

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEAN BEAVER AND LAURIE
BEAVER, HUSBAND AND WIFE;
et al.,

Plaintiffs,

v.

TARSADIA HOTELS, A
CALIFORNIA CORPORATION;
et al.,

Defendants.

Case No. 11-cv-01842-GPC-KSC

ORDER:

- 1) **GRANTING PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT;**
- 2) **GRANTING PLAINTIFFS’ APPLICATION FOR ATTORNEY’S FEES AND COSTS; AND**
- 3) **GRANTING PLAINTIFFS’ REQUEST FOR SERVICE AWARDS**
- 4) **GRANTING JOINT MOTION REGARDING LIEN**

[Dkt. Nos. 286, 287, 309.]

On August 9, 2017, Plaintiffs Dean Beaver, Laurie Beaver, Steven Adelman, Abraham Aghachi, Dinesh Gauba, Kevin Kenna, and Veronica Kenna (collectively

1 “Plaintiffs”) filed a Motion for Final Approval of Class Settlement and Application for
2 Attorneys’ Fees and Costs, and Service Awards. (Dkt. Nos. 286, 287.) Tarsadia
3 Defendants¹ and Third Party Defendant Greenberg Traurig LLP (“GT”) do not oppose the
4 motions. On September 1, 2017, Garden City Group, LLC (“GCG”), the Settlement
5 Administrator, filed a declaration regarding exclusions and objections; Plaintiffs filed a
6 status report regarding the response to the Notice Program; and GT filed a non-opposition
7 to the motion for final approval of class action settlement, application for attorneys’ fees
8 and costs, and service awards for class representatives. (Dkt. Nos. 304, 305, 306.) The
9 Court held a final approval hearing on September 15, 2017 at 1:30 p.m., pursuant to the
10 Preliminary Approval Order dated May 24, 2017. (Dkt. No. 307.) Tyler Meade, Esq.,
11 Michael Schrag, Esq., and Michael Reiser, Esq. appeared on behalf of Plaintiffs, Lynn
12 Galuppo, Esq. appeared on behalf of Tarsadia Defendants, and Michael McNamara, Esq.,
13 Kirsten Spira, Esq. and Wesley Griffith, Esq. appeared on behalf of Third Party Defendant
14 Greenberg Traurig, LLP.

15 Based on the reasoning below, the Court GRANTS Plaintiffs’ motion for final
16 approval of class action settlement and judgment and GRANTS Plaintiffs’ application for
17 attorneys’ fees and costs, and service awards.

18 **Procedural Background**

19 In May 2011, Plaintiffs filed a putative class action alleging that the Tarsadia
20 Defendants violated various federal and state laws, including the Interstate Land Sales Full
21 Disclosure Act, 15 U.S.C. §§ 1701, *et seq.* (“ILSA”) and the California Unfair
22 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), in connection with
23 the sale of condominium units at the Hard Rock. (Dkt. No. 1.) Specifically, in the
24 operative Third Amended Complaint (“TAC”), Plaintiffs alleged, in part, that the Tarsadia
25 Defendants violated ILSA by failing to do three things that the statute required: (1) register
26 the Hard Rock with the U.S. Department of Housing and Urban Development (“HUD”);

27
28 ¹ The remaining Tarsadia Defendants are Tarsadia Hotels, Gregory Casserly, 5th Rock
LLC, and Gaslamp Holdings, LLC.

1 (2) obtain and distribute to Class members a HUD property report; and (3) include ILSA-
2 specified cure language in the purchase contracts. (Dkt. No. 69, TAC at ¶¶ 8-10.) As a
3 result, Plaintiffs and Class members had an absolute two-year right under ILSA to rescind
4 their purchase contracts. (Id. at ¶ 10.) The Tarsadia Defendants were required but failed
5 to disclose this rescission right to Plaintiffs. (Id. at ¶¶ 11-12.) This constituted the fourth
6 ILSA violation and these ILSA violations were the unlawful acts central to Plaintiffs' UCL
7 claim.

8 Tarsadia Defendants failed to disclose this rescission right and told all Class
9 members that they would lose their substantial deposits if they failed to close escrow on
10 their respective condominium units. (Id. at ¶¶ 68-70.) Plaintiffs and most Class members
11 closed escrow in the latter half of 2007, when the real estate market in San Diego was
12 beginning a steep decline and the lending market was constricting. (Id. at ¶¶ 86-88.)
13 Plaintiffs testified that they would have cancelled their purchase contracts prior to closing
14 escrow had the Tarsadia Defendants disclosed their rescission rights under ILSA. (Dkt.
15 No. 81-1 at 32-33.)

16 Tarsadia Defendants disputed liability and class certification through six years of
17 vigorous litigation that included extensive fact and expert discovery and motion practice.
18 The litigation began with defendants filing four motions to dismiss plus a motion for
19 judgment on the pleadings. Defendants did not answer until a year after the case was first
20 filed. A year of intensive discovery followed, with defendants producing more than
21 400,000 pages that Class Counsel had to review and analyze. (Dkt. No. 273-1, Schrag
22 Decl. ¶ 24.) The Parties took more than 20 depositions in 2013. (Id. ¶ 25.)

23 In 2013, Plaintiffs moved to certify a class, and Plaintiffs, the Tarsadia Defendants,
24 and Playground Destination Properties, Inc. ("Playground"), which is no longer in the
25 case, also filed cross-motions for summary judgment. In October 2013, this Court
26 accepted Plaintiffs' arguments that uncontroverted evidence demonstrated that ILSA
27 applied and that the Tarsadia Defendants violated it such that an unlawful prong UCL
28 violation was established as a matter of law, but nevertheless granted the Tarsadia

1 Defendants' motion for summary judgment on the ground that the UCL claim was barred
2 by ILSA's three-year statute of limitations. (Dkt. No. 128.) The Court further granted
3 summary judgment as to Playground. (Id.) This ruling represented a complete loss on the
4 merits of the case after two and a half years of intensive litigation.

5 This Court's initial ruling on the statute of limitations followed several district court
6 decisions interpreting Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001, 1007 n. 3 (9th Cir.
7 2008), to mean that where a plaintiff's UCL unlawful prong claim is based on a violation
8 of a federal law, the federal and not the UCL statute of limitations applies if the time to file
9 under the federal statute is shorter. (Dkt. No. 128 at 40-41.) Believing that these decisions
10 misinterpreted Silvas, Plaintiffs added appellate counsel Michael Rubin to their team and
11 moved for reconsideration based on preemption principles. (Dkt. No. 138.)

12 Eight months later, in July 2014, Plaintiffs prevailed on this motion, obtaining
13 partial summary judgment on their UCL claim. The Court held that the Tarsadia
14 Defendants violated the unlawful prong of the UCL by failing to comply with ILSA's
15 disclosure requirements and that the UCL's four-year statute of limitations applied to this
16 claim. (Dkt. No. 153.)

17 In August 2014, Tarsadia Defendants moved for reconsideration or, in the
18 alternative, for certification of an interlocutory appeal. (Dkt. Nos. 155, 158.) While this
19 motion was pending, Congress amended ILSA to expressly exempt condominiums from
20 ILSA's registration and disclosure requirements. The Tarsadia Defendants argued this
21 amendment should be applied retroactively to bar this action. (Dkt. No. 163.) In October
22 2014, after extensive briefing on these issues, the Court ruled that the amendment to ILSA
23 should not be applied retroactively, but simultaneously certified three issues for
24 interlocutory appeal: (1) whether the Hard Rock project is subject to ILSA because its
25 condominium units are "lots" to which the Improved Lot Exemption does not apply; (2)
26 whether Plaintiffs' UCL claim is governed by the UCL's four-year statute of limitations or
27 ILSA's shorter limitations period; and (3) whether Congress intended its 2014 amendment
28 to ILSA to apply retroactively to this action. (Dkt. No. 177.) The case was on appeal for

1 nearly a year and a half, and on March 10, 2016, the Ninth Circuit affirmed the partial
2 summary judgment ruling in Plaintiffs' favor on all three issues. See Beaver v. Tarsadia
3 Hotels, 816 F.3d 1170 (9th Cir. 2016). This ruling firmly established that the UCL statute
4 of limitations applies to all UCL actions, including those that "borrow" a federal predicate
5 violation with a shorter limitations period. Id. at 1179-1181.

6 Meanwhile, while the main litigation was proceeding, Tarsadia Defendants claimed
7 in a third-party complaint that GT negligently advised them that ILSA did not apply to the
8 Hard Rock, and that any restitution the Tarsadia Defendants may owe Plaintiffs and Class
9 members is a result of this malpractice. (Dkt. No. 106-2, Third Party Compl.) In its
10 answer, GT denied any wrongdoing whatsoever and raised numerous affirmative defenses.
11 (Dkt. No. 140.) This third-party action had been stayed since June 30, 2014, (Dkt. No.
12 152), but following remand from the Ninth Circuit, GT moved for permission to join the
13 litigation on Tarsadia Defendants' defense on the two remaining and related issues in the
14 case: class certification and remedies. (Dkt. No. 211.) On June 27, 2016, the Court
15 granted GT permission to participate in the defense of this main action. (Dkt. No. 218.)

16 Earlier, the Court had deferred its ruling on whether to certify a class. (Dkt. No.
17 108.) Plaintiffs filed a renewed motion for class certification on July 1, 2016. (Dkt. No.
18 219.) The Tarsadia Defendants and GT opposed, focusing primarily on the contention that
19 Plaintiffs' proposed method for calculating UCL restitution was prohibited under Ninth
20 Circuit authority. (Dkt. Nos. 229, 230.)

21 The Court stated that it was likely to certify a class on the issue of liability, but
22 expressed its view that certifying the issue of remedies for class treatment "was a much
23 more complicated question." (Id. at 4.) The Court explained that it was not yet convinced
24 that Plaintiffs had proffered a viable remedies model that "matche[d] the theory of
25 liability." Id. The Court allowed the Tarsadia Defendants and GT to file supplemental
26 briefs on Plaintiffs' proposed restitution model. (Dkt. No. 240.) The Court also
27 encouraged the Parties to attempt to settle the case. (Dkt. No. 273-15 at 7) ("Given that
28 and given the uncertainty that remains with respect to any number of these issues, I would

1 expect and I would hope that the parties would look at all of this uncertainty as a means to
2 try to resolve this case amongst yourselves”). In order to pursue mediation and potential
3 settlement, the Parties agreed to stay the action to delay the Court’s ruling on class
4 certification and the Court granted the requested stay. (Dkt. Nos. 248, 251.)

5 The Parties participated in an Early Neutral Evaluation in 2012, an all-day
6 mediation in 2013, and a settlement conference with Magistrate Judge Karen Crawford in
7 2014, none of which resulted in a settlement. Pursuant to the Court’s suggestion at the
8 August 2016 hearing, the Parties engaged in a day-long mediation before Honorable Carl
9 J. West (Ret.) of JAMS on December 15, 2016. Although the Parties did not reach
10 agreement on that day, they made substantial progress and continued negotiations with
11 Judge West’s assistance during the following days. (Dkt. No. 273-1, Schrag Decl. ¶ 26.)
12 Upon the Parties’ joint motion, the Court continued the stay through December 22, 2016.
13 (Dkt. No. 255.) The Parties ultimately settled the entire case, including the third-party
14 claims against GT, on December 21, 2016. Over the next four months, the Parties, with
15 assistance from Judge West, then negotiated the detailed terms of the Settlement. (Dkt.
16 Nos. 258, 259, 260, 263, 265, 266.) On April 24, 2017, Plaintiffs filed their motion for
17 order granting preliminary approval of class action settlement. (Dkt. No. 274.) On May
18 24, 2017, the Court granted Plaintiff’s unopposed motion for preliminary approval of class
19 action settlement, directing issuance of notice, and setting final approval hearing. (Dkt.
20 No. 278.) In compliance with the preliminary approval order, on August 9, 2017,
21 Plaintiffs filed the instant motion for final approval of class settlement and application for
22 attorneys’ fees and costs and for service awards. (Dkt. Nos. 286, 287.)

23 **Legal Standard**

24 The Ninth Circuit adheres to a “strong judicial policy that favors settlements,
25 particularly where complex class action litigation is concerned.” Class Plaintiffs v. City of
26 Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992); see also Rodriguez v. W. Publ’g Corp., 563
27 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-
28 length, non-collusive, negotiated resolution[.]”). “[T]he decision to approve or reject a

1 settlement is committed to the sound discretion of the trial judge[.]” Hanlon v. Chrysler
2 Corp., 150 F.3d 1011, 1026 (9th Cir. 1998).

3 Federal Rule of Civil Procedure 23(e) provides that a court may approve a proposed
4 settlement “only after a hearing and on finding that it is fair, reasonable, and adequate.”
5 Fed. R. Civ. P. 23(e)(2); see also Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).
6 In making this determination, a district court must consider a number of factors, including,
7 but not limited to:

8 the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration
9 of further litigation; the risk of maintaining class action status throughout the trial;
10 the amount offered in settlement; the extent of discovery completed, and the stage
11 of the proceedings; the experience and views of counsel; the presence of a
12 governmental participant; and the reaction of the class members to the proposed
settlement.

13 Staton, 327 F.3d at 959 (internal citation and quotation marks omitted).

14 In examining the settlement for “overall fairness,” a court must review the
15 settlement “as a whole, rather than the individual component parts.” Hanlon, 150 F.3d at
16 1026. A court cannot “delete, modify or substitute certain provisions.” Officers for
17 Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco, 688 F.2d 615, 630 (9th
18 Cir. 1982). Rather, “[t]he settlement must stand or fall in its entirety.” Hanlon, 150 F.3d
19 at 1026.

20 **A. The Settlement is Fair, Adequate and Reasonable**

21 **1. The Strength of Plaintiffs’ Case and the Risk, Expense, Complexity, and**
22 **Likely Duration of Further Litigation²**
23

24
25 ²Plaintiffs do not specifically address the risk of maintaining class action status throughout
26 the trial factor. However, under the analysis in this section, the issue is raised as to
27 whether the Court would have certified a class based on remedies which would result in
28 individualized trials on restitution. Thus, the Court concludes that there is risk that
Plaintiffs would not be able to maintain a class action on both liability and remedies if they
proceeded to trial.

1 “The value of a class action ‘depends largely on the certification of the class,’ and...
2 class certification undeniably represents a serious risk for plaintiffs in any class action
3 lawsuit.” Acosta v. Trans Union, LLC, 243 F.R.D. 377, 392 (C.D. Cal. 2007).

4 While Plaintiffs’ case is strong in that they overcame substantial hurdles, including
5 motions to dismiss, an adverse summary judgment ruling, an interlocutory appeal, and
6 they eventually prevailed on liability on the UCL claim, major risks in further litigation of
7 this action remain. First, whether the Court would certify a class and, if so, whether
8 certification would extend to both liability and remedies remains uncertain.

9 Certification of a liability-only class would create a complex, uncertain and
10 expensive process for obtaining individualized restitution for absent class members. It
11 would force the parties to spend considerable time and resources on a remedies trial,
12 including engaging expert witnesses for updated reports on the fluid values of Plaintiffs’
13 and Class members’ units. In addition, a trial and any post-trial motions and appeals
14 would also further delay the resolution of this case, which was initiated in May 2011.
15 Moreover, there is still the possible risk that the Court could deny class certification
16 altogether and the case would dwindle from an action involving a class of approximately
17 360 unit purchasers, or groups of unit purchasers, to merely purchasers of four units.

18 Most significantly, Plaintiffs faced great risk as to what remedies model the Court
19 would ultimately adopt. Plaintiffs believe their core restitution model, calculated by
20 restoring Plaintiffs’ purchase amounts and then, to avoid a windfall, applying appropriate
21 setoffs such as the current value of the units, is both permissible under the UCL and best
22 fits the facts of this unique case. See Spann v. J.C. Penney Corp., No. SA CV 12-215
23 FMO(RNBx), 2015 WL 1526559 (C.D. Cal. 2015); People v. Superior Court (Jayhill), 9
24 Cal. 3d 283 (1973). The Tarsadia Defendants and GT, however, have strenuously argued
25 that this methodology would not be appropriate under Pulaski & Middleman, LLC v.
26 Google, 802 F.3d 979 (9th Cir. 2015) and In re Tobacco Cases II, 240 Cal. App. 4th 779
27 (2015). Specifically, they argue that under the UCL, Plaintiffs and Class members are only
28

1 entitled to the difference between the purchase prices they paid and the market value of the
2 units at the time of purchase. (Dkt. No. 229 at 15-20; Dkt. No. 230 at 11-12.) Since the
3 Tarsadia Defendants further contend that the market value at the time of purchase was
4 equivalent to the purchase prices paid, they contend that restitution would amount to zero.
5 (Dkt. No. 230 at 11-12.) It is not clear which method the Court would apply.

6 Moreover, there is a question as to whether Plaintiffs are entitled to prejudgment
7 interest. While Plaintiffs sought prejudgment interest, the Tarsadia Defendants and GT
8 claimed that the UCL did not allow any and further argued that the Court should apply
9 equitable offsets far greater than what Plaintiffs would have proposed at a restitution trial.

10 Lastly, there is the additional risk that the Tarsadia Defendants would seek
11 attorneys' fees and costs from the Class Representatives, and that Class Representatives
12 and Class Counsel would be named in a malicious prosecution lawsuit. (Dkt. No. 273-1,
13 Schrag Decl. ¶ 21.) In fact, the named plaintiffs in other cases have suffered significant
14 financial consequences from litigation arising out of the Hard Rock. See Salameh v.
15 Tarsadia Hotel, No. 09cv2739-GPC(BLM), 2014 WL 3797276 (S.D. Cal. Mar. 25, 2014)
16 (\$405,371.25 in attorneys' fees awarded); Royalty Alliance, Inc. v. Tarsadia Hotels, 2014
17 WL 2212492 (Cal. App. 2014) (nearly \$1.2 million in attorneys' fees awarded); Salameh
18 v. 5th and K Master Assoc., 2016 WL 4529438 (Cal. App. 2016) (over \$3.6 million in
19 attorneys' fees awarded); Tarsadia Hotels v. Aguirre & Severson, San Diego Superior
20 Court Case No. 37-2016-00044390, (action for malicious prosecution). In yet another
21 case, Bell v. Tarsadia Hotels, San Diego Superior Court No. 37-2010-00096618, Tarsadia
22 Hotels and 5th Rock LLC unsuccessfully sought attorneys' fees and costs from the
23 Plaintiffs here after they dismissed that case, which was filed by other counsel, in order to
24 bring the present case. (Dkt. No. 273-1 Schrag Decl. ¶ 22; see also Dkt. No. 273-14
25 (February 13, 2013 letter from counsel for the Tarsadia Defendants threatening to sue
26 Class Counsel for malicious prosecution.)
27
28

1 In sum, while Plaintiffs have a strong case, in this equitable action, there is no clear
2 cut remedies model. Therefore, the Class faced serious risk in continuing to litigate this
3 action against defendants who had a track record of success and aggression. These factors
4 weigh in favor of final approval.

5 **2. The Amount Offered in Settlement**

6 The amount in Settlement “is generally considered the most important, because the
7 critical component of any settlement is the amount of relief obtained by the class.” Bayat
8 v. Bank of the West, No. C–13–2376 EMC, 2015 WL 1744342, at *4 (N.D. Cal. Apr. 15,
9 2015) (citation omitted). A settlement is not judged against only the amount that might
10 have been recovered had the plaintiff prevailed at trial; nor must the settlement provide full
11 recovery of the damages sought to be fair and reasonable. See Linney v. Cellular Alaska
12 P’ship, 151 F.3d 1234, 1242 (9th Cir. 1998). “Naturally, the agreement reached normally
13 embodies a compromise; in exchange for the saving of cost and elimination of risk, the
14 parties each give up something they might have won had they proceeded with litigation.”
15 Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco, 688 F.2d
16 615, 624 (9th Cir. 1982) (quoting United States v. Armour & Co., 402 U.S. 673, 681
17 (1971)). Because “the interests of class members and class counsel nearly always diverge,
18 courts must remain alert to the possibility that some class counsel may urge a class
19 settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet
20 treatment on fees.” In re HP Inkjet Printer Litig., 716 F.3d 1173, 1178 (9th Cir. 2013)
21 (internal quotation marks, citation, and footnote omitted).

22 Here, the proposed Settlement of \$51,150,000 offers the Class a significant and
23 certain cash award without further delay. Plaintiffs’ proposed restitution model involved
24 restoring the aggregate purchase price paid less the current value of the unit, if still owned,
25 the resale price, if sold by the Class member, or the loan amount, if the Class member lost
26 the unit to foreclosure. Excluding prejudgment interest, the total amount of the core
27 restitution sought is approximately \$69 million. (Dkt. No. 273-1, Schrag Decl. ¶ 10.) The
28 gross Settlement Fund represents approximately 74% of this sum. Id. The Settlement will

1 provide, on average, approximately \$95,000 for each condominium unit purchased by
2 Class members, after fees and expenses.

3 The parties dispute whether prejudgment interest should be awarded in this case,
4 and Plaintiffs acknowledge that there are UCL cases that support both sides on this issue.
5 See Wallace v. Countrywide Home Loans Inc., No. SACV 08-1463-JST(MLGx), 2013
6 WL 1944458, at *7-8 (C.D. Cal. Apr. 29, 2013) (prejudgment interest is a form of
7 restitution and is necessary to fully compensate plaintiffs); but see Rodriguez v. RWA
8 Trucking Co. Inc., 219 Cal. App. 4th 692 (2013) (prejudgment interest not required under
9 the UCL, but is discretionary). The Parties also disagree as to whether, if prejudgment
10 interest was awarded, it should be calculated on the net restitution amount, after setoffs, or
11 on the sum of the purchase prices paid, before setoffs.

12 Based on the risks concerning the restitution the Court would have awarded and the
13 results of any appeal of that award, the \$51.15 million offered in Settlement is an excellent
14 result. See, e.g., Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 257 (N.D. Cal.
15 2015) (finding that the amount offered in settlement weighed in favor of preliminary
16 approval where the common fund amounted to between 11 and 27 percent of the total
17 potential recovery); Greko v. Diesel U.S.A., Inc., No. 10-CV-02576 NC, 2013 WL
18 1789602, at *5 (N.D. Cal. 2013) (approving settlement in which average settlement
19 payment amounted to under 3% of gross settlement value). This factor favors final
20 approval of the settlement.

21 **3. The Extent of Discovery Completed and the Stage of the Proceeding**

22 When trial is near, extensive discovery has been completed, and issues have been
23 thoroughly litigated, the extent of discovery and the stage of the proceedings weigh in
24 favor of the proposed settlement. Low v. Trump Univ., LLC, --F. Supp. 3d --, 2017 WL
25 1275191, at * (S.D. Cal. Mar. 31, 2017) (citation omitted). In this case, (1) the Parties
26 have completed fact and expert discovery, including a review of over 400,000 pages and
27 taking or defending 20 depositions, (2) there is a judgment in Plaintiffs' favor on liability
28 that has been affirmed by the Ninth Circuit and with certiorari denied, (3) the Parties have

1 briefed and argued a motion for class certification, and, (4) as noted above, the only major
2 task left in the case beyond class certification is a remedies trial. This factor weighs
3 strongly in favor of the proposed Settlement.

4 **4. The Experience and Views of Class Counsel**

5 Where “[b]oth Parties are represented by experienced counsel,” the recommendation
6 of experienced counsel to adopt the terms of the proposed settlement “is entitled to great
7 deal of weight.” In re Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1174 (S.D.
8 Cal. 2007). In particular, “[t]he recommendations of plaintiffs’ counsel should be given a
9 presumption of reasonableness.” In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036,
10 1043 (N.D. Cal. 2008) (internal citation and quotation marks omitted).

11 As noted in the preliminary approval order, the Court recognized significant
12 knowledge and experience in handling class action litigation, including in-depth
13 knowledge in cases arising under ILSA. (Dkt. No. 278 at 10.) Each Class Counsel
14 strongly believes that the Settlement provides a fair and advantageous benefit to the Class.
15 Thus, this factor weighs in favor of final approval.

16 **5. The Presence of a Governmental Participant**

17 No governmental agency participated in this litigation or Settlement. After the
18 Court preliminarily approved the Settlement, the Tarsadia Defendants sent CAFA notices
19 to the California Attorney General, Consumer Law Section, and the United States Attorney
20 General. See 28 U.S.C. § 1715; (Dkt. No. 275.) To the Parties’ knowledge, no
21 governmental agency has objected to the Settlement which weighs in favor of the
22 settlement. Schuchardt v. Law Office of Rory W. Clark, 314 F.R.D. 673, 685 (N.D. Cal.
23 2016).

24 **6. The Reaction of Class Members**

25 No objections have been filed to the Settlement and one class member has elected to
26 opt-out. (Dkt. No. 304, Brasefield Decl. ¶¶ 4, 5.) To date, seventeen Class members have
27 submitted letters to the Court stating they support the Settlement and hope the Court
28 approves it. (Dkt. Nos. 282-83; 288-92; 294-303.) According to Class Counsel, class

1 members' reaction to the Settlement has been overwhelmingly positive based on his
2 conversations with approximately a dozen Class members who have all expressed support
3 for the Settlement. (Dkt. No. 287-1, Meade Decl. ¶¶ 16-17.) This factor supports final
4 approval.

5 In sum, based on a review of the factors, the Court concludes that the Settlement is
6 fair, adequate, and reasonable.

7 **B. Request for Class Representative Incentive Awards**

8 Plaintiffs seek four service awards of \$50,000, paid from the common fund to Class
9 Representatives on a per-unit basis and include (1) Mr. Gauba, (2) Kevin and Veronica
10 Kenna, (3) Dean and Laurie Beaver, and (4) Messrs. Adelman and Aghachi Brown.

11 Incentive awards are designed to “compensate class representatives for work done
12 on behalf of the class, to make up for financial or reputational risk undertaken in bringing
13 the action, and, sometimes, to recognize their willingness to act as a private attorney
14 general.” Rodriguez v. West Publ’g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009).

15 “Incentive awards are fairly typical in class action cases,” but are ultimately
16 “discretionary.” Id. at 958. In deciding whether to approve an incentive award, courts
17 consider factors including:

- 18
19 1) the risk to the class representative in commencing suit, both financial and
20 otherwise; 2) the notoriety and personal difficulties encountered by the class
21 representative; 3) the amount of time and effort spent by the class
22 representative; 4) the duration of the litigation and; 5) the personal benefit (or
23 lack thereof) enjoyed by the class representative as a result of the litigation.

24 Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). While most
25 class action service awards are lower, district courts in this circuit and elsewhere have
26 awarded \$50,000 or more. Id. at 300 (“Court finds that an incentive award of \$50,000 is
27 just and reasonable under the circumstances”); Kifafi v. Hilton Hotels Ret. Plan, 999 F.
28 Supp. 2d 88, 106 (D.D.C. 2013) (approving \$50,000 incentive award); McCoy v. Health
Net, Inc., 569 F. Supp. 2d 448, 479-80 (D.N.J. 2008) (approving incentive awards of

1 \$60,000 per plaintiff); Brotherton v. Cleveland, 141 F. Supp. 2d 907, 914 (S.D. Ohio
2 2001) (\$50,000 to lead plaintiff); In re Revco Sec. Litig., Nos. 851, 89cv593, 1992 WL
3 118800, *7 (N.D. Ohio 1992) (\$200,000 incentive award to named plaintiff); Enterprise
4 Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240, 250-51 (S.D. Ohio
5 1991) (\$50,000 incentive awards to each of the six named plaintiffs); In re Dun &
6 Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (two
7 incentive awards of \$55,000 and three incentive awards of \$35,000).

8 In this case, each of the Class Representatives spent over six years assisting the
9 litigation of this case by reviewing the complaint, responding to written discovery and
10 producing documents, being deposed by defense counsel, and reviewing and approving the
11 settlement. (Dkt. No. 287-1, Meade Decl. ¶¶ 3-8, 12.) Plaintiffs also stayed in touch with
12 Class Counsel throughout the litigation. (Id. ¶ 12.) Mr. Kenna attended the settlement
13 conference with the Magistrate Judge Crawford. (Id.) Msrs. Kenna, Aghachi and Gauba
14 also attended the 2016 mediation before Judge West. (Id.)

15 Most importantly, all Class Representatives brought this action in the face of a very
16 real risk that the Tarsadia Defendants would seek attorneys' fees from them, as they have
17 successfully done in other actions arising out of the Hard Rock. The Class Representatives
18 here were among the many plaintiffs in Bell v. Tarsadia Hotels, (San Diego Superior Court
19 No. 37-2010-00096618). After the Bell court granted defendants' demurrer, counsel for
20 plaintiffs in Bell encouraged their clients to sign releases in exchange for a waiver of
21 attorneys' fees and costs because the defendants in the Salameh case that the Bell case was
22 modeled after had just filed a motion seeking \$800,000 in attorneys' fees. Most of the
23 plaintiffs in Bell signed a settlement agreement dismissing their claims with prejudice in
24 exchange for Tarsadia waiving costs and attorneys' fees. (Dkt. No. 287-1, Meade Decl. ¶
25 3, Ex. 1.) Despite the obvious risk of a fee motion, the Class Representatives chose not to
26 sign the settlement agreement in Bell so that they could bring this class action. (Id. ¶ 4.)
27 They believed in the ILSA-based claims and stepped forward for the Class at great
28 financial peril to themselves. After this action was filed, Tarsadia filed a motion in Bell

1 seeking \$63,000 in attorneys' fees from the Class Representatives. Class Counsel,
2 appearing specially in Bell, defeated this fee motion on September 2, 2011. (Id. ¶ 5.)

3 Then, in three later cases Tarsadia successfully obtained attorneys' fees from
4 plaintiffs. In Salameh v. Tarsadia Hotels, (S.D. Cal. Case No. No. 09-cv-2739) ("Salameh
5 I"), upon which Bell was modeled, the plaintiffs filed a securities fraud class action against
6 Tarsadia, arising out of the development of the Hard Rock. The district court dismissed the
7 claims before a class was certified and the Ninth Circuit affirmed. Salameh v. Tarsadia
8 Hotel, 726 F.3d 1124 (9th Cir. 2013). The district court then ordered plaintiffs to pay
9 Tarsadia \$405,371 in attorneys' fees. Salameh v. Tarsadia Hotel, No. 09cv2739-
10 GPC(BLM), 2014 WL 3797283, at *1 (S.D. Cal. July 31, 2014).

11 Similarly, the plaintiffs in Royalty Alliance, Inc. v. Tarsadia Hotels, 2014 WL
12 2212492 (Cal. App. 2014), were ordered to pay the Tarsadia over \$1.1 million in
13 attorneys' fees after they lost summary judgment on securities, fraud, and UCL claims
14 stemming from the Hard Rock. In Salameh v. 5th and K Master Assoc., Inc., 2016 WL
15 4529438 (Cal. App. 2016) ("Salameh II"), the California state court ordered the plaintiffs
16 to pay Tarsadia \$3.5 million in attorneys' fees and this award was affirmed on appeal.

17 Under these circumstances, the service awards of \$50,000 to the Class
18 Representatives are fair and reasonable in light of the extraordinary risks they accepted and
19 the time and effort they expended for the benefit of the Class. The Court grants Plaintiffs'
20 request for class representative incentive awards.

21 **C. Application for Attorneys' Fees and Costs**

22 Class counsel seek attorneys' fees in the amount of \$17,050,000 representing one-
23 third of the Settlement Fund and reimbursement of their out-of-pocket costs of \$195,089.

24 This court has an "independent obligation to ensure that the award, like the
25 settlement itself, is reasonable, even if the parties have already agreed to an amount." In re
26 Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011). At the fee-
27 setting stage, the interests of the plaintiffs and their attorneys diverge and described as
28

1 “adversarial”; therefore, the district court assumes a fiduciary role for the class plaintiffs.
2 In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988, 994 (9th Cir. 2010).

3 **1. California Law**

4 California law governs this fee application because where state law claims
5 predominate, state law applies to determine the right to fees and the method of calculating
6 them. See Mangold v. Cal. Pub. Utilities Comm’n, 67 F.3d 1470, 1478 (9th Cir. 1995).
7 The California Supreme Court recently held that in common fund cases, a trial court may
8 award class counsel a fee out of that fund by choosing an appropriate percentage of the
9 fund. Laffitte v. Robert Half Int’l Inc., 1 Cal. 5th 480, 503-06 (2016). A court “may
10 determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created.” Id. at 503. The trial court has discretion to conduct a lodestar cross-check
12 on a percentage fee or to forgo a lodestar cross-check and use other means to assess the
13 reasonableness of the requested fees. Id. at 506.

14 Here, Class Counsel requests a fee of one-third of the common fund. California
15 courts routinely award attorneys’ fees of one-third of the common fund. See Laffitte, 1
16 Cal. 5th at 506 (affirming a fee award of one-third of the gross settlement amount); Chavez
17 v. Netflix, Inc., 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical studies show that,
18 regardless whether the percentage method or the lodestar method is used, fee awards in
19 class actions average around one-third of the recovery”). “Under the percentage method,
20 California has recognized that most fee awards based on either a lodestar or percentage
21 calculation are 33 percent” Smith v. CRST Van Expedited, Inc., NO. 10cv1116-
22 IEG(WMC), 2013 WL 163293, at *5 (S.D. Cal. 2013).

23 In Laffitte, the California Supreme Court affirmed a one-third fee award in a related
24 wage and hour class actions that, like this case, involved extensive discovery, contentious
25 law and motion practice, motions for summary judgment, a class certification motion, a
26 subsequent motion for reconsideration, numerous experts, and two full-day mediations.
27 See Laffitte v. Robert Half Int’l Inc., 180 Cal. Rptr. 3d 136, 140 (2014) (discussion of
28 complexity of case), aff’d 1 Cal. 5th at 506. The court considered that class counsel

1 litigated the case on a contingency basis, which involved inherent risk and that
2 uncertainties introduced by recent case law injected “significant doubt” that plaintiffs
3 would be able to maintain class certification through trial. *Id.* at 142-43. The *Laffitte* court
4 concluded that the \$19 million settlement achieved in the face of the numerous risks—both
5 those overcome and those still looming at the time of settlement—supported the 33 1/3%
6 fee. *Id.* at 140-43, 154.

7 In this case, Class Counsel litigated this action against tenacious and aggressive
8 defense counsel who prevailed in several other actions brought by Hard Rock purchasers.
9 The action involved novel issues under the UCL’s statute of limitations and issues
10 concerning interpretation of ILSA and a recent Congressional amendment to ILSA that
11 could apply retroactively to bar the Class’s claims. Had Class Counsel lost any one of
12 these three issues they would not have been paid for 9,104 hours of work--and would
13 likely have had to defend a malicious prosecution action. (Dkt. No. 287-1, Meade Decl. ¶¶
14 9, 11, 24.) Even after the appellate victory, risks remained as to whether this Court would
15 certify the Class and how to calculate UCL restitution. Achieving a \$51.15 million cash
16 settlement which will pay significant amounts to all Class Members in the face of these
17 risks merits the requested one-third fee. In further support, Richard M. Pearl, an expert on
18 attorneys’ fee issues and disputes, opines in his expert declaration that “a fee of 33.3% of
19 the fund for this long, heavily contested but highly successful litigation is certainly
20 reasonable.” (Dkt. No. 287-12, Pearl Decl. ¶ 43.) Considering the results achieved, the
21 requested fees are reasonable.

22 2. Ninth Circuit Law

23 Class Counsel also argue that the fee request is reasonable under Ninth Circuit
24 precedent. In common fund cases, a district court has discretion to apply either the
25 percentage of the fund method or the lodestar method. *Vizcaino v. Microsoft Corp.*, 290
26 F.3d 1043, 1047 (9th Cir. 2002); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
27 1291, 1295-96 (9th Cir. 1994). The Ninth Circuit has adopted a benchmark of 25% of the
28 total settlement; however, that amount may be “adjusted upward or downward to account

1 for any unusual circumstances involved in [the] case.” Campbell v. Best Buy Stores, No.
2 LA CV12-7794 JAK (JEMx), 2016 WL 6662719, at *7 (citing Paul, Johnson, Alston &
3 Hunt v. Graulty, 886 F.2d 268, 273 (9th Cir. 1989)). A court that applies the percentage
4 method may cross-check the reasonableness of the fee by calculating the lodestar. Id.
5 (citing Vizcaino, 290 F.3d at 1050). “The 25% benchmark rate, although a starting point
6 for analysis, may be inappropriate in some cases.” Vizcaino, 290 F.3d at 1048. Any
7 percentage-of-the-fund award “must be supported by findings that take into account all of
8 the circumstances of the case.” Id. In determining whether an adjustment from the
9 benchmark is appropriate, courts in the Ninth Circuit consider the following factors: “(1)
10 the results achieved; (2) the risk undertaken by class counsel in pursuing the case; (3)
11 whether the settlement generated benefits beyond a cash payment; (4) the market rate for
12 similar representations; and (5) the nature of the representation, including whether it was
13 executed on a contingency basis.” Taylor v. Shippers Transport Express, Inc., 2015 WL
14 12658458, at *14 (C.D. Cal. 2015) (citing Vizcaino, 290 F.3d at 1048-50).

15 District courts in this circuit have routinely awarded fees of one-third of the
16 common fund or higher after considering the particular facts and circumstances of each
17 case. “[I]n most common fund cases, the award exceeds [the] benchmark.” In
18 reOmnivision Tech., Inc., 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (citations
19 omitted); Taylor, 2015 WL 12658458, at *17 (holding that 33% was reasonable given the
20 result, the risk, and counsel’s time investment); Campbell, 2016 WL 6662719, at *10
21 (approving a fee of one-third of the common fund); Millan v. Cascade Water Services,
22 2016 WL 3077710, at *11-12 (E.D. Cal. 2016) (approving an award of 33% of the
23 common fund); Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431, 449 (E.D. Cal.
24 2013) (awarding one-third of the settlement fund). The Ninth Circuit has also upheld
25 awards of one-third of a common fund. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d
26 454, 460 (9th Cir. 2000) (affirming an award of one-third of total recovery); In re Pacific
27 Enters. Sec. Litig., 47 F.3d 373, 379 (9th Cir. 1995) (affirming an award of one-third of a
28 \$12 million common fund).

1 **a. The Result Achieved**

2 “The overall result and benefit to the class from the litigation is the most critical
3 factor in granting a fee award.” In re Omnivision Techs., 559 F. Supp. 2d at 1046. As
4 discussed above, against a rigorous defense, Class Counsel obtained \$51,150,000 for the
5 Class, without reversion of any funds to the Tarsadia Defendants, GT, GT’s insurers, or
6 any other contributing party. (Dkt. No. 273-2 at ¶ 8.7.) Class members will receive, on
7 average, approximately \$95,000 in settlement funds on a per-unit basis (after fees and
8 expenses). (Dkt. No. 273-1, Schrag Decl. Decl. ¶ 15.) This represents an excellent result.
9 This factor thus favors an upward adjustment from the 25% benchmark to a fee of 33 and
10 1/3%.

11 **b. The Risks of Litigation**

12 From the outset, Class Counsel litigated this case in the face of extraordinary risk of
13 non-payment by taking the case on a pure contingency basis and risked receiving zero
14 compensation for their years of work and out-of-pocket costs. That risk of zero
15 compensation was almost realized when the Court granted summary judgment to
16 defendants on statute of limitations grounds. However, Class Counsel persevered, arguing
17 on reconsideration that the predominant interpretation of Silvas was incorrect. Class
18 Counsel’s steadfastness paid off when the Court not only reversed the grant of summary
19 judgment to defendants, but also granted partial summary judgment on the issue of liability
20 to Plaintiffs. But the risks of litigation remained and new risks emerged. The Tarsadia
21 Defendants filed a motion to reconsider, and then Congress unanimously passed and the
22 President signed legislation that removed condominiums from ILSA’s registration and
23 disclosure requirements. The Tarsadia Defendants argued Congress’ intent was to “clarify”
24 existing law such that the amendment applied retroactively. Though this Court rejected
25 the Tarsadia Defendants’ various arguments, it certified an interlocutory appeal which the
26 Ninth Circuit accepted. Class Counsel then briefed and argued several complex issues
27 before the Ninth Circuit such as the statute of limitations issue, retroactivity, whether to
28 uphold 12 C.F.R. § 1010.5, and whether Plaintiffs had exclusive use of the hotel-

1 condominium units at the Hard Rock notwithstanding restrictions on occupancy and the
2 Sixth Circuit's decision in Becherer, 127 F.3d 478. Beaver, 816 F.3d 1170.

3 After remand, at the August 2016 hearing on Plaintiffs' renewed motion to certify,
4 the Court observed that the Court and the Parties "have made some law along the way;"
5 and also warned that "[t]here's been no shortage of novel issues," suggesting that
6 significant issues and risks remained. (Dkt. No. 273-15 (8/18/16 Trans.) at 5.) Indeed,
7 Class Counsel achieved this settlement even after the Court noted that another issue of first
8 impression -- the question of a proper remedy -- "isn't as simple as presented by the
9 plaintiffs," that it was likely to consider the recent Congressional amendment removing the
10 underlying illegality in fashioning an equitable remedy, and more ominously that it had not
11 yet decided that Plaintiffs had a viable remedies model that matches the theory of liability.
12 (Id. at 4-5.) Both the Tarsadia Defendants and GT capitalized on the Court's invitation for
13 further briefing to file sur-replies arguing that Plaintiffs lacked a viable remedies model.
14 (Dkt. Nos. 245-46.)

15 Even if the court rejected Defendants' analysis, Plaintiffs remained at risk as the
16 Court noted that Plaintiff had the burden to identify a viable alternative remedies model.
17 (Dkt. No. 273-15 at 5.) If the Court denied class certification, Class Counsel would have
18 received, at most, de minimis fees on the claims relating to the four units owned by the
19 named Plaintiffs. See Acosta v. Trans Union, LLC, 243 F.R.D. 377, 392 (C.D. Cal. 2007)
20 ("The value of a class action 'depends largely on the certification of the class,' and ...
21 class certification undeniably represents a serious risk for plaintiffs in any class action
22 lawsuit."). Even if the Court certified a class, there was no guarantee that certification
23 would extend beyond the question of liability; if it did, that Plaintiffs would prevail at the
24 remedies trial; or if they did, that the Court's broad equitable powers to fashion an
25 appropriate remedy would yield significant relief to the Class.

26 Class Counsel also faced the added risk that if the Tarsadia Defendants had
27 prevailed, they would have sued Class Counsel for malicious prosecution, just as they sued
28 other plaintiffs' attorneys after prevailing in a related case. See Tarsadia Hotels v. Aguirre

1 & Severson, 2016 WL 7488351, at *1 (Ct. App. 2016) (affirming dismissal of malicious
2 prosecution complaint in Tarsadia Hotels v. Aguirre & Severson, San Diego Superior
3 Court Case No. 37-2016-00044390). In fact, Tarsadia Defendants specifically threatened to
4 file such a lawsuit. (Dkt. No. 273-1, Schrag Decl. ¶ 9 & Ex. 2 (February 13, 2013 letter
5 from counsel for the Tarsadia Defendants threatening to sue Class Counsel for malicious
6 prosecution).)

7 Class Counsel undertook extraordinary risk in litigating the case for six years
8 against Defendants who have a track record of aggression; thus, this factor supports and
9 upward adjustment.

10 **c. Benefits Beyond a Cash Payment**

11 Where class counsel's performance generates benefits beyond a cash settlement
12 fund, an upward adjustment may be warranted. See Vizcaino, 290 F.3d at 1049 (fact that
13 the litigation benefitted employers and workers nationwide by clarifying the law on worker
14 classification supported upward adjustment). Here, Class Counsel benefitted consumers
15 nationwide by clarifying that where a UCL claim is premised on a violation of federal law,
16 the UCL's statute of limitations applies. Beaver, 816 F.3d at 1180-81. The UCL's four-
17 year statute of limitations provides consumers with a viable cause of action even if they
18 are suing based on violations of a federal predicate law with a shorter limitations period
19 that has expired. Id. The Ninth Circuit's decision in this case also resolved other
20 significant issues, such as whether 12 C.F.R. § 1010.5 imposes a valid limitation on
21 presale contingency clauses, and, therefore, the scope of the Improved Lot Exemption.
22 This issue was particularly important because it was the foundation for GT's liability and,
23 presumably, the motivating factor behind the firm's decision to contribute most of the
24 Settlement Fund. According to the Third Party Complaint, GT advised the Tarsadia
25 Defendants that the Improved Lot Exemption to ILSA applied to the Hard Rock. (Dkt.
26 No. 106-2 at 12.) In fact, because the purchase contract included a presale contingency
27 clause that exceeded the duration permitted by 12 C.F.R. § 1010.5, the Improved Lot
28 Exemption was not available to the Tarsadia Defendants. Beaver, 816 F.3d at 1184.

1 These clarifications in the law will serve a great benefit to the general public, and
2 supports an upward adjustment to a 33 1/3% fee.

3 **d. The Skill Required and the Quality of Work**

4 Class Counsel overcame several hurdles that reflect their skill and experience. For
5 instance, Class Counsel not only won a motion for reconsideration of a summary judgment
6 motion that represented a total loss on the merits, but also obtained summary judgment on
7 the issue of liability for their UCL claim. This win came despite at least six federal district
8 courts interpreting Silvas to hold that in a UCL claim based on federal law, the federal
9 statute of limitations of the controls. (See Dkt. Nos. 128, 146.) Only one district court
10 case had ruled the other way—that absent preemption, the UCL statute of limitations
11 controlled even where the UCL claim was based on federal law. Sonoda v. Amerisave
12 Mortg. Corp., No. C-11-1803 EMC, 2011 WL 2690451, at *9 (N.D. Cal. 2011). Yet, Class
13 Counsel persuasively argued to this Court and the Ninth Circuit that the UCL’s statute of
14 limitations should apply.

15 Class Counsel also prevailed on the issue of whether a 2014 Congressional
16 amendment to ILSA which exempted condominiums from ILSA’s disclosure provisions
17 would apply retroactively to this case even though the title of the amendment indicated
18 that it was meant “to clarify how [ILSA] applies to condominiums.” Beaver, 816 F.3d at
19 1186-87. This Court and the Ninth Circuit agreed with Class Counsel that despite the
20 word “clarify” in the amendment’s title, the amendment was a substantive change in the
21 law that should not be applied to this case. Id. In briefing this issue, Class Counsel
22 exhaustively reviewed HUD’s agency regulations to ILSA and argued that under Chevron
23 deference principles, ILSA applied to condominiums like those at the Hard Rock. (Dkt.
24 No. 287-1, Meade Decl. ¶ 24.)

25 Even after a complete victory on the merits, Class Counsel faced defendants’
26 challenges to their novel remedies model. Although the parties settled before the Court
27 could decide whether Plaintiffs’ remedies model was appropriate, Class Counsel’s briefing
28 and arguments on the matter provided enough leverage to settle the case for over \$51

1 million. This settlement could not have been achieved without the skill and experience that
 2 Class Counsel applied in the face of legal hurdles at every turn. This factor thus supports
 3 an upward adjustment from the benchmark.

4 **e. Market Rate for Similar Representation**

5 Class Counsel's fee request of one-third of the common fund is in line with the
 6 market rate for similar representation. See In re Consumer Privacy Cases, 175 Cal. App.
 7 4th 545, 557 (2009) (a fee award should be "within the range of fees freely negotiated in
 8 the legal marketplace in comparable litigation"). Attorneys with comparable skill and
 9 experience, and who litigate class actions on a contingency basis routinely charge one-
 10 third of the recovery, or 40% or more if the case goes to trial. Fernandez v. Victoria Secret
 11 Stores, LLC, No. CV 06-4149-MMM(SHx), 2008 WL 8150856, at *16 n.59 (C.D. Cal.
 12 2008) (fees representing one-third of the recovery are justified based on study showing
 13 that standard contingency fee rates are 33% if the case settles before trial, 40% if a trial
 14 commences, and 50% if trial is completed). In his declaration, Pearl highlights prevailing
 15 market rates for attorneys across the state, and opines that Class Counsel's rates are well
 16 within the norm. (Dkt. No. 287-12, Pearl Decl. ¶¶ 8-10, 66-73, Dkt. No. 273-18, Pearl
 17 Decl., Ex. F.) Thus, here, where the action was litigated for six years, through a total loss,
 18 reconsideration, an interlocutory appeal and to the brink of trial, a one-third fee is
 19 reasonable as it is in line with the legal marketplace for contingent fees.

20 **f. Contingent Nature of the Representation and the Financial Burden**
 21 **Carried by Class Counsel**

22 Class Counsel took this case on an entirely contingent fee basis against well-
 23 represented defendants who have a track record of aggression. "A contingent fee must be
 24 higher than a fee for the same legal services paid as they are performed. The contingent fee
 25 compensates the lawyer not only for the legal services he renders but for the loan of those
 26 services." Graham v. DaimlerChrysler Corp., 34 Cal. 4th 553, 580 (2004); see also
 27 Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 457 (E.D. Cal. 2013) ("Courts have
 28 long recognized that the attorneys' contingent risk is an important factor in determining

1 the fee award and may justify awarding a premium over an attorneys’ normal hourly
2 rates.”). Class Counsel assumed all the financial risk of the case, since the fee arrangement
3 required Class Counsel to bear all of the costs of litigation. Even with the Court’s finding
4 in favor of Plaintiffs on liability, there was still a risk that the Court would agree with
5 defendants’ restitution methodology and award zero in restitution – thus leaving Class
6 Counsel with no remuneration for six years and 9,104 hours of work and the nearly
7 \$200,000 they spent over the course of this case. That substantial risk warrants an
8 appropriate fee. *Barbosa*, 297 F.R.D. at 449 (“Like this case, where recovery is uncertain,
9 an award of one-third of the common fund as attorneys’ fees has been found to be
10 appropriate”). This factor further supports the 33 and 1/3 % fee.

11 **3. Lodestar Cross-Check**

12 In applying the percentage-of-the-fund method, a district court has discretion to
13 “double check the reasonableness of the percentage fee through a lodestar calculation.”
14 *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1264 (C.D. Cal. 2016) (quoting
15 *Laffitte*, 1 Cal. 5th at 504). Because the lodestar measures counsel’s time investment in
16 the litigation, it provides a check on the reasonableness of the percentage award. *Vizcaino*,
17 290 F.3d at 1050 (“ . . . the lodestar calculation can be helpful in suggesting a higher
18 percentage when litigation has been protracted. Thus, while the primary basis of the fee
19 award remains the percentage method, the lodestar may provide a useful perspective on the
20 reasonableness of a given percentage award.”).

21 In conducting a lodestar cross-check, a court need not exhaustively catalogue and
22 review counsel’s hours, but can instead focus on “the general question of whether the fee
23 award appropriately reflects the degree of time and effort expended by the attorneys.”
24 *Spann*, 211 F. Supp. 3d at 1265 (quoting *Laffitte*, 1 Cal. 5th at 505). To calculate the
25 lodestar, courts multiply the number of hours reasonably expended litigating the case by a
26 reasonable hourly rate, and adjusting the lodestar up or down by an appropriate multiplier
27 reflecting “the quality of representation, the benefit obtained for the class, the complexity
28 and novelty of the issues presented, and the risk of nonpayment.” *Jasper v. C.R. England*,

1 Inc., 2014 WL 12577426 (C.D. Cal. 2014) (citing In re Bluetooth Headset Products Liab.
2 Litig., 654 F.3d 935, 941-942 (9th Cir. 2011)).

3 Here, as summarized in a declaration, Class Counsel expended 9,104 hours litigating
4 this action over more than six years, after the exercise of billing discretion. (Dkt. No. 287-
5 2, Meade Decl. ¶¶ 26, 27).

6 The lodestar for each of the law firms total \$5,908,280.50. (Dkt. No. 287-1, Meade
7 Decl. ¶¶ 21, 29, 31, 34, 35; see also Dkt. No. 287-19, Schrag Decl.; Dkt. No. 287-21;
8 Rubin Decl.; Dkt. No. 287-22, Chomiak Decl.; Dkt. No. 287-23, Fostvedt Decl.; Dkt. No.
9 287-24, Reiser Decl.) After a review of Class Counsel’s declarations, the Court concludes
10 that the lodestar amount is reasonable in light of the work performed and the prevailing
11 rates in the community for attorneys of comparable skill, experience and reputation.

12 The one-third fee Class Counsel seeks reflects a multiplier of 2.89 on the lodestar
13 which is reasonable for a complex class action case. See Hopkins v. Stryker Sales Corp.,
14 11CV2786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013) (“Multipliers of 1 to 4
15 are commonly found to be appropriate in complex class action cases.”). In the recent \$50
16 million settlement in Spann, Judge Olguin held that a multiplier of 3.07 was “well within
17 the range of reasonable multipliers.” Spann v. J.C. Penney Corp., 211 F. Supp. 3d 1244,
18 1265 (C.D. Cal. 2016); see also Vizcaino, 290 F.3d at 1052–1054 (surveying multipliers in
19 23 class action suits and recognizing that courts applied multipliers of 1.0 to 4.0 in 83% of
20 surveyed cases); Parkinson v. Hyundai Motor Am., 796 F. Supp. 2d 1160, 1170 (C.D. Cal.
21 2010) (observing that “multipliers may range from 1.2 to 4 or even higher”).

22 A cross-check with the lodestar confirms the reasonableness of awarding the 33 and
23 1/3% fee award. See Laffitte, 1 Cal.5th at 496 (“If the implied multiplier is reasonable,
24 then the cross-check confirms the reasonableness of the percentage-based fee”).

25 **C. Application for Costs**

26 Class Counsel seek reimbursement of \$195,089.00 in out-of-pocket costs incurred
27 during this litigation. “There is no doubt that an attorney who has created a common fund
28 for the benefit of the class is entitled to reimbursement of reasonable litigation expenses

1 from that fund.” Ontiveros v. Zamora, 303 F.R.D. 356, 375 (C.D. Cal. 2014) (citation
 2 omitted). Class counsel assert that all the expenditures were necessary to Class Counsel’s
 3 prosecution of the action and are reasonable considering the action spanned over six years,
 4 required expert opinions and survived a Ninth Circuit appeal. After a review of the costs
 5 sought by seven firms³, the Court concludes the costs are reasonable and awards Class
 6 Counsel \$195,089.00 in costs.

7 **Conclusion**

8 Based on the above, IT IS HEREBY ORDERED that:

9 1. Based on Plaintiffs’ Motion for Final Approval of Class Settlement, the
 10 argument and comments at the final Fairness Hearing, and its further consideration of the
 11 factors identified in the Court’s Preliminary Approval Order, the Court certifies the
 12 following Class for Settlement purposes only:

13
 14 All individuals and businesses who agreed to purchase condominium-
 15 hotel units at the Hard Rock Hotel & Condominiums in San Diego,
 16 California at any time between May 2006 and December 2007 and
 17 ultimately closed escrow on units in the project, with the exception of
 18 (a) the Tarsadia Defendants and their officers, affiliates, directors,
 19 employees and the immediate family members of its officers, directors
 20 and employees (the Tarsadia Defendants have determined this
 21 exception excludes only Units 602, 639 and 1150), (b) those named
 22 plaintiffs in the action entitled Bell et al. v. Tarsadia Hotels et al. (San
 23 Diego Superior Court Case No. 37-2010-00096618) who signed the
 24 Settlement Agreement And Mutual Release in that case, (c) the named
 25 plaintiffs in the action entitled Salameh et al. v. Tarsadia Hotels et al.
 26 (Case No. 09-CV-2739), and (d) Persons who file timely Opt-Outs. The
 27 Settlement Class shall be construed to include purchasers “Subject to
 the 2008 Close Defense” and “Subject to the Assignment Defense,” as
 those phrases are used in Exhibit A to the Class Member Stipulation
 (Dkt. No. 70), provided that they otherwise fall within the definition of
 the Settlement Class. Without in any way limiting the foregoing, a list

28 ³ Until early 2015, Tyler Meade and Michael Shrag practiced as Meade & Schrag, LLP, and then both continued to work on the case in their new firms, The Meade Firm and Gibbs Law Group, LLP.

1 of known Settlement Class members is attached hereto as **Exhibit A**
2 (the “Class Member List”).

3 2. The Court confirms its appointment of Plaintiffs Dean Beaver, Laurie
4 Beaver, Steven Adelman, Abraham Aghachi, Dinesh Gauba, Kevin Kenna, and Veronica
5 Kenna as Class Representatives. The Court also confirms its appointment of the following
6 five firms to serve as Class Counsel: Reiser Law, P.C.; Gibbs Law Group LLP; The
7 Meade Firm p.c.; Talisman Law PC; and the Fostvedt Legal Group LLC.

8 3. The Court has reviewed the Declaration of Jacqueline Brasefield Regarding
9 Notice Dissemination, Dkt. No. 279, and finds that Class Notice has been disseminated to
10 the Class in compliance with the Court’s Preliminary Approval Order and that the Notice
11 Program provided the best notice to the Class practicable under the circumstances, fully
12 satisfied due process, met the requirements of Rule 23 of the Federal Rules of Civil
13 Procedure, and complied with all other applicable law. The Court further finds that notice
14 provisions of 28 U.S.C. § 1715 were complied with in this case.

15 4. Only one class member, Jason Brooks, who was a co-purchaser of Unit 1042,
16 has excluded himself from the Class by submitting a timely Request for Exclusion to the
17 Settlement Administrator. *See* Dkt. No. 304 (Declaration of Jacqueline Brasefield
18 Regarding Exclusions and Objections). Therefore, Jason Brooks (a) is not a Class member
19 as that term is defined and used herein; (b) shall not be bound by this Final Approval
20 Order or any release provided herein; and (c) shall not be entitled to benefits from the
21 Settlement. No other Class members requested exclusion from the Settlement.

22 5. Seventeen members of the Class have written to the Court to express their
23 support for the Settlement. (Dkt. Nos. 282-283, 288-292, 294-303.) The Court has not
24 received any objections to the Settlement. (See also Dkt. No. 304 (Brasefield Decl. re
25 exclusions and objections); (Dkt. No. 305 (Class Counsel’s Status Report Regarding
26 Response to Notice Program).) The absence of any objections bars any appeal. (Dkt. No.
27 278 at ¶ 35 (“Any Class member who does not file a valid and timely objection to the
28 Settlement will be deemed to have waived any objections to the Settlement, will be barred

1 from speaking or otherwise presenting any views at the Fairness Hearing, and shall be
2 barred from seeking review of the Settlement by appeal or otherwise”); see also
3 Newberg on Class Actions § 14:13 (5th ed.) (“[I]t is equally clear that a class member
4 who did not object in the district court cannot pursue an appeal. Indeed, she has nothing to
5 appeal because she waived her rights by not objecting below.”); In re UnitedHealth Group
6 Inc. Shareholder Derivative Litigation, 631 F.3d 913, 917 (8th Cir. 2011) (class member
7 *must* file a timely and proper objection with the district court before appealing a
8 settlement agreement); Aichele v. City of Los Angeles, Case No. CV 12-10863-DMF
9 (FFMx), 2015 WL 12732003, at *6 (C.D. Cal. Sept. 9, 2015) (“Since there have been no
10 objections to the Settlement, there can be no appeals taken”).⁴

11 6. No Class member has requested to speak at the Final Fairness Hearing.

12 7. The Court finds that the Settlement is fair, reasonable, adequate and is in the
13 best interests of the Class, has been entered into in good faith, and should be and hereby is
14 fully and finally approved pursuant to Federal Rule of Civil Procedure 23. The Settlement
15 represents a fair resolution of all claims asserted by the Class Representatives on behalf of
16 the Class, and fully and finally resolves all such claims.

17 8. The release set forth in the Settlement will become binding and effective on
18 all Class members upon the Effective Date, which under Paragraph 2.8 of the Settlement
19 Agreement will likely be 31 days from the date of this Order given that no Class member
20 filed a timely objection. (Dkt. No. 273-2 at ¶ 2.8.) To avoid ambiguity, these releases,
21
22
23
24
25

26
27 ⁴ The Court orders that any party who attempts to file an appeal shall, within 10 days of
28 filing a notice of appeal, post a bond pursuant to Rule 7 of the Federal Rules of Appellate
Procedure in the amount of \$500.00.

1 which must be read in light of the broad definitions of “Claims”⁵ and “Released Parties,”⁶
2 read as follows:

3 11.1 Mutual Releases: Upon the Effective Date, this Settlement
4 fully, finally and forever extinguishes and releases all Claims held by,
5 between, and among Plaintiffs, the Settlement Class, Playground
6 Destination Properties, Inc., the Tarsadia Defendants, and GT against all
7 Released Parties that arise out of the facts alleged in the First, Second, and
8 Third Amended Complaints, and/or the Third Party Complaint
9 (collectively, “Complaint”) filed in the Action, including known and
10 Unknown Claims which could have been brought in the Action based on
11 the same set of facts pleaded in the Complaint. The Settlement further
12 extinguishes any and all Claims, including future and Unknown Claims,
13 between the Tarsadia Defendants, Playground Destination Properties,

14 ⁵ “Claims” means any and all actual or potential claims, actions, causes of action, suits,
15 counterclaims, cross-claims, third party claims, contentions, allegations, and assertions of
16 wrongdoing, and any demands for any and all debts, obligations, liabilities, damages
17 (whether actual, compensatory, treble, punitive, exemplary, statutory, or otherwise),
18 attorneys’ fees, costs, expenses, restitution, disgorgement, injunctive relief, any other type
19 of equitable, legal or statutory relief, any other benefits, or any penalties of any type
20 whatsoever (whether sought by a Party directly or on behalf of a Party by another person),
21 regardless of when such claims accrue, whether known or unknown, suspected or
22 unsuspected, contingent or non-contingent, discovered or undiscovered, whether asserted
23 in federal court, state court, arbitration or otherwise, and whether triable before a judge or
24 jury or otherwise.

25 ⁶ “Released Parties” (or, individually, “Released Party”) means Plaintiffs, members of the
26 Settlement Class, Class Counsel, Playground Destination Properties, Inc., the Tarsadia
27 Defendants, GT, and GT’s insurers and underwriters, together with their predecessors,
28 successors (including, without limitation, acquirers of all or substantially all of its assets,
stock, or other ownership interests) and assigns; their respective insurers, the past, present,
and future, direct and indirect, parents (including, but not limited to holding companies),
subsidiaries and affiliates in any capacity of any of the above; and the past, present, and
future principals, trustees, partners, claims administrators, officers, directors, employees,
agents, attorneys, shareholders (including without limitation, Richard Davis, as applicable
to GT), advisors, predecessors, successors (including, without limitation, acquirers of all or
substantially all of their assets, stock, or other ownership interests), assigns,
representatives, heirs, executors, and administrators in any capacity of any of the above.

1 Inc., and GT that in any way relate to the Hard Rock Hotel &
2 Condominiums in San Diego, California, including but not limited to
3 claims against or by the Tarsadia Defendants, Playground Destination
4 Properties, Inc., GT, and/or their respective predecessors, successors
5 (including, without limitation, acquirers of all or substantially all of its
6 assets, stock, or other ownership interests) and assigns, insurers, past,
7 present, and future, direct and indirect parents (including, but not limited
8 to holding companies), subsidiaries and affiliates in any capacity of any of
9 the above, and the past, present, and future principals, trustees, partners,
10 claims administrators, officers, directors, employees, agents, attorneys,
11 shareholders (including without limitation, Richard Davis, as applicable to
12 GT), advisors, predecessors, successors (including, without limitation,
13 acquirers of all or substantially all of their assets, stock, or other
14 ownership interests), assigns, representatives, heirs, executors, and
15 administrators in any capacity of the above. Nothing in this Agreement
16 shall release any insurer from any obligations to defend or indemnify any
17 Party or non-party to this Agreement with respect to any claims not
18 encompassed within the Complaint or Third-Party Complaint. Without
19 limitation, and for the sake of clarity, the claims, counter and cross-claims
20 of T-2 Three vs. Turner Construction (Orange County Superior Court
21 Case No. 30-2011-00514568-CU-BC-CJC), specifically are not within
22 scope of the releases granted herein. The District Court's Final Approval
23 Order shall constitute a judgment dismissing the Action with prejudice,
24 but the District Court shall retain jurisdiction to oversee and carryout the
25 Settlement.

19 11.2 Unknown Claims: Consistent with and subject to Section
20 11.1, the mutual releases contemplated by this Settlement and provided
21 for in this Agreement extend to Claims that the Parties and Playground
22 Destination Properties, Inc. do not know or suspect to exist at the time of
23 the release, which if known, might have affected the decision to enter into
24 the release ("Unknown Claims"). In releasing their Unknown Claims, the
25 Parties and Playground Destination Properties, Inc. expressly waive (and
26 each Class member by operation of law shall be deemed to waive) any
27 and all protections, provisions, rights and benefits conferred by any law of
28 the United States or any state or territory of the United States, or principle
of common law, which governs or limits a person's release of Unknown
Claims, including Section 1542 of the California Civil Code. Section
1542 of the California Civil Code provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**

1 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
2 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4 The Parties and Playground Destination Properties, Inc. understand and
5 acknowledge (and each Class member by operation of law shall be
6 deemed to have acknowledged) the significance of these waivers of
7 California Civil Code Section 1542 and/or of any other applicable law
8 relating to limitations on releases of Unknown Claims. In connection with
9 such waivers and relinquishment, the Parties and Playground Destination
10 Properties, Inc. acknowledge (and each Class member by operation of law
11 shall be deemed to acknowledge) that they are aware that they may
12 hereafter discover facts in addition to, or different from, those facts which
13 they now know or believe to be true with respect to the subject matter of
14 the Settlement, but that they release fully, finally and forever all released
15 Claims, and in furtherance of such intention, the release will remain in
16 effect notwithstanding the discovery or existence of any such additional or
17 different facts. The Parties and Playground Destination Properties, Inc.
18 acknowledge (and all Class members by operation of law shall be deemed
19 to acknowledge) that the release of Unknown Claims as set forth herein
20 was separately bargained for and was a key element of the Settlement.

21 11.3 Limitation of Release: Consistent with Sections 11.1 and 11.2
22 above and mentioned here for avoidance of doubt, this Settlement will not
23 in any way impact: (a) the Tarsadia Defendants' rights against putative
24 class members Frank Issa and/or Ray Hammi relating to, in connection
25 with or arising from any and all judgments, demands, and claims for
26 attorneys' fees and costs incurred by the Tarsadia Defendants, and others,
27 in connection with other litigation (excluding this Action) brought against
28 them involving the Hard Rock Hotel guestroom condominium units; and
29 (b) the continuing rights and obligations between GT and its insurers. The
30 Settlement and this Agreement shall not affect any debts owed by any of
31 the Class members to the Tarsadia Defendants, and all Class
32 Representatives and Class members will remain fully obligated on any
33 and all such debts.

34 11.4 Three parties that were previously dismissed as defendants in
35 this Action (B.U. Patel, Tushar Patel, and MKP One, LLC) are not parties
36 to this Settlement but have agreed to mutual releases with GT and
37 Playground via a separate agreement.

38 9. The Settlement Administrator, Garden City Group, LLC, is hereby directed
to implement and carry out the Settlement in accordance with the terms and provisions

1 thereof, Dkt. No. 273-2, Schrag Decl., Ex. 1, including the Distribution Plan, Dkt. No.
2 273-7, Schrag Decl. Ex. E to Settlement Agreement.

3 10. Class Counsel and the Class Representatives fairly and adequately
4 represented the interests of Class members. The Court finds that Class Counsel's request
5 for \$17,050,000.00 in attorney fees which represents 33 and 1/3% of the Settlement Fund
6 is fair and reasonable, given the high level of risk involved, the result achieved, the high
7 quality of the legal representation, the duration of this case, the novelty of their claim, and
8 the complexity of the issues in this Court and the Court of Appeals. In addition, this Court
9 has cross-checked the fee award and finds that Class Counsel's combined lodestar of
10 \$5,908,280.50 is reasonable under the circumstances of this case and that the 2.89
11 multiplier on this lodestar is fair and reasonable for the reasons discussed above. The
12 Court finds Class Counsel reasonably spent over 9,104 hours representing the Class's
13 interests over the course of this litigation, that Class Counsel's hourly rates are reasonable
14 and in line with the prevailing rates in the community for complex class action litigation.
15 The Court further finds that the \$195,089 in costs incurred to prosecute the litigation were
16 reasonable. Accordingly, Class Counsel is hereby awarded attorney fees in the amount of
17 \$17,050,000.00, and costs in the amount of \$195,089.00.

18 11. The Tarsadia Defendants and GT shall make the payments specified in
19 paragraph 8.1 of the Settlement Agreement within the deadline specified in that paragraph
20 (*i.e.*, 15 days from the date of this Order), and the Settlement Administrator shall
21 distribute the \$17,050,000.00 in attorneys' fees and the \$195,089.00 in costs to Class
22 Counsel (in the amounts and in the manner specified by them) within five (5) days of the
23 Effective Date.

24 12. The Court further finds the requested service awards are fair and reasonable,
25 given the time and effort expended by the Class Representatives on behalf of the Class,
26 and the risk they incurred in pursuing relief on behalf of the Class. The Court awards four
27 \$50,000.00 service awards to: (1) Mr. Gauba, (2) Kevin and Veronica Kenna, (3) Dean
28 and Laurie Beaver, and (4) Messrs. Adelman and Aghachi. These incentive awards shall

1 be distributed by the Settlement Administrator at the same time as the attorneys' fees and
2 costs.

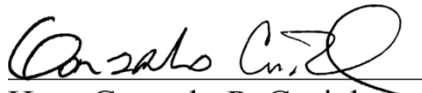
3 13. On August 1, 2017, a Notice of Lien was filed in this case for satisfaction of
4 a money judgment against two Class members (Frank Issa and Ray Hammi) in a separate
5 case, 5th & K Parcel 2 Owners' Association, Inc. v. Tamer Salameh, et al., San Diego
6 Superior Court Case No, 37-2010-00094424-CUOR- CTL (lead case). Dkt. No. 281 (the
7 "Lien"). At the request of GT and with the agreement of the other parties, the Court
8 confirms that the Lien does not impose any duties or obligations on GT, its insurers, their
9 underwriters and related entities. GT should proceed to honor its payment obligations
10 under the terms of the Settlement Agreement, without regard to the Lien. Should Mr. Issa
11 or Hammi seek relief from the Lien, the Court will address the Lien separately after final
12 approval.

13 14. There being no just reason for delay, the Court, in the interests of justice,
14 expressly directs the Clerk of the Court to enter this Final Order and Judgment, and
15 hereby decrees that, upon entry, it be deemed a Final Judgment.

16 15. Without affecting the finality of this Judgment in any way, this Court hereby
17 retains continuing jurisdiction over (a) implementation and administration of the
18 Settlement; (b) further proceedings, if necessary, on applications for attorneys' fees and
19 costs in connection with the Action and the Settlement; and (c) the Parties and the Class
20 members for the purpose of construing, enforcing, and administering the Settlement
21 Agreement and all orders and judgments entered in connection therewith.

22 IT IS SO ORDERED.

23 Dated: September 28, 2017

24 
25 Hon. Gonzalo P. Curiel
26 United States District Judge
27
28

BEAVER v. TARSADIA - CLASS MEMBER LIST

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
UNITS STILL OWNED BY CLASS MEMBERS												
220	Smith	Michael	Smith	Rosibel								
222	McPeck	Clarissa	Povenmire	Daniel	Olivares	Luis						
234	Doctolero	Rene	Doctolero	Guisela								
310	Morgan	Christopher	Morgan	Fitzgerald	Kevin							
312	Martinez	Manuel	Diaz	Fernando								
314	Miller	Christopher S										
320	Kushen	Craig	Kushen	Meredith								
322	Annett	Cecil	Becker	Elizabeth								
332	Tang	Steven Don	Tang	Thomas								
334	Kuenster	Jerome	Kuenster	Susan								
338	Zwass	Josef										
350	Feeney	Michael										
352	Hand	Jason	Hand	Frank	Hand	Kathy						
354	Simpson-Galligan	Nicole V										
356	Gaub	Dinesh	Sheila	Dobee								
359	Beaver	Dean	Beaver	Laurie								
408	Kimball	Thomas	Kimball	Lori	Kimball	Casie	Kimball	Kyle	Pensco Trust Co.			
420	Fifth Street Investors L L C											
426	NCO Properties LLC		McCormick	Mark								
427	Godinez	Paul	Jolly	Kevin	Zabka	Sven	Mackey	Tom	Gibbons	Brendan		
429	Trymax, California GP											
430	Marbury-Hammonds	Franchesta	Coates	Jay								
431	Schindler	Mark										
432	Erskine	Ioshua	Erskine	Shane	Erskine	Kirt	Erskine	Charlene	Grieco	Jason		
434	Wells	Marc	Wells	Margaret	Wells	Christopher						
438	Paniccia	Mario	Paniccia	Rachel								
440	Lapsi	Amar										
442	Mauter	Keith	Mauter	Susan								
503	Volore	Brandon										
504	Kass	Irving										
507	Schneider	James	Schneider	Candice								
510	Dogan	Jarrod	Blaise	Heather								
511	Acharya	Bella	Johnstone	Jeffrey								
518	Hom	Yau Keung										
520	Goldstein	Eyal										
522	Tassiello	Richard	Tassiello	Amy								
526	Sunabe	Jack	Sunabe	Marian								
530	Sunabe	Jack	Sunabe	Marian								
532	Pruski	Timothy										
533	Hammond	Myle										
535	Francescon	Lewis	Francescon	Kimberly	Ghorbani	Jason	Ghorbani	Adriana				
536	Angulo	Victor	Angulo	Laura								
538	Baird	Brian	Baird	Meagan								
541	Salazar	Laurie										
543	Salazar	Laurie										
544	Gay	Stephen	Ritaldato	Dennis	Gay	David						
546	Durfee	Peter	Durfee	Susan								
550	Clayton	Kristopher	Cortez	Marcos	Cortez	Andrew	Cortez	Socorro				
556	Celeste	Leon	Celeste	Lisa								
559	Hetherington	Roy	Hetherington	Maria								
560	Rabindranauth	Premnauth	Zaky	Mary								
604	Oriol	Caesar	Oriol	Julie								
605	Moughan	John	Moughan	Nicole								
606	Cimo	Joseph	Cimo	Patricia								
607	Modiano	Robert	Modiano	Nina								
608	Young	Seldon	Young	Heston	Heisel LLC							

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
609	Scolinos	Frank	Scolinos	Maria								
620	Bakshi	Uminderjit	Bakshi	Jagjit	Scola	Linda	Rutan	Joshua				
626	Adelman	Steven	Aghachi	Abraham								
627	Schneider	Douglas	Schneider	Anne Marie								
628	Chen	Yei-Huang	Tu	Ahn								
630	Tayloe	Michael	Johnson	Howard								
632	Berman	Joseph	Berman	Leslie								
636	Friedman	Gregory	Friedman	Linda								
638	Elbling	Ronald	Elbling	Jacqueline								
640	Mokharti	Mohsen										
641	Viesca Las Vegas LLC (David/Margarita McCain)											
642	Hand	Jason	Hand	Frank	Hand	Kathy						
643	Schmalle	Joral	Roman-Schmalle	Patricia								
648	Kline	Kelly										
650	Paniccia	Anthony	Paniccia	Mario	Paniccia	Rachel						
658	Wilson	Brian	Wilson	Elizabeth	Mezich	Daniel						
659	Erickson	Michael T.										
701	Rock Daddy LLC											
702	Villasenor	Jose										
704	Villasenor	Jose										
708	Dirkson	Mark Steven	Ortiz	Ronald	Sloan-Ortiz	Susan						
711	Nye	Troy	Nye	Cindy								
718	Schwartz	Pam	Stewart	Sunny								
726	Robertson	Christopher										
727	Parkos	Robert	Parkos	Donna								
729	Terhune	Gentry	Terhune	Bonita								
730	Ota	Bowen	Ota	Alexandra								
731	Kline	Kelly										
732	Porcelli	Joseph	Gina	Porcelli								
738	Ou	Joy										
740	Pinkerton	William	Pinkerton	Nicole								
743	Cedar Mountain LLC											
744	Garnett	John	Garnett	Bonnie M	Milne	Shane	Geske	Jennifer				
754	Hugo	Jonathon	Bernardo	Rainier	Bernardo	Jennifer						
758	Berman	Joseph	Berman	Leslie								
802	Security Fse Ninety-Eight Inc											
804	Wells	David	Wells	Donna	King	Gregory						
807	Mohler	Floyd	Freshwater	Ken	Rodrigues	Brian J						
809	Amadio	Brian										
812	Evans	Ronald										
816	Prime Coordinates, LLC (Sergio Gallego)											
818	Sandrian	Reza	Sedigheh	Roya								
824	Rowan	Doug	Rowin	Jody	Metroyanis	Frank	Metroyanis	Teresa	Horrigan	Sean	Horrigan	Krista
825	Usui	Mark										
826	Strada	Nelson										
827	Reese	Donald	Reese	Melanie	Tosh	Diane	Jan	Vicek	Cuthbert	Raquel		
828	Tkach	Adam	Tkach	Angela								
829	Thuy-Truong	Lynn	Hung Truong	Richard								
833	Luttrull	Ronald	Luttrull	Kimberly								
836	ADD Properties LLC											
837	Valdivieso	Lawrence										
838	Viola	Alexander										
839	Gregory Wiener, MD Profit Sharing Plan											
840	Nute	James	Errol R Korn	Ira	Erickson	Terry						
843	Kenna	Kevin	Kenna	Veronica								
846	Giampaolo	Michael	Giampaolo	Cristine								
854	Kouza	Fawaz P.										
856	Pennington	David	Doherty	Sean M.	Pozzi	Matthew S.	Kanafani	Ghassan L.				
859	Trymax, California GP											
902	Castro	Ernest V										
903	Baker	Kathryn	Baker	Troy								

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
904	Schmalle	Joral	Roman-Schmalle	Denise								
905	Erickson	Michael										
911	Mezich	Daniel	Upchurch	Mark	Upchurch	Kay						
912	Gaertner	Grant	Gaertner	Tiana	Pham-Lukas	Brianne						
914	Casper	Joseph	Casper	Susan								
916	Ong-Veloso	Glenn										
920	Roberts	Kristofer										
925	Racofsky	Richard										
927	Guanill	Edward	Guanill	Veronica	Bergstrom	Dennis	Bergstrom	Julia				
929	303 Solutions LLC											
930	Sherif	Oleg										
931	Gonzalez	Ruben A.										
933	Hassen	Sam										
934	Benaron	Joseph	Blankenship	Lisa								
936	ER Trust (Parham Soroudi, Trustee)											
938	Barrett	Robyn Lynn										
941	Frankel Family Trust (Douglas and Mindi Frankel)		Reed	Timothy								
942	Foletta	Mark G.										
946	JKE Holdings, Inc. (Ers kines)		Darby	Jason								
948	Tvorik	Stephen	Tvorik	Kathryn								
952	Woods Family Trust (Barry K Woods & Diane W. Woods-Trustees)											
956	Sze	Geordie										
959	Strauss Family Trust (William L & Margie A Strauss- Trustees)											
1001	Kushen	Craig	Kushen	Meredith								
1002	Trymax, a California GP											
1004	Pack	Scott M	Wood	Kelly D								
1008	Ruiz	Miguel Francisco Abed	Ruiz	Mauricio Jose Vega								
1009	Hughes	Gary D	Hughes	Judy Y	Hughes	Shelby K	Hughes	Tracy M				
1010	Mosley	Coleman	Mosley	Ellen								
1011	Porter	Brook F	Porter	Beth A								
1016	Lee	Stephen	Lee	Joji Stephanie								
1018	Low	Nelman	Low	Karen Kodama								
1020	Roberts	John	Roberts	Joanne								
1022	Shean	Keith	Shean	Charlotte	Geronime	Lara	Geronime	Mark				
1024	Scibetti	Charles J	Purdie	Alexander M.	Purdie	Edith						
1026	Miles	Dean	Richards	Kurt								
1028	Take 2 LLC											
1031	Rosenberger	Catherine M										
1032	Lindsay	Greg	Lindsay	Olga	Casado	Christopher	Casado	Valerie				
1033	Estoril, LP											
1035	Darden	Jon	Darden	Christine								
1036	Avedikian	Eddie	Garnet	Noah								
1037	Sorensen	Matthew	Sorenson	Joseph	Duarte	Effren						
1038	Manio	Allan	Manio	Kimberly	Ma	Roger						
1042	Thielen	Brian										
1044	Kaminski	Frank										
1046	Gough	Derek										
1059	Cohan	Ross	Cohan	Morena								
1101	Vllasenor	Jose										
1110	Trymax, California GP											
1114	Contento	Louis J										
1116	Merrell	David E										
1118	Harris	Randall S	Harris	Carolann G								
1120	Mirra	David	Mirra	Kathleen	Mirra	Mark						
1122	SHG Holding LLC											
1126	Dao	Mymy										
1128	Lord	John Marc	Lord	Shannon								
1129	Fabian	Rosie	Fabian	Vivian								
1131	Painter	Robert	Painter	Deborah	Fletcher	Ronald						
1135	Chew III	Edward	Wedge	Gary	Marcotte	Joe	Miranda	Leonard	Miranda	Teresa		
1136	Signaigo	Thomas Mark										

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
1137	Miller	Richard	Miller	Carla Ann								
1139	Brunnhoelzl	Michael	Brunnhoelzl	Janine								
1142	Healey	Fritz	Healey	Jeannine								
1143	Massa	Farid	Klein	Jennifer								
1144	Brookes	Darren	Yune	Jane Jiwon								
1146	J&D Capital Holding, Inc											
1148	Sperbeck (Trustee)	Nura T										
1154	Funke	Thomas M										
1156	Magallon	Luis	Magallon	Ofelia								
1158	Maze	Hobart	Maze	Freida								
1159	Inzunza	Joseph	Inzunza	Kristi	Long	Catherine						
1201/1209	Villasenor	Jose										
1208	Vargas	James	Vargas	Frances								
1210	Multhauf	Lloyd	Multhauf	Carmen								
1211	Turner	Frank	Zinn	Laurel								
1212	Vargas	James F	Vargas	Frances T								
1218	Sowden	Douglas S										
1222	Simington	Kenneth	Simington	Maureen	Sargenti	Steve	Sargenti	Sherri				
1226	1226 Hard Rock LLC											
1229	Andrews	Peter N										
1230	Nagy Revocable Trust		Nagy	Sandra								
1232	Chappell	Jason	D'Ambrosia	Christopher								
1233	Padua	Anthony										
1234	Osley Jr.	John P	Mosh	Eric	Mosh	Danielle						
1235	Joseph	Donald L	Joseph	Teresa								
1238	Trymax, a California GP											
1239	Top of the Rock San Diego, LLC											
1244	Shakelian	Anto	Shakelian	Harout								
1250	James Callaghan	James	Callaghan	Suzanne								
1252	Sohovich	Gregory	Sohovich	Debra								
1259	Neu	David	Neu	Esperanza								
1260	Lopez	Brandon	Lopez	Tracy								
SOLD UNITS												
230	Tsui	Albert H.										
318	Bermeo	Dennis G.										
326	Heydet	Richard	Heydet	Lisa								
340	Guillet	Christopher G										
348	Schneider	Charles	Schneider	Mary Jean								
410	Garg	Geeta										
418	Chacon	Robert	Nicolay	Christy M								
422	Silver Bay Properties, Inc.											
425	Chrisman	Robert G	Rogers	Sarah N								
433	Vigil	David L	Vigil	Rebecca J								
446	Valentini	Christine F	Valentini	Danny T	McCafferty	Douglas M	Devone-McCafferty	Yvonne M.				
452	Dunaway	Jerry T	Dunaway	Jennifer G								
458	Sapienza	John J	Sapienza	Jennifer L.								
514	Childre	Kevin	Lum	Margaret								
516	Rodil	Belinda L.	Rodil-Separa	Florem	Gaffud	Emeline R.						
525	Peterson	Eric G	Peterson	Jane L	Berridge	Ashley						
529	Zeller	Kathleen Victoria Hill										
542	Folkers	Benjamin										
558	Merriman	Shawne										
610	Gorne	Brian	Gorne	Lee Ann								
618	Sanchez	Steve	Sanchez	Christine	Sanchez	Michelle						
625	Delgado	Samuel	Delgado	Rose Mary								
629	Cheng	Tina M.	Cheng	Sharon R.								
652	Goniae	Clifford J	Goniae	Concepcion B								
656	Loelkes	Roland X	DiMeglio	Paul J								
703	Bennett	David S	Bennett	Leah H								

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
705	Gonia	Clifford J	Gonia	Concepcion B								
710	Kianpour	Alireza										
712	Sanchez	Corey										
716	Egan	James P										
722	Zanotelli	Joseph V	Zanotelli	Mary R								
734	Collins	William	Collins	Lisa								
739	Persson	Lars G										
746	Phillips	Kari A	Phillips	Christopher J								
759	Myhedyn	Mark	Alstyne	Tracie Van								
760	Ripley	Rodney J										
801	NCO PROPERTIES, LLC											
831	Matiasic	Paul A										
835	Frost	Sherri R	Frost	Larry E								
852	Webster	George W	Webster	Patricia A	Gross	Edward W.	Yeager	Pauline	Yeager	Michael E		
906	Batrez	Joshua M	Batrez	Veronica								
907	Smith	Todd Derek	Smith	Heather Leigh								
908	Molitor	Michael P	Molitor	Kourtney A								
926	GTLves Consulting LLC											
940	Frankel	Paul R										
943	Jupp	Peter	Stewart-Jupp	Beth								
944	Nguyen	Doris K										
1006	Peterson	Clayton	Peterson	Rebecca	Peterson	Todd	Peterson	Tara				
1027	Sturm	Marco										
1030	Congtang	Yenchi										
1048	Rock Star 1048 LLC (Brian Verburg)											
1050	Melillo	Joseph										
1052	Martin	Kevin N	Martin	Nicole D								
1056	Bono	Christy	Mays	Dennis Michael								
1058	Fordham	Robert										
1111	Veliz	Jose G										
1127	Rose	Edward A Jr	Rose	Janice A								
1130	Davis	Jason	Schranz	Jeffrey								
1138	Salas	Marco M.	Salas	Fabiola	Salas	Jorge A						
1140	Souissi	Slim										
1152	Thompson	Blake	Shoemaker (J Tenant - D	William								
1160	Golledge	Heidi										
1224	Johnson	Richard M	Johnson	Cynthia A								
1227	Magallon	Luis J	Magallon	Ofelia								
1231	Clements	Jim	Clements	Lori	Dougherty	Stephen	Bargoona	Martha				
1248	Yasukochi	Takeshi	Yasukochi	Joyce S.A.								
FORECLOSED UNITS												
228	Simeon	Omer T II	Simeon	Jacqueline A								
346	Van de Zilver	Eric	Van de Zilver	Valerie								
414	Faticone	Carrie Ann										
424	Ovanesian	Louisa	Dorian	Baret	Dorian	Mariam	Dorian	Charissa				
428	Dimacali	Dexter C	Dimacali	Arlene B	Benedicto	Alexander						
435	Tecson	Paul C										
444	Pitner	Todd	Golec	Michael								
450	Montoya	Gabriel H	Montoya	Vickie P								
505	Rajasingam	Pat	Rajasingam	Patrick S	Chestang	Anne E						
527	Veliz	Ernesto										
531	Bollen	Jamin	Zlotoff	Wesley	Kennedy	Robert						
548	Attias	Messod										
554	Loya	Glenda	Gollaz (trustee)	James	Gollaz (trustee)	Sandra						
601	Doherty	Ryan	Lucke	Richard T	Leibner	David	Weginer	Justin				
603	Smargon	Magdalena										
631	Mullen	Jesse	Mullen	Tobin								
634	Tran	Bihn Phuong	Naito	Risa								
646	Geiger	Andrew										

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
654	Higgins	Quinn										
660	Gerke	John	Roper	Scott T.								
707	Crichton	Leslie										
714	Schroadter	Adam	Schroadter	Susanna								
725	Masanés	Edgardo	Masanés	Arlene								
737	Perez	Peter A										
750	Hammi	Ray	Issa	Frank								
752	Sandhu	Harmanjit Singh										
805	Wayne	Brian	Hanley	Michelle (Mia?)								
806	Yahya	Adbulliah	Yahya	Rosalee	Yahya	Sandra	Yahya	Emad	Yahya	Astabrik		
808	Ferrer	Frederick										
811	Marshall	Frank	Marshall	Lizbeth								
841	Geisen	Grant	Geisen	Gregory	Geisen	Linda	Jolly	Kevin	Walsh	Patrick		
844	Rosana	Ardith	Rosana	Ruth E								
848	Kinsey	William J										
901	Alber	J. David Jr.										
910	Okada	Michael	Okada	Shirley								
918	Walsh	Patrick	Jolly	Kevin	Geisen	Grant	Geisen	Linda	Geisen	Gregory		
924	Luna	Scott	Saltzman	Kevin								
935	Martos	Humberto J	Martos	Kimberly K								
937	Devito	John	Knapic	Kristina								
939	Bluestar Development LLC											
950	Ergueta	Ester E										
954	Saragueta	Michael	Placencia	Karen J								
958	Plati	Liliana										
960	Hodlin	Matthew R	Hodlin	Bridgette								
1007	Corley	Douglas E	Lotwis	Barbara A								
1014	KAG Hard Rock LLC		Gordon	Kenneth								
1034	Burton Jr	Earnest										
1039	Morris Investment Properties, LLC		Morris	Ronald L								
1040	Nabors	John	Nabors	Sandra								
1041	Nguyen	Cuong Duc										
1043	Greene	David L										
1054	Sample	Kelly	Sample	Kristy L								
1060	Mullen	Jesse										
1112	Dunton	Sewell N. III	Dunton	Linn								
1133	Martel Jr.	William										
1134	Schroadter	Adam	Schroadter	Adrienne								
1216	Laffen	Gregory E										
1242	Fu	Amy	Myong	Robert								
10 Units	Stanzaz, LLC	#454,506,612,709,728,822,832,909,932,1124										
Mixed Units - Bell Non-Parties												
448	Martin	Anita										
456	Roby	Stacy										
635	Adler	Caren										
724	Coen	Brendan										
742	Avon	Joseph S.	Avon	Cynthia Beltran								
756	Wallace	Michele	Wallace	Steven								
1214	Adler	Caren										
1225	Deposki	Kenneth										
Mixed Units - Saleme Non-Parties												
360	Cantoral	Diane										
512	Havluciyán	Kami	Nolan	James								
624	Nolan	James										
733	Alvarenga Family Living Trust											
748	Lashgari	Shane	Lashgari	Roseanne								

Unit No.	Buyer No. 1		Buyer No. 2		Buyer No. 3		Buyer No. 4		Buyer No. 5		Buyer No. 6	
	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
842	Lovejoy	Mariah										
928	Reyna	Richard										