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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 AMYE ELBERT, on behalf of herself and
22 all others similarly situated,

23 Plaintiff,

24 v.

25 ROUNDPOINT MORTGAGE SERVICING
26 CORPORATION,

27 Defendant.

Case No. 3:20-cv-00250-MMC

**PLAINTIFF’S MOTION FOR AWARD
OF ATTORNEYS’ FEES, COSTS, AND
SERVICE AWARD**

Date: April 15, 2022
Time: 9:00 a.m.
Location: Courtroom 7 (19th Floor)
450 Golden Gate Avenue
San Francisco, CA 94102

1 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on **April 15, 2022, at 9:00 a.m.**, or as soon thereafter as this
3 matter may be heard, in Courtroom 7, before the Honorable Maxine Chesney, Plaintiff Amye Elbert
4 respectfully moves this Court to grant Plaintiff's Motion for Award of Attorneys' Fees, Costs, and
5 Service Award.

6 This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points
7 and Authorities, the Settlement Agreement, the Declarations of Kristen G. Simplicio and James L.
8 Kauffman and exhibits thereto, the pleadings and papers on file in this Action, and any other such
9 evidence and argument as the Court may consider.

10 Dated: January 21, 2022

Respectfully submitted,

11
12 /s/ James L. Kauffman
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1 **I. INTRODUCTION**

2 Plaintiff Amye Elbert submits this memorandum in support of her Motion for Fees, Costs, and
3 Service Award. Ms. Elbert brings this Motion because the time and effort spent by her and Class
4 Counsel resulted in a settlement that establishes a \$1,600,000 Common Fund and fully resolves the class
5 claims she brought against Defendant RoundPoint Mortgage Servicing Corporation (“RoundPoint”)
6 based on their practice of charging fees for making mortgage payments over the phone (“Convenience
7 Fees”). The Common Fund represents approximately 35% of class damages and will provide automatic
8 cash payments to Settlement Class Members, pay Administrative Costs to provide notice and administer
9 the Settlement, and, if approved by the Court, pay the Fees and Expenses and Service Award that are the
10 subject of this Motion. In addition to the Common Fund, the Settlement includes important and valuable
11 injunctive relief. As a result of the Settlement, RoundPoint agreed to cease charging Convenience Fees
12 for all borrowers in the United States effective June 1, 2021 for at least two years after the date the Court
13 grants final approval of the Settlement.

14 Ms. Elbert seeks a total of \$533,280 in attorneys’ fees, plus \$8,826.95 in reimbursable costs.
15 That amount is in line with the Ninth Circuit’s fee awards in common fund cases. The fees sought are
16 one-third of the common fund, but when factoring in the benefit to the class of changed practices, are
17 significantly less than the full value provided by the Settlement. In the Ninth Circuit, courts should take
18 into account the value of these changed practices when assessing the reasonableness of a fee. *See*
19 *Williams v. MGMPathe Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (finding “district court abused its
20 discretion in basing attorney fee award on actual distribution to class” instead of amount being made
21 available).

22 The requested fee also represents a modest 1.6 multiplier of Class Counsel’s lodestar, within the
23 acceptable range in the Ninth Circuit. *See Tom v. Com Dev USA, LLC*, No. 16CV1363PSGGJSX, 2017
24 WL 10378629, at *8 (C.D. Cal. Dec. 4, 2017) (noting that the accepted range of multipliers has ranged
25 from 2 and 4, or even higher). Given the risks inherent in this litigation, the efficient way in which Class
26 Counsel was able to negotiate an early resolution, and the value of the changed practices, the multiplier
27 is appropriate.

1 Notably, the requested fee award, along with the Settlement as a whole, avoids any of the pitfalls
2 flagged by the Ninth Circuit in *Briseno v. Henderson*, 998 F.3d 1014, 1026-28 (9th Cir. 2021). Here, the
3 parties did not discuss any award of attorneys' fees during their negotiations and there is no clear sailing
4 provision that prevents Defendant from challenging the fee award. *See* ECF # 78-3, Settlement
5 Agreement, at ¶ (IV)E. The fee award still leaves adequate compensation for the Class, maximizes
6 redemption by automatically paying Class Members instead of requiring them to submit claims,
7 provides for changed practices, the value of which can be reliably estimated, and provides that no
8 portion of the Settlement Fund will revert to RoundPoint.

9 The Settlement compares favorably to settlements in similar cases against major mortgage loan
10 servicers. *See* App'x A (showing common fund recoveries in convenience fee cases that range from 20%
11 of damages to 49%). Class Counsel's work on this case has included, among other things, investigating
12 the factual and legal bases for this suit, meeting with Ms. Elbert, researching novel legal theories to draft
13 a class action complaint, staying abreast of legal developments in a variety of related cases, opposing
14 two motions to dismiss, and to strike class allegations, preparing discovery requests, handling a number
15 of case management matters, drafting an amended complaint, exchanging mediation memoranda and
16 reviewing class data, participating in an all-day mediation with a mediator and several other settlement
17 discussions, negotiating, drafting, and finalizing the Settlement Agreement and associated paperwork.

18 Counsel has undertaken this litigation on a purely contingency basis. Counsel has paid out-of-
19 pocket for expenses and has not received any payment for their work to-date. Counsel took on these
20 risks fully aware that RoundPoint denied any liability and intended to fully defend this case every step
21 of the way. Recovery was therefore far from certain, and even if secured, likely to be delayed for many
22 years.

23 Ms. Elbert also seeks a reasonable service award for the time she spent bringing and participating
24 in this litigation. Ms. Elbert provided critical assistance to counsel, including by participating in
25 meetings with counsel to provide factual information for the complaint, sharing financial information,
26 such as mortgage documents, and reviewing pleadings and settlement papers. Ms. Elbert has also taken
27 time away from her other responsibilities to meet with counsel and litigate this case on behalf of the
entire Class. She seeks a service award of \$5,000, an amount consistent with service awards in the Ninth

1 Circuit. *See In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (upholding award
 2 to named plaintiff \$5,000 in case with \$1.725 million total recovery); *Willner v. Manpower Inc.*, No. 11-
 3 CV-02846-JST, 2015 WL 3863625, at *8 (N.D. Cal. June 22, 2015) (“Many courts in the Ninth Circuit
 4 have also held that a \$5,000 incentive award is “presumptively reasonable.”) (citations omitted).

5 The requested fees, costs, and service award are especially appropriate because of the results
 6 Plaintiff and her counsel achieved based on the primary allegation in the complaint. Plaintiff alleged that
 7 RoundPoint charged and collected illegal processing fees from borrowers paying their monthly
 8 mortgage by phone. With the Settlement, RoundPoint has agreed to a settlement amount that represents
 9 35% of the total Convenience Fees collected across the country by RoundPoint from the Class during
 10 the five and a half year class period, which is in line and compares favorably with other court-approved
 11 class action settlements involving Convenience Fees. *See* App’x A. Moreover, as a result of the
 12 Settlement, RoundPoint ceased charging such Convenience Fees and will refrain from charging such
 13 fees for two years. Settlement Class Members do not have to submit claims or take any other affirmative
 14 steps to receive benefits under the Settlement. Each Settlement Class Member who paid at least one
 15 Convenience Fee during the Class Period shall be entitled to receive a *pro rata* share of the Settlement
 16 Fund. *See* Settlement Agreement § IV(B), ECF No. 78-3.

17 Finally, any funds remaining after all distributions shall be donated to the *cy pres* recipient,
 18 NeighborWorks America, subject to approval by the Court.

19 In light of the work performed by Class Counsel and the substantial time, effort, and personal
 20 sacrifice of the named Plaintiff, the fee, cost, and service award sought in this Motion are reasonable.
 21 For all of the reasons set forth herein, Plaintiff requests that the Court grant these awards.

22 **II. THE FEE, COST, AND SERVICE AWARD REQUESTS ARE FAIR, REASONABLE,**
 23 **AND APPROPRIATE.**

24 **A. THE CLASS REPRESENTATIVE’S SERVICE AWARD SHOULD BE**
 25 **APPROVED.**

26 Ms. Elbert seeks a \$5,000 Service Award in recognition of her contributions on behalf of the
 27 Class. In deciding whether to approve such an award, a court should consider: “(1) the risk to the class
 representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulty
 encountered by the class representative; (3) the amount of time and effort spent by the class

1 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by
 2 the class representative as a result of the litigation.” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,
 3 299 (N.D. Cal. 1995). Further, as a matter of public policy, representative service awards are necessary
 4 to encourage consumers to take on the reputational risk to formally challenge unfair business practices.
 5 *See, e.g., Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (upholding award of
 6 service awards to class representatives as they “compensate class representatives for work done on
 7 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
 8 sometimes, to recognize their willingness to act as a private attorney general”); *Wehlage v. Evergreen at*
 9 *Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL 4755371, at *5 (N.D. Cal. Oct. 4, 2012) (finding service
 10 award justified for plaintiffs “lending their names to this case, and thus subjecting themselves to public
 11 attention”); *Miletak v. Allstate Ins. Co.*, No. C 06-03778 JW, 2012 WL 12924933, at *2 (N.D. Cal. July
 12 12, 2012) (same); *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at
 13 *13 (D. Minn. Dec. 4, 2020) (awarding service award because “Class Representatives participated and
 14 willingly took on the responsibility of prosecuting the case and publicly lending their names to this
 15 lawsuit, opening themselves up to scrutiny and attention from both the public and media”).

16 Ms. Elbert worked with counsel to provide information regarding her experiences and claims to
 17 enable her to join this case and represent a class throughout the litigation. Declaration of Kristen G.
 18 Simplicio (“Simplicio Decl.”), ¶ 26. Ms. Elbert conducted searches of her personal records and shared
 19 mortgage documents. *Id.* And Ms. Elbert remained actively involved in the litigation after the Settlement
 20 was reached. *Id.* In addition, Ms. Elbert took on the discomfort of bringing million dollar claims against
 21 the company that serviced her home loan, and undertook reputational risk, as her association with these
 22 lawsuits is publicly available.

23 These personal risks and sacrifices, substantial time invested into the matter, and critical
 24 contributions to the outstanding results for the Class, along with her release of claims against Defendant,
 25 all support approval of a \$5,000 service award. Service awards of \$5,000 are well within the range of
 26 reasonableness. *See, e.g., Mego*, 213 F.3d at 463; *Willner*, 2015 WL 3863625, at *8; *Wolf v. Permanente*
 27 *Med. Grp., Inc.*, No. 3:17-CV-05345-VC, 2018 WL 5619801, at *1 (N.D. Cal. Sept. 14, 2018)
 (approving service award in the amount of \$7,500 to named plaintiff and \$2,500 to opt-in Plaintiff);

1 *Jabbari v. Wells Fargo & Co.*, No. 15-CV-02159-VC, 2018 WL 11024841, at *6 (N.D. Cal. June 14,
 2 2018) (finding proposed service award of \$5,000 to each named plaintiff fair and reasonable); *Guilbaud*
 3 *v. Sprint Nextel Corp.*, No. 3:13-CV-04357-VC, 2016 WL 7826649, at *4 (N.D. Cal. Apr. 15, 2016)
 4 (approving service award of \$10,000 for each of the four named Plaintiffs); *Miller v. Ghirardelli*
 5 *Chocolate Co.*, No. 12-cv-04936, 2015 WL 758094 at *7 (N.D. Cal. Feb 20, 2015) (awarding \$5,000 to
 6 named plaintiffs); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, *6 (S.D. Cal. Jan. 14, 2013)
 7 (finding \$15,000 incentive payments for three Class representatives well within the range awarded in
 8 similar cases); *Dorsette v. TA Operating LLC*, No. EDCV091350PARZX, 2010 WL 11583002, at *8
 9 (C.D. Cal. July 26, 2010) (finding \$5,000 service award reasonable). Consistent with these cases, and in
 10 recognition of the time, effort, and risk taken on behalf of the Class, Ms. Elbert requests that the Court
 11 award the requested Service Award.

12 **B. CLASS COUNSEL’S FEE AND COST REQUEST IS REASONABLE.**

13 **1. Legal Standard**

14 The Settlement Agreement provides for the payment of attorneys’ fees and expenses from the
 15 Common Fund. Having reached a common fund settlement, Class Counsel is entitled to seek an award
 16 of fees and expenses from the Fund. *See Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir.
 17 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990). Under Ninth
 18 Circuit standards, the district court can award attorneys’ fees based on either: (1) the “lodestar” method
 19 under which the hours reasonably spent by class counsel are multiplied by the reasonable rate, or (2) a
 20 percentage of the benefit made available to the settlement class, including costs, fees, and injunctive
 21 relief. *See, e.g., Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Nwabueze*
 22 *v. AT&T, Inc.*, No. C 09-01529 SI, 2014 WL 324262, at *2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v.*
 23 *Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at *11-12 (E.D. Cal. Sept. 2, 2011).

24 Furthermore, in the Ninth Circuit, when assessing fairness of a fee award, courts consider the
 25 total value provided to the class, including injunctive relief. *See Young v. Polo Retail, LLC*, No. C 02
 26 4546 VRW, 2007 WL 951821, at *9 (N.D. Cal. Mar. 28, 2007) (citing *Williams v. MGMPathe*
 27 *Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (finding “district court abused its discretion in basing
 attorney fee award on actual distribution to class” instead of amount being made available)). *See also*

1 Principles of the Law of Aggregate Litigation, § 3.13(b) (American Law Institute, 2010) (“[A]
2 percentage of the fund approach should be the method utilized in most common-fund cases, with the
3 percentage being based on both the monetary and nonmonetary value of the judgment or settlement.”).

4 Here, Plaintiff requests an award that is one-third of the Common Fund alone, without taking
5 into account the extra value of the changed practices. This fee represents a modest 1.6 multiplier of the
6 lodestar (currently \$330,723 and estimated to be approximately \$360,723 by the time of completion) and
7 costs of \$8,826.95 incurred by Plaintiff’s counsel in the litigation of this matter.¹

8 **2. Plaintiff’s Counsel’s Requested Fee is a Reasonable Percentage of The**
9 **Common Fund.**

10 Where a settlement involves a common fund, courts typically award attorneys’ fees based on a
11 percentage of the total settlement. *See State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990). Indeed,
12 the percentage method is the preferred approach in common fund cases. *Vizcaino*, 290 F.3d at 1050
13 (noting “the primary basis of the fee award remains the percentage method”). *See also, e.g., In re*
14 *ECOality, Inc. Secs. Litig.*, No. 13-cv-03791-SC, 2015 WL 5117618, at *3 (N.D. Cal. Aug. 28, 2015)
15 (finding percentage approach to be the “typical method of calculating class fund fees”); *Evans v. Linden*
16 *Research, Inc.*, No. C-11-01078 DMR, 2014 WL 1724891, at *5 (N.D. Cal. Apr. 29, 2014) (same);
17 *Taylor v. Meadowbrook Meat Co., Inc.*, No. 3:15-CV-00132-LB, 2016 WL 4916955, at *5 (N.D. Cal.
18 Sept. 15, 2016) (“Where the settlement involves a common fund, courts typically award attorney’s fees
19 based on a percentage of the total settlement.”).

20 In the Ninth Circuit, the benchmark for an attorney fee is 25% of the total settlement value. *See*
21 *Six Mexican Workers*, 904 F.2d at 1311; *see also Glass v. UBS Financial Services, Inc.*, No. C-06-4068
22 MMC, 2007 WL 221862, *14 (N.D. Cal. Jan. 26, 2007). However, many courts have awarded fees
23 ranging from 30% and 50% of the common fund when the settlement fund is less than ten million. *See*
24 *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 923 (9th Cir.) (“[T]he district court acted within its

25 _____
26 ¹ An attorney is entitled to “recover as part of the award of attorney’s fees those out-of-pocket expenses
27 that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
1994) (internal quotation marks omitted). To support an award of costs, plaintiff should file an itemized
list of their expenses by category, listing the total amount advanced for each category, allowing the court
to assess whether the expenses are reasonable. *See Wren v. RGIS Inventory Specialists*, No. 06-cv-
05778-JCS, 2011 WL 1230826, at *30 (C.D. Cal. Apr. 1, 2011).

1 proper discretion when it found that the settlement contains significant benefits for Plaintiffs beyond the
 2 cash recovery, and thus that the award, at about a third of the lodestar amount, was reasonable.”),
 3 *vacated on other grounds*, 772 F.3d 608 (9th Cir. 2014); *Galeener v. Source Refrigeration & HVAC,*
 4 *Inc.*, No. 3:13-CV-04960-VC, 2015 WL 12977077, at *1 (N.D. Cal. Aug. 21, 2015) (“[I]n light of the
 5 many cases in this circuit that have granted fee awards of 30% or more’, it is ‘well within the usual
 6 range of percentages awarded.’”) (quoting *Vedachalam v. Tata Consultancy Servs., Ltd*, No. C 06-0963
 7 CW, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) and collecting cases awarding 30% or more);
 8 *Van Vranken.*, 901 F. Supp. at 297-98 (collecting cases); *see also Johnson v. Gen. Mills, Inc.*, No.
 9 SACV 10-00061-CJC(ANx), 2013 WL 3213832, at *6 (C.D. Cal. June 17, 2013) (awarding a fee award
 10 of 30% of the settlement fund).

11 Plaintiff’s counsel’s requested fee award of 33.33% of the \$1,600,000 Common Fund, is in line
 12 with this authority approving fees ranging from 30% to 50%. And when taking into account the benefit
 13 the Class has and will receive from RoundPoint’s changed fee practices, the fee request is actually
 14 below the 25% benchmark.² Calculating the total amount RoundPoint collected in fees during the class
 15 period (using the fact that \$1.6 million represents 35% of fees collected from January 1, 2016 to May
 16 31, 2021), Class Members have already received a value of approximately \$538,767 because they have
 17 been able to make mortgage payments for free since June 1, 2021. This benefit results in a total
 18 settlement value of \$2,138,767 when added to the Common Fund, even before adding the value for two
 19 additional years of free payments. The requested fee is 25% of this total.

20 Multiple factors support the requested award. The risk in this litigation was high. The dispositive
 21 issue on liability is a straightforward question of law: whether convenience fees are prohibited by
 22 federal and state debt collection statutes. At the time the Complaint was filed in early 2020, the law was
 23 uncertain, and courts in this Circuit diverged on the applicability of the FDCPA and Rosenthal Act to
 24 convenience fees. *Compare Flores v. Collection Consultants of California*, No.
 25 SACV140771DOCRNBX, 2015 WL 4254032 (C.D. Cal. Mar. 20, 2015) (dismissing similar claims)

26 _____
 27 ² As discussed in section II.B.4, *infra*, Plaintiff’s counsel separately seeks an award of costs, and they
 are typically entitled to reimbursement of all reasonable out-of-pocket expenses and costs in prosecution
 of the claims and in obtaining a settlement. *See Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir.
 1977).

1 with *Simmet v. Collection Consultants of California*, No. CV 16-02273-BRO, 2016 WL 11002359 (C.D.
2 Cal. July 7, 2016) (denying motion to dismiss similar claims). Despite that uncertainty, Plaintiff was
3 able to secure an excellent, early settlement without extensive litigation. Since that time, courts have
4 continued to divide on this issue, which remains unsettled. Compare *Thomas-Lawson v. Carrington*
5 *Mortg. Servs., LLC*, No. 2:20-cv-07301-ODW-EX, 2021 WL 1253578 (C.D. Cal. Apr. 5, 2021)
6 (dismissing claims); *Lish v. Amerihome Mortgage Company, LLC*, No. 2:20-cv07147, 2020 WL
7 6688597 (C.D. Cal. Nov. 10, 2020) (same) with *Corona v. PNC Financial Services Group, Inc.*, No.
8 2:20-cv-06521-MCS, 2021 WL 1218258, *2-*8 (C.D. Cal. Mar. 16, 2021) (allowing claims to proceed);
9 *Lembeck v. Arvest Cent. Mortg. Co.*, 498 F. Supp. 3d 1134, 1135 (N.D. Cal. 2020) (same); *Torliatt v.*
10 *Ocwen Loan Servicing*, No. 19-cv-04303-WHO, 2020 WL 1904596, at *2 (N.D. Cal. Apr. 17, 2020)
11 (same). While Plaintiff believes her claims would have ultimately be successful, there was no guarantee
12 of recovery.

13 Success here was far from certain, and the fact that the Settlement Class will be compensated
14 quickly, without protracted litigation or appeals, notwithstanding this uncertainty, further supports the
15 requested fee. Moreover, in light of the uncertainty regarding the legality of convenience fees, the
16 changed practices are particularly valuable to the Class. The excellent result in the face of this risk
17 supports the fee award. See *Vizcaino*, 290 F.3d at 1050 (recognizing risk as a relevant circumstance for
18 awarding fee above 25% benchmark).

19 **3. Plaintiff's Counsel's Requested Fee Is Also Reasonable When Measured**
20 **Using the Lodestar Crosscheck.**

21 If the Court elects to award a fee based on a percentage of the common fund, it is not required to
22 conduct a lodestar cross-check. *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737 (9th Cir.
23 2017) (noting that district court was not required to do a lodestar method cross-check); *Yamada v. Nobel*
24 *Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016) (“[A] cross-check is entirely discretionary”).
25 In a common fund case, the lodestar method “does not necessarily achieve the stated purposes of
26 proportionality, predictability and protection of the class and can encourage unjustified work and
27 protracting the litigation.” *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at *5
(N.D. Cal. Oct. 18, 2013) (citing *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D.

1 Cal. 1989)). Nonetheless, a lodestar cross check shows that the requested fee is reasonable, representing
 2 a modest 1.6 multiplier, which is entirely justified by the results obtained.

3 **a) Plaintiff’s counsel’s lodestar is the result of swift and efficient**
 4 **litigation.**

5 Under the lodestar approach, the fee is determined by “multiplying the number of hours
 6 reasonably expended by a reasonable hourly rate.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App.
 7 4th 19, 26 (2000). Here, because Class Counsel was able to secure a settlement shortly after filing the
 8 Complaint, the benefit to Class Members was achieved efficiently, without the need for Class Counsel to
 9 spend hundreds of hours in discovery or litigating contested motions.

10 Plaintiff’s counsel’s lodestar through January 15, 2022 is approximately \$330,723 (Simplicio
 11 Decl. ¶ 32; Declaration of James L. Kauffman (“Kauffman Decl.”) ¶ 8. Plaintiff’s counsel’s efforts to
 12 date include, without limitation:

- 13 • Pre-filing investigation;
- 14 • Drafting and filing a class action complaint and amended complaint;
- 15 • Drafting oppositions to Defendant’s motions to dismiss;
- 16 • Preparing Initial Disclosures, Requests for Interrogatories, Requests for Admission, and
 17 Requests for the Production of Documents;
- 18 • Preparing various routine filings;
- 19 • Meeting-and-conferring with Defendant’s counsel regarding various case management
 20 matters;
- 21 • Drafting a comprehensive mediation statement, and participating in a full day mediation;
- 22 • Negotiating and drafting the Settlement Agreement along with corresponding documents,
 23 including claim forms, summary notice, and long-form notice;
- 24 • Filing the motion for preliminary approval and supporting documents, including a
 25 proposed preliminary approval order and a proposed final judgment;
- 26 • Reviewing and responding to communications from Settlement Class Members;
- 27 • Supervising the work of the Claims Administrator; and
- Preparing this motion and supporting documentation.

1 Simplicio Decl. ¶¶ 4-24; Kauffman Decl. ¶¶ 9-20.

2 In addition, before the final approval hearing, Class Counsel’s efforts may also include, without
3 limitation:

- 4 • Continued correspondence with Settlement Class Members and supervision of the work
5 of the Claims Administrator;
- 6 • Preparing a motion for final approval;
- 7 • Researching and drafting a reply memorandum to this motion;
- 8 • Responding to objections, if any; and
- 9 • Preparing for, and traveling to the hearing on the motion for final approval;
- 10 • Attending to miscellaneous case management responsibilities, including any status
11 reports that this Court may order.

12 Simplicio Decl. ¶ 37; Kauffman Decl. ¶ 29. Class Counsel estimates that approximately 70 hours of
13 work will be required to see this matter to completion, assuming no objections are filed. Simplicio Decl.
14 ¶ 37; Kauffman Decl. ¶ 29. These additional hours will almost certainly increase the lodestar by at least
15 \$30,000 and likely more. *Id.* Thus, it is likely that by the time this matter is closed, the total lodestar will
16 be about \$360,723.

17 As attested to in Class Counsel’s declarations, Class Counsel’s rates are the prevailing rates in
18 the appropriate legal markets, and are reasonable. Simplicio Decl. ¶¶ 33-35; Kauffman Decl. ¶¶ 25-27.
19 To be conservative, Plaintiff’s counsel calculated their lodestar using the LSI Laffey Matrix, which
20 provides market rates for attorneys and staff working in the Washington D.C. area. The Laffey Matrix
21 “provides additional guidance and has been cited with approval by other courts in this Circuit.” *Lakim*
22 *Indus., Inc. v. Linzer Prod. Corp.*, No. 2:12-CV-04976 ODW, 2013 WL 1767799, at *8 (C.D. Cal. Apr.
23 24, 2013); *see Elbert v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856,
24 at *14 (C.D. Cal. July 21, 2008) (accepting Laffey Matrix to be used to approximate lodestar).

25 Bailey Glasser LLP and Tycko & Zavareei LLP both use and obtain approval for the Laffey
26 Matrix billing rates. Simplicio Decl. ¶ 34; Kauffman Decl. ¶ 25. The rates charged by Class Counsel
27 have been deemed reasonable in connection with the approval of their fee applications in other recent
matters. *Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal.

1 July 7, 2017) (approving Tycko & Zavareei rates as “reasonable and commensurate with those charged
 2 by attorneys with similar experience in the market”); *Stathakos v. Columbia Sportswear Co.*, No. 15-
 3 CV-04543-YGR, 2018 WL 1710075, at *6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No.
 4 14-cv-0832 (N.D. Ohio Aug. 7, 2018), Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964
 5 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683
 6 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v.*
 7 *Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015);
 8 *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014). Simplicio Decl. ¶ 34;
 9 Kauffman Decl. ¶ 25.

10 Courts in other cases over the past several years have also approved similar fees charged by other
 11 firms. See *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 3:10-md-2143-RS, 2016 WL 7364803, at
 12 *8 (N.D. Cal. Dec. 19, 2016) (approving hourly rates of \$205 to \$950); *Civil Rights Educ. and*
 13 *Enforcement Ctr. v. Ashford Hospitality Trust, Inc.*, No. 15-cv-00216-DMR, 2016 WL 1177950 (N.D.
 14 Cal. Mar. 22, 2016) (finding that requested hourly rates of \$900, \$750, \$550, \$500, \$430, and \$360 for
 15 attorneys and \$225 for paralegals were “in line with the market rates charged by attorneys and paralegals
 16 of similar experience, skill, and expertise practicing in the Northern District of California”); *Gutierrez v.*
 17 *Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *5 (N.D. Cal. May 21, 2015)
 18 (approving hourly rates of \$475 to \$975); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th
 19 Cir. 2012) (finding that the district court did not abuse its discretion by awarding hourly rates between
 20 \$425, \$700, and \$875).

21 Class Counsel’s current rates are also appropriate given the deferred and contingent nature of
 22 counsel’s compensation. See *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998)
 23 (“[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in
 24 payment” (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989))); *In re Washington Pub. Power*
 25 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has discretion to
 26 compensate delay in payment in one of two ways: (1) by applying the attorneys’ current rates to all
 27 hours billed during the course of litigation; or (2) by using the attorneys’ historical rates and adding a

1 prime rate enhancement.”). Using current rates, rather than historical rates, will fairly compensate
2 counsel for the significant risk of nonpayment taken on in connection with this matter.

3 **b) In performing the cross-check, a modest multiplier is appropriate.**

4 Courts in this Circuit routinely approve lodestar multipliers. *See, e.g., Vizcaino*, 290 F.3d at
5 1051-52 (approving of 3.65 multiplier and citing multipliers as high as 19.6); *Noll v. eBay, Inc.*, 309
6 F.R.D. 593, 610 (N.D. Cal. 2015) (listing multipliers as high as 5.2 among “the range of acceptable
7 lodestar multipliers”); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (“A 2.83
8 multiplier falls within the Ninth Circuit’s presumptively acceptable range of 1.0–4.0.”). Multipliers are
9 particularly appropriate in cases, like this one, where the legal issues are uncertain, and thus the risk is
10 high. *Rodriguez v. Marshalls of CA, LLC*, No. EDCV181716MWFSPX, 2020 WL 7753300, at *10
11 (C.D. Cal. July 31, 2020) (granting multiplier where risks to the litigation made an unfavorable outcome
12 uncertain); *Roberts v. Marshalls of CA, LLC*, No. 13-CV-04731-MEJ, 2018 WL 510286, at *16 (N.D.
13 Cal. Jan. 23, 2018) (same); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL
14 5158730, at *10 (N.D. Cal. Sept. 2, 2015) (granting multiplier where “the issues presented in the case
15 were sufficiently complex and novel”); *Parkinson v. Freedom Fid. Mgmt., Inc.*, No. 10-CV-0345-TOR,
16 2012 WL 5194955, at *5 (E.D. Wash. Oct. 19, 2012) (granting multiplier where success on claims was
17 uncertain). Multipliers are also used to reward efficient and successful resolution of cases, which serves
18 policy goals of settlement and avoiding wasteful litigation. *In re Bank of Am. Credit Prot. Mktg. & Sales*
19 *Pracs. Litig.*, No. 11-MD-2269 TEH, 2013 WL 174056, at *1 (N.D. Cal. Jan. 16, 2013) (“The multiplier
20 of approximately 1.6 is justified by the risk Counsel undertook and the results they achieved for the
21 Class in an efficient manner”).

22 Here, Class Counsel’s requested fee award of \$533,280 effectively produces a 1.5 multiplier
23 when compared to the expected lodestar of \$360,723. This low number is reasonable, particularly in
24 light of the risks taken on and the fact that such an excellent result was achieved without extensive
25 litigation.

4. **Plaintiff’s Counsel Should Be Awarded Costs.**

1 Plaintiff’s Counsel additionally requests that the Court grant its application for reimbursement of
2 \$8,826.95 in expenses incurred in connection with the prosecution of this Litigation. These expenses are
3 itemized in the Simplicio and Kauffman Declarations. (Simplicio Decl. ¶ 38, Ex. A; Kauffman Decl. ¶
4 30) Plaintiff’s counsel is typically entitled to reimbursement of all reasonable out-of-pocket expenses
5 and costs in prosecution of the claims and in obtaining a settlement. *See Harris*, 24 F.3d at 19; *Hughes*
6 *Air West*, 557 F.2d at 769. Thus, the costs should be awarded.

7
8 **III. CONCLUSION**

9 For all of these reasons, Plaintiff respectfully requests that the Court approve her request for a
10 service award of \$5,000 and for a fee award of \$533,280 and a cost award of \$8,826.95 for Class
11 Counsel.

12 Dated: January 21, 2022

Respectfully submitted,

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