlement** – To reduce the burden of protracted litigation to the Court and the
parties, Class Counsel first attempted to resolve this case during an in-person

1 mediation with Judge Mary Wiss in November 2018. (*Id.* at ¶12.) Trinity,
 2 however, informed the Court that it believed the key impediment to settlement
 3 was that it needed the Court to determine the key liability issue (whether or not
 4 its charges for water and trash services were prohibited under the Rent
 5 Ordinance) in a bifurcated trial. (*Id.*) Following the bifurcated trial, Class
 6 Counsel requested to resume settlement efforts. The parties returned to Judge
 7 Wiss and attended numerous telephonic and video mediation sessions spanning
 8 three months (between September and December 2022). (*Id.*) It was only after
 9 an in-person mediation session that lasted all day and went into the early
 10 evening that the parties were finally able to reach a settlement in December
 11 2022. (*Id.*)

- 12 • **Settlement Approval and Administration** – Class Counsel drafted and
 13 negotiated the Settlement Agreement with Trinity and prepared the motion
 14 requesting that this Court grant preliminary approval of the proposed
 15 settlement. (*Id.* at ¶13.) Class Counsel drafted a detailed Notice package to
 16 inform Class Members of their rights. To ensure the best value to the Class,
 17 Class Counsel interviewed three potential claims administrators, and worked
 18 with the chosen administrator to set up a claims administration process that
 19 will be able to quickly deliver cash payments to Class Members upon final
 20 approval by this Court. (*Id.*)

21 As is discussed below, Class Counsel has spent a total of more than 1,800 hours on
 22 these activities. In addition to these 1,800 hours, Class Counsel will continue to devote
 23 significant time to this case to ensure the settlement is successfully implemented and Class
 24 Members receive the benefits to which they are entitled. (*Id.* at ¶22.)

25 III. LEGAL ARGUMENT

26 A. The Requested Attorneys’ Fees Are Reasonable

27 California has long recognized the propriety of awarding attorneys’ fees to a party
 28 who has recovered a monetary fund for the benefit of others. (*Laffitte v. Robert Half Int’l Inc.*
 (2016) 1 Cal.5th 480, 488-489.) In awarding a fee from the fund, “the trial court acts within its
 equitable power to prevent the other parties’ unjust enrichment.” (*Id.*) The trial judge has wide
 discretion in awarding attorneys’ fees and their judgment “will not be disturbed unless the
 appellate court is convinced that it is clearly wrong.” (*Id.*)

In instances like the present settlement that involve a common fund, California
 courts generally apply a “percentage of the fund” method in determining the reasonableness of an

1 attorneys' fee request. The California Supreme Court has noted the advantages of the percentage
2 method, including the "relative ease of calculation, alignment of incentives between counsel and
3 the class, a better approximation of market conditions in a contingency case, and the
4 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
5 the litigation." (*Id.* at 503.) California courts also sometimes apply a "lodestar cross-check" to
6 evaluate the reasonableness of a requested percentage fee. (*Id.* at 506.)

7 Class Counsel seeks approval of attorneys' fees in the amount of \$1,260,000,
8 which represents 40 percent of the \$3,150,000 common fund. Despite the novel and complex
9 issues that Class Counsel skillfully litigated in this highly risky case against a formidable and
10 well-financed adversary, this represents a *downward* multiplier and represents only 70 percent of
11 Class Counsel's \$1,797,750 lodestar. As is discussed below, the attorney's fees requested by
12 Class Counsel are reasonable and well-supported.

13 **1. The Percentage of Fund Is Appropriate**

14 The common fund created by the settlement is \$3,150,000, from which all class
15 member benefits, attorneys' fees and costs, administrative costs, and incentive awards will be
16 paid. (Devine Dec. at ¶14.) The Settlement Agreement and Notice documents provide for
17 attorneys' fees and costs not to exceed \$1,400,000, and Trinity does not oppose this amount. (*Id.*
18 at ¶15.) Nevertheless, Class Counsel requests that this Court approve attorneys' fees in the lesser
19 amount of \$1,260,000, which is 40 percent of the common fund. As is discussed in detail below,
20 this percentage is justified by the novel and complex issues in this case, the highly risky and
21 contingent nature of this case, and the high level of skill Class Counsel demonstrated throughout
22 this case leading to a favorable decision during the first phase of trial and ultimately resulting in
23 this settlement that will provide substantial benefits to Class Members.

24 The 40 percent fee award is in line with percentages awarded in other class action
25 cases in state and federal court. A review of class action settlements over the past 10 years shows
26 that the courts have historically awarded fees between 20 to 50 percent of the common fund,
27 depending upon the circumstances of the case. (*See, e.g.,* Newberg on Class Actions (5th ed.) §
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1 15:83; *see also*, *Espinosa v. California College of San Diego, Inc.*, 2018 WL 1705955, at *9 (S.D.
2 Cal. 2018) (“With respect to the percentage method, case law surveys suggest that 50% is the
3 upper limit, with 30–50% commonly being awarded in cases in which the common fund is
4 relatively small.”). This department has awarded fees in these ranges. (*See, e.g., Doe v. City and*
5 *County of San Francisco*, CGC-16-551618, Nov. 21, 2022 [awarding attorneys’ fees of 40% of
6 common fund.]])

7 Courts examine several factors to determine a reasonable fee percentage in class
8 action cases, including: (1) the results obtained by counsel in the case, (2) the risk and complex
9 issues involved in the case, (3) the skill required and quality of work, and (4) the contingent
10 nature of the fee and the financial burden carried by the plaintiffs.¹ (*See, e.g., Laffitte* at 504.) As
11 is discussed below, each of these factors support a percentage of at least 40 percent.

12 **Results Obtained** - Class Counsel obtained an excellent result in this case on
13 behalf of the Class. Despite the risks of the case and the arguments Trinity would have had
14 during the second phase of trial and on appeal, the \$3.15 million that Trinity will pay into the
15 common fund represents **76.4 percent** of the total amount that Trinity overcharged Class
16 Members. (Devine Dec. at ¶16.) Moreover, this \$3.15 million does not include the very
17 substantial future benefits (discussed below) from charges that Trinity has agreed not to collect.
18 If this Court approves the attorneys’ fees and costs, the administrative costs, and the incentive
19 award, Class Members will receive average benefits of at least \$500 per apartment, Class
20 Members who resided in a Trinity apartment for a year or more will receive an average of at least
21 \$1,000 per apartment, and the largest award to a single Class Member will exceed \$3,300. (*Id.*)
22 The proposed settlement also provides significant benefit to Class Members because the
23 settlement proceeds will be distributed before the end of the summer 2023, as opposed to waiting
24 years for a likely appeal to be decided, and without the risk of a less favorable final result. (*Id.*)

25 In addition to the \$3.15 million that Trinity will pay into the common fund, all
26 Class Members who still reside in a Trinity apartment will never have to pay Trinity for water and

27 ¹ A fifth factor—the opportunity for Class Members to object—will be addressed after Class Members have time to
28 file any objections.

1 trash services for the duration of their lease. (*Id.* at ¶17.) Additionally, following the settlement,
2 Trinity discontinued charging water and trash bills to its tenants, even those tenants who moved
3 in after the Class Period and are not Class Members. (*Id.* at ¶18.) Class Counsel estimates
4 Trinity’s changes in business practices that this lawsuit caused will save its tenants between
5 ***\$85,000 - \$100,000 per month*** in charges for water and trash bills. (*Id.*)

6 **Risk and Complex Issues** – As is discussed earlier, this case involved a novel
7 issue of law that has never been litigated: whether the SFRO prohibits a landlord from passing on
8 water and trash charges in addition to the “base rent” amount. Class Counsel were the first—and
9 only—attorneys to bring a case of this nature. (*Id.* at ¶2.) Before filing this case, Class Counsel
10 spent weeks exhaustively researching the SFRO, the applicable Rent Board Regulations, the
11 relevant law on the subject, and all prior Rent Board decisions to ensure this case was built on a
12 sound legal foundation. (*Id.* at ¶3.) Class Counsel then spent five years litigating this novel and
13 risky case against the formidable team of skilled lawyers who vigorously defended Trinity. (*Id.* at
14 ¶¶4-11.)

15 **Skill Required and Quality of Work** – Class action litigation—particularly when
16 advancing a novel theory that has never before been litigated—requires significant skill,
17 knowledge and experience. The issues litigated in this case, therefore, required much more than
18 just a general appreciation of consumer protection and class action procedure. This Court has
19 witnessed Class Counsel’s work through the extensive briefing at trial and on the various motions
20 that have come before the Court. Plaintiffs prevailed in every one of these motions: they
21 prevailed at the first phase of the bifurcated trial, and they prevailed in obtaining disputed
22 discovery from Trinity. (*Id.* at ¶7.) After prevailing on the liability issue at trial, Class Counsel
23 had to spend a significant amount of time securing the funds that would be necessary to pay a
24 judgment in this case. (*Id.* at ¶¶ 9-10.) They scoured the records of the San Francisco Recorder’s
25 Office and the California Secretary of State’s Office to identify the ostensible owner of each
26 building and trace that LLC through several layers to link it back through to the Sangiacomo
27 family who were the ultimate owners of all of the properties. (*Id.*) Class Counsel then prevailed
28 at obtaining a hotly contested Writ of Attachment, and they prevailed at obtaining disputed leave

1 to amend the Complaint to add the Sangiacomo family members and several of their related
2 parties as defendants in this case. (*Id.*) Three and a half weeks after obtaining these results, the
3 parties were able to reach the proposed settlement. (*Id.*) Class Counsel believes that these results
4 speak to the very high quality of their work.

5 **Contingent Nature of Fee and Financial Burden** – Confronted with a novel and
6 complex case with a highly uncertain outcome, Class Counsel bore the risk that Trinity would
7 ultimately prevail. As is discussed in detail below, Class Counsel spent more than 1,800 hours
8 working on this case and advanced more than \$11,000 in costs without any assurance that they
9 would be paid for this time or reimbursed for these costs. Class Counsel have worked long and
10 hard for over five years and have not yet received any payment for their efforts. Given the small
11 size of Class Counsel’s firm, not receiving any compensation for their time for the five and a half
12 years that this case has been pending—while simultaneously advancing litigation costs—was
13 highly risky.

14 In determining a reasonable fee award in a case that results in a significant fund for
15 a large class of individuals, courts should consider that such fees serve as an economic incentive
16 for lawyers to bring class litigation to achieve increased access to the judicial system for
17 meritorious claims and to enhance deterrents to wrongdoing even where individual damages may
18 not be substantial. (*See Conte, Attorney Fee Awards* (2d ed. 1993) § 104, p. 6.) If counsel is not
19 adequately compensated for the risks inherent in difficult class actions, competent attorneys will
20 be discouraged from prosecuting similar cases. (*See Ketchum v. Moses*, (2001) 24 Cal. 4th 1122,
21 1132-33; *see also Cazares v. Saenz* (1989) 208 Cal. App. 3d 279, 287.)

22 Class Counsel is not aware of any other Trinity tenant filing any claim (either in
23 court or with the Rent Board) asserting that Trinity violated the SFRO by allocating water and
24 trash charges to them. (Devine Dec. at ¶2.) The benefits that Class Members will receive from
25 this settlement, therefore, will be a welcome surprise for most Class Members. If Class Members
26 had chosen instead to retain their own attorney to pursue these claims, they likely would have to
27 pay a contingency fee (likely 40 percent) and pay the costs of litigation (which in many cases
28 would far exceed their recovery.) If this Court approves the requested attorneys’ fees and costs,

1 the costs of administration, and the incentive award, there will still be \$1,830,000 (58 percent of
2 the common fund) available to pay Class Member claims. Class Members, therefore, will
3 significantly benefit from this settlement without any of the work or risk associated with this
4 litigation. For these reasons, an attorneys' fee percentage of 40 percent is reasonable in this case.

5 **2. A Lodestar Cross-Check Results In A Negative Multiplier, Confirming The** 6 **Reasonableness Of The Fee Request**

7 Although courts are not required to conduct a lodestar analysis when attorneys'
8 fees are calculated as a percentage of a common fund, courts have the discretion to consider the
9 lodestar as a "cross-check" to evaluate the reasonableness of a fee request. (*Lafitte* at 506.)
10 Courts generally consider the time that counsel spent on the case as an important factor in
11 choosing a reasonable percentage to apply, and if the lodestar multiplier is extraordinarily high or
12 low, "the trial court should consider whether the percentage used should be adjusted so as to bring
13 the imputed multiplier within a justifiable range, but the court is not necessarily required to make
14 such an adjustment." (*Id.* at 505.)

15 As is discussed in detail below, Class Counsel's lodestar is \$1,797,750. The
16 attorneys' fees that Class Counsel request (\$1,260,000) represent a **negative multiplier** and
17 represents only 70 percent of Class Counsel's lodestar. Ordinarily, a negative multiplier supports
18 the conclusion that a percentage-based fee award is reasonable. (*See, e.g., Chun-Hoon v. McKee*
19 *Foods Corp.*, 716 F.Supp.2d 848, 854 (N.D. Cal. 2010.) Consequently, the lodestar cross-check
20 confirms the reasonableness of Class Counsel's fee request.

21 Class Counsel have worked more than 1,800 hours on this case over the last five
22 and a half years. As discussed in detail earlier, this time was necessary to achieve the favorable
23 judgment in the first phase of the bifurcated trial and to convince Trinity to settle this case rather
24 than appeal this Court's decision. Additionally, Class Counsel will continue to devote significant
25 time to this case to ensure the settlement is successfully implemented and Class Members receive
26 the benefits to which they are entitled.

27 The following is a breakdown of Class Counsel's lodestar to date, broken down
28 by the three attorneys who worked on behalf of Plaintiffs. (Devine Dec. at ¶19.) Class Counsel

1 is prepared to provide any additional details that the Court might request about the work they
 2 performed:²

Attorney	Hours	Hourly Rate	Lodestar
Ken Seeger (Senior Partner – 34 years’ experience)	755	\$1,100	\$830,500
Brian Devine (Senior Partner – 21 years’ experience)	987	\$950	\$937,650
Isaac Walrath (Associate – 1-2 years’ experience)	74	\$400	\$29,600
TOTAL	1,816		\$1,797,750

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 8 Ken Seeger’s usual hourly rate is \$1,100 per hour, Brian Devine’s is \$950 per
 9 hour, and Isaac Walrath’s is \$400 per hour. Ken Seeger and Brian Devine have billed these rates
 10 in all of the cases in which they worked since 2020. (*Id.* at ¶21.) Ken Seeger and Brian Devine
 11 recently received these rates in a class action case in the Northern District of California involving
 12 Kaiser’s illegally charging for COVID tests, and these rates are similar to the lodestar rate of
 13 \$950 per hour approved by the federal court overseeing a complex mass tort case in which Brian
 14 Devine was awarded fees in 2020. (*Id.*)

15 Class Counsel’s rates are in line with average rates for lawyers with commensurate
 16 experience in the San Francisco market. The “Laffey Matrix” is “a widely recognized
 17 compilation of attorney and paralegal rates based on various levels of experience” upon which
 18 courts routinely rely to determine the reasonableness of attorney hourly rates. (*See, e.g., Theme
 19 Promotions, Inc. v. News Am. Mktg. FSI, Inc.*, 731 F. Supp. 2d 937, 948 (N.D. Cal. 2010), *see
 20 also Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702.) The Laffey Matrix,
 21 adjusted for the San Francisco Bay Area, reflects that partners with more than 20 years of
 22 experience charge an average of \$1,084 per hour and associates with 1-3 years’ of experience
 23 charge an average of \$446 per hour.³ This is similar to rates that courts in the Bay Area have

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 28 ² Trial courts conducting lodestar cross-checks are not required to closely scrutinize each claimed attorney hour, but
 have instead used information on attorney time spent to “focus on the general question of whether the fee award
 appropriately reflects the degree of time and effort expended by the attorneys.” (*Laffitte* at 505). It is sufficient if a
 party seeking fees under the lodestar method provides “[d]eclarations of counsel setting forth the reasonable hourly
 rate, the number of hours worked and the tasks performed. . . .” *Wershba v. Apple Computer, Inc.* (2001) 91
 Cal.App.4th 224, 254, *see also, Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal. App. 4th 1309, 1324 [“It is not
 necessary to provide detailed billing timesheets to support an award of attorney fees under the lodestar method.”].)

³ The Laffey Matrix shows that senior partners charged an average rate of \$997 in 2022 and associates with one to

1 approved as reasonable. (*See, e.g., Bennett v. Franklin Res., Inc.*, No. 11-cv-05807-CRB (N.D.
2 Cal. 2018) [partner rates between \$825 and \$1,250 per hour were reasonable.]])

3 The two partners who worked on this case for Plaintiffs, Ken Seeger and Brian
4 Devine, are senior partners of Seeger Devine with 34 years' and 21 years' experience,
5 respectively. (Devine Dec. at ¶22.) They are both very experienced litigators who have national
6 reputations in class action and complex mass tort cases. For example, this Court appointed Ken
7 Seeger as Liaison Counsel in the Judicial Council Coordinated Proceeding for *DePuy Pinnacle*
8 *Hip Systems Cases* (JCCP No. 4662), which was successfully resolved and terminated after ten
9 years of litigation. This Court also appointed Ken Seeger to the Plaintiffs' Steering Committee in
10 the Judicial Council Coordinated Proceeding for *DePuy ASR Hip Systems Cases* (JCCP No.
11 4662). Both Ken Seeger and Brian Devine have been appointed as Class Counsel in three other
12 class action cases involving landlord-tenant disputes which were successfully resolved. (*Id.*)
13 State court and federal court judges from across the country have appointed both Brian Devine
14 and Ken Seeger to leadership positions in several complex class action and mass tort litigation,
15 which are described in detail in the Devine Declaration. (*Id.*) Ken Seeger authored the updates to
16 the Continuing Education of the Bar publications "California Tort Guide" and "California Tort
17 Damages Guide," and he frequently publishes and lectures on class action and complex litigation
18 topics. (*Id.* at ¶24.) Brian Devine has served on the Emory Law School Institute for Complex
19 Litigation's judicial roundtable where he collaborated with defense counsel, in-house counsel and
20 the federal judiciary to develop practices and procedures to make complex litigation more

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23 three years' of experience charged an average of \$413 per hour. (Laffey Matrix, <http://www.laffeymatrix.com/>.)
24 Because the Laffey Matrix reports rates for the Washington D.C. area, courts have adjusted the rates in the Laffey
25 Matrix to reflect the differences between the District of Columbia and the local market. For example, the Northern
26 District of California applied the federal government's "General Schedule" locality pay tables to adjust the rates in
27 the Laffey Matrix upward by between 7 and 10 percent to reflect the pay differentials between San Francisco and
28 Washington D.C. (*Theme Productions* at 949.) Currently, the pay differential between San Francisco market and the
Washington D.C. market, as reflected by the federal government's "General Schedule" locality pay tables, is 8.8%.
(Compare Baltimore/District of Columbia (accessed at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf>) with San Jose/San Francisco (accessed at
<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/SF.pdf>.) Consequently,
the 2022 Laffey Index hourly rate of \$997 for attorneys with 20+ years of experience, adjusted upward by 8.8% to
reflect San Francisco rates, is \$1,084 and the \$413 rate for young associates is increased to \$446.)

1 efficient. He also served on the Sedona Conference’s working group on mass tort litigation and he
2 frequently speaks and publishes regarding complex litigation issues. (*Id.* at ¶23.)

3 Brian Devine and Ken Seeger’s skill and experience justify rates well above the
4 “average” Laffey Index rates. Nevertheless, Brian Devine’s rate is \$950, which is lower than the
5 \$1,084 adjusted Laffey Index rate for an attorney with his number of years of experience, Ken
6 Seeger’s rate of \$1,100 is only slightly higher than the average adjusted rate of \$1,084, and Isaac
7 Walrath’s rate is \$400, which is lower than the average adjusted rate of \$446.

8 The 1,800 hours Class Counsel invested into this novel, complex, and risky case is
9 what produced a favorable decision during the first phase of trial and ultimately led to a
10 settlement that, if approved, will provide significant benefits to Class Members. Class Counsel’s
11 \$1,797,750 lodestar confirms that \$1,260,000 is a reasonable attorneys’ fee award.

12 **B. Plaintiffs’ Litigation Costs Are Reasonable and Should Be Reimbursed**

13 Class Counsel was required to advance all expenses in this litigation without any
14 assurance they would be reimbursed. Over the course of the last five and a half years, Class
15 Counsel have incurred **\$11,490.48** in costs in this case. (Devine Dec. at ¶25, Ex. C.) An
16 itemization of each cost item is provided as Exhibit C to the Devine Declaration. In summary, the
17 totals for each category of costs are as follows:

19 Category	Amount
20 Filing and Service Costs	\$ 4,730.17
21 Court Reporter Fees	\$ 4,537.50
22 Hearing and Trial Costs	\$ 1,245.21
23 Class Notice Costs (2021 Certification)	\$ 497.52
24 Fact and Legal Research Costs	\$ 480.08
TOTAL	\$ 11,490.48

25 Class Counsel requests that this Court approve reimbursement of these expenses
26 that are reasonable and were necessary to pursue this case against Trinity.

1 **C. The Incentive Award Should Be Approved**

2 Plaintiffs request that this Court approve an incentive award to Class
3 Representatives Jonathan Spiro and Simone Kaplan in the amount of \$10,000 each to compensate
4 them for the time and effort they spent and the significant financial risk they undertook to bring
5 this case on behalf of the Class. In awarding an incentive award, Courts consider factors such as:
6 (1) the risk to the Class Representative in bringing the lawsuit, (2) the amount of time and effort
7 spent by the Class Representative, (3) the duration of the litigation, and (4) the personal benefit
8 the Class Representative received from the litigation. (*See, e.g., Cellphone Termination Cases*
9 (2010) 186 Cal. App. 4th 1380, 1394-95.)

10 The personal financial risk that Class Representatives took in bringing this
11 litigation on behalf of the Class is unusual in this case. The Rent Ordinance states that “The
12 prevailing party in any civil action brought under this section 37.11A shall be entitled to recover
13 reasonable attorneys’ fees and costs.” (S.F. Admin Code §37.11A(c).) Consequently, if Trinity
14 had prevailed in this case, it could have sought an award of its attorneys’ fees and costs. This
15 significant financial risk might explain why no other Class Member has ever brought a lawsuit
16 alleging that Trinity’s water and trash billing practices violated the Rent Ordinance. If they had,
17 they would risk having to pay Trinity tens of thousands of dollars in exchange for a maximum
18 average recovery of only about \$1,000. The benefits that this settlement provides exist only
19 because Class Representatives were willing to take the risk to advance this ground-breaking case.

20 In addition to taking a substantial risk, Class Representatives discharged all of
21 their obligations to the Class with dedication, persistence, and care. (Declarations of Jonathan
22 Spiro and Simone Kaplan, filed and served concurrently herewith at ¶¶ 2-12; Devine Dec. at
23 ¶26.) They hired experienced and Class Counsel to handle this case, and they provided crucial
24 documents and records necessary to investigate and bring this case. (*Id.*) Throughout this case,
25 they responded to Trinity’s discovery (consisting of **60 special interrogatories** directed to each of
26 the two Class Representatives), they actively participated in the litigation and regularly monitored
27 the progress of this case. (*Id.*) Both Class Representatives monitored the settlement efforts and
28

1 this case, analyzed the proposed Settlement Agreement and provided Class Counsel their input
2 regarding the Settlement. (*Id.*) Both Class Representatives worked hard to obtain a significant
3 benefit for Class Members, despite the fact that that they had to take a huge financial risk and
4 stand to gain only \$627 on their individual claims. (*Id.*)

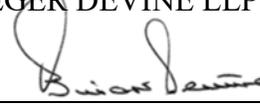
5 Trinity does not object to an incentive award in the amount of \$10,000 to each of
6 the Class Representatives, the Class was notified about their request, and this amount is well
7 within the range approved by other California courts. (Devine Dec. at ¶26; *Cellphone Fee*
8 *Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-96 [affirming incentive awards of
9 \$10,000 each to class representatives.]) Indeed, the requested amount is significantly lower than
10 this Department and other Courts have approved. (*See, e.g., Stewart v. Kaiser Foundation Health*
11 *Plan, Inc.*, Case No. CGC-21-590566, order dated March 10, 2022 [approving incentive awards
12 of \$60,000 and \$75,000 to class representatives], *see also Glass v. UBS Fin. Services, Inc.*, 2007
13 WL 221862 at *16-17 (N.D. Cal. 2007) [approving \$25,000 incentive award to class
14 representative.]) Given the personal risk that Class Representatives undertook and the time and
15 effort they expended to obtain significant benefits to Class Members, incentive awards of \$10,000
16 each is reasonable and appropriate.

17 IV. CONCLUSION

18 For the foregoing reasons, Plaintiffs respectfully request that the Court approve:
19 (1) attorneys' fees in the amount of \$1,260,000 and costs in the amount of \$11,490.48 to be paid
20 from the Settlement Fund to Seeger Devine LLP, and (2) Incentive Awards in the amount of
21 \$10,000 each to be paid from the Settlement Fund to Class Representatives Jonathan Spiro and
22 Simone Kaplan.

23 DATED: June 13, 2023.

SEEGER DEVINE LLP

24 By 

25
26 Kenneth M. Seeger
27 Brian J. Devine
28 Class Counsel