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12 **IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 PHITSAMAY FERNANDEZ, *on behalf*
15 *of herself and all others similarly situated,*

16 Plaintiff,

17 v.

18 RUSHMORE LOAN
19 MANAGEMENT SERVICES LLC,

20 Defendant.

Case No. 8:21-cv-00621-DOC-(KESx)

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
FEES, COSTS, AND SERVICE
AWARD; MEMORANDUM IN
SUPPORT**

Date: February 14, 2022

Time: 8:30AM

Courtroom: 9D

Judge: Hon. David O. Carter

Date Filed: September 24, 2021

Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiff Phitsamay Fernandez (“Ms. Fernandez” or “Class Representative”), by and
3 through Class Counsel, respectfully submits this memorandum in support of Plaintiff’s
4 Motion for Fees, Costs, and Service Awards (“Motion”). Ms. Fernandez brings this Motion
5 because the time and effort spent by her and Class Counsel resulted in a \$1,645,840
6 Common Fund and resolution of Ms. Fernandez’s and the Settlement Class’s claims deriving
7 from Defendant Rushmore Loan Management Services LLC’s (“Rushmore”) practice of
8 charging fees for making mortgage payments over the phone (“Convenience Fees”). The
9 Common Fund represents approximately 30% of damages and will provide automatic cash
10 payments to Settlement Class Members, pay Administrative Costs to provide notice and
11 administer the settlement, and, if approved by the court, pay Fees and Expenses and Service
12 awards that are the subject of this Motion. Moreover, Rushmore agrees to stop charging
13 Convenience Fees and continue to stop charging for a period of two years after entry of the
14 Final Approval Order. Given that Rushmore has stopped charging Convenience Fees and
15 will continue to refrain from charging after Final Approval, class members have reaped
16 months in savings already from the changed practices, and will continue to enjoy additional
17 benefits, as a result of litigation and settlement. This changed practice could save them
18 approximately \$1.5 million a year going forward. *See* Declaration of Hassan A. Zavareei In
19 Support Of Motion For Preliminary Approval of Class Action Settlement, ECF No. 27-1,
20 (“Zavareei Decl.”) ¶ 13.

21 Ms. Fernandez seeks a total of \$548,613.33 for her Counsel for reasonable fees, and
22 an additional \$10,689.20 in reimbursable costs. That requested amount is in line with the
23 Ninth Circuit’s standard approach in common fund cases, whereby attorneys receive 25% of
24 the value provided to the class, plus costs. Here, the fees sought are one third of the
25 common fund, but when factoring in the benefit to the class of changed practices, is
26 significantly less. Indeed, in the Ninth Circuit, courts should take into account the value of
27 these changed practices when assessing fairness. *See Williams v. MGMPathe Commc’ns Co.*, 129

1 F.3d 1026 (9th Cir. 1997) (finding “district court abused its discretion in basing attorney fee
2 award on actual distribution to class” instead of amount being made available). This further
3 supports a finding of fairness of the fee award.

4 Additionally, while this fee award is higher than Class Counsel’s lodestar, the modest
5 multiplier, estimated to be 1.56 by the time the matter is complete, is within the acceptable
6 range in the Ninth Circuit. *See Tom v. Com Dev USA, LLC*, No. 16CV1363PSGGJSX, 2017
7 WL 10378629, at *8 (C.D. Cal. Dec. 4, 2017) (noting that the accepted range of multipliers
8 has ranged from 2 and 4, or even higher). Given the risks inherent in this litigation, the
9 efficient way in which Class Counsel was able to negotiate early resolution to this matter, and
10 the value of the changed practices, such an award is appropriate.

11 Notably, the requested fee award, along with the settlement as a whole avoids any of
12 the pitfalls flagged by the Ninth Circuit in *Briseno v. Henderson*, 998 F.3d 1014, 1026-28 (9th
13 Cir. 2021). Here, the parties did not discuss any award of attorneys’ fees during their
14 negotiations and there is no clear sailing provision that prevents Defendant from challenging
15 the fee award. Indeed, the fee award still leaves adequate compensation of the class,
16 maximizes redemption by automatically paying class members instead of requiring them to
17 submit claims, provides for changed practices, the value of which can be reliably estimated,
18 and provides that no portion of the settlement fund will revert to Rushmore.

19 Class Counsel’s work in this case led to the settlement that the Court preliminarily
20 approved on October 28, 2021. The settlement obtained compares favorably to other
21 settlements obtained in similar cases against major mortgage loan services. *See App’x A*.
22 From inception to now, Class Counsel has expended time and resources by, among other
23 things, investigating the factual and legal bases for this suit, meeting with Ms. Fernandez,
24 researching novel legal theories to draft a class action complaint, staying abreast of legal
25 developments in a variety of related cases, briefing a demurrer to dismiss the complaint,
26 preparing discovery requests, handling a number of case management matters, drafting two
27 amended complaints, exchanging mediation memoranda and reviewing class data,

1 participating in an all-day mediation with a mediator and several other settlement
2 discussions, negotiating, drafting, and finalizing the Settlement Agreement and associated
3 paperwork, and addressing this Court's concerns regarding the Settlement Agreement.

4 Counsel has undertaken the costs and time of this litigation on a pure contingency
5 basis and therefore has paid out-of-pocket for expenses and has not received payment for
6 their work to-date. Counsel took on these risks fully aware that Rushmore denied all charges
7 and intended to fully defend this case every step of the way. Recovery was therefore far from
8 certain, and even if secured, certain to be delayed for many years.

9 Ms. Fernandez also seeks reasonable service awards for the time she spent and the
10 risks she took in bringing and participating in this litigation. Ms. Fernandez provided critical
11 assistance to counsel, including by participating in meetings with counsel to provide factual
12 information for the complaint, sharing confidential and sensitive information, such as
13 mortgage paperwork and bank statements, and reviewing pleadings and settlement papers.
14 Indeed, Ms. Fernandez did so at great personal risk to herself, not only to her reputation, but
15 because Rushmore owned the servicing rights to her home loans. And Ms. Fernandez has
16 also taken time away from her other responsibilities to meet with counsel and litigate this
17 case on behalf of the entire Class. Ms. Fernandez seeks a service award of \$5,000, an amount
18 consistent with reasonable and just service awards in the Ninth Circuit. *See In re Mega*
19 *Financial Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (upholding award to named
20 plaintiff \$5,000 in case with \$1.725 million total recovery); *Willner v. Manpower Inc.*, No. 11-
21 CV-02846-JST, 2015 WL 3863625, at *8 (N.D. Cal. June 22, 2015) (“Many courts in the
22 Ninth Circuit have also held that a \$5,000 incentive award is “presumptively reasonable.”)
23 (citations omitted).

24 Ms. Fernandez submits that her requested fees, costs, and service awards are
25 especially appropriate because Plaintiff and her Counsel achieved outstanding relief as to the
26 primary allegation in their complaint. Plaintiffs alleged that Rushmore had a practice of
27 charging and collecting illegal processing fees from borrowers paying their monthly

1 mortgage by phone. With the settlement, Rushmore has agreed to a settlement amount that
2 represents 30% of the total Convenience Fees collected across the country by Rushmore
3 from the class during the nearly eight-year class period, which is in line with other court-
4 approved class action settlements involving Pay-to-Pay Fees. *See* App’x A. Moreover, as a
5 result of the settlement, Rushmore ceased charging such Pay-to-Pay Fees. The Settlement
6 Class Members do not have to submit claims or take any other affirmative steps to receive
7 benefits under the Settlement. Each Settlement Class Member who paid at least one
8 Convenience Fee during the Class Period shall be entitled to receive a *pro rata* share of the
9 Settlement Fund. *See* Settlement Agreement §§ 5.1-5.8, ECF No. 27-2 (“SA”). For each loan
10 on which a Settlement Class Member has paid Pay-to-Pay Fees, the Settlement
11 Administrator shall allocate the amount of the Net Settlement Fund that represents the
12 proportional amount of Pay-to-Pay Fees charged by Rushmore within the Class Period on
13 that loan. *Id.*

14 Finally, if the amount of remaining funds following a secondary distribution is
15 impracticable or infeasible, the remaining funds will be distributed, pursuant to the *cy pres*
16 doctrine to a 501(c)(3) charitable organization.

17 In sum, and as explained below, in light of the work performed by Class Counsel and
18 the substantial time, effort, and personal sacrifice of the named Plaintiff, the fee, cost, and
19 service awards sought in this Motion are reasonable. For all of the reasons set forth herein,
20 Plaintiff respectfully request that the Court grant these awards.

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

23 **A. THE CLASS REPRESENTATIVE’S SERVICE AWARDS SHOULD**
24 **BE APPROVED.**

25 This Court should approve a \$5,000 Service Award to Ms. Fernandez in just, fair, and
26 reasonable recognition of her contributions on behalf of the Class. In deciding whether to
27 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

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

19 Ms. Fernandez took on a substantial risk by bringing claims against the company that
20 currently serviced her home loans, and undertook reputational risk, as her association with
21 these lawsuits is publicly available. Simplicio Decl. ¶ 22. Ms. Fernandez also worked with
22 counsel to provide information regarding her experiences and claims to enable her to join
23 this case and represent a class throughout the litigation. *Id.* Ms. Fernandez conducted
24 searches of her personal records and shared sensitive information, including bank records
25 and mortgage documents. *Id.* And Ms. Fernandez remained actively involved in the litigation
26 after the Settlement was reached. *Id.*

1 These personal risks and sacrifices, substantial time invested into the matter, and
 2 critical contributions to the outstanding results for the Class, along with her release of claims
 3 against Defendant, all support approval of a \$5,000 service award. Service awards of \$5,000
 4 are well within the range of reasonableness. *See, e.g., Mego*, 213 F.3d at 463; *Willner*, 2015 WL
 5 3863625, at *8; *Wolf v. Permanente Med. Grp., Inc.*, No. 3:17-CV-05345-VC, 2018 WL 5619801,
 6 at *1 (N.D. Cal. Sept. 14, 2018) (approving service award in the amount of \$7,500 to named
 7 plaintiff and \$2,500 to opt-in Plaintiff); *Jabbari v. Wells Fargo & Co.*, No. 15-CV-02159-VC,
 8 2018 WL 11024841, at *6 (N.D. Cal. June 14, 2018) (finding proposed service award of
 9 \$5,000 to each named plaintiff fair and reasonable); *Guilband v. Sprint Nextel Corp.*, No. 3:13-
 10 CV-04357-VC, 2016 WL 7826649, at *4 (N.D. Cal. Apr. 15, 2016) (approving service award
 11 of \$10,000 for each of the four named Plaintiffs); *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-
 12 04936, 2015 WL 758094 at *7 (N.D. Cal. Feb 20, 2015) (awarding \$5,000 to named
 13 plaintiffs); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, *6 (S.D. Cal. Jan. 14, 2013)
 14 (finding \$15,000 incentive payments for three Class representatives well within the range
 15 awarded in similar cases); *Dorsette v. TA Operating LLC*, No. EDCV091350PARZX, 2010 WL
 16 11583002, at *8 (C.D. Cal. July 26, 2010) (finding \$5,000 service award reasonable). *See also*
 17 Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*
 18 *Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (an empirical study of incentive awards
 19 to class action plaintiffs has determined that the average aggregate incentive award within a
 20 consumer class action case is \$29,055.20, and that the average individual award is \$6,358.80).
 21 Consistent with these cases, and in recognition of the time, effort, and substantial personal
 22 risk taken on behalf of the Class, Ms. Fernandez requests that the Court award the requested
 23 service award.

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

25 **1. Legal Standard**

26 The Settlement Agreement provides for the payment of attorneys’ fees and expenses
 27 from the common fund. Having reached a common fund settlement, Plaintiff’s Counsel is

1 entitled to seek an award of fees and expenses from the fund. *See Vizcaino v. Microsoft Corp.*,
2 290 F. 3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d
3 1301 (9th Cir. 1990). Under Ninth Circuit standards, it is appropriate for a district court to
4 analyze an attorney's fee request and issue an award either based on (1) the "lodestar"
5 method or (2) by making an award as a percentage of the total benefit made available to the
6 settlement class, including costs, fees, and injunctive relief. *See, e.g., Bluetooth Headset Prods.*
7 *Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Nwabueze v. AT&T, Inc.*, No. C 09-01529 SI,
8 2014 WL 324262, at *2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v. Youngblood*, No. CV-F-07-0474
9 DLB, 2011 WL 10483569, at *11-12 (E.D. Cal. Sept. 2, 2011).

10 Furthermore, in the Ninth Circuit, when assessing fairness of a fee award, courts
11 consider the total value provided to the class, including injunctive relief. *See Young v. Polo*
12 *Retail, LLC*, 2007 WL 951821, at *9 (N.D. Cal. Mar. 28, 2007) (citing *Williams v. MGMPathe*
13 *Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (finding "district court abused its discretion in
14 basing attorney fee award on actual distribution to class" instead of amount being made
15 available)). *See also* Principles of the Law of Aggregate Litigation, § 3.13(b) (American Law
16 Institute, 2010) ("[A] percentage of the fund approach should be the method utilized in most
17 common-fund cases, with the percentage being based on both the monetary and
18 nonmonetary value of the judgment or settlement.").

19 Here, Plaintiff requests the benchmark 33% percentage of the cash value of the
20 settlement without taking into account the extra value of the changed practices. This fee
21 represents a modest 1.56 multiplier to the lodestar (currently \$297,351.20 and estimated to
22 be approximately \$352,351.20 by the time of completion) and costs of \$10,689.20 incurred
23 by Plaintiffs' counsel in the litigation of this matter.¹

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25
26 ¹ An attorney is entitled to "recover as part of the award of attorney's fees those out-of-
27 pocket 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

1 **2. Plaintiff's Counsel's Requested Fee is a Reasonable Percentage of**
2 **The Common Fund.**

3 Where a settlement involves a common fund, courts typically award attorneys' fees
4 based on a percentage of the total settlement. *See State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th
5 Cir. 1990). Indeed, the percentage method is the preferred approach in common fund cases.
6 *Vizcaino*, 290 F.3d at 1050 (noting "the primary basis of the fee award remains the
7 percentage method"). *See also, e.g., In re ECOTality, Inc. Secs. Litig.*, No. 13-cv-03791-SC, 2015
8 WL 5117618, at *3 (N.D. Cal. Aug. 28, 2015) (finding percentage approach to be the "typical
9 method of calculating class fund fees"); *Evans v. Linden Research, Inc.*, No. C-11-01078 DMR,
10 2014 WL 1724891, at *5 (N.D. Cal. Apr. 29, 2014) (same); *Taylor v. Meadowbrook Meat Co.,*
11 *Inc.*, No. 3:15-CV-00132-LB, 2016 WL 4916955, at *5 (N.D. Cal. Sept. 15, 2016) ("Where
12 the settlement involves a common fund, courts typically award attorney's fees based on a
13 percentage of the total settlement."); Principles of the Law of Aggregate Litigation, § 3.13(b)
14 (American Law Institute, 2010) ("[A] percentage of the fund approach should be the method
15 utilized in most common-fund cases, with the percentage being based on both the monetary
16 and nonmonetary value of the judgment or settlement.").

17 In the Ninth Circuit, the benchmark for an attorney fee is 25% of the total settlement
18 value, including both monetary and non-monetary recovery. *See Six Mexican Workers*, 904
19 F.2d at 1311; *see also Glass v. UBS Financial Services, Inc.*, No. C-06-4068 MMC, 2007 WL
20 221862, *14 (N.D. Cal. Jan. 26, 2007) ("The Ninth Circuit has repeatedly held that 25% of
21 the gross settlement amount is the benchmark for attorneys' fees awarded under the
22 percentage methods"). However, many cases have found that between 30% and 50%
23 of the common fund is an appropriate range when the settlement fund is less than ten

24
25 should file an itemized list of their expenses by category, listing the total amount advanced
26 for each category, allowing the Court to assess whether the expenses are reasonable. *See Wren*
27 *v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (C.D. Cal. Apr.
1, 2011).

1 million. *See Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 923 (9th Cir.) (“[T]he district court
2 acted within its proper discretion when it found that the settlement contains significant
3 benefits for Plaintiffs beyond the cash recovery, and thus that the award, at about a third of
4 the lodestar amount, was reasonable.”), *vacated on other grounds*, 772 F.3d 608 (9th Cir. 2014);
5 *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-CV-04960-VC, 2015 WL 12977077, at
6 *1 (N.D. Cal. Aug. 21, 2015) (“[I]n light of the many cases in this circuit that have granted
7 fee awards of 30% or more’, it is ‘well within the usual range of percentages awarded.”)
8 (quoting *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. C 06-0963 CW, 2013 WL 3941319, at
9 *2 (N.D. Cal. July 18, 2013) and collecting cases awarding 30% or more); *Van Vranken.*, 901
10 F. Supp. at 297-98 (collecting cases); *see also Johnson v. Gen. Mills, Inc.*, No. SACV 10-00061-
11 CJC(ANx), 2013 WL 3213832, at *6 (C.D. Cal. June 17, 2013) (awarding a fee award of 30%
12 of the settlement fund).

13 Here, Plaintiff’s requested fee award of \$548,613.33 represents 33% of the \$1,645,840
14 common fund, and thus is in line with the Ninth Circuit benchmark. And when taking into
15 account the changed practices, the fee request is far below the 25% benchmark because
16 Plaintiff does not seek to be awarded off the total value provided to the class, which includes
17 valuable changed practices, and only off of the cash benefits provided.²

18 Moreover, the risk in this litigation was high. The dispositive issue here is a
19 straightforward question of law: whether Pay-to-Pay fees are prohibited by federal and state
20 debt collection statutes. Fact discovery, while pertinent to class certification and some
21 secondary issues, would not have informed the parties on this threshold question, and thus,
22 the risk could be assessed early in the litigation. Indeed, at the time the Complaint was filed
23 in early 2020, the law was uncertain, and courts in this Circuit diverged on the applicability of

24
25
26 ² As discussed in section II.B.4, *infra*, Plaintiff’s counsel separately seeks an award of costs,
27 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 the FDCPA and Rosenthal Act to Pay-to-Pay Fees. *Compare Flores v. Collection Consultants of*
2 *California*, No. SACV140771DOCRNBX, 2015 WL 4254032 (C.D. Cal. Mar. 20, 2015)
3 (dismissing similar claims) *with Simmet v. Collection Consultants of California*, No. CV 16-02273-
4 BRO, 2016 WL 11002359 (C.D. Cal. 2016) (denying motion to dismiss similar claims).
5 Despite that, Plaintiff was able to secure an excellent, early settlement without extensive
6 litigation. Simplicio Decl. ¶ 15. Since that time, courts have continued to divide on this issue.
7 *Compare Thomas-Lawson v. Carrington Mortg. Servs., LLC*, No. 2:20-cv-07301-ODW-EX, 2021
8 WL 1253578 (C.D. Cal. Apr. 5, 2021) (dismissing claims); *Lish v. Amerihome Mortgage Company,*
9 *LLC*, No. 2:20-cv07147, 2020 WL 6688597 (C.D. Cal. Nov. 10, 2020) (same) *with Corona v.*
10 *PNC Financial Services Group, Inc.*, No. 2:20-cv-06521-MCS, 2021 WL 1218258, *2-*8 (C.D.
11 Cal. 2021) (allowing claims to proceed); *Lembeck v. Arvest Cent. Mortg. Co.*, 498 F. Supp. 3d
12 1134, 1135 (N.D. Cal. 2020) (same); *Torliatt v. Ocwen Loan Servicing*, No. 19-cv-04303-WHO,
13 2020 WL 1904596, at *2 (N.D. Cal. Apr. 17, 2020) (same). While these issues are on appeal
14 in two Circuits and Plaintiff believes her claims would have ultimately be successful, there
15 was no guarantee of recovery.

16 Success here was far from certain, and the fact that the Settlement Class here will be
17 compensated quickly, without protracted litigation or appeals, notwithstanding this
18 uncertainty further supports the fact that it is entirely appropriate to award the requested fee.
19 Moreover, in light of this uncertainty, the changed practices are particularly valuable, as Class
20 This excellent result in the face of this risk supports the fee award. *See Vizcaino*, 290 F.3d at
21 1050 (recognizing risk as a relevant circumstance for awarding fee above 25% benchmark).

22 **3. Plaintiffs' Counsel's Requested Fee Is Also Reasonable When** 23 **Measured Using the Lodestar Method.**

24 If the Court elects to award a fee based on a percentage of the common fund, it is not
25 required to conduct a lodestar cross-check. *In re Google Referrer Header Privacy Litig.*, 869 F.3d
26 737 (9th Cir. 2017) (noting that district court was not required to do a lodestar method
27 cross-check); *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016) (“[A]

1 cross-check is entirely discretionary . . .”). Indeed, “[i]n a common fund case, a lodestar
2 method does not necessarily achieve the stated purposes of proportionality, predictability
3 and protection of the class and can encouraged unjustified work and protracting the
4 litigation.” *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at *5 (N.D.
5 Cal. Oct. 18, 2013) (citing *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378 (N.D.
6 Cal. 1989)). However, should the Court elect to utilize a lodestar cross-check, Class
7 Counsel’s fee here is likewise eminently reasonable. While a modest multiplier of 1.56 is
8 needed, given the risks and result achieved, it is appropriate.

9 **a. Plaintiff’s lodestar is the result of swift and efficient**
10 **litigation.**

11 Under the lodestar approach, “[t]he lodestar (or touchstone) is produced by
12 multiplying the number of hours reasonably expended by counsel by a reasonable hourly
13 rate.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000). Here, because Class
14 Counsel was able to secure a settlement shortly after filing the complaint, the benefit to Class
15 Members was achieved efficiently, without the need for Class Counsel to spend hundreds of
16 hours in discovery or litigating contested motions.

17 Plaintiffs’ Counsel’s lodestar through December 31, 2021 (7 business days before the
18 date of this application) is approximately \$297,351.20 (Simplicio Decl. ¶ 28; Declaration of
19 James L. Kauffman (“Kauffman Decl.,”) ¶ 8 (tables showing hours worked by timekeeper).)
20 Plaintiffs’ Counsel’s efforts to date included, without limitation:

- 21 • Pre-filing investigation;
- 22 • Drafting and filing a class action complaint;
- 23 • Drafting an opposition to Defendant’s demurrer;
- 24 • Preparing for and arguing the opposition to Defendant’s demurrer;
- 25 • Preparing Initial Disclosures, Requests for Interrogatories, Requests for
26 Admission, and Requests for the Production of Documents;
- 27 • Preparing various routine filings;

- 1 • Meeting-and-conferring with Defendant’s counsel regarding various case
2 management matters;
- 3 • Drafting a comprehensive mediation statement, and participating in a two all-
4 day mediations;
- 5 • Negotiating and drafting the Settlement Agreement along with corresponding
6 documents, including claim forms, summary notice, and long-form notice;
- 7 • Filing the motion for preliminary approval and supporting documents,
8 including a proposed preliminary approval order and a proposed final
9 judgment;
- 10 • Responding to this Court’s concerns regarding the proposed settlement,
11 including revising drafts of notice and obtaining additional information from
12 the Settlement Administrator regarding the form of notice;
- 13 • Reviewing and responding to communications from Settlement Class
14 Members;
- 15 • Supervising the work of the Claims Administrator; and
- 16 • Preparing this motion and supporting documentation.

17 Simplicio Decl. ¶¶ 3-20; Kauffman Decl. ¶¶ 7-12.

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

- 20 • Continued correspondence with Settlement Class Members and supervision of
21 the work of the Claims Administrator;
- 22 • Preparing a motion for final approval;
- 23 • Researching and drafting a reply memorandum to this motion;
- 24 • Opposing objections, if any; and
- 25 • Preparing for, and traveling to the hearing on the motion for final approval;
- 26 • Attending to miscellaneous case management responsibilities, including any
27 status reports that this Court may order.

1 Simplicio Decl. ¶ 21; Kauffman Decl. ¶ 13. Indeed, Class Counsel estimates that
2 approximately 120 hours of work will be required to see this matter to completion, and that
3 number assumes that no objections will be filed. Simplicio Decl. ¶ 33; Kauffman Decl. ¶ 13.
4 These additional hours will almost certainly increase lodestar by at least \$55,000 and likely
5 more. *Id.* Thus, it is likely that by the time this matter is closed, the total lodestar will be
6 around \$352,351.20.

7 Of further note, Plaintiff's lodestar does not include activities by Class Counsel in
8 related pay-to-pay litigation, which enabled Class Counsel to gain expertise and oversee
9 developments in the case law more efficiently. Simplicio Decl., ¶ 4.

10 As attested to in Class Counsel's declarations, Class Counsel's rates are the prevailing
11 rates in the appropriate legal markets, and are reasonable. Simplicio Decl., ¶¶ 29-30;
12 Kauffman Decl. ¶¶ 17-18. To be conservative, Plaintiff's Counsel calculated their lodestar
13 using the LSI Laffey Matrix, which provides market rates for attorneys and staff working in
14 the Washington D.C. area. The Laffey Matrix "provides additional guidance and has been
15 cited with approval by other courts in this Circuit." *Lakim Indus., Inc. v. Linzer Prod. Corp.*,
16 No. 2:12-CV-04976 ODW, 2013 WL 1767799, at *8 (C.D. Cal. Apr. 24, 2013); *see Fernandez*
17 *v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *14 (C.D.
18 Cal. July 21, 2008) (accepting Laffey matrix to be used to approximate lodestar).

19 Bailey Glasser LLP and Tycko & Zavareei LLP both regularly use and obtain approval
20 for the Laffey matrix billing rates. Simplicio Decl., ¶ 30; Kauffman Decl. ¶ 17. The rates
21 charged by Class Counsel have been deemed reasonable in connection with the approval of
22 their fee applications in other recent matters. *Kumar v. Salov North America Corp.*, No. 14-CV-
23 2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017) (approving Tycko & Zavareei rates as
24 "reasonable and commensurate with those charged by attorneys with similar experience in
25 the market"); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL
26 1710075, at *6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D.
27 Ohio Aug. 7, 2018), Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D.

1 Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D.
2 Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v.*
3 *Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25,
4 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014). *Simplicio Decl.* ¶
5 30; *Kauffman Decl.* ¶ 17.

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

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

1 **b. In performing the cross-check, a modest multiplier is**
2 **appropriate.**

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

23 Here, Class Counsel’s requested fee award of \$548,613.33 effectively produces a 1.56
24 multiplier when compared to the expected lodestar of \$352,351.20. This low number is
25 reasonable, particularly in light of the risks taken on and the fact that such an excellent result
26 was achieved without extensive litigation.
27

1 **4. Plaintiffs' Counsel Should Be Awarded Costs.**

2 As part of Plaintiffs' Counsel's \$548,613.33 fee request, Plaintiffs' Counsel
3 additionally requests that the Court grant its application for reimbursement of \$10,689.20 in
4 expenses incurred in connection with the prosecution of this Litigation. These expenses are
5 itemized in the Simplicio and Kauffman Declarations. (Simplicio Decl., ¶ 34, Ex. A;
6 Kauffman Decl. ¶ 22) Plaintiff's Counsel is typically entitled to reimbursement of all
7 reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a
8 settlement. *See Harris*, 24 F.3d at 19; *Hughes Air West*, 557 F.2d at 769. Thus, the costs
9 should be awarded.

10 **III. CONCLUSION**

11 For all of these reasons, Plaintiff respectfully requests that the Court approve her
12 request for a service award of \$5,000 and for a fee award of \$548,613.33 and a cost award of
13 \$10,689.20 for Class Counsel.

14
15 Dated: January 11, 2021

Respectfully submitted,

16
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APPENDIX A

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
<i>Fernandez v. Rushmore</i> , 8:12-cv-00621-DOC-(KEXc) (C.D. Cal)*	122,000 loans	\$1,645,840	30%	Amount of funds distributed pro rate to class members automatically via check.	Rushmore agrees to stop charging Convenience Fees and continue to stop charging for a period of two years after entry of the Final Approval Order.	One third of the settlement fund.	\$5,000 for named plaintiff	Preliminary Approval Granted
<i>Elbert v. Roundpoint</i> , 20-cv-00250-MMC (N.D. Cal)*	123,000	\$1,600,000	35%	Amount of funds distributed pro rate to class members automatically via check.	As a result of the settlement, RoundPoint has agreed to cease charging Pay-to-Pay Fees for all borrowers in the United States effective June 1, 2021 and continuing until at least two years after the date the Court grants final approval of the Settlement.	One third of the settlement fund.	\$5,000	Preliminary Approval Granted
<i>Silveira v. M&T Bank</i> , 2:19-cv-06958-ODW-KS (C.D. Cal)*	110,871 loans	\$3.325 mil Common fund with no reversion.	34.7%	Amount of funds distributed pro rata to class members automatically via check.		25% of the settlement fund	\$5,000 for named plaintiff	Final Approval Granted

* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
<i>Phillips v. Caliber Home Loans, Inc., 19-cv-2711 (D. Minn)*</i>	322,404 loans	\$5 mil Common fund with no reversion	29.38%	Amount of funds distributed pro rata to class members automatically via pre-paid card or check.	As term of Settlement, Defendant agreed to stop charging fees nationwide for two years	To be determined but no more than 1/3 of the Settlement Fund	\$5,000 for each named plaintiff	Pending final approval
<i>Lembeck et al v. Arvest Central Mortgage Co., 4:20-cv-03277 (N.D. Cal.)*</i>	48,059	\$1,474,314 Common Fund with no reversion.	49.7%	Amount of fund distributed pro rata to all class members via a check without need to make a claim	As term of Settlement, Defendant will stop charging fees in class member states for three years.	25% of Settlement Fund	\$3,000 for each named plaintiff	Final Approval Granted

* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
<i>Morris v. PHH Mortgage Co., 0:2020-cv-60633 (S.D. Fla)</i>	659,304 loans	\$12.587 mil Payment Cap	20%	Class members must make claims to be reimbursed either 28% or 18% of fees paid; balance of fund reverts to Defendant	As term of Settlement, class member mortgages amended to permit Defendant to charge fees going forward indefinitely. For three years, fees will be reduced by 13.3%.	30% of the settlement fund	\$5,000 for each named plaintiff	Pending preliminary approval
<i>Sanders v LoanCare, LLC, 2:18-CV-09376-SJO(RAOx) (C.D. Cal)</i>	61,867 class members	\$3.4 mil Common fund with no reversion.	38.64%	Amount of funds distributed pro rata to class members. Current customers will receive a credit. Former customers must make a claim to receive payment via check.		25% of the common fund in fees and \$30,6881.71 in expenses	\$7,500 combined for named plaintiffs	Final Approval Granted December 4, 2020

* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
<i>Montesi et al v. Seterus, Inc</i> 2015CA010910 (Fla Cir. Ct) [‡]	57,615 loans	\$1.75 mil Common fund with no reversion.	35%	Amount of funds distributed to class members in form of check without the need to make a claim.		One third of fund, up to \$150,000 in expenses	\$10,000 for each named plaintiff	Final Approval Granted April 1, 2020
<i>McWhorter, et al v. Ocwen Loan Servicing LLC, et al</i> 2:15-cv-1831 (N.D. Ala.)	182,831 loans	\$9.7 mil. Common fund with no reversion.	30%	Amount of fund distributed pro rata via check to class members defendant is no longer servicing and via credit to class members defendant is still servicing.	As term of Settlement, class member mortgages amended to permit defendants to charge fees effective June 1, 2018. Fees will not increase until at least August 1, 2020. Defendant will provide disclosures on fee amount and avoidance.	One third of the fund, \$7,977.95 in expenses	\$15,000 for each named plaintiff	Final Approval Granted August 1, 2019

[‡] Plaintiff was represented by James Kauffman of Bailey Glasser LLP.

* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
<i>Garcia v. Nationstar Mortgage, LLC</i> , 2:15-cv-1808 (W.D. Wash.)	119,511 loans	\$3.875 mil Common fund with no reversion.	32%	Amount of fund distributed pro rata to class members via check. Class members must make a claim to receive payment.	As term of Settlement, Defendant will provide express notice to consumers prior to charging any Convenience Fees	25% of the fund, \$16,383.53 in expenses	\$5,000 for each named plaintiff	Final Approval Granted October 26, 2018
<i>Reddick v. Freedom Mortgage Corporation</i> 3:19-cv-02193 (N.D. Tex.)	187,757 accounts	\$2.25 mil Common fund with no reversion.	35%	Amount of funds distributed to class members in form of check without the need to make a claim.	As term of Settlement, Defendant agreed to stop charging fees from borrowers for a period of at least one year after entry of the Final Approval Order.	33.33% of the Gross Settlement Fund, \$19,982 in expenses	\$5,000 for each named plaintiff	Final Approval Granted December 17, 2021

* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

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10 Counsel for Plaintiff

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 PHITSAMAY FERNANDEZ, *on behalf*
16 *of herself and*
17 *all others similarly situated,*

18 Plaintiff,

19 v.

20 RUSHMORE LOAN
21 MANAGEMENT SERVICES LLC,

22 Defendant.

Case No. 8:21-cv-00621-DOC-(KESx)

**DECLARATION OF KRISTEN G.
SIMPLICIO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FEES, COSTS, AND SERVICE
AWARDS**

Date: February 14, 2022

Time: 8:30AM

Courtroom: 9D

Judge: Hon. David O. Carter

Date Filed: September 24, 2021

Trial Date: None set

1 I, Kristen G. Simplicio, declare:

2 1. I am an attorney admitted to practice in the State of California, a partner
3 at Tycko & Zavareei (“TZ”), and counsel of record for Plaintiffs and the Class in this
4 case. I have personal knowledge of all of the facts set forth in this Declaration unless
5 otherwise stated, and I am competent to testify to these facts if called on to do so.

6 2. I make this Declaration in support of Plaintiffs’ Motion for Fees, Costs,
7 and service awards. In that regard, I discuss, in the following order: (a) the history of
8 this litigation, which includes a summary description of the legal services provided by
9 TZ in this litigation, including expected work under the Settlement Agreement; (b) the
10 risks borne by TZ and the Plaintiffs; (c) TZ’s experience; and (d) the time, rate,
11 expenses, and other data underlying the application for attorneys’ fees and costs.

12 **A. History of the Litigation**

13 3. This settlement resolves this matter, which was originally filed in in
14 Orange County Superior Court (Case No. 30-2020-01128156-CU-AT-CXC) on January
15 31, 2020, and removed to this Court on April 2, 2021. Prior to filing of this case,
16 attorneys at my firm spent substantial time investigating the factual and legal bases for
17 the matters set forth in the complaints. Attorneys at my firm interviewed potential class
18 members, reviewed information about the fees charged by Rushmore Loan
19 Management Services (“Rushmore”) on its website, reviewed documents provided by
20 the Plaintiffs and other potential class members, and researched the applicable law.

21 4. The work done to bring these lawsuit in late 2019 and throughout 2020
22 was part of work done by my firm in connection with a series of lawsuits against
23 mortgage loan servicers for the collection of Pay-to-Pay fees from residential
24 borrowers. *See Austin v. Lakeview Loan Servicing*, No. 1:20-cv-01296-RDB (D. Md.);
25 *Bingham v. Caliber Home Loans*, No. 1:20-cv-00338-TDS-LPA (M.D.N.C.); *Brown v.*
26 *Lakeview Loan Servicing*, No. 3:20-cv-00280-FDW-DSC (W.D.N.C.); *Brown v. PennyMac*
27 *Loan Services*, No. 5:20-cv-01052-FMO(KKx) (C.D. Cal.); *Cheney v. Lakeview Loan*
28 *Servicing*, No. 3:20-cv-03016 (N.D. Cal.); *Dawkins v. Carrington Mortgage Co.*, No. 20-cv-

1 60998 (S.D. Fla.); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-MMC(N.D.
2 Cal.); *Owoc v. LoanCare LLC*, No. 20-cv-60805-RS (M.D. Fla.); *McFadden v. Nationstar*
3 *Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Ochondo v. Specialized*
4 *Loan Servicing*, No. 1:20-cv-00701 (D. Colo.); *Tabat v. Select Portfolio Services*, No. 3:19-cv-
5 01264-HES-JRK (M.D. Fla.); *Thomas-Lawson v. Carrington Mortgage Co.*, No. 1:19-cv-
6 03567-CCB (D.Md.) (collectively “Related Litigation”). Each of these cases was filed
7 with my co-counsel, James Kauffman of Bailey Glasser LLP (“BG”). As discussed in
8 more detail in the concurrently filed Declaration of James Kauffman, Mr. Kauffman
9 and BG had filed several other similar cases against other mortgage loan services before
10 our two firms worked on these matters.

11 5. Throughout the work on these Lawsuits and the Related Litigation, TZ
12 worked closely with BG to formulate case strategy. Work was divided between the
13 firms to avoid duplication of efforts. In the course of billing, efforts were also
14 undertaken to ensure that work performed that collectively benefited these Lawsuits
15 as well as Related Litigation was not disproportionately being attributed to the Lawsuits
16 herein. Rather, the billing records and work performed herein do not reflect every
17 hour of work performed that directly benefited this litigation; rather, counsel was able
18 to occasionally rely on templates or research done in conjunction with cases that
19 moved slightly ahead of this case.

20 6. BG and TZ divided the work in managing and litigating the cases, taking
21 care to avoid duplication of work while ensuring both firms remained apprised of the
22 status of and deadlines in all cases. As discussed in more detail in paragraphs 26-27, I
23 have handled a number of consumer matters in California and thus, am more familiar
24 with California law and procedure, whereas Mr. Kauffman and BG had handled a
25 number of other cases against mortgage loan servicers for the collection of Pay-to-Pay
26 fees from residential borrowers, and offered factual expertise.

27 7. Throughout this case, both firms participated in the drafting and
28 preparing of written work product. TZ consulted with clients and prepared the

1 complaint. TZ sought BG's consultation in the preparation, due to the BG's prior
2 experience in this area.

3 8. Shortly after the filing of the Complaint, the Parties began discussions
4 regarding the claims in the case, case management, and the possibility for settlement.
5 BG and TZ participated in these communications.

6 9. Due to the COVID-19 pandemic, the Superior Court reduced its
7 operations and around the time Rushmore filed its demurrer on March 20, 2021, issued
8 the first of many general orders setting forth the parameters of its reduced operations.
9 Until the Superior Court resumed full operations, TZ monitored general orders and
10 press releases from the Court to stay abreast of developments. Indeed, the general
11 orders caused some uncertainty regarding the timeline and deadlines in the case, TZ
12 investigated the impact each had on the deadlines in this case.

13 10. TZ and BG held assorted discussions with counsel for Rushmore to
14 discuss the impact of these orders on the case, often in connection with the preparation
15 of status reports and submissions required by the rules of the Superior Court, which
16 TZ typically took the lead in drafting, with input from BG.

17 11. With BG's consultation, TZ prepared Initial Disclosures, Requests for
18 Interrogatories, Requests for Admission, and Requests for the Production of
19 Documents in the spring of 2020.

20 12. In August 2020, TZ and BG divided up responsibility for the drafting of
21 the opposition to the demurrer, while TZ oversaw the finalization of the brief. With
22 consultation and assistance from others at TZ and BG, I prepared for and argued the
23 demurrer in November 2020. An attorney from BG, Victor Woods, second chaired.
24

25 13. Plaintiff was successful on the demurrer. Shortly thereafter, the parties
26 began discussing settlement. TZ worked with BG on settlement strategy and
27 negotiations. While BG often led settlement communications, TZ took the lead in
28 drafting the mediation statement, with BG's consultation. Attorneys from TZ and BG
attended the mediation on February 16, 2020, which was not successful.

1 14. Following the mediation, the parties continued efforts to resolve the
2 matter. Because it was not clear that the matter would settle, TZ drafted an amended
3 complaint, with input from BG. The Amended Complaint was filed on March 3, 2021
4 and added claims for a nationwide class. On April 2, 2021, Rushmore removed the
5 matter to this Court.

6 15. Around that time, Rushmore obtained new counsel, and the parties
7 continued settlement discussions. Typically, substantive discussions included both me
8 and Mr. Kauffman. Shortly thereafter, the parties reached a settlement in principle.

9 16. While Rushmore prepared the settlement papers and class notices, BG
10 took the lead in reviewing and vetting claims administrator proposals, with TZ's
11 consultation.

12 17. With assistance from TZ, BG took primary responsibility for preparing
13 the motion for preliminary approval. TZ took primary responsibility for preparing the
14 Second Amended Complaint, with input from BG.

15 18. In connection with the filing of these papers, various case management
16 issues needed to be researched or addressed. The two firms divided these
17 responsibilities.

18 19. Since the distribution of notice, TZ has received approximately two
19 dozen inquiries from class members. TZ has ensured that all inquiries receive a timely
20 response.

21 20. With BG's consultation, TZ prepared the fee petition. Each firm drafted
22 their respective declarations.

23 21. The firms will endeavor to divide up the remaining responsibilities, which
24 will include:

- 25 - Preparation of the motion for final approval;
- 26 - Evaluate and respond to any objections received, if any;
- 27 - Communicating with the Plaintiffs and class members regarding the status
28 of the settlement;

- 1 - Preparing for, traveling to, appearing for, and arguing the motion for final
- 2 approval;
- 3 - Overseeing the distribution of settlement funds to class members.

4 22. In the course of TZ's work on these matters, attorneys at TZ, including
5 me, communicated with the Plaintiff. In my view, the Plaintiff took on a substantial
6 risk by bringing claims against the company that currently services her home loans.
7 Plaintiff also undertook reputational risk, as her association with this lawsuits is
8 publicly available. Plaintiff worked with counsel to provide information regarding her
9 experiences and claims to enable her to join this case and represent a class throughout
10 litigation that has progressed for over two years. She also conducted searches of her
11 personal records and shared sensitive information, including bank records and
12 mortgage documents. And Plaintiff remained actively involved in the litigation after
13 the Settlement was reached.

14 **B. Risks Borne By TZ**

15 23. In accepting this case, TZ bore considerable risk. TZ took this case on a
16 fully contingent basis, meaning that we were not paid for any of our time, and that we
17 paid all costs and out of pocket expenses without any reimbursement to date. From
18 the outset, TZ recognized that it would be contributing a substantial amount of time
19 and advancing significant costs in prosecuting this class action, with no guarantee of
20 compensation or recovery, in the hopes of prevailing against a well-funded defense.
21 During the pendency of the litigation, TZ turned away other work.

22 24. The theories advanced in this case were novel. While the Superior Court
23 accepted Plaintiff's view of the law, other courts have not. Indeed, TZ and BG's clients
24 in a similar pay-to-pay lawsuit were recently on the losing side of a motion to dismiss
25 in this District. *See Thomas-Lawson v. Carrington Mortg. Servs., LLC*, No.
26 220CV07301ODWEX, 2021 WL 1253578 (C.D. Cal. Apr. 5, 2021). While that matter
27 is on appeal, and I believe it will be resolved favorably for mortgage loan borrowers,
28

1 there is no guarantee. The pendency of that appeal could have stayed proceedings in
2 this case, delaying resolution and perhaps precluding any recovery.

3 C. TZ's Experience

4 25. A true and correct copy of the firm resume of TZ was attached to the
5 Declaration of Hassan A. Zavareei in Support of Plaintiffs' Motion for Preliminary
6 Approval, filed September 10, 2021 at ECF No. 27-1.

7 26. I further note that prior to joining TZ in February 2020, I spent eleven
8 years practicing in California at Gutride Safier LLP. Gutride Safier specializes in
9 consumer class action litigation and has been named class counsel countless times in
10 state and district courts in California and nationwide. I worked on a number of cases in
11 which the firm was appointed class counsel in California that obtained classwide
12 settlements, including, but not limited to: *Kumar v. Safeway, Inc. et al.*, RG14726707
13 (Super. Ct. of Cal. Cty. of Alameda); *Kumar v. Salov North America Corp., et al.*, 4:14-cv-
14 02411 (N.D. Cal.); *Koller v. Deoleo USA, Inc.*, Case No. 3:14-CV-02400-RS (N.D. Cal.);
15 *Petit v. Procter & Gamble Co.*, No. 15-cv-02150 (N.D. Cal.); *Machan v. Procter & Gamble et*
16 *al.*, 14-538168 (Super. Ct. of Cal. Cty. of San Francisco); *McArdle v. AT&T Mobility*,
17 3:2009-cv-01117 (N.D. Cal.); *Miller v. Ghirardelli Chocolate Company*, 3:2012-cv-4936
18 (N.D. Cal.); *Just Film, et al v. Merchant Services, Inc.*, et al 3:2010-cv-1993 (N.D. Cal).

19 27. TZ was also named Class Counsel, Lead Counsel, or Settlement Class
20 Counsel in the first four cases identified in the preceding paragraph, as well as the
21 following consumer class actions: *Shannon Schulte, et al. v. Fifth Third Bank*, No. 1:09-cv-
22 06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick*
23 *Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson County,
24 Mo.); *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha
25 County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a*
26 *Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley*
27 *and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir.
28 Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al.*, No. 1:10-cv-

21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.); *Wong v. TrueBeginnings LLC d/b/a True.com*, No. 3-07 Civ. 1244-N (N.D. Tex.); *Geis v. Airborne Health, et. al.*, Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); *Dennings, et al. v. Clearwire Corporation*, No. 2:10-cv-01859 (W.D. Wash.); *In Re: Higher One Oneaccount Marketing And Sales Practices Litigation*, No. 3:12-md-02407 (VLB) (D. Conn.); *Galdamez v. I.Q. Data International, Inc.*, No. 15-cv-1605 (E.D. Va.); *Brown v. Transurban USA*, No. 15-cv-494 (E.D. Va.), *Gatinella et al. v. Michael Kors (USA)*, 14-cv-5731 (S.D.N.Y.); *Grayson, et al. v. General Electric Company*, 3:13-cv-1799 (D. Conn.); *Farrell, et al. v. Bank of America, N.A.*, No. 3:16-00492 (S.D. Cal.); *In re: APA Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, No. 1:16-cv-02900 (N.D. Ill.); *Scott, et al. v. JPMorgan Chase & Co.*, No. 17-cv-249 (D.D.C.); *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495 (E.D. Va.); and *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio). Each of these actions has resulted in a settlement that has been finally approved.

D. Lodestar and Expenses for TZ

28. Based on the time records of TZ, TZ has spent 318.60 hours prosecuting this Lawsuit through December 31, 2021. The total number of hours, as well as the lodestar computed at our 2022 rates, is shown in the following table:

Tycko & Zavareei LLP Fernandez v. Rushmore Lodestar

Attorney	Hours	Adjusted Laffey Rate	Total (Adjusted Laffey Rate)
Katherine Aizpuru	10.30	\$676.00	\$6,962.80
David Lawler	0.40	\$919.00	\$367.60
Mallory Morales	4.60	\$468.00	\$2,152.80
Hassan Zavareei	18.30	\$919.00	\$16,817.70
V Prentice	21.10	\$468.00	\$9,874.80
Kristen Simplicio	118.70	\$764.00	\$90,686.80
Fellows	Hours	Adjusted Laffey Rate	Total (Adjusted Laffey Rate)
Jennifer Thelusma	76.90	\$381.00	\$29,298.90
Paralegals/Law Clerks	Hours	Adjusted Laffey Rate	Total (Adjusted Laffey Rate)
Nicole Porzenheim	3.20	\$208.00	\$665.60
Collin Hoover	42.10	\$208.00	\$8,756.80
James Morrison	14.80	\$208.00	\$3,078.40
Aaron McReynolds	5.70	\$208.00	\$1,185.60
Maura Dunn	1.30	\$208.00	\$270.40
Connor Rowe	1.20	\$208.00	\$249.60
LODESTAR	318.60		\$170,367.80

29. I reviewed the time entries, and believe the hours expended were reasonable and necessary to securing the result in this case. The above chart was prepared from contemporaneous detailed daily time records regularly prepared and maintained by TZ utilizing timekeeping software to which all employees have access. In my opinion, the time spent by attorneys and staff of TZ was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour, TZ attorneys and staff worked efficiently and avoided unnecessary work. The hourly rates are based on the typical hourly rates for lawyers of similar experience in the communities in which Class Counsel practice.

30. The hourly rates shown for the attorneys at Tycko & Zavareei are our 2021 rates charged as delineated by the Adjusted Laffey Matrix

1 (http://www.laffeymatrix.com/), which provides market rates for attorneys working in
2 the Washington, D.C. area. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir.
3 2019) (discussing the history and basis of the Laffey matrix). Although the Adjusted
4 Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with
5 the Adjusted Laffey Matrix to my firm in a number of cases. *See, e.g., Kumar v. Salov*
6 *North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017);
7 *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075, at *6
8 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7,
9 2018), Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.);
10 *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D.
11 Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.);
12 *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D.
13 Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C.
14 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009); *Harris et al.*
15 *v. Farmers Insurance Exchange et al.*, BC579498 (Cal. Super. Ct., L.A. Cty. Aug. 30, 2020)
16 (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by
17 Washington, D.C. attorneys).

18 31. The total number of hours is based only on the hours reasonably
19 expended to achieve an excellent result for the Settlement Class. Our firm coordinated
20 our efforts in the litigation of this case with our co-counsel to ensure that there was no
21 duplicative or unnecessary work. Because our firm is experienced in litigating actions
22 of this type, we were able to efficiently divide tasks based on expertise.

23 32. In my opinion, the time expended and expenses incurred in prosecuting
24 this action were reasonable and necessary for the diligent litigation and fair resolution
25 of this matter. The lodestar reflected in the above extract does not include all of the
26 time to be devoted to preparing for and appearing at the final approval hearing, or
27 dealing with post-hearing matters.

1 33. I anticipate that TZ and BG will devote substantial additional time to this
2 case through its completion. Based on my experience, I predict that the additional work
3 will cause the total lodestar at the close of this case to exceed the amount requested.
4 Specifically, the following tasks (and estimated time to complete the work) will likely incur
5 at least \$30,000 in lodestar, and more if there are objections:

- 6 - Preparation of this petition after January 1, 2022 (15 hours);
- 7 - Monitoring notice administration (3 hours);
- 8 - Evaluating and responding to any objections received, if any (3-25 hours);
- 9 - Preparing the motion for final approval and related declarations, including
10 reviewing time records for updated fee and lodestar information and
11 working with the notice administrator on necessary documentation (25
12 hours);
- 13 - Assisting with preparations on the motion for final approval (5 hours);
- 14 - Communicating with the Plaintiff and class members regarding the status of
15 the settlement (5-10 hours);
- 16 - Overseeing the distribution of settlement funds to class members (5 hours);
- 17 and
- 18 - Other routine case management and settlement administration matters (5
19 hours).

20 34. Tycko & Zavareei also carried some of the costs in this litigation—taking
21 on this risk for the putative class members. Specifically, Tycko & Zavareei incurred
22 \$9,897.19 in unreimbursed case-related expenses, including expenses related to filing,
23 travel, copying, and case administration. Expenses are accounted for and billed
24 separately and are not duplicated in my firm’s professional billing rate. TZ has not
25 received reimbursement for expenses incurred in connection with this litigation. The
26 actual expenses incurred in the prosecution of this case is reflected on the computerized
27 accounting records of my firm prepared by bookkeeping staff, based on receipts and
28 check records, and accurately reflect all actual expenses incurred. These expenses were

1 necessary to prosecuting litigation of this size and complexity on behalf of the
2 Settlement Class, and they are typical of expenses regularly awarded in large-scale class
3 actions. Indeed, because Tycko & Zavareei was responsible for advancing all expenses
4 incurred, Tycko & Zavareei had a strong incentive not to spend any funds unnecessarily.
5 An itemized list of Tycko & Zavareei's expenses is attached hereto as **Exhibit A**.

6 I declare under penalty of perjury under the laws of California that the foregoing
7 is true and correct, and that this declaration was executed in Washington, DC on
8 January 11, 2022.

9 

10 _____
11 Kristen G. Simplicio
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EXHIBIT A

Tycko & Zavareei LLP Fernandez v. Rushmore Expenses
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Date	Description	Value
11/7/2019	Postage	\$1.00
12/1/2019	Photocopies	\$0.45
2/1/2020	Westlaw online research in Jan 2020	\$8.21
2/26/2020	One Legal serving complaint to defendant and proof of service on 2/8/20	\$92.20
2/26/2020	One Legal LLC filing of proposed summons	\$16.20
2/26/2020	One Legal LLC filing of complaint and court initiation fee	\$1,494.56
4/28/2020	Postage	\$0.50
4/30/2020	Photocopies	\$0.60
5/29/2020	Efiling fees by One Legal	\$15.20
6/1/2020	Westlaw online research during May 2020	\$140.08
6/26/2020	eFiling fees provided by One Legal on 5/29/20	\$16.20
6/26/2020	Conference calls in April 2020	\$8.54
6/30/2020	Photocopies	\$6.45
7/1/2020	Westlaw online research in Jun 2020	\$44.89
7/27/2020	Court document retrieval from Orange County Superior Court	\$7.50
7/31/2020	Photocopies	\$0.15
9/1/2020	Aug 2020 Westlaw online research	\$218.52
9/29/2020	Court filing by OneLegal on 8/31/20	\$16.20
9/29/2020	Court filing by OneLegal on 9/3/20	\$40.50
9/29/2020	Court filing by OneLegal on 9/3/20	\$16.20
9/29/2020	Court filing by OneLegal on 9/5/20	\$35.75
9/29/2020	Court filing by OneLegal on 9/10/20	\$36.00
10/1/2020	Sep 2020 Westlaw Online Legal Research	\$13.70
10/30/2020	Conference calls during the month of Aug 2020	\$21.47
11/1/2020	Westaw online legal research in October 2020	\$7.58
11/30/2020	Courtcall on 10/28/20	\$94.00
11/30/2020	Courtcall on 11/2/20	\$94.00
11/30/2020	Onelegal filing fee services on 10/21, 22, 23 and 11/9	\$81.00
12/7/2020	Attendance at hearing on 10/30/20 by Veritext invoice 4700192	\$531.00
12/30/2020	Filing of Notice by OneLegal LLC on 11/18/20	\$16.20
1/31/2021	Jan 2021 Westlaw online research	\$37.02
2/19/2021	Judcate West services on 1/25/21	\$5,050.00
2/19/2021	Court document retrieval from Orange County Superior Court on 1/29/21	\$7.85
2/28/2021	Feb 2021 Westlaw online research	\$26.14
3/5/2021	Minimum charge for court attendance on 2/24/21 provided by Veritext invoice 4852248	\$450.00

3/9/2021	Case management conference on 2/24/21 provided by Veritext invoice 4874514	\$125.00
3/30/2021	Court document retrieval from Orange County Superior Court on 2/17/21	\$15.00
3/30/2021	Court call for K. Simplicio appearance on 2/22/21	\$94.00
3/30/2021	Filing charges by OneLegal on 3/4/21	\$40.67
3/30/2021	Court document retrieval from Orange County Superior Court on 2/17/21	\$7.92
3/30/2021	Court reporter for demurrer hearing by IDepo Reporters on 2/22/21	\$226.00
3/30/2021	Efiling of amended complaint by OneLegal on 3/6/21	\$48.55
3/30/2021	2nd efile of amended complaint by OneLegal on 3/9/21	\$48.39
4/28/2021	Conference calls during the month of February 2021	\$9.75
4/28/2021	Conference calls during the month of February 2021	\$6.28
4/30/2021	Apr 2021 Westlaw online research	\$57.76
5/27/2021	April 2021 conference calls	\$5.00
5/31/2021	May 2021 Westlaw online research	\$5.05
6/30/2021	April 2021 Westlaw online research	\$7.04
7/31/2021	July 2021 Westlaw online research	\$8.37
8/16/2021	LoopUp conference calls in Jun 2021	\$0.10
8/31/2021	Pro hac vice admissions for J. Kauffman on 8/2/21	\$500.00
8/31/2021	Aug 2021 Westlaw online research	\$7.56
9/16/2021	Pacer Document Retrieval	\$1.00
9/16/2021	Pacer Document Retrieval	\$0.60
10/1/2021	Sep 2021 Westlaw online research	\$18.38
10/28/2021	LoopUp conference calls in Aug 2021	\$9.01
10/31/2021	Oct 2021 Westlaw online research	\$7.74
11/30/2021	Nov 2021 Westlaw online research	\$2.16
	TOTAL	\$9,897.19

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6 202-463-2103 (j)
7 jkauffman@baileyglasser.com

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10 475 14th Street, Suite 610
11 Oakland, CA 94612
12 Telephone: (510) 207-8633
13 Email: twalburg@baileyglasser.com

14 Counsel for Plaintiff

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 PHITSAMAY FERNANDEZ, *on behalf*
19 *of herself and*
20 *all others similarly situated,*

21 Plaintiff,

22 v.

23 RUSHMORE LOAN
24 MANAGEMENT SERVICES LLC,

25 Defendant.

Case No. 8:21-cv-00621-DOC-(KESx)

**DECLARATION OF JAMES L.
KAUFFMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FEES, COSTS, AND SERVICE
AWARDS**

Date: February 14, 2022
Time: 8:30AM
Courtroom: 9D
Judge: Hon. David O. Carter

Date Filed: September 24, 2021
Trial Date: None set

1 I, James L. Kauffman, declare:

2 1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice
3 before this Court as counsel of record for Plaintiff and the Settlement Class in this
4 case. I have personal knowledge of all of the facts set forth in this Declaration unless
5 otherwise stated, and I am competent to testify to these facts if called on to do so.

6 **BAILEY & GLASSER LLP**

7 2. Bailey & Glasser LLP was founded in 1999 and has an established
8 reputation for successfully prosecuting and defending multimillion dollar cases,
9 including complex class actions. With sixteen offices across the country from Boston,
10 MA to Oakland, CA, our lawyers routinely handle high-stake litigation and other
11 lawyers call upon our firm routinely because of our unique blend of resources and trial
12 experience.

13 3. My firm, Bailey & Glasser, has obtained millions of dollars in restitution
14 and debt forgiveness for consumers by successfully asserting state and federal
15 consumer credit law claims on their behalf. A partial listing of those cases includes the
16 following:

- 17 • *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.)
18 (\$20.5 million jury verdict in a class action trial against Dish Network,
19 alleging Dish was liable for more than 51,000 telemarketing calls placed by a
20 defunct DISH dealer to persons whose telephone numbers were on the
National Do Not Call Registry).
- 21 • *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100%
22 refunds made in class action settlement for California Uber riders charged
23 approximately \$2.2 million in “airport fee tolls” which Uber did not pay to
California airports).
- 24 • *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County,
25 Mass.) (class action settlement for failure to pay all hours worked).
- 26 • *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class
27 action settlement in favor of state-wide class of borrowers denied consumer
rights disclosures).
- 28 • *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million
TCPA class settlement).

- 1 • *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of
2 Mercer County, West Virginia) (wage payment class settlement).
- 3 • *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class
4 action settlement for Massachusetts borrowers regarding late fees).
- 5 • *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH
6 (D. Mass.) (consumer class action resulting in the establishment of a
7 \$750,000 settlement fund and \$20 million in debt relief).
- 8 • *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of
9 Monongalia County, West Virginia) (consumer class action settlement).
- 10 • *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class
11 action settlement in favor of state-wide class of borrowers denied consumer
12 rights disclosures).
- 13 • *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D.
14 W. Va.) (wage payment class action settlement totaling \$750,000).
- 15 • *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37
16 million settlement on behalf of state-wide class of car owners sent allegedly
17 flawed repossession notices).
- 18 • *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000
19 settlement on behalf of class of California consumers).
- 20 • *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.)
21 (class action settlement worth more than \$5 million, alleging violations of
22 state Consumer Goods Rental Protection Act).
- 23 • *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W.
24 Va.) (loan servicing case settled for \$1.5 million).
- 25 • *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha
26 County, West Virginia) (\$2.4 million nationwide settlement of class action
27 brought under the Telephone Consumer Protection Act).
- 28 • *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio)
((\$22 million settlement on behalf of state-wide class of car owners subject
to flawed repossession practices).
- *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W.
Va.) (\$700,000 settlement of West Virginia loan servicing class action
alleging National City Bank charged late loan-payment fees in violation of
state law).
- *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action
against Jackson Hewitt, Inc. for class of California consumers who

1 purchased the tax preparer's refund anticipation loan product, settled for
2 \$672,000).

- 3 • *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln
4 County, W. Va.) (predatory lending class action for over 100 West Virginia
5 mortgage borrowers, settled for just over \$9 million, including more than
6 \$4.9 million write down in mortgage balances, \$4.15 million in cash, and
7 credit repair).
- 8 • *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W.
9 Va.) (in a case litigated for five years in venues ranging from the West
10 Virginia trial and appellate courts, to federal district courts in West Virginia
11 and Illinois, to the United States Supreme Court, firm lawyers served as lead
12 counsel in winning a \$62.5 million multistate class action settlement against
13 H&R Block. The case involved first-impression claims relating to the
14 application of West Virginia's credit-services organization statute to Block's
15 refund anticipation loan product. Other firms across the country litigated
16 cases against Block alleging similar claims, without success, for more than
17 ten years. West Virginia's share of the settlement was \$32.5 million).
- 18 • *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga
19 County, Ohio) (\$15 million settlement in favor of state-wide class of car
20 owners sent flawed repossession notices).
- 21 • *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of
22 Mercer County, West Virginia) (predatory mortgage lending class action
23 settled for \$8.1 million on behalf of 140 class members).
- 24 • *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio
25 County, West Virginia) (\$7 million nationwide class action settlement
26 alleging violations of the federal Telephone Consumer Protection Act).
- 27 • *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County,
28 Penn.) (\$14 million settlement on behalf of state-wide class of car owners
allegedly deprived of post-repossession disclosures).
- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock
County, West Virginia) (\$3.3 million consumer class action settlement).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172
million settlement on behalf of nationwide class of home mortgage
borrowers injured by predatory mortgage lending practices).

- 1 • *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.)
2 (\$55 million settlement on behalf of nationwide class of borrowers subject
3 to predatory loan servicing practices).
- 4 • *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.)
5 (\$405,000 class action settlement in an ERISA action).

EXPERIENCE

6 4. I am licensed and in good standing to practice law in the State of Florida,
7 State of Arkansas, and District of Columbia. I have been a member of the Arkansas Bar
8 since 2003 after I obtained my J.D. from the University of Florida Levin College of Law
9 in December 2002. For more than 18 years, I have served as class and appellate counsel
10 in a wide variety of cases including deceptive trade practices, securities fraud, ERISA,
11 and consumer protection. I am a member of Public Justice, the Florida Bar Association,
12 the Arkansas Bar Association, and the American Association of Justice (AAJ).

13 5. I was appointed as lead or co-lead class counsel in multiple other class
14 actions challenging a loan servicer's practice of collecting Pay-to-Pay fees. These include
15 two such cases in California: *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-
16 04303-WHO (N.D.Cal.) and *Lembeck et. al v. Arvest Central Mortgage Co.*, No. 3:20-cv-
17 03277-vc (N.D. Cal.)(final approval of settlement granted). I was also appointed class
18 counsel in *Pierce v. Statebridge Company, LLC*, No. 1:20-cv-00117-WO-JLW (M.D.
19 N.C.)(ECF# 36)(final approval of settlement granted); *Montesi v. Seterus, Inc.*, Case No.
20 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.)(class certification
21 granted; case ultimately settled on behalf of class of Florida borrowers for \$1.75 million
22 which represented 35% of the amount collected by Seterus during the class period and
23 final approval of class settlement granted); and *Caldwell v. Freedom Mortgage Corp.*, No.
24 3:19-cv-02193-N (N.D. Tex.)(final approval of class settlement granted).

25 6. I am currently representing proposed class representatives in other
26 pending class actions in courts across the country challenging the legality of the
27 collection of Pay-to-Pay from residential borrowers. See *Langston v. Gateway First Bank*,
28 No. 5:20-cv-01902 (C.D. Cal.); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-

1 MMC(N.D. Cal.); *Phillips v. Caliber Home Loans*, No. 0:19-cv-02711 (D. Minn.);
 2 *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.);
 3 *Thomas-Lawson v. Carrington Mortgage Co.*, No. 1:19-cv-03567-CCB (D.Md.); *Urbina v.*
 4 *Freedom Mortgage Co.*, No. 1:19-cv-01471 (E.D. Cal.); *Williams v. PHH Mortgage Corp.*, No.
 5 20-cv-04018 (S.D.Tex.); *Williams v. Lakeview Loan Servicing, LLC et al.*, Case No 4:20cv-
 6 01900 (S.D. Tex); and *Wilson v. Santander Consumer USA, Inc.*, No. 4:20-cv-00152-KGB
 7 (E.D. Ark.).

8 **ATTORNEYS’ FEES AND COSTS**

9 7. Bailey & Glasser started working on this case in 2020 when it investigated
 10 and filed the original complaint in this matter.

11 8. Bailey & Glasser attorneys and paralegals spent more than 200 hours
 12 litigating this case to date. A summary of the hours litigated is as follows:

Name	Title	Hours	Rate	Lodestar
Attorneys				
Kauffman, James L.	Partner	92.5	\$ 759.00	\$ 70,207.50
Littles, Britney A.	Attorney	33.6	\$ 450.00	\$ 15,120.00
Walburg, Todd A.	Partner	7.5	\$ 759.00	\$ 5,692.50
Woods, Victor	Attorney	35.4	\$ 672.00	\$ 23,788.80
Attorney Subtotal				
Lodestar		169		\$ 114,808.80
Paralegals				
Pierre, Vanessa K.	Paralegal	35.2	\$ 206.00	\$ 7,251.20
Mason, Arnold	Paralegal	23.9	\$ 206.00	\$ 4,923.40
Paralegal Subtotal				
Lodestar		59.1		\$12,174.60
TOTAL LODESTAR		228.1		\$ 126,983.40

23 9. Attorneys and paralegals from Bailey & Glasser (“BG”) worked closely
 24 with our co-counsel Tycko & Zavareei (“TZ”). Work was divided between the firms
 25 to avoid duplication of efforts. Where possible, BG and TZ endeavored to divide
 26 work based on which firm’s attorneys had the most experience in a given area.

27 10. Throughout this case, both firms participated in the drafting and
 28 preparing of written work product. BG attorneys and paralegals worked with TZ on

1 settlement strategy and negotiations. Attorneys from TZ and BG attended the first
2 mediation session with Jill Sperber, which drew the parties closer to a resolution, but
3 did not result in an agreed settlement.

4 11. Attorneys from TZ and BG continued to negotiate with counsel for
5 Rushmore and this time, the parties were able to reach a settlement and agree on the
6 principal terms of the Settlement.

7 12. After the Court granted preliminary approval to the settlement, the
8 Settlement Administrator caused the notice to be mailed to all class members. My firm
9 received several phone calls a day from class members inquiring about the notice. I
10 personally returned the majority of these calls, as my number and name appeared first
11 in the Notice advising class members who to call if they had question. Over time, the
12 phone calls from class members have decreased in volume, but as of the time of this
13 Declaration, I continue to receive class member inquiries on an almost daily basis.

14 13. The hours summarized above do not include additional work that will be
15 performed responding to additional class member inquiries about the settlement,
16 finalizing and filing the attorney fee petition, attending the final approval hearing, or
17 assisting the settlement administration with issues that may arise related to the
18 distribution of the Settlement Fund. I anticipate that this additional work will involve
19 an additional 55 hours of work and \$25,000.00 of lodestar for the attorneys and
20 paralegals at my firm.

21 14. A firm resume detailing the experience of the attorneys who worked on
22 this matter is enclosed as **Exhibit A** to this Declaration.

23 15. Time records were kept contemporaneously. For each task performed,
24 staff accounted for their time in 1/10th of an hour (6-minute) increments or shorter,
25 and included a brief narrative description of the work performed. Staff did not “block
26 bill.”

27 16. I personally reviewed the time records and removed any timekeepers that
28 logged less than 5 hours. I also reviewed the time entries to ensure there were no

1 duplicative or erroneous entries. I removed any time entries that were not supported
2 by detailed descriptions of the work performed.

3 17. The hourly rates shown for the attorneys at Bailey & Glasser LLP are our
4 2020-2021 rates charged as delineated by the Adjusted Laffey Matrix
5 (<http://www.laffeymatrix.com/>), which provides market rates for attorneys working in
6 the Washington, D.C. area. *See, e.g., DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir.
7 2019) (discussing the history and basis of the Laffey matrix). Although the Adjusted
8 Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with
9 the Adjusted Laffey Matrix to my firm in a number of cases. *See, e.g., Kumar v. Salov*
10 *North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017);
11 *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075, at *6
12 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7,
13 2018), Dkt. 179; *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.);
14 *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D.
15 Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.);
16 *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D.
17 Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C.
18 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009); *Harris et al.*
19 *v. Farmers Insurance Exchange et al.*, BC579498 (Cal. Super. Ct., L.A. Cty. Aug. 30, 2020)
20 (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by
21 Washington, D.C. attorneys).

22 18. I have reviewed the *Laffey Matrix* and state that each of the attorneys who
23 performed work on this matter has been matched to their position in the firm and years
24 of experience at the time work was performed and the rate during the period of time
25 work was performed in this Action, which for example, reports an hourly rate of \$759
26 for attorneys with at least 8 years of experience and \$206 for paralegals. This calculation
27 results in a lodestar for Bailey & Glasser, LLP's attorneys and paralegals of **\$126,983.40**.
28

1 19. I personally have several hourly clients who pay me rates of \$600-900 per
 2 hour or more for attorneys and \$250 per hour for paralegals of the same experience as
 3 those who performed work in this matter.

4 20. In my opinion, the time expended and expenses incurred in prosecuting
 5 this action were reasonable and necessary for the diligent litigation and fair resolution
 6 of this matter. The lodestar reflected in the above extract does not include all of the
 7 time to be devoted to preparing for and appearing at the final approval hearing, or
 8 dealing with post-hearing matters.

9 21. I anticipate that Class Counsel will devote substantial additional time to this
 10 case after the date of this Declaration, including: (1) finalizing this application; (2)
 11 preparing for and attending the final approval hearing; (3) monitoring the claims and
 12 distribution process; corresponding with the claims administrator; (4) managing the
 13 extended payment plan; (5) ensuring compliance with the injunctive relief; and (6)
 14 responding to Class Member inquiries.

15 22. Bailey & Glasser also carried some of the costs in this litigation—taking on
 16 this risk for the putative class members. Specifically, Bailey & Glasser incurred \$792 in
 17 unreimbursed case-related expenses. These expenses are entirely related to court fees,
 18 outside delivery and printing. These expenses do not include any travel, meals, legal
 19 research, copying or postage costs, which were expenses incurred by Class Counsel but
 20 are not sought to be reimbursed. An itemized list of Bailey & Glasser, LLP’s expenses is
 21 as follows:

Expense	Amount
Court Fees	\$ 692.70
Outside Delivery Services	\$ 61.06
Outside Printing	\$ 38.25
Total	\$ 792.01

26
 27 23. I declare under penalty of perjury under the laws of California that the
 28 foregoing is true and correct.

1 Executed this 11th day of January, 2022 in Washington, DC.
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5 _____
6 James L. Kauffman
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EXHIBIT A

FIRM RESUME

Bailey & Glasser brings a trial-focused litigation approach to its wide-ranging and successful class action and mass torts practice. The firm has the resources, experience and expertise to go toe-to-toe with some of the wealthiest corporations in the world. We litigate class action cases involving predatory mortgage lending, illegal loan servicing, antitrust violations, breaches of warranty, employee rights, mismanaged pension funds, ERISA, and a host of other consumer and employee matters.

The firm concentrates its litigation practice in the areas of complex commercial mass torts and class action litigation. The firm currently represents among others the States of Florida, Montana, Ohio, Oklahoma, and West Virginia, individual consumers, and retirement plan investors throughout the United States. The firm has substantial experience in successfully prosecuting multi-million dollar cases, including complex class actions and mass torts.

Our lawyers are equally comfortable and adept in the role of plaintiff or defendant. We bring a trial-focused approach to litigation to vigorously protect the interests of clients. We represent government and businesses, as well as individual plaintiffs and defendants, and lawyers throughout the country call upon the firm to access our unique blend of resources and trial experience.

The firm concentrates its practice in the areas of complex commercial and class action litigation, with a particular emphasis in energy and finance. We currently represent individual and classes of consumers, and a variety of corporate entities throughout the United States. The firm has substantial experience in successfully prosecuting and defending multimillion-dollar cases, including complex class actions.

BAILEY GLASSER'S REPRESENTATIVE CASES

Loan Servicing and Lending Class Action Representation:

- *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.) (final approval of class settlement of Florida borrowers who paid Pay-to-Pay fees for \$1.75 million).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- *Bacardi v. Select Portfolio Servicing, Inc.*, Case No. 1:16-cv-23381-RNS (class counsel for settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$380,000 recovery for borrowers). *Blake v. Seterus, Inc.*, Case No. 16-cv-21225-JLK (S.D. Fla. (2018 class action settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$527,000 recovery for borrowers).
- *Paneque v. Bank of America, N.A.*, Case No. 1:16-cv-21212-DPG (S.D. Fla.) (2018 class action settlement of case involving challenge to reinstatement quotes, resulting in \$625,000 recovery for borrowers).
- *Shore v. JP Morgan Chase Bank, N.A., et al.*, Case No. 16-cv-60125-JIC (S.D. Fla.) (\$400,000 recovery for borrowers as a result of reinstatement quotes).
- *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).

BAILEY & GLASSER LLP

Other Class Action Representation:

- Jessop v. Bankers Trust Company, et al., Case No. 2:14-cv-00916 (D. Utah) (\$19.8 million settlement recovery in 2017 on behalf of employee stock ownership plan participants for ERISA claims).
- Krakauer v. Dish Network, L.L.C., Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- Cummins v. H & R Block, Inc., Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- Tadeballi v. Uber Technologies, Inc., Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in "airport fee tolls" which Uber did not pay to California airports).
- Navelski v. International Paper Company, Case No. Case No. 3:14-cv-445 MCR/CJK (N.D. Fla.) (certified class on behalf of homeowners of 317 homes in a neighborhood alleged to be flooded by Defendant's dam breaking).
- Wieland v. Bring Care Home, Inc., C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- Thomas v. Home Credit Corp., Inc., 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
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- Roberts v. Walgreen Co., et al., Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
- Glover v. Bank of America, N.A., C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
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BAILEY & GLASSER LLP

Other Class Action Representation (cont.):

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- Morris v. Merck Sharp & Dahme Corp., Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
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- Brailsford v. Jackson Hewitt, Inc., Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- Hardwick v. Rent-A-Center, Inc., Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- Shonk v. SG Sales Co., Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- Lowe v. Ford Motor Credit, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- Brailsford v. Jackson Hewitt, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- Malacky v. Huntington Nat'l Bank, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- Mey v. Herbalife Int'l, Inc., Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
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- Dillon v. Chase, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- Deem v. Ames True Temper, Inc., Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

BAILEY & GLASSER **LLP**



Partner

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jkauffman@baileyglasser.com

James L. Kauffman concentrates his practice on complex business litigation and class actions specifically in the areas of consumer protection, business litigation, and securities. James has represented consumers, investors, state attorneys general, municipalities, and whistleblowers in a wide variety of disputes in both court and arbitration forums across the country.

Notably, James represented shareholders in one of the largest securities litigation matters in history, *In re Initial Public Offerings Security Litigation* (21 MC 92) (SDNY), a case that involved 309 tech-bubble IPOs and 55 investment brokerage defendants and recovered \$586 million.

James regularly speaks at business tort seminars across the country and also on nationally syndicated radio and television shows. He covers topics such as financial industry regulation, consumer fraud, ERISA, and whistleblower protection.

He is also actively involved in the community and provides pro bono legal services to Laugh for Sight, a non-profit organization that raises money for eye disease research through comedy benefits in Los Angeles and New York City.

Government Service / Previous Employment

Financial Advisor, Morgan Stanley (1999)

Practice Areas

Arbitration & Dispute Resolution

Business & Finance

Commercial Litigation

BAILEY & GLASSER **LLP**

JAMES L. KAUFFMAN

Consumer Litigation
ERISA, Employee Benefits & Trust Litigation

Education

J.D., University of Florida Fredric G. Levin College of Law, 2002, *cum laude*
B.S.B.A., University of Florida, 1998

Admissions

District of Columbia
Florida
Arkansas
US Court of Appeals for the Ninth Circuit
US Court of Appeals for the Eleventh Circuit
US District Court, Northern District of Florida
U.S. District Court, Southern District of Florida
US District Court, Middle District of Florida
US District Court, Eastern District of Arkansas
US District Court, Western District of Arkansas
US District Court, Eastern District of Michigan

Representative Matters

- Obtained \$19.8 million recovery of employees' retirement benefits from trustee and individual officers of a closely held private company
- Represented a borrower challenging estimated attorney's fees tacked onto his mortgage loan in *Prescott v. Seterus*, a case that involved two separate appeals to the US Court of Appeals for the Eleventh Circuit; work resulted in two significant appellate opinions that strengthened nationwide consumer debt collection law and led to industry-wide reform, and this precedent paved the way for several recoveries for borrowers from their banks or loan servicers where James served as class counsel
- Obtained \$586 million recovery for shareholders against 309 IPO companies and 55 investment banks in one of the largest securities fraud litigations in history
- Obtained \$20 million recovery for shareholders against semiconductor supplier company in connection with the backdating of employee stock option grants

BAILEY & GLASSER **LLP**

JAMES L. KAUFFMAN

- Represented shareholders against certain officers and directors who participated in a massive Medicare fraud. Resulted in significant corporate reforms and removal of CEO, CFO and General Counsel

News & Insights

Bailey Glasser Announces Promotions for 2020

02.04.2020

Monavie – Jessop v. Larson Settlement

08.06.2018

Judge Allows Class Action Lawsuit Against Credit Suisse Mortgage Unit To Proceed

04.06.2017

Flood Victims Granted Class Action Status In Lawsuit Against International Paper Co.

03.28.2017

Bailey Glasser Seeks Preliminary Approval of \$19.8 Million ESOP Class Action Settlement

11.16.2016

\$19.8 Million ESOP Settlement Negotiated In MonaVie Case

08.23.2016

Bailey Glasser Wins Class Certification on Behalf of Mona Vie Employee Stock Ownership Plan Participants

12.11.2015

Washington State Supreme Court Unanimously Decided in Bailey Glasser Client's Favor

12.10.2015