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

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

13 Plaintiff,

14 v.

15 GATEWAY MORTGAGE GROUP,  
16 LLC,

17 Defendant.

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

**MOTION FOR AWARD OF  
ATTORNEYS' FEES, LITIGATION  
COSTS, AND SERVICE AWARD  
AND INCORPORATED  
MEMORANDUM OF LAW IN  
SUPPORT**

**Date: August 29, 2022**

**Time: 2:00 p.m.**

**Place: Courtroom 8A**

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1 **I. INTRODUCTION**

2 As detailed in Plaintiff’s Motion for Final Approval of Settlement, which is  
3 being filed contemporaneously herewith, Plaintiff and Class Counsel have obtained  
4 an excellent settlement (the “Settlement”) for the benefit of the Settlement Class.  
5 The Settlement reached in this class action will result in a \$1,175,000 common fund  
6 (the “Common Fund”) that will be used to make payments to Settlement Class  
7 Members, and pay administrative costs and court approved fee awards.<sup>1</sup> The  
8 Common Fund represents approximately 27.4% of the Convenience Fees paid by  
9 the Settlement Class during the Class Period that were allegedly improperly  
10 collected. Cash payments will be made automatically to Settlement Class  
11 Members. Unclaimed funds will be paid to a *cy pres* recipient; there will be no  
12 reverter to Defendant Gateway First Bank (“Gateway”). As an additional benefit to  
13 the Settlement Class, Gateway, which stopped charging Convenience Fees in  
14 January 2022, will continue to refrain from charging them for one year after Final  
15 Approval. Thus, Class Members have already reaped months in savings from the  
16 changed practices, and will continue to enjoy additional benefits as a result of this  
17 litigation and the Settlement. This changed practice represents savings of  
18 approximately \$820,000 per year. *See* Declaration of James Kauffman (“Kauffman  
19 Decl.”), attached, at ¶ 29; Declaration of Lee Lowther (“Lowther Decl.”), attached,  
20 at ¶¶ 9, 18.

21 To compensate them for their efforts, Class Counsel request a fee award of  
22 \$293,750, which represents 25% of the \$1,175,000 Common Fund relief, and  
23 approximately 11.5% of the total settlement value, inclusive of the injunctive relief.  
24 Lowther Decl. at ¶ 19. The requested fee recognizes the results Class Counsel  
25 achieved for the Settlement Class given the risks they faced at trial, and the quality

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26  
27 <sup>1</sup> Unless otherwise defined, all capitalized terms herein shall have the same meaning as  
28 set forth in the Parties’ Settlement Agreement.



1 and efficiency of their work. A lodestar crosscheck, while not required, confirms  
2 the reasonableness of this request.

3 Class Counsel also requests reimbursement of \$6,067.64 in litigation costs  
4 that include mediation fees, pro hac vice fees, court fees, docket fees related to  
5 obtaining Plaintiff's mortgage and various documents, food for mediation, and  
6 telephone conference calling services. Kauffman Dec. at ¶ 32; Lowther Decl. at ¶  
7 29 and Ex. A thereto. Finally, Class Counsel requests that the Court approve a  
8 Service Award to Ms. Langston in the amount of \$5,000 for her work on behalf of  
9 the Class. Ms. Langston actively participated in this action for two years. She  
10 assisted in Class Counsel's investigation, conferred with Class Counsel on  
11 settlement discussions, and was ready and willing to testify at trial. Kauffman Dec.  
12 at ¶ 33; Declaration of Jennifer Langston ("Langston Decl.") at ¶¶ 2-3. Without  
13 her there would be no Settlement.

14 **II. PLAINTIFF AND CLASS COUNSEL NEGOTIATED AN**  
15 **EXCELLENT SETTLEMENT.<sup>2</sup>**

16 On August 30, 2021, the Parties engaged in a full-day mediation session  
17 before well-respected mediator Hon. Lisa Cole (Ret.). The Parties were unable to  
18 resolve the case that day. During the weeks following the mediation, and with the  
19 mediator's assistance, the Parties reached a mutually agreeable settlement, which  
20 they memorialized in a Memorandum of Understanding. Thereafter, the Parties  
21 worked together cooperatively to use the Memorandum of Understanding to draft  
22 a comprehensive Settlement Agreement and exhibits thereto. ECF No. 45.

23 The proposed Settlement requires Gateway to pay \$1.175 million into a  
24 Common Fund. ECF No. 45, Settlement Agreement, ¶ II. Subject to Court  
25 approval, the Common Fund will be used to make payments to Settlement Class  
26

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27 <sup>2</sup> For a detailed summary of the proceedings see Plaintiff's Motion for Final Approval of  
28 Settlement and Incorporated Memorandum of Law, being filed contemporaneously herewith.

1 Members; pay the costs of Class Notice and Settlement Administration; pay a  
2 Service Award in the amount of \$5,000 to the named Plaintiff; and pay Class  
3 Counsel’s attorneys’ fees, and litigation costs and expenses. *Id.* ¶¶ IV(D), (E). In  
4 addition, Gateway stopped charging Convenience Fees, and has agreed not to  
5 resume the practice for a period of at least one year after entry of the Final Approval  
6 Order. *Id.*, IV(C). Payments will be made to Settlement Class Members without the  
7 need for any claim forms. No money will revert to Gateway.

8 This Court granted Preliminary Approval to the Settlement on April 25,  
9 2022. ECF No. 49.

### 10 **III. ARGUMENT**

#### 11 **A. LEGAL STANDARD FOR ATTORNEYS’ FEE AWARDS.**

12 The Settlement Agreement provides for the payment of attorneys’ fees and  
13 expenses from the Common Fund. Having reached a common fund settlement,  
14 Plaintiff’s Counsel is entitled to seek an award of fees and expenses from the fund.  
15 *See Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir. 2002); *Six Mexican*  
16 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).

17 Where a settlement involves a common fund, courts typically award  
18 attorneys’ fees based on a percentage of the total settlement. *See State of Fla. v.*  
19 *Dunne*, 915 F.2d 542, 545 (9th Cir. 1990). Indeed, the percentage method is the  
20 preferred approach in such cases. *Vizcaino*, 290 F.3d at 1050 (noting “the primary  
21 basis of the fee award remains” the percentage method”); *see also, e.g., In re*  
22 *ECOality, Inc. Secs. Litig.*, No. 13-cv-03791-SC, 2015 WL 5117618, at \*3 (N.D.  
23 Cal. Aug. 28, 2015) (finding percentage approach to be the “typical method of  
24 calculating class fund fees”); *Taylor v. Meadowbrook Meat Co., Inc.*, No. 3:15-  
25 CV-00132-LB, 2016 WL 4916955, at \*5 (N.D. Cal. Sept. 15, 2016) (“Where the  
26 settlement involves a common fund, courts typically award attorney's fees based  
27 on a percentage of the total settlement.”).

1 In the Ninth Circuit, courts consider the total value provided to the class,  
2 including injunctive relief when assessing fairness of a percentage fee award. *See*  
3 *Young v. Polo Retail, LLC*, 2007 WL 951821, at \*9 (N.D. Cal. Mar. 28, 2007)  
4 (citing *Williams v. MGMPathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997)  
5 (finding “district court abused its discretion in basing attorney fee award on actual  
6 distribution to class” instead of amount being made available)).

7 **1. Class Counsel’s Fee Request is Reasonable Under the**  
8 **Percentage Approach.**

9 The benchmark for percentage-based attorneys’ fees in the Ninth Circuit is  
10 25% of the total settlement value, including both monetary and non-monetary  
11 recovery. *See Six Mexican Workers*, 904 F.2d at 1311 (fee benchmark is 25%);  
12 *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 923 (9th Cir.) (fee was reasonable  
13 considering benefits beyond the cash recovery). Here, Class Counsel’s requested  
14 fee award of \$293,750 represents 25% of the Common Fund, and significantly less  
15 than that when the changed practices are taken into account. The fee is thus in line  
16 with, and in fact below, the Ninth Circuit benchmark.<sup>3</sup>

17 **2. Application of the Ninth Circuit Factors Confirms the**  
18 **Reasonableness of the Fee Request.**

19 In setting a percentage award, courts in this circuit consider the following  
20 factors, in addition to the benchmark: “(1) the result obtained for the class; (2) the  
21 effort expended by counsel; (3) counsel’s experience; (4) the skill of counsel; (5)  
22 the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7)  
23

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24  
25 <sup>3</sup> As discussed in section III.B, *infra*, Class Counsel separately seeks an award of litigation costs,  
26 and they are typically entitled to reimbursement of all reasonable out-of-pocket expenses and  
27 costs in prosecution of the claims and in obtaining a settlement. *See Vincent v. Hughes Air West*,  
28 557 F.2d 759, 769 (9th Cir. 1977).

1 the reaction of the class; and (8) comparison with counsel’s lodestar.” *Waldbuesser*  
2 *v. Northrop Grumman Corp.*, No. CV 06-6213-AB (JCX), 2017 WL 9614818, at  
3 \*2 (C.D. Cal. Oct. 24, 2017) (citing *In re Quintus Sec. Litig.*, 148 F.Supp.2d 967,  
4 973–74 (N.D. Cal. 2001), among others); *Marshall v. Northrop Grumman Corp.*,  
5 No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at \*2 (C.D. Cal. Sept. 18, 2020),  
6 *appeal dismissed*, No. 20-56096, 2021 WL 1546069 (9th Cir. Feb. 16, 2021). Each  
7 of the applicable factors supports the requested fee.<sup>4</sup>

8 ***The Results Achieved.*** Courts in this jurisdiction and elsewhere “have  
9 consistently recognized that the result achieved is a major factor to be considered  
10 in making a fee award. *Marshall v. Northrop*, 2020 WL 5668935, at \*2 (citing  
11 *Hensley v. Eckerhart*, 461 U.S. 424, 436, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983))  
12 (“the most critical factor is the degree of success obtained”); *In re Heritage Bond*  
13 *Litig.*, No. 02-ML-1475-DT, 2005 WL 1594403, at \*19 (C.D. Cal. June 10, 2005)  
14 (a “significant factor”); *Deaver v. Compass Bank*, No. 13-222, 2015 WL 8526982,  
15 at \*11 (N.D. Cal. Dec. 11, 2015) (“the most critical factor”).

16 Class Counsel’s work in this case led to an excellent result for the Settlement  
17 Class, a recovery of 27.4% of class wide damages. Kauffman Dec. at ¶ 27; Lowther  
18 Decl. at ¶¶ 8, 18. As a percentage of damages, the Common Fund is in line with  
19 recoveries in other cases, cases where higher attorneys’ fees were awarded. *See e.g.*  
20 *Fernandez v. Rushmore*, 8:21-cv-00621-DOC (C.D. Cal.) (plaintiff recovered 30%  
21 of class damages; fees of one-third approved); *Phillips v. Caliber Homes Loans*  
22 *Inc.*, 19-cv-2711 (D. Minn.) (plaintiff recovered 29% of class damages; fees of one  
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<sup>4</sup> To date, Class Counsel has received no objection to the Settlement or their fee request, which was included in the Class Notice (*see* Declaration of Edward Dattilo Regarding Implementation of Notice and Settlement Administration (“Dattilo Decl.”) at Exhibits B and C. However, the deadline for objections has not yet expired. Thus, Class Counsel will respond to any objections to this motion in accordance with the Court’s schedule.

1 third approved). The recovery was obtained expeditiously, and no funds will revert  
2 to Gateway.

3 The Settlement provides for the highest level of participation that can be  
4 obtained because rather than a “claims made” process, Settlement Class Members  
5 will automatically receive a payment. This means that each Settlement Class  
6 Member will participate in the recovery unless he or she voluntarily and  
7 specifically excludes himself or herself from the Settlement. Moreover, the practice  
8 changes agreed to as part of the Settlement provide valuable benefits that  
9 Settlement Class Members are already reaping.

10 ***The Effort Expended By Class Counsel.*** As detailed in the Kauffman and  
11 Lowther Declarations, from the inception of this case, Class Counsel has expended  
12 time and resources to move this case along expeditiously by, among other things,  
13 investigating the factual and legal bases for this suit, meeting and conferring with  
14 Ms. Langston, researching legal theories to draft a class action complaint, staying  
15 abreast of legal developments in a variety of related cases that could have directly  
16 affected the outcome of this case, successfully opposing a motion to dismiss,  
17 preparing discovery requests, reviewing Gateway’s discovery responses and  
18 related documents, noticing and preparing for the deposition of Defendant’s  
19 corporate representative, handling case management matters, exchanging  
20 mediation memoranda and reviewing class data, participating in an all-day  
21 mediation with a mediator and several other settlement discussions, negotiating,  
22 drafting, and finalizing the Settlement Agreement and associated paperwork.  
23 Kauffman Decl. at ¶ 13; Lowther Decl. at ¶ 11.

24 Collectively, Class Counsel have expended 397 hours to litigate and resolve  
25 this dispute. While the hours expended by Class Counsel were substantial, they  
26 were necessary and reflect the challenging nature of the lawsuit, the needs of the  
27  
28

1 litigation, the technical nature of the discovery involved, and the aggressive defense  
2 mounted by Defendant's Counsel.

3 ***Counsel's Experience and Skill.*** Class Counsel are among a handful of law  
4 firms litigating cases involving convenience fees across the country and are in the  
5 forefront of that litigation. *See* Kauffman Decl. at ¶¶ 5-8; Lowther Decl. at ¶ 4. The  
6 litigation of cases like these involving challenges to mortgage payment fees is a  
7 specialized field as it requires an understanding of the terms of form mortgages,  
8 statutory provisions and regulations governing FHA mortgages, the applicable debt  
9 collection laws of multiple states, and the intersections of all three. Both firms also  
10 have years of experience litigating class actions, including consumer financial class  
11 actions, ERISA, and securities cases. Kauffman Decl. at ¶¶ 2-3; Lowther Decl. at  
12 ¶¶ 3-6.

13 Mr. Kauffman has over fifteen years of complex class action experience, and  
14 has served as class and appellate counsel in a wide variety of cases involving  
15 consumer protection, securities fraud, and ERISA. Mr. Kauffman is currently  
16 counsel in more than 10 cases challenging convenience fees in courts across the  
17 country, several of which have now settled on a class-wide basis. Kauffman Decl.  
18 at ¶¶ 4-8.

19 Mr. Lowther of Carney, Bates & Pulliam PLLC has over eight years of  
20 experience and is a dedicated professional with demonstrated commitments to his  
21 clients. *See* Lowther Decl. at ¶¶ 3-5; ECF No. 44, Ex. A. As reflected in Mr.  
22 Lowther's declaration and CBP's firm resume, Mr. Lowther and other CBP  
23 attorneys have served as lead or co-lead counsel in a variety of class actions and  
24 other complex litigation and have achieved significant recoveries for their clients,  
25 including *Phillips v. Caliber Home Loans, Inc.*, Case No.: 19-cv-02711-WMW-  
26 LIB (D. Minn.) (class action involving similar claims regarding convenience fee  
27 that recently received preliminary approval of a \$5 million settlement); *Econo-Med*  
28



1 *Pharmacy, Inc. v. Roche Diagnostics Corporation*, 1:16-cv-00789-TWP-MPB  
2 (S.D. Ind.) (TCPA class action that resulted in a \$17 million settlement); *Ebarle, et*  
3 *al. v. LifeLock, Inc.*, Case No. 3:15-cv-00258 (N.D. Cal.) (serving as Co-Lead  
4 Counsel in class action that secured an \$81 million settlement). *See* Lowther Decl.  
5 at ¶¶ 4-5. Additionally, Mr. Lowther was appointed class counsel in a contested  
6 litigation class involving convenience fees. *Torliatt v. Ocwen Loan Servicing, LLC*,  
7 570 F. Supp. 3d 781 (N.D. Cal. 2021). *Id.* at ¶ 4.

8 The work Class Counsel performed and the results they achieved in this  
9 litigation reflect their skill and experience in this field and in complex class  
10 litigation. Kauffman Decl. at ¶ 30; Lowther Decl. at ¶ 21.

11 ***The Complexity of the Issues And The Risk Involved.*** Class Counsel's work  
12 in this case involved a number of complex and difficult legal and factual issues,  
13 with uncertain outcomes, due in part to the unsettled nature of the law regarding  
14 Convenience Fees, and variations in applicable state debt collection law. *See e.g.*  
15 *Lish v. Amerihome Mortg. Co., LLC*, No. 220CV07147JFWJPRX, 2020 WL  
16 6688597, at \*2 (C.D. Cal. Nov. 10, 2020) (granting motion to dismiss in case  
17 challenging convenience fees, finding that plaintiff failed to state a claim for  
18 violation of California debt collection law); *Thomas-Lawson v. Carrington Mortg.*  
19 *Servs., LLC*, No. 220CV07301ODWEX, 2021 WL 1253578, at \*3 (C.D. Cal. Apr.  
20 5, 2021) (granting motion to dismiss similar convenience fee claims brought under  
21 FDCPA and California law).

22 The risk in this litigation was high. The dispositive issue here is a  
23 straightforward question of law: whether Convenience Fees are prohibited by  
24 federal and state debt collection statutes. Fact discovery, while pertinent to class  
25 certification and some secondary issues, would not have informed the parties on  
26 this threshold question, and thus, the risk could not be assessed early in the  
27 litigation. Indeed, at the time the Complaint was filed, the law was uncertain, and  
28

1 remains uncertain, and courts in this Circuit diverged on the applicability of the  
2 FDCPA and the Rosenthal Act to Convenience Fees. *Compare Thomas-Lawson v.*  
3 *Carrington Mortg. Servs.*, No. 2:20-cv-07301-ODW-EX, 2021 WL 1253578 (C.D.  
4 Cal. Apr. 5, 2021 (dismissing claims), *with Corona v. PNC Financial Services*  
5 *Group, Inc.*, No. 2:20-cv-06521-MCS, 2021 WL 1218258, \*2-\*8 (C.D. Cal. 2021)  
6 (allowing claims to proceed). While Plaintiff believes her claims would have  
7 ultimately been successful, there was no guarantee of recovery. And Class Counsel  
8 litigated this case on a contingent basis, with no guarantee of payment.

9 Success here was far from certain, and the fact that the Settlement Class will  
10 be compensated quickly, without protracted litigation or appeals, further supports  
11 the fact that it is appropriate to award the requested fee. In light of this uncertainty,  
12 the changed practices are particularly valuable. This result achieved in the face of  
13 this risk supports the fee award. *See Vizcaino*, 290 F.3d at 1050 (recognizing risk  
14 as a relevant circumstance for awarding fee above 25% benchmark).

15 ***Comparison With Counsel’s Lodestar Supports the Fee Requested.*** If the  
16 Court elects to award a fee based on a percentage of the common fund, it is not  
17 required to conduct a lodestar cross-check. *In re Google Referrer Header Privacy*  
18 *Litig.*, 869 F.3d 737 (9th Cir. 2017) (noting that district court was not required to  
19 do a lodestar method cross-check); *Yamada v. Nobel Biocare Holding AG*, 825 F.3d  
20 536, 547 (9th Cir. 2016) (“[A] cross-check is entirely discretionary . . .”). Indeed,  
21 “[i]n a common fund case, a lodestar method does not necessarily achieve the stated  
22 purposes of proportionality, predictability and protection of the class and can  
23 encouraged unjustified work and protracting the litigation.” *Bolton v. U.S. Nursing*  
24 *Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at \*5 (N.D. Cal. Oct. 18, 2013)  
25 (citing *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal.  
26 1989)).



1           Nonetheless, should the Court elect to use a lodestar cross-check, Class  
2 Counsel’s fee is reasonable under that approach, resulting in a modest lodestar  
3 multiplier of 1.07. Lowther Decl. at ¶ 25. Given the results achieved, and the  
4 efficiency with which they were achieved, the fee is appropriate.

5           Class Counsel’s total lodestar is approximately \$274,378.30, representing  
6 397 hours spent. Kauffman Decl. at ¶ 11; Lowther Declaration at ¶¶ 22, 24, and Ex.  
7 A thereto. This total included hours spent on litigating the related action, styled  
8 *Watkins v. Gateway First Bank*, Case No. 3:20-cv-02136-L-BH (N.D. Tex.). This  
9 case had the benefit of Counsel’s work in *Watkins*.

10           Class Counsel’s efforts to date included, without limitation:

- 11           • Pre-filing investigation;
- 12           • Drafting and filing the complaints;
- 13           • Drafting an opposition to Defendant’s motion to dismiss;
- 14           • Preparing for and arguing the opposition to Defendant’s motion to  
15 dismiss;
- 16           • Preparing Initial Disclosures, Requests for Interrogatories, Requests  
17 for Admission, and Requests for the Production of Documents;
- 18           • Preparing various procedural filings;
- 19           • Meeting-and-conferring with Defendant’s counsel regarding various  
20 case management matters;
- 21           • Drafting a comprehensive mediation statement, and participating in an  
22 all-day mediation;
- 23           • Conducting confirmatory discovery regarding the total number of  
24 Settlement Class Members and the total amount of aggregate  
25 Convenience Fees paid during the Class Period;
- 26
- 27
- 28

- 1 • Negotiating and drafting the Settlement Agreement along with
- 2 corresponding documents, including claim forms, summary notice,
- 3 and long-form notice;
- 4 • Filing the motion for preliminary approval and supporting documents,
- 5 including a proposed preliminary approval order and a proposed final
- 6 judgment;
- 7 • Supervising the work of the Claims Administrator; and
- 8 • Preparing this motion and the motion for final approval and supporting
- 9 documentation.

10 Lowther Decl. at ¶ 11; Kauffman Decl. at ¶ 13.

11 In addition, before the final approval hearing, Class Counsel’s efforts will  
12 also include, without limitation:

- 13 • Continued correspondence with Settlement Class Members and
- 14 supervision of the work of the Settlement Administrator;
- 15 • Researching and drafting a reply memorandum to this motion, if any;
- 16 • Opposing objections, if any;
- 17 • Preparing for, and attending the hearing on the motion for final
- 18 approval; and
- 19 • Attending to miscellaneous case management responsibilities,
- 20 including any status reports that this Court may order.

21 Lowther Decl. at ¶ 11; Kauffman Decl. at ¶ 14. Class Counsel estimates that  
22 approximately 40 hours of work will be required to see this matter to completion,  
23 and that number assumes that no objections will be filed. Kauffman Decl. at ¶ 15.  
24 These additional hours will almost certainly increase lodestar by at least \$10,000  
25 and likely more.

26 Class Counsel’s lodestar does not include activities by Class Counsel in other  
27 similar pay-to-pay litigation against other servicers, which enabled Class Counsel

1 to gain expertise and oversee developments in the case law more efficiently.  
2 Kauffman Decl. at ¶ 4.

3 As attested to in the Kauffman and Lowther Declarations, Class Counsel's  
4 rates are reasonable. Lowther Decl. at ¶¶ 27-29; Kauffman Decl. at ¶ 17. The rates  
5 charged by Class Counsel have been submitted in connection with fee applications  
6 in other recent matters approved by the relevant courts. Kauffman Decl. at ¶ 18;  
7 Lowther Decl. at ¶ 28.

8 Courts in other cases over the past several years have also approved similar  
9 fees charged by other firms. *See Silveira v. M&T Bank*, Case No. 2:19-cv-06958-  
10 ODW-KS, 2021 WL 4776065 (C.D. Cal. Oct. 12, 2021) (approving as reasonable  
11 hourly rates ranging from \$465 to \$914) (the hourly rates can be found at Dkt. No.  
12 37-2, ¶ 20); *Jimenez v. Allstate Ins. Co.*, 2021 WL 4316961, at \*11 (C.D. Cal. Sept.  
13 16, 2021) (approving hourly rates of \$375 to \$900); *Durham v. Sachs Elec. Co.*,  
14 No. 18-CV-04506-BLF, 2022 WL 2307202, at \*8 (N.D. Cal. June 27, 2022)  
15 (approving hourly rates of \$875); *In re Optical Disk Drive Prod. Antitrust Litig.*,  
16 No. 3:10-md-2143-RS, 2016 WL 7364803, at \*8 (N.D. Cal. Dec. 19, 2016)  
17 (approving hourly rates of \$205 to \$950); *Civil Rights Educ. and Enforcement Ctr.*  
18 *v. Ashford Hospitality Trust, Inc.*, No. 15-cv-00216-DMR, 2016 WL 1177950  
19 (N.D. Cal. Mar. 22, 2016) (finding that requested hourly rates of \$900, \$750, \$550,  
20 \$500, \$430, and \$360 for attorneys and \$225 for paralegals were "in line with the  
21 market rates charged by attorneys and paralegals of similar experience, skill, and  
22 expertise practicing in the Northern District of California"); *Gutierrez v. Wells*  
23 *Fargo Bank, N.A.*, 2015 WL 2438274, at \*5 (N.D. Cal. May 21, 2015) (approving  
24 hourly rates of \$475 to \$975); *Prison Legal News v. Schwarzenegger*, 608 F.3d  
25 446, 455 (9th Cir. 2012) (finding that the district court did not abuse its discretion  
26 by awarding hourly rates between \$425, \$700, and \$875).

1 Class Counsel’s current rates are also appropriate given the deferred and  
2 contingent nature of counsel’s compensation. *See LeBlanc-Sternberg v. Fletcher*,  
3 143 F.3d 748, 764 (2nd Cir. 1998) (“[C]urrent rates, rather than historical rates,  
4 should be applied in order to compensate for the delay in payment . . .” (citing  
5 *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *In re Wash. Pub. Power Supply*  
6 *Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has  
7 discretion to compensate delay in payment in one of two ways: (1) by applying the  
8 attorneys’ current rates to all hours billed during the course of litigation; or (2) by  
9 using the attorneys’ historical rates and adding a prime rate enhancement.”). Using  
10 current rates, rather than historical rates, will fairly compensate counsel for the  
11 significant risk of nonpayment taken on in connection with this matter. *See In re*  
12 *Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d at 1299 (“Contingent fees that  
13 may far exceed the market value of the services if rendered on a non-contingent  
14 basis are accepted in the legal profession as a legitimate way of assuring competent  
15 representation for plaintiffs who could not afford to pay on an hourly basis  
16 regardless whether they win or lose.”).

17 Courts in this Circuit routinely apply multipliers when using the lodestar  
18 approach. *See, e.g., Vizcaino*, 290 F.3d at 1051-52 (approving of 3.65 multiplier  
19 and citing multipliers as high as 19.6); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D.  
20 Cal. 2015) (listing multipliers as high as 5.2 among “the range of acceptable  
21 lodestar multipliers”); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D.  
22 Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively  
23 acceptable range of 1.0–4.0.”). Multipliers are particularly appropriate in cases  
24 where the legal issues are uncertain, and thus the risk is high. *Rodriguez v.*  
25 *Marshalls of CA, LLC*, No. EDCV181716MWFSPX, 2020 WL 7753300, at \*10  
26 (C.D. Cal. July 31, 2020) (granting multiplier where risks to the litigation made an  
27 unfavorable outcome uncertain). Multipliers are also used to reward efficient and  
28

1 successful resolution of cases, which serves policy goals of settlement and avoiding  
2 wasteful litigation. *In re Bank of Am. Credit Prot. Mktg. & Sales Pracs. Litig.*, No.  
3 11-MD-2269 TEH, 2013 WL 174056, at \*1 (N.D. Cal. Jan. 16, 2013) (“The  
4 multiplier of approximately 1.6 is justified by the risk Counsel undertook and the  
5 results they achieved for the Class in an efficient manner”).

6 Here, Class Counsel’s requested fee award of \$293,750 effectively produces  
7 a 1.07 multiplier. This low number is reasonable, particularly in light of the risks  
8 taken on and the fact that such an excellent result was achieved without extensive  
9 litigation.

10 **B. CLASS COUNSEL’S EXPENSES WERE REASONABLY**  
11 **INCURRED IN FURTHERANCE OF THE PROSECUTION OF**  
12 **THE CLAIMS AND SHOULD BE AWARDED.**

13 The Settlement terms and well-settled precedent support Class Counsel’s  
14 entitlement to recovery of out-of-pocket costs reasonably incurred in investigating,  
15 prosecuting, and settling the claims in this case. *Harris v. Marhoefer*, 24 F.3d 16,  
16 19 (9th Cir. 1994) (finding an attorney is entitled to “recover as part of the award  
17 of attorney’s fees those out-of-pocket expenses that would normally be charged to  
18 a fee paying client.” (internal quotation marks omitted)); *In re Media Vision Tech.*  
19 *Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (“Reasonable costs and  
20 expenses incurred by an attorney who creates or preserves a common fund are  
21 reimbursed proportionately by those class members who benefit by the settlement.”  
22 (citing Herbert B. Newberg, *Attorney Fee Awards* (1986) § 2.19: “Costs  
23 Reimbursement in Common Fund Fee Determinations,” at 69 and *Mills v. Electric*  
24 *Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970)).

1 Here, Class Counsel have incurred \$6,067.64 in unreimbursed out-of-pocket  
2 expenses over the course of this Litigation.<sup>5</sup> These expenses are itemized in the  
3 Lowther and Kauffman Declarations, and include mediation fees, pro hac vice fees,  
4 court fees, docket fees related to obtaining Plaintiff's mortgage and various  
5 documents, food for mediation, and telephone conference calling services.  
6 Kauffman Dec. at ¶ 32; Lowther Decl. at ¶ 29 and Ex. A thereto. Thus, these costs  
7 should be awarded.

8 **C. THE CLASS REPRESENTATIVE'S SERVICE AWARD**  
9 **SHOULD BE APPROVED.**

10 Finally, the Court should approve a \$5,000 Service Award to Ms. Langston  
11 in recognition of her contributions on behalf of the Settlement Class. In deciding  
12 whether to approve such an award, a court should consider: "(1) the risk to the class  
13 representative in commencing suit, both financial and otherwise; (2) the notoriety  
14 and personal difficulty encountered by the class representative; (3) the amount of  
15 time and effort spent by the class representative; (4) the duration of the litigation  
16 and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as  
17 a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299  
18 (N.D. Cal. 1995).

19 Further, as a matter of public policy, representative service awards are  
20 necessary to encourage consumers to take on the reputational risk to formally  
21 challenge unfair business practices. *See, e.g., Rodriguez v. Wes' Publ'g Corp.*, 563  
22 F.3d 948, 958-59 (9th Cir. 2009) (upholding award of service awards to class  
23 representatives as they "compensate class representatives for work done on behalf  
24 of the class, to make up for financial or reputational risk undertaken in bringing the  
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26 <sup>5</sup> To support an award of costs, plaintiff should file an itemized list of their expenses by  
27 category, listing the total amount advanced for each category, allowing the Court to assess  
28 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 action, and, sometimes, to recognize their willingness to act as a private attorney  
2 general”); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL  
3 4755371, at \*5 (N.D. Cal. Oct. 4, 2012) (finding service award justified for  
4 plaintiffs “lending their names to this case, and thus subjecting themselves to public  
5 attention”); *Miletak v. Allstate Ins. Co.*, No. C 06-03778 JW, 2012 WL 12924933,  
6 at \*2 (N.D. Cal. July 12, 2012) (same); *In re CenturyLink Sales Pracs. & Sec.*  
7 *Litig.*, No. CV 17-2832, 2020 WL 7133805, at \*13 (D. Minn. Dec. 4, 2020)  
8 (awarding service award because “Class Representatives participated and willingly  
9 took on the responsibility of prosecuting the case and publicly lending  
10 their names to this lawsuit, opening themselves up to scrutiny and attention from  
11 both the public and media”).

12 Ms. Langston took on a substantial risk by bringing claims against the  
13 company that currently serviced her home mortgage, and undertook reputational  
14 risk, as her association with these lawsuits is publicly available. Kauffman Decl. at  
15 ¶ 34. Ms. Langston also worked with counsel to provide information regarding her  
16 experiences and claims to enable her to join this case and represent a class  
17 throughout the litigation. Ms. Langston conducted searches of her personal records  
18 and shared sensitive information, including bank records and mortgage documents.  
19 And Ms. Langston remained actively involved in the litigation after the Settlement  
20 was reached. Lowther Decl. at ¶ 31; Langston Decl. at ¶¶ 2-3. Without her  
21 involvement, there would be no settlement. Her commitment is notable given the  
22 relatively modest size of her personal financial stake in this matter.

23 These personal risks and sacrifices, substantial time invested into the matter,  
24 and critical contributions to the outstanding results obtained for the Settlement  
25 Class, all support approval of a \$5,000 service award. Service awards of \$5,000 are  
26 well within the range of reasonableness. *See Roe v. Frito-Lay, Inc.*, No 14CV-  
27 00751, 2017 WL 1315626, at \*8 (N.D. Cal. Apr. 7, 2017) (“[A] \$5,000 incentive  
28

1 award is ‘presumptively reasonable’ in the Ninth Circuit.’” (collecting cases)); *see*,  
2 *e.g.*, *Mego*, 213 F.3d at 463; *Willner*, 2015 WL 3863625, at \*8; *Wolf v. Permanente*  
3 *Med. Grp., Inc.*, No. 3:17-CV-05345-VC, 2018 WL 5619801, at \*1 (N.D. Cal. Sept.  
4 14, 2018) (approving service award in the amount of \$7,500 to named plaintiff and  
5 \$2,500 to opt-in Plaintiff); *Jabbari v. Wells Fargo & Co.*, No. 15-CV-02159-VC,  
6 2018 WL 11024841, at \*6 (N.D. Cal. June 14, 2018) (finding proposed service  
7 award of \$5,000 to each named plaintiff fair and reasonable); *Dorsette v. TA*  
8 *Operating LLC*, No. EDCV091350PARZX, 2010 WL 11583002, at \*8 (C.D. Cal.  
9 July 26, 2010) (finding \$5,000 service award reasonable). *See also* Theodore  
10 Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*  
11 *Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (an empirical study of  
12 incentive awards to class action plaintiffs has determined that the average aggregate  
13 incentive award within a consumer class action case is \$29,055.20, and that the  
14 average individual award is \$6,358.80). Consistent with these cases, and in  
15 recognition of the time, effort, and substantial personal risk taken on behalf of the  
16 Settlement Class, Ms. Langston requests that the Court award the requested Service  
17 Award.

18 **IV. CONCLUSION**

19 For all of these reasons, Plaintiff respectfully requests that the Court (i)  
20 approve her request for a service award of \$5,000, (ii) award Class Counsel  
21 attorneys’ fees of 25% of the Common Fund, or \$293,750, and (iii) award Class  
22 Counsel reimbursement of litigation expenses of \$6,067.64.

23 Dated: July 18, 2022

Respectfully submitted,

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**PROOF OF SERVICE**

I am employed in the County of Pulaski, State of Arkansas; I am over the age of 18 years and not a party to the within action; my business address is 519 W. 7<sup>th</sup> Street, Little Rock, Arkansas 72201.

On July 18, 2022, I served the foregoing documents, described as:

**MOTION FOR AWARD OF ATTORNEYS’ FEES, LITIGATION COSTS, AND SERVICE AWARD AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT** on each interested party in this action, as follows:

BY CM/ECF: I electronically transmitted a true copy of said document(s) to the Clerk’s Office using the CM/ECF System for filing. I checked the CM/ECF docket for this proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Hunter R. Eley  
heley@dollamir.com

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Lee Lowther  
LEE LOWTHER