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 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10
 11 JENNIFER M. LANGSTON,
 on behalf of herself and
 12 all others similarly situated,

13 Plaintiff,

14 v.

15 GATEWAY MORTGAGE GROUP,
 16 LLC,

Defendant.

Case No. 5:20-cv-01902-VAP-KK

**DECLARATION OF LEE
 LOWTHER IN SUPPORT OF
 MOTION FOR FINAL APPROVAL
 OF SETTLEMENT AND MOTION
 FOR AWARD OF ATTORNEYS'
 FEES, LITIGATION COSTS, AND
 SERVICE AWARD**

Date: August 29, 2022

Time: 2:00 p.m.

Place: Courtroom 8A

1 I, Lee Lowther, declare and state as follows:

2 1. I am an attorney with the law firm Carney, Bates and Pulliam, PLLC
3 (“CBP”). My firm, along with co-counsel Bailey & Glasser, LLC (“Bailey
4 Glasser”) (collectively referred to with CBP as “Class Counsel”), represent
5 Plaintiff Jennifer M. Langston (“Plaintiff”) and the proposed Settlement Class in
6 this action (the “Action”).
7

8 2. I make this Declaration in support of Plaintiff’s (i) Motion for Final
9 Approval of Settlement and (ii) Motion for Award of Attorneys’ Fees, Litigation
10 Costs, and Service Award. Except where otherwise stated, I have personal
11 knowledge of the facts set forth in this Declaration based on active participation
12 in all aspects of the prosecution and resolution of the Action. If called upon to
13 testify, I could and would truthfully and competently testify as to all matters
14 stated herein.
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16 **BACKGROUND AND EXPERIENCE**

17 3. CBP’s firm resume details each CBP attorney’s background, as well
18 as provides a full listing of the cases CBP has been involved in. CBP’s firm
19 resume was previously submitted to the Court in conjunction with Plaintiff’s
20 Motion for Preliminary Approval of Settlement. *See* ECF No. 44 (Joint
21 Declaration filed in support of Preliminary Approval).
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23 4. To briefly highlight CBP’s extensive experience in class action and

1 complex litigation, CBP has served or is serving as co-lead counsel in the
2 following cases: *Caldwell, et al. v. Freedom Mortgage Co.*, No. 3:19-cv-02193-
3 N (N.D. Tex.) (Pay-to-Pay class action, settling for \$2,250,000 and receiving final
4 approval in December 2021); *Phillips, et al. c. Caliber Home Loans, Inc.*, 19-cv-
5 02711-WMW-LIB (D. Minn.) (Pay-to-Pay class action settling for \$5,000,000,
6 which represented 29.39% of the aggregate Pay-to-Pay fees collected from the
7 settlement class); *Williams v. State Farm Mutual Automobile Insurance*
8 *Company*, 4:11-cv-00749-KGB (E.D. Ark.) (resulting in a settlement of \$21.7
9 million with 7,635 individuals receiving 100% recovery plus six percent
10 prejudgment interest while releasing no claims or rights (other than named
11 plaintiffs)); *Ebarle, et al. v. LifeLock, Inc.*, 3:15-cv-00258 (N.D. Cal.) (class
12 action on behalf of customers of the identity theft protection service, resulting in a
13 nationwide settlement of \$81 million that was granted final approval in
14 September 2016); *Wayne Miner et al. v. Philip Morris USA Inc.*, Case No. 60CV-
15 03-4661 (Pulaski Co. Cir. Ct.) (class action brought on behalf of Arkansas
16 smokers over claims that the defendant misrepresented the safety of its “light”
17 cigarette products, which settled in 2016 for \$45 million).

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21 5. Additionally, CBP served as lead counsel in *Econo-Med Pharmacy,*
22 *Inc. v. Roche Diagnostics Corporation*, 1:16-cv-00789-TWP-MPB (S.D. Ind.),
23 representing a class of pharmacies in a Telephone Consumer Protection Act

1 (“TCPA”) litigation resulting in a \$17 million settlement, which was granted final
2 approval on September 21, 2017. CBP also served as lead counsel in *ARcare, Inc.*
3 *v. Qiagen North America Holdings, Inc., et al.*, Case No. 43CV-17-46 (Lonoke
4 Co. Cir. Ct.), representing a class of pharmacies in a TCPA litigation resulting in
5 a \$15.5 million settlement, which was granted final approval on December 3,
6 2018. CBP has also been involved in such notable data breach cases as *In re: The*
7 *Home Depot, Inc., Customer Data Security Breach Litigation*, 1:14-md-02583-
8 TWT (N.D. Ga.) (serving on Plaintiffs’ Steering Committee), and *In re: Target*
9 *Corporation Customer Data Security Breach Litigation*, 0:14-cmd-02522-PAM-
10 JJK (D. Minn.) (serving as counsel for lead plaintiff Umpqua Bank).

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13 6. In sum, CBP has extensive knowledge in class action litigation,
14 including class litigation involving Pay-to-Pay fees, and is adequately capitalized
15 and staffed, allowing CBP to dedicate the resources needed to vigorously pursue
16 the claims of putative class members and to achieve the best possible result.

17 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND**
18 **SHOULD BE FINALLY APPROVED.**

19 7. As detailed in the Joint Declaration filed in support of Preliminary
20 Approval (ECF No. 44), the Settlement in this Action creates a non-reversionary,
21 cash settlement fund of \$1,175,000 (the “Settlement Fund”) for the benefit of
22 Settlement Class Members.
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1 8. Based on records obtained from Defendant, the sum of all challenged
2 Convenience Fees collected from Settlement Class Members during the Class
3 Period is \$4,280,170.88. Thus, the Settlement Fund of \$1,175,000 represents
4 roughly 27.4% of that sum.

5
6 9. In addition to the monetary benefits, as a result of the Settlement, as
7 of January 1, 2022, Gateway ceased charging Convenience Fees to any
8 Settlement Class Member and to any borrower and shall refrain from charging
9 Convenience Fees from borrowers for a period of at least one year after entry of
10 the Final Approval Order. This practice change provides meaningful injunctive
11 relief valued at approximately \$820,000.00 per year. *See, e.g. Corker v. Costco*
12 *Wholesale Corp.*, No. 2:19-CV-00290-RSL, 2021 WL 2790518, at *1 (W.D.
13 Wash. June 25, 2021) (“[T]he settlements also provide for meaningful injunctive
14 relief in the form of practice changes on the part of the Settling Defendants . . .
15 .”).

16
17 10. When measured against all the relevant standards for approval of
18 class action settlements, Class Counsel believes the results achieved are excellent
19 and the Settlement is in the best interests of the Settlement Class.

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21 11. Specifically, the Settlement was reached only after Class Counsel
22 conducted an extensive factual investigation into the Defendant’s alleged
23 misconduct and thoroughly researched the law pertinent to the Class’s claims and

1 the Defendant's defenses. In addition to Class Counsel's extensive investigative
2 efforts, Class Counsel performed the following tasks: drafting and filing the
3 complaints; opposing Defendant's motion to dismiss; drafting and propounding
4 discovery requests; reviewing documents submitted by Defendant; preparing for
5 the deposition of Defendant's corporate representative; participating in mediation;
6 engaging in contentious, arm's-length settlement negotiations; conducting
7 confirmatory discovery regarding the total number of Settlement Class Members
8 and the total amount of aggregate Convenience Fees paid during the Class Period;
9 drafting the Settlement Agreement along with corresponding documents,
10 including summary and long-form notices; and participating in calls with
11 opposing counsel and the Settlement Administrator concerning the issuance of
12 Class notice following the Court's granting the Settlement preliminary approval.
13 The efforts undertaken by Class Counsel and Plaintiff demonstrate they have
14 fully, vigorously, zealously and adequately represented the Settlement Class.
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17 12. The settlement negotiations in this Action were further informed
18 through the mediation process, as well as the parties' exchange of information
19 related to class size and damages issues. Here, the assistance of a trained, neutral
20 mediator, Hon. Lisa Cole (Ret.), assisted the parties in identifying, exploring, and
21 promoting a better understanding of the legal and factual issues involved on both
22 sides. This, coupled with the parties' exchange of information and prior litigation
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1 and experience, allowed Class Counsel to adequately assess the strengths and
2 weaknesses of Plaintiff’s case and balance the benefits of settlement against the
3 risks of further litigation.

4
5 13. The Settlement enjoys the support of the Settlement Class. To date,
6 no Settlement Class Member has objected to the Settlement or requested to be
7 excluded. See Declaration of Edward Dattilo Regarding Implementation of
8 Notice and Settlement Administration (“Dattilo Decl.”) at ¶¶ 24-25. And, while
9 no governmental entity is a party to this litigation, notice was issued to the
10 appropriate federal and state officials in accordance with the 28 U.S.C. § 1715,
11 and to date, no governmental entity has raised an objection or concern about the
12 Settlement. *See id.* at ¶¶ 5 and 25.

14 14. Further, the notice program approved by the Court has now been
15 fully implemented. *See* Dattilo Decl. at ¶¶ 5-23. According to the Settlement
16 Administrator, the notice reached an estimated 96.69% of Settlement Class
17 Members, which is at the high end of the range established by
18 Federal Judicial Center, “*Judge’s Class Action Notice and Claims Process*
19 *Checklist and Plain Language Guide*” (2010) (available at
20 <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>) (stating a notice reach
21 of between 70-95% is reasonable). *See* Dattilo Decl. at ¶ 19. Thus, the notice
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1 program satisfies the requirements of Federal Rule of Civil Procedure 23(c) and
2 due process and constitutes the best notice practicable under the circumstances.

3 15. Moreover, the total estimated costs for disseminating notice to the
4 Settlement Class and administration of the Settlement, as detailed in the Dattilo
5 Declaration, is \$166,947.44. This sum is approximately 14% of the Settlement
6 Fund, which is fair and reasonable. *See, e.g., Hose v. Washington Inventory Serv.,*
7 *Inc.*, No. 14-CV-2869-WQH-AGS, 2020 WL 3606404, at *10 (S.D. Cal. July 2,
8 2020) (“Courts regularly award administrative costs associated with providing
9 notice to the class.”); *Mauss v. NuVasive, Inc.*, No. 13CV2005 JM (JLB), 2019
10 WL 13179078, at *3 (S.D. Cal. July 23, 2019) (approving \$280,394.13 in total
11 settlement administration costs).
12

13
14 16. Based upon the foregoing, Class Counsel believe that the Settlement
15 is an excellent result for the Settlement Class and is appropriate for final
16 approval.

17 **CLASS COUNSEL’S FEE REQUEST IS REASONABLE**
18 **AND SHOULD BE APPROVED.**

19 17. In accord with the terms of the Settlement Agreement, Class Counsel
20 are seeking an award of 25% of the Settlement Fund, or \$293,750.00.

21 18. Class Counsel’s fee request is supported by the significant relief
22 obtained for the Settlement Class. Specifically, the Settlement provides for a
23 common fund of \$1,175,000, representing 27.4% of all Convenience Fees paid by

1 the Settlement Class during the Class Period that were allegedly improperly
2 collected, as well as meaningful injunctive relief that Class Counsel calculates to
3 be worth approximately \$820,000 per year.

4
5 19. Class Counsel calculates the total value of the Settlement to equal
6 \$2,544,000.¹ Thus, the requested fee award is 11.5% of the total value of the
7 Settlement.

8 20. Moreover, the negotiated releases are specifically tailored to release
9 only those claims related to the charging, collection, or attempted collection of
10 Convenience Fees accruing from June 8, 2016, through December 31, 2021. *See*
11 Settlement Agreement, Section V.

12
13 21. Class Counsel's fee request is further supported by the time and
14 resources expended by Class Counsel, the complexity of the case, the skill and
15 expertise needed to advance Plaintiff's claims, and the risk undertaken in
16 prosecuting this case.

17 22. Attached hereto as Exhibit A is a true and accurate summary lodestar
18 chart, which reflects, for each CBP timekeeper: (i) their title or position (e.g.,
19 partner, associate); (ii) the total number of hours they worked; (iii) their current
20 hourly rate; and (iv) their lodestar. As demonstrated therein, CBP has expended a
21 total of 255.9 hours in this litigation.
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¹ Class Counsel calculates the value of the injunctive relief based on a minimum of 1.67 years, or from Jan. 1, 2022, to August 29, 2023, to be \$1,369,400 (\$820,000 x 1.67).

1 23. Class Counsel’s requested percentage is directly in line with Ninth
2 Circuit precedent setting “25% of the fund as a ‘benchmark’ award under the
3 percentage-of-fund method.” *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734,
4 738 (9th Cir. 2016); *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942
5 (9th Cir. 2011) (“courts typically calculate 25% of the fund as the ‘benchmark’
6 for a reasonable fee award, providing adequate explanation in the record of any
7 ‘special circumstances’ justifying a departure”); *Steiner v. Am. Broad. Co.*, 248
8 Fed. Appx. 780, 783 (9th Cir. 2007) (upholding 25% fee award).

10 24. While not required, Class Counsel submit that a lodestar crosscheck
11 underscores the reasonableness of Class Counsel’s fee request. Class Counsel
12 have collectively expended a total of 397 hours throughout the course of this
13 litigation, yielding a total lodestar of \$274,378.30. The time expended by Class
14 Counsel was necessary to sufficiently address the needs of the case, to move the
15 litigation forward in an expeditious manner, and to achieve the favorable results
16 ultimately reached. Moreover, to ensure against duplication, tasks were assigned
17 to specific attorneys and every reasonable effort was made to avoid repetition of
18 work. As such, the hours expended by Class Counsel are reasonable.

21 25. Moreover, based on Class Counsel’s total lodestar, the fee request
22 results in a modest multiplier of 1.07, which is reasonable. *Vizcaino v. Microsoft*
23 *Corp.*, 290 F. 3d 1043, 1051-52 (9th Cir. 2002) (approving of 3.65 multiplier and

1 citing multipliers as high as 19.6); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D.
2 Cal. 2015) (listing multipliers as high as 5.2 among “the range of acceptable
3 lodestar multipliers”); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334
4 (N.D. Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s
5 presumptively acceptable range of 1.0–4.0.”)
6

7 26. Thus, a lodestar crosscheck demonstrates the reasonableness of Class
8 Counsel’s fee request.

9 27. I have personal knowledge of the hourly rates charged by CBP
10 attorneys included in the exhibit to this declaration. The hourly rates for the
11 attorneys and professional support staff in my firm are the usual and customary
12 rates set by the firm for each individual. These hourly rates are the same as, or
13 comparable to, the rates accepted by courts in other class action litigation
14 including courts in this district and Circuit. My firm’s rates are set based on
15 periodic analysis of rates charged by firms performing comparable work and that
16 have been approved by courts in other class actions within this Circuit and
17 nationwide. Different timekeepers within the same employment category (*e.g.*,
18 partners, associates, paralegals, etc.) may have different rates based on a variety
19 of factors, including years of practice, years at the firm, year in the current
20 position (*e.g.*, years as a partner), relevant experience and the rates of similarly
21 experienced peers in the legal community.
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1 28. Class Counsel’s rates are consistent with the prevailing market rates
2 in the Central District of California. *See Silveira v. M&T Bank*, Case No. 2:19-cv-
3 06958-ODW-KS, 2021 WL 4776065 (C.D. Cal. Oct. 12, 2021) (approving as
4 reasonable hourly rates ranging from \$465 to \$914) (the hourly rates can be found
5 at Dkt. No. 37-2, ¶ 20); *Jimenez v. Allstate Ins. Co.*, 2021 WL 4316961, at *11
6 (C.D. Cal. Sept. 16, 2021) (approving hourly rates of \$375 to \$900); *see also*,
7 *Durham v. Sachs Elec. Co.*, No. 18-CV-04506-BLF, 2022 WL 2307202, at *8
8 (N.D. Cal. June 27, 2022) (approving hourly rates of \$875); *In re Optical Disk*
9 *Drive Prod. Antitrust Litig.*, No. 3:10-md-2143-RS, 2016 WL 7364803, at *8
10 (N.D. Cal. Dec. 19, 2016) (approving hourly rates of \$205 to \$950); *Civil Rights*
11 *Educ. and Enforcement Ctr. v. Ashford Hospitality Trust, Inc.*, No. 15-cv-00216-
12 DMR, 2016 WL 1177950 (N.D. Cal. Mar. 22, 2016) (finding that requested
13 hourly rates of \$900, \$750, \$550, \$500, \$430, and \$360 for attorneys and \$225
14 for paralegals were “in line with the market rates charged by attorneys and
15 paralegals of similar experience, skill, and expertise practicing in the Northern
16 District of California”); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274,
17 at *5 (N.D. Cal. May 21, 2015) (approving hourly rates of \$475 to \$975); *Prison*
18 *Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2012) (finding that
19 the district court did not abuse its discretion by awarding hourly rates between
20 \$425, \$700, and \$875).
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1 29. CBP reasonably incurred litigation expenses of \$5,948.49, which are
2 summarized in Exhibit A hereto. These costs were associated with mediation fees,
3 pro hac vice fees, docket fees related to obtaining Plaintiff’s mortgage and
4 various documents, food for mediation, and telephone conference calling
5 services. They were reasonably incurred in furtherance of the investigation,
6 prosecution, and settlement of the Action. As such, they are reasonable and
7 should be approved.
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9 30. Plaintiff’s request for a service award of \$5,000 for serving as the
10 Class Representative is in line with similar awards approved in this district. *See*
11 *Roe v. Frito-Lay, Inc.*, No 14CV-00751, 2017 WL 1315626, at *8 (N.D. Cal.
12 Apr. 7, 2017) (“[A] \$5,000 incentive award is ‘presumptively reasonable’ in the
13 Ninth Circuit.” (collecting cases)). Moreover, it is supported by the time and
14 effort she invested in the prosecution and settlement of this Action, which
15 included: (1) initial factual investigation, including creating a spreadsheet
16 cataloging every instance in which Defendant had collected a Pay-to-Pay fee
17 dating back to April 2017; (2) researching Defendant’s websites accessible only
18 to those with Gateway login credentials for the purpose of finding fee schedules
19 and every representation available online that Defendant made to its borrowers
20 concerning Pay-to-Pay fees; (3) reviewing and providing commentary to counsel
21 on drafts of the Complaint; (4) reviewing all pleadings relating to Defendant’s
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1 motion to dismiss; (5) working with counsel to review and respond to discovery;
2 (6) keeping in regular contact with counsel concerning case developments and
3 discovery; (7) participating in the mediation process and considering various
4 settlement offers and counteroffers with counsel; and (8) reviewing and
5 discussing the terms of the settlement reached in this case.
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7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on this 18th day of July, 2022.

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10 By: /s/ Lee Lowther
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Exhibit A

Carney Bates & Pulliam, PLLC
Langston, et al., v. Gateway Mortgage Group, LLC,
Case No. 5:20-cv-01902-VAP-KK

Time Summary

Timekeeper	Hourly Rate	Hours	Lodestar
Lowther, Lee (P)	\$590.00	78.70	\$46,433.00
Pulliam, Randy (P)	\$880.00	65.50	\$57,640.00
Ross, Courtney (A)	\$385.00	8.70	\$3,349.00
Wyatt-Oldham, Tiffany (P)	\$725.00	103.00	\$74,675.00
Total		255.9	\$182,097

(P)-Partner
 (A)-Associate

Expense Summary

Expense Category	Amount
Mediation Services	\$4,950.00
Pro Hac Vice Fees	\$594.36
Docket Fees Related to Obtaining Plaintiff's Mortgage and Various Documents	\$341.00
Food for mediation	\$47.82
Telephone/Facsimile	\$15.31
Total	\$5,948.49