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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' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** Date: TBD Time: TBD Judge: The Honorable Jon S. Tigar Courtroom: 6, 2nd Floor

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I. INTRODUCTION

Defendants' parade of misstatements and red herrings cannot change the facts before the Court. Plaintiffs' claims are ideally suited for classwide adjudication.

Plaintiffs seek to represent a Class of consumers who, like them, purchased bail at prices higher than they would have but-for Defendants' price-fixing conspiracy. The predominate question at trial will be whether the alleged conspiracy occurred, and the jury will rely on common evidence to provide a common answer to that common question. *See* Mot. at 3-22. Defendants' feeble attempt to dismiss this common evidence as mere "palace intrigue" or "rhetorical flourish" speaks volumes. Opp'n at 1. Since then, Chief Magistrate Judge Ryu rejected Defendants' attempt to hide additional conspiracy evidence behind assertions of privilege. ECF No. 558. Judge Ryu found: "[The attorney in question]'s advice was primarily and explicitly to 'rally the industry' and coordinate an industry-wide response to the CDI excessive rate inquiry. Moving Defendants apparently acted on that advice, as the record contains evidence that they communicated frequently with multiple other [Defendant] sureties during that same time period about how to respond to the CDI inquiry." *Id.* at 8. Judge Ryu highlighted several such communications that Defendants tried to conceal from Plaintiffs and the Court, including this damning agenda item for a call among Defendants: "***How do we reach out to other sureties to make sure they don't make a rate filing and to make sure they also state that they have no ability to provide financial information from agents*?**" *Id.* at 9 (emphasis supplied). This Court came to the same conclusions as Judge Ryu, and denied Defendants' objection. ECF No. 555.

Unable to credibly dispute evidence of their price-fixing, Defendants instead mischaracterize the market for bail in California as a hopelessly complex morass of bespoke products and unrelated transactions. The inescapable reality, however, is that a bail bond is a textbook commodity product. California courts do not release an arrestee faster or any differently if presented with a bond underwritten by Defendant Lexington as opposed to Defendant Bankers. Bail bonds are pieces of paper that function identically and are perfect substitutes. They are not highly differentiated technological products like the GPUs at issue in Defendants' primary authority, which were sold in one way to consumers (the portion of the proposed class Judge Alsup *certified*), and sold in a very different way to institutional buyers (the portion of the proposed class he denied). *See generally In re Graphics Processing Units Antitr. Litig.* ("*GPUs*"), 253 F.R.D. 478 (N.D. Cal. 2008).

In functioning markets for commodity products, the absence of product differentiation creates fierce price competition and forces prices down to near marginal costs. Defendant Carmichael, the ringleader of Defendants' conspiracy, understood this well. As he explained in a message to his co-conspirators, absent price-fixing, price competition "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." Ex. 35.[1] The status quo collusion model he and other Defendants maintained was a "standard" rate of 10%, and a concerted campaign to convince agents and customers it was illegal to rebate. The competitive "new model" they conspired to avoid was lower premium rates and rebating below those rates. Dr. Singer applies standard and reliable economic methods to common evidence to estimate both of these "models": what Class Members were actually charged with the conspiracy in place, and what Class Members would have been charged without the conspiracy. The difference between these estimates establishes classwide impact and damages.

In attempting to exclude Dr. Singer's analysis, Defendants and their expert, Dr. Strombom, rely on falsehoods and patently unreliable opinions. Dr. Strombom believes bail bonds are not commodities, yet he concedes all facts proving they are and admits he has never in his career (including now) studied commodities. Unlike Dr. Singer, who relies on a statistically valid sample of agencies, Dr. Strombom relies on declarations Defendants hand-picked (without his input), which he admits are unrepresentative. And in modeling bail bond prices, Dr. Strombom ignores basic economic principles, antitrust law, and the record evidence to support his unfounded conclusion that the premium collected—rather than price charged—determines antitrust damages. These issues are addressed below and in Plaintiffs' concurrently filed *Daubert* briefing.

At trial, Plaintiffs will provide common evidence to establish every element of their antitrust claims. Plaintiffs therefore respectfully request that the Court grant their motion and certify the proposed Class.

II. ARGUMENT

A. <u>All Elements of Rule 23(a) Are Satisfied.</u>

1. Numerosity Is Undisputed.

Defendants do not dispute that the proposed Class exceeds two million members. Mot. at 23.

2. Commonality Is Satisfied.

Defendants' sole response on commonality is to mischaracterize Plaintiffs' claims, asserting they "in fact allege a vertical and horizontal conspiracy between Defendants and thousands of agents." Opp'n at 15.

[1] References to Exhibits 1-83 are to those attached to the Harvey Declaration, filed at ECF No. 513. References to Exhibits 84-111 are to those attached to the Harvey Reply Declaration, submitted herewith.

But repeating a misstatement does not make it true. Plaintiffs challenge only the "naked price-fixing agreement among horizontal competitors." Mot. at 4. Those competitors are the Defendants.

As for the horizontal price-fixing conspiracy actually at issue: Defendants do not contest a single one of the common questions raised in Plaintiffs' motion—effectively conceding their existence. *See* Mot. at 23-24 (listing common questions and citing authorities confirming their commonality in antitrust cases).[2]

3. Plaintiffs' Claims Remain Typical.

Plaintiffs purchased bonds for more than they would have absent Defendants' conspiracy—allegations identical to (and thus typical of) the Class they seek to represent. That is all that is required to satisfy typicality. *See* Mot. at 24-25.[3] Unable to refute this, Defendants resort instead to false—and in context, reprehensible—misrepresentations of Plaintiffs' purchasing experiences and claims. None is persuasive.

Defendants first argue that Plaintiffs are atypical because they did not purchase bonds backed by the same sureties or in the same cities as one another or all other Class Members. Opp'n at 31. If this were a valid measure of typicality—which it is not—then no court could ever find plaintiffs typical in any multi-defendant case, effectively ruling out class treatment in conspiracy actions. None of Defendants' authorities—not one of them an antitrust case—stands for this absurd proposition. *See Small v. Allianz Life Ins. Co. of N. Am.*, 122 F.4th 1182, 1203 (9th Cir. 2024) (holding plaintiff whose life insurance policy lapsed inadvertently due to nonpayment of premiums lacked typicality with insureds whose policies had been intentionally terminated).[4]

Defendants next claim that when Plaintiff Monterrey purchased bail bonds in late 2023—after the end of the Class Period—"she admits that she did not attempt to negotiate those bonds," and that this represents a "divergence" from Dr. Singer's theory that in the but-for world consumers would have "the ability to negotiate a rebate, and all would successfully do so." Opp'n at 32. This is a gross misrepresentation of Ms. Monterrey's testimony, the record evidence, and Dr. Singer's opinion. In reality, Ms. Monterrey received rebates on *both* bonds she purchased in 2023. Defs. Exs. 38-39. And she did *not* admit that she declined negotiation on either.

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[2] On this issue, Defendants do not address: *In re TFT-LCD (Flat Panel) Antitr. Litig.*, 267 F.R.D. 583 (N.D. Cal. 2010); or this Court's 2020 opinion in *In re Cathode Ray Tube (CRT) Antitr. Litig. ("CRT II")*, 2020 WL 1873554 (N.D. Cal. Mar. 11, 2020).

[3] On this issue, Defendants do not address: *In re Qualcomm Antitr. Litig.*, 328 F.R.D. 280 (N.D. Cal. 2018); *In re Packaged Seafood Prods. Antitr. Litig.*, 2022 WL 4283551 (S.D. Cal. Jan. 26, 2022); *CRT II*, 2020 WL 1873554; or *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

[4] *See also Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (plaintiff's "extensive experience in prior securities litigation" subjected him to unique defenses in securities action); *Wiener v. Dannon Co.*, 255 F.R.D. 658, 665 (C.D. Cal. 2009) (plaintiff was not typical because she did not purchase a product at issue).

Rather, she testified that she had *no memory* of the transactions due to [redacted], but acknowledged it was entirely possible she had requested rebates—which, notably, she did receive. Ex. 86 (Monterrey Tr.) at 190:20-191:21, 192:23-194:2, 195:14-23. This aligns with Dr. Singer's opinion about negotiation in the but-for world, which Defendants also misrepresent. *See* Ex. 85 (Singer Reply Rep.) ¶ 18 (explaining that purchasers would have "greater, if not perfect knowledge" in a competitive market).

Defendants identify as another purported "divergence" that both Plaintiffs testified to "seeking bail from the agent closest to the courthouse," which they contend is inconsistent with the "state-wide geographic market" that Dr. Singer defines. Opp'n at 32. This misunderstands economic markets. Buying an iPhone from the nearest Apple store does not mean there are distinct hyper-local geographic markets for iPhones. What matters are the competitive forces that determine prices, and absent Defendants' conspiracy, the prices of bail bonds in California would have been lower statewide. Ex. 84 (Singer Rep.) ¶ 61; Singer Reply Rep. ¶ 202.

Finally, Defendants claim Plaintiffs are subject to "unique defenses," but their arguments reveal a striking lack of familiarity with both the basic facts of this case and the governing law. First, they note neither Plaintiff could recall in 2024 which signage she saw in 2019. Opp'n at 32. But this is not a false advertising case, and no Class Member need prove they relied on any specific advertisement in falling prey to Defendants' conspiracy—reliance is not an element of this antitrust action. Second, Defendants assert Ms. Monterrey was not harmed because she paid a *qualified* rate of 8%, which is below Dr. Singer's but-for *standard* rate of [redacted]%. Opp'n at 32. This conflates distinct concepts: the price-fixed *standard* rate is 10%; a qualified rate is a "lower rate that applies if the Customer fits some objective qualification." Singer Rep. ¶ 15. Plaintiffs have always acknowledged Ms. Monterrey paid a lower qualified rate because she is a veteran. ECF No. 281-1, ¶ 37. But as Dr. Singer explained, she was nevertheless harmed by the conspiracy because, like rebates, "Qualified Rates[] are tethered to the standard Filed Rates, [such] that any shock (in this case, the Challenged Conduct) that caused the standard Filed Rates to increase would necessarily inflate the" qualified rate. Singer Rep. ¶ 4(c). In other words, Plaintiffs allege—and Dr. Singer proves—that absent the conspiracy, the qualified rate Ms. Monterrey paid would have been lower.

4. Plaintiffs and Their Counsel Are Adequate.

First, there is no question that Plaintiffs—whom Defendants concede have timely claims—have vigorously asserted tolling doctrines on behalf of the Class. The Court already held Plaintiffs adequately allege not one but four tolling doctrines. ECF No. 91 at 29-33. For this motion, the only relevant question is whether those doctrines depend on common evidence.[5] They do. In upholding Plaintiffs' continuing violation theory, for instance, the Court held that "each sale of a bail bond that was artificially inflated as a result of the alleged conspiracy thus constitutes an overt act restarting the statute of limitations." *Id.* at 33. The question whether bail bonds are, in fact, "continuously sold in California," *id.*, has a single, uniform answer—it will not vary by Class Member. And no case holds that class representatives with timely claims are barred from advancing tolling doctrines. Indeed, Defendants' primary authority—*Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997)—is not a class certification decision at all.[6] Here, Plaintiffs remain committed to serving as representatives for all Class Members—dating back to 2004. *See, e.g.*, Ex. 87 (Crain Dep) at 53:7-13.

Second, Defendants fabricate a conflict between Plaintiffs—who advocate competitive prices for all bail customers—and "high-risk" Class Members—whom Defendants imagine are *grateful* for the conspiracy because no agent would sell them a bond for lower than 10%. Opp'n at 33. This is simply an attempt to repackage a meritless "ruinous competition" defense as an adequacy problem. The antitrust laws do "not permit[] the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies." *Arizona v. Maricopa Cnty. Med. Soc'y*, 457 U.S. 332, 346 (1982) (quoting *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221-222 (1940)). And Defendants' sole authority does not find inadequacy in their imagined world—where some Class Members want to pay higher prices. *See Alberghetti v. Corbis Corp.*, 263 F.R.D. 571, 577 (C.D. Cal. 2010) (finding named plaintiffs inadequate representatives of a class of artists and entertainers, where the plaintiffs themselves disagreed as to whether enjoining all uses of their images was appropriate). Further, Defendants' own agents admitted they would refuse to sell a bail bond if the arrestee posed a significant flight risk, regardless of the rate. *See, e.g.*, Ex. 88 (Cook Tr.) at 136:19-21 ("[redacted]").[7] That is, "high-risk" purchasers would not have obtained a bail bond in either the actual or but-for worlds.

[5] The Court also held that these doctrines must be decided on a full factual record where, as here, there are "disputed issues of fact." ECF No. 91 at 29 (quoting *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984)). This is not a motion for summary judgment. For now, this is a classwide issue with a common answer.

[6] *See also Thompson v. Gen. Revenue Corp.*, 2020 WL 1526720, at *6 (S.D. Ohio Mar. 31, 2020) (no discussion of tolling at all); *Ortega v. Nat. Balance, Inc.*, 300 F.R.D. 422, 427 (C.D. Cal. 2014) (holding, without citation to a single legal authority, that plaintiffs could not advance only the discovery rule for absent class members); *Minter v. Wells Fargo Bank, N.A.*, 274 F.R.D. 525, 549 (D. Md. 2011) (same, without citation to a single legal authority, for equitable tolling).

[7] *See* Ex. 88 (Cook Tr.) at 133:22-135:8; Ex. 89 (Padilla Tr.) at 149:2-6; Ex. 90 (Stanley Tr.) at 157:6-8.

B. <u>All Elements of Rule 23(b)(3) Are Satisfied.</u>

1. Common Questions Predominate.

a. Common Evidence Will Prove (or Disprove) the Conspiracy.

Defendants insist Plaintiffs lack "direct" evidence of unlawful agreement. Opp'n at 1. But the Supreme Court does not demand a smoking gun to prove conspiracy.[8] And in any event, Plaintiffs identify several. *See* Mot. § II. The record was already replete with such evidence—now largely unrebutted. Since Plaintiffs moved, more incriminating material—all of it improperly withheld by Defendants—has come to light.

i. Defendants Ignore or Mischaracterize the Evidence.

First, Defendants assert that SFAA is not itself a Defendant. Opp'n at 16. But SFAA is *comprised of Defendants* and served as only one of several trade associations Defendants used to carry out their conspiracy.[9] Defendants then compound this misdirection with falsehoods about their membership in SFAA—stating that Seaview, Universal, ILM, and Lexon are not members, when in fact they are. *Compare* Opp'n at 16 *with* Ex. 9. And most remarkably, Defendants claim none of the SFAA minutes "mention California premium rates *at all*." Opp'n at 16. But Defendants knew that discussing bail bond prices was improper, and took care that meeting minutes made no mention of it. Plaintiffs explained, with contemporaneous evidence, that these minutes fraudulently omitted discussion of rates that occurred. Mot. at 20 (citing Exs. 2, 70-73). Further, there is direct evidence showing Defendants violated their own antitrust policies and discussed California bail prices (specifically, rates and rebates) outside of official trade association meetings. *Id*. at 10 (citing Exs. 2, 34).

Second, Defendants cite alleged rate deviations that, as it turns out, are not deviations at all. With one exception already addressed by Plaintiffs, the "varied" rates are not departures from the 10% *standard* rate, but adjustments to *qualified* rates. Opp'n at 4, 16-17; Brass Ex. 2 (Strombom Rep.) Exs. 4-5.[10] This is not the "gotcha" Defendants suggest: qualified rates have been central to the case since it launched, as Ms. Monterrey

[8] *See Interstate Cir., Inc. v. United States*, 306 U.S. 208, 227 (1939) ("It is elementary that . . . [a]cceptance by competitors, without previous agreement, of an invitation to participate in a plan . . . is sufficient to establish an unlawful conspiracy under the Sherman Act."); *see also In re TFT-LCD (Flat Panel) Antitr. Litig.*, 586 F. Supp. 2d 1109, 1116 (N.D. Cal. 2008) (same).

[9] Defendants attempt to minimize their collusion through trade associations by framing membership as an "individualized inquiry." Opp'n at 16 (citing *Kline v. Coldwell, Banker & Co.*, 508 F.2d 226, 233 (9th Cir. 1974)). This mischaracterizes the facts and the law. Membership is easily established through common evidence. Exs. 9-12. And unlike *Kline*, Plaintiffs possess extensive non-membership evidence of collusion.

[10] Dr. Singer already explained the sole exception—AIA—moved to a 9% rate in 2018, only *after* being forced to do so by the CDI. Singer Rep. Ex. 11, n.203. Contemporaneous emails show AIA spent "[redacted]. Ex. 91 at AIA_000049113; Ex. 92 at ACCRED000002580.

purchased bond at an 8% qualified rate. ECF No. 281-1, ¶ 37. And in his opening report, Dr. Singer identified Defendants' qualified rates over time, and explained that, like rebates, they are tethered to the price-fixed 10% standard rate. Singer Rep. ¶ 4(c); Ex. 11. Moreover, the rates highlighted by Defendants only serve to bolster Plaintiffs' argument. Defendants inexplicably point out, for instance, that "North River and USFIC filed for a 7% qualified rate in 2012 after agents requested a lower rate 'to be competitive in the market.'" Opp'n at 4. The agents' request underscores that the 10% rate agents were bound to was then (and remains) uncompetitive.

Third, Defendants do not even bother to respond to the fact that there is no actuarial justification whatsoever for their fixed 10% standard rate. Indeed, the only references to so-called "risk" throughout Defendants' opposition are mere suppositions about how agents decide whether to issue a bond, not evidence supporting Defendants' submissions of the rate itself. That is no surprise: as Defendant Carmichael admitted under oath, there simply is no legitimate justification. Ex. 2 (Carmichael Dep.) at 71:10-17.

Fourth, Defendants offer no competitive justification for their coordinated response to the CDI's fall 2016 inquiry into their inflated 10% standard rate. Defendants' opposition is notably silent about the steps Defendants took not only to conspire at a November 9, 2016 meeting of another trade association (the American Bail Coalition, or ABC), but to *cover-up* those steps. *See* Mot. at 19-20 (detailing evidence). Recently produced evidence sheds even further light on Defendants' coordination, beyond their ABC meetings, in response to the CDI's inquiry. *See infra* § II.B.1.a.ii.

As for rebate suppression, Defendants do not refute the key facts: (1) Carmichael's warning about "the threat to [their] industry" prompted them to form a new trade association (CalBIG) to "work collectively to repel" price erosion (Ex. 35 at 3); (2) Defendants formed a "Rebate/Discount" Committee to coordinate with agent associations (CBAA and GSBAA) on rebate suppression (Ex. 54 at -819); (3) Defendants—through SFAA—created "Standard Forms"[11] that omit rebates (Ex. 11 at -882; Ex. 41 (Holtschneider Dep.) at 188:2-23; Ex. 45 at -546); (4) emails, newsletters, and minutes reflect Defendants' use of these associations to suppress the "trend by our agent partners" to offer rebates (Ex. 35 at 3), and Defendants' coordination on an "[redacted]" (Ex. 55 at -957); and (5) Defendants admitted under oath to their discussion of rebate suppression (Ex. 2 at 116:12-17).

[11] Defendants elide the import of these "Standard Forms." Opp'n at 18. They represent one step taken by Defendants to effectuate rebate suppression; they need not have been adopted by every agent, or analyzed on any individual basis, to estimate the effect of suppression efforts. Indeed, both Dr. Strombom and Dr. Singer create that estimate using common evidence that does not include "Standard Forms." *See infra* § II.B.1.b.

Instead of addressing this evidence, Defendants cherry-pick purported examples of rebating during the Class Period. But many are not rebates at all. Defendants' reliance on a 2013 advertisement promoting "Smart Bail" at 5% is particularly misleading. Opp'n at 6. Defendants themselves elicited testimony from an agent confirming the advertisement did not reflect a 5% rebate, but that he was punished for running it anyhow:

> Q. Do you advertise rebating or discounting?
>
> A. . . . I don't think so. . . . We used to advertise 5 percent in bail. And . . . [i]t wasn't 5 percent bail. It was a 10 percent rate with half the money down. And ***that got a lot people thinking we were charging 5 percent. So we . . . stopped that right away . . . . I got blamed for messing up the industry with that, because every agent thought we were charging 5 percent.***

Ex. 93 (Bench Dep.) at 108:10-109:9 (emphasis supplied). Many other "examples" appear at the end of (or after) the Class Period. To wit: *every* exhibit Defendants cite to argue "agents advertised their desire to 'match or beat' competitors' prices" is dated *less than two months ago*. Opp'n at 6, n.2; Mejia Decl. ¶ 8 (Exs. 64, 65, 66, 67). And despite claiming that "[redacted]" Strombom Rep. ¶ 14(a), Dr. Strombom [redacted], Ex. 94 (Strombom Dep.) at 74:3-76:7; 82:6-84:19. This is entirely consistent with Plaintiffs' theory "that Rebating has generally increased over time." Singer Rep. ¶ 146.

Even more critically, Plaintiffs *never* alleged a complete absence of rebating, at any point in the Class Period. Defendants' contention that agents occasionally rebated proves nothing, as sporadic cheating is expected in any cartel.[12] This is why Dr. Singer developed three methods to estimate rebating throughout the Class Period, including one that assumed *every bond* received the most competitive rebate from the most competitive agent in the most competitive year. Singer Rep. ¶¶ 99-107, 140-56. After correcting for the valid errors Dr. Strombom identified, Dr. Singer updated these analyses. They have not materially changed, and continue to show rebating was rare in the early years but increased over time. Singer Reply Rep. App. 2.

After exaggerating rebating, Defendants then shift blame to the CDI—claiming it suppressed rebates and sowed confusion about their legality. Opp'n at 6-8.[13] The documents Defendants cite tell a different story:

- In some cases, Defendants are correct that agents sought guidance, but they omit the CDI's response ***affirming the legality of rebating***. *See* Defs.' Ex. 19 at -045 (CDI unequivocally responding in 2013: "[redacted].").

[12] Where rebating happened early in the Class Period, it was punished. *See* Singer Reply Rep. ¶¶ 215-30.

[13] Section 2054.4 remaining "on the books until 2016," Opp'n at 6, is irrelevant, as it was unambiguously declared unenforceable in 2004. Mot. at 6. While Defendants maintain agents nevertheless sought guidance through a "joint committee" in 2009, Opp'n at 6-7, committee member Mark Holtschneider [redacted] Ex. 96 (Holtschneider Dep.) at 124:24-125:2. And as Defendants admit, CDI promptly removed Section 2054.4 once notified. Opp'n at 7.

- In other cases, the communication to CDI does not reflect confusion at all. *See* Defs.' Ex. 20 at -3581 (attaching, in 2014, [redacted]"). In others, what Defendants characterize as "confusion" is in fact a request for information on particular transactions, to which agents' responses ***reflect their knowledge of rebating***. *See* Defs.' Ex. 23 (CDI requesting [redacted]"); Ex. 24 (agent responding to Ex. 23, [redacted]") (emphasis supplied); Ex. 25 at -1943 (agent responding to 2017 inquiry, "[redacted]") (emphasis supplied).
- In no case did the CDI "sanction" rebating. Opp'n at 7. The documents reflect *consumer complaints*, in which the CDI cites improper bookkeeping. *See* Defs. Ex. 26 (Lexington did not provide [redacted]"); Ex. 27 (FCS "[redacted]" and therefore [redacted]). Defendants likewise mischaracterize what they describe as "enforcement actions." Opp'n at 8. Immediately prior to the letter in Defendants' Exhibit 30, for example, the CDI [redacted]. Ex. 95 (FCS000096421).[14]

Finally, Defendants distort Plaintiffs' claims in an effort to manufacture a burden that does not exist. Plaintiffs challenge a horizontal conspiracy among the Surety Defendants—not a vertical price-fixing scheme involving the "2,000-plus bail agents" operating in California. Opp'n at 17. Yet Defendants insist that Plaintiffs demonstrate a "meeting of the minds" between Defendants and every agent in the state. *Id.* Again: while it may have been easier for Defendants to oppose certification of a vertical price-fixing agreement between sureties and agents, that is simply not this case. *See supra* § II.A.2. Plaintiffs do *not*, as Defendants suggest, "concede that 2,000-plus bail agents are necessary co-conspirators." Opp'n at 17.[15] Plaintiffs do not allege—and need not prove—an agreement between each Defendant surety and every agent. Defendants' authorities on vertical price-fixing are therefore inapposite.[16] Statements and testimony by the non-Defendant agents are relevant only insofar as they reflect *Defendants'* agreement, or the absence of one.[17]

ii. Newly Released Evidence Confirms Defendants' Collusion.

Since Plaintiffs moved for class certification, new evidence has further confirmed Defendants' collusive conduct. Last fall, certain Defendants attempted to clawback email exchanges regarding the CDI's

[14] Defendants redacted the bond number in Defendants' Exhibit 31, rendering it impossible for Plaintiffs or the Court to review the correspondence surrounding the letter.

[15] Defendants' sole citation for this proposition is a paragraph from the Singer Report that contains no such concession. *See* Opp'n at 17 (citing Singer Rep. ¶ 58).

[16] *See* Opp'n at 18-19 (citing *In re Fine Paper Antitr. Litig.*, 685 F.2d 810 (3d Cir. 1982); *Package Shop, Inc. v. Anheuser-Busch, Inc.*, 1984 WL 6618 (D.N.J. Sept. 25, 1984); *In re Hotel Tel. Charges*, 500 F.2d 86 (9th Cir. 1974); *Kendler v. Federated Dep't Stores, Inc.*, 88 F.R.D. 688 (S.D.N.Y. 1981)).

[17] It is telling that Defendants' only response to the agent documents and testimony cited by Plaintiffs—which reflect agents punishing instances of cheating—is to fault Plaintiffs for not citing more of it. Opp'n at 17-18.

2014 and 2016 inquiries into their fixed 10% standard rate. Due to that improper clawback, Plaintiffs were barred from relying on these emails in their motion. Harvey Reply Decl. ¶ 5. But recently, Judge Ryu and this Court rejected Defendants' clawback in full. ECF Nos. 558, 555. The documents expose what Defendants sought to conceal from Plaintiffs and the Court: an industry-wide effort to sustain their fixed 10% rate:

- On the *same day* Lexington received the CDI's inquiry, it concluded "[redacted]," Ex. 97 at -213268, and days later began planning "[redacted]," Ex. 98 at -218939, and to [redacted]," Ex. 99 at -220165.
- Counsel retained for this improper "[redacted]" suggested to Lexington that "[redacted] Ex. 100 at -219747, while separately acknowledging that [redacted]" Ex. 101 at -219769.
- Lexington, ASC, and Bankers were regularly in conversation with other Defendants—including [redacted] to effectuate their "[redacted]." Ex. 102 at -214597.
- Defendants coordinated to prevent defection and conceal the truth: "[redacted]" Ex. 103 at -219783.

iii. Defendants' Arguments Defy Basic Economics and Their Own Testimony.

The evidence of Defendants' conspiracy is only further corroborated by conditions that render the bail market conducive to collusion. Singer Rep. § II.B. Defendants respond to these conditions with a series of nonsensical claims about bail. Opp'n at 5, 19-20. None withstand scrutiny.

The most economically indefensible of Defendants' arguments is their claim that bail bonds are not commodities. Opp'n at 5. A product qualifies as a commodity when it is "undifferentiated" and exhibits "a high degree of product interchangeability." *GPUs*, 253 F.R.D. at 486. Bail bonds squarely meet that definition. From the consumer's perspective, bail bonds are *entirely* fungible. Singer Reply Rep. ¶¶ 16, 171-77. Like other commodities, price is the *only* differentiating factor. *Id.*; Ex. 104 (Nabi Dep.) at 55:23-56:8. Defendants attempt to inject variation—pointing to customer circumstances or add-ons like "courtesy transportation." Opp'n at 5. But these factors relate to the buyer or ancillary services, not the core product. The bail bond, as a product, remains undifferentiated. Singer Reply Rep. ¶¶ 171-77. And despite claiming bail bonds are not commodities, Defendants' expert ultimately testified [redacted]. Strombom Rep. ¶ 90; Ex. 94 (Strombom Dep.) at 50:12-51:1.

Defendants' remaining arguments fare no better. *First*, Defendants assert that barriers to entry are low

(Opp'n at 19), yet the barriers Dr. Singer detailed resulted in a modal number of *zero* annual market entries between 2004 and 2022 (Singer Reply Rep. ¶ 201). *Second*, Defendants argue they lacked incentive to conspire (Opp'n at 20), but Dr. Singer explains the "Surety's incentive is for an Agent to have the ability to pay as high a contract fee as possible" while the "Agent's incentive is to have a high margin on each Bail Bond after paying their contract fee" (Singer Reply Rep. ¶ 183). And indeed, emails confirm Defendants' belief that [redacted] with rebating. Ex. 39 at -171. *Third*, Defendants deny an enforcement mechanism (Opp'n at 20), yet Dr. Singer identifies a clear one: punishing defecting agents (Singer Reply Rep. ¶¶ 215-30). *Fourth*, Defendants claim Dr. Singer ignores geographic heterogeneity (Opp'n at 20), but this "conflate[s his] analysis of local competition with market definition" (Singer Reply Rep. ¶ 7). *Finally*, Defendants argue declining Surety-agent contract rates undermine the conspiracy (Opp'n at 20), but Plaintiffs challenge a conspiracy with two elements—fixed filed rates and suppressed rebates—any agreement by Defendants to fix agent contract rates is not at issue (Singer Reply Rep. ¶¶ 181-83). Further, declining contract rates only support the conspiracy Plaintiffs *do* challenge: Defendants suppressed rebating because it forced Defendants to lower the share of the premium they took from agents. Ex. 39 at -171.

Critically, common evidence underlies Dr. Singer's and Dr. Strombom's economic disagreements. At this stage, the Court need not decide whether Dr. Singer or Dr. Strombom prevails on the merits of their common disputes. *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969 (9th Cir. 2013).

b. Common Evidence Will Prove (or Disprove) Impact.

At 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 classwide impact." *In re TFT-LCD (Flat Panel) Antitr. Litig.*, 267 F.R.D. 291, 313 (N.D. Cal. 2010). Here, there is no dispute that common evidence can prove or disprove impact. The only dispute is over which party's analysis is correct.

i. The Experts' Competing Analyses Show Classwide Impact Is Measurable.

Relying on much of the same common evidence, Dr. Strombom and Dr. Singer reach different common results. According to Dr. Strombom's flawed analysis: [redacted]% of all bail transactions occurred at rates lower than Dr. Singer's estimated but-for rates. Strombom Rep., Exs. 32-33, ¶ 274. According to Dr. Singer: even adjusting for the few valid input errors Dr. Strombom identifies, that number is [redacted]%. Singer Reply Rep. ¶ 123, Ex. 10. In other words, the parties agree the number is calculable, but disagree about what it is.[18] Either way, the Ninth Circuit has established that Rule 23 permits certification even of "a class that potentially includes more than a de minimis number of uninjured class members." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022). All that matters is that impact can be analyzed with this common evidence, and the parties' competing analyses prove that it can. *Flat Panel*, 267 F.R.D. at 313. Further, claims administration will be able to screen out any few uninjured Class Members, using entirely common methods and procedures. *See infra* § II.B.1.c.i.

Defendants' authorities do not suggest otherwise. *Van v. LLR, Inc.*, did not hold that the presence of a de minimis number of uninjured class members (18 in a class of 13,680) meant "individualized issues predominated." Opp'n at 21. *Van* reaffirmed that *Olean* remains controlling on this issue, and addressed a distinct, non-antitrust context in which an affirmative defense required individualized resolution. *Van*, 61 F.4th 1053 (9th Cir. 2023). There, plaintiffs alleged the defendant improperly charged a sales tax, and the "parties and the district court agree[d] that any class member who received a discount in an amount greater than or equal to the improper sales tax *for the purpose of offsetting the improper sales tax* [had] no claim." *Id*. at 1068 (emphasis supplied). The defendant identified 18 such people—i.e. class members who both parties and the district court agreed had no cognizable claim—through individualized inquiry. *Id*. On that narrow basis, the Ninth Circuit remanded the case for the district court to determine whether common issues predominated over this individual one. *Id*. There is no similar affirmative defense at issue here: the equivalent would be Defendants having identified 3,300 Class Members (an equal portion) who had received a discount specifically to offset the effect of Defendants' unlawful conspiracy. Defendants, of course, identified not one. There are similar issues with Defendants' remaining citations.[19]

ii. Defendants' Attacks on Dr. Singer Go to Weight, Not Commonality.

Defendants accuse Dr. Singer of various methodological errors, but none render his analyses either unsound or uncommon to the class. *First*, Defendants' criticisms of Dr. Singer's data inputs are either

[18] Plaintiffs' concurrently filed *Daubert* motion to exclude Dr. Strombom's opinions detail the sampling and other methodological defects in his analyses—including that he improperly models credit bail as a rebate. Because of these defects, Dr. Strombom's and Dr. Singer's estimates are not an apples-to-apples comparison.

[19] *See White v. Symetra Assigned Benefits Serv. Co.*, 104 F.4th 1182, 1193 (9th Cir. 2024) (holding in cases where "the legal element of reliance" is present—which it is not here—a court cannot make a "common sense inference of reliance" if marketing reflected variation); *Vogt v. Progressive Cas. Ins. Co.*, 129 F.4th 1071, 1073-74 (8th Cir. 2025) (same); *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1068-70 (9th Cir. 2014) (same, where individualized inquiries were needed to determine who was exposed to the deceptive statement); *Robinson v. Texas Auto. Dealers Ass'n*, 387 F.3d 416, 423-24 (5th Cir. 2004) (holding court erred in excluding parol evidence that "might have helped narrow the class or even strengthen its own decision to certify").

unfounded or immaterial. They contend Dr. Singer relied on misleading declarations,[20] misinterpreted agent data, and excluded agent data. Opp'n at 12-14, 22-24. Some of these concerns have merit and have been promptly and transparently addressed, while others are simply incorrect. Singer Reply Rep. App. 2. Yet even after making valid corrections, Dr. Singer's conclusions remain virtually unchanged: his weighted average rebate increases only slightly, from [redacted]% to [redacted]%. Singer Reply Rep. ¶ 65, Ex. 3.[21] And even if this weighted average had increased up to [redacted]% (as Dr. Strombom estimates), this would only marginally impact the effective rate in the actual world—dropping it from [redacted]% to [redacted]%, which well exceeds all three of the but-for effective rates Dr. Singer calculates—[redacted]%, [redacted]%, and [redacted]%. Singer Reply Rep. ¶ 12. Therefore, the correction of Dr. Singer's alleged input errors leave undisturbed his findings regarding both common impact and (as discussed below) aggregate damages. *Id*. Because Dr. Singer responded to all substantiated criticisms without any material effect on his findings, this case bears no resemblance to those cited by Defendants.[22]

Second, Defendants' "credit bail" argument deeply misunderstands both the nature of financing and its relevance (or lack thereof) to antitrust impact. Defendants claim Dr. Singer "ignored" credit bail in estimating rebates, leading to a miscalculation by a factor of fifty. Opp'n at 24. This assertion conflates two concepts: *credit* is a financing option available in virtually all consumer transactions; it bears no resemblance to the *rebates* at issue in this case. In any event, Defendants' expert shows that, even if the Court finds it necessary to account for unpaid installments, there are classwide methods to do so. *See infra* § II.B.1.c.i.

Third, Defendants' attack on averages ignores case law upholding averaging as a defensible tool specifically in antitrust cases. *See In re: Cathode Ray Tube (CRT) Antitr. Litig.*, 308 F.R.D. 606, 628 (N.D. Cal. 2015) ("[A]ttacking averaged data is a standard defense tactic in antitrust cases, so it is unsurprising that

[20] Defendants' critique of Dr. Singer's declarations is mere projection. As discussed in Plaintiffs' concurrently filed *Daubert* briefing, Dr. Strombom based his analysis on Defendants' handpicked, non-random set of declarations—what economists term a "convenient sample"—which Dr. Strombom played zero role in selecting and admitted is statistically unrepresentative. *See supra* n.18. By contrast, Dr. Singer directed a random and statistically valid sampling methodology. *Id*. Moreover, while Defendants assert broadly that Plaintiffs "used misleading definitions" with their declarants, Defendants could identify only three declarants who purportedly expressed any need to revise or correct their signed statements. Opp'n at 12. This disconnect underscores the weakness of Defendants' challenge and the reliability of Dr. Singer's methodology.

[21] Dr. Strombom's inflated claim that correcting these errors would "nearly triple" Singer's estimate stems from his own deeply flawed approach to modeling rebates. *See supra* n.18.

[22] *See* Opp'n at 20, 23 (citing *Klein v. Meta Platforms, Inc.*, 2025 WL 489871, at *9 (N.D. Cal. Feb. 13, 2025); *Miami Prods. & Chem. Co. v. Olin Corp.*, 2024 WL 5116568, at *10 (W.D.N.Y. Dec. 16, 2024); *In re Pre-Filled Propane Tank Antitr. Litig.*, 2021 WL 5632089, at *12 (W.D. Mo. Nov. 9, 2021)). Defendants misleading description of the court's assessment of Dr. Singer's expert report in *In re Photochromic Lens Antitrust Litigation*, 2014 WL 1338605 (M.D. Fla. Apr. 3, 2014), Opp'n at 23, and other cases, is addressed in Plaintiffs' concurrently filed opposition to Defendants' *Daubert* motion to exclude Dr. Singer's opinions.

courts have often evaluated and approved the appropriate use of averages."). As detailed in Plaintiffs' concurrently filed *Daubert* opposition, Dr. Singer's use of averages adheres to economic principles and aligns with precedent. Defendants' three critiques—that averages obscure (1) heterogeneity in the industry, (2) variability in agent rebates, and (3) smaller geographic markets (Opp'n at 25-26)—ignore or misinterpret Dr. Singer's work. *See* Singer Reply Rep. ¶ 25 (explaining he does *not* record as injured customers who paid an effective rate lower than the but-for rates); *id.* ¶ 24 (explaining he "did in fact 'replicate the variation' in rebating in [his] analysis of Common Impact, in which [he] tested even the largest rebates from the sample against every transaction"); *id.* ¶ 7 (explaining Defendants conflate analysis of local competition with market definition). None of Defendants' authorities stand for the proposition that averaging was inappropriate here.[23]

Fourth, Defendants' "false positives" argument simply repackages two flawed claims: (1) that Dr. Singer counts as injured customers who paid an effective rate lower than the but-for rates (Singer Reply Rep. ¶ 25), and (2) "the incorrect incorporation of Credit Bail as a form of rebating, thereby lowering Effective Rates" (*id.* ¶ 9). As set forth above (for the former argument) and below (for the latter), neither withstands scrutiny. Defendants also attempt to fold into their "false positives" theory an unrelated argument: that if Defendants' records cannot identify "*who* purchased a bond," then predominance is not satisfied. Opp'n at 28. This misstates both the facts and the law: (1) on the facts, 80% of Class Members *are* identifiable in the data, Singer Rep. ¶ 2 n.8, and the rest can self-identify during administration; and (2) on the law, the Ninth Circuit does not require that 100% of class members be identifiable at certification, *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1133 (9th Cir. 2017). Defendants' invocation of *In re Apple iPhone Antitrust Litigation*, to suggest otherwise, is puzzling given the case neither imposes that requirement nor undermines the use of expert models to establish predominance. 2022 WL 1284104, at *14 (N.D. Cal. Mar. 29, 2022). In fact, *Apple* confirms "generalized evidence" of impact can be sufficient. *Id.* And unlike in *Apple*, Dr. Singer identifies

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[23] The special master's report on averaging in *In re Intel Corp. Microprocessor Antitrust Litigation* was not "rejected on other grounds." Opp'n at 25 (citing 2010 WL 8591815, at *47 (D. Del. July 28, 2010)). The district court reversed it entirely, finding the expert's opinions "reliable under the standards of Rule 702 and *Daubert*." *In re Intel Corp. Microprocessor Antitr. Litig.*, 2014 WL 6601941, at *9 (D. Del. Aug. 6, 2014). *See also Propane Tank*, 2021 WL 5632089, at *12 (faulting "miniscule" sample as non-representative); *State of Ala. v. Blue Bird Body Co.*, 573 F.2d 309, 328 (5th Cir. 1978) (no discussion of averaging, in nationwide case about "the diverse nature of the school bus market"); *In re Lamictal Direct Purchaser Antitr. Litig.*, 957 F.3d 184, 194 (3d Cir. 2020) (noting "averages may be acceptable," but faulting district court for "assum[ing so], absent a rigorous analysis"); *Reed v. Advocate Health Care*, 268 F.R.D. 573, 592-93 (N.D. Ill. 2009) (rejected by Judge Koh as "inapposite because [it] lack[ed] the comprehensive documentary record present in the instant case," *In re High-Tech Emp. Antitr. Litig.*, 985 F. Supp. 2d 1167, 1183 n.7 (N.D. Cal. 2013)).

the potentially uninjured portion of the class. *Compare id.* at *16 *with* Singer Reply Rep. ¶ 123, Ex. 10. They can be identified at administration, to guarantee no uninjured Class Members recover. *See infra* at § II.B.1.c.i.

c. Common Evidence Will Prove (or Disprove) Damages.

Antitrust damages are a straightforward calculation: the difference between the price that was charged (in the "actual world") and the price that would have been charged but-for the unlawful conduct (in the "but-for" world). Singer Rep. ¶ 88. That amount is known as the "overcharge." *Id*. Defendants' central attack on Dr. Singer's analyses is that his "actual world" fails to account for credit bail. This argument fails.

i. Class Members Have Standing to Recover the Full Amount of the Overcharge.

A plaintiff has standing to recover the full amount of an overcharge—regardless of whether she paid for it in full, in part, or through financing—"because the antitrust injury occurs and is complete when the defendants sell at the illegally high price." *In re Glumetza Antitr. Litig.*, 336 F.R.D. 468, 480-81 (N.D. Cal. 2020) (cleaned up). To hold otherwise would run counter to decades of black-letter antitrust and standing law.

This principle is deeply rooted in federal and state jurisprudence. In *Illinois Brick Co. v. Illinois*, the Supreme Court held that enforcement of the antitrust laws is better served by giving direct purchasers the right to recovery regarding the full extent of the overcharge, even if they offset or passed on the overcharge after the transaction at issue. 431 U.S. 720, 746 (1977). Courts have applied this principle countless times since.[24] In *Glumetza*, for example, Judge Alsup rejected an argument nearly identical to the one Defendants make here: that plaintiffs' expert's damages model failed to "reflect the many discounts and subsequent payments . . . to calculate the ultimate *net* price." 336 F.R.D. at 481. There, like here, the argument failed because the "antitrust injury occurs the moment the purchaser incurs an overcharge." *Id.* (quoting *In re Nexium Antitr. Litig.*, 777 F.3d at 27). And as the California Supreme Court confirmed in *In re Cipro Cases I & II*, California's Cartwright Act is broader still, reinforcing access to full recovery. 61 Cal. 4th 116, 160 (2015).

Defendants' proposed rule would therefore upend decades of settled precedent. Meanwhile, no court anywhere has ever required a plaintiff to trace overcharges to the exact source of payment—be it cash, a checking account, credit card, family loan, or financing plan. The theory is not only novel; it is absurd. Consumers who used a credit card to purchase canned tuna, for example, need not prove they fully paid off

[24] *E.g.*, *In re Xyrem Antitr. Litig.*, 2023 WL 3436097, at *4 (N.D. Cal. May 12, 2023) (quoting *In re Nexium Antitr. Litig.*, 777 F.3d 9, 27 (1st Cir. 2015)); *In re Lidoderm Antitr. Litig.*, 2017 WL 679367, at *20-21 (N.D. Cal. Feb. 21, 2017) (citing *In re Delta/AirTran Baggage Fee Antitr. Litig.*, 317 F.R.D. 675, 683 (N.D. Ga. 2016)).

their credit card bills before claiming compensation for being overcharged. *See* Ex. 105 (Claim Form, *In re Packaged Seafood*). Nor do courts require car buyers to prove they paid cash or otherwise paid down an entire auto loan before recovering an overcharge. *See* Ex. 106 (Claim Form, *In re Chrysler-Dodge-Jeep EcoDiesel*).

These broadly applicable principles align with how courts view "credit bail" in particular. In 2021, the California Court of Appeals explained that credit bail is a "financing agreement [] ancillary to the bail bond transaction" that is indistinguishable from "the ordinary understanding of [any other] consumer credit contract." *BBBB Bonding Corp. v. Caldwell*, 73 Cal. App. 5th 349, 368-69 (2021). The court observed that agents engage in "aggressive collection efforts"—including "highly embarrassing calls to employers, calls made to homes very early in the morning or late at night, [] calls in which [bail agent] representatives stated it could have the cosigner arrested if payment was not made," and collection actions. *Id.* at 359. While all businesses seek to recover full amounts owed, it is a rare business that hires bounty hunters (at the customers' expense), incarcerates debtors, or threatens to arrest cosigners accused of no crime. Yet Defendants ask this Court to assume no difference between a 25% rebate and a customer who has not yet paid 25% owed.

Defendants' framing of "credit bail as rebate" is also inconsistent with how agents—the actual issuers of credit bail—view it. One agent testified he *never* issues rebates, but does regularly issue credit bail. Ex. 89 (Padilla Dep.) at 26:19-27:9, 146:2-6; 167:21-23. He confirmed when he provides credit, he "collect[s] the remainder of the *full amount* of, for example, the 10 percent filed rate premium," just "over time." *Id.* at 95:2-6 (emphasis supplied). And he testified that he uses the aggressive collection efforts described in *BBBB* to guarantee "[n]o one is ever going to get an agreed – a scheme of I am going to stop charging you at this point to give them a discount of premium." *Id.* at 152:8-14. Another agency takes the tactic a step further, warning: "If you fail to make repayments . . . the bail bondsman can surrender the bond [and] may hire a private investigator to find [you] and bring [you] back to custody . . . . Once back in custody, you will have to remain behind bars just as if you hadn't posted bail in the first place." Ex. 107 (Balboa Website). Notably this public statement contradicts the private one Defendants' counsel extracted from this agency.[25]

It is not only the bail agents who contradict Defendants' credit bail argument—their expert does, too. Dr. Strombom admitted "[redacted]" and that [redacted].

[25] Defs. Ex. 11 (Leanos Decl.) ¶ 15. The serious credibility issues with the declarations Defendants' concocted, and their expert then relied upon, are detailed in Plaintiffs' concurrently filed *Daubert* motion.

Ex. 94 (Strombom Dep.) at 108:3-5; 110:10-14. And despite claiming that payment plans are a "rebate" that must be considered in the actual world, Dr. Strombom admitted that [redacted]. *Id.* at 169:3-175:6; 179:12-180:4. As Dr. Singer explains, Dr. Strombom's assumption that credit bail "evaporates entirely in the but-for world," is deeply flawed because, in fact, there is no explanation as to "why any Class Member who received financing on their Bail Bond in the actual world would not have received the same terms of financing in the but-for world." Singer Reply Rep. ¶ 14.[26]

ii. Multiple Classwide Methods Exist to Address Credit Bail, as Necessary.

Even if the Court adopts Defendants' arguments regarding credit bail, there are multiple classwide methods available to take it into account. *First*, class action law—and administrators—long ago developed feasible ways to identify uninjured class members. Recently, amici curiae claims administrators—including the administrator who has been retained for this case—wrote to the Supreme Court, to advise on the myriad tools available to verify class members' injuries. *See* Ex. 108 (Br. of *Amici Curiae*) at 5-15 (identifying defendants' records, third-party data, and class member proof as available tools). Here, Defendants' own records show when each bail bond was purchased, the penal sum, and the gross premium charged. Class Members not identifiable through the data can self-identify and, if needed, could provide affidavits or records to support their damages—preventing uninjured parties from recovering. The Ninth Circuit has explicitly held that the use of such tools at the administration phase is no bar to class certification. *Briseno*, 844 F.3d at 1132.

Second, there are classwide methods to account for unpaid credit bail as part of a common damages analysis, even at this phase of the litigation. Defendants' expert Dr. Strombom proves as much. As. Dr. Singer explains "Dr. Strombom has already demonstrated there exists an (erroneous) classwide method to calculate Credit Bail," which "could simply be added to both sides of an overcharge equation," or, in the alternative, "a new, more accurate calculation of Credit Bail in the actual world could be determined using a random sampling exercise similar to [his] own Agent Rebating Data exercise." Singer Reply Rep. ¶ 38.

iii. Defendants' Criticisms of Dr. Singer's Damages Analyses Fail.

[26] Defendants' stale and irrelevant legal authorities do not support their claim that credit bail is just a rebate. *See Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 648 (1980) (quantifying harm not in connection with an overcharge, but with an "agreement to terminate the practice of giving credit"); *In re Fla. Cement & Concrete Antitr. Litig.*, 278 F.R.D. 674, 685 (S.D. Fla. 2012) (concerning assumptions about "pass through rate," which has no bearing on the nature of credit bail).

First, citing zero legal authority, Defendants claim Dr. Singer's methodology fails the predominance requirement because he does not "defin[e] or model[] a reliable but-for world." Opp'n at 30. This is just a recycled version of Defendants' earlier attacks on Dr. Singer's common impact analysis. *See supra* § II.B.1.b. *Second*, Defendants point to a series of uncontroversial steps Dr. Singer took, casting them as somehow suspicious. Defendants claim he "gins up an aggregate 'overcharge' by subtracting his estimated 'actual' rate from his estimated but-for rate." Opp'n at 30. But what Defendants accurately describe is quite literally the textbook definition of an overcharge calculation. *See* Singer Rep. ¶ 88 (citing literature). Defendants go on to fault Dr. Singer for "purport[ing] to delineate damages from each prong of the conspiracy," Opp'n at 30. True, he does, Singer Rep. ¶¶ 178-79, and Defendants appear to have no substantive critique of his methodology. At bottom, this non-argument boils down to a rehash of earlier, unsuccessful attacks on Dr. Singer's rebate estimates. *See supra* § II.B.1.b. *Third*, Defendants argue that "[e]very class member must have Article III standing in order to recover individual damages." Opp'n at 30. But again, it is well-established that antitrust class members have standing to recover the *full amount* of an unlawful overcharge. Defendants' discredited "credit bail" arguments do nothing to undermine that standing. *See supra* § II.B.1.c.i. In any event, classwide methods are available to identify individuals who did not pay off their credit bail beyond the but-for price. *See supra* § II.B.1.c.ii. *Fourth*, Defendants claim the Class contains too high a portion of uninjured Class Members because "at least 508,437 transactions in Singer's surety dataset would be unharmed compared [to] his lowest but-for rate of 5.19%." Opp'n at 31. This statement not only depends upon Defendants' failed credit bail arguments, but also depends upon Dr. Strombom's untenable and unsupported assumption that there would be zero credit bail in the but-for world. Plaintiffs address these arguments in the *Daubert* briefs.

d. Defendants Disregard Authority on the Commonality of Plaintiffs' Evidence.

The evidence detailed above—and in Plaintiffs' motion—represents precisely the common proof that courts routinely find sufficient to meet Rule 23(b)(3). *See* Mot. at 27-33. Defendants do not bother even to address, let alone distinguish, the vast majority of these authorities.[27] Instead they focus on purportedly

[27] Defendants do not address: *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125 (9th Cir. 2016); *In re Xyrem Antitr. Litig.*, 2023 WL 3440399 (N.D. Cal. May 12, 2023); *Glumetza*, 336 F.R.D. 468; *In re Dynamic Random Access Memory (DRAM) Antitr. Litig.*, 2013 WL 12333442 (N.D. Cal. Jan. 8, 2013); *Flat Panel*, 267 F.R.D. 583; *In re Static Random Access Memory (SRAM) Antitr. Litig.*, 264 F.R.D. 603 (N.D. Cal. 2009); *In re Rubber Chems. Antitr. Litig.*, 232 F.R.D. 346 (N.D. Cal. 2005); *In re Citric Acid Antitr. Litig.*, 1996 WL 655791 (N.D. Cal. Oct. 2, 1996); *Moshier v. Safeco Ins. Co. of Am.*, 2024 WL 4503901 (D. Ariz. Oct. 16, 2024); *Cung Le v. Zuffa, LLC*, No. 2:15-cv-01045-RFB-BNW, ECF No. 839 (D. Nev. Aug. 9, 2023); *In re Disposable Contact Lens Antitr.*, 329 F.R.D. 336 (M.D. Fla. 2018); or *Johnson v. Ariz. Hosp. &*

individual negotiations that many courts have affirmed are no bar to class certification in price-fixing cases.

In *Glumetza*—among the cases ignored by Defendants—Judge Alsup explained the "Supreme Court has observed that antitrust cases readily meet the predominance requirement" because the "violation turns on *defendants'* conduct and intent along with the effect on the market, not on individual class members." 336 F.R.D. at 475 (cleaned up). Yet Defendants focus almost exclusively on Class Members, arguing that "[w]hether each Defendant joined and participated in the alleged conspiracy" somehow requires the Court to examine "whether each class member individually qualified for a lower filed rate; . . . which agent sold their bond, the rebate they were offered, and whether agents provided any discounts based on individual circumstances." Opp'n at 17. Notably, Defendants cite *zero* case law for this assertion. *Id*. But in so arguing, Defendants ignore a host of authority establishing that such negotiations are irrelevant.[28] This concern is particularly misplaced here, where: Defendants' conspiracy fixed a commodity's standard reference price; there is a clear price structure for all class transactions that is anchored to that standard reference price; and Defendants further conspired to convince customers and bail agents that price negotiations were unlawful and unavailable. Just as they did with the CDI, Defendants attempt to defend their price-fixing conspiracy with unsupported claims about rebating and price negotiations that they spent decades frustrating and suppressing.

2. Class Adjudication Would Be Superior and Manageable.

Defendants argue that a class action is not superior, yet offer no realistic alternative. Opp'n at 35. That omission alone defeats their position. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 515 (9th Cir. 2013). Meanwhile, Plaintiffs' concerns about the inefficiency of individual suits proved true: nearly 300 people have already registered with the claims administrator in this case. Harvey Reply Decl. ¶ 10. Defendants' manageability concerns, on the other hand, are meritless: liability will be established using common evidence, and damages can be awarded in the aggregate and allocated through a claims process—standard practice in antitrust cases. Courts routinely find class actions superior in this context. *See* Mot. at 34-35 (citing cases).

Healthcare Assoc., 2009 WL 5031334 (D. Ariz. Jul. 14, 2009).

[28] Defendants do not address: *In re Pork Antitr. Litig.*, 665 F. Supp. 3d 967 (D. Minn. 2023); *Fears v. Wilhelmina Model Agency, Inc.*, 2003 WL 21659373 (S.D.N.Y. 2003); *In re Auction Houses Antitr. Litig.*, 193 F.R.D. 162 (S.D.N.Y. 2000); *In re Flat Glass Antitr. Litig.*, 191 F.R.D. 472 (W.D. Pa. 1999); *In re Indus. Diamonds Antitr. Litig.*, 167 F.R.D. 374 (S.D.N.Y. 1996); *In re NASDAQ Market-Makers Antitr. Litig.*, 169 F.R.D. 493 (S.D.N.Y. 1996); or *Rosack v. Volvo of Am. Corp.*, 131 Cal. App. 3d 741 (1982). The sole case Defendants cite does not suggest a contrary outcome here. In *In re Flash Memory Antitrust Litigation*, unlike here, "Plaintiffs concede[d] that the bulk of Defendants' sales to direct purchasers were made pursuant to negotiated transactions which resulted in substantial variations in the prices paid by direct purchasers for NAND flash memory." 2010 WL 2332081, at *8 (N.D. Cal. June 9, 2010).

C. A Rule 23(b)(2) Injunctive Relief Class Is Proper.

Injunctive relief for antitrust plaintiffs was codified "to serve as well the high purpose of enforcing the antitrust laws." *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 131 (1969). Yet Defendants advance three arguments to protect their ability to violate the antitrust laws. All three fail.

First, Defendants distort Plaintiffs' testimony to suggest they will never again be affected by this ongoing conspiracy. Opp'n at 34. Of course, Plaintiffs do not intend to be arrested. But that says nothing about whether they may again need to post bail. In fact, neither needed bail due to criminal conduct in the past. ECF No. 513-86 ¶ 5; ECF No. 513-87 ¶ 5. And when asked about needing bail again, Ms. Monterrey explained that whether "someone falsely accuses [her] again" is beyond her control. Ex. 86 (Monterrey Dep.) at 43:6-16. Because Defendants' conspiracy persists, Plaintiffs therefore face an ongoing risk of harm. That is all the law requires. *Zenith*, 395 U.S. at 130. Defendants' sole antitrust authority does not hold otherwise, as it involved plaintiffs who could voluntarily exit a market. *See Kamakahi v. Am. Soc'y for Reprod. Med.*, 305 F.R.D. 164, 196 (N.D. Cal. 2015) (finding IVF egg donors lacked standing).[29]

Second, Defendants wrongly assert that "money" is Plaintiffs' only goal. Opp'n at 34. That is false. Ms. Crain testified about the "unjust practices by bail bonds companies," including both the fixing of premium rates and the suppression of rebates. Ex. 87 (Crain Dep.) at 30:10-19. These are precisely the practices Plaintiffs seek to enjoin. And their focus on reform is clear from both settlements they have already secured, which require corrective action. ECF Nos. 465-2 (Lexon Settlement) ¶ 30; 465-3 (DNIC Settlement) ¶ 30.

Third, Defendants claim "no single injunction would provide relief to the whole class," yet do not say how that could be true. Opp'n at 35. If Defendants are enjoined from continuing their conspiracy, that relief would apply equally to all California consumers—it is not possible to enjoin the conspiracy for some but not others. Because Plaintiffs seek a uniform remedy that would benefit all Class Members equally, injunctive relief is appropriate. *In re College Athlete NIL Litig.*, 2023 WL 7106483, at *6 (N.D. Cal. Sept. 22, 2023).

III. CONCLUSION

Plaintiffs respectfully request that the motion be granted and that the Court certify the Class.

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[29] Defendants' other cases no more persuasive. *See Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1039 (9th Cir. 1999) (involving motorists who feared being stopped by border patrol agents); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 402 (2013) (involving lawyers and organizations who feared their communications would be monitored); *Johnson-Jack v. Health-Ade LLC*, 587 F. Supp. 3d 957, 976 (N.D. Cal. 2022) (involving false advertising); *Rahman v. Mott's LLP*, 2018 WL 4585024, at *3 (N.D. Cal. Sept. 25, 2018) (same).

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Respectfully submitted,

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