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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SENIOR AND DISABILITY ACTION, on
 behalf of its members and all others similarly
 15 situated; INDEPENDENT LIVING
 RESOURCE CENTER OF SAN
 16 FRANCISCO; PI RA, on behalf of himself
 and all others similarly situated; and IAN
 17 SMITH, on behalf of himself and all others
 similarly situated,

18 Plaintiffs,

19 v.

20 SAN FRANCISCO BAY AREA RAPID
 21 TRANSIT DISTRICT and ROBERT M.
 POWERS, in his official capacity as General
 22 Manager of the San Francisco Bay Area Rapid
 Transit District,

23 Defendants.

Case No. 3:17-cv-01876-LB

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION FOR AN AWARD OF
 REASONABLE ATTORNEYS' FEES,
 AND COSTS AND MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

Judge: Hon. Magistrate Laurel Beeler
 Date: April 18, 2024
 Time: 9:30 AM
 Courtroom: B, 15th Floor

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on April 18, 2024 at 9:30 a.m., or as soon thereafter as can be heard, Plaintiffs Senior and Disability Action, Independent Living Resource Center of San Francisco, Pi Ra and Ian Smith (collectively “Plaintiffs”) will and hereby do move the Court for entry of an order granting Plaintiffs’ motion for attorneys’ fees and costs and awarding Plaintiffs \$825,000 in fees and costs pursuant to Federal Rule of Civil Procedure 23(h), the Americans with Disabilities Act of 1990, 42 U.S.C. § 12205, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a(b), and California Code of Civil Procedure § 1021.5.

The hearing on this motion will take place before United States Magistrate Judge Laurel Beeler. This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed declarations and exhibits, all pleadings and papers on file in this action, and any oral argument that may be presented.

DATED: January 19, 2024

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

/s/ Jinny Kim
Jinny Kim
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs filed this class action in April 2017 alleging that Defendants San Francisco
4 Bay Area Rapid Transit District (“BART”) and its general manager failed to provide equal
5 access to BART’s stations and services for people with mobility disabilities in violation of the
6 Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Section
7 504”) and California law.

8 After more than six years of settlement negotiations, including nine in-person or virtual
9 settlement conferences and a robust exchange of information, the Parties reached a proposed
10 class settlement to resolve Plaintiffs’ lawsuit, of which they will seek final approval. The
11 proposed Agreement achieves the relief sought in the class action complaint and provides,
12 among other things, elevator and escalator repairs and maintenance, measures to address
13 elevator and station cleanliness, an outage communication and elevator mitigation plan, an
14 emergency preparedness plan, the training of BART personnel, a complaint procedure to report
15 accessibility problems as well as monitoring and a dispute resolution procedure. *See*
16 Declaration of Jinny Kim in support of Joint Motion for Preliminary Approval (“Kim PA
17 Decl.”) Ex. 1 (Class Action Settlement Agreement (hereinafter “Agreement”)), ECF Dkt. No.
18 145-1 at pages 15-271.

19 Pursuant to paragraph 128 of the Agreement, Plaintiffs now seek that the Court (1) find
20 that the negotiated and unopposed amount of \$825,000 for all fees and costs through final
21 approval is fair and reasonable, and (2) pursuant to the settlement agreement, order Defendants
22 to pay Plaintiffs’ counsel the amount of \$825,000 within ninety (90) days of the Court’s order
23 granting final approval. Plaintiffs’ lodestar is fully supported by the efficiency and targeted
24 nature of the work and the hours expended as well as the reasonableness of class counsel’s
25 hourly rates, which have been approved by several courts in the Northern District and are well
26 within the range of attorneys with similar levels of skill and experience. The settlement
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1 amount, which represents a significant reduction of the lodestar is thus more than fair and
2 reasonable and should be approved by this Court.

3 II. FACTUAL BACKGROUND

4 The procedural history of the case, substantive terms of injunctive relief provided in the
5 settlement agreement, and a discussion of the substantial benefits the agreement confers on the
6 settlement class are set forth in greater detail in the Parties' joint motion for preliminary
7 approval. *See* Joint Mot. Preliminary Approval §§ II-III, ECF Dkt. No. 145. Consistent with
8 the Northern District's *Procedural Guidance for Class Action Settlements*,¹ Plaintiffs do not
9 repeat such details here.

10 After the Parties reached agreement on all substantive terms of injunctive relief in the
11 settlement agreement, and service payments for the class representatives, Plaintiffs provided a
12 demand for \$1,177,888.86 in attorneys' fees and costs, consisting of: \$1,161,331.00 in fees for
13 work completed through final approval, based on Disability Rights Advocates' and Legal Aid at
14 Work's (collectively "Class Counsel") combined lodestar; and litigation expenses and costs in
15 the amount of \$16,557.86. *See* Declaration of Jinny Kim in Support of Motion for Attorneys'
16 Fees & Costs ("Kim Fee Decl.") ¶ 10.

17 For purposes of settlement, in preparing their lodestar, Class Counsel wrote off over
18 1,434 hours, or 30 percent of time billed on the case through December 31, 2022 and all hours
19 expended on the case after that date. *See* Kim PA Decl. Ex. 2 (showing 1434.7 hours not billed
20 out of total 2477.7 hours expended, for lodestar of \$507,618.50); Kim Fee Decl. ¶¶ 8, 12. After
21 negotiations, the Parties agreed to a total lump sum payment of \$825,000 for Class Counsel's
22 attorneys' fees and costs through final approval. Kim PA Decl. ¶ 21; Agreement ¶ 128.

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28 ¹ U.S. DIST. CT. N. DIST. OF CAL., *Procedural Guidance for Class Action Settlements* (Aug. 4, 2022), available at <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

III. ARGUMENT

The Parties' negotiated attorneys' fees and costs are reasonable and should be approved because (1) Plaintiffs seek a fee award based on the lodestar method in accordance with California and federal precedents regarding the applicable fee-shifting statutes including the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("Section 504"), and California Code of Civil Procedure Section 1021.5 as well as the Agreement; (2) the agreed-upon award of \$825,000 in attorneys' fees and costs through final approval is significantly less than Plaintiffs' lodestar, which is based on reasonable rates and reasonable hours; and (3) the types of litigation expenses and costs requested by Plaintiffs are properly recoverable.

A. Plaintiffs are the Prevailing Parties

As the prevailing parties, Plaintiffs are entitled to recover their reasonable attorneys' fees, costs and expenses. *See* U.S.C. § 12205; 29 U.S.C. § 794a(b) and California Code of Civil Procedure § 1021.5. A plaintiff "prevails" for the purpose of awarding attorneys' fees under the ADA and Section 504 when "actual relief on the merits of [their] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Chapman v. NJ Properties Inc.*, No. 5:16-cv-02893-EJD, 2019 WL 3718585, at *2 (N.D. Cal. Aug. 7, 2019) (quoting *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118 (9th Cir. 2000)). Such "material alteration" can occur through a legally enforceable settlement agreement. *Id.* at *3; *see also Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9th Cir. 2008). The key is whether the plaintiff can "force the defendant to do something [they] otherwise would not have to do." *Chapman*, 2019 WL 3718585, at *2 (quoting *Fischer*, 214 F.3d at 1118).² A party that obtains a judicially enforceable settlement agreement that provides some of the relief sought is a "prevailing party" for purposes of fee-shifting statutes. *See, e.g.,*

² The bar for recovery is lower under California state law, where "[a] plaintiff will be considered a 'successful party' where an important right is vindicated by activating defendants to modify their behavior" and "an attorney fee award may be justified even where a plaintiff's legal action does not lead to a favorable final judgment." *Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352–53 (1983) (internal quotations omitted).

1 *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th
2 Cir. 2010); *Folsom v. Butte County Ass’n of Govts.*, 32 Cal. 3d 668, 671 (1982).

3 Here, the Parties have entered into a legally enforceable settlement agreement that (1)
4 provides the Settlement Class with the relief sought in the Complaint including renovating and
5 repairing elevators and escalators and implementing preventative maintenance plans, emergency
6 evacuation procedures and the training of BART personnel; and (2) will remain enforceable by
7 this Court under its continuing jurisdiction. See Agreement ¶ 8 (stipulating to the Court’s
8 retention of jurisdiction over the action “to enforce this Settlement Agreement and to mediate
9 disputes throughout the Term”).

10 Plaintiffs have prevailed under both federal and state law by achieving a global
11 settlement that resolves all federal and state law claims in the case. The Settlement provides
12 unitary and complete injunctive relief to the entire Class under both federal and state law. Thus,
13 upon final approval, Plaintiffs will have “prevailed” in this action for purposes of this motion by
14 achieving “actual relief on the merits of [their] claim” that is legally enforceable. *Chapman*,
15 2019 WL 3718585, at *2. Because there are also no special circumstances rendering an award
16 of fees and costs unjust, Plaintiffs are therefore entitled to an award of reasonable attorneys’
17 fees and costs.

18 **B. The Statutory Fee-Shifting Methodology**

19 The lodestar method is used to determine an award of reasonable attorneys’ fees in cases
20 in which a fee-shifting statute applies. The Ninth Circuit has held that courts should use the
21 lodestar method to calculate fees if a settlement contains injunctive relief. See, e.g., *Hanlon v.*
22 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (“In employment, civil rights and other
23 injunctive relief class actions, courts often use a lodestar calculation because there is no way to
24 gauge the net value of the settlement of any percentage thereof.”).

25 To calculate the lodestar, courts multiply the number of hours reasonably expended by
26 the reasonable hourly rates. See *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983); *Moreno v.*
27 *City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (“a district court must start by
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1 determining how many hours were reasonably expended on the litigation, and then multiply
 2 those hours by the prevailing local rate for an attorney of the skill required to perform the
 3 litigation”); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001), 24 Cal. 4th at 1133 (lodestar
 4 includes “all the hours *reasonably spent*, including those relating solely to the fee”). In the
 5 Ninth Circuit, courts use the “lodestar method” for calculating a reasonable attorneys’ fee “in
 6 class actions brought under fee-shifting statutes (such as federal civil rights...), where the relief
 7 sought—and obtained—is often primarily injunctive in nature and thus not easily monetized,
 8 but where the legislature has authorized the award of fees to ensure compensation for counsel
 9 undertaking socially beneficial litigation.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d
 10 at 941; *see also Serrano v. Priest*, 20 Cal. 3d 25, 47–48 (1977) (Serrano III). “The lodestar
 11 figure is calculated by multiplying the number of hours the prevailing party reasonably
 12 expended on the litigation...by a reasonable hourly rate for the region and for the experience of
 13 the lawyer.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at 941; *see also Ketchum*, 24
 14 Cal. 4th at 1133. The lodestar figure is presumptively reasonable. *See Fischer*, 214 F.3d at
 15 1119 n.4; *Rodriguez v. Barrita, Inc.*, 53 F. Supp. 3d 1268, 1277 (N.D. Cal. 2014).

16 **C. Plaintiffs are Entitled to Attorneys’ Fees, Costs and Expenses Under**
 17 **Applicable Statutes and the Settlement Agreement.**

18 “In a certified class action, the court may award reasonable attorney’s fees and
 19 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).
 20 The statutes under which this action was brought allow for fee shifting when plaintiffs prevail
 21 on their claims. 42 U.S.C. § 12205 (ADA prevailing party is entitled to “a reasonable attorney’s
 22 fee, including litigation expenses, and costs”); 29 U.S.C. § 794a(b) (Section 504 prevailing
 23 party is entitled to “a reasonable attorney’s fee as part of the costs”); Cal. Civ. Proc. § 1021.5
 24 (successful party in an action under California law that enforces an important right affecting the
 25 public interest, confers a significant benefit on a large class of persons, was brought in the
 26 absence of public enforcement, imposed a financial burden on plaintiffs’ counsel, and secures
 27 non-monetary relief, is entitled to “attorneys’ fees”). Plaintiffs who prevail under these fee-
 28 shifting statutes “should ordinarily recover an attorney’s fee unless special circumstances would

1 render such an award unjust.” *Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9th Cir. 2008)
 2 (internal quotation marks and citations omitted). Granting successful civil rights plaintiffs a
 3 reasonable attorneys’ fee “ensure[s] effective access to the judicial process” and advances the
 4 important causes behind such legislation. *Id.* at 1130–31.

5 **D. Plaintiffs’ Lodestar is Reasonable.**

6 “While attorneys’ fees and costs may be awarded in a certified class action where so
 7 authorized by law or the parties’ agreement . . . courts have an independent obligation to ensure
 8 that the award . . . is reasonable, even if the parties have already agreed to an amount.” *Senne v.*
 9 *Kansas City Royals Baseball Corp.*, No. 14-cv-00608 JCS, 2023 WL 2699972, at *17 (N.D.
 10 Cal. Mar. 29, 2023) (quoting *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th
 11 Cir. 2011)).

12 Class Counsel’s combined lodestar—upon which they based their demand for fees—
 13 was \$1,161,331.00 and their litigation expenses and costs were \$16,557.86, for a total of
 14 \$1,177,888.86 in fees, costs, and litigation expenses. Kim Fee Decl. ¶ 10. The negotiated
 15 award is approximately 70 percent of that total and covers Class Counsel’s fees and costs
 16 through final approval. Agreement ¶ 128. The requested award of \$825,000 is reasonable
 17 because (1) Class Counsel’s lodestar is based on reasonable rates and a reasonable number of
 18 expended hours, (2) the award requested represents a substantial reduction to the presumptively
 19 reasonable lodestar; and (3) Plaintiffs’ well-documented costs and litigation expenses are
 20 recoverable.

21 1. **Class Counsel’s Hourly Rates are Reasonable.**

22 The rates claimed by plaintiffs’ attorneys are reasonable if they are within the market
 23 range of hourly rates charged by attorneys of comparable experience, reputation and ability for
 24 similar litigation. Both the Ninth Circuit and California courts determine the reasonable hourly
 25 rate by looking at the prevailing market rate “for similar work performed by attorneys of
 26 comparable skill, experience, and reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205,
 27 1210-11 (9th Cir. 1986); *Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783
 28

1 (2002) (affirming rates that were “within the range of reasonable rates charged by and judicially
2 awarded comparable attorneys for comparable work.”).

3 Under Ninth Circuit and California precedents, the fact that a court has previously
4 upheld counsel’s hourly rates establishes a presumption that those rates are reasonable, and that
5 they fall within the market range. *See, e.g., United Steelworkers of Am. v. Phelps Dodge Corp.*,
6 896 F.2d 403, 407 (9th Cir. 1990). Class Counsel’s standard hourly rates are in line with those
7 charged by other lawyers of similar skill, experience, and reputation in the prevailing market.
8 Plaintiffs’ lodestar is based on the following 2022 hourly billing rates, which Disability Rights
9 Advocates (DRA) and Legal Aid at Work (LAAW) set based on attorneys’ years of legal
10 experience, taking into account their expertise, and market rates of private firms and fee orders
11 for similar work:

12 *Disability Rights Advocates:*

Name	Title	2022 Hourly Billing Rate	Graduation Year
Larry Paradis	DRA’s co-founder and former Executive Director	\$1005	1967
Sid Wolinsky	DRA’s co-founder and former Director of Litigation	\$1005	1961
Rebecca Williford	President and CEO	\$600	2009
Sean Betouliere	Senior Staff Attorney	\$490	2015

18 *Legal Aid at Work:*

Name	Title	2022 Hourly Billing Rate	Graduation Year
Jinny Kim	Director, Disability Rights Program and Senior Staff Attorney	\$865	1999
Rachael Langston	Senior Staff Attorney	\$755	2008

24 Kim Fee Decl. ¶¶ 23-24; Declaration of Christopher Ho in Support of Motion for Attorneys’
25 Fees & Costs (“Ho Fee Decl.”) ¶¶ 8, 10.

26 Class Counsel’s billing rates are reasonable as they are based on the extensive
27 experience each attorney has in complex disability rights class action litigation and are similar
28

1 to prevailing market rates awarded to “lawyers of reasonably comparable skill, experience, and
 2 reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *G. F. v.*
 3 *Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25,
 4 2015); *see also Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002). The
 5 “relevant legal community” is generally the forum district for the action in which fees are
 6 sought. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *Heritage Pac. Fin., LLC v.*
 7 *Monroy*, 215 Cal. App. 4th 972, 1009 (2013). “[R]ate determinations in other cases,
 8 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the
 9 prevailing market rate.” *See Johnson v. Baird Lands, Inc.*, No. 18-cv-05365-VKD, 2020 WL
 10 3833278, at *2 (N.D. Cal. July 8, 2020) (quoting *United Steelworkers of Am. v. Phelps Dodge*
 11 *Co.*, 896 F.2d 403, 407 (9th Cir. 1990)).

12 Class Counsel are highly experienced litigators in the field of complex disability rights
 13 class action litigation. *See* Kim Fee Decl. ¶¶ 17-18; Ho Fee Decl. ¶¶ 5-6. Both organizations
 14 have successfully litigated dozens of disability rights class action cases. *See* Kim Fee Decl.
 15 ¶ 18; Ho Fee Decl. ¶ 6. In recognition of this skill and expertise, California district courts have
 16 routinely approved Class Counsel’s standard rates as reasonable. *See McCullough v. California*
 17 *Dep’t of Developmental Servs.*, No. 3:20-cv-2958-SI (N.D. Cal. Sept. 18, 2023) (attached as
 18 Exhibit 1 to Kim Fee Decl.) (approving DRA’s 2022 rate of \$600 for Rebecca Williford and
 19 \$505 for senior staff attorney with 8 years’ experience); *Navarro v. City of Mountain View*, No.
 20 5:21-cv-05381-NC, Dkt. No. 137 at 5 n.1, 6–8 (N.D. Cal. Feb. 28, 2023) (attached as Exhibit 3
 21 to Kim PA Decl.) (approving DRA’s 2022 rates of \$490 for staff attorneys with 7 years’
 22 experience, \$520 for staff attorney with 9 years’ experience, and \$590 for a supervising attorney
 23 with 12 years’ experience); *Maria de la Luz Bautista-Perez v. Juul Labs, Inc., et al.* Case No.
 24 20-cv-01613-HSG, Dkt. No. 149 (N.D. Cal. June 22, 2022) (attached as Exhibit 2 to Ho PA
 25 Decl.) (approving LAAW’s 2022 rate of \$505 for an attorney with 5 years’ experience, \$775 for
 26 an attorney with 15 years’ experience, and \$865 for Jinny Kim); *T.G. v. Kern Cnty.*, No. 1:18-
 27 cv-0257 JLT, 2020 WL 3035199, at *22 (E.D. Cal. June 5, 2020) (approving DRA’s hourly
 28

1 rates³ ranging from \$400 to \$1,005 for Sid Wolinsky); *Cnty. Res. for Indep. Living v. Mobility*
 2 *Works of California, LLC*, No. 18-cv-06012-JSW, 2020 WL 10505223, at *2 (N.D. Cal. May
 3 22, 2020) (approving DRA’s 2020 rates including \$425 for staff attorney with 5 years’
 4 experience, and \$525 for supervising attorney with 10 years’ experience); *Nat’l Fed’n of the*
 5 *Blind of California v. Uber Techs., Inc.*, No. 14-cv-04086-NC, Dkt. No. 203 at 5 (N.D. Cal.
 6 Nov. 8, 2019) (attached as Exhibit 4 to Kim PA Decl.) (approving DRA’s rates⁴ as reasonable);
 7 *Cole v. Cnty. of Santa Clara*, No. 5:16-cv-06594-LHK, Dkt. No. 86 at 3–4 (N.D. Cal. Mar. 21,
 8 2019) (attached as Exhibit 5 to Kim PA Decl.) (approving DRA’s 2018 rates of \$425 for a staff
 9 attorney, \$655 for a Director of Litigation, and \$775 for Managing Director of Litigation⁵);
 10 *Willits v. City of Los Angeles*, Case No. CV 10-5782 CBM (RZx) (C.D. Cal. Aug. 25, 2016)
 11 (attached as Exhibit 1 to Ho Fee Decl.) (approving LAAW’s 2016 rates of \$644 for Jinny Kim
 12 and \$473 for Rachael Langston).⁶

13 Moreover, use of Class Counsel’s 2022 billing rates is reasonable because in fee-shifting
 14 cases taken on contingency, compensation is delayed and counsel must assume the cost of
 15 litigation. *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1078 (N.D. Cal. 2010) (citing *Missouri v.*
 16 *Jenkins*, 491 U.S. 274, 283–84 (1989)).

17 Accordingly, the rates used to determine Class Counsel’s lodestar reflected above are
 18 reasonable.

19
 20 ³ In *T.G. v. Kern Cnty.*, the court approved Class Counsel’s 2020 rates. Kim PA Decl. ¶ 24(c).

21 ⁴ In *NFB of CA v. Uber*, the court approved DRA’s 2019 rates of \$470 for attorney with 7 years’
 22 experience, and \$785 for attorney with 21 years’ experience. Kim PA Decl. ¶ 24(e).

23 ⁵ These attorneys had 5 years, 13 years, and 20 years of experience, respectively. Kim PA Decl.
 24 ¶ 24(f).

25 ⁶ DRA’s standard rates have also been approved by other courts around the country. *Liberty*
 26 *Res., Inc. v. City of Philadelphia*, No. CV 19-3846, 2023 WL 3204018, at *11 (E.D. Pa. May 1,
 27 2023) (finding DRA’s 2021 rates reasonable, including \$455 for attorney with 7 years
 28 experience, \$475 for senior staff attorney with 8 years’ experience, and \$815 for director of
 litigation with 23 years’ experience); *Adam X. v. New Jersey Dep’t of Corr.*, No. CV 17-00188
 (FLW) (LHG), 2022 WL 621089, at *11 (D.N.J. Mar. 3, 2022) (finding DRA’s 2020 rates
 reasonable, including \$425 for staff attorney with 5 years’ experience and \$675 for co-director
 of litigation with 15 years’ experience); *Roque v. Seattle Hous. Auth.*, No. 2:20-cv-00658-JRC,
 2021 WL 9649847, at *3 (W.D. Wash. Sept. 28, 2021) (approving DRA’s 2021 rates, including
 \$445 for staff attorney with 6 years’ experience and \$545 for a supervising attorney with 11
 years’ experience).

1 2. Class Counsel’s lodestar is based on a reasonable number of hours.

2 Prevailing plaintiffs are entitled to be compensated for “every item of service which, at
3 the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance
4 or protect [their] client’s interest[.]” *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839
5 (9th Cir. 1982) (quoting *Twin City Sportservice v. Charles O. Finley & Co.*, 676 F.2d 1291,
6 1313 (9th Cir. 1981)); *see also Ramon v. Cnty. of Santa Clara*, 173 Cal. App. 4th 915, 924–25
7 (2009). Courts “should defer to the winning lawyer’s professional judgment as to how much
8 time he was required to spend on the case.” *Rodriguez*, 53 F. Supp. 3d at 1284 (quoting *Moreno*
9 *v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)); *see also Chaudhry v. City of Los*
10 *Angeles*, 751 F.3d 1096, 1111 (9th Cir. 2014) (quoting same).

11 While the Parties were able to reach a settlement agreement without extensive discovery
12 or litigation, this matter demanded significant time and resources from Class Counsel, including
13 more than six years of settlement negotiations, including nine settlement conferences and even
14 more settlement meetings among counsel. *See* Joint Mot. Preliminary Approval § II(B); Kim
15 PA Decl. ¶ 10. Class Counsel also reviewed documents provided by BART and publicly
16 available documents on BART’s website, engaged with an emergency preparedness expert and
17 vetted numerous drafts of the settlement agreement with the class representatives. Kim Fee
18 Decl. ¶¶ 14-15. Given the necessary work and the extensive negotiations required to reach a
19 robust agreement, Plaintiffs’ counsel expended a total of 2,477 hours on this action until
20 December 2022. Kim PA Decl. ¶ 22, Ex. 2 (1552 hours expended by DRA and 925.7 hours
21 expended by LAAW).

22 3. Class Counsel Have Exercised Substantial Billing Judgment.

23 Class Counsel have reviewed their billing records on an entry-by-entry basis to exercise
24 billing judgment and excise inefficient or duplicative work, clerical entries and other billing
25 entries that are otherwise inadequate or non-compensable. *See* Kim Fee Decl. ¶ 25. *See, e.g.,*
26 *Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992) (5% billing
27 reduction by counsel sufficient to address clerical time and other billing errors), *vacated in part*
28

1 *on other grounds*, 984 F.2d 345 (9th Cir. 1992).

2 In preparing their lodestar, Class Counsel thoroughly reviewed their billing records and
3 exercised billing judgment, including by not seeking fees for:

- 4 • Time reviewing fee records;
- 5 • Time related to press-related activities;
- 6 • Time related to internal case approval and obtaining retainer agreements;
- 7 • Time spent drafting discovery;
- 8 • Most travel time;
- 9 • All billable time by billers who were not central to the case;
- 10 • All billable time for Melissa Riess;
- 11 • All billable time for Christopher Ho; and
- 12 • All billable time by all litigation support staff and law clerks.

13 Kim Fee Decl. ¶ 25; Ho Fee Decl. ¶ 11. Class Counsel also minimized internal time (within
14 each office) as well as co-counsel team discussions and only billed for the lowest biller from
15 each office when multiple people attended a meeting or settlement conference. Kim Fee Decl.
16 ¶ 11; Ho Fee Decl. ¶ 12. This resulted in Class Counsel no-charging 1434.7 hours of work
17 valued at over \$500,000. Kim PA Decl. ¶ 22, Ex. 2 (1143.6 hours no-charged by DRA and
18 291.1 hours no-charged by LAAW). Plaintiffs' lodestar is thus based on 1043 hours. Kim PA
19 Decl. ¶ 22, Ex. 2. Class Counsel performed a review of all time records for purposes of
20 exercising billing judgment and the final negotiated amount represents a discount of
21 approximately 58% from Class Counsel's combined lodestar as of December 31, 2022. Kim
22 Fee Decl. ¶¶ 8, 25; Ho Fee Decl. ¶ 11.

23 In addition to this exercise of billing judgment, Plaintiffs' lodestar omits over a full year
24 of work completed since December 31, 2022, including (a) negotiating and finalizing the
25 settlement agreement (which was not completed until September 2023), (b) briefing preliminary
26 approval, (c) completing class notice and responding to class member inquiries, and (d) briefing
27 final approval. Kim Fee Decl. ¶ 12. This amounts to approximately 285 hours of omitted work
28

1 in 2023. Kim Fee Decl. ¶ 12; Ho Fee Decl. ¶ 12.

2 Given the work that was required by this case, Class Counsel’s exercise of billing
3 judgment in preparing the lodestar, and the omission of all hours worked in finalizing the
4 settlement and obtaining approval from this Court, the number of hours included in Plaintiffs’
5 lodestar for this matter is reasonable. In addition, the outstanding result that Plaintiffs achieved
6 on behalf of the class underscores the reasonableness of Plaintiffs’ requested lodestar. *See*
7 *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

8 Furthermore, the agreed-upon award of \$825,000 in attorneys’ fees and costs represents
9 a significant reduction to the Plaintiffs’ presumptively reasonable lodestar. *See Fischer*, 214
10 F.3d at 1119 n.4.

11 4. Plaintiffs’ Costs and Expenses are Recoverable and Reasonable.

12 As prevailing parties, Plaintiffs are entitled to costs and out-of-pocket expenses. Fed. R.
13 Civ. P. 54(d)(1) (providing for award of taxable costs to prevailing party); 42 U.S.C. § 12205
14 (providing for award of litigation expenses and costs under ADA); 29 U.S.C. § 794a(b)
15 (providing for award of costs under Section 504). Plaintiffs’ litigation expenses and costs of
16 \$16,557.86⁷—including American Sign Language interpreters, filing fees, service of process,
17 delivery and service fees, and expenses associated with experts—were reasonably and
18 necessarily incurred for the prosecution and successful settlement of this action. Kim Fee Decl.
19 ¶¶ 41-42 & Ex. 3. These types of costs and litigation expenses are properly recoverable. *See* 28
20 U.S.C. § 1920 (filing fees and compensation of interpreters); *Lovell v. Chandler*, 303 F.3d 1039,
21 1058–59 (9th Cir. 2002) (expert witness fees); *Rodgers v. Fitzgerald*, No. 14-cv-00985-DMR,
22 2016 WL 4658974, at *8 (N.D. Cal. Sept. 7, 2016) (awarding filing fees and service of process
23 costs in ADA case); *Uriarte-Limon v. Leyva*, No. EDCV 16-194 JGB (KKx), 2017 WL
24 5665016, at *6 (C.D. Cal. June 30, 2017) (awarding service costs, filing fees, and interpreter
25 fees to prevailing plaintiff in ADA case). Class Counsel did not bill for costs related to travel,
26

27 ⁷ This amount does not include those costs Class Counsel declined to charge for in the exercise
28 of billing judgment and in the interest of settlement, including all costs incurred after December
31, 2022. Kim Fee Decl. ¶ 41.

