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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE CALIFORNIA BAIL BOND
ANTITRUST LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 4:19-cv-00717-JST

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR CLASS CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: TBD
Time: TBD
Judge: The Honorable Jon S. Tigar
Courtroom: 6, 2nd Floor

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NOTICE OF MOTION AND MOTION

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on a date and time to be decided, before the Honorable Jon S. Tigar, District Judge of the United States District Court, Northern District of California, Oakland Courthouse, Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, California, individual and representative plaintiffs Shonetta Crain and Kira Monterrey (“Plaintiffs”) will and hereby do move the Court for an order certifying a class (the “Class”) pursuant to Rule 23 of the Federal Rules of Civil Procedure, defined as follows:

All persons who, between February 24, 2004, and August 14, 2023 (the “Class Period”), paid for part or all of a commercial bail bond premium in connection with a California state court criminal proceeding. Specifically excluded from this Class are Defendants; the officers, directors, or employees of any Defendant; any entity in which any Defendant has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, and any person acting on their behalf; any person who acted as a bail agent during the Class Period; any judicial officer presiding over this action and members of their immediate family and judicial staff; and any juror assigned to this action.

Plaintiffs also hereby move the Court, pursuant to Rule 23(g), to appoint them as Class representatives and to confirm as final the Court’s prior interim appointment (*see* ECF No. 44) of Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) as Class Counsel.

This motion is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities, the Declaration of Dean M. Harvey, filed herewith, and the exhibits thereto, including the Expert Report of Hal J. Singer, Ph.D., the Declarations of Shonetta Crain and Kira Monterrey, the pleadings and papers on file in this action, and any such other matters as may be properly presented to the Court at the time of or after hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

“I can safely predict that if left unchecked, rampant premium discounting will result in the end of the bail bond business as we know it, to be replaced by a new model that properly reflects the proper balance of risk and reward. Simple economics dictate it.”

- Defendant William B. Carmichael, President and CEO of Defendant American Surety Company (Harvey Decl. Ex. 35 at 3)

[REDACTED]

- California Bail Agents Association Area Director Sean Cook (Harvey Decl. Ex. 58 at 1)

I. INTRODUCTION

Plaintiffs Shonetta Crain and Kira Monterrey seek redress for themselves and a proposed Class of California consumers who overpaid for bail bonds because of an unlawful conspiracy among 20 bail bond surety companies (the “Surety Defendants”) and conspiracy ringleader Defendant William B. Carmichael, the long-time President and CEO of Surety Defendant ASC.¹

¹ The Surety Defendants are: Accredited Surety and Casualty Company, Inc. (“Accredited”); AIA Holdings, Inc., Allegheny Casualty Company (“Allegheny”), and International Fidelity Insurance Company (“IFIC”) (collectively, “AIA Defendants”); American Contractors Indemnity Company (“ACIC”); American Surety Company (“ASC”); Bankers Insurance Company (“Bankers”); Continental Heritage Insurance Company (“Continental”); Danielson National Insurance Company (“Danielson”); Financial Casualty & Surety, Inc. (“FCS”); Indiana Lumbermens Mutual Insurance Company (“ILM”); Lexington National Insurance Company (“Lexington”); Lexon Insurance Company (“Lexon”); The North River Insurance Company (“North River”), Seneca Insurance Company (“Seneca”), and United States Fire Insurance Company (“U.S. Fire”) (collectively, “C&F Defendants”); Seaview Insurance Company (“Seaview”); Sun Surety Insurance Company (“Sun Surety”); Universal Fire & Casualty Company (“Universal”); and Williamsburg National Insurance Company (“Williamsburg”). Two Surety Defendants—Danielson and Lexon—reached settlement agreements with Plaintiffs, for which the Court granted Plaintiffs’ preliminary approval motion. *See* ECF No. 512.

1 Plaintiffs allege Defendants conspired to fix prices for bail bonds through two methods: first,
 2 Defendants conspired to maintain an artificially high “standard” bail bond premium rate of 10%;
 3 second, Defendants conspired to suppress rebating by bail bond agents, which is (and was
 4 throughout the Class Period) a lawful method of making bail bonds more affordable to customers.
 5 Defendants’ conspiracy violated the Cartwright Act, California Business and Professions Code
 6 section 16720; Unfair Competition Law, California Business and Professions Code section
 7 17200; and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Plaintiffs allege this
 8 conspiracy began no later than 2004 and continued throughout the Class Period.

9 Plaintiffs seek to certify a damages class under Rule 23(b)(3) and an injunctive relief class
 10 under Rule 23(b)(2). Plaintiffs seek to represent other California bail bond purchasers—a
 11 particularly vulnerable population who (like them) paid inflated prices for bails bonds as a result
 12 of Defendants’ conspiracy, and for whom (like them) those extra dollars were critical sums. The
 13 proposed Class satisfies each required element of Rule 23. The Class consists of over two million
 14 members for whom common questions—such as the existence of Defendants’ conspiracy—
 15 predominate over individual questions. Plaintiffs are typical and adequate Class representatives
 16 who have secured adequate proposed Class Counsel. Finally, a class action is vastly superior to
 17 over two million individual actions for fairly and efficiently adjudicating these claims.

18 **II. SUMMARY OF DEFENDANTS’ CONSPIRACY**

19 **A. The Conspiracy Begins in 1953**

20 Throughout the Class Period, all Surety Defendants submitted the same “standard rate” to
 21 CDI: 10% of the total bail amount. Harvey Decl. ¶ 17. They admit this 10% standard price was
 22 not the result of any actuarial analysis, and did not reflect any financial consideration such as risk
 23 of loss. Indeed, several Surety Defendants proudly boasted they never sent a penny to a
 24 California Court in connection with a bail forfeiture. Harvey Decl. Ex. 3 at -282; Ex. 4 at -577;
 25 Ex. 5 at -370; Ex. 6 (Blackwell Dep.) at 80:20-25; Ex. 7 (Lauricella Dep.) at 125:21-126:1. The
 26 10% standard price results from a price-fixing conspiracy, not independent assessments of risk.

27 Defendants’ conspiracy dates back to 1953, when California sureties “that specialize in
 28 bail” used their trade association (then called the Surety Association of America, or “SAA,” now

known as the Surety and Fidelity Association of America, or “SFAA”) to [REDACTED]
 [REDACTED]² Harvey Decl. Ex. 8 at
 -573, -582 (copy of original letter dated 1953). SFAA did so. Over the following *four decades*,
 [REDACTED]
 [REDACTED]. *Id.* at -573. All Surety Defendants have been dues-paying members of the
 SFAA, and nearly all still are. *See* Harvey Decl. Ex. 9 (SFAA members). And nearly all Surety
 Defendants have been members of SFAA’s Bail Bond Advisory Committee since 2003. *See*
 Harvey Decl. Exs. 10-12. [REDACTED]
 [REDACTED] (Harvey Decl. Ex. 8), Surety Defendants maintained and expanded the conspiracy.
 All Defendants joined the conspiracy when they submitted the same 10% fixed standard price to
 CDI. For instance, when Defendant Seaview Insurance Company (“Seaview”) entered the
 California market in 2011, Seaview admitted its 10% “standard rate” was “based on Surety
 Association of America (SAA) pricing. SAA pricing up to the time they ceased promulgating
 rates was based on 2% of liability plus 8% service fee.” Harvey Decl. Ex. 13 at 5. This was a
 classic, naked price-fixing agreement among horizontal competitors.

B. Proposition 103 Threatens the Fixed 10% Price

A major threat to Defendants’ conspiracy arose in 1988, when California voters passed the
 Insurance Rate Reduction and Reform Act (“Proposition 103”). Proposition 103 allowed bail
 agents to charge prices below Defendants’ fixed rates. The express purpose of Proposition 103
 was, among other things, “to protect consumers from arbitrary insurance rates and practices [and]
 to encourage a competitive insurance marketplace.”³ In 1990, the California Attorney General
 issued guidance stating that Proposition 103 allowed for rebating and discounts, and made clear
 that CDI did not have authority to regulate the competitiveness of filed rates. ECF No. 67-7. As
 the Attorney General explained, “Proposition 103 . . . divest[s] the commissioner of earlier

² It bears noting that California bail sureties did not simply fix the standard price charged to
 consumers, they also [REDACTED]. *See* Harvey Decl. Ex. 8 at -582. This split is not subject to CDI
 review, and is purely a matter of private contracting between a surety and its agents. Bail surety-
 agent contracts are not public and highly confidential.

³ Cal. Dep’t Ins., *Prop 103 Consumer Intervenor Process*, <https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor> (last visited Dec. 10, 2024).

authority over the competitiveness of rates.” *Id.* at 35. The California Insurance Code similarly explains that while the CDI reviews and approves premium rates that sureties submit, it is prohibited from—and does not—assess whether premiums submitted to it result from unlawful coordination among competing sureties: “In considering whether a rate is excessive, inadequate or unfairly discriminatory, *no consideration shall be given to the degree of competition.*” Cal. Ins. Code § 1861.05(a) (emphasis added). The only way for California consumers to enforce the competition that Proposition 103 was designed to create is through private antitrust actions like this one. *See Donabedian v. Mercury Ins. Co.*, 116 Cal. App. 4th 968, 982–83 (2004), *as modified on denial of reh’g* (Cal. App. Mar. 30, 2004) (describing “use of private attorneys general” for enforcement of § 1861).

C. The Industry Protects the Conspiracy and Prevents California’s Largest Bail Agency—Aladdin—from Offering Competitive Prices

At the time (and continuing to today), the largest bail agency in California by far was Pacific Bonding Corporation, Harvey Decl. Ex. 14 (Hayes Dep.) at 36:5-8; Ex. 15 ¶ 1, which did business as “Aladdin.” Aladdin accounts for [REDACTED] of all bail bond sales during the Class Period. Harvey Decl. Ex. 16 (Singer Rep., Ex. 2 at p. 23). When California passed Proposition 103, Aladdin was owned and operated by Robert Spencer Douglass. Under Douglass’s leadership, Aladdin took advantage of the competition that Proposition 103 permitted and offered bail bond prices below filed rates. *See* Harvey Decl. Ex. 17. This alarmed Aladdin’s competitors, who disparaged Douglass publicly and privately. [REDACTED]

Id. at -923. [REDACTED]

[REDACTED]. Harvey Decl. Ex. 18. Others in the industry shared the sentiment. *See* Harvey Decl. Ex. 19 at -249 [REDACTED]

Douglass sought to make clear that Proposition 103 applied to bail bonds and permitted

1 charging consumers prices below filed rates. On August 8, 2003, Douglass filed a lawsuit on
2 behalf of his company (Pacific Bonding) against John Garamendi, who was then California's
3 Insurance Commissioner, seeking declaratory relief to invalidate a regulation created before
4 Proposition 103 that prohibited rebates, and a permanent injunction prohibiting enforcement of
5 the anti-rebating regulation. Harvey Decl. Ex. 20 (Complaint, *Pac. Bonding Corp. v. Garamendi*,
6 No. GIC 815786 (Cal. Super. Ct. Aug. 8, 2003)). As part of the lawsuit, Pacific Bonding filed a
7 declaration from its President, Steffan Gibbs, explaining that rebates "allow bail agents to return
8 money to insureds in consideration of the business transacted, thereby lowering costs for insureds
9 and increasing competition." Harvey Decl. Ex. 15 ¶ 3. Gibbs also explained that confusion over
10 the legality of rebating commonly impacts bail bond consumers: "the general public pays
11 increased premiums for bail bonds due to the inability of bail agencies to offer rebate programs
12 and due to reduced competition." *Id.* ¶ 6. The case went to trial, and Pacific Bonding prevailed.
13 On February 24, 2004, Judge Styn of San Diego County Superior Court held that Proposition 103
14 repealed the anti-rebating regulation, and he enjoined the California Insurance Commissioner
15 from enforcing it. Harvey Decl. Ex. 21 (Statement of Decision, *Pac. Bonding Corp. v.*
16 *Garamendi*, No. GIC 815786 (Cal. Super. Ct. Feb. 4, 2004)). The outcome removed any doubt
17 that charging bail bond prices below filed rates through rebating is lawful in California. *See*
18 Harvey Decl. Ex. 2 (Carmichael Dep.) at 79:3-9; Ex. 22 (Nairin Dep.) at 92:4-16; Ex. 23 (Mehr
19 Dep.) at 36:1-14.

20 While Douglass won the battle, he lost the war. The bail industry retaliated against him
21 with a concerted campaign to boycott and defame him. This forced Douglass to fight on two
22 fronts: establishing the right to rebate, while litigating a defamation, tort, and unfair competition
23 case against the trade association for California bail agents (the California Bail Agents
24 Association, or "CBAA"), and several other leading members of the bail industry. *See* Harvey
25 Decl. Ex. 24 (First Amended Complaint, *Pac. Bonding Corp. v. CBAA*, No. CIV 439663 (Cal.
26 Super. Ct. Mar. 26, 2004)). Douglass provided a copy of the following letter purportedly sent to
27 "every attorney" in six California counties, *one month* after he filed his case seeking to establish
28

1 the right to rebate:

2
3 TO WHOM IT MAY CONCERN.

4 TO EVERY ATTORNEY: SAN FRANCISCO COUNTY
5 SAN MATEO COUNTY
6 SANTA CLARA COUNTY
7 MARIN COUNTY
8 ALAMEDA COUNTY
9 NORTH COUNTY

10 PLEASE SEE THE FOLLOWING INFORMATION ON THE ILLEGAL ACTIVITY
11 REGARDING ROBERT SPENCER DOUGLAS
12 A.K.A. ALADDIN BAIL BONDS.

13 OUR ASSOCIATION IS PUTTING ALL ATTORNEYS ON NOTICE. WE ARE MAKING
14 A LIST AND CHECKING IT TWICE. IF WE HEAR OF ANY ATTORNEYS REFER-
15 RING ALADDIN BAIL BONDS, YOU WILL BE LISTED ON OUR BLACK LIST AND
16 NEVER REFER ANOTHER CLIENT FROM ANY OTHER BAIL BONDS OFFICE.

17 WE AS A STATE WIDE ASSOCIATION ARE SICK OF CUSTOMERS BEING LIED
18 TO AND QUOTED ILLEGAL RATES. HOW CAN YOU SEND YOUR CLIENTS TO
19 SUCH A PLACE.

20 WE ARE TRULY SORRY IT HAD TO COME TO THIS.

21 *Id.* ¶¶ 34-46; Harvey Decl. Ex. 25 (First Am. Compl. Ex. B). Douglass also provided detailed
22 allegations regarding a concerted effort to hire a free-lance “investigative reporter” to write what
23 would appear to be an objective investigation of the bail industry, but was in fact a “hit-piece” on
24 Douglass, with the intent of driving him out of business. Harvey Decl. Ex. 24 ¶¶ 21-33.
25 Douglass also filed a copy of the report. Harvey Decl. Ex. 26 (First Am. Compl. Ex. A).

26 The industry’s retaliation succeeded. The Riverside County District Attorney’s office
27 prosecuted Douglass for illegal solicitation of bail business (a crime unrelated to rebating) and, on
28 June 26, 2004, Douglass accepted a plea deal requiring him to give up his license and sell
Aladdin.⁴ The bail industry drove Douglass out of the market, only four months after he
established the right to rebate. The industry sent a powerful message to every agent in the State:
if you rebate, we will come after you and put you out of business.

⁴ See L.A. Times, *Bail Bond Chief Takes Plea Deal* (June 26, 2004),
<https://www.latimes.com/archives/la-xpm-2004-jun-26-me-bailplea26-story.html>.

D. Douglass's Own Lawyer—Robert Hayes—Purchases Aladdin and Upholds the Conspiracy

Douglass sold Aladdin to Robert Hayes, who owns and runs Aladdin to this day.⁵ Hayes is the largest investor in both Aladdin and Defendant Seaview Insurance Company, which provides powers for Aladdin’s bail bonds. *See* Harvey Decl. Ex. 27 at 4. Hayes was also a member of Seaview’s board of directors, who “manage the business and affairs of [Seaview].” *Id.*; Harvey Decl. Ex. 14 (Hayes Dep.) at 51:17-21. Hayes recognized a good business opportunity when he saw it, and believed he could run Aladdin more profitably than Douglass.

Harvey Decl. Ex. 14 (Hayes Dep.) at 22:21-23:4, 24:25-25:2.

” *Id.* at 27:14-19.

(*id.* at 17:24-18:

Id. at 47:16-20. Hayes has no credibility. Before buying Aladdin,

Hayes was a practicing lawyer and the first named partner of a law firm: Hayes Simpson Greene LLP. *Id.* at 12:13-15.

Hayes and his firm represented Pacific Bonding in *both cases*; in

fact, *Hayes was the lead attorney on both complaints*. Harvey Decl. Ex. 28 (Compl. at 1, 9, *Pac. Bonding Corp. v. CBAA*, No. CIV 439663 (Cal. Super Ct. Nov. 3, 2003)); Ex. 20 (Compl. at 1, 8, *Pac. Bonding v. Garamendi*). In purchasing Aladdin from Douglass, Hayes knew exactly what he was doing. He gave up his law practice to maintain and profit from a price-fixing conspiracy that his own client had sought to disrupt.

After his purchase of Aladdin but before the creation of Seaview, Hayes sold bail bonds on behalf of [REDACTED] Harvey Decl.

Ex. 14 (Hayes Dep.) at 50:12-21. While Hayes profited from the ongoing conspiracy from the agency side, he wanted to also profit from the conspiracy from the surety side and commenced steps to acquire Seaview in 2011. Harvey Decl. Ex. 27 at 2. On August 15, 2012, the CDI

⁵ Since Hayes's purchase, Aladdin also does business as "Two Jinn, Inc." Harvey Decl. Ex.14 (Hayes Dep.) at 94:6-19.

1 approved his acquisition of Seaview, which had already sought and obtained approval for the
 2 same fixed rates that other Defendants charged, admitting that the basis for it was the fixed rate
 3 that SFAA promulgated. *See id.*; Harvey Decl. Ex. 13 at 5. Soon after obtaining CDI approval,
 4 Seaview underwrote all of Aladdin's bail bonds, through what was essentially a single, vertically
 5 integrated enterprise. *E.g., id.* at 73.

6 [REDACTED]
 7 [REDACTED]. *See* Harvey Decl. Ex. 29. [REDACTED]
 8 [REDACTED]
 9 [REDACTED]. *Id.* at -632. In other words, Hayes

10 directed Aladdin to mislead its customers into believing that only the fixed rates were available
 11 by law, and to only offer a rebate if needed to get the business, from the very limited subset of
 12 customers who had the wherewithal to know to ask. [REDACTED]
 13 [REDACTED]. Singer Rep., Ex. 30 at

14 p. 90. Everyone else, including Plaintiff Monterrey, was misled into paying the full fixed rates.
 15 Monterrey Decl. ¶¶ 4-5. Hayes is unrepentant about misleading his customers: [REDACTED]
 16 [REDACTED] Harvey Decl. Ex. 14

17 (Hayes Dep.) at 212:2-9; *see also id.* at 212:11-213:21.

18 **E. Defendants Collude to Maintain the Fixed 10% Standard Rate and Suppress**
 19 **Rebating**

20 How did Hayes eliminate rebating at Aladdin without losing customers to competing bail
 21 agencies? The reason is that bail agency rebating was essentially nonexistent until many years
 22 later, Singer Rep. ¶¶ 140-148, and even then bail agencies did not advertise their ability to rebate,
 23 or market effective prices below fixed filed rates, *e.g.*, Harvey Decl. Exs. 30-31. There was no
 24 reasonable way for a typical consumer of bail bonds to see through Defendants' collusive
 25 misrepresentations like: "The cost of the bail bond itself is regulated by the State of California
 26 and is 10% of the bail amount." Harvey Decl. Ex. 30 (Greg Padilla Bail Bonds website). This
 27 was no remarkable coincidence across thousands of individual bail agents. Nor was it the result
 28 of independent decision-making or conscious parallelism. Bail bonds are commodity products.

1 A purchaser of a bail bond does not care if the bond is underwritten by ASC or Lexington, or if it
 2 is sold to them by Aladdin or All-Pro. Consumers only care how fast they can get their relatives
 3 or themselves out of jail, and at what price. *E.g.*, Harvey Decl. Ex 32 (Stahlman Dep.) at 69:13-
 4 18; Ex. 33 (Cook Dep.) at 20:4-12. These are otherwise textbook conditions for competition to
 5 bring prices down to near marginal costs. This did not happen because of a concerted effort
 6 among Defendants.

7 Before Proposition 103, the price of a bail bond was dictated only by the filed rate,
 8 namely the standard 10% rate fixed by California sureties in 1953 and then adopted and
 9 implemented by their trade association SFAA. By 2003, Defendants' conspiracy was under
 10 attack, with Douglass leading the charge via rebating. Three months before Douglass filed
 11 *Pacific Bonding v. Garamendi*, [REDACTED]
 12 [REDACTED]. Harvey Decl. Ex. 10 at -041. [REDACTED]
 13 [REDACTED]
 14 [REDACTED]. *Id.* [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]. Harvey Decl. Ex. 2 (Carmichael Dep.) at 80:22-81:3.
 18 The PBUS convention is the biggest event of the year in the bail bond world (Harvey Decl. Ex.
 19 22 (Nairin Dep.) at 159:23-160:4; ECF No. 67-2 at 1), and provided opportunities for sureties and
 20 bail agents to socialize and converse. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]. See Harvey Decl. Ex. 2 (Carmichael Dep.) at 82:6-25; Ex. 34 (Bench Dep.) at
 23 151:13-23 ("We smoked cigars and went to Vegas, we had a good time. . . . it's all a personal
 24 business.").

25 In addition to the industry's frequent in-person and off-the-record meetings, mailed
 26 publications also maintained the conspiracy. Carmichael communicated his thoughts in writing to
 27 senior executives of other Surety Defendants and with the bail agents who worked for them, by
 28 mailing them copies of ASC's newsletters, [REDACTED]

1 [REDACTED]. Harvey Decl. Ex. 2 (Carmichael Dep.) at 83:1-84:23. In February 2005, about a
 2 year after the *Garamendi* decision, Carmichael sounded an alarm: “2005 will not be a year when
 3 we, as an industry, can sit passively by while competitive forces continue to encroach upon our
 4 markets. This coming year also yields a continuing trend by our agent partners in many parts of
 5 the U.S. to provide premium credit or rate discounting in order to be perceived as competitive. I
 6 certainly don’t know which is more damaging or troublesome for our industry.” Harvey Decl.
 7 Ex. 35 at 3. “Agents must be our industry’s eyes, ears and mouths in recognizing and alerting all
 8 to the impending attack. When you become aware of a situation, please contact us so that we
 9 may work alongside of you to craft an appropriate response.” *Id.* “Advocates argue that the
 10 market dictates that they charge and collect less than the filed rate. Regrettably, this naïve
 11 assumption fails to fully grasp all the variables that have been used to determine the original rate
 12 filing.” *Id.* This was a lie. [REDACTED]

13 [REDACTED]
 14 [REDACTED]. See Harvey Decl. Ex. 2 (Carmichael Dep.) at 71:10-17; Ex. 36 (Schneider Dep.) at 27:12-
 15 18. Surety Defendants’ public rate filings admitted the same. Harvey Decl. Ex. 37 at -062; Ex.
 16 38 at 17 (“**There is no actuarial justification for bail bond rates filed by any insurance**
 17 **company writing bail bond surety.**”) (emphasis in original).

18 Throughout this case, Surety Defendants have argued that rebating was irrelevant to them
 19 because agent rebating did not lower the surety share of the premiums. This, too, is false.
 20 Carmichael explained in writing to other Surety Defendants and their agents why it was critical to
 21 suppress rebating: “Surety companies have continued to accept less and less as their share of the
 22 premium in the form of higher and higher commission rates to the agents.” Harvey Decl. Ex. 35
 23 at 3. This is consistent with other contemporaneous written admissions, [REDACTED]

Harvey Decl. Ex. 39 at -171 (emphasis added).⁶ Carmichael further explained in a written communication to his competitors: “I can safely predict that if left unchecked, rampant premium discounting will result in the end of the bail bond business as we know it, to be replaced by a new model that properly reflects the proper balance of risk and reward. Simple economics dictate it.” Harvey Decl. Ex. 35 at 3. It is difficult to imagine a more telling admission regarding the common impact of a price-fixing conspiracy.

Of course, Carmichael had no intention of leaving competition “unchecked.” *Id.* He understood that Defendants’ price-fixing conspiracy required active maintenance and enforcement to survive. He invited Defendants and their agents to join this effort: “I urge all of us to recognize the serious nature of the threat to our industry and work collectively to repel them. Leaving profits on the table, in the form of discounts or uncollected accounts receivable, is a fool’s game. It reminds me of stripping the wood off the walls for a fire to stay warm. It works briefly but eventually you have no fire and no building.” *Id.* (emphasis in original).

Harvey Decl. Ex. 11.

Id. at -881.

Id. at -882.

Harvey Decl. Ex. 43 at -278.

⁶ Indeed, holding the line on their

. See Harvey Decl. Ex. 2 (Carmichael Dep.) at 98:1-11, 240:4-24; Ex. 40 (Francis Dep.) at 59:6-61:5; Ex. 41 (Holtshneider Dep.) at 22:18-23:7; Ex. 42 (Thompson Dep.) at 68:1-69:2; Ex. 33 (Cook Dep.) at 21:1-10; Ex. 23 (Mehr Dep.) at 47:13-48:6.

1 [REDACTED]
2 [REDACTED]
3 See Harvey Decl. Ex. 41 (Holt Schneider Dep.) at 188:2-23 (discussing Harvey Decl. Ex. 44); Ex.
4 45. There is no way to understand this omission other than a concerted effort to prevent agents
5 from rebating. [REDACTED]

6 [REDACTED].⁷ See Harvey Decl. Ex. 41
7 (Holt Schneider Dep.) at 138:1-15; Ex. 46. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]. *Id.*

14 Only three months after Carmichael asked his competitors to “work collectively to repel”
15 competition, he and other Defendants created a new trade association to do just that: the
16 California Bail Insurance Group (“CalBIG”). Harvey Decl. Ex. 47. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] Harvey
25 Decl. Ex. 47 at -614.

26 One month later, Carmichael sent another written communication to the Surety

27
28 ⁷ “Individual members of a cartel always have an incentive to cheat and will do so when cheating seems profitable.” 12 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 2002 (4th ed.).

1 Defendants and their agents. Harvey Decl. Ex. 48 at 3. In it, he warned that “premium
 2 discounting” threatened to be the main source of trouble for the industry. *Id.* “I don’t know who
 3 the math wiz was who thought this was a good idea but they get my vote for a lifetime vacation in
 4 Guantanamo.” *Id.* He again exhorted his competitors to join his efforts to maintain their ongoing
 5 conspiracy: “My point in that we attempt to be actively involved in every facet of our industry.
 6 We’re not content to simply write bail. We recognize the important role a surety must play in
 7 protecting our markets. If only every competitor we have would do the same.” *Id.*

8 At the same time as this message, members of CalBIG continued to discuss how best to
 9 enforce the 10% fixed price. Harvey Decl. Ex. 49. From the start, they all understood there was
 10 no legitimate legislative or regulatory solution: [REDACTED]

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED] *Id.* at -482 (emphases added).

14 They knew they had to maintain the conspiracy themselves, but they also knew that such an effort
 15 was illegal. So they used the appearance of government petitioning as a pretext to accomplish
 16 privately what they knew they could not accomplish through government action. [REDACTED]

17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED] *Id.* As testimony makes
 22 clear, such a proposal would have effectively made rebating impossible, and put anyone who
 23 rebated out of business for a single violation. *Id.*; Harvey Decl. Ex. 2 (Carmichael Dep.) at
 24 136:21-137:6; Ex. 22 (Nairin Dep.) at 71:1-11.

25 Lexington was the only member of CalBIG who had reservations. [REDACTED]

26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED] Harvey Decl. Ex.

1 51. [REDACTED] *Id.* Parton later
2 communicated his reservations to CalBIG as follows: [REDACTED]

3 [REDACTED] Harvey Decl. Ex. 52 at -310.

4 Lexington's reservation infuriated Carmichael: [REDACTED]

12 [REDACTED] *Id.*

13 Carmichael's browbeating worked. [REDACTED]

19 [REDACTED] Harvey Decl. Ex. 53. Parton also endorsed their collective plan to
20 leverage their agents to get California's two bail agent trade associations on board. [REDACTED]

25 [REDACTED] *Id.* (emphasis in original). Parton added: [REDACTED]

27 [REDACTED] *Id.*

28 In the ensuing years, the Surety Defendants actively maintained their price-fixing

1 conspiracy in a variety of ways, colluding to fend off competition when necessary. These efforts
 2 fell into two categories: keeping the benchmark standard price at 10%, and discouraging price
 3 competition below filed rates. As Parton colorfully explained, these efforts sometimes required
 4 collusion with bail agents and their trade associations. [REDACTED]

5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] *Id.*; Harvey Decl. Ex. 24 (First
 11 Am. Compl. at 2, *Pacific Bonding v. CBAA*). [REDACTED]

12 [REDACTED]
 13 [REDACTED] Harvey Decl. Ex. 54 at -817.

14 Lexington's Mark Holtschneider was a lead player from the Surety Defendants (*id.* at -818), [REDACTED]
 15 [REDACTED] Harvey Decl. Ex. 41 (Holtschneider
 16 Dep.) at 156:2-16. [REDACTED]
 17 [REDACTED]

18 [REDACTED] Harvey Decl. Ex. 55 at -957. In other words, to agree on how and whether to price
 19 below fixed rates. And that is what they did. They agreed to spread at least three pernicious and
 20 related lies: rebating under any circumstances was improper and could land you in trouble with
 21 CDI; agents cannot lawfully advertise bail bond prices below filed rates; and agents should
 22 charge full filed rates because the rates result from financial risk analysis (when they were
 23 actually set arbitrarily by a price-fixing agreement).

24 In the year following the creation of the Rebate/Discount Committee, CDI created its own
 25 committee regarding the bail industry (the "CDI Bail Ad Hoc Committee"), and a variety of co-
 26 conspirators attended, including AIA's Brian Nairin, the Presidents of both CBAA and GSBAA,
 27 and Aladdin's Hayes. Harvey Decl. Ex. 56. Hayes proposed a "fixed 10% rate," but CDI told
 28

1 him that would be contrary to Prop 103. *Id.* at -262-63.⁸ With respect to rebating, Hayes testified

2 [REDACTED]
3 [REDACTED]. Harvey Decl. Ex. 14 (Hayes Dep.) at 29:18-23. This is another of Hayes'

4 falsehoods. [REDACTED]

5 [REDACTED] *Id.* at 28:19-20. Nairin of AIA testified: [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Harvey Decl. Ex. 22 (Nairin Dep.) at 188:5-11. Nairin elaborated: [REDACTED]

10 [REDACTED]
11 [REDACTED] *Id.*

12 at 189:1-5. There was absolutely no confusion from CDI about the legality of rebating, and the
13 industry representatives who attended that 2010 meeting (Harvey Decl. Ex. 56) lied to the
14 industry when they reported out that there was. *See* Harvey Decl. Ex. 57 (Padilla Dep.) at 53:14-
15 17. *That* was the "general consensus." Harvey Decl. Ex. 56 at -303.

16 In 2012, one bail agent (Chad Conley) dared to buck this collusion and correctly explained
17 on his website that consumers can obtain a [REDACTED] through the use of a [REDACTED]

18 [REDACTED] Harvey Decl. Ex. 58 at -078-79. This truthful disclosure to the
19 public alarmed the industry. [REDACTED]

20 [REDACTED]
21 [REDACTED] *Id.* at -078. [REDACTED]

22 [REDACTED] Harvey Decl.

23 Ex. 59. The response by the industry was very similar to what happened to Douglass years

24 earlier. [REDACTED] Harvey Decl.

25 Ex. 58 at -077. [REDACTED]
26 [REDACTED]

27 ⁸ [REDACTED]
28 [REDACTED] Harvey Decl. Ex. 14 (Hayes Dep.) at 124:5-126:23.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED] *Id.* at -075, -077. (There were no risk managers. Surety loss ratios were
 5 essentially zero. There were no loss mitigation analysts.) [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 *Id.* In other words, we do not talk about price-fixing in writing.

14 Another agent reached out to Conley's surety—Accredited—in 2013 to complain further:

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]. *See* Harvey Decl. Ex. 62; Exs. 63-65. Of course, these efforts had nothing to do
 21 with his advertising, which Accredited knew was completely accurate. This was about enforcing
 22 the conspiracy. Throughout these attacks, Conley continued to educate the bail industry and bail
 23 customers on the accurate facts regarding rebating. Harvey Decl. Ex. 66 at 1. He explained:
 24 “Trust me after the good ol boys club came after my license for trying to save clients money I was
 25 forced to study this! Most people don’t want you to know! *They prefer price fixing and would*
 26 *prefer to have it back to only one rate of 10% period.” Id.* at 2 (emphasis added). After
 27 Accredited’s investigation, a “complainant, acting through Colleen Calia, Background Analyst for
 28 [CDI], brought the Accusation.” Harvey Decl. Ex. 67 (*In re License & Licensing Rights of Chad*

1 *Joseph Conley*, No. PLBS 12388-A (Cal. Ins. Comm'r Apr. 18, 2019)). Conley's license was
 2 ultimately revoked for reasons having nothing to do with offering competitive prices, *id.*, just as
 3 Douglass's license was.

4 **F. Defendants Circle the Wagons and Defend Their Conspiracy from CDI's**
 5 **Excessive Rate Inquiry**

6 Defendants' conspiracy continued in this fashion until the fall of 2016, when their fixed
 7 prices faced an unprecedented threat. CDI became concerned that Defendants' standard rate of
 8 10% was excessive, and launched an investigation into whether CDI should force Defendants to
 9 lower their rates. CDI sent an identical letter to all Surety Defendants individually, except CHIC.
 10 Harvey Decl. Ex. 68. CDI explained: "If it is determined your company's rates are excessive
 11 your company must make an appropriate rate adjustment as soon as possible and in no event later
 12 than May 1, 2017. If the rate adjustment is not implemented until after May 1, 2017, your
 13 company will be required to refund excess premiums charged to all affected policyholders." *Id.*
 14 at -955-56. Defendants had to either lower their rates, or risk being forced to refund excessive
 15 premiums to all injured customers. *Id.*; see also Harvey Decl. Ex. 69 at -779 ([REDACTED]).
 16 [REDACTED].

17 Defendants sprung into action. They immediately reached out to each other, and
 18 determined they received the same letter. They assembled a chart demonstrating this. Harvey
 19 Decl. Ex. 68 at -958. They all had the same unlawful purpose: to make sure no one filed lower
 20 rates, and to prevent CDI from forcing them to lower rates to a competitive level. They put the
 21 matter at the top of the agenda for trade association meetings, [REDACTED].
 22 [REDACTED]. Harvey Decl. Ex. 70.

23 ABC was yet another trade association of Defendants dominated by Carmichael. *Id.* ABC had an
 24 appropriate set of Antitrust Guidelines, but gave enforcement responsibility to its Chairman:
 25 Carmichael. Harvey Decl. Ex. 71. Comparing this situation to a fox guarding a henhouse would
 26 be an insult to foxes. Carmichael and his co-conspirators demonstrated contemptuous disregard
 27 for their own Antitrust Guidelines. Among other things, the Guidelines prohibited any discussion
 28 or activity that included "any discussion or action, for any purposes or in any fashion, of pricing

1 methods,” or any “other discussion or action which tend to restrict competition in any manner
 2 between members or within the industry.” *Id.* at -431-32. To Carmichael and his co-conspirators,
 3 the *entire purpose* of these trade associations was to restrict competition.

4 To cover their tracks, Defendants had ABC’s Executive Director, Jeff Clayton, read the
 5 Guidelines at the start of every meeting, [REDACTED].
 6 Harvey Decl. Ex. 70 at -782. Emails exchanged among Defendants immediately preceding that
 7 meeting make clear that the CDI excessive rate inquiry, and their coordinated response to it, was
 8 the only topic Defendants wanted to discuss. Harvey Decl. Ex. 72; Ex. 68 at -957; Ex. 22 (Nairin
 9 Dep.) at 209:1-210:6. Defendants discussed the CDI inquiry, and how to best collude to ensure
 10 that no one would lower their standard 10% rate, but the official agenda of the meeting simply
 11 referred to [REDACTED] Harvey Decl. Ex. 70 at -782. And, while ABC’s
 12 Antitrust Guidelines require that the minutes “accurately record what actions were taken at the
 13 meeting,” Harvey Decl. Ex. 71 at -431, the official minutes make no mention of what Defendants
 14 actually discussed or decided to do. [REDACTED]
 15 [REDACTED] Harvey Decl. Ex. 73 at -507. At his deposition, Carmichael explained
 16 the fraudulent minutes as follows: [REDACTED]
 17 [REDACTED] Harvey Decl. Ex. 2 (Carmichael
 18 Dep.) at 216:18-20. *See also id.* at 216:5-218:14. [REDACTED]
 19 [REDACTED] Harvey Decl. Ex. 73 at -506.
 20 *See also* Harvey Decl. Ex. 2 (Carmichael Dep.) at 218:15-220:13.

21 Defendants communicated in two modes. In one mode, their emails appear relatively
 22 innocuous, often copying Clayton (who had the thankless task of reading the Antitrust Guidelines
 23 at the start of ABC meetings), in which Defendants made comments like “We are mindful of
 24 antitrust rules and understand there will be no discussion of rates during the call.” Harvey Decl.
 25 Ex. 68 at -955. In other communications that do *not* copy Clayton, Carmichael and other
 26 Defendants collude regarding their rates. Plaintiffs cannot provide these emails to the Court,
 27 however, because ASC and Lexington are attempting to claw them back on the basis of meritless
 28 assertions of privilege. Plaintiffs are challenging these clawback requests, and filed a joint letter

1 brief with ASC and Lexington regarding them, asking the Court to review the emails at issue in
2 camera. *See* ECF No. 510.

3 Carmichael's ASC, Lexington, and Bankers led the response to the CDI excessive rate
4 inquiry. Calling themselves the "Bail Coalition Working Group," they submitted a "White
5 Paper" to CDI reflecting their collusion. Harvey Decl. Ex. 74. In it, they admit that the 10% rate
6 was created in 1953, but say falsely that the California Supreme Court established it. *Id.* at -765.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Harvey Decl. Ex. 8 at -573, -582. The White Paper also defends the 10% rate
10 on the basis of an opaque formula, but Defendants' executives, including Carmichael, admitted
11 there was no actuarial calculation or formula that resulted in the 10% rate. Harvey Decl. Ex. 2
12 (Carmichael Dep.) at 71:10-17; Ex. 36 (Schneider Dep.) at 27:12-18; Ex. 6 (Blackwell Dep.) at
13 108:11-25 (discussing Ex. 37); Ex. 75 (Shields Dep.) at 90:5-21 (discussing Ex. 1). Finally, the
14 White Paper asserts that the standard 10% rate doesn't really matter, because: "For more than the
15 past 10 years, retail bail agents in California have been exercising their right to rebate
16 commissions to consumers at a substantial percentage. These rebates have reduced premium
17 costs to consumers." Harvey Decl. Ex. 74 at -765. This was the height of chutzpah. After
18 colluding to discourage rebating during that exact period of time, Defendants now justified their
19 fixed 10% rate on the basis of the very rebates they demonized and prevented. [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED] Harvey Decl. Ex. 2 (Carmichael Dep.) at 238:16-240:2; Ex. 41 (Holtschneider Dep.)
23 at 259:1-7 [REDACTED].

24 Defendants' gambit worked, in part: CDI did not require most Defendants to lower their
25 fixed 10% rate.⁹ However, Defendants paid a price for their misrepresentations regarding the

26 _____
27 ⁹ With two exceptions: the CDI required the two AIA sureties—Defendants Allegheny and
28 International Fidelity (IFIC)—to lower their standard 10% rate to 9%. *See* Harvey Decl. Ex. 76 at
-580 ([REDACTED]).

1 extent of rebating. On January 31, 2017, CDI held an Informational Hearing about the bail
 2 industry, ahead of which Defendants were forced to take the industry-wide stance that rebating
 3 was legal and widespread. *See* Harvey Decl. Exs. 69, 77. CDI soon thereafter took limited steps
 4 to educate bail agents on the legality of rebating, including by posting on its website for the first
 5 time in July 2017 a webpage explaining that rebating is legal under Proposition 103.¹⁰

6 **III. LEGAL STANDARDS**

7 To certify a class under Rule 23, plaintiffs must satisfy all four requirements of Rule
 8 23(a)—numerosity, commonality, typicality, and adequacy—and at least one of three sections of
 9 Rule 23(b). *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 663
 10 (9th Cir. 2022) (*en banc*). Certification of a Rule 23(b)(2) injunctive relief class requires that,
 11 “final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a
 12 whole.” Fed. R. Civ. P. 23(b)(2). For certification of a Rule 23(b)(3) damages class, the
 13 “questions of law or fact common to class members” must “predominate over any questions
 14 affecting only individual members,” and a class action must be “superior to other available
 15 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).
 16 Because “class actions play a particularly vital role in the private enforcement of antitrust
 17 actions,” “in antitrust cases, courts tend to favor class certification when in doubt.” *In re*
 18 *Tableware Antitrust Litig.*, 241 F.R.D. 644, 648 (N.D. Cal. 2007) (collecting cases). The Court
 19 may “treat[] Plaintiffs’ federal and state law claims together when certifying the class,” including
 20 because “Plaintiffs’ UCL claim is premised at least in part upon the Sherman and Cartwright Act
 21 violations.” *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059, 1065 (9th Cir. 2021). *But see Cipro*
 22 *Cases I & II*, 61 Cal. 4th 116, 160-61 (2015) (“The Cartwright Act is broader in range and deeper
 23 in reach than the Sherman Act.”) (citation omitted).

24 **IV. ARGUMENT**

25 **A. Plaintiffs Satisfy All Four Requirements of Rule 23(a)**

26 Rule 23(a) is satisfied if: “(1) the class is so numerous that joinder of all members is
 27 impracticable; (2) there are questions of law or fact common to the class; (3) the claims or

28 ¹⁰ *See* Harvey Decl. Ex. 78, also available via the Internet Archive at <https://web.archive.org/web/20170701232156/http://www.insurance.ca.gov/01-consumers/170-bail-bonds>.

defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Plaintiffs readily satisfy these threshold requirements.

1. The Class Is Numerous

Generally, courts find “a presumption of impracticability of joinder” for classes above 40 members. *See, e.g., Smith v. City of Oakland*, 339 F.R.D. 131, 138 (N.D. Cal. 2021) (citation omitted). Here, there are over two million Class Members. Singer Rep. ¶ 2. As the Court noted in its December 11, 2024 Order, “the joinder of two million Plaintiffs would be impracticable,” and “the numerosity requirement is met.” ECF No. 512 at 6.

2. There Is at Least One Common Question with a Common Answer

Certification is appropriate where “a classwide proceeding [can] generate common answers apt to drive the resolution of the litigation.” *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1133 (9th Cir. 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis in original)). Not “every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is ‘a single *significant* question of law or fact.’” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (citation omitted) (emphasis in original). That common question need not be one that “will be answered, on the merits, in favor of the class.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). It must only “be of such a nature that it is capable of classwide resolution.” *Dukes*, 564 U.S. at 350.

The Ninth Circuit construes the commonality requirement “permissively.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011). In this District, “courts have consistently held that the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.” *In re Cathode Ray Tube Antitrust Litig.* (“CRT III”), No. 07-CV-05944-JST, 2022 WL 4596621, at *3 (N.D. Cal. Aug. 1, 2022) (Tigar, J.) (quoting *Wortman v. Air New Zealand*, 326 F.R.D. 549, 556 (N.D. Cal. 2018)); *see also In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013) (“Antitrust liability alone constitutes a common question that will resolve an issue that is central to the validity of each class member’s claim in one stroke.”) (citation omitted).

Here, commonality is established by questions related to Defendants’ antitrust liability: (1) whether Defendants entered into the alleged price-fixing conspiracy; (2) whether the conspiracy violated the Sherman Act and California law; (3) whether the conspiracy inflated bail bond prices; and (4) what those prices would have been in the absence of the alleged conspiracy. *See In re Cathode Ray Tube (CRT) Antitrust Litig.* (“*CRT IP*”), No. 07-cv-05944-JST, 2020 WL 1873554, at *5 (N.D. Cal. Mar. 11, 2020) (Tigar, J.) (common questions included “whether the Defendants engaged in a price-fixing conspiracy that injured Plaintiffs”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 593 (N.D. Cal. 2010) (common questions included “whether defendants’ agreements resulted in an unlawful overcharge” to class members). The common questions of law concerning Defendants’ conspiracy here establish commonality and also, as discussed *infra*, predominance under Rule 23(b)(3).

3. Plaintiffs’ Claims Are Typical of the Class

Typicality “requires only that the representative’s claims are reasonably co-extensive with those of the absent class members; they need not be substantially identical.” *In re Qualcomm Antitrust Litig.*, 328 F.R.D. 280, 295 (N.D. Cal. 2018) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)). “In antitrust cases, typicality usually will be established by plaintiffs and all class members alleging the same antitrust violations by defendants.” *In re High-Tech*, 985 F. Supp. 2d at 1181 (citations omitted).

Here, Plaintiffs’ claims and alleged injuries stem from the same challenged conspiracy as do other members of the Class. Both Plaintiffs assert they paid more for their bail bonds than they would have in the absence of Defendants’ alleged conspiracy—allegations identical to (and therefore typical of) the Class they seek to represent. *See CRT II*, 2020 WL 1873554, at *6 (typicality satisfied because class representatives and class members purchased the product at supra-competitive levels due to the alleged conspiracy); *In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-02670-DMS-MDD, 2022 WL 4283551, at *4 (S.D. Cal. Jan. 26, 2022) (typicality satisfied where the claims of both the proposed settlement class and of plaintiffs were based on the same conspiracy and antitrust injuries).

It is immaterial that Plaintiffs purchased their bail bonds at different times and in different

1 transactions from different bail agents, as typicality does *not* depend on the manner in which a
 2 product was purchased. *See CRT III*, 2022 WL 4596621, at *4 (“In cases involving an alleged
 3 price-fixing conspiracy, the representative plaintiff’s claim is often considered typical even where
 4 the plaintiff followed different purchasing procedures[.]” (citation omitted)).

5 **4. Plaintiffs and Counsel Adequately Represent the Class**

6 The adequacy requirement examines whether the proposed representatives have any
 7 conflicts of interests with the proposed Class, and whether the plaintiffs are represented by
 8 qualified and competent counsel. *In re Conseco Life Ins. Co. LifeTrend Ins. Sales & Mktg. Litig.*,
 9 270 F.R.D. 521, 531 (N.D. Cal. 2010). Only conflicts that are “fundamental to the suit and that
 10 go to the heart of the litigation” inform adequacy. *In re Online DVD-Rental Antitrust Litig.*, 779
 11 F.3d 934, 942 (9th Cir. 2015) (citation omitted). Plaintiffs and their counsel satisfy this prong.

12 Plaintiffs’ interests are aligned with, and are not antagonistic to, the interests of other
 13 members of the proposed Class. Crain Decl. ¶ 9; Monterrey Decl. ¶ 9. Plaintiffs and the Class
 14 share a common interest in: (1) maximizing the total monetary recovery to address their economic
 15 injuries caused by the conspiracy; and (2) implementing injunctive relief to prevent the alleged
 16 misconduct from continuing or reoccurring. Plaintiffs are well-represented by proposed Class
 17 Counsel, who have extensive experience litigating, trying, and settling antitrust class actions.
 18 Harvey Decl. ¶¶ 2-10. Indeed, at the outset of the Action, the Court appointed Lieff Cabraser as
 19 Interim Class Counsel. ECF No. 44. In so doing, the Court considered the Rule 23(g)(3) criteria.
 20 *Id.* at 2-3. In the nearly six years since, Interim Class Counsel have zealously litigated this action
 21 on behalf of the Class. Harvey Decl. ¶¶ 11-15. They will continue to do so. *Id.* ¶ 16. Further,
 22 the Court has deemed Plaintiffs and their counsel as adequate with respect to preliminary
 23 approval, noting that “Plaintiffs and their counsel have vigorously prosecuted this action over the
 24 past five years.” ECF No. 512 at 11.

25 **B. Plaintiffs Satisfy the Requirements for a Rule 23(b)(2) Injunctive Class**

26 Class certification is appropriate under Rule 23(b)(2) where “the party opposing the class
 27 has acted or refused to act on grounds that apply generally to the class, so that final injunctive
 28 relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.

1 Civ. P. 23(b)(2). “[T]he Rule 23(b)(2) requirements ‘are unquestionably satisfied when members
 2 of a putative class seek uniform injunctive or declaratory relief from policies or practices that are
 3 generally applicable to the class as a whole.’” *In re College Athlete NIL Litig.*, No. 20-cv-03919
 4 CW, 2023 WL 7106483, at *6 (N.D. Cal. Sept. 22, 2023) (quoting *Parsons v. Ryan*, 754 F.3d
 5 657, 688 (9th Cir. 2014)). “That inquiry does not require an examination of the viability or bases
 6 of the class members’ claims for relief, does not require that the issues common to the class
 7 satisfy a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of
 8 the class have suffered identical injuries.” *Id.* “Rather, as the text of the rule makes clear, this
 9 inquiry asks only whether ‘the party opposing the class has acted or refused to act on grounds that
 10 apply generally to the class.’” *Id.* (quoting Fed. R. Civ. P. 23(b)(2)).

11 Here, Defendants’ alleged conspiracy makes final injunctive relief appropriate. If
 12 Plaintiffs prevail on any of their claims, injunctive relief would inure to the benefit of all Class
 13 Members. Defendants’ conduct has “applied in the past, in a uniform manner to all members,”
 14 and Plaintiffs’ requested relief to increase competition in Defendants’ collusive market “would
 15 enjoin the enforcement of the challenged [conduct],” thereby “provid[ing] uniform relief to all
 16 members of the proposed class.” *In re College Athlete*, 2023 WL 7106483, at *6.

17 **C. Plaintiffs Satisfy the Requirements for a Rule 23(b)(3) Damages Class**

18 To certify a class under Rule 23(b)(3), courts must find that (1) “questions of law or fact
 19 common to class members predominate over any questions affecting only individual members”—
 20 predominance—and (2) “that a class action is superior to other available methods for fairly and
 21 efficiently adjudicating the controversy”—superiority. Fed. R. Civ. P. 23(b)(3).

22 **1. Common Issues Predominate**

23 The predominance inquiry focuses on the relationship between common and individual
 24 issues. “To carry their burden of proving that a common question predominates, plaintiffs must
 25 show that the common question relates to a central issue in the plaintiffs’ claim.” *CRT III*, 2022
 26 WL 4596621, at *4 (quoting *Olean*, 31 F.4th at 665). In antitrust class actions, Plaintiffs must
 27 show: “(i) the existence of an antitrust violation; (ii) ‘antitrust injury’ or ‘impact’ flowing from
 28 that violation (i.e., the conspiracy); and (iii) measurable damages.” *Id.* (quoting *Olean*, 31 F.4th

at 665–66). Specifically, “Plaintiffs must show that ‘essential elements of the cause of action, such as the existence of an antitrust violation or antitrust impact, are capable of being established through a common body of evidence, applicable to the whole class,’ and that such common questions predominate over individual issues.” *Id.* (quoting *Olean*, 31 F. 4th at 666).

“The Supreme Court has observed that antitrust cases readily meet the predominance requirement. . . . The violation turns on *defendants’* conduct and intent along with the effect on the market, *not* on individual class members.” *In re Glumetza Antitrust Litig.*, 336 F.R.D. 468, 475 (N.D. Cal. 2020) (citations omitted) (emphasis in original). Indeed, “[i]t has long been accepted that the predominance test is ‘readily met’ in horizontal price-fixing antitrust cases.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at *44 (N.D. Cal. Jan. 8, 2013) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)), *report and recommendation adopted sub nom. In re Dynamic Random Access Memory Antitrust Litig.*, No. C 06-4333 PJH, 2014 WL 12879520 (N.D. Cal. June 27, 2014). As set forth below, here, too, the common evidence establishing the elements of the Class’s antitrust claims predominate over any individual issues.

a. Defendants Engaged in a Common Conspiracy

Plaintiffs allege an illegal price-fixing conspiracy with two components that are common to the Class: a common standard rate of 10%, and suppressing rebating below filed rates. Such antitrust violations can only be proved on a class-wide basis. *See CRT III*, 2022 WL 4596621, at *4 (“In price-fixing cases, like this one, courts repeatedly have held that the existence of the conspiracy is the predominant issue and warrants certification even where significant individual issues are present”) (citations omitted); *In re High-Tech*, 985 F. Supp. 2d at 1187 (defendants’ conspiracy was the overriding, common issue for every class member); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D 603, 611 (N.D. Cal. 2009) (finding that, if the court finds common proof of defendants’ antitrust conspiracy, class certification is warranted on that basis alone). Here, too, the alleged conspiracy either happened or it did not; this question will be answered, affirmatively or negatively, with the same common evidence for all. *See supra*

1 Section II (summarizing evidence).¹¹

2 Further, Plaintiffs retained Dr. Hal Singer, a well-qualified antitrust economist, to
 3 determine whether there is additional economic evidence, common to the Class, capable of
 4 evidencing the alleged conspiracy. Singer Rep. ¶¶ 3, 7-11, and Appendix 1. Dr. Singer first
 5 investigated the important economic actors and terms used in the bail bond industry. *Id.* ¶¶ 13-
 6 20. He then reviews the relevant details of bail bond transactions in California, including the
 7 roles of filed rates and rebates. *Id.* ¶¶ 21-41. Dr. Singer summarizes the bond forfeiture process,
 8 and estimates actual forfeiture rates during the Class Period. *Id.* ¶¶ 42-46. He next summarizes
 9 Defendants' filed rates during the Class Period, including their universal filing of the same 10%
 10 standard rate. *Id.* ¶¶ 47-51. Dr. Singer defines the relevant antitrust market, and examines
 11 whether Defendants had collective market power sufficient to inflate bail bond prices above
 12 competitive levels. *Id.* ¶¶ 52-65. He concludes, through both direct and indirect proof common
 13 to the Class, that Defendants possessed sufficient market power to conspire profitably. *Id.* Dr.
 14 Singer investigates the challenged misconduct, and explains how both components of the
 15 conspiracy—naked price-fixing of the standard rate and collusive efforts to suppress rebating—
 16 could effectively inflate prices of bail bonds across the Class. *Id.* ¶¶ 66-86.

17 Dr. Singer also assesses economic evidence of the conspiracy itself, using standard
 18 econometric and economic theory models. Singer ¶¶ 87-148. He first assembles a Classwide
 19 dataset of all Class transactions, with estimated prices charged to all Class Members. *Id.* ¶¶ 94-
 20 107. Dr. Singer begins with Class data produced by Defendants, which identify all Class bail
 21 bond purchases: over 3 million transactions. *Id.* ¶ 95. The purchase price of all Class
 22 transactions followed the same simple formula: Purchase Price = Bond Amount x (Filed Rate –
 23 Rebate). *Id.* ¶ 89. For example, if a court sets the Bond Amount at \$100,000, the applied Filed
 24 Rate is 10%, and the agent offers a Rebate of 1%, then the purchase price is \$9,000. Defendants'
 25 data provide the Bond Amounts and charged Filed Rates for all Class transactions. *Id.* ¶¶ 94-98.

26
 27 ¹¹ In the settlement context, the Court found that the “predominance requirement is satisfied,”
 28 noting that, “[i]n this case, the predominant issue is ‘the existence of the Surety Defendants’
 alleged conspiracy to fix bail bond prices,’” citing Plaintiffs’ contention that “the conspiracy
 inflated the price of bail bonds for all Class Members in the same way.” ECF No. 512 at 12
 (quoting ECF No. 465 at 18-19).

Defendants' data did not contain information regarding rebates. *Id.* ¶ 99. For rebate information, Dr. Singer directed Plaintiffs to obtain data from bail agencies directly. *Id.* ¶ 100. He designed a two-prong census and sampling approach, seeking rebate data from the top bail agencies by volume (census) and a random sample of the rest (sampling). *Id.* Dr. Singer used this data to estimate rebates provided to Class Members, which allowed him to estimate prices charged to Class Members net of rebates. *Id.* ¶¶ 101-107. Across the Class Period, Dr. Singer estimates that Class Members were charged an average Filed Rate of [REDACTED] and received an average Rebate of [REDACTED], resulting in an average Effective Rate of [REDACTED] (i.e., purchase price). *Id.* ¶ 90 and Ex. 11.

Dr. Singer then turned to estimating what competitive prices for bail bonds would have been in the absence of a conspiracy (prices "but-for" the conspiracy). He employs two independent but reinforcing analytical methods. First, Dr. Singer directly models the but-for Effective Rate, using both a theoretical risk-pricing model as well as a marginal cost analysis. *Id.* ¶¶ 91. The theoretical model examines bond risk type, probabilities of forfeiture, and administrative costs, and produces a range of competitive Effective Rates: a minimum of [REDACTED], a maximum of [REDACTED], and an average across all scenarios of [REDACTED]. *Id.* ¶¶ 116-117 and Ex. 22. Dr. Singer also looks at revealed marginal costs, based upon common evidence of bail agents charging certain Effective Rates profitably, and demonstrates a range of between [REDACTED] which provides independent confirmation and support for the theoretical model. *Id.* ¶¶ 120-125. Second, Dr. Singer uses a benchmarking method, applying competitive benchmarks from within the data. To estimate competitive Filed Rates, he uses Filed Rates applied by bail agents located on North Vignes Street in Central Los Angeles, where a dozen bail agencies have offices on the same block across from the county jail. *Id.* ¶¶ 127-139. Despite being subject to the conspiracy and Defendants' fixed rates, this group of bail agencies charged Filed Rates at least [REDACTED] less than the rest of the State, controlling for relevant factors. *Id.* ¶¶ 139. For a rebating benchmark, Dr. Singer looks to agency rebate data from the end of the Class Period (2023), because the evidence shows that Defendants' efforts to suppress rebating became less effective over time, such as after the filing of this lawsuit in 2019. *Id.* ¶¶ 140-148. This evidence shows that rebating at the end of the Class Period ranged from [REDACTED] *Id.* ¶ 148.

Dr. Singer compares these competitive prices against actual prices charged and determines that the conspiracy succeeded in inflating prices well above competitive levels, by [REDACTED] [REDACTED] *Id.* ¶ 92 and Ex. 13. “As only a firm with market power (or a collection of firms acting as a monopolist) is capable of rising prices above competitive levels for a commodity product like Bail Bonds, the evidence of price inflation is consistent with a conspiracy.” *Id.* ¶ 92.

b. Class Members Were Commonly Impacted by Defendants’ Conspiracy Because They Paid Higher Prices for Bail Bonds

“Antitrust ‘impact’—also referred to as antitrust injury—is the ‘fact of damage’ that results from a violation of the antitrust laws.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. 02-md-1486-PJH, 2006 WL 1530166, at *7 (N.D. Cal. June 5, 2006). With regard to an expert modelling of impact, “[f]or the purpose[] of the predominance analysis, the question is not whether [the expert’s] projection is correct. The question is only whether individualized inquiries will predominate over common ones.” *In re Xyrem Antitrust Litig.*, No. 20-md-02966-RS, 2023 WL 3440399, at *8 (N.D. Cal. May 12, 2023) (noting there that the particularities of the model posed “a question for the jury to decide,” and “Plaintiffs have clearly not relied on such extreme data that the Class must fail for lack of predominance”); *see also In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 313 (N.D. Cal. 2010) (“[O]n a motion for class certification, the Court only evaluates whether the method by which plaintiffs propose to prove class-wide impact could prove such impact, not whether plaintiffs in fact can prove class-wide impact.” (citation omitted)).

Dr. Singer’s analysis regarding the extent by which Defendants’ conspiracy inflated bail bond prices generally is important evidence of common impact. This “generalized evidence” is “capable of showing that all class members suffered antitrust impact on a classwide basis.” *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR (N.D. Cal. Mar. 29, 2022), ECF No. 789 at 26 (quoting *Olean*, 31 F.4th at 669). Indeed, the very sort of aggregate overcharge calculations Dr. Singer conducts here are accepted by courts to also show common impact. *See Ruiz Torres*, 835 F.3d at 1140 (proof of an aggregate overcharge “is not a matter of probability—it is a matter of logic that an aggregate underpayment means that [defendant] underpaid some,

possibly all, subclass members”); *In re Disposable Contact Lens Antitrust*, 329 F.R.D. 336, 424 (M.D. Fla. 2018) (“[A] large overcharge makes it more likely than not that classwide impact occurred.”); *Moshier v. Safeco Ins. Co. of Am.*, No. 23-CV-00225-PHX-DLR, 2024 WL 4503901, at *2 (D. Ariz. Oct. 16, 2024) (“The use of aggregate damages calculations is well established in federal court and implied by the very existence of the class action mechanism itself.”) (quoting *In re Pharm. Indus. Average Wholesale Price Litig.*, 582 F.3d 156, 197 (1st Cir. 2009)).

Dr. Singer also investigates whether Defendants’ conspiracy injured all or nearly all Class Members specifically. He uses two independent, mutually reinforcing methods. First, Dr. Singer uses in-sample prediction, comparing the price that each Class Member actually paid to the price each Class Member would have paid without the Conspiracy, on a transaction-by-transaction basis. Singer Rep. ¶¶ 152-156. Dr. Singer finds that in-sample prediction yields an impact percentage of [REDACTED] *Id.* ¶ 154. See *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, No. 6:20-MD-02977-RJS-CMR, 2024 WL 2117359, at *19 (E.D. Okla., May 8, 2024) (“The in-sample prediction method is a standard technique used to test whether the impact of an antitrust conspiracy is widespread.”); *In re Capacitors Antitrust Litig. (No. III)*, No. 14-CV-03264-JD, 2018 WL 5980139, at *7-9 (N.D. Cal., Nov. 14, 2018). Second, Dr. Singer examines evidence of a price structure that would transmit price inflation Classwide. *Id.* ¶¶ 157-170. He observes common evidence showing that all prices charged were either equal to the fixed 10% standard rate, or negotiated from it. *Id.* ¶¶ 160-166. Indeed, documents and testimony on this point provide substantial common evidence of a price structure whereby all transactions were anchored to the fixed 10% standard rate. Harvey Decl. Ex. 79 (Lexington CDI rate filing No. 15-10267 at 39-40, 43-52); Exs. 80-82; Ex. 34 (Bench Dep.) at 118:4-13; Ex. 75 (Shields Dep.) at 118:8-16; Ex. 83 (Stanley Dep.) at 95:3-8; Ex. 33 (Cook Dep.) at 254:2-10, 254:21-24. Dr. Singer also conducts a separate price structure regression, demonstrating that an increase in average Filed Rates across the Class is associated with an approximately equal increase in the Filed Rate for an individual Class Member. Singer Rep. ¶¶ 167-170. Thus, “Filed Rates charged to Class Members move together across agencies, sureties, rate types, and the industry at large.” *Id.* “This result is strong evidence of a price structure.” *Id.* ¶ 170. See *Olean*, 31 F.4th at 671-73; *Broiler*

1 *Chicken*, 2024 WL 2117359, at *7-9; *Cung Le v. Zuffa, LLC*, No. 2:15-cv-01045-RFB-BNW (D.
 2 Nev. Aug. 9, 2023), ECF No. 839 (order granting class certification); *In re Polyurethane Foam*
 3 *Antitrust Litig.*, 314 F.R.D. 226, 286 (N.D. Ohio 2014); *In re High-Tech Emp.*, 985 F. Supp. 2d at
 4 1206; *Johnson v. Ariz. Hosp. & Healthcare Assoc.*, No. 07-CV-1292-PHX-SRB, 2009 WL
 5 5031334, at *8, 11 (D. Ariz. Jul. 14, 2009).

6 The existence of individual negotiations in some bail bond transactions does not negate
 7 the common impact of Defendants' conspiracy. Instead, "the prevailing [economic] view" is that
 8 "price-fixing affects all market participants, creating an inference of class-wide impact even when
 9 prices are individually negotiated." *Olean*, 31 F.4th at 671 (quoting *In re Urethane Antitrust*
 10 *Litig.*, 768 F.3d 1245, 1254 (10th Cir. 2014)). As the Ninth Circuit concluded in *Olean*, "even
 11 assuming the existence of these individualized differences, a higher initial list price as a result of
 12 Defendants' price-fixing scheme could have raised the baseline price at the start of negotiations
 13 and could have affected the range of prices that resulted from negotiation." *Olean Wholesale*
 14 *Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 993 F.3d 774, 790 (9th Cir. 2021).¹² An inflated
 15 baseline price is itself common proof as to the antitrust impact resulting from the Defendants'
 16 conspiracy. See *In re Urethane*, 768 F.3d at 1254 ("The inference of class-wide impact is

17 ¹² See also *In re Pork Antitrust Litig.*, 665 F. Supp. 3d 967, 1006 (D. Minn. 2023) ("Individual
 18 differences between negotiations and transactions do not disrupt the fact that the Defendants'
 19 conspiracy, if true, would cause all prices to increase.") (citing *Olean*, 31 F.4th at 681); *In re*
 20 *Disposable Contact Lens*, 329 F.R.D. at 420–21 ("The fact that a plaintiff may have successfully
 21 employed bargaining power to fend off the effect of the conspiratorial practices does not mean
 22 that it has not been put in a worse position but-for the conspiracy.") (citation omitted); *In re*
 23 *Auction Houses Antitrust Litig.*, 193 F.R.D. 162, 166 (S.D.N.Y. 2000) ("Price fixing conspiracies,
 24 at least to the extent they succeed in fixing prices, almost invariably injure everyone who
 25 purchases the relevant goods or services."); *Fears v. Wilhelmina Model Agency, Inc.*, No. 02 Civ-
 26 4911 HB, 2003 WL 21659373, at *6 (S.D.N.Y. 2003) (noting that even if plaintiffs negotiated for
 27 a lower rate, the negotiations began at the "artificially elevated rate," thereby showing common
 28 impact); *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 486 (W.D. Pa. 1999) ("[E]ven though
 some plaintiffs negotiated prices, if plaintiffs can establish that the base price from which these
 negotiations occurred was inflated this would establish at least the fact of damage, even if the
 extent of damage by each plaintiff varied."); *In re Indus. Diamonds Antitrust Litig.*, 167 F.R.D.
 374, 383 (S.D.N.Y. 1996) ("[I]f a plaintiff proves that the alleged conspiracy resulted in
 artificially inflated list prices, a jury could reasonably conclude that each purchaser who
 negotiated an individual price suffered some injury."); *In re NASDAQ Market-Makers Antitrust*
Litig., 169 F.R.D. 493, 523 (S.D.N.Y. 1996) ("Neither a variety of prices nor negotiated prices is
 an impediment to class certification if it appears that plaintiffs may be able to prove at trial that . .
 . the price range was affected generally."); *Rosack v. Volvo of Am. Corp.*, 131 Cal. App. 3d 741,
 759-60 (1982) ("The good negotiator in the fixed market would presumably have gotten an even
 better 'deal' in a competitive market.").

1 especially strong where, as here, there is evidence that the conspiracy artificially inflated the
 2 baseline for price negotiations.”). Plaintiffs’ allegations to this effect are highly similar to *Hyland*
 3 *v. Homeservices of America, Inc.*, No. 3:05-CV-612-R., 2008 WL 4858202 (W.D. Ky. Nov. 7,
 4 2008). There, plaintiffs alleged that defendants “engaged in a conspiracy to inflate the price of
 5 commissions charged by real estate brokers for the purchase of real estate in Kentucky,” and
 6 further that the defendants “worked to avoid, suppress, or eliminate price competition from
 7 discount brokerage companies.” *Id.* at *1. In concluding that the predominance inquiry was
 8 satisfied, the district court explained, “To the extent that Plaintiffs are successful in proving that
 9 [the standard rate] is a conspiratorially established standard, any proof that a Defendants’ agents
 10 followed the rate would be proof that the class members who hired that particular agent was
 11 harmed by the conspiracy.” *Id.* at *7. Here, Plaintiffs possess exactly this sort of proof. *See*
 12 *supra* Section II. All California bail agents used the same fixed 10% “standard” rate.

13 In sum, common impact will be established because Defendants’ alleged conspiracy
 14 inflated the price of bail bonds for all Class Members in the same way. *See, e.g., In re Rubber*
 15 *Chems. Antitrust Litig.*, 232 F.R.D. 346, 352 (N.D. Cal. 2005) (“[C]lass-wide impact is usually
 16 found to exist where the defendants are shown to have used collusively-set list prices for the
 17 product at issue.”). The class-wide impact of the conspiracy is an overriding common issue. *In*
 18 *re Citric Acid Antitrust Litig.*, Nos. 95-1092, No. 95-cv-02963, 1996 WL 655791, at *7-8 (N.D.
 19 Cal. Oct. 2, 1996).

20 **c. Damages Will Be Established by Common Proof**

21 “In contrast to the ‘impact’ prong of the Rule 23(b) analysis, which asks only ‘*whether* the
 22 plaintiffs were harmed,’ the damages prong asks ‘by how much.’” *In re Titanium Dioxide*
 23 *Antitrust Litig.*, 284 F.R.D. 328, 348 (D. Md. 2012), *amended*, 962 F. Supp. 2d 840 (D. Md.
 24 2013) (citations omitted). At the class certification stage, “Plaintiffs must show, using evidence
 25 common to the class, that class members paid a higher price for [bail bonds] from Defendants
 26 than they would have absent the alleged conspiracy.” *Id.* at 345; *see also Aberin v. Am. Honda*
 27 *Motor Co.*, No. 16-CV-04384-JST, 2021 WL 1320773, at *11 (N.D. Cal. Mar. 23, 2021) (Tigar,
 28 J.) (plaintiffs must show damages “can ‘feasibly and efficiently be calculated once the common

liability questions are adjudicated” (quoting *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513-14 (9th Cir. 2013)); *Olean*, 31 F.4th at 668 (“That the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause individual questions to predominate.”) (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014); *Ruiz Torres*, 835 F.3d at 1136–37 (explaining that “even a well-defined class may inevitably contain some individuals who have suffered no harm as a result of a defendant’s unlawful conduct,” but “such fortuitous non-injury to a subset of class members does not defeat certification as to the entire class”). Any concerns Defendants may have as to the accuracy of a common damages analysis “go purely to the merits, and present no overlap with the predominance requirement.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 JG VVP, 2014 WL 7882100, at *63 (E.D.N.Y. Oct. 15, 2014).

Here, Plaintiffs’ estimate of damages, and the methodology used in calculating aggregate damages, are rooted in widely accepted methods that are common to the Class. Singer Rep. ¶¶ 175-179.

In sum, because Defendants’ alleged conduct applies to all Class Members’ claims, and because Plaintiffs allege “a common and unifying injury” as a result of Defendants’ alleged illegal conduct, the predominance requirement is met. *In re Volkswagen “Clean Diesel” Litig.*, MDL No. 2672 CRB, 2017 WL 672727, at *14 (N.D. Cal. Feb. 16, 2017); *CRT III*, 2022 WL 4596621, at *4.

2. A Class Action Is Superior to Millions of Individual Actions

A class action is a superior means of adjudicating a dispute if no realistic alternative exists and class litigation of common issues “reduce[s] litigation costs and promote[s] greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F. 3d 1227, 1234-35 (9th Cir. 1996).

Here, there is no realistic alternative to a class action due to the size of the Class and the prohibitive cost of litigating individual cases. See *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 515 (9th Cir. 2013) (reversing where the “district court concluded that class certification is not the superior method of adjudication but did not suggest any other means for putative class members to adjudicate their claims”). Individual lawsuits could also result in inconsistent rulings and

results for the same misconduct. *Volkswagen*, 2017 WL 672727, at *14. Furthermore, each Class Member would be required to prove the same misconduct and would offer the same evidence. As such, class treatment is the superior method of adjudication. *See In re High-Tech*, 985 F. Supp. 2d at 1228 (finding that a class action was the superior form of adjudication because of the nature of the defendants' conspiracy and the desirability of concentrating litigation in one proceeding); *Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D 270, 316 (N.D. Cal. 2016) (same). Moreover, in granting preliminary approval of settlements with Defendants Lexon Insurance Company and Danielson National Insurance Company, the Court explained that, here, "the judicial economy achieved through common adjudication undoubtedly makes a class action superior to any alternative procedures for resolving the claims of approximately two million class members." ECF No. 512 at 12.

V. CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request that the motion be granted and that the Court certify the Class.

Dated: December 11, 2024

Respectfully submitted,

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