

1 Guy B. Wallace (SBN 176151)
gwallace@schneiderwallace.com
2 Mark T. Johnson (SBN 76904)
mjohnson@schneiderwallace.com
3 SCHNEIDER WALLACE
COTTRELL KONECKY LLP
4 2000 Powell Street, Suite 1400
Emeryville, CA 94608
5 (415) 421-7100; (415) 421-7105 (Fax)

6 Linda M. Dardarian (SBN 131001)
ldardarian@gbdhlegal.com
7 Andrew P. Lee (SBN 245903)
alee@gbdhlegal.com
8 Katharine L. Fisher (SBN 305413)
kfisher@gbdhlegal.com
9 GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
10 Oakland, CA 94612
(510) 763-9800; (510) 835-1417 (Fax)

11 Adam B. Wolf (SBN 215914)
awolf@pwcklegal.com
12 Catherine Cabalo (SBN 248198)
ccabalo@pwcklegal.com
13 PEIFFER WOLF CARR & KANE
4 Embarcadero Center, 14th Floor
14 San Francisco, CA 94111
15 (415) 766-3592; (415) 402-0058 (Fax)

16 *Attorneys for Plaintiffs and the Certified Classes*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 ABDUL NEVAREZ and PRISCILLA NEVAREZ,
21 on behalf of themselves and all others similarly
situated, and SEBASTIAN DEFRANCESCO,

22 Plaintiffs,

23 vs.

24 FORTY NINERS FOOTBALL COMPANY, LLC,
25 a Delaware limited liability company, et al.,

26 Defendants.
27
28

CLASS ACTION

Case No.: 5:16-cv-07013-LHK (SVK)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 16, 2020
Time: 1:30 p.m.
Dept: Courtroom 8
Before: Hon. Lucy H. Koh

TABLE OF CONTENTS

Page

1

2

3 NOTICE OF MOTION 1

4 MEMORANDUM OF POINTS AND AUTHORITIES 1

5 I. INTRODUCTION 1

6 II. BACKGROUND 2

7 A. Plaintiffs’ Experiences at Levi’s Stadium 2

8 B. Litigation History 4

9 III. LEGAL STANDARD 5

10 IV. ARGUMENT 7

11 A. The Class Representatives Devoted Significant Amounts of Time and Effort to

12 this Litigation..... 7

13 1. Responding to Written Discovery 7

14 2. Drafting Declarations 7

15 3. Preparing and Sitting for Depositions 8

16 4. Advising Counsel on Factual Investigation and Settlement 8

17 5. Class Outreach 8

18 B. The Class Representatives’ Efforts Resulted in Substantial Benefits to the Class..... 8

19 C. The Class Representatives Faced Personal Difficulties Due to Their

20 Participation in this Litigation. 9

21 D. The Duration of the Litigation Supports the Service Awards. 10

22 E. The Class Representatives Faced Significant Risk in Commencing Suit. 11

23 F. The Service Awards Are a Small Fraction of the Settlement Amount..... 12

24 G. The Class Representatives Have Acted in the Best Interests of the Class. 13

25 H. The Requested Service Awards Promote the Public Policies Underlying the

26 ADA and the California Unruh Act..... 13

27 V. CONCLUSION 14

28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

1

2

3

4 *Ability Ctr. Of Greater Toledo v. City of Sandusky,*
385 F.3d 901 (6th Cir. 2004)14

5

6 *Alberto v. GMRI, Inc.,*
252 F.R.D. 652 (E.D. Cal. 2008)12

7

8 *In re Am. Apparel S’holder Litig.,*
No. CV 10-06352 MMM, 2014 U.S. Dist. LEXIS 184548 (C.D. Cal. July 28, 2014)10

9 *Asgari v. Volkswagen Grp. Of Am., Inc.,*
No. CV 13-02529 MMM, 2015 U.S. Dist. LEXIS 188824 (C.D. Cal. May 29, 2015)11

10

11 *Bellinghausen v. Tractor Supply Co.,*
306 F.R.D. 245 (N.D. Cal. 2015)6

12

13 *Black v. T-Mobile USA, Inc.,*
No. 17-cv-04151-HSG, 2019 U.S. Dist. LEXIS 123676 (N.D. Cal. July 24, 2019).....9

14 *Boyd v. Bank of Am. Corp.,*
No. SACV 13-0561-DOC, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014).....6

15

16 *Curtis-Bauer v. Morgan Stanley & Co., Inc.,*
No. 08-CV-821-IEG (BLM), 2008 WL 7863877 (N.D. Cal. Oct. 22, 2008).....6

17 *Garner v. State Farm Mut. Auto Ins. Co.,*
No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477 (N.D. Cal. Apr. 22, 2010).....6

18

19 *Glass v. UBS Fin. Servs., Inc.,*
No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007).....6

20

21 *In re Mego Fin. Corp. Sec. Litig.,*
213 F.3d 454 (9th Cir. 2000)12

22 *In re Nucoa Real Margarin Litig.,*
No. CV 10-00927 MMM, 2012 U.S. Dist. LEXIS 189901 (C.D. Cal. June 12, 2012)11

23

24 *In re Online DVD-Rental Antitrust Litig.,*
779 F.3d 934 (9th Cir. 2015)6, 12

25

26 *Radcliffe v. Experian Info. Solutions, Inc.,*
715 F.3d 1157 (9th Cir. 2013)12

27 *Rodriguez v. West Publ’g Corp.,*
563 F.3d 948 (9th Cir. 2009)5, 6

28

1 *Sandoval v. Tharaldson Employee Mgt., Inc.*,
 No. EDCV 08-482-VAP, 2010 U.S. Dist. LEXIS 69799 (C.D. Cal. June 15, 2010)12

2

3 *Schaffer v. Litton Loan Servicing, LP*,
 No. CV 05-07673 MMM, 2012 U.S. Dist. LEXIS 189830 (C.D. Cal. Nov. 13 2012).....5, 9

4

5 *Smothers v. NorthStar Alarm Servs., LLC*,
 No. 2:17-cv-00548-KJM-KJN, 2020 U.S. Dist. LEXIS 56473 (E.D. Cal. March 30, 2020).....10

6 *Staton v. Boeing Co.*,
 327 F.3d 938 (9th Cir. 2003)5, 6, 8, 12

7

8 *In re Toys R Us – Del., Inc. – Fair & Accurate Credit Transactions (FACTA) Litig.*,
 295 F.R.D. 438 (C.D. Cal. 2014).....10, 11

9

10 *Weeks v. Kellogg Co.*,
 No. CV 09-08102 (MMM), 2011 U.S. Dist. LEXIS 155472 (C.D. Cal. Nov. 23, 2011)11

11 *In re Wells Fargo Loan Processor Overtime Pay Litig.*,
 No. C-07-1841-DMC, 2011 U.S. Dist. LEXIS 84541 (N.D. Cal. Aug. 2, 2011)6

12

13 *Winans v. Emeritus Corp.*,
 No. 13-cv-03962-HSG, 2016 U.S. Dist. LEXIS 3212 (N.D. Cal. Jan. 11, 2016)6

14 *Wren v. RGIS Inventory Specialists*,
 No. C-06-05778 JCS, 2011 U.S. Dist. LEXIS 38667 (N.D. Cal. Apr. 1, 2011)11

15

16 **State Cases**

17 *Koire v. Metro Car Wash*,
 40 Cal. 3d 24 (1985)14

18

19 *Munson v. Del Taco, Inc.*,
 46 Cal. 4th 661 (2009).....14

20 **Federal Statutes**

21 42 U.S.C. § 12101(a)(7)13

22 Americans with Disabilities Act Titles II and III4, 9, 13, 14

23

24 **State Statutes**

25 California Unruh Act, Cal. Civ. Code §§ 51 *et seq.*.....4, 14

26

27

28

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT, on July 16, 2020 at 1:30 p.m. in Courtroom 8 of the United
4 States Courthouse at 280 South 1st Street, San Jose, California, Plaintiffs will and hereby do move the
5 Court for an order awarding \$5,000 to each of Plaintiffs Abdul Nevarez, Priscilla Nevarez, and
6 Sebastian DeFrancesco for their efforts and contributions on behalf of the Settlement Classes.

7 This motion is based on this Notice; the Memorandum of Points and Authorities; the
8 accompanying Declarations of Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco; all
9 papers and pleadings from this case on file with the Court; any further evidence or argument offered to
10 the Court at the hearing on this motion; and any other matters that the Court may consider.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 Plaintiffs Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco (“Plaintiffs” or “Class
14 Representatives”) expended considerable time and effort—and faced genuine personal hardships—to
15 achieve full and equal access to Levi’s Stadium for people with mobility disabilities. Their
16 contributions toward the final settlement of this case have been important and substantive.

17 Thanks to the efforts of the Class Representatives, Defendants are required to remediate
18 thousands of architectural barriers at the Stadium and its surrounding pedestrian rights of way, and
19 they are ameliorating problems with ticketing, transportation, and other services that prevented people
20 with mobility disabilities from having full and equal access to the Stadium. *See* Settlement Agreement
21 and Release of Claims (“Settlement,” ECF No. 375-2). In addition, Defendants have created a \$24
22 million damages fund to be distributed to class members with mobility disabilities who experienced
23 discrimination and file a timely and valid claim.

24 In recognition of their efforts and sacrifices on behalf of the Classes, Plaintiffs seek a service
25 award of \$5,000 each. The requested awards represent a tiny fraction of the Settlement’s total value,
26 amounting to only about 0.06% of the damages fund, not including the very extensive injunctive relief
27 the Settlement requires. The requested service awards are further supported by the risks associated
28 with bringing this lawsuit, the intensity and length of this litigation, and the important public policies

1 underlying the Plaintiffs' claims. The Class Representatives agreed to the proposed settlement with no
 2 expectation of receiving a service award and have consistently demonstrated that they take seriously
 3 their duties toward Class members.

4 Plaintiffs' request for service awards is reasonable and should be granted.

5 **II. BACKGROUND**

6 **A. Plaintiffs' Experiences at Levi's Stadium**

7 All three Plaintiffs are longtime Forty Niners fans, and all have attended Forty Niners games
 8 and other events at Levi's Stadium since it opened in 2014. *See* Declaration of Abdul Nevarez in
 9 Support of Plaintiffs' Motion for Service Awards, filed herewith ("A. Nevarez Decl.") ¶ 5; Declaration
 10 of Priscilla Nevarez in Support of Plaintiffs' Motion for Service Awards, filed herewith ("P. Nevarez
 11 Decl.") ¶ 5; Declaration of Sebastian DeFrancesco in Support of Plaintiffs' Motion for Service
 12 Awards, filed herewith ("DeFrancesco Decl.") ¶ 5. On each of these occasions, they were denied full
 13 and equal access to the Stadium and related services as a result of pervasive barriers throughout the
 14 Stadium and Defendants' discriminatory practices.

15 Plaintiff Abdul Nevarez has a mobility disability and uses a wheelchair. His wife, Plaintiff
 16 Priscilla Nevarez, does not have a mobility disability and has accompanied and assisted Mr. Nevarez
 17 each time he has visited Levi's Stadium. P. Nevarez Decl. ¶ 4. On these occasions, the Nevarezes had
 18 difficulty getting to the Stadium as a result of inadequate accessible parking; a lack of transportation
 19 from the parking lot to the Stadium that can accommodate wheelchairs; and sidewalks approaching the
 20 Stadium that are too steep, curved, cracked, and uneven to safely navigate in a wheelchair. *Id.* ¶ 9; A.
 21 Nevarez Decl. ¶¶ 9-10. They also encountered many physical access barriers at the Stadium, including
 22 elevators that are very hard to find, luxury suites where a person using a wheelchair has no view of the
 23 field, concession booths that lack accessible counters and seating areas, and metal detectors that are too
 24 narrow for a wheelchair to pass through. P. Nevarez Decl. ¶ 10; A. Nevarez Decl. ¶ 11. Even
 25 purchasing tickets for accessible seats has proved inordinately burdensome, as the Forty Niners
 26 required the Nevarezes to purchase tickets in person, even though non-disabled people can purchase
 27 tickets online or by phone. P. Nevarez Decl. ¶ 8; A. Nevarez Decl. ¶ 8.

1 The Nevarezes have often experienced great frustration and embarrassment when visiting
2 Levi's Stadium as a result of pervasive access barriers. In November 29, 2015, for instance, the
3 Nevarezes attended a Forty Niners game against the Arizona Cardinals and arrived early to exchange
4 inaccessible seats for accessible ones at the Stadium's box office. A. Nevarez Decl. ¶ 9. They parked
5 in a Stadium lot that was approximately one mile from the box office and planned to take a shuttle to
6 the box office. *Id.* However, after 45 minutes of waiting at two different shuttle stations and inquiring
7 with multiple employees, it became apparent that Defendants would not provide accessible
8 transportation. *Id.* ¶ 10. Instead, Ms. Nevarez pushed Mr. Nevarez's wheelchair for part of the way,
9 and they paid a pedicab tricycle driver to transport them the rest of the way, even though the pedicab
10 had no wheelchair lift. *Id.* The experience was physically taxing for Ms. Nevarez and embarrassing
11 for Mr. Nevarez. *Id.* ¶ 10; P. Nevarez Decl. ¶ 9.

12 Plaintiff Sebastian DeFrancesco has quadriplegia and uses a manual wheelchair for mobility.
13 DeFrancesco Decl. ¶ 3. In 2016, he purchased two season tickets for Forty Niners games and was
14 assured that his seats would be accessible. *Id.* ¶ 7. However, when he subsequently attended a pre-
15 season home game with his daughter, he was surprised and embarrassed to discover that he could not
16 access his seats because they were located up a flight of stairs. *Id.* ¶ 8. Rather than guaranteeing him
17 specific accessible seats for every game, Defendants forced Mr. DeFrancesco to contact the Forty
18 Niners and request to exchange his assigned seats for accessible ones before each game or event he
19 wished to attend. *Id.* ¶ 9. By failing to provide Mr. DeFrancesco permanent accessible seats,
20 Defendants deprived him of the experience of being a season ticket holder that non-disabled fans
21 enjoy. *Id.*

22 Moreover, much like the Nevarezes, Mr. DeFrancesco has encountered many architectural
23 barriers at Levi's Stadium that make it difficult for him to navigate the Stadium in his wheelchair. For
24 example, he encountered restroom doors that are too heavy, counters at concession booths that are too
25 high, and aisles in merchandise stores that are too narrow. *Id.* at ¶¶ 10, 12. In addition, he has had
26 difficulty locating elevators due to lack of wayfinding signage, and he has been subjected to
27 excessively physical searches of his body by inadequately trained staff. *Id.* at ¶¶ 10, 12.

1 Plaintiffs brought this case to ensure that other persons with mobility disabilities and their
2 companions would not endure the same degrading and discriminatory experiences at Levi's Stadium.

3 **B. Litigation History**

4 The Nevarezes filed this lawsuit on December 7, 2016 against Defendants Forty Niners
5 Football Company LLC and the City of Santa Clara, among others. (ECF No. 1.) Plaintiffs alleged
6 violations of federal and California law, including Titles II and III of the Americans with Disabilities
7 Act ("ADA") and the California Unruh Act, Cal. Civ. Code §§ 51 *et seq.* ("Unruh Act."), based on
8 numerous access barriers at Levi's Stadium. The Nevarezes then added Mr. DeFrancesco as an
9 additional class representative and detailed more than 2,600 barriers to access for persons with
10 mobility disabilities throughout the Stadium, its related parking facilities, and its pedestrian rights of
11 way. (ECF Nos. 47, 50).

12 All three Plaintiffs were significantly involved in the extensive discovery process. As detailed
13 further below, all of the Plaintiffs prepared and sat for their own lengthy depositions, responded to
14 fact-intensive interrogatories, and gathered documents to respond to requests for production. This
15 process was time-consuming and required Plaintiffs to repeatedly describe and revisit difficult,
16 stressful experiences in great detail. *See* A. Nevarez Decl. ¶¶ 16-20; P. Nevarez Decl. ¶¶ 13-17;
17 DeFrancesco Decl. ¶¶ 14-18.

18 During the extensive discovery phase, this Court granted Plaintiffs' motion for class
19 certification (ECF No. 186), and the parties began to discuss settlement. In order to settle this case, the
20 parties participated in six formal mediation sessions between January 2018 and August 2019, in
21 addition to a substantial number of informal negotiation meetings. All of the Plaintiffs attended the
22 first mediation session and made themselves available telephonically for subsequent mediations. A.
23 Nevarez Decl. ¶ 22; P. Nevarez Decl. ¶ 19; DeFrancesco Decl. ¶ 19. Plaintiffs' participation was
24 instrumental to the excellent result achieved, as they lent to the process their years of experience as
25 people with mobility disabilities and companions attending events and encountering myriad
26 accessibility barriers at Levi's Stadium.

27 The settlement agreement, signed in September 2019, provides extensive injunctive relief. It
28 requires remedial access work with respect to all areas of Levi's Stadium, its main parking lot, and the

1 pedestrian rights of way leading from the parking lots to the Stadium. *See* Settlement § III.A. This
2 work will ensure that people with mobility disabilities and their companions have full and equal access
3 to the Stadium and its related facilities. The settlement also requires Defendants to provide full and
4 equal access to ticketing services. *Id.* § III.C.

5 In addition, the settlement agreement creates a \$24 million class damages fund with no
6 reversion to Defendants. *Id.* § VII.A. Each class member who files a claim will receive a share of the
7 \$24 million fund based on the number of visits to Levi’s Stadium during which they encountered an
8 access barrier that caused difficulty, discomfort, or embarrassment. Each claimant will receive a
9 minimum award of \$4,000, unless the submitted, valid claims exceed the amount of the damages fund,
10 in which case awards will be reduced on a pro rata basis. *Id.* § VIII.A. This is the largest class
11 damages settlement ever achieved in a case addressing physical access barriers at a place of public
12 accommodation. The settlement allows Plaintiffs to apply for service awards of up to \$7,500 each. *Id.*
13 § VIII.B.

14 The Court granted preliminary approval of the settlement on March 9, 2020. (ECF No. 392.)
15 The Court also appointed Plaintiff DeFrancesco, who had not been appointed as a class representative
16 at class certification, as a representative of the Injunctive Relief Class. (*Id.* ¶ 3.)

17 **III. LEGAL STANDARD**

18 Service awards are common in class action cases. *Rodriguez v. West Publ’g Corp.*, 563 F.3d
19 948, 958 (9th Cir. 2009) (service awards “are fairly typical in class action cases”); *Staton v. Boeing*
20 *Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (“named plaintiffs ... are eligible for reasonable incentive
21 payments”). The purpose of such awards is “to compensate class representatives for work done on
22 behalf of the class [and] make up for financial or reputational risk undertaken in bringing the action
23” *Rodriguez*, 563 F.3d at 958-59; *see also Staton*, 327 F.3d at 977 *Schaffer v. Litton Loan*
24 *Servicing, LP*, No. CV 05-07673 MMM (JCx), 2012 U.S. Dist. LEXIS 189830, at *57-58 (C.D. Cal.
25 Nov. 13 2012) (“[I]t is well established that the court may grant a modest incentive award to class
26 representatives, both as an inducement for their having agreed to bring the action and as compensation
27 for time spent in litigation activities, including depositions.”).

1 The Ninth Circuit and numerous courts in the Northern District of California have approved
2 service awards of \$5,000 or more. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
3 947-48 (9th Cir. 2015) (approving \$5,000 service awards); *Winans v. Emeritus Corp.*, No. 13-cv-
4 03962-HSG, 2016 U.S. Dist. LEXIS 3212, at *26-27 (N.D. Cal. Jan. 11, 2016) (approving \$7,500
5 service award where litigation lasted 2.5 years; the award amounted to 0.05% of the gross settlement;
6 and plaintiffs assisted by drafting complaint and responding to discovery, sitting for depositions, and
7 participating in settlement discussions); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268
8 (N.D. Cal. 2015) (approving \$10,000 service award); *Garner v. State Farm Mut. Auto Ins. Co.*, No. CV
9 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *46-47 (N.D. Cal. Apr. 22, 2010) (approving
10 \$20,000 service award, in part, because plaintiff was deposed twice, met with class counsel on six
11 occasions, attended a full-day court hearing, spoke with class counsel on many occasions, reviewed
12 pleadings, and responded to written discovery); *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, No. 08-
13 CV-821-IEG (BLM), 2008 WL 7863877, at *1 (N.D. Cal. Oct. 22, 2008) (approving \$25,000 service
14 award because plaintiff took risks in her career by coming forward and for effort she devoted to case);
15 *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal.
16 Jan. 26, 2007) (approving \$25,000 service award to each of four class representatives because of risks
17 incurred in coming forward and extensive informal discovery).

18 In evaluating requests for service awards, courts consider the following factors: (1) the amount
19 of time and effort spent by the class representatives on the litigation; (2) the degree to which the class
20 representatives' efforts benefitted the class; (3) the personal difficulties encountered by the class
21 representatives; (4) the duration of the litigation; (5) the risk to the class representatives in
22 commencing suit, whether financial, reputational, or otherwise; and (6) whether the litigation has
23 promoted important public policy. *Rodriguez*, 563 F.3d at 958-59; *Staton*, 327 F.3d at 977; *In re Wells*
24 *Fargo Loan Processor Overtime Pay Litig.*, No. C-07-1841-DMC, 2011 U.S. Dist. LEXIS 84541, at
25 *31-32 (N.D. Cal. Aug. 2, 2011); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 U.S.
26 Dist. LEXIS 162880, at *10-11 (C.D. Cal. Nov. 18, 2014).

IV. ARGUMENT

A. The Class Representatives Devoted Significant Amounts of Time and Effort to this Litigation.

Each of the three Class Representatives expended significant time and effort for this case. Their consistent involvement included participating in the discovery process, such as sitting for depositions and responding to interrogatories and requests for production; participating in the preparation of pleadings filed on behalf of the class; remaining informed of the status of the litigation; and participating in settlement decisions. Mr. Nevarez estimates that he has spent at least 72 hours working on this case; Ms. Nevarez estimates at least 90 hours; and Mr. DeFrancesco estimates at least 52 hours. A. Nevarez Decl. ¶ 16; P. Nevarez Decl. ¶ 13; DeFrancesco Decl. ¶ 14.

1. Responding to Written Discovery

All three Class Representatives spent considerable time and effort responding to written discovery. Plaintiff Abdul Nevarez responded to a total of 21 interrogatories propounded by Defendants, and Plaintiff DeFrancesco responded to 17. *See* A. Nevarez Decl. ¶ 17; DeFrancesco Decl. ¶ 15. Although Defendants did not propound any interrogatories on Plaintiff Priscilla Nevarez, Ms. Nevarez helped respond to interrogatories propounded on Mr. Nevarez. *See* P. Nevarez Decl. ¶ 14. Plaintiffs' answers included comprehensive information regarding access barriers and other discrimination they experienced at the Stadium. Each Plaintiff discussed their responses in detail with Class Counsel. In addition, Plaintiffs helped their attorneys draft initial disclosures and gathered documents in response to Defendants' requests for production (a total of 22 propounded on Mr. Nevarez and 21 propounded on Mr. DeFrancesco). *See* A. Nevarez Decl. ¶ 17; P. Nevarez Decl. ¶ 14; DeFrancesco Decl. ¶ 15.

2. Drafting Declarations

Each Class Representative submitted a lengthy declaration in support of their class certification motion describing the access barriers and experiences of discrimination they had encountered on visits to Levi's Stadium. (ECF No. 139 Exs. H, P, and Q.) In addition, Plaintiffs DeFrancesco and Priscilla Nevarez submitted shorter reply declarations in support of the class certification motion. (ECF No. 168- 4, 5, and 6.)

1 **3. Preparing and Sitting for Depositions**

2 All Class Representatives were deposed in connection with this litigation. Plaintiff Sebastian
3 DeFrancesco was deposed on April 27, 2018. His deposition lasted approximately six hours, including
4 breaks. Plaintiff Abdul Nevarez was deposed on May 1, 2018. His deposition lasted just under eight
5 hours, including breaks. Plaintiff Priscilla Nevarez was deposed on May 2, 2018. Her deposition
6 lasted nearly eight hours, including breaks. Prior to their depositions, all of the Class Representatives
7 spent several hours with Class Counsel to prepare.

8 **4. Advising Counsel on Factual Investigation and Settlement**

9 Throughout the litigation, Plaintiffs assisted Class Counsel with factual development. First,
10 each of the Plaintiffs described to Counsel in detail their experiences with discrimination and access
11 barriers at Levi's Stadium, and each thoroughly reviewed the factual allegations in the Complaint and
12 in their individual damages claims filed with the City of Santa Clara. A. Nevarez Decl. ¶ 19; P.
13 Nevarez Decl. ¶ 16; DeFrancesco Decl. ¶ 19. Even once the lawsuit was underway, the Nevarezes
14 continued to visit Levi's Stadium for events, and they reported the details of their experiences to Class
15 Counsel. A. Nevarez Decl. ¶¶ 13-14, 21; P. Nevarez Decl. ¶¶ 11, 18. Plaintiffs' insights helped
16 counsel understand conditions at the Stadium and the changes that were necessary to make the Stadium
17 accessible to visitors with mobility disabilities.

18 In addition, all three Plaintiffs attended the Parties' first mediation, on January 11, 2018. Prior
19 to the mediation, they spent time preparing with counsel to assist with the settlement efforts. A.
20 Nevarez Decl. ¶ 22; P. Nevarez Decl. ¶ 19; DeFrancesco Decl. ¶ 19.

21 **5. Class Outreach**

22 Plaintiff DeFrancesco is active in the disability community and volunteers for several
23 organizations that advocate for the rights of people with disabilities. As this litigation progressed, he
24 reached out to class members through his personal network to keep them informed about the case and
25 even identify potential trial witnesses. DeFrancesco Decl. ¶ 20.

26 **B. The Class Representatives' Efforts Resulted in Substantial Benefits to the Class.**

27 In evaluating a requested service award, courts also consider the degree to which class
28 representatives' efforts benefitted the class. *Staton v. Boeing Co.*, 327 F.3d at 977. Here, Class

1 Representatives' contributions to the litigation and negotiation were instrumental in bringing about this
2 important settlement. Based on their personal encounters with access barriers and discriminatory
3 policies at Levi's Stadium, they assisted Class Counsel in litigating and settling this case. For
4 example, the Nevarezes shared the difficulties they had often experienced trying to find transportation
5 from the parking lot to the Stadium, exchanging inaccessible seats for accessible ones, and watching a
6 supercross event from a luxury suite that was not wheelchair-accessible. *See* A. Nevarez Decl. ¶¶ 8-
7 12; P. Nevarez Decl. ¶¶ 8-10. Mr. DeFrancesco described his frustration in purchasing season tickets
8 and then discovering that he could not access his seats, denying him an equal experience to that of non-
9 disabled season ticket holders and embarrassing him in front of his daughter. *See* DeFrancesco Decl.
10 ¶¶ 7-9. All three Plaintiffs spoke articulately about the genuine pain these experiences caused, and as a
11 result, rectifying these barriers became central to the settlement.

12 As a result of Plaintiffs' efforts, people with mobility disabilities will have full and equal access
13 to Levi's Stadium and related facilities and services. This factor weighs heavily in favor of granting
14 the modest service awards requested here. *See, e.g., Black v. T-Mobile USA, Inc.*, No. 17-cv-04151-
15 HSG, 2019 U.S. Dist. LEXIS 123676, at *21-22 (N.D. Cal. July 24, 2019) (approving \$10,000 service
16 award in part because settlement was favorable to the class).

17 **C. The Class Representatives Faced Personal Difficulties Due to Their Participation in this**
18 **Litigation.**

19 Another factor that courts consider in assessing service awards is whether the class
20 representatives' service resulted in personal difficulties. *See, e.g., Schaffer*, 2012 U.S. Dist. LEXIS
21 189830, at *59. In prosecuting this action, each of the Class Representatives faced notable personal
22 hardships and still persevered on behalf of the Classes. In particular, Plaintiffs were personally
23 targeted by Defendants' harsh litigation tactics. At Abdul Nevarez's deposition, defense counsel
24 subjected him to a series of unnecessarily invasive questions in an attempt to portray him as a serial
25 litigator who pursues frivolous ADA lawsuits as a source of income. A. Nevarez Dep. (A. Nevarez
26 Decl. Ex. A) at 163:18-165:8. The stereotype of the "drive-by" ADA plaintiff is demeaning toward
27 people with disabilities, and Mr. Nevarez felt embarrassed and stigmatized as a result of this
28 experience. A. Nevarez Decl. ¶ 20. And, as this Court has observed, Plaintiffs' prior litigation has no

1 bearing on their fitness as class representatives; private enforcement, often by repeat litigants, is
2 critical to the ADA's implementation. (*See* Order Granting Class Certification, ECF No. 186 at 26.)

3 Plaintiffs Priscilla Nevarez and Sebastian DeFrancesco were also subjected to unnecessarily
4 aggressive deposition tactics. At Ms. Nevarez's deposition, defense counsel focused inordinately on
5 the Nevarezes' unrelated disability-access cases involving golf courses. Defense counsel repeatedly
6 asked whether the Nevarezes call golf courses to inquire about accessibility with no intention of
7 actually visiting them, insinuating again that the Nevarezes are vexatious litigators rather than serious
8 advocates of the rights of people with disabilities. P. Nevarez Dep. (P. Nevarez Decl. Ex. A) at 69:11-
9 81:11. At Mr. DeFrancesco's deposition, defense counsel likewise dwelled on Mr. DeFrancesco's
10 unrelated litigation involving disability access, including details about his monetary awards in those
11 cases, and implied that Mr. DeFrancesco had received monetary awards in those cases despite not
12 suffering any genuine injury. DeFrancesco Dep. (DeFrancesco Decl. Ex. A) at 123:4-134:9. All three
13 Plaintiffs were distressed as a result of these deposition techniques, and all were offended by the
14 erroneous implication that they pursue frivolous disability rights cases. A. Nevarez Decl. ¶ 20; P.
15 Nevarez Decl. ¶ 17; DeFrancesco Decl. ¶ 18. Thus, the personal difficulties and reputational harm that
16 the Class Representatives have faced in pursuing this litigation weigh in favor of granting their
17 requests for service awards.

18 **D. The Duration of the Litigation Supports the Service Awards.**

19 Perseverance in pursuing class litigation over the course of several years also supports the
20 approval of reasonable service awards. *See, e.g., In re Toys R Us – Del., Inc. – Fair & Accurate Credit*
21 *Transactions (FACTA) Litig.*, 295 F.R.D. 438, 471 (C.D. Cal. 2014). Here, the Class Representatives
22 have vigorously represented the interests of the Classes since 2016—three-and-a-half years of intense
23 litigation—and were prepared to continue through trial and appeal before a settlement was reached.

24 The proposed service awards in this case compare favorably to service awards that have been
25 approved in cases of similar or shorter duration. *See, e.g., Smothers v. NorthStar Alarm Servs., LLC*,
26 No. 2:17-cv-00548-KJM-KJN, 2020 U.S. Dist. LEXIS 56473, at *35-36 (E.D. Cal. March 30, 2020)
27 (granting \$10,000 service awards where litigation went on for just over a year and noting that that
28 duration “weigh[ed] slightly in favor of granting each [plaintiff] an incentive award”); *In re Am.*

1 *Apparel S'holder Litig.*, No. CV 10-06352 MMM (JCGx), 2014 U.S. Dist. LEXIS 184548, at *104-04
 2 (C.D. Cal. July 28, 2014) (finding duration of litigation weighed in favor of incentive award where
 3 duration of litigation was “almost four years”); *Asgari v. Volkswagen Grp. Of Am., Inc.*, No. CV 13-
 4 02529 MMM (VBKx), 2015 U.S. Dist. LEXIS 188824, at *159 (C.D. Cal. May 29, 2015) (finding that
 5 a duration of litigation of three years favored incentive award); *In re Nucoa Real Margarin Litig.*, No.
 6 CV 10-00927 MMM (AJWx), 2012 U.S. Dist. LEXIS 189901, at *116-18 (C.D. Cal. June 12, 2012)
 7 (approving \$8,000 service awards where litigation lasted for just over two years and noting that this
 8 duration of litigation weighed “slightly in favor of approving the incentive award”). Accordingly, this
 9 factor weighs in favor of the requested service awards.

10 **E. The Class Representatives Faced Significant Risk in Commencing Suit.**

11 “When a class representative shoulders some degree of personal risk in joining the litigation, ...
 12 an incentive award is especially important.” *In re Toys R Us*, 295 F.R.D. at 470; *Weeks v. Kellogg Co.*,
 13 No. CV 09-08102 (MMM) (RZx), 2011 U.S. Dist. LEXIS 155472, at *36 (C.D. Cal. Nov. 23, 2011).
 14 However, personal risk is not necessary for courts to approve service awards, but only one of several
 15 factors to be considered. *See Toys R Us*, 295 F.R.D at 470-72 (approving \$5,000 service award for
 16 each plaintiff despite finding that they shouldered no personal risk in joining the litigation). Courts
 17 consider not just risks of workplace retaliation, but also of other financial and reputational risks. *See*,
 18 *e.g.*, *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 U.S. Dist. LEXIS 38667, at *92
 19 (N.D. Cal. Apr. 1, 2011).

20 Here, Class Representatives have shouldered the risk of being tainted publicly as vexatious,
 21 serial litigants rather than serious advocates for the rights of people with disabilities. At their
 22 depositions, defense counsel repeatedly insinuated that each of the Plaintiffs pursues frivolous
 23 disability rights litigation for monetary gain. This implication was troubling to them in light of their
 24 genuine commitment to their communities and to civil rights. *See* A. Nevarez Decl. ¶¶ 20, 23; P.
 25 Nevarez Decl. ¶¶ 17, 20; DeFrancesco Decl. ¶¶ 18, 21. Plaintiffs pursued this case in spite of the real
 26 danger of reputational harm that can result from being cast as a “drive-by” litigator.

27 In addition, Plaintiffs feared that their participation in this action would affect their continued
 28 enjoyment of events at Levi’s Stadium. All of the Plaintiffs are enthusiastic Forty Niners fans and,

1 when not suffering the indignity of disability-based discrimination, derive a great deal of joy from
 2 attending games and other events at Levi's Stadium. All intend to continue frequenting Levi's
 3 Stadium and feared that pursuing this litigation would jeopardize their ability to do so. A. Nevarez
 4 Decl. ¶ 23; P. Nevarez Decl. ¶ 20; DeFrancesco Decl. ¶ 21.

5 **F. The Service Awards Are a Small Fraction of the Settlement Amount.**

6 In ruling on service-award motions, courts compare the overall settlement benefits and the
 7 range of recovery available to the class to the representative plaintiffs' proposed service awards. *See,*
 8 *e.g., Staton*, 327 F.3d at 976-77; *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008). The
 9 purpose of this inquiry is to ensure that the service awards have not compromised the ability of the
 10 representative plaintiffs to act in the best interest of the class. *Radcliffe v. Experian Info. Solutions,*
 11 *Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (courts must scrutinize service awards "so that they do not
 12 undermine the adequacy of the class representatives"). Courts view especially favorably service
 13 awards that constitute "only a tiny fraction" of the value of the settlement to the class. *See, e.g., In re*
 14 *Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947-48 (approving \$5,000 service award for each of
 15 nine class representatives, which amounted to 0.17% of the \$27,250,000 settlement fund); *In re Mego*
 16 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (awarding \$5,000 to two class
 17 representatives where combined service awards constituted 0.57% of the \$1.725 million settlement);
 18 *Sandoval v. Tharaldson Employee Mgt., Inc.*, No. EDCV 08-482-VAP (OPx), 2010 U.S. Dist. LEXIS
 19 69799, at *26-27 (C.D. Cal. June 15, 2010) (approving service award of \$7,500 where average class
 20 member received \$749.60, but service award was 1% of gross settlement).

21 Here, the requested \$15,000 service award total—\$5,000 for each of the three Class
 22 Representatives—amounts to a mere 0.06% of the \$24 million in monetary relief afforded by the
 23 Settlement.¹ This figure does not even include the value of the extensive injunctive relief that the
 24 Settlement requires. The requested service awards therefore represent a tiny fraction of the value of
 25 the settlement to the Classes. In addition, members of the Damages Class (including Mr. DeFrancesco
 26 and Mr. Nevarez, but not Ms. Nevarez) who file valid claims will receive at least \$4,000 per violation,
 27

28 ¹ Notably, the service awards will be paid by Defendants out of a separate pot of money, not out of the \$24 million damages fund set aside for class members.

1 unless more than 6,000 Class Members file valid claims, and Plaintiffs and Class Members alike will
 2 benefit from the injunctive relief that the Settlement requires for many years to come. Thus, the
 3 requested service awards do not make the relief for Plaintiffs disproportionate to the benefits available
 4 for Class Members. This factor weighs heavily in favor of granting the requested service awards.

5 **G. The Class Representatives Have Acted in the Best Interests of the Class.**

6 Plaintiffs Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco have always acted in
 7 the best interest of the certified classes. They understood that as Class Representatives they have a
 8 duty to act in the best interests of the Classes, and they have fulfilled this obligation faithfully
 9 throughout the case. A. Nevarez Decl. ¶¶ 6, 15, 24; P. Nevarez Decl. ¶¶ 6, 12, 21; DeFrancesco Decl.
 10 ¶¶ 6, 13, 22. In fact, the reason they each brought this case was to ensure that other persons with
 11 mobility disabilities and their companions would not suffer the same kind of difficulty, embarrassment,
 12 and frustration that they suffered each time they went to events at Levi's Stadium.

13 Mr. DeFrancesco and Mr. Nevarez originally sought compensatory damages on their own
 14 behalves and statutory damages on behalf of class members, but they voluntarily elected to withdraw
 15 their claims for compensatory damages to avoid any suggestion of a conflict of interest. A. Nevarez
 16 Decl. ¶ 6; DeFrancesco Decl. ¶ 6. Moreover, when they accepted the settlement on behalf of the
 17 Classes, all three Plaintiffs understood that their receipt of service awards was subject to the Court's
 18 discretion. Their support for the Settlement is not conditioned on the promise of a service award or
 19 any other personal benefit. A. Nevarez Decl. ¶ 24; P. Nevarez Decl. ¶ 21; DeFrancesco Decl. ¶ 22.
 20 Finally, the settlement agreement provides that each Plaintiff may seek up to \$7,500 as a service
 21 award, and to date, no class member has objected to the settlement in any respect, including with
 22 regard to the service awards.

23 **H. The Requested Service Awards Promote the Public Policies Underlying the ADA and the**
 24 **California Unruh Act.**

25 Approving the requested service awards will promote the important public policies underlying
 26 Plaintiffs' civil-rights claims. Congress enacted the ADA to empower people with disabilities to live
 27 full and independent lives to the maximum extent possible. *See* 42 U.S.C. § 12101(a)(7). Congress
 28 expressly intended to address "indirect forms of discrimination" that result from inaction rather than

1 overt hostility. *Ability Ctr. Of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 909 (6th Cir. 2004).
 2 As the Sixth Circuit has observed, “aside from merely hoping to curtail intentional discrimination
 3 against the disabled, [Congress] aimed to improve the quality of the lives of the disabled by requiring
 4 that public entities – as well as other entities subject to the Act’s requirements – eliminate barriers to
 5 physical access, including barriers inherent in existing facilities.” *Id.*

6 Similarly, the Unruh Act was enacted in part to effectuate full and equal access for people with
 7 disabilities to places of public accommodation. *See, e.g., Munson v. Del Taco, Inc.*, 46 Cal. 4th 661,
 8 673 (2009). The Unruh Act’s statutory damages provision recognizes that an experience of
 9 discrimination is inherently harmful, regardless whether it resulted in concrete financial losses. *See*
 10 *id.*; *Koire v. Metro Car Wash*, 40 Cal. 3d 24, 33 (1985) (“[B]y passing the Unruh Act, the Legislature
 11 established that arbitrary ... discrimination by businesses is *per se* injurious. Section 52 provides for
 12 minimum statutory damages ... for *every* violation of section 51, *regardless* of the plaintiff’s actual
 13 damages.”). Thus, by enforcing Class Members’ rights under the ADA and the Unruh Act, Plaintiffs
 14 furthered important public policies concerning the civil rights of people with disabilities. A service
 15 award of \$5,000 for each of the three Class Representatives is therefore warranted.

16 V. CONCLUSION

17 For the foregoing reasons, Plaintiffs respectfully request that the Court approve service awards
 18 in the amount of \$5,000 for each of the three Class Representatives.

19
 20 Dated: May 22, 2020

Respectfully submitted,

21 GOLDSTEIN, BORGEN, DARDARIAN & HO

22
 23 /s/ Linda M. Dardarian
 Linda M. Dardarian

24 *Attorneys for Plaintiffs and the Plaintiff Classes*
 25
 26
 27
 28