

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et al.,

Defendants.

Civil Action No. 1:17-cv-998-PLF

**DECLARATION OF DOUGLAS W. BARUCH
IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEY'S FEES, EXPENSES, AND
COSTS PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

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I, Douglas W. Baruch, declare as follows:

1. I am a partner of Morgan, Lewis & Bockius LLP (“Morgan Lewis”). I am resident in the firm’s Washington, D.C. office and a member of the Litigation Practice Group. I am a member in good standing of the bar of the District of Columbia Court of Appeals, the bar of the State of New York, the bar of the State of Maryland, and the bar of this Court. I have personal knowledge of the facts stated herein, except those stated on information and belief, and, if called upon, could and would testify competently to them. I submit this declaration in support of Plaintiffs’ Motion for Attorney’s Fees, Expenses, and Costs Pursuant to the Equal Access to Justice Act (the “Motion”) in the above-captioned case.

A. Class Counsel

2. Since the original *Nio* Complaint was filed in May 2017, my law partner Jennifer Wollenberg and I have served as counsel-of-record for Plaintiffs. *See* Complaint (ECF 1), *Nio v. U.S. Dept. of Homeland Security*, No. 1:17-cv-998-PLF (May 24, 2017). When the litigation began, Ms. Wollenberg and I were associated with the firm Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”), and we were assisted by a large team of Fried Frank attorneys and other legal professionals. Ms. Wollenberg and I joined Morgan Lewis on July 22, 2019 and, with the consent of Plaintiffs, we remained lead counsel in the matter and transitioned it from Fried Frank to Morgan Lewis. Other members of the case team joined Morgan Lewis from Fried Frank as well and continued working on the matter as Morgan Lewis attorneys.

3. Morgan Lewis is a leading global law firm, with more than 2,000 attorneys in 31 offices across North America, Europe, Asia and the Middle East. *The American Lawyer* ranked Morgan Lewis as the ninth largest law firm in the United States on its 2020 Am Law 100 survey. The MAVNI case team is drawn from Morgan Lewis’s Litigation Practice Group, which includes

over 600 attorneys, and all *Nio* team members involved in the litigation of the matter are resident in the firm's Washington, D.C. office.

4. Fried Frank is a leading law firm with approximately 500 lawyers in offices in New York, London, Frankfurt, and Washington, D.C. *The American Lawyer* ranked Fried Frank as the 56th largest law firm in the United States on its 2020 Am Law 100 survey. Fried Frank's practice areas fall into several different departments. In 2017, when class counsel was appointed, the Litigation Department had approximately 95 lawyers, 86 of whom were resident in Washington, D.C. or New York. All of the Fried Frank attorneys who worked on *Nio* were members of the Litigation Department resident in the firm's Washington, D.C. office.

B. Class Counsel's Experience and Expertise

5. The MAVNI case team has extensive experience in complex federal civil litigation, class actions, immigration, military matters, and public interest litigation, all of which was important to the successful prosecution of this case.

6. Both Morgan Lewis and Fried Frank regularly are engaged to represent clients in complex civil litigation matters. Members of the MAVNI case team have extensive experience litigating matters in federal court, including matters against federal government agencies and matters in which Justice Department attorneys are actively involved. Representative engagements include civil fraud, securities and other class action litigation, immigration, antitrust, intellectual property, and government contracts.

7. For example, Ms. Wollenberg and I regularly represent clients in the financial services, aerospace and defense, and healthcare industries, as well as other government contractors, and handle all aspects of these matters, ranging from investigation, to federal and state court litigation, to appellate matters. Sitting in Washington, D.C., the epicenter for government-related investigations and litigation, the case team is well-versed in and understands the technical

and the practical aspects of complex civil litigation, experience that benefitted our clients in the prosecution of this case.

8. Morgan Lewis has a long track record of successes in class actions. Over the last decade, Morgan Lewis has been retained in more antitrust class actions than just about any other law firm. Our class action experience spans across several sectors, including: consumer, privacy & data breach, labor & employment, ERISA, financial services, healthcare, retail, securities, and product liability/mass torts.

9. Specifically with respect to class action experience, members of the MAVNI case team have been (or currently are) counsel for defendants in several class action cases. Our wealth of experience and deep knowledge of the theories and issues advanced in systemic litigation helped shape our strategy in these cases.

10. Morgan Lewis is highly experienced in immigration law representing vulnerable immigrants. In April 2019, the American Immigration Counsel recognized Morgan Lewis with its Stephen K. Fischel Distinguished Public Service Award for its commitment to helping ensure legal representation within the U.S. immigration system. The deep knowledge in immigration law possessed by Morgan Lewis attorneys was critical to the success of securing relief for the MAVNI soldiers.

11. Prior to their engagement in these matters, members of the MAVNI case team served as counsel for *amici curiae* the American Immigration Council and American Immigration Lawyers Association in a class action lawsuit concerning immigration matters. They also served as counsel for *amicus curiae* the American Bar Association in a separate suit involving immigration matters.

12. In addition, Fried Frank's Public Service Counsel, Karen T. Grisez, devoted significant time and resources to the *Nio* case in 2017 and 2018. (In an effort to limit the scope of the Motion, Plaintiffs do not seek compensation for Ms. Grisez's work on behalf of the class.). Ms. Grisez is one of the nation's leading immigration law practitioners and has held leadership positions with numerous public interest and professional organizations, including Chair of the ABA Commission on Immigration and Co-Chair of the ABA Section of Litigation's Immigration Litigation Committee. Ms. Grisez's professional biography is available at <https://www.friedfrank.com/?pageID=42&itemID=292>.

13. In 2018, the American Immigration Lawyers Association presented the MAVNI case team with AILA's Jack Wasserman Memorial Award for Excellence in Litigation in recognition of their work in this and related MAVNI cases, which recognizes significant achievement in the field of immigration law. *See* Ex. 42.

14. One of the keys to the success of these cases is the experience of Plaintiffs' counsel in navigating the nuance of military law. Prior to his legal career, Fried Frank partner Joseph LoBue had served as an officer and aviator in the U.S. Navy and retired as a Commander in the U.S. Naval Reserve. Another case team member, associate Webster Beary, had also served as a U.S. military officer. Their years of military service, particularly in the earliest phases of the case, was critical to understanding the organizational structure and chain of command of the military, which assisted the case team in identifying the many systematic deficiencies of the MAVNI program and ultimately led to filing four related MAVNI cases: *Nio*; *Kirwa v. U.S. Dept. of Defense*, No. 17-cv-1793-PLF (D.D.C.); *Calixto v. U.S. Dept. of Defense*, 18-cv-1551-PLF; and *Miriyeva v. U.S. Citizenship and Immigration Services*, No. 19-cv-3351 (D.D.C.).

15. The MAVNI case team also has extensive experience serving as counsel in many public interest cases, including immigration, veteran's affairs, fair housing, and family law matters, among others.

16. I further outlined counsel's experience and qualifications in my August 11, 2017 declaration filed in support of Fried Frank's application to be appointed class counsel in *Nio* (ECF 30-3), and my September 19, 2017 declaration filed in support of a similar application in *Kirwa v. U.S. Dept. of Defense*, No. 17-cv-01793-PLF (D.D.C.) (ECF 12-1), both of which I incorporate by reference. *See also* Exs. 8 (professional biographies of Morgan Lewis attorneys), 9 (professional biographies of other counsel for the class).

17. As reflected in Exhibit 9, Ms. Fitzgerald is a 1993 law school graduate and is currently a Fried Frank Staff Attorney. Because Ms. Fitzgerald was employed as a Fried Frank legal assistant at the time of her work in these cases and billed out at legal assistant rates, she is treated as a paralegal for purposes of the Motion, including the calculation of her applicable rates.

18. H. Hinnant Coleman is a Fried Frank legal assistant who worked on these cases. Mr. Coleman is a graduate of Christopher Newport University, and earned a Master of Fine Arts degree from George Mason University. He joined Fried Frank in December 2003 as a litigation legal assistant after attaining a paralegal certificate from Georgetown University's ABA-approved legal assistant program.

C. Counsel's *Pro Bono* Representation of Plaintiffs and the Class

19. The MAVNI case team devoted substantial time and resources to the representation of the Plaintiffs and class.

20. It was clear to me from the outset of the litigation in 2017 that the representation would, if Defendants denied the claims and opposed the relief sought, require very significant time and resources due to the complexity of the issues, including the intersection of immigration and

military law, as well as the need to bring class action litigation on behalf of thousands of soldiers. Fried Frank and Morgan Lewis were able and willing to commit the necessary resources, including assigning additional attorneys and staff as necessary to fully and vigorously litigate the matter to resolution.

21. Class counsel devoted thousands of hours to *Nio* each year, including nearly 4,000 hours in the seven-month period from May to December 2017, and over 7,500 hours in 2018:

2017	2018	2019	2020	Total Hours
3,521.5	7,625.3	2,685.4	1,493.3	15,325.5

See generally Ex. 11.

22. I have reviewed the detailed billing records at Exhibits 6 and 7, and I certify that the time and services reflected therein were reasonable and necessary to provide effective representation given the nature and circumstances of the *Nio* case and our role as class counsel.

23. The successful resolution of these cases is directly attributable to the hard work of the case team. Many members of the case team devoted hundreds of hours to the representation. In fact, as noted below, of the 22 attorneys and other legal professionals whose time has been included in the Motion, nine have devoted 500 or more hours, including Ms. Wollenberg and Ms. Raol who devoted more than 5,000 hours and 2,000 hours, respectively, to the *Nio* case.

Timekeeper	Firm	Title	<i>Nio</i> Hours
Baruch, Douglas W.	FF/MLB	Partner	1,756.2
Beary, Webster	FF	Associate	479.2
Fitzgerald, Amber	FF	Legal Asst.	86.6
Gates, Shaun	FF	Associate	366.6
Gogadze, Helene	FF	Associate	623.6
Hinnant, H. Coleman	FF	Legal Asst.	131.5
Johnson, Sam	FF	Associate	470.7
Kaplan, Kayla Stachniak	FF/MLB	Associate	338.5
Kiziltay Carter, Melis	FF	Associate	181.9
LoBue, Joseph J.	FF	Partner	720.3
LoPresti, Elizabeth	FF	Associate	118.2
McNamara, Brendan	FF	Associate	730.9
Mendelson, Benjamin W.	MLB	Associate	166.4
Raol, Neaha	FF/MLB	Associate	2,103.6
St. Romain, Kate	FF	Associate	707.5
Stuart, Brian C.	FF	Associate	113.9
Szlarb, Natalia	FF	Associate	687.3
Williams, Ronald	FF	Associate	44.0
Wollenberg, Jennifer	FF/MLB	Partner	5,221.6
Woods, Elizabeth	FF	Associate	277
Total			15,325.5

See generally Ex. 11.

24. In addition to their work on *Nio*, the same case team has, to date, devoted more than 3,000 hours to the successful resolution of the *Kirwa* case, as well as thousands of hours to *Calixto* and *Miriyeva*. In sum, over a four-year period, the case team has devoted more than 24,000 hours to the MAVNI litigations.

25. Both Morgan Lewis and Fried Frank have represented Plaintiffs on a *pro bono* basis, under which the firms have represented Plaintiffs and the class without charge.

26. Should an award be made to Plaintiffs, Morgan Lewis intends to donate all fees related to its work obtaining summary judgment and the permanent injunction to charitable purposes and legal services organizations, including the firm's ML Foundation. Morgan Lewis established the ML Foundation in 2014 to use funds awarded to Morgan Lewis in a historic settlement on behalf of African American families working to combat nearly a century of government-sponsored racial segregation in the Baltimore area. The ML Foundation provides financial support to promising law students from underrepresented groups to promote diversity, and thereby strengthen the legal profession and improve its contributions to our communities. To date, the ML Foundation has awarded over \$1.3 million in funding to eligible recipients.

27. I am authorized to represent that Fried Frank will apply a substantial portion of any attorneys' fee award in this matter to support that firm's pro bono partners and/or other public interest organizations.

D. Class Counsel's Standard Rates

28. Set forth below are the 2019-20 standard billing rates and experience levels (based on law school graduation year) for each Morgan Lewis attorney who provided legal counsel and assistance to Plaintiffs and whose time has been included in this Motion¹:

Morgan Lewis Timekeeper	Title	Experience Level	2019 Standard Rate	2020 Standard Rate
Baruch, Douglas W.	Partner	1987	\$1,195	\$1,195
Kaplan, Kayla Stachniak	Associate	2010	\$730	\$730
Kiziltay Carter, Melis	Associate	2012	\$615	\$615
Raol, Neaha	Associate	2010	\$710	\$725
Wollenberg, Jennifer	Partner	2005	\$895	\$895

¹ Standard hourly rates are provided only for those individuals whose time has been included in this motion and for the years in which an attorney or other legal professional provided services to Plaintiffs. *See generally* Wollenberg Decl. ¶¶ 13, 19, 23 (discussing time actually worked but not included in Plaintiffs' fees motion in the exercise of billing judgment).

See also Ex. 12 (noting Morgan Lewis standard rates).

29. The billing rates charged by Morgan Lewis attorneys are within the range typically charged by attorneys with comparable skills and experience. Morgan Lewis's clients retain the above-identified attorneys at these or substantially similar rates to perform services of the type counsel provided to Plaintiffs and the class in these cases.

30. Set forth below are the standard billing rates and levels of experience for the Fried Frank personnel—four of whom continued to represent the class after moving to Morgan Lewis, as denoted by the * below—who provided legal counsel and assistance to Plaintiffs and the class and whose time has been included in this Motion:

Fried Frank Timekeeper	Title	Experience Level	2017 Standard Rate	2018 Standard Rate	2019 Standard Rate
Baruch, Douglas W. *	Partner	1987	\$ 1,285	\$ 1,350	\$ 1,415
Beary, Webster	Associate	2011	\$ 780	\$ 860	
Fitzgerald, Amber	Legal Asst.			\$ 350	\$ 370
Gates, Shaun	Associate	2014	\$ 695	\$ 785	
Gogadze, Helene	Associate	2009	\$ 905	\$960	
Hinnant, H. Coleman	Legal Asst.		\$ 255	\$ 275	
Johnson, Sam	Associate	2018		\$ 545	\$ 575
Kaplan, Kayla Stachniak *	Associate	2010		\$ 960	\$ 1,000
Kiziltay Carter, Melis	Associate	2012		\$ 630	
LoBue, Joseph J.	Partner	2003	\$ 1,180	\$ 1,240	
LoPresti, Elizabeth	Associate	2018		\$ 545	\$ 575
McNamara, Brendan	Associate	2010	\$ 295	\$ 315	\$ 335
Raol, Neaha *	Associate	2010	\$ 870	\$ 945	\$ 1,000
St. Romain, Kate	Associate	2010	\$ 600	\$ 730	\$ 825
Stuart, Brian C.	Associate	2015		\$ 730	\$ 770
Szlarb, Natalia	Associate	2016		\$ 545	\$ 670
Williams, Ronald	Associate	2018		\$ 545	\$ 575
Wollenberg, Jennifer M. *	Special Counsel	2005	\$ 975	\$ 1,025	\$ 1,075
Woods, Elizabeth	Associate	2017	\$ 520	\$ 545	

See also Ex. 13 (noting Fried Frank standard rates).

31. It is Fried Frank's policy to adjust the hourly rate of certain associates in the fourth quarter of the year in light of their increased experience and skill. Thus, the standard rates of the following Fried Frank associates were as shown below in Q4 2017 and/or Q4 2018:

Fried Frank Timekeeper	Title	Graduation year	2017 Q4 Standard Rate (if different)	2018 Q4 Standard Rate (if different)
Beary, Webster	Associate	2011	\$ 815	
Gates, Shaun	Associate	2014	\$ 745	
Kiziltay Carter, Melis	Associate	2012		\$ 730
Raol, Neaha	Associate	2010	\$ 895	\$ 960
St. Romain, Kate	Associate	2010	\$ 695	\$ 785
Szlarb, Natalia	Associate	2016		\$ 630
Woods, Elizabeth	Associate	2017		\$ 630

See also Ex. 13 (noting Fried Frank standard rates).

32. The billing rates charged by Fried Frank attorneys and legal assistants are within the range of rates typically charged by attorneys with comparable skills and experience.

E. The LSI *Laffey* Matrix

33. Exhibit 19 is a true and correct copy of the LSI *Laffey* Matrix available at <http://www.laffeymatrix.com/see.html>, as well as pages from the same website describing its history, relevant case law, and expert opinions.

34. The LSI *Laffey* Matrix sets out attorney hourly rates for the Washington, D.C. area based on the number of years out of law school, and is adjusted annually based on the rate of inflation for legal services as reflected in the Consumer Price Index for U.S. City Average, Legal Service Fees. *Id.* The LSI *Laffey* Matrix also sets out hourly rates for paralegals and law clerks. *Id.*

35. The LSI *Laffey* Matrix rates for Washington, D.C.-based attorneys and other legal professionals in the relevant time period are:

Year	Paralegal/ Law Clerk	Years Out of Law School				
		1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	\$196	\$359	\$440	\$636	\$717	\$864

36. Exhibit 22 is a chart setting forth class counsel’s rates under the LSI *Laffey* Matrix.

37. The U.S. Court of Appeals for the District of Columbia Circuit discussed the history and provenance of the LSI *Laffey* Matrix in detail in *DL v. District of Columbia*, 924 F.3d 585 (2019). As the D.C. Circuit noted, the LSI *Laffey* Matrix addresses hourly rates for “complex federal litigation” in Washington, D.C. and is regularly updated by economist Dr. Michael Kavanaugh using the Bureau of Labor Statistics’ Legal Services Index (LSI), a statistic that estimates price increases in the legal market (as opposed to inflation more generally). *Id.* at 589-90; *see also* T12 at 7 (quoting Dr. Kavanaugh’s methodological explanation). As the D.C. Circuit observed in *Salazar v. District of Columbia*, “[T]he district court’s point that the LSI-adjusted matrix is probably a conservative estimate of the actual cost of legal services in this area, does not appear illogical.” 809 F.3d 58, 65 (D.C. Cir. 2015).

38. Following the D.C. Circuit’s opinions in *DL* and *Salazar*, judges of this court frequently have used the LSI *Laffey* Matrix as a guide to market rate fees in Washington, D.C. *See, e.g., B.J. v. Dist. of Columbia*, No. 19-cv-2163-TSC-ZMF, 2020 WL 8512639 (D.D.C. Nov. 9, 2020) (Faruqui, M.J.); *True the Vote, Inc. v. Internal Revenue Service*, No. 13-cv-734 (RBW), 2020 WL 5656694 (D.D.C. Sept. 23, 2020) (Walton, J.); *U.S. v. Dist. of Columbia*, 2020 WL 4673418 (D.D.C. Aug. 12, 2020) (Howell, C.J.); *Feld v. Fireman’s Fund Ins. Co.*, 2020 WL

1140673 (D.D.C. Mar. 9, 2020) (Bates, J.) (“Because the Underlying Litigation was ‘complex federal litigation,’ the LSI Laffey Matrix is applicable.”) (citing *DL*, 924 F.3d at 594); *American Oversight v. U.S. Dept. of Justice*, 375 F. Supp. 3d 50, 70 (D.D.C. 2019) (Moss, J.); *Mattachine Society of Washington, DC v. United States Dept. of Justice*, 406 F. Supp. 3d 64 (D.D.C. 2019) (Lamberth, J.); *Hernandez v. Chipotle*, 257 F. Supp. 3d 100 (D.D.C. 2017) (Howell, J.); *Texas v. United States*, 247 F. Supp. 3d 44 (D.D.C. 2017) (Collyer, J.).

39. Exhibit 20 is a chart comparing Class Counsel’s standard rates to the rates set out in the LSI Laffey Matrix for Washington, D.C.-based attorneys with similar levels of experience, demonstrating that the LSI Laffey Matrix rates generally are lower than the rates charged by Fried Frank and, in most cases, generally consistent with the rates charged by Morgan Lewis.

F. Additional Market Rate Evidence

1. The Real Rate Report

40. True and correct copies of excerpts from the Wolters Kluwer *2020 Real Rate Report* are attached as Exhibit 17 to the Motion.

41. True and correct copies of excerpts from the Wolters Kluwer *2018 Real Rate Report* are attached as Exhibit 16 to the Motion.

42. The *Real Rate Report* describes itself as “the industry’s leading data-driving benchmark report for lawyer rates.” Ex. 17 at 4. It is based on a data set of “over \$140 billion in anonymized legal data.” *Id.* “As with past Real Rate Reports, all of the data analyzed are from corporations’ and law firms’ e-billing and time management solutions. We have included lawyer and paralegal rate data filtered by specific practice and sub-practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability to pinpoint areas of opportunity.” *Id.*

43. The *Real Rate Report* provides data on legal billing rates in the U.S. and internationally broken down in a number of different ways, including based on role (partner, associate, paralegal), experience level (21 or more years and fewer than 21 years), city, practice area, industry served, and location. It also includes an “In-Depth Analysis for Select U.S. Cities,” which provides regional market data for different practice areas and different firm sizes.

44. As shown in Exhibit 17, in Q3 2019, partners practicing commercial law (a category that includes “contract breach or dispute”) in Washington, D.C. at firms with 1,000 or more attorneys typically charged from \$793/hr. (first quartile) to \$1,193/hr. (third quartile), and associates charged from \$476/hr. (first quartile) to \$746/hr. (third quartile):

Section IV: In-Depth Analysis for Select US Cities									
Washington DC									
By Practice Area and Firm Size									
2019 -- Real Rates for Partners and Associates							Trend Analysis (Mean)		
Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2019	2018	2017
Commercial	50 Lawyers or Fewer	Partner	15	\$411	\$518	\$590	\$512	\$619	\$556
	51-200 Lawyers	Partner	13	\$610	\$680	\$700	\$676	\$632	\$590
		Associate	45	\$596	\$664	\$752	\$691	\$675	\$694
	201-500 Lawyers	Partner	48	\$350	\$438	\$508	\$445	\$408	\$439
		Associate	93	\$680	\$846	\$992	\$869	\$883	\$842
	501-1,000 Lawyers	Partner	50	\$464	\$530	\$601	\$544	\$549	\$528
		Associate	99	\$793	\$950	\$1,193	\$994	\$887	\$868
	More Than 1,000 Lawyers	Partner	59	\$476	\$625	\$746	\$634	\$603	\$557
Associate									

Ex. TempJJ at 123.

45. As shown in Exhibit 16, in Q3 2018, partners practicing commercial law in Washington, D.C. at firms with 1,000 or more attorneys typically charged from \$742/hr. (first quartile) to \$985/hr. (third quartile), and associates charged from \$431/hr. (first quartile) to \$685/hr. (third quartile):

Section IV: In-Depth Analysis for Select US Cities

Washington DC
By Practice Area and Firm Size

Q3 2018 -- Real Rates for Partners and Associates **Trend Analysis (Mean)**

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	Q3 2018	Q3 2017	Q3 2016
Commercial	50 Lawyers or Fewer	Partner	16	\$553	\$630	\$734	\$623	\$567	\$488
		Associate	18	\$526	\$582	\$683	\$604	\$595	\$635
	201-500 Lawyers	Partner	55	\$564	\$640	\$743	\$662	\$700	\$682
		Associate	40	\$340	\$427	\$498	\$414	\$435	\$437
	501-1,000 Lawyers	Partner	86	\$615	\$804	\$975	\$856	\$831	\$746
		Associate	57	\$415	\$493	\$630	\$542	\$516	\$478
	More Than 1,000 Lawyers	Partner	82	\$742	\$857	\$985	\$855	\$883	\$848
		Associate	42	\$431	\$574	\$685	\$603	\$556	\$545

Ex. 16 at 127.

46. Exhibit 18 is a chart comparing the 2018 and 2019 rates set out in the *Real Rate Report* to Class Counsel's 2018 and 2019 standard rates, demonstrating that Class Counsel's rates generally are in line with those charged by attorneys practicing commercial law in the Washington, D.C. offices of large law firms. *See also*, Ex. 21 (comparing the 2018 and 2019 rates set out in the *Real Rate Report* to the LSI Laffey Matrix rates for 2018 and 2019).

47. U.S. district courts around the country have relied on the *Real Rate Report* to set market-based fee award rates. *See, e.g., Kries v. City of San Diego*, No. 17-CV-1464 GPC (BGS), 2021 WL 120830, at *2 (S.D. Cal. Jan. 13, 2021) (relying on the *Real Rate Report* and awarding reasonable attorney's fees in a Fair Labor Standards Act case); *Eclipse Grp. LLP v. Target Corp.*, No. 15-CV-1411 JLS (BLM), 2020 WL 5709488, at *4 (S.D. Cal. Sept. 24, 2020) (accepting the *Real Rate Report* as reliably indicating rates for "reasonable attorney fees"); *Aispuro v. Ford Motor Company*, No. 18-CV-2045 DMS, 2020 WL 4582677, *4 (S.D. Cal. 2020) (awarding reasonable attorney fees under state law); *Smith v. Cty. of Riverside*, No. EDCV 16-227 JGB (KKx), 2019 WL 4187381, at *3 (C.D. Cal. June 17, 2019) (overruling objections to the *Real Rate Report* and

relying on it in awarding fees based on “reasonable hourly rate” in a 42 U.S.C. § 1983 case); *Whitewater W. Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 17-cv-1118 BEN (BLM), 2019 WL 2209398, at *3 n.3 (S.D. Cal. May 22, 2019) (citing cases); *Hernandez v. FCA US LLC*, No. CV 17-5452 GW (ASx), 2019 WL 2932637, at *3 (C.D. Cal. Jan. 4, 2019) (“The Court finds that the Real Rate Report provides objective empirical data that serves as a better benchmark of reasonableness than scouring a litany of cases from within and outside the judicial district.”) (also citing cases relying on the *Real Rate Report*); *Trustees of Operating Engineers Pension Tr. v. Spates Excavation & Equip. Rental, Inc.*, No. CV 17-7005, 2018 WL 6038290, at *5 (C.D. Cal. Aug. 7, 2018) (relying on the *Real Rate Report* on the Court’s own initiative); *Frias v. City of Los Angeles*, No. CV 16-4626, 2017 WL 5640529 (C.D. Cal. June 22, 2017) (relying on 2018 *Real Rate Report*); *Hicks v. Toys “R” Us-Delaware, Inc.*, No. CV 13-1302, 2014 WL 4670896, at *1 (C.D. Cal. Sept. 2, 2014) (finding the 2013 *Real Rate Report* to be “a much better reflection of true market rates than self-reported rates”); *Tallman v. CPS Sec. (USA), Inc.*, 23 F. Supp. 3d 1249, 1258 (D. Nev. 2014) (considering the *Real Rate Report*); *G.B. ex. Rel. N.B. v. Tuxedo Union Free Sch. Dist.*, 894 F. Supp. 2d 415, 433 (S.D.N.Y. 2012) (same).

48. Courts have found the *Real Rate Report* particularly reliable “because it is based on actual legal billing, matter information, and paid and processed invoices from a wide range of companies.” *Withrow v. Stryker Sales Corp.*, No. CV 16-544 DSF (PLAx), 2018 WL 5858609, at *4 (C.D. Cal. Mar. 27, 2018); *see also Vogel v. MS Food Servs., Inc.*, No. CV 16-8433 DSF, 2018 WL 11027947, at *3 (C.D. Cal. Dec. 26, 2018) (same) (awarding reasonable attorney’s fees under the ADA); *Abrego v. City of Los Angeles*, No. CV 15-00039 BRO (JEMx), 2017 WL 3453293, at *6 (C.D. Cal. June 16, 2017) (“The Court finds the [*Real Rate Report*] persuasive here, as it is

based on actual legal billing, matter information, and paid and processed invoices[.]” (expressly taking into account firm size when setting hourly rates for fees award in a 42 U.S.C. § 1983 case).

2. Peer Monitor

49. Thompson Reuters’ Peer Monitor service aggregates data from over 200 participating law firms’ financial management systems and provides data and competitive analysis about the legal services industry, including rate information.

50. Exhibit 14 is a true and correct copy of information obtained from Peer Monitor by Morgan Lewis’s Director of Client Analysis & Rate Management showing for the period December 2019 to November 2020 the mean, median, first quartile, and third quartile hourly rates of litigation partners and associates resident in the Washington, D.C. offices of Am Law 100 firms.

51. Exhibit 15 is a comparison of the rates set out in Exhibit 14 to those charged by class counsel, demonstrating that the 2020 hourly rates charged by Morgan Lewis are in line with those charged by other top-tier Am Law 100 firms.

52. Courts have found Peer Monitor data relevant and useful in evaluating reasonable attorney and paralegal billing rates. *See, e.g., Sanchez Y Martin, S.A. de C.V. v. Dos Amigos, Inc.*, No. 17CV1943-LAB-LL, 2019 WL 3769191, at *12 (S.D. Cal. Aug. 9, 2019) (“Plaintiff’s declarations of counsel and Peer Monitor report with recent reported rates are sufficient to meet its burden for the attorneys and paralegal.”); *Obermeyer Hydro Accessories, Inc. v. CSI Calendering, Inc.*, No. 14-CV-00184-RM-KMT, 2017 WL 4324772, at *6 (D. Colo. Jan. 10, 2017) (relying on Peer Monitor evidence); *United Food & Commercial Workers v. Super Fresh Food Markets Inc.*, No. CIV. 04-1226 (RMB), 2009 WL 2517064, at *3 (D. N.J. Aug. 14, 2009) (relying on the Peer Monitor Report and finding fees “close to the median of rates charged by comparable attorneys in the litigation area” to be reasonable).

I declare under penalty of perjury that the foregoing is true and correct

Dated: April 9, 2021



Douglas W. Baruch