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7 *Class Counsel*

8
9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

11 MARY BETH MONTERA, individually and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 PREMIER NUTRITION CORPORATION
15 f/k/a JOINT JUICE, INC.,

16 Defendant.

Case No. 3:16-CV-06980 RS

**DECLARATION OF THOMAS J.
O'REARDON IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION FOR
AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF NONTAXED
EXPENSES**

CLASS ACTION

Date: May 11, 2023
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Courtroom: Courtroom 3, 17th Floor

Complaint Filed: December 5, 2016
Trial Date: May 23, 2022

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1 I, THOMAS J. O'REARDON, declare:

2 1. I am a partner in the law firm Blood Hurst & O'Reardon, LLP, one of counsel for
3 Plaintiff in this action. I am court-appointed Class Counsel pursuant to Federal Rule of Civil
4 Procedure 23(g) in the above-entitled matter. I have personal knowledge of the matters set forth in
5 this declaration or believe them to be true based on facts and events made available to me and would
6 be competent to testify as to them.

7 **I. INTRODUCTION**

8 2. I submit this declaration in support of Plaintiff's Renewed Motion for Award of
9 Attorneys' Fees and Reimbursement of Nontaxed Expenses. Pursuant to Local Rule 54-5(a) the
10 parties met and conferred for the purpose of resolving any disputed issues relating to attorneys' fees.
11 The parties were not able to come to an agreement.

12 3. I believe the requested fees and costs are fair and reasonable under controlling law,
13 particularly considering the results realized for the Class and the time and expense spent by
14 Plaintiff's Counsel to achieve the results.

15 4. The outstanding result at trial was reached after extensive litigation spanning nearly
16 ten years from the start of pre-filing investigation. The motion practice was substantial and included
17 motions for class certification, a motion for summary judgment, motions to exclude expert
18 declarations in connection with class certification and summary judgment, a motion for judgment
19 on the pleadings, two motions for decertification, motions *in limine*, and numerous *Daubert* motions
20 to exclude expert testimony in connection with class certification, summary judgment, and at trial.
21 All the motions were heavily contested and fully briefed, with some involving multiple rounds of
22 briefing. The litigation also involves substantial discovery. Plaintiff's Counsel work included (1)
23 conducting and defending 49 depositions, including those of Defendant's corporate designees, its
24 CEO, current and former marketing, operations, and science employees, and scientific, marketing
25 and damages-related experts; (2) reviewing over 500,000 pages of documents produced by
26 Defendant; and (3) serving 23 subpoenas on third parties with involvement in marketing and retail
27 sales issues who produced thousands of pages of documents. Plaintiff's Counsel also responded to
28 discovery served on Plaintiff, defended the deposition of Ms. Montera and eleven other named

1 plaintiffs whose testimony was used throughout the litigation, and worked with more than eleven of
 2 their own expert witnesses and additional consultants to prepare for class certification, summary
 3 judgment, and trial, including preparing and exchanging expert reports and conducting and
 4 defending expert depositions. 43 expert reports or declarations were exchanged by the parties at
 5 various stages of the litigation. After a nine-day trial the jury came back after just 2.5 hours and
 6 awarded Plaintiff and the Class full recovery on both consumer fraud claims. Plaintiff's Counsel's
 7 collective, years'-long efforts led to this result, which I believe was the largest class action jury
 8 verdict in the field of consumer product false advertising in at least the past decade. On February
 9 15, 2023, the Los Angeles Daily Journal listed the result as one of the top verdicts of 2022.

10 5. Given the protracted nature of the litigation and the sophistication of counsel
 11 involved, the litigation also changed, refined, and became more challenging over time as defense
 12 counsel adjusted and responded to our positions and as we adjusted and responded to theirs.

13 **II. INDEX OF EXHIBITS TO THIS DECLARATION AND IN SUPPORT OF THE**
 14 **RENEWED MOTION**

15 6. Attached to this declaration are the following exhibits submitted in support of this
 16 Renewed Motion:

- 17 • Exhibit 1: Firm Resume for Blood Hurst & O'Reardon, LLP ("BHO");
- 18 • Exhibit 2: Lodestar Detail
- 19 • Exhibit 3: Photocopying Detail
- 20 • Exhibit 4: Postage / FedEx / Messenger Detail
- 21 • Exhibit 5: Service of Process Detail
- 22 • Exhibit 6: Depositions / Transcripts / Videographers Detail
- 23 • Exhibit 7: Experts / Consultants Detail
- 24 • Exhibit 8: Electronic Document Management Detail
- 25 • Exhibit 9: Online Research Detail
- 26 • Exhibit 10: Conference Calls Detail
- 27 • Exhibit 11: Transportation, Hotels and Meals – Detailed Itemization
- 28 • Exhibit 12: Transportation, Hotels and Meals – Invoices and Credit Card Statements

- Exhibit 13: Miscellaneous Costs Detail
- Exhibit 14: Class Notice and Outreach Detail
- Exhibit 15: Mediation Fees Detail

III. SUMMARY OF LITIGATION HISTORY

A. Pretrial Investigation, Discovery, Experts and Motion Practice

7. Beginning in 2012 and 2013, my firm began investigating whether the advertising claims about Joint Juice were false or misleading. We are a small contingency-only plaintiffs firm and are very selective in the cases we bring. We carefully research them before filing. The work from the beginning was used in the *Montera* trial, which was tried as a type of bellwether for the overall litigation. Despite the number of cases, the litigation was mostly treated as one matter, except for some notable exceptions, because of the shared facts, common science, and very similar legal claims. The investigation included a review of the scientific evidence analyzing Joint Juice's ingredients, glucosamine hydrochloride, chondroitin sulfate, and several vitamins. There was a large amount of science and Plaintiff's Counsel determined that the clear consensus showed that Joint Juice did not work. We also obtained as much advertising as possible and informally sought out various opinions about the implicit meaning of the advertising.

8. On March 21, 2013, the initial complaint was filed on behalf of a nationwide class. Dkt. No. 1 at 15. Premier answered on May 21, 2013. Dkt. No. 21. Soon after, Plaintiff's Counsel began formal discovery and prepared and proposed a detailed ESI protocol, but Premier refused to discuss it. *See* Dkt. No. 42. The parties discussed the possibility of settlement and exchanged limited discovery related to the scientific studies Premier relied on to support its advertising claims and Joint Juice sales data in advance of a November 2013 mediation held in San Francisco. We analyzed Premier's science in preparation for the mediation. Despite a full day of mediation, it went nowhere.

9. Discovery then began in earnest. Pursuant to the parties' later agreement, all the discovery taken in the initial part of the litigation could be and was used in the bellwether case. In 2014, Plaintiff's Counsel subpoenaed documents from Eleven Inc. and R2C Group to obtain market research and other marketing-related documents about Joint Juice and Premier's marketing strategy. The documents from these third parties were used by experts throughout the litigation, including at

1 trial. Plaintiff's Counsel also subpoenaed ten retailers that sold Joint Juice. From these subpoenas,
2 Plaintiff's Counsel received over 2,000 pages of valuable marketing documents and comprehensive
3 retail sales data for the Joint Juice products.

4 10. Starting in June 2014, Plaintiff's Counsel deposed six Premier employees. The
5 depositions included CEO Darcy Horn, Joint Juice Brand Manager Lance Palumbo, and Dr. Kevin
6 Stone, the creator of Joint Juice. Premier also designated Mr. Palumbo as a Rule 30(b)(6) witness.
7 Given the number of topics and amount of testimony, his deposition took place over three days.
8 These depositions were used in preparing the *Montera* trial and to impeach the Premier executives
9 and employees at trial.

10 11. Also in 2014, Plaintiff's Counsel retained various expert consultants to help guide
11 them in the case. These include Dr. Jeremiah Silbert, Dr. Steven R. Graboff, Dr. Lynn R. Willis,
12 and Mark Keegan. Each of these experts helped Plaintiff's Counsel understand various aspects of
13 the case to allow them to formulate theories and arguments used throughout the litigation. They also
14 gave us the foundation to adapt, change and refine theories as both sides approach to the litigation
15 became for sophisticated and nuanced. They further led us to additional experts that were ultimately
16 used in connection with trial.

17 12. In the first part of 2015, the parties retained experts and exchanged expert reports to
18 be used for class certification, summary judgment, and the first scheduled trial. The parties each
19 retained science, marketing, survey, and damages experts. In April 2015, the parties participated in
20 a second mediation in San Francisco. Once again, the mediation failed. Expert discovery continued
21 with the depositions of five expert witnesses.

22 13. Premier then filed a motion for summary judgment (Dkt No. 85), and Plaintiff moved
23 for class certification (Dkt. No. 88). Both motions were heavily briefed and involved a large amount
24 of evidence. The orders resulting from these motions have been repeatedly used by the parties and
25 the Court, including in connection with motions filed shortly before, during and after the *Montera*
26 trial. Plaintiff's motion sought a nationwide class or alternatively, a multi-state class which included
27 the New York class here. Premier opposed a nationwide class and any grouping for a multistate
28

1 class. Dkt. No. 98. Each party also filed *Daubert* motions to exclude aspects of the other side's
2 expert opinions.

3 14. On April 15, 2016, the Court issued its order denying Premier's motion for summary
4 judgment and granting portions of plaintiff's motions to exclude Premier's marketing and science
5 experts. *See Mullins*, 178 F. Supp. 3d 867 (N.D. Cal. 2016). The Court found that the full refund
6 damages model was appropriate, found that Premier targeted arthritis sufferers and utilized Dr.
7 Stone in advertisements to add credibility to the Joint Juice advertising message, and noted that
8 Plaintiff's Counsel had "identified many significant issues to address during cross-examination"
9 with Premier's outside survey expert. *Id.* at 876, 878, 906. The Court excluded Premier's expert's
10 opinions related to treatment protocols and injectable glucosamine. *Id.* at 904. Plaintiff has
11 continually relied on this order throughout the litigation, including to exclude certain opinion
12 testimony of Premier's Dr. Grande, whose testimony was so limited by the time of the *Montera* trial
13 that Premier did not call him as a witness. *See* Dkt. No. 180 at 16-18. The Court granted class
14 certification of the California class and requested further briefing from the parties related to the
15 multi-state class. *See Mullins*, 2016 U.S. Dist. LEXIS 51140 (N.D. Cal. Apr. 15, 2016).

16 15. The experts and consultants retained by Plaintiff's Counsel in the litigation were
17 crucial in developing Plaintiff's litigation and trial strategy and combating the convincing pseudo-
18 science Premier developed. For example, Dr. Silbert was retained to show that physiologically the
19 active ingredients never made it to one's joints. Dr. Silbert was the world's leading researcher in
20 this area. He passed away last year. Even then, Dr. McAlindon used Dr. Silbert's research and
21 insights in his trial testimony. *See e.g.*, Trial Tr. 109. Dr. Silbert's assistance also was the genesis of
22 Plaintiff's Counsel presentation at trial about the misleading nature of Premier's advertisements that
23 showed or implied that Joint Juice was absorbed into the joint. Premier's summary judgment motion
24 was so thoroughly repudiated that aspects of it have been used throughout the litigation and that was
25 the only summary judgment motion Premier brought.

26 16. Dr. Graboff also helped Plaintiff's Counsel develop the facts and arguments about
27 the hierarchy for treating osteoarthritis and professional medical societies' guidelines
28 recommending against the use of glucosamine and chondroitin supplements for osteoarthritis, which

1 also was used at trial. His testimony was cited in the order denying Defendant's motion for summary
2 judgment: 178 F. Supp. 3d 867, 885, 893 (N.D. Cal. 2016).

3 17. Dr. Willis helped Plaintiff's Counsel understand and formulate arguments used
4 throughout the litigation about clinical research, meta-analyses, treatment protocols, and in vitro and
5 animal study research. He helped counsel locate additional experts used in the litigation and was
6 cited extensively by the Court in the order denying Defendant's motion for summary judgment: *Id.*
7 at 883-86, 895.

8 18. Mr. Keegan helped Plaintiff's Counsel understand Premier's consumer research, the
9 Joint Juice advertising message, and the faults with Premier's survey expert's, Hal Poret, opinions.
10 Mr. Keegan's expert testimony was cited in the orders granting class certification and denying
11 Defendant's motion for summary judgment *See, e.g., Id.* at 867, 879-82 and 2016 U.S. Dist. LEXIS
12 51140, at *9 (N.D. Cal. Apr. 15, 2016).

13 19. The summary judgment and class certification orders have been central to the
14 litigation and extensively relied upon by the parties in *Montera*. *See e.g.*, Dkt. No. 290 at 7-8, 13-
15 14, 16, 18 (Plaintiff's opposition to decertification motion); (Plaintiff's opposition to decertification
16 motion); Dkt. No. 264 at 6 (Plaintiff's objections to final jury instructions); Dkt No. 227 (Premier's
17 opposition to motion *in limine*); Dkt No. 224 at 1-2, 9-10 (Plaintiff's motion *in limine*); Dkt No. 222
18 at 5 (Plaintiff's trial brief); Dkt No 208 at 3, 7 (Plaintiff's opposition to motion *in limine*); Dkt. No.
19 190 at 2-3 (same); Dkt. No. 166 (same); Dkt. 165 at 1, 2-3 (same); Dkt No. 188 at 1 (same); Dkt.
20 No. 184 at 1, 5, 11 (Plaintiff's opposition to the motion to exclude opinions of Dr. Dennis at trial);
21 Dkt. No. 166 at 2 (Plaintiff's motion *in limine*); Dkt No. 165 at 1, 2, 3 (same); Dkt No. 145 at 1
22 (Premier's opposition to motion to exclude Dr. Grande's testimony at trial); Dkt No. 129 at 1, 3-4
23 (Plaintiff's motion to exclude Dr. Grande's testimony at trial); Dkt No. 124 at 4 (Plaintiff's motion
24 to exclude e Dr. Silverman's testimony at trial); Dkt. No. 193 at 53 (Plaintiff's proposed jury
25 instructions).

26 20. As a result of positions taken by Premier and consistent with the Court's class
27 certification ruling, between November 18, 2016, and January 5, 2017, Plaintiff's Counsel filed the
28 additional state-only class actions, including the New York action that became *Montera*.

1 21. At the February 9, 2017, case management conference, Premier made an oral motion
2 to stay the related actions until after the *Mullins* trial. *Montera*, Dkt. No. 170. Counsel for plaintiffs
3 objected, but the Court granted the motion to stay. *Id.* Premier then requested a continuance of the
4 expert disclosures deadline, which was granted. *Id.*

5 22. As a result of the passage of time and as the case developed because of the hard-
6 fought and protracted nature of this litigation, Plaintiff retained additional experts because others
7 were no longer able to testify or people with different backgrounds became more useful given the
8 posture of the litigation, the positions we wanted to advance, and our responses to positions taken
9 by Premier, its lawyers, and their experts. These included retaining Dr. McAlindon, one of the
10 world's leading scientific experts on osteoarthritis, in 2016. Picking up on work done by earlier
11 experts, Dr. McAlindon provided extensive analysis of the scientific evidence behind the Joint Juice
12 ingredients. Dr. McAlindon systematically reviewed the applicable scientific studies and produced
13 an expert report exceeding one-hundred pages. He also developed detailed rebuttal reports to refute
14 the assertions of Premier's experts, Drs. Grande, Lippiello, and Silverman. These reports provided
15 the framework for his trial testimony and were utilized in developing several of the trial
16 demonstratives used with the jury.

17 23. Plaintiff also retained Colin Weir in 2017 to rebut expert opinions of Premier's
18 economics expert, Dr. William Choi, as defendant developed its theme that Joint Juice provided
19 multiple benefits and people purchased Joint Juice for multiple reasons. Because of this rebuttal
20 work, Dr. Choi substantially limited the related expert report done shortly before the *Montera* trial.
21 Although Plaintiff's Counsel also retained Mr. Weir to rebut Dr. Choi, given the weakness of Dr.
22 Choi's opinions, Plaintiff's Counsel decided the rebuttal testimony was not needed. Instead, Mr.
23 Weir's trial testimony was limited to the retail sales data analysis he performed.

24 24. Plaintiff's Counsel are not including the *Sonner*-specific trial work performed in
25 connection with the then-anticipated May 10, 2018, trial on behalf of the California class, plaintiff
26 *Sonner*'s claim for injunctive relief which was eventually dismissed for lack of personal jurisdiction,
27 work relating to the bill of costs filed by Premier in *Sonner*, or work performed in the subsequent
28 *Bland* and *Sonner* state court actions (currently pending in Alameda County Superior Court) relating

1 to the complaints in those actions, removal, remand, the 2020 and 2021 state court motions for class
2 certification, Premier's motion to stay in *Sonner*, class notice in *Bland*, or third-party retailer
3 subpoenas served in August 2022 in *Bland*. We will file future fee motions as appropriate, and as a
4 result, we have also not presently included the time spent on this renewed motion or work on the
5 Ninth Circuit appeals filed post-trial in this action. Plaintiff also is not seeking reimbursement for
6 fees or expenses related to the work pertaining to the various *Sonner* appeals, as that work did not
7 directly benefit the New York Class in *Montera*.

8 25. In September 2018, the Court lifted the stay in the related actions, including the New
9 York action, and shortly thereafter, Premier answered the ten complaints. *Montera*, Dkt. No. 36.
10 Because the actions are all based on the same facts and assert similar state statutory consumer
11 protection claims presenting largely the same issues, the parties agreed to streamline discovery by
12 sharing the discovery obtained up to that date. *Montera*, Dkt. No. 28. All of the work done up to this
13 time was used in *Montera*, other than the time excluded as described above, for the work unique to
14 *Sonner*.

15 26. On July 18, 2019, Premier moved for judgment on the pleadings again arguing the
16 FDA preempted the state law claims because Joint Juice was not advertised to treat or prevent
17 arthritis or joint pain. *See Montera*, Dkt. No. 48. The Court denied the motion noting that "the prior
18 order denying summary judgment in *Mullins* found that plaintiff had successfully raised triable
19 issues of fact regarding both [implied prevention and treatment of arthritis] claims." *Mullins*, 2019
20 U.S. Dist. LEXIS 153698, at *12 (N.D. Cal. Aug. 29, 2019). Premier deposed the other named
21 plaintiffs. The testimony from these named plaintiffs has been used throughout the litigation,
22 including by Plaintiff and the Court in connection with the motion for leave to substitute Ms.
23 *Montera* as the Class Representative. *Montera*, Dkt. No. 134 at 5-6.

24 27. On August 29, 2019, Plaintiffs filed an omnibus motion for class certification after
25 Premier refused to stipulate that the class certification requirements were met. *See Montera*, Dkt
26 No. 60-3. Despite its refusal that required us to fully brief class certification again, in the end, and
27 given the work we did in obtaining the prior order granting class certification of the California class,
28 Premier did not oppose the motion other than on a minor issue about the length of some of the class

1 periods. *See Mullins*, 2019 U.S. Dist. LEXIS 229365, at *2-3 (N.D. Cal. Dec. 17, 2019) (“In light
 2 of the class of California consumers previously certified in this action, [citation] Premier does not
 3 substantively oppose class certification.”). The Court also acknowledged that “Plaintiffs have
 4 provided hundreds of pages of factual discovery demonstrating that Premier engaged in a
 5 coordinated advertising campaign which caused customers to buy Joint Juice because of its
 6 purported health benefits.” *Id.* at *4.

7 28. Next, from June 2019 to December 2021, Drs. Guilak, Dennis, and Rucker were
 8 retained to consult, prepare Rule 26 reports, and testify as needed. Dr. Guilak, an expert in basic
 9 science research on osteoarthritis, tissue engineering, and biomechanics, was retained to refute one
 10 of Premier’s central science experts, Dr. Grande and address topics previously addressed by Dr.
 11 Silbert. Dr. Guilak was also retained to rebut another of Premier’s former science experts, Dr.
 12 Lippiello, whom Premier ultimately chose to not use.

13 29. Plaintiff retained Dr. Dennis to conduct a consumer survey concerning the
 14 advertising message conveyed by Joint Juice. The Court noted that Dr. Dennis’ survey “bolstered”
 15 the evidence that Plaintiff developed in the prior class certification briefing. *See* 2019 U.S. Dist.
 16 LEXIS 229365, at *4. Dr. Rucker, a highly published researcher in the science of marketing,
 17 advertising, and psychology, described the marketing elements which are implemented by brands
 18 and analyzed Premier’s marketing documents to analyze Premier’s strategy and conclude that a
 19 reasonable consumer purchases Joint Juice to address their joint issues such as joint pain and
 20 stiffness. *See* Dkt. No. 127-2 at 35. Drs. Guilak, Dennis, and Rucker also scrutinized Premier’s
 21 experts in their rebuttal reports.

22 30. On September 24, 2020, a third all-day mediation session was held. The mediator,
 23 Judge Layne Phillips, concluded after half a day that continuing further would not result in a
 24 resolution.

25 **B. Preparing for Trial in *Montera*, Including Additional Expert Discovery**
 26 **and Motion Practice**

27 31. In April 2021, the Court directed the parties to propose trial dates and selected a first
 28 case for trial. *See Montera*, Dkt. No. 96. The parties reached agreement on possible trial dates but

1 not on the first case to try. *Montera*, Dkt No. 97. In November 2021, the Court issued an order
2 setting the trial date in *Montera* for May 23, 2022. Dkt. No. 98. Class Notice was disseminated on
3 December 28, 2021. The parties prepared for trial, worked with the science, marketing, survey, and
4 damages consultants and experts, completed expert discovery, and plaintiffs requested and received
5 updated fact discovery related to sales data.

6 32. While preparing for trial, Class Counsel learned that the original named plaintiff had
7 been found to be an inadequate class representative in another action. *See Montera*, Dkt. No. 106.
8 Class Counsel believed that ethically they had no choice but to seek to substitute the class
9 representative, even though the named plaintiff had done an excellent job in this case. Accordingly,
10 on February 28, 2022, Class Counsel moved for leave to substitute Ms. Montera and requested that
11 the Court appoint her as the new Class Representative. *Id.* Premier opposed the motion and requested
12 that the Class be decertified or alternatively, that the trial be delayed. *Montera*, Dkt. No. 111. The
13 Court granted the motion for leave, appointed Ms. Montera as the Class Representative, and held
14 firm on the trial date. *Montera*, Dkt No. 134. We made Ms. Montera available for deposition on
15 May 4, 2022.

16 33. On March 24, 2022, Premier again sought to decertify the Class, arguing causation
17 was lacking because consumers purchase Joint Juice for “many reasons having nothing to do with
18 Premier’s advertising” and a full refund was not available because Joint Juice provides non-joint
19 health benefits such as taste and hydration. *Montera*, Dkt. No. 130 at 1, 3, and 8.

20 34. From January 12, 2022, to February 14, 2022, the parties designated 12 experts and
21 exchanged 20 expert reports. The parties prepared and took 11 expert witness depositions. *Id.*
22 Thereafter, the parties collectively filed eleven *Daubert* motions, with corresponding opposition and
23 reply briefs to each.

24 35. On April 26, 2022, the Court denied another of Premier’s motions to decertify the
25 class and granted in part and denied in part the parties *Daubert* motions. *Montera*, 2022 U.S. Dist.
26 LEXIS 75843 (N.D. Cal. Apr. 26, 2022). As a result of the years of work done, the strategic positions
27 we took, and our efforts to impact the positions Premier’s experts were forced to take, the order was
28 overwhelmingly favorable to Plaintiff. The Court agreed with Plaintiff that statutory damages under

1 the GBL are to be assessed on a “per transaction” basis. *Id.* at *21. The Court excluded Premier’s
2 lead scientific expert, Dr. Silverman, from testifying on the human microbiome and the
3 bioavailability of the active ingredients in Joint Juice, personal observations about his patients’ use
4 of glucosamine, the importance of alternative osteoarthritis treatments, and regulatory matters. *Id.*
5 at *22-26. The Court also precluded Premier’s other science expert, Dr. Grande, from testifying
6 about bioavailability because it was based on “speculation.” *Id.* at *26-28. Plaintiff’s Counsel were
7 able to limit and truncate Dr. Grande’s testimony so much that Premier never called him at trial,
8 even though it kept saying it would so Plaintiff’s Counsel would have to spend time preparing the
9 cross-examination. The Court also found that the consumer survey conducted by Premier’s expert
10 has “limited probative value” and “numerous shortcomings” which could be addressed on cross-
11 examination. *Id.* at *31-32. The Court precluded Premier’s two non-retained experts, Dr. Stone and
12 Palumbo, from providing expert testimony. *Id.* at *34-36. Premier’s motion to decertify the class
13 was also denied. *Id.* at *37-44 (holding “Plaintiff has presented common evidence that Premier’s
14 marketing statements caused class members to purchase Joint Juice,” and “Plaintiffs may pursue a
15 full refund theory of liability.”).

16 C. The *Montera* Jury Trial and the Post-Trial Motions

17 36. After a nine-day class trial, the jury reached a unanimous verdict in just two and half
18 hours. *See Montera*, 2022 U.S. Dist. LEXIS 144491, at *7-8 (N.D. Cal. Aug. 12, 2022). The jury
19 found that Premier engaged in deceptive acts and practices in violation of GBL § 349 and that Joint
20 Juice was falsely advertised in violation of GBL § 350. *Id.* The jury found that full refunds should
21 be awarded to Ms. Montera and the Class, rejecting Premier’s applicable arguments and expert
22 opinion testimony. *Id.* at *8.

23 37. Thereafter, Premier filed an unsuccessful motion for judgment as a matter of law. *Id.*
24 The Court also granted Plaintiff’s motion for entry of judgment, awarding \$50 for each purchase of
25 Joint Juice in the amount of \$8,312,450 in statutory damages and \$4,583,004.90 in prejudgment
26 interest, for a total of \$12,895,454.90. *Id.* at *26.

27 38. On August 26, 2022, Plaintiff’s Counsel filed a motion for an award of attorneys’
28 fees, reimbursement of expenses, and a service award for the Class Representative, Ms. Montera.

1 Montera, Dkt. No. 296. Based on either the percentage-of-the-fund or lodestar method, Plaintiff's
 2 Counsel requested a fee award of \$6,806,031.96, which is equal to 33% of the gross benefit to the
 3 Class (\$20,438,534.42). This amount also represented a 1.06 multiplier on the conservative
 4 attribution of the portion of Plaintiff's Counsel's lodestar benefitting the *Montera* lawsuit. *See*
 5 *Montera v. Premier Nutrition Corp.*, 2022 U.S. Dist. LEXIS 190146, at *7 (N.D. Cal. Oct. 18, 2022).
 6 Plaintiff's Counsel also sought \$1,133,794.77 in reimbursed expenses, and a \$25,000 service award
 7 for Ms. Montera. *Id.* at 13. Premier responded by contending that Plaintiff's Counsel was only
 8 entitled to fees equal to 25% of the Class's judgment (\$3,223,863.73), and the fee award must come
 9 from and draw down the Class's judgment. *Montera*, Dkt. No. 306. Premier also contended that
 10 Plaintiff's Counsel's expenses must be apportioned equally among all related Joint Juice actions and
 11 so they are only entitled to reimbursement of \$197,852.36 in expenses. *Id.* Premier did not contest
 12 the proposed service award to Ms. Montera. *Id.*

13 39. Also on August 26, 2022, Plaintiff's Counsel filed a Rule 54(d)(1) bill of costs
 14 seeking \$132,096.79 in taxable costs. *Montera*, Dkt. No. 295. Premier opposed most of these costs
 15 and argued based on an apportionment theory that the Court deduct at least \$82,611.20 from the
 16 requested taxable costs. *Id.*, Dkt. No. 307. Pursuant to a stipulated schedule, Plaintiff's Counsel filed
 17 a reply on September 30, 2022. *Id.*, Dkt. No. 310.

18 40. On October 10, 2022, the Clerk issued an order taxing costs of \$54,455.74. *Montera*,
 19 Dkt. No. 314 (the "Taxation Order"). The Taxation Order contains a mathematical error. The order
 20 correctly states that Plaintiff's Counsel sought \$132,096.79 in total taxable costs. However, there
 21 appears to be a mathematical mistake in the order because it also states that \$82,611.20 in costs
 22 relating to deposition transcripts / video recordings were disallowed. Additionally, the Taxation
 23 Order did not state whether the \$342.60 in requested visual aid costs (Civil LR 54(d)(5)) was
 24 allowed or disallowed. Premier did not oppose taxing the \$342.60 requested. *Montera*, Dkt. No.
 25 307. Below is a chart of the requested and awarded items and amounts. However, the possible error
 26 is likely a moot issue. That is because in the accompanying Renewed Motion for fees and expenses
 27 Plaintiff's Counsel seeks reimbursement of all nontaxed expenses. This amount is \$1,073,123.10,
 28

1 which is equal to the total expenses incurred in this litigation of \$1,127,578.85 less the \$54,455.74
2 taxed by the Clerk on October 10, 2022.

3 Cost Item	Amount Claimed	Amount Allowed	Disallowed	Disallowance Reason
4 Filing Fees and Docket Fees	\$400.00	\$400.00		
5 Transcripts for appeal	\$34,117.70	\$34,117.70		
6 Deposition transcript/video recording	\$88,162.77	\$10,864.32	\$82,611.20	D-Disallowed as unrecoverable under 28 U.S.C. Section 1920
7 Deposition exhibits	\$4,799.25	\$4,799.25		
8 Notary & reporter attendance fees	\$513.50	\$513.50		
9 Trial exhibits	\$3,760.97	\$3,760.97		
10 Visual Aids	\$342.60	<u>NOT STATED</u>	<u>NOT STATED</u>	
11 TOTAL	\$132,096.79	\$54,455.74	\$82,611.20	

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17 41. On October 18, 2022, after full briefing, the Court issued an order granting in part
18 and denying in part the motion. *Montera v. Premier Nutrition Corp.*, 2022 U.S. Dist. LEXIS 190146
19 (N.D. Cal. Oct. 18, 2022). The Court granted the unopposed request for a \$25,000 service award to
20 Ms. Montera, held that the GBL fee-shifting statutes apply and that fees shall be shifted in this
21 action, that Premier must pay the fee award directly and on top of the Class's judgment, but denied,
22 without prejudice, Plaintiff's Counsel's requested fee and expense award. *Id.* at *6-14. The Court
23 determined that the lodestar method serves as the relevant guide for the fee award in this action, and
24 therefore Plaintiff's Counsel should resubmit a fee and expense request with more detailed
25 documentation about the lodestar and expenses. *Id.* at *10-13.

26 42. On September 9, 2022, Premier filed a Rule 59 Motion for a New Trial (*Montera*,
27 Dkt. No. 304), and a Rule 50(b) Renewed Motion for Judgment as a Matter of Law (*Id.*, Dkt. No.
28 302). In its new trial motion, Premier argued a new trial was necessary because of issues relating to

1 jury instructions, admitted evidence, improper argument, the Seventh Amendment, and that the jury
 2 verdict was contrary to the weight of the evidence. In its Rule 50(b) motion, Premier made
 3 arguments that it possessed scientific substantiation that precluded liability as a matter of law under
 4 the GBL, that civil liability is prohibited by the First Amendment and New York Constitution, and
 5 that Plaintiff failed to establish injury, causation, and materiality elements of the GBL claims. To
 6 protect the verdict and judgment, Plaintiff's Counsel opposed both motions. *Id.*, Dkt Nos. 308, 309.
 7 On October 18, 2022, the Court issued an order denying Premier's motion for a new trial and
 8 renewed motion for judgment as a matter of law. *Montera v. Premier Nutrition Corp.*, 2022 U.S.
 9 Dist. LEXIS 190146 (N.D. Cal. Oct. 18, 2022).

10 **D. Summary of Plaintiff's Counsel's Efforts to Achieve the Successful**
 11 **Result at Trial**

12 43. This case was the bellwether trial for this litigation. In all, Plaintiff's Counsel took
 13 25 depositions, defended and prepared witnesses for 24 depositions, and served 23 subpoenas;
 14 eleven sets of discovery requests were exchanged by the parties, well-over half a million pages of
 15 ESI were produced by Premier, and 43 expert reports or declarations were exchanged by the parties
 16 at various stages of the litigation; Plaintiff's Counsel successfully opposed a summary judgment
 17 motion, a motion for judgment on the pleadings, a motion for judgment as a matter of law, two
 18 motions to decertify the class, and brought two class certification motions; the parties brought 29
 19 written motions *in limine* and 17 *Daubert* motions; the Court issued nearly 100 orders over the
 20 course of the litigation; and the trial transcript consisted of 1,705 pages of trial proceedings.

21 44. While more work lies ahead, to date Plaintiff's Counsel has expended significant
 22 resources that all led to achieving the outstanding result at trial.

23 **IV. THE REQUESTED FEES**

24 45. My firm prosecuted this litigation on a pure contingent basis with no guarantee of
 25 recovery. Primarily my firm, but also along with co-counsel, incurred 100% of the risk in pursuing
 26 the litigation. Over the course of nearly ten years, my firm advanced well over a million dollars in
 27 expenses with the understanding that we would be paid a fee and receive reimbursement for
 28 expenses only if successful. We took on and prevailed against a publicly traded, billion-dollar

1 company that was supported by a team of a highly experienced class action and trial attorneys from
2 three AmLaw 100 law firms: Arnold & Porter, Venable, and Morrison & Foerster. Following the
3 trial verdict, a fourth AmLaw 100 law firm, Faegre Drinker Biddle & Reath, appeared as additional
4 counsel for Premier.

5 46. My firm passed on other employment opportunities to devote the time and resources
6 necessary to pursue this litigation.

7 47. My firm has been involved in every aspect of the litigation from inception through
8 the present. I played a primary role in prosecuting this litigation and was responsible for day-to-day
9 litigation activity, including pursuing discovery from Defendant and third parties, responding to and
10 drafting motions, including at the summary judgment, class certification and *Daubert* stages,
11 working with each of Plaintiff's experts in preparing declarations and Rule 26 reports, and attending
12 trial where I helped prepare witnesses, aided in devising direct and cross examination strategies, and
13 helped create opening and closing statements and the trial demonstratives.

14 **A. Qualifications of Class Counsel and Their Roles in This Litigation**

15 48. The backgrounds and qualifications of the BHO attorneys who worked on the matter
16 are set forth in the Firm Resume, a true and correct copy is attached as **Exhibit 1** to this declaration.
17 BHO has significant experience prosecuting consumer protection class actions, including class
18 actions involving the false advertising of consumer products. We have been appointed class counsel
19 by state and federal courts throughout the country, have worked on a number of appeals resulting in
20 decisions presenting consumer protection law issues relevant to this action, and frequently give
21 continuing legal education lectures at seminars about class actions, consumer protection and related
22 issues. BHO has developed an expertise in dietary supplement false advertising cases, and in
23 particular, class actions challenging the truthfulness of health benefit claims made on the labels and
24 advertising of dietary supplements and other consumer products. We are responsible for obtaining
25 landmark appellate decisions in this field and for securing the largest, all-cash settlement in a dietary
26 supplement class action. *See Yamagata v. Reckitt Benckiser* (N.D. Cal. 2021) (\$50 million
27 settlement in action challenging the truthfulness of glucosamine/chondroitin joint health claims);
28 *Kroessler v. CVS Health Corp.*, 977 F.3d 803 (9th Cir. 2020) (no FDA preemption of state law

1 claims challenging labeling of dietary supplements); *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989
2 (9th Cir. 2018) (plaintiff's burden of proof when challenging dietary supplement labeling claims as
3 false or misleading under state consumer protection laws); *Rikos v. P&G*, 799 F.3d 497 (6th Cir.
4 2015) (class certification when challenging dietary supplement labeling claims as false or
5 misleading under state consumer protection laws); *Fitzpatrick v. General Mills, Inc.*, 635 F.3d 1279
6 (11th Cir. 2011) (same).

7 49. Described below are the general roles and responsibilities of each professional at
8 BHO who worked on this litigation.

9 50. I took a lead role on thirty-two (32) depositions of party and non-party witnesses and
10 outside experts. I took the depositions of Defendant's current and former employees and Rule
11 30(b)(6) designee who played various roles in the marketing, sales, scientific substantiation of Joint
12 Juice, taking the depositions of Defendant's outside experts on matters of science, damages,
13 marketing, and consumer surveys, and defending the depositions of experts on matters of marketing,
14 consumer surveys, damages and science. I also took the lead role on subpoenas to 17 third parties
15 (with many receiving multiple subpoenas), and negotiating with each of their in-house or outside
16 counsel to obtain relevant information. The information obtained from the third parties was utilized
17 in connection with fact witness and expert depositions, expert reports, class certification, summary
18 judgment, and trial. I also attended the trial where I helped prepare witnesses, aided in devising
19 direct and cross examination strategies, and helped create opening and closing statements and the
20 trial demonstratives. I have substantial experience litigating consumer product false advertising
21 cases, including over fifteen years working with scientific experts on matters of the scientific
22 veracity of health benefit claims. As a result of this experience, which includes years of experience
23 litigating deceptive health benefit claims on the labels of dietary supplements in general, and
24 glucosamine product cases in particular, I was able to litigate this matter efficiently and effectively
25 from the filing of the complaint, through discovery, class certification, summary judgment, expert
26 retention and workup of their reports and the review of opposing expert work, trial preparation, and
27 the class trial itself.

28

1 51. My partner, Timothy Blood, oversaw each aspect of the litigation and had primary
 2 responsibility for overall litigation strategy. He was personally involved in drafting every
 3 substantive pleading in this litigation, including class certification, summary judgment and *Daubert*
 4 motions, taking the lead role at all oral arguments, closely coordinating with me, Paula Brown, and
 5 Craig Straub about discovery and expert strategy to efficiently delegate and allocate responsibilities
 6 based on seniority, billing rate and expertise, defended three depositions of Plaintiff's experts, took
 7 the deposition of one of Defendant's marketing experts, worked with Plaintiff's retained experts,
 8 assisted with trial preparation, and took a lead role at trial where he cross-examined one of
 9 Defendant's primary consumer survey experts. Mr. Blood also took the lead on mediation efforts.
 10 There were numerous formal and informal attempts to reach a settlement before and after class
 11 certification and while engaging in substantial discovery and motion practice. These attempts
 12 included use of three separate mediators, but all were unsuccessful. *See also Montera*, Dkt. No. 296-
 13 1 (Blood Decl.) at ¶¶ 39, 46 (same).

14 52. My partner, Leslie Hurst, is an appellate attorney who has authored numerous trial
 15 and appellate briefs on relevant issues relating to scientific substantiation and efficacy, structure /
 16 function and implied disease claims, the scope of preemption under the Dietary Supplement Health
 17 and Education Act of 1994 ("DSHEA"), and rights to pursue equitable relief in federal courts. For
 18 instance, Ms. Hurst argued before the Ninth Circuit Court of Appeals in *Sonner v. Schwabe North*
 19 *America, Inc.*, No. 17-55261 (argued May 16, 2018; op. filed Dec. 26, 2018), *Sonner v. Premier*
 20 *Nutrition Corp.*, No. 18-15890 (argued Dec. 3, 2019; amended op. filed Aug. 20, 2020), *Kroessler*
 21 *v. CVS Health Corp.*, No. 19-55671 (argued July 8, 2020; op. filed Oct. 9, 2020), *Seegert v. Rexall*
 22 *Sundown, Inc.*, No. 20-55486 (argued Sept. 3, 2021; op. filed Feb. 1, 2022), *Sonner v. Premier*
 23 *Nutrition Corp.*, No. 21-15526 (argued May 23, 2022). Here, besides taking the lead role on the
 24 appeals in *Sonner* and post-trial in this action, which time is not included in the lodestar being
 25 submitted with this motion, Ms. Hurst worked on the briefing relating to Defendant's summary
 26 judgment, Defendant's motion for judgment on the pleadings, the motions for class certification,
 27 Plaintiff's motion for entry of judgment, and Defendant's motion for judgment as a matter of law.

28

1 53. Paula Brown is a partner at BHO. Ms. Brown has significant experience litigating
2 false advertising cases relating to dietary supplements. Ms. Brown's experience also includes trying
3 certified class actions. In this litigation, Ms. Brown played a central role in prosecuting this litigation
4 including defending or taking eight depositions including defending six named plaintiff depositions
5 which took place around the country, taking the deposition of one of Defendant's primary expert
6 witnesses, and defending one of Plaintiff's experts, preparing the named plaintiffs for their
7 depositions, drafting motions *in limine* before trial, at the summary judgment stage, and as the rest
8 of the team was working simultaneously at the class trial, worked on the summary judgment-related
9 briefing, including as primary drafter of motions to exclude the testimony of Defendant's experts,
10 and worked on trial-related briefing, including as the primary drafter of the jury instructions, verdict
11 form, and motions to exclude expert testimony of Defendant's expert William Choi and others.

12 54. Jennifer MacPherson is Of Counsel at BHO where she works as a full-time salaried
13 attorney. Before joining BHO in 2012, Ms. MacPherson spent years litigating class actions,
14 including at the law firm Milberg Weiss (now Robbins Geller Rudman & Dowd, LLP).
15 Ms. MacPherson's work on this litigation included assisting with obtaining discovery from
16 subpoenaed retailers of Joint Juice (a unique task she has experience with from other consumer
17 product class actions), drafting briefing relating to evidence submitted at summary judgment, and
18 assisting Ms. Hurst in the two *Sonner* appeals and with class certification briefing. As true with Ms.
19 Hurst (and all other Plaintiff's Counsel), Ms. MacPherson's time spent on *Sonner* appeal-related
20 matters is not included in the lodestar submitted with this motion.

21 55. Craig Straub was an associate at BHO. Mr. Straub and I were the attorneys at BHO
22 responsible for the day-to-day litigation of these cases. In these actions, Mr. Straub was tasked with
23 reviewing and analyzing the hundreds of thousands of pages of documents produced by Defendant
24 and third parties. Mr. Straub had primary responsibility for organizing this large volume of data and
25 identifying "hot" documents in connection with class certification, summary judgment, fact and
26 expert depositions, expert review, focus groups, and trial preparation including drafting the trial
27 exhibit list. Mr. Straub drafted numerous memoranda about these key documents and other factual
28 and evidentiary issues he identified and met with the other attorneys on the team throughout the

1 litigation to apprise them of these facts. Since joining my firm in 2016, Mr. Straub was also the
2 primary attorney tasked with organizing and preparing potential exhibits for nearly every deposition
3 conducted by my firm and co-counsel in this litigation. Mr. Straub assisted as second chair for eleven
4 depositions throughout the litigation. Mr. Straub assisted with propounding subpoenas and
5 discovery requests, meeting and conferring to obtain relevant discovery from Defendant and third
6 parties, communicating with Class Members including retaining Ms. Montera and other Class
7 Representatives in the related actions, working with Plaintiff's retained experts on matters of
8 science, sales and marketing, analyzing data for trial purposes, attending a mediation session,
9 drafting the class certification and judgment on the pleadings briefing including compiling all
10 exhibits in support thereof, briefing motions to exclude Defendant's non-retained experts and
11 several motions *in limine* in connection with the jury trial, drafting the oppositions to Defendant's
12 motions for decertification, and attending trial where he created trial demonstratives, prepared trial
13 exhibits, and developed memorandum, binders, and strategy for direct and cross-examination of the
14 trial witnesses. At BHO, Mr. Straub spent most of his time litigating class actions involving the
15 health benefit advertising of consumer products in general and glucosamine supplements in
16 particular. Thus, while Mr. Straub had a significant load of responsibility in this litigation, I believe
17 his knowledge, background and experience, and by closely working with me to identify issues and
18 avoid duplicative efforts, allowed him to accomplish these tasks efficiently and effectively.

19 56. In addition to BHO attorneys listed in the Firm Resume, BHO's senior paralegal,
20 Dafne Maytorena, has extensive experience. Prior to joining BHO in 2018, Ms. Maytorena spent
21 six years with the law firm Kessler Topaz Meltzer & Check LLP, focusing on class action litigation.
22 Before that, Ms. Maytorena gained additional experience as a paralegal at several other law firms
23 that also specialize in class action litigation: Robbins Arroyo, LLP, Faruqi & Faruqi, LLP, and
24 Bernstein, Litowitz, Berger & Grossman, LLP. Ms. Maytorena earned her Paralegal Certificate from
25 the University of San Diego in 2002, and her bachelor's degree from the University of California,
26 San Diego in 2002.

27 57. Michelle M. Chaseton is the former senior paralegal at BHO. Ms. Chaseton received
28 her paralegal certificate from the University of San Diego, a Bachelor of Arts in Criminal Justice

1 from University of Nevada, and a professional certificate in intellectual property from the University
2 of California, San Diego. Ms. Chaseton gained significant experience as a paralegal at Milberg
3 Weiss Bershad Hynes & Lerach, a firm that specialized in class actions.

4 58. Bethany C. Maxwell is a former paralegal at BHO. Prior to joining BHO, Ms.
5 Maxwell spent ten years with the law office of Buchalter Nemer, P.C. in San Francisco, focusing
6 on litigation. Ms. Maxwell earned her Paralegal Certificate at San Francisco State University, where
7 she was awarded Highest Honors and the Delmar Legal Studies Award for excellence in legal
8 research. She also holds a dual Bachelor's degree from Smith College. Ms. Maxwell handled
9 document management, prepared pleadings, discovery, and correspondence, and obtained
10 documents to respond to discovery. Ms. Maxwell was also responsible for preparing the billing and
11 expenses for the litigation and profiling and organizing court filings.

12 59. Aleksandr J. Yarmolinet was an associate at BHO. Mr. Yarmolinet earned his B.S.,
13 magna cum laude from Embry Riddle Aeronautical University, his J.D. cum laude from California
14 Western School of Law, his LLM from Georgetown University Law Center, and was admitted to
15 the State Bar of California in 2011. Mr. Yarmolinet's primary responsibilities were obtaining
16 discovery from third parties, including drafting third-party subpoenas, and meeting and conferring
17 with the retailers' counsel to obtain sales data for this litigation.

18 60. Camille Bass is a former associate at BHO. Ms. Bass earned her B.S. from Arizona
19 State University, her J.D. from St. John's University School of Law, and she was admitted to the
20 State Bar of California in 2014. Ms. Bass was responsible for researching discrete legal issues,
21 communicating with absent class members and synthesizing those communications for the team.

22 61. Geoffrey Drew La Val is a former staff attorney at BHO. Mr. La Val earned his B.A.,
23 cum laude, from the University of California, Berkely, his J.D. from California Western School of
24 Law, and he was admitted to the State Bar of California in 2011. He was primarily responsible for
25 document review and analysis and assisting in deposition preparation. Mr. La Val helped locate
26 potential exhibits and otherwise prepare me and co-counsel Todd Carpenter for the 2014 depositions
27 of Kevin Stone (6/13/14), Darcy Horn Davenport (7/25/14), David Ritterbush (6/6/14), Katrina Taft
28 (6/12/14), and Lance Palumbo (11/18/14, 11/19/14, and 12/9/14). Mr. La Val played an important

1 role in formulating search terms for the collection of ESI, coding and identifying relevant documents
2 which were utilized throughout the litigation. Mr. La Val also developed in-depth memorandum on
3 specific topics while working with my partner, Mr. O'Reardon, which included analysis of the
4 foreign regulations relating to glucosamine, timelines of relevant events and people with citations
5 to specific documents produced by Defendant, and summaries of scientific articles related to the
6 ingredients in Joint Juice.

7 62. Colette N. Menaldino is a former staff attorney at BHO. Ms. Menaldino earned her
8 B.A. and J.D. from the University of Pittsburgh. She was admitted to the State Bar of Pennsylvania
9 in November 2013, and the State Bar of California in August 2015. Ms. Menaldino was primarily
10 responsible for document review and analysis, preparing exhibits for motions, and assisting in
11 deposition preparation.

12 **B. Class Counsel's Reasonable Lodestar Incurred Since 2013**

13 63. The services rendered and work performed by my firm's attorneys and staff covered
14 every aspect of this extensive, hard-fought litigation. My firm took the lead at every stage of the
15 action from working up the case including analysis of hundreds of scientific manuscripts,
16 propounding and pursuing discovery, class certification, summary judgment, motion for judgment on
17 the pleadings, two motions for decertification, the motion for judgment as a matter of law, the
18 renewed motion for judgment as a matter of law, the motion for a new trial, fact depositions,
19 document review, third-party subpoenas, discovery motions, expert declarations and reports, trial
20 preparation, and the jury trial. The motion practice in this litigation was substantial and related to,
21 *inter alia*, motions to compel discovery responses, Plaintiff's motions for class certification, cross-
22 motions to exclude expert testimony submitted by the parties in connection with class certification,
23 summary judgment, and before trial, and eight motions *in limine* to exclude evidence to be presented
24 at trial, and post-trial, motion for entry of judgment, motion for decertification, motions for
25 judgment as a matter of law, and the motion for a new trial. Even as to the sealing of evidence and
26 scheduling matters, these motions were heavily contested. This litigation also involved substantial
27 discovery. Plaintiff's counsel conducted significant pre-suit investigation and analysis of the
28 scientific basis for Defendant's advertising claims; conducted and defended 48 depositions,

1 including those of Defendant's corporate designee, current and former marketing, science and
2 regulatory employees, scientific experts, and third-party scientists; reviewed over 500,000 pages of
3 documents produced by Defendant; and subpoenaed documents and testimony from 17 third parties
4 who produced thousands of pages of documents. Plaintiff's counsel also responded to extensive
5 discovery served on Plaintiffs, defended the depositions of eleven Plaintiffs and worked with more
6 than seven of their own expert witnesses and additional consultants to prepare for class certification,
7 summary judgment, and trial, including preparing and exchanging expert declarations and Rule 26
8 reports and conducting and defending expert depositions.

9 64. I am thoroughly familiar with the quality and quantity of work done in this case by
10 all lawyers representing Plaintiff and the Class. Along with Mr. Blood, I have endeavored to ensure
11 there was no unnecessary work or duplication of effort. I also note that my firm does not have a
12 billable hour requirement and does not award bonuses or raises based on billed hours.

13 65. I believe the time expended by my firm in this litigation was reasonable and
14 necessary considering the amount of work required to litigate and try to *Montera* action. My firm
15 was lead counsel and played the primary role in briefing and arguing every motion, pursuing
16 discovery, working with experts, preparing for trial, and conducting the class trial. There has been
17 no unreasonable duplication of services for which my firm and my co-counsel now seek
18 compensation. In the situations in which two or more attorneys participated in any matter, the
19 participation was reasonable because of the complexity of the issues involved and the time
20 constrains which existed. I believe tasks were delegated appropriately among senior attorneys,
21 junior attorneys, and paralegals according to their complexity.

22 66. The following information regarding my firm's time and out-of-pocket expenses is
23 taken from time and expense records prepared and maintained by the firm in the ordinary course of
24 business. The time records were prepared daily or shortly thereafter by each attorney or paralegal
25 working on the litigation. The expense records are prepared from receipts, expense vouchers, check
26 records and other documents, and are an accurate record of the expenses. Throughout the litigation
27 I assisted in reviewing and approving for payment these out-of-pocket expenses.

28

1 67. The schedule below provides a summary of the hours expended by timekeepers from
2 my firm who performed work in this litigation. The schedule includes the name of each person who
3 worked on the case, hourly billing rates, the number of hours expended, the resulting lodestar, and
4 the bar passage year for each timekeeper.

5 68. The lodestar calculation is based on the firm’s current billing rates, other than those
6 no longer employed by the firm, in which event their billing rate at the time they stopped working
7 at the firm is used. These rates have been determined to be reasonable by numerous other courts in
8 class action litigation. A sample of courts that have approved BHO’s standard billing rates and
9 attorneys’ fees as reasonable include:

10 • *Yamagata v. Reckitt Benckiser Llc*, No. 3:17-cv-03529-VC, 2021 U.S. Dist.
11 LEXIS 244276, at *12 (N.D. Cal. Oct. 28, 2021) (approving BHO rates as “reasonable, and that the
12 hours expended were reasonable”);

13 • *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171 FMO (FFMx),
14 2017 U.S. Dist. LEXIS 77576, at *42-43 (C.D. Cal. May 21, 2017) (approving BHO rates as
15 reasonable given “the prevailing rates in the community for lawyers of comparable skill, experience,
16 and reputation”);

17 • *In re Hydroxycut Mktg. & Sales Practices Litig.*, MDL No. 2087, 2014 U.S.
18 Dist. LEXIS 162106, at *192 (S.D. Cal. Nov. 18, 2014) (approving hourly rates of Blood Hurst &
19 O’Reardon, LLP as “typical rates for attorneys of comparable experience”);

20 • *Hartless v. Clorox Company*, 273 F.R.D. 630, 644 (S.D. Cal. 2011)
21 (overruling objections to hourly rates, stating that BHO’s hourly rates “have been accepted in other
22 class action cases and are comparable to rates approved by other district courts in class action
23 litigation”);

24 • *In re Skechers Toning Shoe Prods. Liab. Litig.*, MDL No. 2308, 2013 U.S.
25 Dist. LEXIS 67441, at *51-52 (W.D. Ky. May 13, 2013) (approving BHO’s hourly rates, stating
26 that “a lodestar cross-check demonstrates the reasonableness of the fees award”);

27
28

1 • *Dennis v. Kellogg Co.*, No. 09-cv-1786-L (WMC), 2013 U.S. Dist. LEXIS
2 163118, at *22-23 (S.D. Cal. Nov. 14, 2013) (approving BHO’s hourly rates as “fall[ing] within
3 typical rates for attorneys of comparable experience”);

4 • *Johnson v. General Mills, Inc.*, No. SACV 10-00061-CJC(ANx), 2013, U.S.
5 Dist. LEXIS 90338, at *19-21 (C.D. Cal. June 17, 2013) (approving hourly rates and time spent by
6 BHO, stating “[t]he Court has considered class counsel’s rates and finds they are reasonable because
7 of the experience of the attorneys and prevailing market rates”) (citing BHO firm resume);

8 • *Blessing v. Sirius XM Radio, Inc.*, No. 09 CV 10035 (HB), 2011 U.S. Dist.
9 LEXIS 94723, at *17 (S.D.N.Y. Aug. 24, 2011) (approving fee award as “reasonable under both the
10 lodestar and percentage method of calculation”);

11 • *In re Adobe Systems Inc. Privacy Litig.*, No. 5:13-cv-05226-LHK, Doc. No.
12 107 (N.D. Cal. Aug. 13, 2015) (approving hourly rates and time spent by BHO, finding “counsel’s
13 hourly rates to be reasonable and in line with the prevailing rates in the community for complex
14 litigation”).

15 69. Further, based on my knowledge of the class action plaintiff’s bar nationwide, the
16 rates charged by my firm are in line with or lower than the rates charged by other firms that handle
17 class actions of similar size and complexity. *See Orthopaedic Hosp. v. Encore Med., L.P.*, No. 3:19-
18 cv-00970-JLS-AHG, 2021 U.S. Dist. LEXIS 225014, at *40 (S.D. Cal. Nov. 19, 2021) (2020 and
19 2021 partner rates of \$925-\$1,225, associate rates of \$770-\$1,065); *Hefler v. Wells Fargo & Co.*,
20 No. 16-CV-05479-JST, 2018 U.S. Dist. LEXIS 213045, at *38 (N.D. Cal. Dec. 17, 2018) (approving
21 rates from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates); *In re*
22 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC),
23 2017 U.S. Dist. LEXIS 39115, at *732 (N.D. Cal. Mar. 17, 2017) (\$275 to \$1,600 for partners, \$150
24 to \$790 for associates, and \$80 to \$490 for paralegals); *Schneider v Chipotle Mexican Grill, Inc.*,
25 336 F.R.D. 588, 601 (N.D. Cal. Nov. 4, 2020) (\$830 to \$1,275 for partners and \$425 to \$695 for
26 associates); *Carlotti v. Asus Comput. Int’l*, No. 18-cv-03369-DMR, 2020 U.S. Dist. LEXIS 108917,
27 at *15 (N.D. Cal. June 22, 2020) (\$950 and \$1,025 for partners); *Dickey v. Advanced Micro Devices,*
28 *Inc.*, No. 15-cv-04922-HSG, 2020 U.S. Dist. LEXIS 30440, at *22 (N.D. Cal. Feb. 21, 2020) (\$615-

1 \$1,000 for partners and \$275-\$575 for associates); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-
 2 5923, 2015 U.S. Dist. LEXIS 67298, at *15 (N.D. Cal. May 21, 2015) (\$475-\$975 for partners,
 3 \$300-\$490 for associates, \$150-\$430 for paralegals, and \$250-\$340 for litigation support); *In re*
 4 *Animation Workers Antitrust Litig.*, No. 14-CV-4062-LHK, 2016 U.S. Dist. LEXIS 156720, at *20
 5 (N.D. Cal. Nov. 11, 2016) (up to \$1,200 for senior attorneys and \$290 for paralegals); *In re High-*
 6 *Tech Empl. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 118052, at *33-34
 7 (N.D. Cal. Sept. 2, 2015) (\$490-\$975 for partners, \$310-\$800 for non-partner attorneys, and \$190-
 8 \$430 for paralegals, law clerks, and litigation support staff); *In re Anthem, Inc. Data Breach Litig.*,
 9 No. 15-MD-02617-LHK, 2018 U.S. Dist. LEXIS 140137, at *122-23 (N.D. Cal. Aug. 17, 2018)
 10 (\$400-\$975 for partners, \$185-\$900 for non-partner attorneys, \$95-\$440 for paralegals, law clerks,
 11 and litigation support staff, and \$270-\$345 for summer law clerks).

12 70. BHO's hourly rates also compare favorably to reported rates charged by the law firms
 13 Defendant hired in this action. For example, in 2022, "courtesy discount rates" for Venable of up to
 14 \$1,010 were approved as reasonable hourly rates. *See Ray v. CLH N.Y. Ave, LLC*, No. 19-cv-2841-
 15 RCL, 2022 U.S. Dist. LEXIS 114586, at *14 (D.C. Cir. June 29, 2022); *see also Aero Norfolk, LLC*
 16 *v. Philadelphia Truck Lines, Inc.*, Case No. 2:21-cv-00101-RCY-RJY (E.D. Va.) at ECF No. 23-2
 17 (the April 11, 2022, declaration of Venable litigation partner Caroline Gately declares that Venable's
 18 standard rates "do not change depending on the locale of the matter," that she is a 1989 graduate,
 19 her 2022 standard rate is \$1,000, and a 2020 law school graduate's standard rate was \$440). In *Nat'l*
 20 *Abortion Fedn v. Ctr. for Med. Progress*, Case No. 15-cv-03522-WHO (N.D. Cal.), Morrison &
 21 Foerster San Francisco partner Derek Foran declared (ECF No. 756-2) that his standard billing rate
 22 was \$1,200 per hour in 2021, that associate rates ranged from \$745 for 2018 graduates to \$925 for
 23 2014 graduates, and paralegals billed at \$295 to \$400 per hour. These hourly rates were approved
 24 as reasonable. *Nat'l Abortion Fedn v. Ctr. for Med. Progress*, 2021 U.S. Dist. LEXIS 245090, at
 25 *16 (N.D. Cal. Dec. 23, 2021). In *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Medical*
 26 *Progress*, No. 3:16-cv-00236-WHO (N.D. Cal. Apr. 29, 2020) (ECF No. 1150 at 4), the court
 27 approved hourly rates for attorneys at Arnold & Porter ranging from \$750 to \$1,150 per hour for
 28

1 partners, \$910 to \$1,280 per hour for senior counsel, \$545 to \$910 per hour for associates, and \$390
2 to \$405 per hour for paralegals.

3 71. Each of the BHO attorneys who have worked on this litigation has practiced for the
4 following number of years: Mr. Blood – 32 years; Ms. Hurst – 27 years; Mr. O’Reardon – 16 years;
5 Ms. Brown – 15 years; Ms. MacPherson – 23 years; Mr. Straub – 15 years; Mr Yarmolinet –
6 12 years; Ms. Bass – 9 years; Mr. La Val – 12; and Ms. Menaldino – 8 years. Based on the years
7 and depth of experience of each of the attorneys and staff, the hourly rates of \$280.00 to \$960.00
8 are reasonable. These hourly rates do not take into account any contingency enhancement.

9 72. As described in the accompanying motion and below, after factoring in exclusion of
10 certain time entries (*see* paragraph 74 below), the total number of hours reasonably attributable to
11 the claims subject to this litigation as of March 8, 2023, by professional staff at my firm is 9,547.50
12 hours for a total lodestar of \$6,210,890.00. That total lodestar is broken down as detailed in the chart
13 below. Additionally, the detailed time entries for which my firm seeks compensation are in **Exhibit**
14 **2** attached. The time entries are organized chronologically and include the date, timekeeper name,
15 timekeeper hourly rate, a detailed description of the work done, and the number of hours.

16 73. As stated in the original fee request, the total number of hours reasonably attributable
17 to the claims subject to this litigation as of August 25, 2022, by professional staff at my firm was
18 9,083.25 hours. Mr. Blood’s previous declaration described how the previous wholesale exclusion
19 method represented a conservative approach that resulted in over-exclusion of time benefitting this
20 litigation:

21 To reasonably ensure that the present fee application represents only the time spent
22 on the claims subject to this litigation, I exercised my professional judgment and
23 excluded all of billable hours on the appeals of the *Sonner* action, as well as all
24 billable hours from the date the Court entered the stay of all related actions (including
25 *Montera*) on February 10, 2017 through May 17, 2018. This time period spanned all
26 of the expert merits reports and trial preparation in *Sonner*, up through the Court
27 granting Premier’s motion to dismiss in *Sonner*, the filing of the notice of appeal in
28 *Sonner* of the order of dismissal and judgment, and complete adjudication of
Premier’s Bill of Costs in *Sonner* on May 17, 2018. I believe this is a reasonably
conservative calculation because, for example, my firm spent time during this period
on expert-related tasks (e.g., relating to Drs. McAlindon and Grande) that directly

1 benefitted this litigation. Additionally, as described in Paragraphs 23-24 above, the
2 time spent on the *Sonner* and *Bland* state court actions is also excluded.

3 *See* Dkt. No. 296-1 at ¶ 61.

4 74. In connection with this renewed motion, we performed an entry-by-entry analysis to
5 determine if: (1) the billed time benefitted this litigation (and is thus, included time); (2) the time
6 did not benefit this litigation because it concerned e.g., the *Sonner I* or *Sonner II* appeals (and is
7 thus, excluded time); or (3) the time entry related to both. To be conservative, we excluded all entries
8 where the description included both included and excluded work. For example, if a timekeeper
9 entered one hour on a given day and the entry stated it related to working with both Dr. McAlindon
10 and with Dr. Maronick (a marketing expert only disclosed for *Mullins* trial purposes), that entire
11 hour was excluded from the lodestar calculation for this litigation, even though some of the time
12 billed benefitted this case. Other examples of fully excluded lodestar is from the time spent on
13 briefing class certification in the state court *Bland* action (which occurred after *Montera* was
14 certified), work on jury instructions from *Mullins* that concerned UCL and CLRA claims not at issue
15 in *Montera* (although similar consumer fraud, false advertising themes existed), the motion to
16 compel Vincent Mullins to travel to San Francisco for his deposition, the motion to substitute in Ms.
17 Sonner for Mr. Mullins, the motion for leave to amend to file the Second Amended Complaint in
18 *Sonner* to drop the request for damages under the CLRA and the subsequent motion to dismiss filed
19 by Defendant, all time working with expert Robert Wallace regarding California class damages in
20 *Mullins*, all time working with Dr. Thomas Maronick in connection with his marketing opinions and
21 deposition provided in *Mullins*, and 2017 *Mullins*-only trial work regarding Drs. Graboff, Silbert
22 and Lippiello. This detailed, entry-by-entry analysis confirmed the prior stated belief that our
23 previous estimate of 9,083.25 hours by my firm on work benefitting this litigation was reasonably
24 conservative. As further detailed in the lodestar documentation that is attached as **Exhibit 2** to this
25 declaration, as of March 8, 2023, the lodestar by professional staff at my firm on work benefitting
26 this litigation is as follows:
27
28

BLOOD HURST & O' REARDON, LLP

Attorney/Paralegal	Hours	Rate	Lodestar	Bar Admission
Timothy G. Blood (Partner)	1,136.75	\$960	\$1,091,280.00	1990
Leslie E. Hurst (Partner)	223.75	\$810	\$181,237.50	1995
Thomas J. O'Reardon II (Partner)	3,335.50	\$710	\$2,368,205.00	2006
Paula R. Brown (Partner)	765.75	\$660	\$505,395.00	2007
Jennifer MacPherson (Of Counsel)	100.75	\$585	\$58,938.75	1999
Craig W. Straub (Associate)	2,917.25	\$575	\$1,677,418.75	2007
Aleksandr J. Yarmolinet (Associate)	9.00	\$565	\$5,085.00	2011
Camille Bass (Associate)	11.50	\$410	\$4,715.00	2014
Geoffrey Drew La Val (Staff Attorney)	443.00	\$335	\$148,405.00	2011
Colette N. Menaldino (Staff Attorney)	25.50	\$320	\$8,160.00	2015
Michelle M. Chaseton	391.75	\$280	\$109,690.00	
Bethany C. Maxwell (Paralegal)	21.00	\$280	\$5,880.00	
Dafne Maytorena (Paralegal)	166.00	\$280	\$46,480.00	
TOTALS	9,547.50		\$6,210,890.00	

75. The hours and lodestar incurred by my firm will increase because, as Class Counsel, my firm is responsible for defending the verdict and judgment on the appeal Premier has filed, and thereafter, my firm will be responsible for working with a claims administrator to develop and propose a plan of judgment allocation, oversee the claims administration process, and communicate with Class Members. This appeal and post-appeal administration process will require hundreds, if not thousands of hours of additional work.

1 76. My firm's lodestar figures are based on the firm's billing rates, which rates do not
2 include charges for expense items. Expense items are billed separately, and such charges are not
3 duplicated in my firm's billing rates.

4 **V. THE REQUESTED EXPENSES**

5 77. As detailed below, my firm's out-of-pocket nontaxed litigation expenses for which
6 we seek reimbursement with this motion are \$1,040,420.50. The expenses incurred in this action are
7 reflected in the books and records of my firm. These books and records are prepared from expense
8 vouchers, check records and other source materials and are an accurate record of the expenses
9 incurred. In light of expenses relating to matters that did not directly benefit the overall *Montera*
10 litigation, I have reviewed these documents and invoices and reduced my firm's overall expenses
11 on Joint Juice litigation to seek reimbursement of just the \$1,040,420.50 detailed below.

12 78. The out-of-pocket litigation expenses incurred by BHO are reasonable in amount and
13 were necessary for the effective and efficient prosecution of the litigation. In addition, I believe the
14 expenses are of a type that normally would be charged to a fee-paying client in the private legal
15 marketplace and have been charged by my firm to fee-paying clients. They are also the categories
16 of expenses that have been awarded to my firm and other plaintiff's counsel in other class action
17 lawsuits, including in the following cases: *Yamagata v. Reckitt Benckiser LLC*, No. 3:17-cv-03529-
18 VC (N.D. Cal. 2021); *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171 FMO (FFMx)
19 (C.D. Cal. 2017); *Murr v. Capital One Bank (USA), N.A.*, No. 1:13-cv-01091-LMB-TCB (E.D. Va.
20 2015); *In re: Hydroxycut Mktg. and Sales Prac. Litig.*, MDL No. 2086 (S.D. Cal. 2014); *Serochi v.*
21 *Bosa*, No. 2009-00096686 (S.D. Super. Ct. 2014); *Hartless v. Clorox Co.*, No. 06-cv-02705 (S.D.
22 Cal. 2011); *Johnson v. Gen. Mills, Inc.*, No. 10-cv-00061 (C.D. Cal. 2013); *Grabowski v. Skechers*
23 *U.S.A., Inc.*, No. 12-cv-00204 (W.D. Ky. 2013); *Schwartz v. Reebok Int'l Ltd.*, No. 10-cv-12018 (D.
24 Mass. 2012); *Nelson v. Mead Johnson & Co., LLC*, No. 09-cv-61625 (S.D. Fla. 2012); and *Gemelas*
25 *v. The Dannon Co., Inc.*, No. 08-cv-00236 (N.D. Ohio 2011).

26 79. My firm's nontaxed, out-of-pocket litigation expenses for which we seek
27 reimbursement through this Renewed Motion are \$1,040,420.50. This amount is separate from and
28

1 does not include any of the costs (totaling \$54,455.74) that were taxed by the Clerk on October 4,
2 2022. *See* Dkt. No. 314. The nontaxed amount being sought with this application is described below.

Expense Category	Total	Nontaxed Portion Sought Here	Taxed Portion (Dkt. 314)
Photocopying / Printing	\$20,220.80	\$20,220.80	\$0
Filing Fees	\$400	\$0	\$400
Service of Process	\$5,102.30	\$5,102.30	\$0
Experts / Consultants	\$613,343.90	\$609,582.93	\$3,760.97 ¹
Depositions / Transcripts / Videographers	\$115,082.67	\$98,905.85	\$16,177.07 ²
Court Reporters' Transcripts	\$34,117.70	\$0	\$34,117.70
Mediation Fees	\$24,300.00	\$24,300.00	\$0
Electronic Document Management	\$110,682.95	\$110,682.95	\$0
Postage / FedEx	\$4,399.07	\$4,399.07	\$0
Online Research (LexisNexis, PACER, TransUnion, White Pages Premium)	\$11,360.97	\$11,360.97	\$0
Conference Calls	\$192.97	\$192.97	\$0
Transportation, Hotels & Meals	\$115,098.65	\$115,098.65	\$0
Miscellaneous	\$1,882.22	\$1,882.22	\$0 ³
Class Notice and Outreach	\$38,691.79	\$38,691.79	\$0
TOTAL	\$1,094,876.24	\$1,040,420.50	\$54,455.74

17
18 80. Additional backup detail regarding these expenses is attached to this declaration
19 within the following exhibits:

20 ¹ \$3,760.97 was paid to VideoTrack, one of Plaintiff's consultants, for three sets of all pre-
21 marked exhibits in three-ring binders as required by the Court. The Clerk taxed this amount pursuant
22 to Local Rule 54-3(d)(4) and so that portion of costs is not sought here. *See Montera*, Dkt. No. 314.

23 ² As discussed, there appears to be a small mathematical mistake in the Clerk's Taxation Order
24 (Dkt. No. 314). Assuming the total amount awarded of \$54,455.74 is accurate, that means
25 \$77,641.05 was the total amount disallowed and not the \$82,611.20 that is stated in the Taxation
26 Order. This disallowed amount all relates to deposition expenses. (*Id.*). Thus, assuming \$16,177.07
27 of deposition costs *were* taxed by the Clerk's Taxation Order, Plaintiff now seeks reimbursement of
28 \$98,905.85, which is the balance of the relevant deposition costs incurred.

³ The Clerk's Taxation Order did not tax the requested \$342.60 for visual aids used during
trial was taxed pursuant to Civil LR 54(d)(5). (Dkt. No. 314). Instead, the Clerk's Taxation Order
appears to have mistakenly skipped that line item, which Premier did not oppose taxing. (*Id.*; Dkt.
No. 307). Accordingly, that cost is included within the "miscellaneous" category of costs sought
here.

- 1 • Exhibit 3: Photocopying Detail
- 2 • Exhibit 4: Postage / FedEx / Messenger Detail
- 3 • Exhibit 5: Service of Process Detail
- 4 • Exhibit 6: Depositions / Transcripts / Videographers Detail
- 5 • Exhibit 7: Experts / Consultants Detail
- 6 • Exhibit 8: Electronic Document Management Detail
- 7 • Exhibit 9: Online Research Detail
- 8 • Exhibit 10: Conference Calls Detail
- 9 • Exhibit 11: Transportation, Hotels and Meals – Detailed Itemization
- 10 • Exhibit 12: Transportation, Hotels and Meals – Invoices and Credit Card Statements
- 11 • Exhibit 13: Miscellaneous Costs Detail
- 12 • Exhibit 14: Class Notice and Outreach Detail
- 13 • Exhibit 15: Mediation Fees Detail

14 81. The following is additional information regarding these expenses:

15 (a) Photocopying/Printing: The requested copy costs total \$20,220.80 (101,104
 16 pages through December 31, 2022) were incurred in connection with providing the Court with hard
 17 copies of filings and additional in-house copies for hearing preparation, printing case law when
 18 necessary, analyzing certain documents produced in discovery, in connection with expert reports
 19 and declarations, including printing the scientific studies cited by experts and providing our experts
 20 with report binders, and printing copies of documents for use in the many depositions throughout
 21 this case and for trial preparation. For example, 284 exhibits were introduced during the 11
 22 depositions taken of Defendant's employees, class certification involved 175 exhibits, and trial
 23 involved 750 exhibits, 109 of which were admitted. These figures do not include the many studies
 24 and other exhibits necessarily printed and used in the course of preparing for, taking and defending
 25 expert depositions. To help minimize copy expenses, we agreed with counsel for Defendant to serve
 26
 27
 28

1 documents by electronic mail only and used electronic copies of exhibits at some depositions. Each
2 time our copy machine is used, our billing system requires that a case code be entered. For each
3 page copied or printed, my firm charges 35 cents, but here we only seek reimbursement of 20 cents
4 per copy. This is the rate charged to all clients, including non-contingency clients. The rate is
5 determined by calculating the approximate cost to my firm per page, without any mark-up. The
6 calculation includes the monthly copy / scanner machine rental, the price-per-page charged by our
7 vendor and paper and toner costs, which are not included in the price-per-page cost. The average is
8 approximate because it varies each month depending upon the number of photocopies made for a
9 particular month, but 20 cents is significantly less than the approximate average over time. The per-
10 page amount is higher than an outside copy service because we print relatively few copies as part of
11 an effort to use less paper. While the per-page amount may be higher, the overall cost is lower than
12 if we printed more copies at a rate that would lower the per-page cost. Each time a copy is made
13 either directly at a copy machine or from a firm computer, our Sharp copy system requires than an
14 account code be entered. The Sharp copy system records the page counts and associated account
15 codes. **Exhibit 3** reflects the expense record documentation of our in-house copies made using the
16 Joint Juice case account code. As stated above, we only seek reimbursement of 20 cents per copy.
17 At that reduced rate, the total in-house copy cost through December 31, 2022, is \$20,220.80.

18 (b) Filing Fees: \$400 was paid to file the complaint in this action. This amount
19 was taxed in full by the Clerk and so it is not sought with this motion. *Montera*, Dkt. No. 314. All
20 other court filing and docket fees paid in connection with litigating the other related Joint Juice
21 actions, including complaint, motion, and appellate filing fees, are not presently sought with this fee
22 application.

23 (c) Postage / FedEx / Messenger: \$4,399.07 total. These costs relate to USPS
24 postage (\$239.48 through August 30, 2022) and delivery services (\$4,159.59 through July 1, 2022),
25 including providing courtesy copies of filings as required by the courts in this action and sending
26 documents for Plaintiff's witnesses to review before depositions. Plaintiff does not presently seek
27 reimbursement of \$747.55 spent to mail documents to Drs. Silbert and Graboff in connection with
28 their Rule 26 testimony in *Mullins*, or for the required courtesy copies sent to the courts in

1 connection with the motion for leave to amend to file a second amended complaint and the
2 subsequent motion to dismiss in *Mullins*, the Ninth Circuit appeals in *Mullins*, or filings in the state
3 court related actions. Additional documentation for these expenses is attached to this declaration as
4 **Exhibit 4.**

5 (d) Service of Process: These costs (\$5,102.30) relate to service of process of
6 subpoenas for documents and/or testimony on the major retailers of Joint Juice (Walmart / Sam's
7 Club, Walgreens, Costco, Target, BJ's Wholesale Club, Albertsons, Kroger, SuperValue, Safeway,
8 Rite Aid, and CVS), and companies that supplied Defendant with marketing services for Joint Juice
9 (Eleven Inc. and R2C Group). Service costs were minimized because certain of these retailers agreed
10 to accept email service of subsequent subpoenas in this action. These subpoenas were served to
11 obtain sales and marketing information that directly benefitted *Montera*. Costs to serve subpoenas
12 in 2022 to obtain California-specific sales data for the *Bland* state court matter are not included. The
13 amount sought here also includes costs of serving subpoenas on James Speed (who sent documents
14 to CalRecycle on behalf of Premier) and on certain of Premier's experts and former employees: Hal
15 Poret, Kevin Stone, David Ritterbush, Stewart Irving, William Choi, and Booker Lucas. Additional
16 documentation for these expenses is attached to this declaration as **Exhibit 5.**

17 (e) Depositions / Transcripts / Videographers: Plaintiff requests reimbursement
18 of \$98,905.85 in deposition costs. These costs include court reporter and/or videographer fees in
19 connection with forty-six of the fifty depositions in this litigation. Plaintiff's counsel saved
20 significantly on deposition and travel costs by taking twenty-two (22) of these depositions remotely.
21 Plaintiff does not presently seek reimbursement for costs in connection with Dr. Silbert's 2017
22 deposition (\$1,874.06), Dr. Lippiello's 2017 deposition (\$3,448.25), Dr. Graboff's 2017 deposition
23 (\$1,040.70), or Dr. Maronick's 2017 deposition (\$2,373.94). *Pursuant to L.R. 54-3(c), Plaintiff
24 sought taxation of \$93,475.27 of the \$115,082.67 reasonably spent on depositions. The remaining
25 portion of these deposition costs (\$21,607.40), which include standard incidental costs and
26 deposition features in complex litigation such as Realtime feeds, are reasonable expenses that are
27 typically paid by the fee-bearing client and properly recovered by the prevailing party. On October
28 4, 2022, the Clerk taxed \$16,177.07 of the \$93,475.27 in requested deposition costs. *Montera*, Dkt.

1 No. 314. On March 9, 2022, in the lead up to trial here, we also paid \$1,507.00 to obtain a copy of
 2 the e-transcript from the deposition of one of Premier's primary experts, Dr. Grande, taken in 2019
 3 in a separate glucosamine supplement lawsuit titled *Seegert v. Rexall* (S.D. Cal.). Although BHO
 4 and Lynch Carpenter were counsel in the *Seegert* matter, we had not obtained a copy of the e-
 5 transcript and our trial support consultant in this case needed the e-transcript version. The *Seegert*
 6 action is now dismissed. Previously, we have not sought or obtained reimbursement for the cost of
 7 that e-transcript. It was reasonably necessary to obtain the e-transcript of Dr. Grande's deposition
 8 for purposes of the *Montera* trial because Dr. Grande was one of Premier's main science experts,
 9 we planned to use Dr. Grande's testimony from *Seegert* while questioning him on the stand at trial,
 10 and I was informed that our trial support vendor required the e-transcript version for display
 11 purposes. Ultimately, Premier's counsel informed us the night before he was scheduled to testify
 12 that Dr. Grande would not be testifying. As demonstrated in the accompanying deposition invoices
 13 attached as **Exhibit 6**, and taking into account the mathematical error discussed in Paragraph 40
 14 above, the amount disallowed by the Clerk (\$77,641.05) is comprised of standard deposition costs
 15 charged by the reporting services which are routinely charged by the fee-bearing client and
 16 recovered by the prevailing party. Accordingly, Plaintiff requests that such deposition costs of
 17 \$98,905.85 (equal to the \$77,641.05 disallowed as taxable by the Clerk plus the \$21,607.40 that
 18 Plaintiff did not seek to tax) be awarded by this Court pursuant to this motion.

19 (f) Court Reporters' Transcripts: \$34,117.70 was spent to obtain transcripts from
 20 the January 27, 2016 hearing on class certification, summary judgment and motions to exclude
 21 expert testimony (\$127.80), the November 21, 2019 hearing on class certification (\$30.45), the May
 22 6, 2022 final pretrial conference and hearing on motions *in limine* (\$196.20), and the daily trial
 23 transcripts (\$33,921.50). This amount was taxed in full by the Clerk. *Montera*, Dkt. No. 314.
 24 Plaintiff does not presently seek reimbursement of \$7,827.21 spent on court reporters' transcripts
 25 from any other hearings, including the motion for leave to file a second amended complaint in
 26 *Mullins*, and the state court related action hearings and status conferences.

27 (g) Experts / Consultants: This cost includes fees charged by experts and
 28 consultants utilized in this litigation. In addition to the costs detailed below spent on experts and

1 consultants retained by Plaintiff, pursuant to the parties' agreement, Plaintiff's Counsel paid
 2 \$4,025.00 to Defendant's expert, Hal Poret, for his time when being deposed. I believe these expert
 3 and consultant costs were reasonably incurred in furtherance of this litigation, and that the assistance
 4 and testimony from each of the experts discussed below helped lead to the successful prosecution
 5 of Plaintiff's claims. Additionally, the hourly rates charged by Plaintiff's experts and consultants
 6 are in line with standard testimony rates charged by science, marketing and damages experts in class
 7 action litigation and are generally lower than the hourly rates Premier paid its outside experts,
 8 including Dr. Silverman (\$850/hour), Dr. Grande (\$400/hour), Mr. Poret (\$800/hour), Dr. Steckel
 9 (\$1,225/hour), and Dr. Choi (\$900/hour). *Compare with* hourly rates charged by Dr. McAlindon
 10 (\$500/hour), Dr. Guilak (\$500/hour), Dr. Dennis (\$450/hour), Dr. Rucker (\$900/hour), and Mr.
 11 Weir (\$725/hour). Additional documentation for these expenses is attached to this declaration as
 12 **Exhibit 7.**

13 (i) Timothy McAlindon, MD, MPH: Plaintiff seeks reimbursement of
 14 \$112,256.94 paid to Dr. McAlindon for his expert testimony and consulting throughout this
 15 litigation. Plaintiffs retained Dr. McAlindon to provide analysis of scientific issues, including Joint
 16 Juice and its various ingredients to support joint health and treat arthritis and its symptoms, and to
 17 provide trial testimony in this litigation. Dr. McAlindon is a physician rheumatologist at Tufts
 18 Medical Center, where he holds the positions of Chief of the Division of Rheumatology and Natalie
 19 V. Zucker and Milton O. Zucker Chair in Rheumatology. We were charged \$500/hour for Dr.
 20 McAlindon's expert services. Dr. McAlindon's medical, clinical and academic experience is in the
 21 fields of arthritis and rheumatic disease, including studying potential interventions for arthritis and
 22 its symptoms. Dr. McAlindon also worked directly on a number of the scientific studies and medical
 23 professional guidelines at issue in this litigation. Dr. McAlindon provided a Rule 26 opening report
 24 spanning 115 pages that systematically analyzed nearly 200 scientific studies, and a 42-page Rule
 25 26 rebuttal report responding to the reports proffered by Premier's scientific experts Dr. Silverman
 26 and Dr. Grande. Dr. McAlindon's work product and expert declarations were used in connection
 27 with fact witness and expert depositions, in support of Plaintiff's motions for class certification, in
 28 support of Plaintiff's motions to exclude testimony from Dr. Silverman and Dr. Grande, in

1 opposition to Defendant's motions for summary judgment and decertification, and during trial
 2 including portions of the PowerPoint presentations shown to the jury during opening and closing.
 3 Dr. McAlindon traveled to San Francisco on May 21, 2022, assisted with trial preparation and
 4 strategy, and testified for two days at trial on May 24-25, 2022. Of the \$112,256.94 total charged
 5 by Dr. McAlindon, \$60,006.94 related to his work performed in *Montera* between January 18, 2022,
 6 and May 25, 2022.

7 (ii) Farshid Guilak, Ph.D.: Plaintiff seeks reimbursement of \$20,400.00
 8 paid to Dr. Guilak for his expert testimony and consulting throughout this litigation. Plaintiff
 9 retained Dr. Guilak to provide analysis of scientific issues specifically including to opine on the
 10 physiology of the joint, to discuss in vitro studies he conducted on glucosamine and chondroitin
 11 supplements, to rebut the opinions of Defendant's scientific experts, Drs. Grande and Silverman,
 12 and to provide trial testimony in this litigation. Dr. Guilak is a Professor in the Department of
 13 Orthopaedic Surgery at Washington University and Director of Research for the Shriners Hospitals
 14 for Children – St. Louis Shriners. I am also the co-director of the Washington University Center of
 15 Regenerative Medicine and have appointments in the Departments of Developmental Biology and
 16 Biomedical Engineering. We were charged \$500/hour for Dr. Guilak's expert services. Dr. Guilak's
 17 scientific and academic experience is in the fields of osteoarthritis, tissue engineering, and
 18 biomechanics, including studying the etiology and pathogenesis of osteoarthritis, as a basis for the
 19 development of new therapies. Dr. Guilak provided Rule 26 opening and rebuttal expert reports, his
 20 work product was used in connection with fact witness and expert depositions, trial testimony, and
 21 in connection with motions to strike expert testimony. Dr. Guilak also assisted with trial strategy
 22 and examination of Defendant's witnesses at trial.

23 (iii) Derek D. Rucker, Ph.D.: Plaintiff seeks reimbursement of \$98,700.75
 24 paid to Dr. Rucker for his expert testimony and consulting throughout this litigation. Plaintiff
 25 retained Dr. Rucker to provide analysis of marketing and advertising issues and trial testimony in
 26 this litigation. Dr. Rucker is the Sandy & Morton Goldman Professor of Entrepreneurial Studies in
 27 Marketing, Northwestern University and a Professor of Marketing at the Kellogg School of
 28 Management, Northwestern University. We were charged \$900/hour for Dr. Rucker's expert

1 services. Dr. Rucker is a highly published researcher, has been a reviewer for more than 25 journals,
2 served as an Associate Editor for the *Journal of Consumer Research* and the *Journal of Consumer*
3 *Psychology*, and is currently the co-editor for *Consumer Psychology Review*. Dr. Rucker received
4 his Ph.D. in psychology from The Ohio State University and his academic research interests include
5 the study of advertising, persuasion, and consumer behavior. Dr. Rucker provided Rule 26 opening
6 and rebuttal expert reports in this matter and also assisted with trial preparation and deposition
7 strategy. Dr. Rucker traveled to San Francisco and testified at trial on May 27, 2022.

8 (iv) Colin B. Weir: Plaintiff seeks reimbursement of \$73,691.80 paid to
9 Mr. Weir for his expert testimony and consulting throughout this litigation. Mr. Weir holds a Master
10 of Business Administration, with honors, from the High Technology program at Northeastern
11 University. He has qualified as an economic damage expert witness on many occasions in various
12 state and federal courts. He has consulted on a variety of consumer and wholesale products cases,
13 calculating damages relating to food products, household appliances, herbal remedies, health/beauty
14 care products, electronics, furniture, and computers. We were charged \$725/hour for Mr. Weir's
15 services in this action. Mr. Weir provided expert analysis and expert reports relating to economic
16 damages, and assisted with rebutting and deposing Defendant's damages expert, including
17 analyzing the hedonic regression opinions by Dr. Choi, Defendant's economic valuation expert. Mr.
18 Weir assisted with deposition and trial strategy and testified at trial on May 31, 2022.

19 (v) J. Michael Dennis, Ph.D.: Plaintiff seeks reimbursement of
20 \$87,516.50 paid to Dr. Dennis for his expert testimony and consulting throughout this litigation. We
21 engaged Dr. Dennis to conduct a consumer survey concerning the advertising message conveyed by
22 Joint Juice. We were charged \$450/hour for his services. Dr. Dennis has designed and conducted
23 hundreds of statistical surveys using the internet mode of data collection for over 19 years. Since
24 joining in 2014, Dr. Dennis has been a Senior Vice President leading the online panel survey
25 research business for National Opinion Research Center ("NORC") – affiliated with the University
26 of Chicago. Dr. Dennis' survey and expert analysis, including his Rule 26 opening and rebuttal
27 expert reports were critical to one of the major issues in the case and to rebutting Defendant's
28

1 multiple marketing and survey experts. Dr. Dennis assisted with deposition and trial preparation and
2 strategy and testified at trial on May 27, 2022.

3 (vi) Steven R Graboff, M.D.: Plaintiff seeks reimbursement of \$30,062.50
4 paid to Dr. Graboff for his expert testimony and consulting in connection with class certification
5 and summary judgment. We were charged \$475/hour for his services. The testimony from Dr.
6 Graboff was cited by the Court in the order denying Defendant's motion for summary judgment:
7 178 F. Supp. 3d 867, 885, 893 (N.D. Cal. 2016) (Discussing, for example, that "Dr. Steven Graboff,
8 plaintiff's expert, a practicing orthopedic surgeon, confirms that 'glucosamine and chondroitin
9 sulfate are not part of the general hierarchy of treatment for arthritis.'"). Plaintiff does not presently
10 seek reimbursement of the additional \$10,550.00 charged by Dr. Graboff in connection with his
11 later Rule 26 reports and related deposition, and preparation for trial in *Mullins*.

12 (vii) Jeremiah E. Silbert, M.D.: Plaintiff seeks reimbursement of
13 \$37,655.00 paid to Dr. Silbert for his expert testimony and consulting in connection with class
14 certification and summary judgment. We were charged \$450/hour for his services. The expert
15 testimony from Dr. Silbert regarding the bioavailability and efficacy of glucosamine and chondroitin
16 and his analysis of Dr. Grande's opinions was cited extensively by the Court in the order denying
17 Defendant's motion for summary judgment: 178 F. Supp. 3d 867, 886-87, 893, 895-98 (N.D. Cal.
18 2016) ("Silbert offers evidence that Premier's general health claims are false because ingested
19 glucosamine and chondroitin are not bioavailable in joint tissue in sufficient quantity to confer any
20 benefit."). Plaintiff does not presently seek reimbursement of the additional \$21,037.50 charged by
21 Dr. Silbert in connection with his later Rule 26 reports and related deposition, and preparation for
22 trial in *Mullins*.

23 (viii) Lynn R. Willis, Ph.D.: Plaintiff seeks reimbursement of \$26,500.00
24 paid to Dr. Willis for his expert testimony and consulting in connection with class certification and
25 summary judgment. We were charged \$500/hour for his services. The expert testimony from Dr.
26 Willis regarding the clinical research, meta-analyses, treatment protocols, in vitro and animal study
27 research relating to the ingredients in Joint Juice was cited extensively by the Court in the order
28 denying Defendant's motion for summary judgment: 178 F. Supp. 3d 867, 883-86, 895 (N.D. Cal.

1 2016) (noting Dr. Willis “offered principles critiques” of the scientific literature and that “[a] review
 2 of the meta-analyses reveals that the effects of glucosamine and chondroitin are similar to placebo,
 3 and therefore clinically insignificant”).

4 (ix) Mark Keegan: Plaintiff seeks reimbursement of \$68,159.09 paid to
 5 Keegan & Donato Consulting, LLC for their expert testimony and consulting in connection with
 6 class certification and summary judgment. We were charged \$275 to \$350/hour for these services.
 7 The expert testimony from Mr. Keegan regarding consumer research and marketing was cited
 8 extensively by the Court in the order denying Defendant’s motion for summary judgment: 178 F.
 9 Supp. 3d 867, 879-82 (N.D. Cal. 2016) (discussing and quoting Mr. Keegan’s analysis of the
 10 consumer research, opinion about Joint Juice’s implied advertising message, and critique of the
 11 survey Mr. Poret commissioned for Defendant). In its order granting class certification, the Court
 12 cited Mr. Keegan “interpret[ation] [of] the results of Premier’s marketing research and consumer
 13 survey,” and rejected Defendant’s argument that “substantiating consumer reliance is not amenable
 14 to common proof because Joint Juice users cite the advice of doctors or friends as the reason they
 15 tried Joint Juice in the first place.” 2016 U.S. Dist. LEXIS 51140, at *9 (N.D. Cal. Apr. 15, 2016).
 16 Mr. Keegan also assisted with preparation for deposing Defendant’s expert, Hal Poret.

17 (x) VideoTrack Litigation & Trial Support: Plaintiff paid \$49,140.07 to
 18 VideoTrack for trial presentation services and consulting in this action. This amount included
 19 \$3,760.97 to VideoTrack for three sets of all pre-marked exhibits in three-ring binders as required
 20 by the Court. The Clerk taxed this amount pursuant to Local Rule 54-3(d)(4). *See Montera*, Dkt.
 21 No. 314. Here, Plaintiff requests reimbursement of \$45,379.10, which is the remaining amount paid
 22 to VideoTrack for its services in this action. This amount includes VideoTrack’s hourly consulting
 23 services (369.5 hours at average rate of \$112/hour) and reimbursing VideoTrack for trial exhibit
 24 binder preparation and printing (1 set for \$1,253.65), trial presentation equipment rental (\$1,977.75),
 25 and travel expenses/transportation (\$701.45). *See also Montera*, Dkt. No. 295 at 103-04
 26 (VideoTrack invoice for \$49,140.07). Shayne Davison from VideoTrack assisted in trial
 27 preparation, converted deposition video files and prepared deposition transcripts for synchronization
 28 purposes, organized video deposition materials into a trial database, and before and during trial,

1 created video clips for possible use during trial for testimony in lieu of live appearances, pursuant
2 to designations, and for purposes of cross examination. Debbie Burk from VideoTrack assisted in
3 trial preparation, traveled to San Francisco and attended the entire trial and provided trial
4 presentation services throughout the trial, including assisting in the preparation of exhibits,
5 PowerPoints, demonstratives, and video clips.

6 (xi) Chopra Koonan Litigation Consulting: Plaintiff seeks reimbursement
7 of \$5,236.25 paid to Chopra Koonan Litigation Consulting for witness preparation and jury
8 consulting services by Karen Jo Koonan. We were charged \$425/hour for these services. Ms.
9 Koonan has served as a trial consultant at the National Jury Project and worked on more than 1,600
10 cases over the last 35 years. Ms. Koonan assisted with jury selection, assisted with pretrial
11 preparation of witnesses, and case theme development.

12 (h) Electronic Document Management: As of July 21, 2022, \$110,682.95 was
13 paid to e-discovery specialists, Epiq (f/k/a DTI Global) and Ankura Consulting, for monthly hosting,
14 storage and management of documents produced in this litigation. Defendant and various third
15 parties produced over 500,000 pages of discovery, including emails. Thus, it was necessary for my
16 firm and co-counsel to be able to search, review, code, and organize these documents on secure,
17 Internet-based electronic databases. The Relativity and Casepoint document platforms hosted by
18 Epiq and Ankura are standard ESI tools used in complex litigation involving large data productions.
19 These costs include document hosting for 91 months (through June 30, 2022) at monthly per-
20 Gigabyte rates ranging from \$10 to \$25/GB. These online platforms also allowed us to efficiently
21 coordinate document review and coding and to access the documents in connection with motions,
22 depositions, experts, and trial. Additional documentation for these expenses is attached to this
23 declaration as **Exhibit 8**.

24 (i) Online Research: \$11,360.97 total is sought here. \$4,734.52 was paid to
25 LexisNexis for legal research conducted through September 30, 2022. LexisNexis was used to
26 obtain access to legal research, factual databases, and for cite-checking of briefs. The expense
27 amount detailed herein represents the out-of-pocket costs incurred by my firm in connection with
28 use of these services in connection with this litigation. My firm has a flat-rate contract with

1 LexisNexis for use of its services. When my firm utilizes LexisNexis services, a billing code is
 2 entered for the specific case being researched. At the end of each billing period in which a service
 3 is used, BHO's costs for such services are allocated to specific cases based on the percentage of use
 4 in connection with that specific case in the billing period. As a result of the flat fee we negotiated
 5 with LexisNexis, we do not charge the "market rate" for *a la carte* use of online legal research
 6 services, which some law firms charge their clients. We also do not otherwise mark-up LexisNexis
 7 bills, as some firms do. LexisNexis costs that were incurred when utilizing Joint Juice Bland and
 8 Joint Juice Appeal billing codes are not included in this amount sought. As an additional reduction,
 9 for purposes of this renewed motion we have now excluded the entire monthly costs of Joint Juice
 10 LexisNexis research for the 28 months when at least some legal research was done on the adequate
 11 remedy issue in *Mullins*, and for the *Sonner I* and *Sonner II* appeals.⁴ This conservative approach
 12 results in over-exclusion because it removes for example, all of the May 2022 LexisNexis costs
 13 (\$175.42) when we conducted legal research for the *Montera* trial in addition to a small amount
 14 (relatively speaking) of research in preparation of the *Sonner II* Ninth Circuit oral argument on May
 15 23, 2022. The online research costs sought here also include \$4,141.80 paid to the Administrative
 16 Office of the United States Courts for PACER research of federal court filings, and \$2,275.00 paid
 17 to TransUnion and \$209.65 for White Pages Premium for public records background research for
 18 purposes of this litigation including on deponents, witnesses and Class Members through July 31,
 19 2022. When my firm uses PACER we are required to enter a client code associated with each search.
 20 The client code for Joint Juice, which appears on the PACER invoices, is 11813-01. Documents
 21 accessed from PACER included briefs, expert reports and declarations, orders and exhibits that were
 22 reviewed and used in connection with motion practice, expert discovery and trial, including
 23 researching sample jury instructions, motions *in limine*, and verdict forms as well as reports and
 24 declarations submitted by the parties' experts in other lawsuits that we used to confirm consistency

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 26 _____
 27 ⁴ The 28 months for which LexisNexis research costs are excluded here are: November 2017,
 28 December 2017, January 2018, February 2018, March 2018, April 2018, May 2018, June 2018, July
 2018, August 2018, September 2018, October 2018, November 2018, December 2018, January
 2019, February 2019, March 2019, July 2019, November 2019, December 2019, May 2020, June
 2020, July 2020, August 2021, September 2021, October 2021, November 2021, and May 2022.

1 of opinions and methodology and which provided valuable insight into potential areas of inquiry for
 2 cross examination and impeachment. Additional documentation for these online research expenses
 3 is attached to this declaration as **Exhibit 9**.

4 (j) Conference Calls: Conference call charges (\$192.97 through May 21, 2022)
 5 were incurred to make or host conference calls in this litigation. The conference call charges are
 6 allocated to each case by punching in a case code after accessing the conference call number. The
 7 case code is mandatory to host a conference call. At the end of each billing period, the conference
 8 call charges for each case are entered into our billing system. Additional documentation for these
 9 expenses is attached to this declaration as **Exhibit 10**. The account code for Joint Juice, which
 10 appears on the conference call invoices, is 11813. The calls for which reimbursement is sought here
 11 related to work benefitting *Montera*. Plaintiff does not presently seek reimbursement for costs of
 12 conference calls relating to the *Sonner* appeals, class notice in *Mullins*, Premier's bill of costs in
 13 *Mullins*, calls with Dr. Maronick regarding his expert work, calls with defense counsel about
 14 California sales data, or the state court actions.

15 (k) Transportation, Hotels and Meals: These travel costs were in connection with
 16 hearings, formal and informal mediations and settlement meetings, depositions, and the trial in this
 17 litigation. Attorneys at BHO took the lead role in each hearing before this Court, had first-chair
 18 responsibility for deposing or defending 45 witnesses, and assisted in each deposition. My partners,
 19 Thomas O'Reardon and Paula Brown, traveled to take or defend 23 of these depositions in-person.
 20 Mr. O'Reardon and I also traveled to take the lead role in status conferences and oral argument with
 21 this Court and to participate in two mediations. Mr. O'Reardon, Mr. Straub, and I also traveled to
 22 participate in the jury trial. When practicable and reasonable, my firm minimized travel costs by
 23 taking depositions of out-of-town deponents via videoconference. The mediation session during the
 24 pandemic was also conducted via videoconference. Airfare was booked in coach class, and to save
 25 on hotel expenses, we often flew up and back to San Francisco the same day that matters took place
 26 in San Francisco. For the second, formal mediation, which took place in Los Angeles, we drove up
 27 the morning of the mediation and returned later that day. During trial we stayed in standard-size
 28 rooms at the Intercontinental San Francisco. The trial team did not need to rent office space during

1 the almost three weeks spent in San Francisco. This too saved a substantial amount of money. Travel
 2 costs associated with depositions or hearings specific to *Mullins*, *Sonner*, *Bland* and *White* are not
 3 included in this request. These excluded travel costs include those related to the August 2014 motion
 4 to compel Vincent Mullins to attend deposition in California, the July 2017 expert depositions of
 5 Drs. Thomas Maronick and Louis Lippiello in Baltimore⁵, the July 2017 deposition of Dr. Silbert
 6 in Boston relating to his expert merits report (and the costs incurred by my firm to travel in June
 7 2017 to Boston to defend Dr. Silbert's deposition that was cancelled last minute by defense counsel),
 8 the motion to dismiss hearing in *Sonner* on December 21, 2017, a case management conference in
 9 *Sonner* on March 1, 2018, the Ninth Circuit oral argument in *Sonner* on December 3, 2019, and case
 10 management conferences in *Bland* on December 11, 2019 and March 10, 2020. The majority of the
 11 travel-related expenses (\$60,335.58 of \$115,098.65) were incurred in May and June 2022,
 12 specifically for the pretrial conference and trial in *Montera*. For instance, \$46,846.93 was for hotel
 13 accommodations during trial between May 21, 2022 and June 8, 2022. This amount was paid for
 14 onsite food and beverage and standard hotel rooms for Timothy Blood, Thomas O'Reardon, Craig
 15 Straub, Mary Beth Montera, and for Debbie Burk who provided litigation and trial support. Class
 16 Counsel spent an additional \$13,488.65 on airfare, meals and local transportation during trial for
 17 themselves, witnesses and co-counsel. Additional documentation for these travel-related expenses
 18 is attached to this declaration as **Exhibits 11 and 12**. Below is additional information regarding
 19 certain travel-related expenses attested to in this declaration and documented in Exhibits 11 and 12:

20 (i) 12/17/15, Southwest Airlines. Credit card statement shows \$415.96.

21 As indicated on the receipt emailed on December 17, 2015, this flight was originally booked for
 22 travel to Chicago for another matter. That trip was cancelled and so these funds were used to book
 23 my flight to San Francisco for the hearing on class certification and summary judgment in this
 24 litigation. That hearing was originally scheduled for January 20, 2016 and was continued to January
 25

26 ⁵ Plaintiff's expert Dr. Maronick and Defendant's expert Dr. Lippiello were only disclosed
 27 and deposed in the context of merits reports they provided for the trial set for 2017 in *Sonner*. These
 28 two experts were not used in connection with motions for class certification or summary judgment,
 and were not disclosed for trial purposes in *Montera*. These two experts were unique in these
 respects and so Plaintiff's Counsel does not presently seek any reimbursement relating to them.

1 27, 2016. Thus, while the credit card statement shows \$415.96, only the cost of the airfare (\$397.91)
2 for this litigation is being sought here.

3 (ii) 7/13/17, Southwest Airlines. T. O'Reardon took the deposition of Dr.
4 Stuart Silverman on 7/12/17 in Los Angeles. Following the full day deposition, stayed at the Westin
5 LA Airport and flew to Boston the morning of 7/13/17 from Los Angeles to Boston to meet with
6 Dr. McAlindon in preparation for his deposition on 7/14/17.

7 (iii) 11/11/19, Southwest Airlines. T. Blood credit card statement and
8 emailed receipt show \$319.96 for a flight to San Francisco for the 11/20/19 class certification
9 hearing with half of that cost (\$159.98) being allocated to Joint Juice. Only half was allocated to
10 Joint Juice because at the time, a hearing in another matter was scheduled for the same day in San
11 Francisco. The hearing in the other matter was later continued. Nevertheless, only half the cost
12 remained allocated to Joint Juice, and so is being sought here.

13 (iv) 1/7/20, Southwest Airlines. Credit card statement shows \$243.96.
14 This flight was originally booked and cancelled and then rebooked for the deposition of Premier
15 witness Donna Imes that was continued from 1/28/20 to 2/13/20. Only the cost of the airfare
16 necessary for rebooking my flight (\$171 of \$243.96) is being sought here.

17 (v) 5/5/22 flight to SFO, returning to San Diego on 5/6/22. \$343.96. This
18 was Mr. Blood's airfare to the 5/6/22 final pretrial conference. It was booked on 4/12/22 and paid
19 for with travel funds from a previous cancelled flight in another matter. Therefore, while this charge
20 does not appear on a credit card statement, this was an amount spent on this litigation.

21 (l) Miscellaneous: \$1,882.22. This includes \$545.20 incurred to obtain sixteen
22 Joint Juice-related scientific publications from peer-reviewed journals and their publishers (e.g.,
23 Elsevier, Inc.). These publications were used throughout the litigation, including in connection with
24 expert discovery. Purchase documentation for these articles is attached to this declaration within
25 **Exhibit 13**.⁶ \$18.19 was spent on a copy of Dr. Kevin Stone's book, "Play Forever," which was
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27 ⁶ Exhibit 13 contains emailed receipts for 15 of the articles. In addition, on November 17,
28 2014, I purchased Yang et al., *Effects of glucosamine and chondroitin on treating knee OA* (2014)
from ReadCube for \$35.00. My credit card statement from that time period is also included within

1 used during his cross-examination at trial. \$52.80 was spent on a copy of Dr. Shari Diamond's book,
 2 "Trademark and Deceptive Advertising Surveys," which Mr. Poret cited in his expert rebuttal report
 3 and which we used to prepare for his deposition and to respond to arguments that he and Premier
 4 made about Dr. Dennis' survey. \$16.00 was paid to the New York State Library for research
 5 concerning legislative history regarding New York GBL §§ 349 and 350. \$495 was spent for access
 6 to CVN.com, which provides archived video coverage of trials categorized by attorneys and parties.
 7 This provided insight into how defense counsel would approach the trial here. We paid \$92 to the
 8 National Institutes of Health in connection with a FOIA request for materials relating to the GAIT
 9 trial. \$342.60 was paid to ARC Document Solutions for the demonstratives used during closing
 10 argument. We spent more than \$117.96 for product exemplars used in connection with factual
 11 research, depositions, trial preparation, and the trial. We also purchased a knee joint model (\$34.77)
 12 for use at trial. Premier also purchased a similar model that its counsel used with Dr. Stone during
 13 his examination and so we used that model during cross-examination of Dr. Stone. We also paid
 14 \$168.00 to Specialized Legal Services Inc. for removal of 9 boxes of exhibits and other documents
 15 stored in the courtroom during trial.

16 (m) Class Notice and Outreach: \$38,691.79 total sought. On February 2, 2017,
 17 the Court granted Plaintiff's unopposed motion for approval or class notice and ordered notice of
 18 pendency to be sent pursuant to Fed. R. Civ. P. 23(c)(2)(B). Plaintiff retained JND Legal
 19 Administration ("JND"), an experienced class notice and claims administrator, to implement and
 20 disseminate the class notice and opt-out requests. Pursuant to the Court's Order (Dkt. No. 102), the
 21 Court-approved notice of pendency was disseminated via publication methods and included a class
 22 notice website (www.JointJuiceNYLawsuit.com) that JND created and has maintained and updated
 23 through the present date. As of January 25, 2023, JND has billed \$29,691.81 for these notice of
 24 pendency services. Plaintiff also seeks reimbursement of \$8,999.98 spent through Top Class Actions
 25 (\$8,000.00) and Facebook (\$999.98) on additional outreach to Class members. Additional
 26 documentation for these expenses is attached to this declaration as **Exhibit 14**. The October 23,

27 _____
 28 Exhibit 13 and it identifies this purchase of a scientific study used throughout the litigation.

2018, invoice from Top Class Actions totaled \$4,500. One-third of that cost was allocated to the Joint Juice matter. The May 12, 2020, invoice from Top Class Actions totaled \$6,000. One-third of that cost was allocated to the Joint Juice matter. Premier will also be required to pay for the cost of noticing the Class and allocating the judgment. This significant expense will benefit the Class and has not been included in the judgment value calculation.

(n) Mediation Fees: These costs (\$24,300.00) were paid by my firm relating to the December 3, 2013, mediation with Mr. Martin Quinn (JAMS) (\$3,275 paid by my firm), the April 9, 2015 mediation with Hon. Carl West (Ret.) (JAMS) (\$3,525 paid by my firm), and the September 24, 2020 mediation with Hon. Layn R. Phillips (Ret.) (\$17,500 paid by my firm). For each of these mediations, the parties agreed to divide the total mediation fees (\$48,600.00) as follows: 50% to Plaintiff's Counsel and 50% to Premier. Additional documentation for these expenses is attached to this declaration as **Exhibit 15**.

VI. SUMMARY OF PLAINTIFF'S COUNSEL'S REQUESTED FEES AND EXPENSES

82. Collectively, with this fee application, Plaintiff's Counsel seek reimbursement of \$1,073,123.10 in out-of-pocket, nontaxed expenses incurred in this litigation. As stated in their respective declarations, the firms have each expended the following amounts:

Firm	Nontaxed Expenses Requested
Blood Hurst & O'Reardon, LLP	\$1,040,420.50
Lynch Carpenter, LLP	\$8,709.80
Iredale & Yoo, APC	\$23,992.80
TOTAL	\$1,073,123.10

83. Based on the information provided in the concurrently filed declarations of Plaintiff's Counsel, the total number of hours spent on this litigation by Plaintiff's Counsel is 10,921.30, for a total lodestar of \$7,201,393.50.

Firm	Hours	Lodestar
Blood Hurst & O'Reardon, LLP	9,547.50	\$6,210,890.00
Lynch Carpenter, LLP	567.00	\$392,293.50
Iredale & Yoo, APC	806.80	\$598,210.00

TOTAL	10,921.30	\$7,201,393.50
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84. The requested attorney’s fees and costs would equal 33.9% of the total recovery exceeding \$21,224,427.24, should this request be granted. This consists of the \$12,895,454.90 Class judgment, \$54,455.74 in taxed costs, \$1,073,123.10 in the requested nontaxed costs, and the \$7,201,393.50 requested fee award. This total does not include accruing post-judgment interest amounts, any future fee and expense awards, and the costs for disseminating notice and allocating the judgment to the Class. As of March 27, 2023, post-judgment interest on just the Class judgment amount exceeds \$250,000.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 4, 2023, at San Diego, California.

By: s/ Thomas J. O’Reardon

THOMAS J. O’REARDON

BLOOD HURST & O’ REARDON, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

Executed on April 4, 2023.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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