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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

WILLIAM F. WREN and JOHN
MURPHY, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

TRANSAMERICA LIFE INSURANCE
COMPANY,

Defendant.

Case No. 5:21-cv-00178-JGB-SP

**CLASS COUNSEL'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
SERVICE AWARDS**

Hearing Date: November 9, 2026
Time: 9:00 a.m.
Courtroom 1

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I. INTRODUCTION

After more than five years of hard-fought and complex litigation—defeating a motion to dismiss, obtaining reversal from the United States Court of Appeals for the Ninth Circuit of an adverse summary judgment ruling for Transamerica that had rendered this case completely worthless, prevailing on two crucial motions to compel, completing fact discovery, and conducting two mediations—Class Counsel settled this case for over \$142 million in settlement benefits for the Class. Those benefits include \$110 million in cash and guaranteed increases to the cash value of eligible Class Members’ policy accounts worth more than \$26.5 million. The Settlement also secured Transamerica’s agreement to (i) separately pay the first \$5.8 million in attorneys’ fees awarded by the Court in addition to and on top of the cash settlement fund, and (ii) ensure death benefits are paid by agreeing never to challenge the validity of any Class Policy on insurable interest grounds or misrepresentations made in connection with the original application.

This combination of cash and non-cash relief provides enormous value to the Class. The \$110 million cash component alone represents *more than 90%* of the unpaid Cash Value Increases (“CVIs”) that Plaintiffs contend that Transamerica owes to Class Members. That percentage of recovery far exceeds what courts in this Circuit have considered an exceptional result for a class action settlement. *See, e.g., Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *2–*3 (C.D. Cal. Sept. 18, 2020) (calling 29% recovery “exceptional” based on a survey of settlements). The non-cash benefits provided by this Settlement could not even have been obtained with a full trial win. And if final approval is granted, participating Class Members will receive these benefits automatically, using addresses and accounts on file with Transamerica, without filling out or filing claim forms.

Class Counsel devoted more than 6,180 hours and \$447,905.48 in costs and expenses to achieve this extraordinary result, entirely on a contingent-fee basis, without any compensation or financing. The legal and factual obstacles to any

1 recovery, much less a recovery of this magnitude, were daunting. To prevail, Class
2 Counsel first had to establish both that the *Oakes* settlement did not bar the claims
3 and that the complex insurance contracts of the Class Members entitled them to CVIs.
4 Indeed, this Court initially granted Transamerica’s summary judgment motion on
5 *Oakes*. At that point, this case was worth nothing. But Class Counsel remained
6 committed to the action, pursued an appeal, and preserved a chance of recovery by
7 obtaining reversal at the Ninth Circuit and a remand for further proceedings. Even
8 then, to obtain the evidence needed to establish classwide relief, Class Counsel had
9 to win a closely contested motion to compel. Dkt. 114. Class Counsel then reviewed
10 and analyzed Transamerica’s 59 document productions, consisting of more than 2
11 million pages of documents, 1,800 spreadsheets, and 580 audio files; incurred and
12 paid the significant costs required by multiple insurance experts who worked closely
13 with Class Counsel on this analysis; and took and defended 12 depositions. Only after
14 Class Counsel won a second motion to compel—forcing Transamerica to choose
15 between disclosing privileged documents or forgoing a key defense, Dkt. 167—was
16 this remarkable settlement negotiated.

17 Given this outstanding result, Class Counsel respectfully applies for an
18 attorneys’ fee award equal to 33 1/3 percent of the \$142 million total value of the
19 settlement, reimbursement of \$447,905.48 in expenses, and a \$25,000 service award
20 for each Class Representative. In the Ninth Circuit, a fee based on a percentage of
21 the settlement value achieved is the favored approach for calculating attorneys’ fees
22 in contingent class actions, and 25% is the usual benchmark. *See Lopez v. First*
23 *Student, Inc.*, 2022 WL 618973, at *3–*4 (C.D. Cal. Feb. 8, 2022) (Bernal, J.). But
24 this is no ordinary case and no ordinary result.

25 To determine whether the fee requested here is reasonable, courts consider, as
26 relevant, “the results for the class,” “whether the case was risky,” “whether counsel’s
27 performance generated benefits beyond the cash settlement fund,” “the burden class
28 counsel experienced,” and “whether the case was handled on a contingency basis.”

1 *Lopez*, 2022 WL 618973, at *5 (citation omitted). All these factors weigh strongly in
2 favor of a one-third award here, and the requested percentage is squarely within the
3 range routinely awarded in similar cases that achieve excellent results. That is
4 especially true here, given the adverse summary judgment ruling that wiped out the
5 entire value of the case before appeal. Many other lawyers might have reasonably
6 made the economic choice to write off that loss, rather than incur even more risk and
7 invest the additional time, money, and skill necessary for this litigation.

8 In sum, the extraordinary success achieved by the settlement was no small feat.
9 Class Counsel’s willingness to bear the risk of a total loss to maximize recovery to
10 the Class—which after half a decade led to this outstanding settlement—places this
11 case in a special category. Class Counsel pressed this complicated and technical
12 action through a successful Ninth Circuit appeal and the many hazards of discovery
13 on remand, spent more than five years litigating, including more than 6,180 hours in
14 time and hundreds of thousands of dollars in expenses on a purely contingent basis,
15 and faced numerous Transamerica defenses along the way, any of which if accepted
16 would have completely barred recovery. These efforts, undertaken at great financial
17 risk and in the face of an adverse summary judgment order, resulted in a settlement
18 worth more than \$142 million. Class Counsel therefore respectfully requests that the
19 Court grant this motion for \$47,455,027 in fees, which is equal to one-third of the
20 value of the settlement, \$447,905.48 in expenses, and a \$25,000 service award for
21 each of the two Class Representatives.

22 **II. BACKGROUND**

23 **A. Class Counsel Investigated Transamerica’s Conduct, Filed Suit,** 24 **and Overcame Transamerica’s Motion to Dismiss**

25 Class Counsel is highly experienced in representing policyowners in insurance
26 breach of contract cases. *See* Declaration of Steven G. Sklaver (“Sklaver Decl.”) ¶ 6.
27 In 2016, Transamerica notified policyholders that “we will not credit any cash value
28 bonuses” for “the 30th and 40th anniversary years” of certain “Direct Recognition

1 Life” Policies that promised CVIs on those anniversaries. *See, e.g.*, Dkt. 207-7. Class
2 Counsel Bonnett, Fairbourn, Friedman & Balint PC (“BFFB”) investigated whether
3 withholding those payments comported with the terms of the policies and, a few
4 months after the 30th anniversary CVI for William F. Wren’s policy became due,
5 filed this suit on February 1, 2021, on behalf of Plaintiff Wren and the settlement
6 class. Dkt. 1. The Complaint asserted claims for breach of contract, breach of the
7 implied covenant of good faith and fair dealing, and tortious breach of the duty of
8 good faith and fair dealing.

9 Transamerica moved to dismiss the tortious bad faith claim on statute of
10 limitations grounds. Dkt. 22. Plaintiff opposed, arguing that the limitations period
11 did not start running until the 30th policy anniversary. Dkt. 28. The Court agreed,
12 denying the motion to dismiss. Dkt. 30, at 6.

13 Following limited preliminary discovery, the parties filed cross-motions in
14 January 2022 for early summary judgment concerning the effect of *Oakes* on
15 Plaintiff’s claims. *See* Dkt. 46; Dkt. 51. The Court granted Transamerica’s motion,
16 holding that *Oakes* barred Plaintiff from enforcing the uncredited CVIs. Dkt. 90, at
17 9–10, 13. An adverse summary judgment ruling is a devastating blow and often the
18 end of a case. It would have been economically rational for the parties and counsel
19 to write off the loss and end the expenditure of time and resources.

20 **B. Class Counsel Revived the Claims Through a Ninth Circuit Appeal**

21 Despite the adverse summary judgment ruling, Class Counsel doubled down
22 on its efforts to secure benefits for the Class, with great risk ahead. The only sure
23 thing was a total loss if the Ninth Circuit affirmed, as it does more than 85% of the
24 time in private civil litigation. *See* Sklaver Decl. Ex. 5. Plaintiff’s counsel BFFB
25 nevertheless noticed the appeal and enlisted Class Counsel Susman Godfrey (“SG”)
26 to handle the appeal and any litigation to follow. Sklaver Decl. ¶ 12. Class Counsel
27 spent more than 450 hours litigating the appeal alone, including researching and
28 drafting the briefs and preparing for oral argument. *Id.* At the Ninth Circuit, Class

1 Counsel reframed the issues to lead with a Texas claim preclusion argument, which
2 had been a secondary contention in the district court briefing. No. 22-56131, Dkt. 24,
3 at 16 (July 20, 2023); Dkt. 52, at 15; Dkt. 90, at 13. Those efforts paid off. Less than
4 a month after oral argument, the Ninth Circuit reversed in a unanimous decision. It
5 held that under Texas claim preclusion law, Plaintiff’s “current claims could not have
6 been raised at the time of the prior class action suit,” so they were “not barred.” *Wren*
7 *v. Transamerica Life Ins. Co.*, 2024 WL 977685, at *1 (Mar. 7, 2024).

8 **C. Class Counsel Pursued Extensive Discovery and Won Two Motions**
9 **to Compel**

10 Fact discovery on remand spanned about 18 months, from the Ninth Circuit’s
11 mandate on March 29, 2024 through September 30, 2025. *See* Sklaver Decl. ¶¶ 14–
12 15. During that time, Class Counsel issued 102 requests for production, four sets of
13 interrogatories, and 34 requests for admission. Sklaver Decl. ¶ 17. In April 2025,
14 Class Counsel amended the Complaint to add a second named Plaintiff, John
15 Murphy. Dkt. 131. The parties exchanged dozens of emails, met and conferred
16 extensively, and negotiated search terms, custodians, supplemental interrogatory
17 responses, and other issues. Sklaver Decl. ¶ 15.

18 Little of this discovery would have been possible without a motion to compel
19 that Plaintiff Wren filed on September 20, 2024. As that motion explained,
20 Transamerica had failed to produce *any* of the requested policy or non-policy files
21 by the date the motion was filed—six months after remand. Dkt. 114, at 6–7. In her
22 ruling, Magistrate Judge Pym noted that Transamerica had not “offer[ed] a
23 satisfactory explanation for its dilatory actions” as to the non-policy documents and
24 “inexplicably . . . did not begin its collection and review of [them] . . . until after the
25 motion to compel was filed.” *Id.* at 7–8. After 75 pages of briefing and oral argument,
26 the Court ordered Transamerica to produce all policy file documents and to
27 commence production of custodial documents. *Id.* at 7, 10.

28 This ruling and Class Counsel’s discovery efforts yielded a massive document

1 record. Class Counsel and their experts reviewed over 2 million pages of documents
2 produced by Transamerica, including actuarial reports, policy-level data, emails,
3 meeting minutes, regulatory correspondence, and thousands of complex
4 spreadsheets. Sklaver Decl. ¶ 17. This task was all the more difficult because the
5 Class Policies were mostly issued in the late 1980s and early 1990s, and many of the
6 pertinent documents were more than 30 years old. *Id.* As a result of this enormous
7 undertaking, Class Counsel uncovered key documents that showed Transamerica’s
8 decision to “kick the can down the road” with respect to the 30-year CVIs, instead of
9 promptly notifying policyholders that it would not pay CVIs at what Transamerica
10 called the “30 year bonus Armageddon.” Sklaver Decl. ¶ 18. Because Class
11 Counsel’s investigation also concerned Transamerica’s decisions with respect to
12 accounting and financial modeling for the CVIs, discovery required significant work
13 with top-notch actuarial and economics experts, each of whom Class Counsel
14 identified, retained, and paid. Sklaver Decl. ¶ 19.

15 Class Counsel also extracted key admissions at the fact depositions of nine
16 current and former Transamerica employees, and at a 30(b)(6) deposition on 19
17 topics (including more than 100 sub-topics) over three days and from three
18 individuals. Sklaver Decl. ¶ 20. For example, Transamerica’s corporate
19 representative testified that Transamerica did not notify policyholders about all the
20 bases for refusing to pay CVIs because Transamerica did not want to “overwhelm”
21 them. *Id.* The Senior Actuary responsible for these policies testified that he could not
22 understand why Transamerica refused to pay the CVIs. *Id.* And the former
23 Transamerica CEO who made the final decision not to pay the CVIs purported at his
24 deposition to not recall making that decision, the process he used, the reasons for it,
25 or any decisions he made during his six years as CEO. *Id.*

26 With just days remaining before the close of fact discovery, Class Counsel won
27 a second motion to compel concerning one of Transamerica’s key defenses. This
28 proved critical. Plaintiffs moved to require Transamerica to produce documents

1 concerning Transamerica’s interpretation of the *Oakes* settlement. Sklaver Decl. ¶
2 21. Transamerica had asserted privilege over these documents while, Plaintiffs
3 contended, selectively disclosing attorney-client communications about its
4 interpretation of *Oakes*, and advancing what was “effectively an advice of counsel
5 defense” concerning *Oakes*. Dkt. 167, at 12. After briefing and oral argument,
6 Magistrate Judge Pym granted this motion, ordering Transamerica to either produce
7 the withheld *Oakes* documents or withdraw its affirmative defense and “agree[] it
8 will not argue it relied in good faith on its interpretation of the *Oakes* settlement.”
9 Dkt. 167, at 13. The choice was stark for Transamerica: give up its privilege claims
10 or give up one of its main defenses. Magistrate Judge Pym temporarily stayed the
11 ruling pending Transamerica’s appeal to this Court, Dkt. 173, and less than two
12 weeks later the parties stipulated to stay the case pending mediation, Dkt. 183.

13 **D. Due to Class Counsel’s Efforts, Transamerica Paid Class Members**
14 **Credits in the “Wren Crediting Project”**

15 During the litigation, as a direct result of Class Counsel’s efforts, Transamerica
16 decided to provide the relief sought for some, but not all, Class Members. On May
17 27, 2025, while the case was in the middle of fact discovery, Transamerica informed
18 Class Counsel that it would pay those policies’ 30-year CVIs after all, with interest,
19 and would pay the 40-year CVIs as well, assuming the policies reached the 40-year
20 milestone. *See* Sklaver Decl. ¶ 23. As Plaintiffs confirmed in discovery,
21 Transamerica then credited those 30-year CVIs in multiple waves, for a total of \$14.6
22 million to these Class Members’ accounts. Sklaver Decl. ¶ 26.

23 Plaintiffs uncovered the obvious in discovery: Transamerica paid these credits
24 due to Plaintiffs’ success in this litigation including at the Ninth Circuit.
25 Transamerica’s internal documents called this crediting project the “*Wren* Crediting
26 Project”—*i.e.*, named after this lawsuit. Sklaver Decl. ¶ 25. Those documents also
27 stated that the project was undertaken “in light of an appellate court order that
28 disagreed with [Transamerica’s] prior rationale for not doing so”—*i.e.*, the Ninth

1 Circuit's decision in this case. *Id.*

2 **E. Class Counsel Negotiated an Outstanding Settlement**

3 On October 9, 2025, nine days after fact discovery ended and with Plaintiffs'
4 privilege victory hanging over Transamerica, the parties participated in a full-day
5 mediation with Robert Meyer, Esq., of JAMS. Sklaver Decl. ¶ 31. Both sides
6 prepared lengthy mediation statements. Sklaver Decl. ¶ 30. No deal was struck at that
7 first mediation, but the parties agreed to a second session on January 12, 2026.
8 Sklaver Decl. ¶ 32.

9 At the end of that second mediation, the parties agreed to the framework of a
10 tentative settlement, subject to further negotiation and Transamerica corporate
11 governance approval. Sklaver Decl. ¶¶ 35–36. The parties accordingly sought to stay
12 all deadlines, Dkt. 200, and then negotiated and agreed to a long-form settlement
13 agreement. The mediator agrees that the Settlement is a highly successful result for
14 Class Members, and is fair and reasonable. Dkt. 207-11, at ¶¶ 18–19.

15 In total, the \$142,365,081 Settlement includes \$110 million in cash relief,
16 equal to between 90.6% and 134.8% of the total unpaid CVIs Plaintiffs contend
17 Transamerica owes to Class Members, as calculated by Plaintiff's expert, Mr. Robert
18 Mills.¹ Sklaver Decl. ¶ 3; Dkt. 207-12, Declaration of Robert Mills ("Mills Decl.")
19 ¶¶ 6–7. In addition to this cash fund, which will be distributed to eligible Class
20 Members automatically, without any claim forms, the Settlement guarantees
21 \$26,529,683 in value for the 30th and 40th anniversary CVIs of eligible policies, as
22 part of the "Wren Crediting Project."² Sklaver Decl. ¶ 3; Mills Decl. ¶¶ 8, 10–12.

23 ¹ While the Final Settlement Fund will decrease proportionately to opt-outs, *see*
24 Settlement Agreement ¶ 81, the relevant metric for determining a percentage award is
25 the entire settlement value made available to potential class members (\$142,365,081).
26 *Williams v. MGM-Pathe Comm'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). No opt-
27 outs have been received as of September 17, 2026.

28 ² This includes \$14,648,637.64 in guaranteed 30-year CVIs, equivalent to
\$16,276,264.04 on a cash pre-load basis, which takes into account that recipients were
not required to pay premium loads on these payments to account values. Mills Decl.
¶¶ 8, 10. It also includes \$11,675,929.48 in 40-year CVIs that Transamerica has
guaranteed to pay to the Wren Crediting Project policies that remain in force on their

1 That too has been or will be distributed to eligible Class Members automatically,
2 without any claim forms. And Transamerica has also agreed to pay the first \$5.8
3 million in fees awarded by the Court separate and on top of the Settlement Fund.
4 Sklaver Decl. ¶ 3; Settlement Agreement ¶ 124. Moreover, in order to help ensure
5 the benefits provided by the Settlement are not diminished later at the time a death
6 benefit is owed, Transamerica has agreed not to “deny coverage of death claims” by
7 Settlement Class Members “based on any alleged lack of insurable interest or
8 misrepresentations made in connection with the original application process.”
9 Settlement Agreement ¶ 88.

10 **III. ARGUMENT**

11 **A. Class Counsel’s Fee Request Is Reasonable**

12 **1. Class Counsel is Entitled to Fees from the Common Fund as a Whole**

13 “In a certified class action, the court may award reasonable attorney’s fees and
14 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R.
15 Civ. P. 23(h). The Supreme Court has long recognized that a lawyer who obtains
16 recovery “for the benefit of persons other than himself or his client is entitled to a
17 reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444
18 U.S. 472, 478 (1980).

19 **2. The Requested Fee of 33 1/3 Percent of Settlement Benefits is** 20 **Reasonable Under the Preferred Percentage-of-the-Benefit Approach**

21 Class Counsel requests a fee of 33 1/3 percent of the total settlement value.
22 The percentage-of-recovery analysis is the preferred method for awarding fees in
23 common fund cases such as this one, and should be used here. *See Aichele v. City of*
24 *Los Angeles*, 2015 WL 5286028, at *5 (C.D. Cal. Sept. 9, 2015); *Lopez*, 2022 WL
25 618973, at *3. This method best aligns the interests of the class and counsel in
26 “maximizing the recovery of the class,” while the lodestar method encourages

27 _____
28 40-year anniversaries, which is equivalent to \$10,253,419.76 in present value on a
cash, pre-load basis, adjusted for mortality. Mills Decl. ¶¶ 11–12.

1 “inefficiency” and disincentivizes “early settlement,” *Aichele*, 2015 WL 5286028, at
2 *5 (citations omitted). Although the court may use a lodestar “cross-check” after
3 calculating fees as a percentage-of-recovery, doing so “is not required in this circuit,
4 and in some cases is not a useful reference point.” *Craft v. City of San Bernardino*,
5 624 F. Supp. 2d 1113, 1122 (C.D. Cal. 2008); e.g., *Lopez*, 2022 WL 618973, at *6
6 (Bernal, J.) (declining to perform lodestar cross-check); *Odom v. ECA Mktg., Inc.*,
7 2021 WL 7185059, at *6 (C.D. Cal. Dec. 22, 2021) (Bernal, J.) (same); *Rubin-*
8 *Knudsen v. Arthur Gallagher & Co.*, 2021 WL 4924765, at *7 (C.D. Cal. Mar. 19,
9 2021) (Bernal, J.) (approving one-third fee award without lodestar cross-check).

10 As noted, 25% of the recovery is the benchmark upon which courts evaluate
11 percentage recoveries in the Ninth Circuit, *Lopez*, 2022 WL 618973, at *4, and
12 awards at that percentage are a “presumptively reasonable amount of attorney’s fees.”
13 *Thompson v. Transamerica Life Ins. Co.*, 2020 WL 6145104, at *1 (C.D. Cal. Sept.
14 16, 2020).

15 To determine whether a higher percentage is reasonable, courts consider “the
16 results achieved and the risk of litigation,” “as well as the skill required and the work
17 performed,” “the burden class counsel experienced,” and whether the case was on
18 contingency. *Lopez*, 2022 WL 618973, at *5–6 (citations omitted). The “[f]oremost”
19 consideration “is the benefit obtained for the class.” *In re Bluetooth Headset Prods.*
20 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). An excellent result for the class merits
21 a higher percentage. Applying these factors, “[c]ourts within this Circuit,” including
22 this one, “routinely award attorneys’ fees equal to one-third of a gross settlement
23 amount.” *Rubin-Knudsen*, 2021 WL 4924765, at *7 (collecting cases); *Metrow v.*
24 *Liberty Mut. Managed Care LLC*, 2018 WL 6265085, at *9 (C.D. Cal. June 14, 2018)
25 (Bernal, J.) (collecting cases).

26 These factors when applied to this litigation strongly support a fee award of
27 one-third of the settlement value.
28

a. The Results Achieved Are Exceptional

The \$142,365,081 total settlement value is exceptional. In calculating the settlement value, courts include both monetary and non-monetary benefits. *See* Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* 35 (3d ed. 2010) (“The primary method [to calculate fees] is based on a percentage of the actual value to the class of any settlement fund plus the actual value of any nonmonetary relief.”); *Harris v. Amgen Inc.*, 2017 WL 6048215, at *7 (C.D. Cal. Apr. 4, 2017) (“[I]n common fund cases, the court may consider the value of . . . non-monetary relief in setting attorneys’ fees when the value of the . . . non-monetary relief can be measured.” (citing *Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003))). That total value includes the \$110 million cash fund, the increased account values through the Wren Crediting Project guaranteed by the settlement worth more than \$26.5 million, a separate, additional fund to cover the first \$5.8 million in attorneys’ fees, and an agreement that Transamerica would never deny payment of any Class Policies’ death benefits on insurable interest or misrepresentation grounds in the original application. The \$110 million in cash payments alone represents between 90.6% and 134.8% of the unpaid CVIs that Plaintiffs contend Transamerica owes to Class Members. This recovery is more than double the recovery percentage one court, in another insurance breach of contract case, called “quite extraordinary,” *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-CV-9924, Dkt. 164, at 20:10 (S.D.N.Y. Mar. 18, 2019); *id.*, Dkt. 145, at 19 (Jan. 18, 2019) (42%). Even had the case proceeded through trial and liability been found, there is a real risk that the damages recovered would have come nowhere close to the 90%+ recovery secured here. *See, e.g., Meek v. Kansas City Life Ins. Co.*, 126 F. 4th 577, 589 (8th Cir. 2025) (affirming denial of additur in insurance class action where jury awarded 27% of damages sought, which district court reduced to 5%).

Compared to other class action settlements, this recovery is an exceptionally

1 high percentage of a defendant’s total potential liability. Indeed, “it is not uncommon
2 for a class action settlement to amount to approximately 10% of the total potential
3 value.” *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30,
4 2014) (approving settlement potentially worth 9.1% of total liability as “within the
5 range of reasonableness”). Courts have noted that even much smaller percentage
6 recoveries than what was obtained here favor an upward departure from the 25%
7 benchmark. *See, e.g., Marshall*, 2020 WL 5668935, at *2 (collecting cases where
8 recoveries between 10% to 27.6% of damages justified upward departure from
9 benchmark); *Hurtado v. Rainbow Disposal Co.*, 2021 WL 2327858, at *4 (C.D. Cal.
10 May 21, 2021) (settlement “between 23.4% and 34.0% of the maximum” recovery
11 justified upward adjustment). The percentage of recovery here is ***at minimum greater***
12 ***than 90%***—which warrants the requested upwards departure from 25 to 33 1/3
13 percent. Class Counsel regularly takes high-stakes, non-class commercial contingent
14 cases, and the firm typically negotiates contingent fees starting at 40% of the gross
15 recovery, with increases to 45% and 50% depending on the time of settlement and
16 trial. Sklaver Decl. ¶ 4. This is also relevant to determining the reasonableness of the
17 fee request. *See, e.g., Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 623
18 (S.D.N.Y. 2012) (approving one-third fee request partly because clients “typically
19 pay one-third of their recoveries under private retainer agreements”). Excellent
20 results should be rewarded, and Class Counsel held Transamerica accountable for
21 refusing to pay CVIs, despite stiff opposition from a resourceful opponent
22 represented by highly-regarded litigation counsel both before the district court and
23 on appeal.

24 Class Counsel’s request for 33 1/3 percent is well within the range that courts
25 have awarded in other cases involving breach-of-contract claims against life
26 insurance companies, even with less remunerative settlements. *See, e.g., PHT*
27 *Holding II LLC v. N. Am. Co. for Life & Health Ins.*, 2023 WL 8522980, at *5, *7
28 (S.D. Iowa Nov. 30, 2023) (approving 33 1/3 percent award where settlement covered

1 at least 36.2% of damages); *Hancock*, Dkt. 164, at 20:08-10 (approving 30% award,
2 with 6.92 multiplier, where cash fund covered 42% of damages).

3 The settlement here is even more striking considering the other substantial
4 benefits to the Class. Because of Class Counsel’s efforts, Transamerica started paying
5 (through what it called the “Wren Crediting Project,” named after this lawsuit) 30-
6 year CVIs to the policy accounts of certain Class Members, and told those Class
7 Members that their 40-year CVIs would be paid if that anniversary was reached. The
8 Settlement now guarantees those payments, which are valued at more than \$26.5
9 million, which conservatively excludes the interest those account credits earn. *See*
10 Settlement Agreement ¶ 86; Mills Decl. ¶¶ 8, 10–12. The Settlement also requires,
11 subject to Court approval, Transamerica to pay the first \$5.8 million in attorneys’
12 fees in addition to, and on top of, the \$110 million in cash payments and the \$26.5
13 million worth of “Wren Crediting Project” payments. Settlement Agreement ¶ 124.
14 And all participating Class Members are protected under the Settlement from
15 Transamerica denying a death benefit on insurable interest grounds or based on a
16 misrepresentation in the original application—a benefit that could not even have been
17 obtained at trial. Settlement Agreement ¶ 88.

18 Finally, the recovery is also exceptional given how quickly Class Members
19 will receive compensation. This is not a claims-made settlement. Eligible Class
20 Members will automatically receive checks through the addresses that Transamerica
21 keeps on file. Settlement Agreement ¶ 133. And Class Members covered by the Wren
22 Crediting Project have received or will automatically receive increases to their
23 account values in recognition of the 30-year and 40-year anniversaries.

24 **b. Class Counsel Successfully Handled the High Risks**
25 **Associated with This Case on a Fully Contingent Basis**

26 Class Counsel overcame substantial risks in securing the Settlement, which
27 further supports the requested 33 1/3 percent award. This litigation focused on
28 Transamerica’s contractual obligation to pay CVIs, and Transamerica’s alleged bad

1 faith in refusing to honor those contracts. Transamerica aggressively challenged the
2 merits of these claims. No other counsel was willing to take on the costs and risks of
3 this litigation to bring a class action on behalf of the thousands of otherwise
4 unrepresented policyowners.

5 From the outset, it was by no means certain that Plaintiffs had any chance of
6 recovery. Transamerica told Class Members that it would not pay the CVIs because
7 the *Oakes* settlement had released its obligations to do so. And Transamerica then
8 persuaded the Court to grant summary judgment based on *Oakes*. That would have
9 been the end of this case if not for Class Counsel's efforts on appeal. But even after
10 obtaining reversal of that decision, there was a significant risk that further litigation
11 would have resulted in no recovery.

12 Once the Ninth Circuit reversed the application of the *Oakes* bar and the case
13 progressed to discovery, recovery was still far from certain. Plaintiff Wren could not
14 even obtain the necessary policy files and internal communications to prove the case
15 without winning a motion to compel. Had the case gone again to summary judgment,
16 or to trial, or on appeal again, Transamerica had several robust arguments on liability
17 that may well have precluded relief.

18 For example, Transamerica would have sought to convince this Court or a jury
19 that it had no contractual obligation to pay CVIs. Plaintiffs' theory is that
20 Transamerica breached the policies by not paying CVIs because, by the language of
21 the policies, those CVIs were "assumed." But Transamerica would have pointed to
22 other language in the contracts that Plaintiffs' interpretation would arguably make
23 superfluous. For instance, the Plaintiffs' policies each say that it "assumes" the
24 CVIs—but elsewhere uses the term "guarantee." *See, e.g.*, Dkt. 140, at Ex. B; *id.* at
25 Ex. D. Transamerica also argued that it had no obligation to pay CVIs on policies
26 that terminated after Transamerica notified policyholders that it would not pay the
27 30-year CVIs in 2016 because those policyholders failed to mitigate their damages
28 or "immediately seek damages for breach of contract," *Romano v. Rockwell Int'l*,

1 *Inc.*, 14 Cal. 4th 479, 489 (1996) (citation omitted), and because they waived their
2 CVIs by “induc[ing]” Transamerica to reasonably believe that their rights were
3 “relinquished,” *Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4th 588, 598 (2007)
4 (citation omitted).

5 Transamerica would also have contended that these arguments against
6 Plaintiffs’ breach-of-contract claims, if accepted, would bar Plaintiffs’ bad-faith
7 claims. *See, e.g., Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1034
8 (9th Cir. 2008). And Plaintiffs’ bad-faith claims were also vulnerable to
9 Transamerica’s argument that it reasonably relied on *Oakes* to not pay the CVIs,
10 which might have taken on particular force because this Court had rejected Plaintiffs’
11 claims based on *Oakes*. Transamerica was still seeking to raise that argument when
12 the parties reached the settlement, appealing to this Court the decision of Magistrate
13 Judge Pym that Transamerica should not be able to mount that defense unless it
14 agreed to waive privilege over documents concerning its interpretation of *Oakes*. Dkt.
15 167, at 12–13.

16 “The risk that further litigation might result in no recovery is a ‘significant
17 factor’ in assessing the fairness and reasonableness of an award of attorneys’ fees.”
18 *Taylor v. Shippers Transp. Express, Inc.*, 2015 WL 12658458, at *15 (C.D. Cal. May
19 14, 2015) (citation omitted); *accord In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379
20 (9th Cir. 1995) (affirming 33% fee “because of the complexity of the issues and the
21 risks”). Here, the risk of no recovery was very high, as the first adverse summary
22 judgment order showed. Even if Plaintiffs prevailed at both summary judgment post-
23 remand and trial on liability, Transamerica would still have contested damages, and
24 likely would have appealed a final judgment. This risk, and “the financial burden
25 accompanying the contingent nature of the representation,” justify “a higher
26 percentage fee award” here. *Taylor*, 2015 WL 12658458, at *16.

**3. A Lodestar “Cross-Check”, If Used, Confirms That the Fee Requested
Is Reasonable**

Because the percentage approach is preferred, the Court is not required to conduct a lodestar cross-check, *see, e.g., Lopez*, 2022 WL 618973, at *6; *Odom*, 2021 WL 7185059, at *6; *Rubin-Knudsen*, 2021 WL 4924765, at *7, but if it does, that calculation also confirms that the requested one-third fee award is reasonable. The lodestar amount is calculated “by multiplying the number of hours . . . reasonably expended on the litigation by a reasonable hourly rate,” *McGrath v. Cnty. of Nev.*, 67 F.3d 248, 252 (9th Cir. 1995). Current, “rather than historic, hourly rates” apply. *Charlebois v. Angels Baseball LP*, 993 F. Supp. 2d 1109, 1119 n.6 (C.D. Cal. 2012). “Where a lodestar is merely being used as a cross-check,” “the court may use a rough calculation of the lodestar.” *Dashiell v. Cnty. of Riverside*, 2018 WL 3629915, at *6 (C.D. Cal. July 19, 2018) (Bernal, J.) (citation omitted). The Court then considers the multiplier that would result in the fee requested using the percentage-of-the-benefit method.³

Here, the requested fee yields a 7.46 multiplier. Class Counsel, including local counsel, spent 6,187 hours through September 18, 2026 on this entirely contingent action, representing a lodestar of \$6,363,094.⁴ Sklaver Decl. ¶ 39. In accounting for this time, Class Counsel excluded the work of summer associates, as well as attorneys who provided spot assistance or otherwise billed less than 20 hours, and work on this motion. Sklaver Decl. ¶ 38.

This 7.46 multiplier is well within the range other courts routinely conclude is reasonable, especially given the extraordinary benefits obtained in this case, the reasonable rates billed by Class Counsel, and the efficiency with which the case was

³ In cases where courts apply the lodestar method instead of the percentage method, courts may adjust the lodestar based on reasonableness factors that coincide with those used in the preferred percentage method. *See Bluetooth*, 654 F.3d at 942.

⁴ In the Ninth Circuit, “affidavits of the plaintiffs’ attorneys and other attorneys regarding prevailing fees in the community, and rate determinations in other cases are satisfactory evidence of the prevailing market rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (citation and alterations omitted).

1 litigated. *See, e.g., Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at *13 (S.D.
2 Cal. May 28, 2019) (10.96 multiplier); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467,
3 481 (S.D.N.Y. 2013) (“Courts regularly award lodestar multipliers of up to eight
4 times the lodestar, and in some cases, even higher multipliers.”); *Craft*, 624 F. Supp.
5 2d at 1125 (collecting cases with multipliers up to 19.6); *Hancock*, Dkt. 164, at 19:14-
6 20:11 (6.92 multiplier where class recovery was 42%).

7 Counsel’s hourly rates are reasonable. The rates for Counsel and their staff,
8 ranging from \$190 to \$1,850 per hour, are comparable to peer law firms litigating
9 matters of similar magnitude. Sklaver Decl. ¶¶ 39, 41. In a 2026 survey of AmLaw
10 50 law firms performed by PwC, the median billing rate for equity partners was
11 \$1,964 and for associates was \$1,196. Sklaver Decl. ¶ 41. Every SG partner is an
12 equity partner, and every partner, associate, of counsel, staff attorney, and paralegal
13 billed below the respective median rate for each of these categories. Sklaver Decl. ¶¶
14 41–42. Courts indeed regularly find SG’s rates reasonable. *See, e.g., Flo & Eddie,*
15 *Inc. v. Sirius XM Radio, Inc.*, 2017 WL 4685536, at *8–*9 (C.D. Cal. May 8, 2017);
16 *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9,
17 2015) (SG’s rates were “reasonable” and “comparable to peer plaintiffs and defense-
18 side law firms litigating matters of similar magnitude”).

19 The 6,187 hours Class Counsel spent litigating this case over five years are
20 also reasonable. Class Counsel sought discovery relevant to both class certification
21 and the merits as soon as practicable, and elevated the work of associates where
22 appropriate. For example, associates briefed and argued both motions to compel in
23 this case, deposed one of Transamerica’s designated 30(b)(6) corporate
24 representatives, Transamerica’s former CEO, and other former employees, and
25 defended one Class Representative deposition. The most junior SG partner and one
26 of counsel took and defended the other depositions. Class Counsel handled the
27 massive volume of discovery in this case as efficiently as possible: one partner and
28 one associate supervised one of counsel and two staff attorneys, who processed the

1 millions of pages of documents produced by Transamerica. *Cf. In re Volkswagen*
2 *'Clean Diesel' Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 WL 1352859, at
3 *6 (N.D. Cal. Apr. 12, 2017) (explaining that class counsel should not be “punished”
4 for “efficiently litigating” (citation omitted)). Moreover, had Class Counsel not
5 effectively negotiated this Settlement at the time it did, which remunerates upwards
6 of 90% of the unpaid CVIs owed, many thousands more hours would have been
7 expended. After all, this Settlement was reached before expert discovery had been
8 completed, summary judgment litigated, or trial held. Where, as here, counsel
9 through “diligence and experience” secures the relief that could be obtained at trial
10 (if not more) well before trial is reached, a percentage award that would otherwise be
11 justified should not be reduced. *Aguilar Auto Repair, Inc. v. Wells Fargo Bank, N.A.*,
12 2025 WL 1753509, at *10 (N.D. Cal. May 23, 2025); *Herrera v. Cnty. of L.A.*, 2026
13 WL 507909, at *2 (C.D. Cal. Feb. 23, 2026) (“Higher multipliers are especially
14 appropriate where, as here, targeted litigation results in early settlement with
15 excellent benefits to the class.”).

16 Finally, the current 7.46 multiplier does not account for *future* hours that Class
17 Counsel will need to work to ensure that all Class Members receive the Settlement
18 relief, including time that will be spent for final approval, shepherding the notice and
19 disbursement process, and administering the Settlement until all funds are
20 distributed. Sklaver Decl. ¶ 43. All this additional settlement work will further reduce
21 the multiplier. *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales Practices, &*
22 *Prods. Liab. Litig.*, 746 F. App’x 655, 659 (9th Cir. 2018) (explaining that district
23 court permissibly considered future work in analyzing lodestar).

24 **4. The Reaction of the Settlement Class Supports the Requested Fee**

25 “Courts evaluating the reasonableness of an attorney fee award have also
26 considered the presence, or absence, of objections to the award from class members.”
27 *Cooley v. Indian River Transp. Co.*, 2019 WL 2077029, at *7 (E.D. Cal. May 10,
28 2019). The Class was notified that Class Counsel would seek up to 33 1/3 percent of

1 the gross settlement benefits. Sklaver Decl. ¶ 48. As of September 17, 2026, no Class
2 Member has objected, and no Class Member has opted out. *Id.* The lack of objections,
3 at least to date, weighs in favor of the requested award. *See, e.g., Davis v. Symetra*
4 *Life Ins. Co.*, 2025 WL 1434727, at *6 (W.D. Wash. May 19, 2025) (approving 33
5 1/3 percent fee based in part on fact that “no objections were received to the request
6 for attorneys’ fees” in life insurance breach of contract case).

7 **B. Class Counsel’s Expenses Are Reasonable, Were Necessarily**
8 **Incurred to Achieve the Settlement, and Should Be Reimbursed**

9 Class Counsel also requests reimbursement of \$447,905.48 for out-of-pocket
10 expenses incurred in prosecuting this action, which includes \$50,087.06 in expenses
11 incurred by the Administrator to date. *See* Sklaver Decl. ¶¶ 44–45; Intrepido-Bowden
12 Decl. ¶ 3. These expenses, including filing fees, legal research charges, deposition
13 costs, and expert fees, are all of the sort that would normally be charged to a fee
14 paying client and are recoverable here. *Weinstein v. Mortg. Contracting Servs., LLC*,
15 2018 WL 11377827, at *10 (C.D. Cal. Oct. 23, 2018) (Bernal, J.) (Expenses “such
16 as reimbursement for travel, meals, lodging, photocopying” “computer legal
17 research, postage, courier service,” and “mediation” “are typically recoverable”);
18 *Thomas-Byass v. Michael Kors Stores (Cal.), Inc.*, 2016 WL 11506717, at *12 (C.D.
19 Cal. Sept. 19, 2016) (Bernal, J.) (reimbursing expert witness fees).

20 Class Counsel advanced expenses without any assurance they would ever be
21 reimbursed given the contingent nature of the case. That Class Counsel was willing
22 to spend its own money (without outside funding), with reimbursement dependent
23 entirely on this litigation’s success, is perhaps the best indicator that expenditures
24 were reasonable, necessary, and economical where appropriate.

25 Class Counsel also requests the Court approve payment of Settlement
26 Administration Expenses under paragraph 64 of the Settlement. The Administrator
27 has incurred \$50,087.06 in expenses through September 17, 2026, and will incur
28 additional expenses as payments are distributed. Intrepido-Bowden Decl. ¶¶ 3–4.

1 **C. Service Awards for the Plaintiffs Are Appropriate**

2 Plaintiffs William F. Wren and John Murphy each request a service award of
3 \$25,000 for being a class representative, or 0.0176 percent of the total settlement
4 value each. A service award is meant to compensate class representatives “for work
5 done on behalf of the class, to make up for financial or reputational risk undertaken
6 in bringing the action, and sometimes, to recognize their willingness to act as a
7 private attorney general.” *Rodriguez v. W. Publishing Corp.*, 563 F.3d 948, 958–59
8 (9th Cir. 2009). Factors considered include “the risk to the class representative,”
9 “notoriety and personal difficulties encountered,” “the amount of time and effort
10 invested,” “the duration of the litigation,” and “the personal benefit, or lack thereof,
11 enjoyed by the class representative.” *Weinstein*, 2018 WL 11377827, at *11. The
12 “proportion of the payments relative to the settlement amount” is also relevant.
13 *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009).

14 Here, Plaintiffs’ risks were greater than normal given that the case was the first
15 and only class action to involve the CVIs. Plaintiffs spent significant time gathering
16 and reviewing documents to respond to Transamerica’s discovery requests, prepared
17 for and attended day-long depositions, and advised on the settlement process. Wren
18 Decl. ¶¶ 5–12; Murphy Decl. ¶¶ 5–11. Plaintiff Wren spent between 200 and 250
19 hours participating in this case over its five-year run; Plaintiff Murphy, who joined
20 through the Amended Complaint in April 2025, has spent more than 30 hours.
21 Without Plaintiffs’ willingness to bring this case and their involvement in helping to
22 settle it, thousands of similarly situated policyowners would not be receiving any
23 relief.

24 The \$25,000 request is in line with those awarded in other complex class
25 actions involving similar insurance policies, *see, e.g., Hancock*, Dkt. 164, at 21:2-4
26 (approving \$40,000 service awards), and in other complex class actions securing
27 much smaller settlements in this district, *see, e.g., Flo & Eddie*, 2017 WL 4685536,
28 at *11 (\$25,000 service award, which represented “only .2 percent of the \$25.5

1 million minimum recovery”). The awards here merely ensure that Plaintiffs’ efforts
2 and willingness to take on risk for the benefit of the Class—which led to this
3 extraordinary settlement—are recognized.

4 **IV. CONCLUSION**

5 For those reasons, Class Counsel respectfully requests that the Court award
6 attorneys’ fees of \$47,455,027 plus a *pro rata* share of the interest earned on the
7 settlement fund, reimbursement of \$447,905.48 in litigation expenses, and a \$25,000
8 service award for Plaintiffs William F. Wren and John Murphy.

9
10 Dated: September 18, 2026

SUSMAN GODFREY L.L.P.

11 By: */s/ Steven G. Sklaver*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, and Class Counsel, certify that this memorandum contains 6,935 words, which complies with the word limit of L.R. 11-6.1, and does not exceed 25 pages, in compliance with Section 9 of the Standing Order.

Dated: September 18, 2026

By: /s/ Steven G. Sklaver

Steven G. Sklaver