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13 *Attorneys for Plaintiffs and the Settlement*
14 *Classes*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 JASMEN HOLLOWAY, AMY GARCIA,
CHERYL CHAPPEL, ERIC
18 BLACKSHER, JESSICA TREAS,
LAWRENCE SANTIAGO, JR.,
19 MUEMBO MUANZA, MAURICE
CALHOUN, and NICHOLAS DIXON, on
20 behalf of themselves and all others
similarly situated,

21 Plaintiffs,

22 v.

23 BEST BUY CO., INC. and BEST BUY
24 STORES, L.P.,

25 Defendants.

Case No. C-05-5056 PJH (MEJ)

**NOTICE OF MOTION AND MOTION
FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF COSTS AND
EXPENSES**

Date: November 9, 2011

Time: 9:00 A.M.

Judge: Hon. Phyllis J. Hamilton

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 9, 2011 at 9:00 A.M., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Phyllis J. Hamilton, 1301 Clay Street, Oakland, California 94612, Courtroom 3, Plaintiffs will and hereby do move the Court for an Order awarding \$9,999,999 in attorneys' fees and costs to Plaintiffs. This motion is based upon the Memorandum of Points and Authorities, the Declarations of Eve Cervantez, Bill Lann Lee, Jeffrey Lewis, Kelly Dermody, and Guy Wallace filed herewith, the detailed attorney time records submitted to the Court for *in camera review*, the pleadings and discovery on file in this action, and the arguments of Counsel presented to Court at the hearing of this Motion. Best Buy does not oppose the requested award of attorneys' fees and costs.

Respectfully Submitted,

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Dated: August 17, 2011

By: /s/ Eve H. Cervantez

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1 **I. INTRODUCTION**

2 Class Counsel Altshuler Berzon LLP; Lief, Cabraser, Heimann & Bernstein, LLP; Lewis,
3 Feinberg, Lee, Renaker & Jackson P.C.; and Schneider Wallace Cottrell Brayton Konecky LLP
4 have obtained extensive and meaningful injunctive relief for a Settlement Class of well over
5 55,000 female, African-American, and Latino employees of Best Buy. The comprehensive
6 injunctive relief directly addresses the discriminatory policies and practices that Plaintiffs targeted
7 in this lawsuit, and will ensure that women, African-Americans, and Latinos are treated fairly by
8 Best Buy in hiring, assignment to desirable jobs, promotions, and exempt compensation. Over its
9 four-year term, the Decree will open highly valuable job opportunities not just to members of the
10 Class but to members of the public. To obtain this important relief, Class Counsel collectively
11 devoted over 40,300 hours of time worth \$15,983,694.00 (after substantial reductions for billing
12 judgment and removal of time spent unsuccessfully defending against Defendant's Motion for
13 Judgment on the Pleadings) and almost two million dollars in costs to this litigation on behalf of
14 the Class. Class Counsel have not been paid for any of their fees and costs in this lawsuit. Under
15 the fee-shifting statutes at issue here, they would be entitled to recover this entire amount.

16 Pursuant to the independently negotiated fee section of the Consent Decree, Class Counsel
17 are seeking attorneys' fees and costs of \$9,999,999, which Best Buy has agreed to pay if
18 approved by the Court. After reimbursement of costs and expenses in the amount of
19 \$1,836,858.67, that sum will only pay Class Counsel for 51 percent of their collective lodestar.

20 Class Counsel are statutorily entitled to a reasonable fee, generally set at the "lodestar"
21 amount – that is, hours reasonably expended on the lawsuit times the marketplace rates charged
22 for attorneys of comparable experience and expertise. 42 U.S.C. §2000e-5(k); 42 U.S.C.
23 §1988(b); *see Blum v. Stenson*, 465 U.S. 886, 888 (1984). Accordingly, after reaching agreement
24 regarding injunctive relief and the amount to be paid to the Named Plaintiffs to resolve their
25 individual claims, Best Buy and Class Counsel negotiated a reasonable amount for attorneys' fees
26 and reimbursement of costs arising from Best Buy's potential exposure for prevailing party
27 attorneys' fees and costs. The attorneys' fee amount negotiated by the parties and requested by
28 Class Counsel is easily fair and reasonable.

1 The \$1,836,858.67 in reimbursement of costs and expenses sought by Class Counsel is
2 also fair and reasonable. Each of the costs and expenses for which reimbursement is sought was
3 expended to advance the prosecution of the class claims. Here, the largest expenses were for
4 experts (\$1,116,547.63), for setting up and maintaining document databases (\$190,807.16), and
5 for transcripts (\$150,198.50). All of the costs for which reimbursement are sought are of the type
6 regularly billed to paying clients.

7 **II. STATEMENT OF FACTS**

8 **A. The Proposed Consent Decree Provides Extensive Injunctive Relief.**

9 Class Counsel's diligent work has led to a Proposed Consent Decree that provides
10 extensive injunctive relief. The proposed injunctive relief requires Best Buy to implement
11 comprehensive affirmative remedies that directly address the specific policies that Plaintiffs
12 believe led to the disparities in hiring, assignment, promotion, and exempt compensation that
13 Plaintiffs challenged in this lawsuit. It also requires Best Buy to designate a person to be in
14 charge of its diversity efforts; makes improvements in Best Buy's complaint process and in
15 training of managers; and provides for effective monitoring and enforcement.

16 **1. Hiring, Promotions, and Assignment**

17 Best Buy has developed and will continue to use standardized selection procedures
18 (including using new interview guides prepared by an industrial organizational psychologist [“I/O
19 psychologist”] based on job analyses prepared by an I/O psychologist) for all retail store hiring,
20 initial and subsequent job assignment, and for promotions to supervisor or exempt manager
21 positions. Class Counsel retained their own, independent I/O psychologist who reviewed the new
22 interview guides and found them materially improved from the older interview guides challenged
23 by Plaintiffs. Cervantez Decl. ¶37. Best Buy will make material changes to these selection
24 procedures only with the approval of an I/O psychologist and notification to the Court and Class
25 Counsel. Consent Decree (Dkt. 355-1), Sections II.C, D, I.

26 Best Buy will designate a qualified individual whose primary purpose will be to oversee
27 Best Buy's processes for encouraging the recruitment and retention of qualified diverse
28

1 management candidates, including qualified African Americans, Latinos, and women, throughout
2 the company. Consent Decree (Dkt. 355-1), Section II.C.5.

3 Best Buy will post all open senior, supervisor, and exempt manager positions on an
4 electronic system accessible to all Best Buy store-level employees no less than five days before
5 the position is filled. Although Best Buy will be excused from the posting requirement in the
6 case of business necessity, business necessity will not include preference for a particular
7 candidate or urgency to fill a position. Consent Decree (Dkt. 355-1), Section II.D.3.

8 Best Buy will include with every job posted on the company's online application system a
9 clear description of the position's duties and the required qualifications. Consent Decree (Dkt.
10 355-1), Section II.C.4.

11 Best Buy will create an electronic process for current store-level employees to register
12 their interest in any full-time, senior, supervisor, or exempt position, and will remind employees
13 to renew their interest at 6-month intervals. Before selecting outside applicants or employees
14 who have not registered an interest, managers will be required to consider employees who have
15 registered their interest through this system. Consent Decree (Dkt. 355-1), Section II.D.1.

16 Best Buy will also implement processes to increase the pool of African American, Latino,
17 and female employees qualified for promotion to management at all its retail stores by increasing
18 training opportunities, and will continue to ensure that any training programs and formal
19 mentoring opportunities provided will be available to all employees regardless of race or gender,
20 except when such opportunities are targeted at minority or female employees. Consent Decree
21 (Dkt. 355-1), Section II.D.5.

22 Best Buy will explicitly train managers that Best Buy's marketing strategies should not be
23 interpreted to influence or guide Best Buy's hiring, recruitment, job assignment, transfer,
24 promotions, or compensation practices. Consent Decree (Dkt. 355-1), Section II.F.3.

25 **2. Exempt Compensation**

26 Best Buy will retain an I/O psychologist or outside compensation specialist to review Best
27 Buy's compensation policies and make recommendations to Best Buy. Best Buy will train its
28 managers on the use of any tools developed by this consultant. Best Buy will review the

1 compensation of exempt managers not less than once annually to ensure that the company is
2 complying with its non-discrimination policies. Consent Decree (Dkt. 355-1), Section II.E.

3 **3. Training**

4 Within 6 months of the date the Decree becomes effective, Best Buy will train all its
5 General Managers regarding the terms of the Decree pertaining to hiring, promotions, the registry
6 system, job postings, the complaint procedure, the company's diversity policies, and the
7 distinction between customer marketing and employee staffing. Best Buy will also provide the
8 following training: all new hires will be trained on the company's non-discrimination, anti-
9 harassment, and anti-retaliation policies; all employees will be trained on use of the registry
10 system; supervisors and managers will receive annual diversity trainings; and staff involved in
11 hiring and promotions will be trained on use of the selection procedures, including the company's
12 interest in diversity. Consent Decree (Dkt. 355-1), Sections II.C, D, and F.

13 **4. Communication**

14 Best Buy will continuously post its non-discrimination, anti-harassment, and anti-
15 retaliation policies on the company's intranet website, along with an annual message from the
16 CEO. A high ranking Best Buy officer will make a statement in support of these policies at
17 annual regional or national meetings attended by store General Managers during the term of the
18 Decree. Consent Decree (Dkt. 355-1), Section II.B.

19 **5. Evaluation of Managers**

20 Best Buy will evaluate all supervisors, exempt store managers, and district managers
21 annually on their ability to manage a diverse workforce, including their compliance with the
22 terms of the Consent Decree. An I/O psychologist will advise Best Buy on how best to conduct
23 and weigh these evaluations. Consent Decree (Dkt. 355-1), Section II.H.

24 **6. Complaint Process**

25 Best Buy will continue to provide a procedure for employees or job applicants to report
26 discrimination or retaliation on the basis of race, color, national origin, or gender, or alleged
27 violations of the Consent Decree. This procedure will be communicated to new hires and posted
28 on the company's intranet website continuously, and on the intranet home page for 7 consecutive

1 days at least once annually. In cases where a complaint is substantiated, Best Buy's policy will
2 be to impose appropriate discipline, up to and including discharge. Consent Decree (Dkt. 355-1),
3 Section II.G.

4 **7. Monitoring and Enforcement of the Decree**

5 The term of the Decree is four years from the date the Decree becomes effective. Consent
6 Decree (Dkt. 355-1), Section II.M. Best Buy will make good faith best efforts to implement the
7 provisions of the Decree as soon as reasonably practicable. If Best Buy requires more than 12
8 months to fully implement the Decree, the term will be extended with respect to the specific
9 provisions not yet implemented by the additional time over 12 months required for
10 implementation. Consent Decree (Dkt. 355-1), Section II.L.

11 Best Buy will designate an officer ("Monitor") who will oversee Best Buy's policies and
12 practices to ensure compliance with the Decree. The Monitor will have access to statistical data
13 necessary to ensure that the company is complying with the terms of the Decree in its hiring, job
14 assignment, promotion, and compensation practices. Within 6 months after the Decree becomes
15 effective, and annually thereafter for the term of the Decree, the Monitor will file a Certificate of
16 Compliance with the Court. Consent Decree (Dkt. 355-1), Section II.I. In addition, Best Buy's
17 corporate audit department will regularly audit to ensure compliance with the terms of the Decree.
18 Consent Decree (Dkt. 355-1), Sections II.C.2., II.D.1.d., II.D.3.c., II.E.3., II.F.5.

19 The Court will retain jurisdiction during the term of the Decree to enforce its provisions.
20 Consent Decree (Dkt. 355-1), Section II.K.

21 **8. No Release of Claims for Monetary Relief Or Individual Injunctive
22 Relief**

23 The class release is only for class-wide systemic injunctive relief. Class members have
24 not released claims for monetary relief or individual injunctive relief. Consent Decree (Dkt. 355-
25 1), Section V.

1 **B. To Obtain These Results for the Class, Class Counsel Reasonably Expended**
2 **40,300 Hours Having a Lodestar Value of \$15,983,694.00.**

3 Class counsel (even after the deletion of substantial time in the exercise of billing
4 judgment and the time spent opposing Best Buy's Motion for Judgment on the Pleadings on
5 which Class Counsel did not prevail) expended more than 40,300 hours, having a lodestar value
6 of \$15,983,694.00, on this litigation. Declaration of Eve Cervantez ("Cervantez Decl.") ¶7, Ex.
7 C; Dermody Decl. Ex. C; Lee Decl. Ex. C; Wallace Decl. Ex. C.

8 **1. Class Counsel Filed Class EEOC Charges and Conducted an Extensive**
9 **Pre-Filing Investigation.**

10 Prior to filing the initial complaint, Class Counsel conducted an extensive pre-filing
11 investigation that included interviews of dozens of Best Buy employees at several stores.
12 Cervantez Decl. ¶8. Class counsel also retained an expert labor economist to review Best Buy
13 employment and demographic data before filing suit. *Id.* Class Counsel then filed administrative
14 charges with the Equal Employment Opportunity Commission between April and December of
15 2005 on behalf of Named Plaintiffs Jasmen Holloway, Amy Garcia, Cheryl Chappel, Muembo
16 Muanza, Maurice Calhoun, and Nicholas Dixon. *Id.*

17 **2. Class Counsel Filed a Class Action Complaint.**

18 Class Counsel filed the initial class action complaint on December 8, 2005. The Third
19 Amended Complaint, filed on January 6, 2009, alleged that Best Buy denied employment,
20 desirable job assignments, promotions/transfers, and equal exempt compensation to African
21 Americans; denied desirable job assignments, promotions/transfers, and equal exempt
22 compensation to women; and denied desirable job assignments and promotion/transfers to Latino
23 employees of Best Buy retail stores in the United States. (Dkt. No. 142-43) Based on these
24 allegations, Plaintiffs asserted disparate impact and treatment claims for race and gender
25 discrimination under Title VII of the Civil Rights Act of 1964; race discrimination claims under
26 42 U.S.C. §1981 (as to the Latino and African-American classes); and violations of the California
27 Fair Employment and Housing Act (as to those class members who worked in California during
28 the class period).

1 **3. Class Counsel Thoroughly Investigated The Facts of This Case**
2 **Through Formal Discovery And Informal Investigation.**

3 Class Counsel engaged in a broad and thorough investigation of the claims of the Classes.
4 Class Counsel propounded extensive written discovery, including 15 sets of Requests for
5 Production of Documents, four sets of Interrogatories, and one set of Requests for Admission.
6 Cervantez Decl. ¶¶10, 13. In response to these discovery requests, Best Buy produced
7 approximately 1.5 million documents, totaling over 12 million pages, and produced
8 comprehensive employment data covering approximately 500,000 Best Buy employees. *Id.* ¶¶10,
9 19. Class Counsel have expended thousands of hours thoroughly reviewing and coding the
10 documents produced. *Id.* ¶12. Class Counsel also took 23 depositions of Rule 30(b)(6) designees
11 and 10 depositions of additional fact witnesses, and defended over 50 depositions taken by
12 Defendants. *Id.* ¶¶16-17.

13 Class Counsel also engaged in extensive informal discovery. Counsel spoke with civil
14 rights organizations about discrimination at Best Buy, interviewed hundreds of current and former
15 Best Buy employees regarding their experiences, and gathered over 100 declarations from these
16 potential class members. *Id.* ¶18.

17 The detailed review of documents, the 30(b)(6) and fact witness depositions, and the
18 interviews of potential class members were essential to Class Counsel's efforts to understand Best
19 Buy's corporate and store hierarchy and employment policies and practices. This analysis was
20 necessary both to move for class certification and to fashion injunctive relief that is carefully
21 calibrated to Best Buy's policies and procedures. *Id.* ¶¶9, 11, 13, 16, 18.

22 Class Counsel also devoted many hours to working with the Named Plaintiffs to respond
23 to the numerous written discovery requests Defendants propounded to the Named Plaintiffs. *Id.*
24 ¶14.

25 **4. Class Counsel Worked Closely with a Statistician, a Sociologist, Labor**
26 **Economists, and I/O Psychologists to Fully Understand and Effectively**
27 **Present the Class Claims.**

28 Class Counsel retained three testifying experts – statistician Dr. Richard Drogin,
sociologist Dr. Barbara Reskin, and labor economist Dr. Jonathan Leonard, to analyze Best Buy's

1 personnel data and practices. Cervantez Decl. ¶¶19-26. Drs. Drogin and Reskin produced
2 extensive reports. Dr. Drogin's statistical analysis was essential to demonstrating a disparate
3 impact on Class Members and a pattern and practice of discrimination. *Id.* ¶21. Dr. Reskin's
4 sociological report allowed Plaintiffs to identify those policies and practices at Best Buy that led
5 to discrimination and anticipated Best Buy's opposition on these same points. *Id.* ¶25. Best Buy
6 deposed each of these experts twice. *Id.* ¶¶19, 22. In response to Plaintiffs' experts' reports,
7 Best Buy submitted eleven reports from six experts, one of which they subsequently withdrew.
8 *Id.* ¶¶ 20, 23-24. Class Counsel retained Dr. Leonard to provide a rebuttal report, and defended
9 his deposition. *Id.* ¶26. Class Counsel took eight depositions of Defendants' experts, and
10 prepared for but did not take a deposition of an expert that Best Buy withdrew less than a week
11 before his deposition was scheduled. *Id.* ¶¶20, 23-24.

12 Class Counsel also hired five consulting experts. *Id.* ¶¶23-24. In addition to a consulting
13 labor economist hired to review Best Buy employment data prior to the filing of the class
14 complaint, Class Counsel hired as consulting experts Dr. Tony Greenwald, Dr. Brian Nosek, and
15 Dr. Nita French to assist them in responding to and preparing for the depositions of the three
16 social science experts hired by Best Buy to rebut Dr. Reskin's report. *Id.* ¶23. Class Counsel also
17 retained I/O Psychologist Michael Campion to assist with the deposition of the expert that Best
18 Buy designated and then withdrew. *Id.* ¶24. Dr. French, an I/O Psychologist, also assisted Class
19 Counsel with the negotiation of injunctive relief by examining Best Buy's new interview guides,
20 and confirming that the new guides were a material improvement over the old ones. *Id.* ¶37.

21 **5. Class Counsel Briefed and Argued Discovery Motions and the Motion**
22 **for Class Certification.**

23 The parties engaged in active motion practice. In connection with written discovery,
24 Class Counsel filed five motions to compel, all of which were granted in whole or in part. *Id.*
25 ¶15. Of particular importance, the Court granted Plaintiffs' request for production of documents
26 from four high-ranking corporate officers, and for the personnel files of class member witnesses.
27 *Id.* ¶15.

1 Class Counsel fully briefed and argued Plaintiffs' Motion for Class Certification, then re-
 2 briefed that motion after changes in the applicable law. Cervantez Decl. ¶¶29-33. In connection
 3 with the class certification briefing, Class Counsel also briefed and argued in opposition to Best
 4 Buy's motions to strike the expert reports of Dr. Drogin and Dr. Reskin. *Id.* ¶30; Declaration of
 5 Bill Lann Lee ("Lee Decl.") ¶¶6, 8. Class Counsel also successfully opposed Defendants'
 6 Motion to Strike their Second Motion for Class Certification. Cervantez Decl. ¶32.

7 **6. Fully Informed of the Strengths and Weaknesses (both Factual and**
 8 **Legal) of the Class Claims, Class Counsel Negotiated Meaningful**
 9 **Injunctive Relief That Will Advance Equal Employment Opportunity**
 10 **at Best Buy.**

11 The Parties discussed settlement over the course of several years. Settlement discussions
 12 took place in a number of in-person meetings and in many telephone conference calls. Cervantez
 13 Decl. ¶36. Class Counsel drafted and then re-drafted and revised the injunctive relief proposals
 14 and the Consent Decree. The parties exchanged many drafts about the terms of class-wide
 15 injunctive relief. *Id.* ¶38. Only after agreement was reached on class-wide injunctive relief and
 16 the release to be given by members of the Settlement Classes did the parties turn to the individual
 17 claims of Named Plaintiffs. *Id.* ¶38. Only after the basic terms of settlement of the Named
 18 Plaintiffs' claims were also agreed upon did the parties negotiate attorneys' fees and costs. *Id.*
 19 ¶38. The Consent Decree is not contingent upon the Court's approval of the full fee and cost
 20 amount. Consent Decree (Dkt. 355-1), Section X.

21 **III. ARGUMENT**

22 As prevailing parties, Plaintiffs are statutorily entitled to an award of fees and costs. The
 23 parties separately negotiated fees and costs at arms' length after injunctive relief was already
 24 agreed upon. The attorneys' fees and costs provided for in the Consent Decree are independent of
 25 the injunctive relief. The requested fees and costs do not come from a common fund, so failure to
 26 grant the full negotiated fees will not increase relief to the Classes.

27 Where, as here, the parties to a case involving a fee-shifting statute negotiated and settled
 28 the amount of attorneys' fees "the district court's review [should] focus on the reasonableness of
 the fee request under the lodestar calculation method." *Staton v. Boeing*, 327 F.3d 938, 966 (9th

1 Cir. 2003). “Absent some unusual explanation, a defendant,” fully informed and represented by
2 counsel, “would not agree in a class action settlement to pay out of its own pocket fees
3 measurably higher than it could conceivably have to pay were the fee amount litigated.” *Id.* For
4 that reason, “the court need not inquire into the reasonableness of the fees . . . with precisely the
5 same level of scrutiny as when the fee amount is litigated.” *Id.* The court will generally not find
6 negotiated attorneys’ fees unreasonable unless “the amount of fees [the defendant] agreed to pay
7 in the settlement agreement [is] distinctly higher than the fees class counsel could have been
8 awarded by the district court using the lodestar method.” *Id.*

9 The negotiated amount of attorneys’ fees in this case is easily fair and reasonable under
10 the lodestar method. Class Counsel has obtained substantial and meaningful injunctive relief that
11 directly addresses the specific policies challenged by Plaintiffs with respect to fairness in hiring,
12 assignment, promotions, and exempt compensation. The Consent Decree vindicates the purposes
13 of Title VII and will create better job opportunities for women, African-Americans, and Latinos.
14 Having achieved an “excellent result,” Class Counsel could have received a fully compensatory
15 fee. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Nonetheless, pursuant to the Consent
16 Decree, Class Counsel requests only reimbursement for reasonable costs and expenses and
17 payment of 51% of a reasonable lodestar fee.

18 **A. Class Counsel Is Statutorily Entitled to Fees and Costs.**

19 Plaintiffs’ entitlement to attorneys’ fees derives from three fee-shifting statutes. A
20 “prevailing party” in both a Title VII action and a suit under 42 U.S.C. §1981 is entitled to “a
21 reasonable attorney’s fee.” 2000e-5(k); 42 U.S.C. §§1988(b). In addition, a party who prevails
22 on a California Fair Employment and Housing Act claim is entitled to “reasonable attorney’s
23 fees.” Cal. Govt. Code §12989.2(a). Litigation costs and expenses are authorized by both federal
24 and state statutes. 42 U.S.C. §§1988(c), 2000e-5(k); Cal. Civ. Proc. Code §1032(b).

25 It is undisputed that Plaintiffs, who have obtained substantial injunctive relief in a court-
26 ordered consent decree, are prevailing parties. *See Buckhannon Bd. & Care Home, Inc. v. West*
27 *Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604 (2001) (“[C]ourt-ordered consent decrees
28 create the ‘material alteration of the legal relationship of the parties’ necessary to permit an award

1 of attorney's fees" (citation omitted)); *Rosenfeld v. Southern Pac. Co.*, 519 F.2d 527, 529 (9th
2 Cir. 1975) (obtaining injunctive relief renders a plaintiff a prevailing party under Title VII). A
3 party is deemed to have prevailed even if not all of the relief originally sought was obtained.
4 *Texas State Teachers Ass'n v. Garland Sch. Dist.*, 489 U.S. 782, 791-92 (1989) (party need
5 receive only "some of the benefit. . . sought in bringing suit" to be a prevailing party).

6 **B. The Extensive and Meaningful Injunctive Relief Obtained Supports the**
7 **Reasonableness of the Attorneys' Fee Award.**

8 Class Counsel has obtained significant injunctive relief on behalf of the Classes that
9 addresses the policies and practices that Plaintiffs have alleged to be discriminatory in this
10 litigation. Among other things, Defendants will be required to use improved, standardized
11 selection procedures, including professionally designed interview guides, for all hiring,
12 assignment and promotions, and cannot change these selection procedures without approval from
13 an I/O psychologist; must retain an I/O psychologist, whose qualifications have been provided to
14 Class Counsel, to examine and make recommendations to its exempt compensation practices and
15 train its supervisors on the implemented recommendations; must post all open senior, supervisor,
16 and exempt manager positions on an electronic system accessible to all Best Buy store-level
17 employees along with accurate description of the jobs; and must create an electronic registry by
18 which all current, store-level employees may register their interest in any full-time, senior,
19 supervisor, or exempt positions and must consider individuals who have expressed such an
20 interest before considering outside applicants or those who have not registered an interest. Best
21 Buy will explicitly train managers that "customer centricity" and other customer demographic
22 programs should not influence staffing decisions. It will also designate an individual whose
23 primary purpose will be to oversee Best Buy's processes for encouraging the recruitment and
24 retention of qualified diverse candidates, and must make many significant improvements to the
25 training of supervisors and communication of policies on diversity. Best Buy will appoint a
26 monitor to ensure that these policies are carried out.

27 These changes to policies and practices are precisely those which both experts and courts
28 have found are most effective at increasing diversity within a company. For example, in *Butler v.*

1 *Home Depot*, N.D.Cal. Case Nos. 94-4335, 95-2182 SI, the court approved a consent decree in a
2 Title VII gender discrimination class action that included, like the Decree here, creation of a
3 system for employees to register interest in jobs, publication of job openings, accountability of
4 managers for diversity, a designated individual responsible for diversity efforts within the
5 company, and ongoing monitoring. *See, e.g., S. Sturm, Second Generation Employment*
6 *Discrimination: A Structural Approach*, 101 Columbia L. Rev. 458, 509-20 (2001). In approving
7 the settlement, Judge Illston commended counsel for the excellent result and stated that the
8 “injunctive relief” obtained is “even more significant” than the monetary payment. Transcript,
9 Jan. 14, 1998, Final Approval Hearing, *Butler v. Home Depot*, Nos. 94-4335, 95-2182, at 17:11-
10 15, Cervantez Decl. Ex. G. As a result of the injunctive relief in that case, during the first three
11 years of the Consent Decree alone, the percentage of women in the job of sales associate jumped
12 from 16 to 22 percent (an increase of 4,200 female sales associates), the percentage of women
13 department supervisors increased from 15 to 19 percent (an increase of 450 female department
14 supervisors), the percentage of female assistant store managers increased from 15 to 20 percent
15 (an increase of approximately 200 female assistant store managers), and the percentage of female
16 store managers increased from 8 to 19 percent (an increase of approximately 30 store managers).
17 Cervantez Decl. Ex. K (Transcript of June 24, 2002 hearing in *Butler v. Home Depot* Nos. 94-
18 4335, 95-2182), at 13-14. During that period, Home Depot’s turnover in the jobs covered by the
19 Consent Decree dropped 11.4 percent, *id.* at 11, which caused Home Depot to continue to use the
20 Decree procedures after the Decree term expired. As a result, female representation continued to
21 increase after the Decree expired. Although the Decree was focused on increasing gender
22 diversity, the Decree procedures also resulted in a substantial increase in minority managers.
23 Sturm, 101 Columbia L. Rev. at 518-19.

24 Similarly, after implementation of a consent decree in *Haynes v. Shoney’s, Inc.*, No. PCA
25 89-30093 (N.D. Fla. 1993), which required, among other things, posting of jobs and job
26 descriptions, publicizing and strengthening complaint procedures, establishing responsible
27 individuals within the company, and ongoing monitoring, there was a substantial increase in
28 African-American restaurant managers. S. Watkins, *The Black O: Racism and Redemption In An*

1 *American Corporate Empire*, 230-232 (1997); *Haynes v. Shoney's Inc.*, No. PCA 89-30093,
 2 Consent Decree, Sections VI, IX, XI-XIII. (Available at <http://bit.ly/qqnUDG>). *See also* A.
 3 Kalev, F. Dobbin, et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate*
 4 *Affirmative Action and Diversity Policies*, 71 *Am. Sociological Rev.* 589 (2006) (extensive study
 5 of actual company operations demonstrated that systems of accountability, such as creation of a
 6 staff position for diversity, are most effective at creating diversity in management). The
 7 injunctive relief obtained by Plaintiffs here is similarly well-designed and highly likely to create
 8 valuable job opportunities and increased compensation for women, African Americans, and
 9 Latinos at Best Buy.

10 **C. Injunctive Relief Alone Supports a Fully Compensatory Lodestar Fee Award.**

11 Injunctive relief such as that obtained in this case is of central importance in actions under
 12 Title VII and 42 U.S.C. §1981. A major purpose of attorneys' fee awards in civil rights cases is
 13 to encourage pursuit of injunctive relief that has "benefits...for the named plaintiff and for society
 14 at large" regardless of whether monetary relief is also pursued. *Blanchard v. Bergeron*, 489 U.S.
 15 87, 95-96 (1989). In passing 42 U.S.C. §1988, which provides for attorneys' fee awards to
 16 prevailing parties under §1981, Congress specifically noted as appropriate models for
 17 interpretation of the statute cases in which plaintiffs had "received substantial attorney's fees"
 18 while obtaining only injunctive relief.¹ *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986).
 19 In particular, Congress provided as an example of an appropriate fee award a Title VII class
 20 action, *Davis v. County of Los Angeles*, 1974 WL 180 (C.D. Cal. Jun. 5, 1974), in which the
 21 Court concluded that "plaintiffs' counsel are entitled to an award of fees for all time reasonably
 22 expended" where plaintiff had obtained substantial injunctive relief. *Riverside*, 477 U.S. at 576
 23 (quoting *Davis*, 1974 WL 180, at *2). The Supreme Court therefore concluded in *Riverside*, a
 24 case interpreting the attorneys' fee provision in §1988, that attorneys' fees are "not conditioned
 25 upon and need not be proportionate to an award of money damages." *Id.*; *see also Millea v.*

26 _____
 27 ¹ 42 U.S.C. §1988, which provides for attorneys' fees to prevailing parties under §1981, was
 28 patterned after the Title VII attorneys' fee provision, and the two provisions are generally
 construed in the same manner. *Schwarz v. Sec. of Health & Human Servs.*, 73 F.3d 895, 901 n.2
 (1995).

1 *Metro-North Railroad*, ---F.3d---, 2011 WL 3437513, at *10 (2d Cir. Aug. 8, 2011) (“The whole
2 purpose of fee-shifting statutes is to generate attorneys' fees that are *disproportionate* to the
3 plaintiff's recovery” (emphasis in original)). Plaintiffs may obtain an award of fees that is
4 substantially higher than the monetary relief obtained because, “[r]egardless of the form of relief
5 he actually obtains, a successful civil rights plaintiff often secures important social benefits.”
6 *Riverside*, 477 U.S. at 574.

7 Consistent with these principles, courts regularly approve substantial attorneys' fees
8 settlements in cases involving only injunctive relief. *See, e.g., Sorenson v. Mink*, 239 F.3d 1140,
9 1147 (9th Cir. 2001) (holding that plaintiffs had obtained an “excellent result” in prison reform
10 case involving only injunctive relief and that plaintiffs are entitled to an award of reasonable
11 attorneys' fees based on more than 8000 hours expended on litigation with adjustment for
12 duplicative or inadequately documented time); *Californians for Disability Rights v. Cal. Dep't of*
13 *Transportation*, N.D. Cal. No. 06-05125 SBA (Dkt. 528, 529) (approving attorneys' fee award of
14 over \$8 million in Americans with Disabilities Act (“ADA”) case involving only injunctive relief
15 (Cervantez Decl. Ex. H); *Friend v. Kolodziejczak*, 72 F.3d 1386, 1390 (9th Cir. 1995) (approving
16 substantial attorneys' fee award in case brought on behalf of Roman Catholic inmates and noting
17 that “[t]he fact that plaintiffs received no monetary relief is of no import”).

18 That Plaintiffs, while obtaining important injunctive relief, did not succeed in obtaining
19 damages in this lawsuit, is not itself a basis for reducing the reasonable lodestar fee. “A district
20 court should not reduce the lodestar, merely because the prevailing party did not receive the *type*
21 of relief that it requested.” *Gates v. Deukmejian*, 987 F.2d 1392, 1404 (9th Cir. 1992) (emphasis
22 added). The Supreme Court has explained that “a plaintiff who failed to recover damages but
23 obtained injunctive relief, or vice versa, may recover a fee award based on all hours reasonably
24 expended if the relief obtained justified that expenditure of attorney time.” *Hensley*, 461 U.S. at
25 435 n.11. It is thus an abuse of discretion to reduce the lodestar amount solely on the grounds
26 that a plaintiff has obtained injunctive relief but failed to obtain damages. *See, e.g., Public*
27 *Interest Research Group of New Jersey, Inc. v. Windall*, 51 F.3d 1179 (3rd Cir.1995) (reversing
28

1 as an abuse of discretion decision of district court to reduce lodestar amount by 50% where
2 plaintiffs had obtained injunctive relief, but had not obtained damages).

3 Instead, regardless of whether a plaintiff has recovered each type of relief sought,
4 “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully
5 compensatory fee.” *Hensley*, at 435; *see also Sorenson*, 239 F.3d at 1147. Courts therefore have
6 not reduced attorneys’ fees awards in cases in which plaintiffs either failed to obtain damages at
7 trial or voluntarily dismissed their damages claims while obtaining substantial injunctive relief.
8 *See, e.g., Rosenfeld v. Southern Pacific Co.*, 519 F.2d 527, 529-530 (9th Cir. 1975) (approving
9 substantial award of attorneys’ fees in Title VII action in which plaintiff failed to obtain damages
10 but obtained declaratory and injunctive relief); *Hashimoto v. Dalton*, 118 F.3d 671, 678 (9th Cir.
11 1997) (approving award of substantial attorneys’ fees to Title VII claimant in administrative
12 action before EEOC because, despite the fact that she failed to receive backpay and reinstatement,
13 she obtained remedial measures that “not only benefited her personally, but also served to assist
14 persons like her . . . from being subjected to retaliatory actions”); *Lopez v. San Francisco Unified*
15 *School Dist.*, No. 99-03260 SI (N.D. Cal. 2005) (Dkt. 676) and Plaintiffs’ Reply Memorandum of
16 Points and Authorities in Support of Award of Attorney’s Fees therein (Dkt. 667), at 15-17 (in
17 ADA action, awarding a total of nearly \$6 million in fees in case in which plaintiffs originally
18 sought damages and injunctive relief but dismissed their damages claim before trial) (Cervantez
19 Decl. Ex. I); *Cherry v. City College of San Francisco*, No. 04-4981 WHA (N.D. Cal. 2006) (Dkt.
20 673) and Memorandum of Points and Authorities in Support of Motion for Reasonable Attorneys’
21 Fees therein (Dkt. 661), at 6 (in ADA action, granting application for attorneys’ fees of \$1.66
22 million in its entirety in case in which plaintiffs initially sought both damages and declaratory and
23 injunctive relief and ultimately settled for injunctive relief) (Cervantez Decl. Ex. J).

24 On the other hand, it is true that when a plaintiff prevails on some, but not all, *claims*, a
25 reasonable lodestar may not include hours spent on claims that are *both* factually and legally
26 unrelated to the victorious claims, *see Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005), and that
27 did not “contribute to the ultimate victory in the lawsuit.” *Cabrales v. County of Los Angeles*,
28 935 F.2d 1050, 1052 (1991). As discussed further below, Class Counsel have conservatively

1 removed from their lodestar the hours spent opposing Defendant’s Motion for Judgment on the
2 Pleadings with respect to the initial assignment claim, which turned on an exhaustion of
3 administrative remedies issue that was inapplicable to Plaintiffs’ other claims. *See Webb v.*
4 *Sloan*, 330 F.3d 1158, 1169 (9th Cir. 2003) (court appropriately deducted hours spent on
5 unsuccessful claim advanced in summary judgment motion when it asserted a “separate legal
6 theory that was not tied to the facts”). Plaintiffs did, however, ultimately obtain relief that will
7 address discrimination in both initial and subsequent assignment. Cervantez Decl. ¶28. Thus,
8 Class Counsel could have appropriately requested compensation for these hours as well, but
9 chose not to.

10 Even were the Court to find that Plaintiffs’ attorneys’ fees award must also be reduced
11 because the Consent Decree does not include a damages award, it must only remove hours that
12 “did not contribute to the ultimate victory in this lawsuit.” *Cabrales*, 935 F.2d at 1052 (even
13 where a claim fails, if it advances success in the lawsuit, hours spent on it should be reimbursed);
14 *Marbled Murrelet v. Pacific Lumber Co.*, 163 F.R.D. 308 (N.D. Cal. 1995) (time spent on
15 unsuccessful motion and preparing evidence ruled inadmissible nonetheless compensable because
16 they contributed in small way to plaintiffs’ ultimate success). The overwhelming majority of
17 Class Counsel’s time was spent investigating Best Buy’s allegedly discriminatory procedures and
18 policies and litigating class certification—efforts that contributed to obtaining the extensive
19 injunctive relief contained in the Consent Decree. And of course the threat of a damages award
20 must have weighed into Best Buy’s calculus of risk when it agreed to settle the case for extensive
21 injunctive relief for the next four years, rather than continuing to litigate. Cervantez Decl. ¶34.
22 Thus, those minimal hours spent calculating and litigating entitlement to damages should be fully
23 compensated. Class Counsel spent approximately 0.56% of its lodestar hours on issues related to
24 damages. Cervantez Decl. ¶34; Ex. E; Lee Decl. Ex. E. Were the Court to deduct these 226
25 hours, Class Counsel’s request for fees would still represent approximately 51 percent of their
26 reasonable lodestar.

1 **D. The Attorneys' Fee Class Counsel Seek is Reasonable.**

2 The negotiated attorneys' fee provided for in the Consent Decree is reasonable. The
3 starting point for computing a prevailing party's attorneys' fee under the lodestar method is to
4 multiply the number of hours the prevailing party reasonably expended on the litigation by a
5 reasonable hourly rate. *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Caudle v. Bristow Optical*
6 *Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000). Class Counsel are entitled to be compensated for
7 "every item of service which, at the time rendered, would have been undertaken by a reasonable
8 and prudent lawyer to advance or protect his client's interest." *Moore v. James H. Mathews &*
9 *Co.*, 682 F.2d 830, 839 (9th Cir. 1982). Class Counsel are entitled to be compensated for time
10 spent litigating the merits of this action, as well as time spent in preparing this motion for
11 attorneys' fees (which represents a miniscule fraction of the total lodestar, *see* Cervantez Decl.
12 Ex. M2; Lee Decl. G2). *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-60 (9th Cir.1985) ("In
13 statutory fee cases, federal courts, including our own, have uniformly held that time spent in
14 establishing the entitlement to and amount of the fee is compensable.").

15 For lodestar awards, the hourly rate is "the prevailing market rate[] in the relevant
16 community." *Blum*, 465 U.S. at 895. Once this "raw" lodestar figure has been determined, the
17 court "may, if circumstances warrant, adjust the lodestar to account for other factors which are
18 not subsumed within it." *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir.
19 2001). "A strong presumption exists," however, "that the lodestar figure represents a reasonable
20 fee" and adjustments will therefore not normally be made. *Jordan v. Multnomah County*, 815
21 F.2d 1258, 1262 (9th Cir. 1987) (internal quotation marks omitted); *see also Oviatt By and*
22 *Through Waugh v. Pearce*, 954 F.2d 1470, 1472 (9th Cir. 1992) (fees calculated by the lodestar
23 method are "presumptively reasonable"). Here, Class Counsel are not requesting any adjustment
24 to the reasonable lodestar, but have agreed as part of the settlement to accept far less than their
25 lodestar.

26 Here, the \$9,999,999 in fees and expenses provided for in the Consent Decree will only
27 cover \$8,163,140.33 of Class Counsel's \$15,983,694.00 lodestar, once the \$1,836,858.67 in costs
28 and expenses are reimbursed. Cervantez Decl. ¶7. Accordingly, Class Counsel will only receive

1 51 percent of their lodestar amount, even after exercising billing judgment and after removing
2 hours expended unsuccessfully opposing a Motion for Judgment On the Pleadings on one claim.
3 See Cervantez Decl. ¶¶ 7, 82; Lee Decl. ¶13; Lewis Dec ¶6; Wallace Decl. ¶¶13-17; Dermody
4 Decl. ¶¶13-14.

5 **1. The Hours Class Counsel Expended Were Reasonable.**

6 In order to obtain substantial and important injunctive relief for a Settlement Class made
7 up of well over 55,000 people, Class Counsel spent many thousands of hours over six years
8 thoroughly investigating and vigorously litigating this case. Cervantez Decl. ¶48-80. The work
9 performed by Class Counsel is documented in contemporaneously maintained records of
10 attorneys, law clerks, and paralegals. Class Counsel have filed summary charts showing the total
11 hours spent by each timekeeper, and the detailed time records have been submitted for *in camera*
12 review pursuant to Local Rule 54-5(b)(2). Cervantez Decl. Exs. C, M1,M2; Lee Decl. Exs. C,
13 G1-G2; Wallace Decl. Exs. C, F; Dermody Decl. Exs. C, F. In all, after the exercise of billing
14 judgment and deletion of hours spent unsuccessfully opposing the Motion for Judgment on the
15 Pleadings, Class Counsel spent 40,300.25 hours on the litigation. Cervantez Decl. ¶7.

16 The tasks performed by Class Counsel included conducting an extensive pre-filing
17 investigation and preparing detailed EEOC charges; thoroughly interviewing hundreds of Best
18 Buy employees and obtaining more than 100 declarations; reviewing millions of pages of
19 documents produced by Best Buy; reviewing and analyzing with expert assistance data
20 concerning over 500,000 employees and applicants to Best Buy; working with a statistics expert,
21 several social science experts, and labor economists to identify disparate treatment and
22 discriminatory policies and practices; analyzing the reports of and deposing six expert witnesses
23 retained by Defendant; deposing Defendant's corporate designees on a wide variety of topics,
24 including hiring, promotions, compensation, complaint procedures, HR procedures, training,
25 affirmative action, and diversity efforts; deposing additional Best Buy officers and employees
26 including those responsible for maintaining Best Buy's internal statistics; propounding and
27 responding to dozens of discovery requests; defending depositions of the Named Plaintiffs,
28 declarants, and other class members whose depositions were noticed by Best Buy; drafting,

1 arguing, and re-drafting a class certification brief and numerous supporting motions and
2 documents; and negotiating and drafting the Consent Decree. *See* Cervantez Decl. ¶¶8-38, 71;
3 Lee Decl. ¶8; Wallace Decl. ¶7; Dermody Decl. ¶8. These activities all assisted Counsel in
4 convincing Best Buy of the necessity of settlement and in crafting meaningful injunctive relief.
5 Class Counsel performed this work entirely on a contingent basis and have not been compensated
6 for their time. *See* Cervantez Decl. ¶¶81, 87; Lee Decl. ¶12; Wallace Decl. ¶12; Dermody Decl.
7 ¶¶18, 12.

8 The hours expended in pursuit of this litigation have been reasonable. Class Counsel were
9 efficient in litigating this case, and made efforts to avoid duplication and unnecessary work.
10 Cervantez Decl. ¶5; Wallace Decl.¶6; Dermody Decl.¶7. To the extent work was inefficient or
11 duplicative, Class Counsel have deleted that time from the lodestar submitted, in the exercise of
12 billing judgment, cutting 4649 from the total hours spent (a value of \$1,765,994.50). *See*
13 Cervantez Decl. ¶¶6-7, 82, Ex. D; Lee Decl. ¶13, Ex. D; Lewis Decl. ¶6; Wallace Decl. ¶17, Ex.
14 D; Dermody Decl. ¶¶13, 16. This leaves a total of 40,300.25 lodestar hours. Counsel also have
15 not included hours spent on unsuccessfully opposing a Motion for Judgment on the Pleadings
16 with respect to the initial assignment claim (although the relief ultimately obtained in the Consent
17 Decree addresses initial as well as subsequent assignment). Consent Decree (Dkt. 355-1),
18 Sections II.C and D. Cervantez Decl. ¶¶6, 7, 82; Dermody Decl. ¶14.

19 2. Class Counsel's Hourly Rates Are Reasonable.

20 The rates used to calculate the lodestar are also reasonable. The lodestar should be
21 calculated using hourly rates that are “the prevailing market rates in the relevant community.”
22 *Blum*, 465 U.S. at 895. Courts typically apply each attorney’s current rates for all hours of work
23 regardless of when performed in order to account for the delay in payment resulting from the
24 years it took to litigate the case. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989) (court should
25 account for delay in payment by applying current rather than historic hourly rates); *In re*
26 *Washington Public Power Supply System Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994). The
27 hourly rates used to calculate the lodestar in this case are the rates of counsel with similar
28 experience, reputation, and ability in the Bay Area. *See* Cervantez Decl. ¶79; Lee Decl. ¶11;

1 Wallace Decl. ¶11; Dermody Decl. ¶¶10-11. Class Counsel have extensive experience litigating
 2 complex employment discrimination class actions. Cervantez Decl. ¶73; Lee Decl. ¶¶4, 6;
 3 Wallace Decl. ¶¶4, 6; Dermody Decl. ¶4. They have been recognized as top employment
 4 lawyers. Cervantez Decl. ¶¶51-68, 73; Lee Decl. ¶¶4, 6; Wallace Decl. ¶¶4, 6; Dermody Decl.
 5 ¶4, 6. Judges in this District and elsewhere have approved the reasonableness of Class Counsel's
 6 then-current hourly rates in similar cases, and clients have paid their rates. Cervantez Decl. ¶¶74-
 7 78 and Ex. B; Lee Decl. ¶10 and Ex. B; Wallace Decl. ¶10 and Ex. B; Dermody Decl. ¶10 and
 8 Ex. B.

9 Based on these hours and rates, Plaintiffs' presumptively reasonable lodestar is
 10 \$15,983,694.00. Cervantez Decl. ¶7. Under the terms of the Consent Decree, however, Plaintiffs
 11 seek only \$9,999,999 for both attorney's fees and expenses. Because costs are \$1,836,858.67,
 12 this leaves Class Counsel with \$8,163,140.33 in fees, which is 51% of their lodestar amount.
 13 Since Class Counsel's request is only 51% of a presumptively reasonable lodestar, the requested
 14 fees are easily reasonable under the lodestar method.

15 **E. Class Counsel Should Be Reimbursed for their Reasonable Litigation Costs**
 16 **and Expenses.**

17 Class Counsel may recover costs under both federal and state law. 42 U.S.C. §2000e-
 18 5(k); 42 U.S.C. §1988(b); Cal. Civ. Proc. Code §1032(b). In light of the complex nature of this
 19 action, the costs sought here, which total \$1,836,858.67, are reasonable. In making this motion
 20 for attorney's fees and costs, Class Counsel have complied with the Court's standing orders
 21 regarding Settlement of Securities Class Actions by providing receipts for all items larger than
 22 \$250, the reason for each expenditure, and legal authority supporting the compensability of each
 23 item. As described in more detail in the accompanying declarations, Class Counsel seek recovery
 24 of the following:

25 Experts/Consultants. By far the largest expenses in this case were the out-of-pocket fees
 26 paid to three testifying experts and five consulting experts. Cervantez Decl. ¶40. As described
 27 above, these experts' work was vital to the case. *See supra* pp 7-8; Cervantez Decl. ¶¶40, 21, 25,
 28 26. Plaintiffs in this circuit typically use expert social science testimony to support their claims

1 on class certification and the merits. *See, e.g., Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571,
2 602-03 (9th Cir. 2010) (en banc) (noting that courts have “long accepted[] that properly analyzed
3 social science data . . . may support a plaintiff’s assertions that a claim is proper for class
4 resolution” and upholding district court’s reliance on social science expert testimony to support
5 certification of gender discrimination class action), *reversed, Wal-Mart Stores, Inc. v. Dukes*, 131
6 S. Ct. 2541 (2011); *Butler v. Home Depot, Inc.*, 984 F. Supp. 1257, 1264-65 (N.D. Cal. 1997)
7 (denying motions to exclude testimony of social science experts at trial because such testimony
8 was relevant to plaintiffs’ disparate treatment and disparate impact claims); *Butler v. Home*
9 *Depot, Inc.*, 1996 WL 421436, at *1-2 (N.D. Cal. Jan. 25, 1996) (certifying gender discrimination
10 class action in which plaintiffs submitted testimony of social science expert in support of the
11 motion); *Stender v. Lucky Stores, Inc.*, 803 F. Supp. 259, 301-03, 327 (N.D. Cal. 1992) (finding
12 testimony by plaintiffs’ social science expert at trial—similar to the type of social science
13 testimony offered by Plaintiffs here—to be consistent with evidence accepted by other courts and
14 to be persuasive of gender discrimination). And statisticians are invariably used in class action
15 pattern or practice and disparate impact casts. *See, e.g., Dukes*, 603 F.3d at 603-04 (9th Cir.
16 2010) (en banc) (noting that plaintiffs’ use of statistical evidence to demonstrate commonality is
17 “well established”), *overturned on other grounds, Wal-Mart v. Dukes*, 131 S. Ct. 2541; *Stender*,
18 803 F. Supp. at 295, 327 (finding Dr. Drogin to be a qualified expert in statistics in gender
19 discrimination class action); *Butler*, 984 F. Supp. at 1266; *Butler*, 1996 WL 421436, at *1, *3.
20 Plaintiffs incurred a total of \$1,116,547.63 in out-of-pocket costs for experts. Best Buy expended
21 more than \$5 million on its five testifying and one withdrawn expert – far more than Plaintiffs.
22 Cervantez Decl. ¶¶42, 41. Plaintiffs who prevail under Title VII and 42 U.S.C. §1988 may
23 receive reimbursement for expert fees, 42 U.S.C. §2000e-5(k), 42 U.S.C. §1988(c), and courts
24 regularly award such fees. *See Harris v. Marhoefer*, 24 F.3d 16, 20 (9th Cir. 1994).

25 Plaintiffs also expended \$5,737.50 on a consultant to assist in publicizing the case to class
26 members through a communications plan and initial press conference upon the filing of the
27 complaint. Cervantez Decl. ¶9, 41. This kept class members informed of the pendency of the
28 case and allowed Class Counsel to obtain additional evidence from members of the proposed

1 class regarding the facts underlying the class claims. *Id.* Plaintiffs may recover costs of public
2 relations work that contributed “to the attainment of [the class’s] litigation goals.” *Davis v. City*
3 *& County of San Francisco*, 976 F.2d 1536, 1545 (9th Cir. 1992), *opinion vacated in part on*
4 *denial of reh’g*, 984 F.2d 345 (9th Cir. 1993). Here, Class Counsel received many calls from
5 class members after the initial press conference and resultant media exposure. Class Counsel
6 interviewed these witnesses, and obtained declarations from many of them. Cervantez Decl. ¶9,
7 18. Accordingly, this relatively modest expense advanced the litigation goals. *See also*
8 *Rosenberg v. Int’l Bus. Machines Corp.*, No. C-06-0430 (N.D. Cal. Jul. 27, 2007) (Dkt. 134)
9 (Hamilton, J.) (awarding \$250,000 in costs) and Supplemental Memorandum of Points and
10 Authorities in Support of Motion for Reimbursement of Costs (Dkt. 131) (requesting
11 reimbursement for cost of “consultant re: using media to publicize case to class members”).
12 (Cervantez Decl. Ex. L).

13 Electronic Database. Class Counsel incurred \$190,807.16 in creating and maintaining an
14 electronic document depository to house the millions of pages of documents received from Best
15 Buy. Cervantez Decl. ¶44, 46. Counsel also created and maintained a database of class
16 members. Courts routinely recognize that such electronic databases are a necessary and
17 recoverable expense. *See, e.g., McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 479 (D.N.J.
18 2008) (granting award of \$1,725,337.06 in costs, including “substantial fees for experts;
19 substantial costs associated with creating and maintaining an electronic document database . . .”
20 (citation omitted)); *In re Ins. Brokerage Antitrust Litig.*, 2007 WL 2916472, at *8 (D.N.J. Oct. 5,
21 2007).

22 Hearing and Deposition Transcripts. Class counsel paid for transcripts of various Court
23 proceedings. These transcripts were necessary to review Court proceedings and to ensure that
24 Class Counsel followed the Court’s specific requests. Class Counsel also incurred substantial
25 costs for deposition transcripts and video recordings of depositions. In total, Class Counsel spent
26 \$150,198.50 on transcripts. Cervantez Decl. ¶43. All of these costs are recoverable because they
27 were beneficial to the class and necessary to pursue the action efficiently and responsibly.
28

1 Indeed, these costs are specifically allowed by statute and Local Rule. *See* 28 U.S.C. § 1920(2);
2 L.R. 54-3(b).

3 In-House Copying and Printing. Class counsel made every effort to review documents
4 electronically and to be efficient. Nonetheless, given the size and complexity of this case,
5 Plaintiffs' counsel incurred \$121,805.74 in in-house copying costs and \$75,590.37 in printing
6 costs, a large portion of which were related to deposition exhibits or documents furnished to the
7 Court, or to experts for their review. Cervantez Decl. ¶45. Courts routinely permit these costs.
8 *Ashker v. Sayre*, 2011 WL 825713 (N.D. Cal. Mar. 7, 2011) (Wilken, J.) (“The costs of
9 reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying
10 clients” and are reimbursable); *Mahach-Watkins*, 2009 WL 3401281, at *2. The rates Class
11 Counsel firms charged for in-house copying are the same rates Class Counsel charge fee-paying,
12 non-contingency clients for such copying. Cervantez Decl. ¶85; Lee Decl. ¶16; Dermody ¶18.

13 Attorney Travel. In order to fully investigate this case and to take and defend depositions,
14 it was necessary for Class Counsel to travel extensively, primarily to Minneapolis where Best
15 Buy is headquartered and where Best Buy produced most of its corporate witnesses, but also to
16 cities across the United States where Best Buy took class member depositions. Cervantez Decl.
17 ¶43. Such travel expenses totaled \$92,869.65 and are reimbursable. *Davis v. City of San*
18 *Francisco*, 976 F.2d 1536, 1556 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345.

19 Messenger Service & Overnight Delivery. Class Counsel necessarily incurred \$21,987.85
20 in expenses to send documents to expert and fact witnesses, in preparation for out of town
21 depositions, and for submission of courtesy copies to the Court. Cervantez Decl. ¶¶48, 50.
22 Courier fees and overnight delivery are a recoverable expense. *Davis v. City of San Francisco*,
23 976 F.2d 1536, 1556 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345 (holding
24 that “attorneys’ fees awards can include reimbursement for out-of-pocket expenses including . . .
25 travel, courier and copying costs.”); *Nobles v. MBNA Corp.*, 2009 WL 1854965, at *3 (N.D. Cal.
26 June 29, 2009) (awarding overnight delivery fees as “reasonable and the type typically billed by
27 attorneys in the marketplace”).
28

1 Computer Research. Class counsel spent \$21,547.36 on access to online databases in
2 order to conduct legal research. Cervantez Decl. ¶¶48, 50. Such expenses are beneficial to the
3 class and recoverable. *Trustees of Const. Indus. & Laborers Health & Welfare Trust v. Redland*
4 *Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (citing *Jenkins*, 491 U.S. 274, 287 (1989)). See
5 also *Mahach-Watkins v. Depee*, 2009 WL 3401281, *2 (N.D. Cal. Oct. 20, 2009) (Illston, J.).

6 Outside Copying. Class counsel paid outside vendors to copy, enlarge, or otherwise
7 duplicate documents related to this litigation for a total amount of \$11,885.69. Cervantez Decl.
8 ¶45, 50. “Requests for reimbursement for photocopying charges are regularly reimbursed.” *In re*
9 *Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1368 (N.D. Cal. 1996)(“the outside copy
10 services expenses should be granted in full.”).

11 Telephone and Fax Costs. Class Counsel necessarily incurred telephone videoconference
12 and fax costs of \$11,861.50, Cervantez Decl. ¶¶48, 50, and they are reimbursable. *Mahach-*
13 *Watkins*, 2009 WL 3401281, at *2.

14 Mediation Services. In an attempt to settle this lawsuit, Class Counsel necessarily
15 incurred \$9,829.18 in mediation expenses. Cervantez Decl. ¶47. These expenses are recoverable.
16 See *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal.
17 2007).

18 Postage. Over the course of this six-year litigation, Class Counsel have incurred postage
19 costs in an amount of \$4,092.67. Cervantez Decl. ¶¶48, 50. Such costs were necessary to the
20 litigation and are regularly reimbursed. *Mahach-Watkins*, 2009 WL 3401281, at *1.

21 Witness Travel and Per Diem. Class Counsel incurred travel and per diem costs of
22 \$3,697.25 for the many witnesses that Best Buy deposed. Cervantez Decl. ¶50; Such reasonable
23 costs are recoverable. 28 U.S.C. §1920(3); *ASIS Internet Services v. Optin Global, Inc.*, No. C-
24 05-5124 JCS, 2008 WL 5245931 (N.D. Cal. Dec. 17, 2008) *aff’d sub nom. ASIS Internet Services*
25 *v. Azoogole.com, Inc.*, 357 F. App’x. 112 (9th Cir. 2009).

26 Overtime Meals and Taxis. Class Counsel incurred costs for overtime meals and taxi
27 service in order to respond to unexpected events and tight deadlines. Cervantez Decl. ¶¶49, 50.
28 These costs amounted to \$2,750.78. Courts reimburse such costs. *Interfaith Cmty. Org. v.*

1 *Honeywell Int'l, Inc.*, 426 F.3d 694, 718 (3d Cir. 2005) (overtime meals); *Finkelstein v. Bergna*,
2 804 F. Supp. 1235, 1264 (N.D. Cal. 1992) (taxis). Class Counsel regularly bill paying clients for
3 such charges. Cervantez Decl. ¶88; Lee Decl. ¶16.

4 Court Filing Fees. Class counsel have incurred filing costs related to this litigation of
5 \$670.00. Cervantez Decl. ¶50. "A filing or serving fee is unquestionably a necessary expense of
6 every litigation." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. at1371.

7 Secretarial Overtime. In order to respond to unexpected events and tight deadlines during
8 the course of this litigation, Class Counsel also incurred \$118.74 in costs for secretarial overtime.
9 Cervantez Decl. ¶49, 50. Courts have reimbursed these costs. *Automotive Prods. PLC v. Tilton*
10 *Eng'g, Inc.*, 855 F. Supp. 1101, 1106 (C.D. Cal. 1994). Class Counsel bill paying clients for such
11 charges. Cervantez Decl. ¶85.

12 CONCLUSION

13 For the foregoing reasons, Class Counsel's Application for an Award of Attorneys' Fees
14 and Reimbursement of Costs in the amount of \$9,999,999 (consisting of \$1,836,858.67 in cost
15 and expenses and \$8,163,140.33 in attorneys' fees) should be granted.

16 Respectfully Submitted,

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