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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KAREN SOLBERG, NANCY MORIN, and NARISHA  
BONAKDAR, on their own behalf and on behalf  
of others similarly situated,

Plaintiffs,

v.

VICTIM SERVICES, INC., d/b/a  
CorrectiveSolutions, NATIONAL CORRECTIVE  
GROUP, INC., d/b/a CorrectiveSolutions,  
AMERICAN JUSTICE SOLUTIONS, INC., d/b/a  
CorrectiveSolutions, BIRCH GROVE HOLDINGS,  
INC., MATS JONSSON and KARL THOMAS  
JONSSON,

Defendants.

NO. 3:14-cv-05266-VC

**PLAINTIFFS' MOTION FOR ATTORNEYS'  
FEES, REIMBURSEMENT OF LITIGATION  
COSTS, AND SERVICE AWARDS**

Honorable Vince Chhabria

CLASS ACTION

**DEMAND FOR TRIAL BY JURY**

DATE: August 5, 2021

TIME: 2 p.m.

LOCATION: Zoom video conference

TO: THE CLERK OF THE COURT; and

TO: DEFENDANTS VICTIM SERVICES, INC., d/b/a CorrectiveSolutions, NATIONAL CORRECTIVE GROUP, INC., d/b/a CorrectiveSolutions, AMERICAN JUSTICE SOLUTIONS, INC., d/b/a CorrectiveSolutions, BIRCH GROVE HOLDINGS, INC., MATS JONSSON and KARL THOMAS JONSSON, AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 5, 2021, at 2:00 p.m., via Zoom video conference, Plaintiffs will move for approval of attorneys' fees, reimbursement of litigation costs, and service awards. The motion will be based on this notice of motion, the memorandum of points and authorities, the declarations of Blythe H. Chandler, Paul Arons, Deepak Gupta, and Michael F. Ram, the records and file in this action, and such other matter as may be presented before or at the hearing of the motion.

RESPECTFULLY SUBMITTED AND DATED this 10th day of June, 2021.

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## I. INTRODUCTION

In the more than six years since Plaintiffs filed their initial complaint in December 2014, the parties briefed numerous motions, including multiple motions to dismiss, a motion to compel arbitration, class certification, two rounds of cross-motions for summary judgment, and two appeals and a Rule 23(f) petition. Discovery encompassed the Defendants named in the initial complaint and those subsequently added to the case, as well as several district attorneys' offices and other third parties with relevant information. When the Classes risked losing on the merits of their claims or prevailing on the merits but being unable to collect any judgment because of Defendants' financial condition, Plaintiffs negotiated a settlement that will provide Class members with cash payments they would likely never receive if the parties continued to litigate.

Plaintiffs now move for an attorneys' fee award equal to 25% of the Settlement Fund, or \$275,000. Consideration of the relevant factors confirms that a fee award at the Ninth Circuit's benchmark of 25% is reasonable. Class Counsel negotiated a valuable settlement for the Classes that eliminated the very real risk of no recovery at all. They devoted more than 3,500 hours to the litigation with no guarantee they would ever be paid for their time. Awards in similar cases confirm the reasonableness of the requested fee as does a lodestar crosscheck, since Class Counsel's lodestar is more than \$2.4 million. Plaintiffs also request reimbursement of \$130,151.66 in litigation costs that Class Counsel necessarily incurred on behalf of the Class, and request that the Court approve combined service and statutory damage awards of \$3,000 for each Plaintiff.

## II. STATEMENT OF FACTS

### A. Plaintiffs and their counsel vigorously litigated on behalf of the Classes.

Plaintiffs Karen Solberg, Kevin Breazeale, and Kevin Hiep Vu filed this class action lawsuit against defendants NCG, VSI, and Mats Jonsson on December 1, 2014, seeking damages and injunctive relief on behalf of classes of similarly situated persons. Dkt. No. 1. Nancy Morin and Narisha Bonakdar joined the case as Plaintiffs in a First Amended Complaint filed on February 6,



2015. Dkt. No. 8. Plaintiffs added defendants American Justice Solutions, Inc., an entity that runs the day-to-day operations of the bad check programs as well as other private probation businesses operated by Defendants, Birch Grove Holdings, Inc., the corporate parent of VSI and AJS, and Karl Thomas Jonsson, the son of Defendant Mats Jonsson and an employee of Birch Grove, and removed Mr. Breazeale and Mr. Vu as named plaintiffs in a Second Amended Complaint filed on May 25, 2018. Dkt. No. 216.

Throughout the litigation, Plaintiffs asserted claims for violations of the Fair Debt Collection Practices Act and the California Unfair Competition Law. Plaintiffs alleged that Defendants are private debt collectors that sent false, deceptive, and misleading letters on the letterhead of district attorneys to collect dishonored checks on behalf of retail merchants in California. Among other things, Plaintiffs alleged that Defendants demanded fees that were not authorized by law and operated without district attorney oversight, as required by state and federal law. *See* Dkt. Nos. 1, 8, 216.

In April 2015, Defendants moved to strike Plaintiffs' state law claims as barred under California Code of Civil Procedure section 425.16, contending that this case was a strategic lawsuit against public participation, or SLAPP suit. Dkt. No. 37. Defendants also moved to dismiss Plaintiffs' claims, arguing that they failed to state a claim upon which relief could be granted and that the Court lacked jurisdiction over the claims. Dkt. No. 38. Following briefing and a hearing, the Court denied both motions. Dkt. Nos. 47-52, 62-63. Defendants appealed. Dkt. No. 65. Plaintiffs moved to certify the appeal as frivolous and Defendants for a stay. Dkt. Nos. 72, 74, 76-81. The Court denied both motions. Dkt. No. 83.<sup>1</sup>

In October 2015, VSI moved to compel individual arbitration of Ms. Bonakdar's claims. Dkt. No. 92. Plaintiffs opposed, arguing that there was no valid contract formed between Ms. Bonakdar and VSI and that the arbitration agreement is unconscionable. Dkt. No. 106. The

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<sup>1</sup> At the Court's request, the parties briefed the issue of whether a district court may rule on the merits of a plaintiff's claim prior to class certification or class notice, since Rule 23 generally prohibits so-called "one-way intervention." Dkt. Nos. 85, 95, 98, 100.

Court requested further briefing on the question of whether it is appropriate for disputes that arise between a private company that assists in the operation of the criminal justice system and citizens to be resolved through arbitration. Dkt. No. 120; *see also* Dkt. Nos. 123, 131. The Court invited further briefing on the application of the FAA to the dispute. Dkt. Nos. 135-137. Ultimately, the Court denied VSI's motion, holding that the FAA did not apply and that California law does not allow arbitration of a dispute arising out of the exercise of the government's criminal law enforcement powers. Dkt. No. 140. VSI appealed. Dkt. No. 144.

The Ninth Circuit consolidated the two appeals and held oral argument on September 13, 2017. On January 8, 2018, the Ninth Circuit issued its decision, concluding that it lacked jurisdiction to consider the Court's denial of Defendants' motion to strike and affirming the Court's denial of VSI's motion to compel arbitration because the purported agreement was not a private contract subject to the FAA. Dkt. No. 187. The Ninth Circuit denied Defendants' petition for rehearing or rehearing en banc. Dkt. No. 209.

The parties commenced discovery while the appeals proceeded. Over several years, the parties engaged in targeted but thorough discovery. Defendants and third parties produced thousands of documents and the parties took more than 20 depositions, including Rule 30(b)(6) depositions of multiple district attorneys' offices. Chandler Decl. ¶ 10. Plaintiffs served subpoenas on several major creditors that submitted unpaid checks to Defendants for processing. *Id.* The parties engaged in many meet and confer sessions and some of the disputes required rulings from the Court. *See, e.g.*, Dkt. Nos. 176, 307.

In June 2018 Plaintiffs moved for class certification. Dkt. Nos. 225-32. Defendants opposed and filed a motion to deny class certification. Dkt. Nos. 243-244. While the class certification motion was pending, Defendants moved to dismiss Plaintiffs' Second Amended Complaint, arguing that the Court lacked subject matter jurisdiction and Plaintiffs did not state a claim upon which relief could be granted, and a Rule 12(b)(7) motion to dismiss or to require joinder of the district attorneys' offices who are parties to the contracts with Defendants. Dkt. Nos. 237-38. Plaintiffs opposed and Defendants filed replies. Dkt. Nos. 259-62, 266-67.

Having learned that Defendants were handling many accounts from third-party Global Payments Services, Plaintiffs moved to reopen discovery. Dkt. Nos. 235-36. Plaintiffs sought to complete discovery of Global Payment Services, as well as the newly-added defendants. *Id.*

The Court heard argument on Plaintiffs' motion for class certification and motion to amend the scheduling order and reopen discovery and on Defendants' motions to dismiss on November 1, 2018. The Court advised the parties that the Defendants' motions to dismiss would be denied except that the Court was inclined to find that Plaintiffs lacked Article III standing to pursue injunctive relief and to certify a class of persons who received letters from Defendants before the date on which Defendants modified the challenged program as required by a consent order between Defendants and the CFPB. Defendants modified their program consistent with the CFPB consent requirements as of May 8, 2015. Dkt. No. 284 at 1.

The Court granted Plaintiffs' motion "in large part" on December 12, 2018, certifying two litigation classes. Dkt. No. 297 at 1. The FDCPA Class consists of persons in California to whom Defendants sent a demand in connection with a returned check attempting to collect money for checks written for personal, family, or household purposes from December 1, 2013, to May 7, 2015. *Id.* The UCL class consists of persons in California to whom Defendants sent an initial collection demand in connection with a returned check at any time from September 1, 2011, to May 7, 2015, and then paid any fees to Defendants in response. *Id.* at 4. The Court found that Plaintiffs lacked standing to seek injunctive relief because they were unlikely to bounce checks again the future or, if they did, to "then be pulled into the diversion program." *Id.* at 3. The UCL Class members were therefore limited to seeking restitution of the fees the paid to Defendants. The Ninth Circuit denied the Rule 23(f) petition. Dkt. No. 313.

Plaintiffs retained JND Class Action Administration to disseminate notice of the Court's class certification order to the Classes. At the direction of Class Counsel, JND sent the Court-approved Initial Class Notice—consisting of a postcard notice and email notice, with a more detailed notice posted on the [www.CheckDiversionClassAction.com](http://www.CheckDiversionClassAction.com) website—to Class members on February 13, 2019. Dkt. No. 393 (Keough Decl.) ¶ 4; Dkt. Nos. 303, 308.

The parties filed cross-motions for summary judgment between April and June 2019. Dkt. Nos. 314-24, 329-30. The Court granted in part and denied in part both motions on November 20, 2019. Dkt. No. 348. The Court held that VSI is not exempt from the FDCPA's coverage but that Defendants' form letters were not misleading. *Id.* at 1-2, 4-22, 27. The Court granted summary judgment to Defendants on Plaintiffs' fraudulent and negligent misrepresentation claim and partial summary judgment to Defendants on the "fraudulent" and "unfair" prongs of the UCL. *Id.* at 25-26. The Court found it could not determine whether Defendants violated the FDCPA and California law by charging unauthorized fees. *Id.* at 22-25.

After obtaining additional discovery from counties regarding approval of Defendants' programs, the parties briefed the issue of the legality of the fees Defendants collected in a second round of cross-motions for summary judgment. Dkt. Nos. 356-60, 364-65. Defendants also moved for decertification, judgment on the pleadings, and to dismiss for failure to join required parties, and Plaintiffs opposed. *Id.* The Court had not ruled on these motions when the parties negotiated the settlement.

**B. Plaintiffs and their counsel negotiated a valuable settlement for the Classes.**

The parties first mediated in September 2016 with the assistance of Bruce Friedman, Esq. of JAMS but were unsuccessful. Chandler Decl. ¶ 11. The parties mediated again with Mr. Friedman's assistance in April 2018 and in June 2019 without reaching a resolution. *Id.*

At the parties' request, the Court referred the case to Magistrate Judge Laurel Beeler for a settlement conference. The parties provided Judge Beeler with a candid summary of the remaining issues and the challenges for settlement. At the conclusion of the November 19, 2020 conference, Judge Beeler proposed a settlement. Dkt. No. 385. After further discussions, the parties accepted the proposal and reached an agreement on November 30. Dkt. No. 386.

The proposed settlement requires Defendants' insurers to pay \$1,100,000 into a Settlement Fund to be allocated to Settlement Awards, administrative expenses, statutory damages and service awards to Plaintiffs, and attorneys' fees and costs, subject to approval by the Court. Settlement Agreement § III.1. Class members who submit timely, complete claim

forms will be paid a single Settlement Award calculated as follows:

- Members of the FDCPA Class will receive a pro rata share of the amount of the \$20,000 portion of the Settlement Fund allocated to FDCPA statutory damages.
- Members of the FDCPA Class who paid fees to Defendants and members of the UCL Class will receive a pro rata share of the Actual Damages Settlement Fund calculated based on the percentage paid by the Claimant of the total amount paid to Defendants in fees by all Claimants.

Settlement Agreement § III.4.

**C. The Court approved dissemination of notice of the settlement to the Classes.**

Plaintiffs moved for approval to disseminate notice of the settlement to the Classes on January 29, 2021. Dkt. Nos. 390-393. On March 2, 2021, the Court issued an order requiring supplemental briefing on the strengths and weaknesses of the remaining claims and the record for Defendants' financial condition. Dkt. No. 396. Plaintiffs filed a supplemental brief on March 12, 2021, addressing the two issues the Court raised, supported by declarations from Defendants Mats Jonsson and Karl Jonsson. Dkt. Nos. 397-401. After a hearing on March 18, the parties filed an Amendment to the Settlement Agreement that revised the language of the release and requires a proposal for a second distribution of the Settlement Fund after the period for cashing checks has closed and revised notices. Dkt. No. 405. On March 31, the Court granted Plaintiffs' motion. Dkt. No. 406.

**III. STATEMENT OF ISSUES**

Whether the requested attorneys' fees, costs, and combined service and statutory damages awards are reasonable and should be awarded.

**IV. ARGUMENT AND AUTHORITY**

**A. The percentage-of-the-fund method is the appropriate method for determining a reasonable attorneys' fee award in this case.**

Courts in the Ninth Circuit have discretion to award attorneys' fees using either the percentage of the fund method or the lodestar method when settlement of a class action

creates a common fund. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The method a district court chooses to use, and its application of that method, must achieve a reasonable result. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result.”). “Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion.” *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997).

The percentage-of-the-fund method is the appropriate method for determining a reasonable fee in this case. *See, e.g., In re Bluetooth*, 654 F.3d at 942 (“Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar.”). Class Counsel’s efforts resulted in a \$1,100,000 common fund, which will be distributed to Settlement Class Members after deducting administration expenses, Court-approved fees and costs, and Court-approved service awards.

1. A fee award of 25% of the Settlement Fund will fairly compensate Class Counsel for their work on behalf of the Classes.

The Ninth Circuit has instructed that 25% is “a proper benchmark figure,” with common fund fees typically ranging from 20% to 30% of the fund. *In re Coordinated Pretrial*, 109 F.3d at 607 (citation omitted); *see also In re Bluetooth*, 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.”). The percentage may be adjusted up or down based on the court’s consideration of “all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. The relevant circumstances include (1) the results achieved for the class, (2) the risk counsel assumed, (3) the skill required and the quality of the work, (4) the contingent nature of the fee, (5) whether the fee is above or below the market rate, and (6) awards in similar cases. *Id.* at 1048-50.

Consideration of the relevant circumstances supports a fee award of 25% of the Settlement Fund, or \$275,000. This is not a “mega fund” case and Plaintiff’s counsel do not seek a windfall. *See In re Bluetooth*, 654 F.3d at 942-43 (courts should adjust the benchmark percentage where awarding 25% of a mega fund “would yield windfall profits for class counsel in light of the hours spent on the case”). The requested fee is a proportional distribution of the settlement, there is no “clear sailing arrangement,” and no portion of the Settlement Fund will revert to Defendants. *See id.* at 947-49. Without any guarantee that they would ever be paid, Class Counsel devoted more than 3,500 hours to litigating this case over more than six years before the parties reached a settlement. Chandler Decl. ¶¶ 14, 16. A fee of \$275,000 is far less than Class Counsel’s lodestar, which is over \$2.4 million. *Id.* ¶ 16; Arons Decl. ¶ 5; Gupta Decl. ¶ 16; Ram Decl. ¶¶ 2, 4, 6.

a. *Class Counsel achieved an excellent settlement for the Classes.*

This was an extremely hard-fought case. Class Counsel defeated Defendants’ motions to dismiss and motion to compel arbitration as well as Defendants’ appeals of the Court’s rulings on the motions. Class Counsel’s pursuit of necessary discovery from Defendants required many meet and confer sessions and rulings from the Court. Class Counsel reviewed thousands of documents produced by Defendants and third parties. Class Counsel successfully moved for class certification, defeated Defendants’ Rule 23(f) petition, and disseminated notice to the certified Classes. Class Counsel also briefed two rounds of cross-motions for summary judgment. By the time the parties engaged in settlement negotiations with the assistance of Magistrate Judge Laurel Beeler in November 2020, six years had passed since the initial complaint was filed. The claims had been narrowed by the Court’s ruling on the first round of cross-motions for summary judgment and the outcome of the second round of cross-motions was highly uncertain. Among other things, Plaintiffs faced a risk of losing on the merits and decertification of the Classes if the Court accepted Defendants’ argument that the fees Defendants collected were authorized by California law. Even if Plaintiffs prevailed, retained certification, and survived the inevitable appellate process, they faced a considerable hurdle of

collecting from Defendants, whose net worth was negligible at the time of the negotiations. See Dkt. Nos. 392, 398, 399, 401; *see also* Dkt. No. 391 ¶¶ 4-5.

Under these circumstances, the settlement is an excellent result for the Classes, who were unlikely to pursue any relief on an individual basis and now will recover some of the allegedly unlawful fees they paid to Defendants. This settlement also follows the Defendants' settlement with the CFPB and reimbursement of more than \$6 million to California residents who paid fees to Defendants between July 21, 2011 and March 30, 2015. Dkt. No. 244 at 3-4. Settlement Class members who paid Defendants' fees have therefore already received some compensation related to the claims asserted against Defendants in this case.

The amount Class members will recover depends on the number of claims filed. JND estimates that approximately 6% of Class members will submit a claim based on JND's experience with claims processes generally and in similar cases. Dkt. No. 393 (Keough Decl.) ¶ 6. Of the 48,212 members of the Settlement Classes, 26,992 paid fees to Defendants. Dkt. No. 324 ¶ 6. These Class members will be paid an award from the \$535,000 Actual Damages Settlement Fund that is proportional to the amount of fees they paid to Defendants. If 6% of these Class members file claims, the average payment will be \$330.34. All members of the FDCPA Class who file valid claims will receive an equal portion of the \$20,000; FDCPA Class members who paid fees to Defendants will receive this amount in addition to their portion of the Actual Damages Settlement Fund. There are 29,531 members of the FDCPA Class. Dkt. No. 342 ¶ 6. If 6% of FDCPA Class members file claims, they will each receive \$11.29.

The benefit to the Settlement Class, which is "[t]he most important factor," weighs in favor of Class Counsel's fee request. *In re Capacitors Antitrust Litig.*, No. 3:17-md-02801-JD, 2018 WL 4790575, at \*3 (N.D. Cal. Sept. 21, 2018).

b. *Class Counsel assumed a significant risk of no recovery.*

Class Counsel's fee request also reflects that the case was risky and handled on a contingency basis. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015); *Vizcaino*, 290 F.3d at 1048. Class Counsel represented Plaintiffs and the Classes entirely on a



contingent basis. They devoted more than 3,500 hours to litigating this case, foregoing opportunities to work on other cases, and now request a fee that is a mere fraction of their lodestar. Because of the novelty of the claims, the extensive motion practice, and Defendants' dwindling net worth, Class Counsel faced the very real risk they would not recover any fees and costs. "The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2008). These risks weigh in favor of Class Counsel's fee request.

c. *Class Counsel's quality of work delivered a recovery for the Classes.*

Class Counsel drew on their experience in litigating consumer fraud and debt collection cases to develop the legal theories Plaintiffs asserted and then develop evidence to support the Classes' claims. The multiple motions that Plaintiffs prevailed on—as well as three rulings by the Ninth Circuit—are also a testament to Class Counsel's skill and quality of work. When it became evident that the Classes faced significant risk of losing on the merits and collecting nothing or prevailing and still collecting nothing because of Defendants' financial condition and insurance policies that are unlikely to cover a judgment for unlawful fees, Class Counsel negotiated a settlement that ensured Class Members recovered a portion of the fees they paid. The high quality of Class Counsel's representation is reflected in all of the work they performed over the six years of litigation. *See Wallace v. Countrywide Home Loans, Inc.*, No. SACV 08-1463-JLS, 2015 WL 13284517, at \*9 (C.D. Cal. Apr. 17, 2015) (factors reflecting counsel's skill included developing the facts and legal claims, conducting discovery, reviewing documents, retaining experts, motion practice, and negotiating and drafting the settlement).

Class Counsel's ability to negotiate a favorable settlement despite the vigorous opposition of Defendants' counsel also supports their fee request. *See, e.g., Lofton v. Verizon Wireless LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at \*1 (N.D. Cal. May 27, 2016) (the "risks of class litigation against an able defendant well able to defend itself vigorously" support an upward adjustment in the fee award); *Knight v. Red Door Salons, Inc.*, No. 08-01520, 2009 WL

248367, at \*6 (N.D. Cal. Feb. 2, 2009) (where defense counsel “understood the legal uncertainties in this case[] and were in a position to mount a vigorous defense,” the favorable settlement was a “testament to Plaintiffs’ counsel’s skill”). This factor weighs in favor of Class Counsel’s fee request.

d. *Awards in similar cases confirm the requested fee is reasonable.*

This Court has recognized that “fee awards of approximately 33⅓% are typical for settlements up to \$10 million.” *Zamora v. Lyft, Inc.*, No. 3:16-cv-02558-VC, 2018 WL 4657308, at \*3 (N.D. Cal. Sept. 26, 2018). Courts in this circuit have awarded fees equal to the 25% benchmark or higher in many similar consumer class action settlements. *See, e.g., Sanders v. LoanCare, LLC*, No. CV 18-9376 PA, 2020 WL 8365241, at \*9 (C.D. Cal. Dec. 4, 2020) (awarding 25% of settlement fund, or \$850,000, in FDCPA and UCL settlement); *De La Torre v. CashCall, Inc.*, No. 08-CV-03174-MEJ, 2017 WL 5524718, at \*13 (N.D. Cal. Nov. 17, 2017) (awarding a fee equal to 40% of a \$1.5 settlement fund in UCL class action); *Zepeda v. PayPal, Inc.*, No. C 10-1668 SBA, 2017 WL 1113293, at \*21 (N.D. Cal. Mar. 24, 2017) (“fee awards in other consumer class actions support the conclusion that a fee award based on 25% of the Settlement Fund is reasonable and appropriate”).

2. A lodestar crosscheck confirms the requested fee is reasonable.

The Court is not required to perform a lodestar crosscheck in evaluating Class Counsel’s fee request. *See Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020) (“This Court has consistently refused to adopt a crosscheck requirement, and we do so once more.”). Even if it chooses to do a lodestar crosscheck, “[t]he aim is to ‘do rough justice, not to achieve auditing perfection.’” *In re Apple Inc. Device Performance Litig.*, No. 5:18-md-02827-EJD, 2021 WL 1022866, at \*7 (N.D. Cal. Mar. 17, 2021) (quoting *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL 6619983, at \*14 (N.D. Cal. Dec. 18, 2018)); *see also In re Capacitors*, 2018 WL 4790575, at \*6 (a cross-check does not require “mathematical precision nor bean-counting” and may be based on summaries rather than billing records).

“In conducting a lodestar cross-check, a court takes the ‘number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.’” *Hefler*, 2018 WL 6619983, at \*14. This litigation involved extensive discovery of Defendants and third parties and substantial motion practice—including three appeals to the Ninth Circuit. The more than 3,500 hours Class Counsel devoted to this litigation were reasonable and necessary “taking into consideration the amount of substantive litigation activity.” *In re Apple Device*, 2021 WL 1022866, at \*8. Class Counsel have provided the Court with their time records detailing the work they performed on behalf of the Classes. Chandler Decl. ¶¶ 16-20, Ex. 2; Arons Decl. ¶ 5, Ex. 1; Gupta Decl. ¶ 16, Ex. A; *see also* Ram Decl. ¶¶ 2, 4, 6 (describing work performed).

Class Counsel’s rates are “reasonable and comparable to the fees generally charged by attorneys with similar experience, ability, and reputation for work on similar matters in this judicial district.” *Rivas v. BG Retail, LLC*, No. 16-CV-06458-BLF, 2020 WL 264401, at \*7 (N.D. Cal. Jan. 16, 2020). “To determine the prevailing market rate, courts may rely on attorney affidavits as well as ‘decisions by other courts awarding similar rates for work in the same geographical area by attorneys with comparable levels of experience.’” *Id.* (citation omitted). Class Counsel have provided the Court with declarations describing their background and experience. Chandler Decl. ¶¶ 1-8; Arons Decl. ¶¶ 8-13; Gupta Decl. ¶¶ 1-11; Ram Decl. ¶¶ 3, 5, 7, Exs. A-C. Class Counsel’s hourly rates are also consistent with rates approved by courts in this district, which typically range from \$300 to \$1,000 for attorneys. *See Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922-HSG, 2020 WL 870928, at \*8 (N.D. Cal. Feb. 21, 2020) (finding rates between \$275 and \$1,000 for attorneys reasonable); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at \*26 (N.D. Cal. July 22, 2020) (approving rates of \$450 to \$900 for partners, \$160 to \$850 for non-partner attorneys, and \$50 to \$380 for staff members); *Zamora*, 2018 WL 4657308, at \*3 (finding rates of \$280 to \$850 for attorneys and \$240 to \$260 for staff to be reasonable); *Superior Consulting Servs., Inc. v. Steeves-Kiss*, No. 17-cv-06059-EMC, 2018 WL 2183295, at \*5 (N.D. Cal. May 11, 2018) (“[D]istrict courts in Northern California have found that rates of \$475 to \$975 per hour for

partners and \$300 to \$490 per hour for associates are reasonable.”); *see also Hefler*, 2018 WL 6619983, at \*14 (finding rates of \$245 to \$350 reasonable for paralegals); *700 Valencia St. LLC v. Farina Focaccia & Cucina Italiana, LLC*, No. 15-CV-04931-JCS, 2018 WL 783930, at \*4 (N.D. Cal. Feb. 8, 2018) (finding rate of \$335 reasonable for paralegal with 10 years of experience); *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-CV-04062-LHK, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017) (finding rate of \$290 per hour for paralegal reasonable).

Finally, Class Counsel’s fee request is far below their actual lodestar of over \$2,400,000. “[A] multiplier below 1.0 is below the range typically awarded by courts and is presumptively reasonable.” *Wong v. Arlo Techs., Inc.*, No. 5:19-CV-00372-BLF, 2021 WL 1531171, at \*11 (N.D. Cal. Apr. 19, 2021) (approving fees of 25% of \$1.25 million settlement fund, which amounted to 0.43 of counsel’s lodestar); *see also Rivas*, 2020 WL 264401, at \*8 (“A negative multiplier ‘suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by class counsel.’” (citation omitted)).

**B. Class Counsel’s litigation costs were necessarily and reasonably incurred.**

Class Counsel request reimbursement of \$130,151.66 in litigation costs, which includes \$39,150 in expert fees, \$14,750 in mediation costs, and over \$21,000 in court reporting costs. Chandler Decl. ¶ 21. “It is appropriate to reimburse attorneys prosecuting class claims on a contingent basis for ‘reasonable expenses that would typically be billed to paying clients in non-contingency matters,’ *i.e.*, costs ‘incidental and necessary to the effective representation of the Class.’” *In re Capacitors*, 2018 WL 4790575, at \*6 (citation omitted); *see also Vincent v. Hughes Air W.*, 557 F.2d 759, 769 (9th Cir. 1977). These costs were necessary to the litigation, reasonable in amount, and the type of costs typically billed to paying clients. *See Dickey*, 2020 WL 870928, at \*9 (approving “professional service fees (for experts and investigators), travel fees, and discovery-related fees”); *In re Yahoo!*, 2020 WL 4212811, at \*42 (approving reimbursement of costs for expert fees, travel, transcripts, document management, copying, mailing and serving documents, electronic research, and filing and court fees). The requested amount is less than the \$135,000 stated in the settlement notices.

**C. Plaintiffs request combined service and statutory damages awards of \$3,000.**

Plaintiffs request a combined statutory damages and service award of \$3,000 for each Plaintiff, or \$9,000 total. Plaintiffs are entitled to statutory damages of \$1,000 under the FDPCA. 15 U.S.C. § 1692k. The Ninth Circuit has explained that service awards are “intended to compensate class representatives for work undertaken on behalf of a class ‘are fairly typical in class action cases.’” *In re Online DVD-Rental*, 779 F.3d at 943 (citation omitted). “Service awards recognize the effort class representatives expend, the financial or reputational risk they undertake, and their willingness to act as private attorneys general.” *Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-cv-05486-JCS, 2018 WL 8949777, at \*6 (N.D. Cal. Oct. 15, 2018) (citation omitted). Courts consider the class representative’s actions to protect the interests of the class, the degree to which the class has benefitted from those actions, the time and effort the class representative expended in pursuing the litigation, and any risk the class representative assumed. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Plaintiffs devoted significant time to assisting Class Counsel with this case for the benefit of all Class members, including developing the claims, responding to voluminous written discovery, and being deposed. Chandler Decl. ¶ 22. Plaintiffs agreed to be the public face of the case despite having to disclose their financial circumstances and respond to Defendants’ questioning about sensitive topics. Service awards of \$2,000 are appropriate in this case and below the Ninth Circuit benchmark of \$5,000. *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612, at \*11 (N.D. Cal. Aug. 25, 2016); *see also Online DVD*, 779 F.3d at 942 (rejecting argument that \$5,000 service award created a conflict where settlement provided for \$12 individual awards).

**V. CONCLUSION**

Plaintiffs request that the Court grant their motion for an award of attorneys’ fees, costs, and combined statutory damages and service awards.

RESPECTFULLY SUBMITTED AND DATED this 10th day of June, 2021.

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CERTIFICATE OF SERVICE

I, Blythe H. Chandler, hereby certify that on June 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all registered CM/ECF users:

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