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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

LAURA ZAMORA JORDAN, as her separate estate, and on behalf of others similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC, a Delaware limited liability company,

Defendant,

and

FEDERAL HOUSING FINANCE AGENCY,

Intervenor.

NO. 2:14-cv-00175-TOR

**PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES, COSTS AND SERVICE AWARD**

CLASS ACTION

**Note on Motion Calendar:**

**Date: Thursday, March 21, 2019**

**Time: 1:30 p.m.**

**Location:**
**Thomas S. Foley U.S. Courthouse**
**Courtroom 902**
**920 West Riverside Avenue**
**Spokane, Washington**

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## I. INTRODUCTION

The settlement negotiated by Class Counsel on the eve of trial in this matter is an excellent result for the Class. It provides a non-reversionary common fund of $17,000,000, which will be distributed to homeowners at whose properties Nationstar changed the locks or performed other property preservation services prior to foreclosure. Class members will receive substantial monetary awards ranging from $75 to over $50,000, without having to file claims.

Class Counsel request an award of $4,250,000 for more than six years of work performed on a purely contingency basis. The requested award is at the Ninth Circuit's 25% benchmark for attorneys' fee awards in common fund cases. Class Counsel also request an award of $208,245 in reasonable litigation costs. Class Counsel have devoted more than 6,400 hours to prosecuting this action and advanced over one-hundred-thousand-dollars in expert witness fees and thousands more in class notice costs, without any guarantee of payment.

Class Counsel took significant risk in filing and aggressively litigating this action. When Class Counsel filed this case, there was no Washington appellate court decision specifically holding that a homeowner may recover damages for a lock change or other property preservation measures performed prior to foreclosure. Moreover, Class Counsel faced stiff opposition from experienced counsel for both Nationstar and the Federal Housing Finance Agency, which is

reflected in the two published appellate decisions issued in the case, and the twelve orders issued by this Court on substantive motions after full briefing.

## II. STATEMENT OF FACTS

In April 2011, after Ms. Jordan defaulted on her mortgage loan, but before Nationstar instituted foreclosure proceedings, Nationstar drilled out and replaced the lock on her front door. ECF No. 262 at 2. Nationstar also rekeyed the homes of thousands of other members of the class prior to foreclosure. *Id.* at 8–9. In addition to rekeying doors, Nationstar performed other "property preservation" measures at the homes of Class Members, including interior property inspections, winterizing properties, and boarding up doors and windows. ECF No. 262 at 4. The Class alleged that Nationstar trespassed on their properties and violated the Washington Consumer Protection Act when it changed the locks and performed other property preservation measures at their homes.

Ms. Jordan filed her complaint in this matter in Chelan County Superior Court in April 2012. She filed an amended complaint making class allegations later that year. *See* ECF No. 1-2 (Second Amended Complaint). After the parties completed written discovery and depositions, and after significant briefing, the Chelan County Superior Court certified the Class under Washington Civil Rule 23 on May 9, 2014. ECF No. 1-3; Declaration of Clay Gatens in support of Plaintiff's Motion for Fees, Costs, and Service Awards ("Gatens Decl.") ¶ 4–6.

Nationstar then removed the case to this Court. ECF No. 1. The Court ruled the removal was untimely and granted Ms. Jordan's motion to remand. ECF No. 18. Nationstar appealed that decision and prevailed in the Ninth Circuit. ECF No. 39.

After returning to this Court, both parties filed motions for partial summary judgment. ECF Nos. 45, 61. The Court deemed the question of whether a lender violates RCW 7.28.230 when it changes the locks on a borrower's home prior to foreclosure a controlling question of state law and certified it to the Washington Supreme Court. ECF No. 72. The Washington Supreme Court held that the form entry provision that Nationstar contended authorized its pre-foreclosure lock changes was unenforceable and that Nationstar took possession of Ms. Jordan's home in violation of Washington law when it changed the locks on her home prior to foreclosure. *Jordan v. Nationstar Mortg. LLC*, 185 Wash.2d 876, 374 P.3d 1195 (2016).

After the Washington Supreme Court's ruling, the Court granted Federal Housing Finance Agency's ("FHFA") contested request to intervene in this action. ECF Nos. 92, 104, 108, 113. FHFA then sought summary judgment, arguing that the Class's claims are preempted by federal law. ECF Nos. 118, 137, 146. The Court denied FHFA's motion. ECF No. 147. FHFA sought certification of that decision for immediate appeal, which the Court also denied. ECF No. 157.

The parties completed extensive discovery. Nationstar ultimately produced millions of pages of documents, including policy and procedure documents, summary data, and loan files, payment histories, and comment histories for every member of the Class. Declaration of Beth E. Terrell in Support of Plaintiff's Motion for Award of Attorneys' Fees and Costs ("Terrell Decl.") ¶ 38. The parties took fourteen depositions. Nationstar deposed Ms. Jordan and a representative of the vendor it hired to change the locks at her home. Ms. Jordan also took the depositions of six different Nationstar corporate representatives. Some of those representatives were deposed multiple times. Terrell Decl. ¶ 39.

The parties also briefed discovery issues. First, the Court denied Nationstar's motion to compel responses to certain interrogatories. ECF No. 171. Then Nationstar sent subpoenas seeking to depose absent Class members, and Ms. Jordan successfully moved to quash them. ECF No. 186.

Nationstar moved to decertify the Class. ECF No. 119. The Class responded to the motion and the Court denied it. ECF Nos. 168, 207. The Court also denied Nationstar's motion for partial summary judgment on the Class's statutory trespass claims. ECF No. 207.

Ms. Jordan moved for partial summary judgment on liability. ECF No. 217. After a hearing, the Court granted Ms. Jordan's motion, ruling that Class

members whose locks Nationstar changed prior to foreclosure had established the elements of their common-law trespass and CPA claims. ECF No. 262.

The case required significant expert work. Each side's experts produced at least two reports. Terrell Decl. ¶ 40. Nationstar deposed Ms. Jordan's expert witness twice and Ms. Jordan deposed both of Nationstar's expert witnesses. Within two weeks before the first scheduled trial, FHFA moved to disqualify the Class's expert witness on damages. ECF No. 278. The Class opposed that motion and the Court denied it. ECF No. 292.

The parties mediated on November 27, 2017 with the assistance of Louis D. Peterson of Hillis Clark Martin & Peterson. *Id.* ¶ 7. Mr. Peterson has litigated and mediates large, complex cases, including those involving consumer protection claims. *Id.* The parties did not reach a settlement during mediation, but continued arm's-length negotiations with Mr. Peterson's assistance. The parties reached an agreement in principle just a few days before trial was set to commence on December 18, 2017. ECF No. 297. The Court struck the trial date so that the parties could negotiate a formal settlement agreement. ECF No. 298.

Although the parties had agreed on a settlement amount, the parties were unable to reach agreement on several settlement terms, including the scope of the release and whether Class Members should receive an opportunity to opt out of

the settlement. Terrell Decl. ¶ 41. The parties resumed litigation but continued to discuss resolving the case. *Id.*.

The parties had filed trial briefs and were set to start trial on July 30, 2018, when they reached final agreement. Trial would have focused on identifying the Class members whose locks were changed, determining whether Nationstar's trespasses were wrongful under RCW 4.24.630(1), determining whether Nationstar had established its consent defense with respect to any Class members, and determining damages. *See* ECF Nos. 349, 351 (trial briefs).

## III. AUTHORITY & ARGUMENT

Class Counsel seek an award of attorneys' fees and costs from the common settlement fund under Federal Rules of Civil Procedure 23(h) and 54(d)(2). 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."). As the Ninth Circuit has instructed, "[r]easonableness 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).

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

It is well settled that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The "common fund" doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Id.* A court with jurisdiction over the fund can "prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.*

The percentage-of-the-fund method is the appropriate method for calculating fees when counsel's effort has created a common fund. *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."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (observing that "use of the percentage method in common

fund cases appears to be dominant" and discussing its advantages over the lodestar method).

The lodestar method, by contrast, is typically used when the value of the class's recovery is difficult to determine. *See In re Bluetooth*, 654 F.3d at 941 (courts use the lodestar method when the relief is "primarily injunctive in nature and thus not easily monetized"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (noting that courts use the lodestar method when "there is no way to gauge the net value of the settlement or any percentage thereof").

The percentage-of-the-fund method is the appropriate method for determining a reasonable fee in this case. The benefit to the class is easily quantified. Class Counsel's efforts resulted in a $17,000,000 common fund, which will be distributed to class members based on the type of property preservation services performed at their homes after deduction of settlement expenses, including administration expenses, Court-approved fees, and Court-approved service awards.

**B. A fee award at the Ninth Circuit benchmark of 25% of the Settlement Fund will fairly compensate Class Counsel for their work on behalf of the Settlement Class.**

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). A district court must

"adequately explain" the special circumstances justifying departure from the 25% benchmark. *In re Bluetooth,* 654 F.3d at 942. The 25% benchmark is the starting point for the analysis, and 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 circumstances of the case," *Vizcaino*, 290 F.3d at 1048, confirms that an award at the benchmark of 25% is appropriate.

The Court preliminarily concluded that an attorneys' fee award at the Ninth Circuit's 25% percent benchmark is reasonable in this case. ECF No. 369 at 14.

1. Class Counsel achieved an excellent settlement for the class.

The Settlement Agreement requires Nationstar to pay $17,000,000 into the Settlement Fund, and all Settlement Class Members for whom the Class Administrator has a deliverable address will receive a payment from the Settlement Fund with no requirement to file claims. ECF Nos. 36-1, 36-2 ("Settlement Agreement") § III.3. The Settlement Fund is non-reversionary, ensuring that the monetary benefits will go to the Settlement Class Members—

none of the Settlement Fund will revert to Nationstar. Settlement Agreement § III.1.

Although the precise amount of each Settlement Class Member's award cannot be determined now, Class Counsel estimates that Settlement Class Members will receive awards ranging from $75 to $52,165.34. Terrell Decl. ¶ 43. The average estimated award for Class Members with evidence of a lock change is $3,589.92. *Id.* Class Counsel estimates that at least 2,595 Settlement Class Members will be entitled to payments that exceed $1,000. *Id.* Courts have recognized that such high value settlement awards are an excellent outcome for a class. *See, e.g., In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No 4:14-md-2541-CW, 2017 WL 6040065, at *3 (N.D. Cal. Dec. 6, 2017) (finding that a settlement with awards averaging $6,000 is an exceptional result for the class).

2. Class Counsel assumed significant risk is prosecuting this action for more than six years on a purely contingency basis.

Class Counsel's fee request 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). Class Counsel invested thousands of hours of work into the case over more than six years and also advanced hundreds of thousands of dollars in expert witness and other related litigation costs. *Vizcaino*, 290 F.3d at 1048;

*see also Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that *any* recovery ultimately would be obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of expenses, is important to determining a proper fee award." (internal citation omitted)).

Class Counsel represented Plaintiff and the Class entirely on a contingent basis. Courts recognize that awarding contingent fees that often exceed fees for services provided on a non-contingent basis is necessary to encourage counsel to take on contingency the cases of plaintiffs who otherwise could not afford to pay hourly fees." *In re Wash. Public Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

There was also a very real risk that Class Counsel would not recover their fees and costs at all. Another class action case with similar allegations was recently decertified and dismissed after years of litigation, without receiving a penny in fees. *See Bund v. Safeguard Properties, Inc.*, 2018 WL 5112642 (W.D. Wash. Oct. 19, 2018). The court also ruled in *Bund* that Washington homeowners whose locks were changed prior to the Washington Supreme Court's decision in this case could pursue claims under the Washington Consumer Protection Act. *See Bund v. Safeguard Properties LLC*, 2018 WL 4008039 (W.D. Wash. Aug. 20, 2018). While Class Counsel respectfully disagree with the court's rulings in *Bund*

and have appealed on behalf of their clients in that matter, the decisions reflect the inherent risk in prosecuting consumer class actions against large mortgage servicers and their agents.

In addition, lobbyists for lenders and the loan servicing industry repeatedly pressed the Washington State Legislature to adopt legislation immunizing them from liability for pre-foreclosure lock changes. *See* Gatens Decl., ¶ 9; Declaration of Lili Sotelo ("Sotelo Decl."), ¶¶ 2–14. Following the Washington Supreme Court's ruling in this case, big players in the lender and loan servicing industries spent two legislative sessions lobbying for an end-run around the State Supreme Court's decision that would provide retroactive immunity for pre-foreclosure lock changes. *Id.* Though those efforts were ultimately unsuccessful, they created a risk that Plaintiff, the Class, and Class Counsel would recover little or nothing if this case proceed through trial and appeal. *Id.*

3. Class Counsel produced high quality work reflecting their skill and experience.

Class Counsel's work in this case included depositions of numerous corporate representatives and complex analysis of the data and records maintained by Nationstar. It also involved briefing complex legal issues including the application of Washington's statute prohibiting lenders from retaking possession of property prior to foreclosure to property preservation activity

performed pursuant to a deed of trust, federal preemption of state law claims in the mortgage servicing context, and the appropriate measure of damages for Nationstar's trespasses and Washington Consumer Protection Act violations. Class Counsel prevailed at many key points, including on the questions this Court certified to the Washington Supreme Court, on FHFA's motion for summary judgment, on Nationstar's motion to decertify the class, and on the Class's motion for partial summary judgment. Class Counsel's skill and experience allowed them to marshal the evidence necessary to obtain partial summary judgment on liability and some damages, significantly narrowing the issues for trial and putting pressure on Nationstar to settle the case for $17,000,000.

4. Class Counsel's requested fee is at the market rate and consistent with awards in similar cases.

Washington courts routinely award attorneys' fees of more than 25 percent of the common in consumer class actions. *See e.g.*, *Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wash.2d 157, 161–66, 240 P.3d 790 (2010) (40 percent contingency fee based on the $5 million settlement was fair and reasonable); *Ikuseghan v. Multicare Health Sys.*, 2016 WL 4363198 (W.D. Wash. Aug. 16, 2016) (awarding 30% of common fund); *Vizcaino*, 290 F.3d at 1047 (affirming award of 28% of the common fund by United States District Court for the Western District of Washington); *Desio v. Emercon Elec. Co.*, No. 2:15-CV-00346-SMJ, ECF No.

84 (E.D. Wash. Feb. 7, 2018) (awarding 25% of the common fund). Class Counsel's requested award is at the Ninth Circuit benchmark for common fund cases, and less than or equal to amounts awarded in similar cases. *See* Alan Hirsch et al., Awarding Attorneys' Fees and Managing Fee Litigation, 82-83 (Federal Judicial Center 3d ed. 2015) (explaining that the percentage method "helps ensure that the fee award will simulate marketplace rates, since most common fund cases are handled on a contingency basis").[1]

**C. A lodestar cross check confirms request is reasonable.**

Class Counsel's requested fee will not result in windfall profits. *See In re Bluetooth*, 654 F.3d at 942–43. To the contrary, 25% of the fund in this case is $4,250,000, which reflects a modest multiplier of 2.16 on Class Counsel's $1,965,475 lodestar. The lodestar amount is calculated by multiplying the number of hours reasonably expended on the litigation by the prevailing local rate for an attorney of the skill required to perform the litigation. *Moreno v. City of Seattle*, 534 F.3d 1106, 1111 (9th Cir. 2008).

[1] Available at https://www.fjc.gov/sites/default/files/2015/Awarding%20Attorneys%20Fees%20and%20Managing%20Fee%20Litigation%20Third%20Edition%202015.pdf

1. Class Counsel's hours are reasonable and have been reduced to reflect billing judgment.

Class Counsel spent over 6,400 hours prosecuting this litigation. The Court is familiar with the extensive discovery, motions practice, and trial preparation undertaken by Class Counsel prior to the settlement in this action. The number of hours that Class Counsel devoted to litigating the case and achieving a favorable settlement is reasonable. The number of hours to be included in a lodestar calculation should be determined based on whether "the time could reasonably have been billed to a private client." *Moreno*, 534 F.3d at 1111 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). While time spent on unnecessarily duplicative work should not be included in a lodestar calculation, The Ninth Circuit has said that some duplication is "an inherent part of litigating over time" and expected. *Id.* at 1112. Class Counsel have provided the Court with their detailed billing records,[2] which show the work performed by each attorney and staff member included in Class Counsel's calculation of their lodestar. Terrell Decl. ¶ 29 & Ex. 1; Gatens Decl., ¶ 30 & Ex. 1; Daudt Decl., Ex. 1. Class counsel have already exercised billing judgment and removed time entries for clerical work, work that was duplicative, and entries by timekeepers who spent fewer than ten hours working on the case. Terrell Decl. ¶ 31; Gatens Decl. ¶ 30.

Throughout this litigation, Class Counsel worked collaboratively, but also took care to avoid duplication of effort by dividing tasks according to each professional's skill, experience, and availability, both within and amongst the firms. Gatens Decl. ¶ 3. The resulting hours are those that would be billed to a fee-paying client in a non-contingent case.

The advanced stage of this litigation at settlement explains the number of hours Class Counsel devoted to the case. In addition to developing all evidence necessary for class certification and a trial on the merits of the Class's claims, Class Counsel had to respond to numerous procedural matters and defenses litigated aggressively by Nationstar and FHFA in multiple courts. The parties had fully litigated class certification in state court before the case was removed to this Court. Nationstar's appeal of this Court's remand order was fully litigated in the Ninth Circuit. Class Counsel filed both merits briefs and a response to amicus

[2] Class Counsel redacted work product from their billing records. *See Democratic Party of Wash. v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) (recognizing that litigants are "entitled for good reason to considerable secrecy about what went on between client and counsel, and among counsel" and redactions appropriately "preserve secrecy about something the … lawyers talked about, and some issue of … law they researched").

briefs on the questions certified to the Washington Supreme Court. After prevailing in the Washington Supreme Court, Class Counsel had to respond to FHFA's motion to intervene and motion for summary judgment raising complex preemption issues. Class Counsel then responded to Nationstar's motions to decertify the class and for partial summary judgment, before filing the Class's affirmative motion for summary judgment. Class Counsel then had to respond to FHFA's motion to disqualify the Class's expert on damages made just weeks before trial was set to commence. The Class prevailed on nearly all the substantive motions filed in this case. Class Counsel's time records reflect the reasonableness of their efforts, which were necessary to obtain the excellent settlement secured for the Class.

2. Class Counsel calculated their lodestar using rates consistent with those approved by this Court in the past.

Class Counsel have calculated their lodestar in this case using rates aligned with rates approved in this district for attorneys of comparable skill and experience. Those hourly rates range from $75 for legal secretaries to $390 for senior partners. Judge Peterson has found rates ranging from $100 for legal secretaries to $400 for senior partners at the Terrell Marshall Law Group to be "reasonable rates based on their experience and in relation to the relevant market rate." *Cavnar v. Bounceback, Inc.*, No. 2:14-cv-00235-RMP, Order

Memorializing Court's Oral Rulings, ECF No. 152 at 6 (E.D. Wash. Sept. 15, 2016); *see also Brown v. Consumer Law Assocs. LLC*, Case No. CV-11-0194-TOR, ECF Nos. 211, 212 & 227 (approving rates up to $540); *Bronzich v. Persels & Assocs., LLC*, Case No. CV-10-00364-TOR, ECF Nos. 296, 297 & 311 (approving rates up to $530).

The rates sought for each timekeeper and experience of each timekeeper are detailed in the declarations attached to this motion. Terrell Decl. ¶ 29, Ex. 1; Gatens Decl. ¶ 30, Ex. 1; Daudt Decl., Ex. 1. The forum rates used are, if anything, low. Class Counsel are not aware of any firms located in this district that practice almost exclusively plaintiff-side class action litigation or have complex litigation experience comparable to that of the Terrell Marshall Law Group. Terrell Decl. ¶ 33. Class Counsel are regularly awarded hourly rates significantly higher than those used to calculate their lodestar in both state and federal courts in Western Washington. *See e.g., Rinky Dink v. World Business Lenders, LLC*, No. 2:14-cv-0268-JCC, Order Granting Final Approval of Class Settlement, ECF No. 92 at 7-8 (W.D. Wash. May 31, 2016) (approving lodestar calculated using Ms. Terrell's standard rate of $650 per hour); Terrell Decl. ¶ 34.

3. A modest multiplier is reasonable and appropriate.

Class Counsel's requested award at the Ninth Circuit's 25% benchmark results in a lodestar multiplier of 2.16. In the Ninth Circuit, multipliers "ranging

from one to four are frequently awarded." *Vizcaino*, 290 F.3d at 1051 n.6. Courts find higher multipliers appropriate when using the lodestar method as a crosscheck for an award based on the percentage method. *See, e.g., Steiner v. Am. Broad Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding a multiplier of approximately 6.85 to be "well within the range of multipliers that courts have allowed" when crosschecking a fee based on a percentage of the fund); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (finding that a multiplier of 3.6 was "well within the acceptable range" and explaining that "[m]ultipliers in the 3-4 range are common"); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *7 (N.D. Cal. May 11, 2018) (finding a 4.375 multiplier to be reasonable in crosschecking a fee of 25% of a settlement fund).

Courts may consider the following factors when assessing the reasonableness of a multiplier: "(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and

length of the professional relationship with the client, and (12) awards in similar cases." *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also Vizcaino*, 290 F.3d at 1051 (noting that the district court found a 3.65 multiplier to be reasonable after considering the factors in *Kerr*). Application of these factors confirms that a multiplier of 2.16 is reasonable and appropriate in this case. Class Counsel took on the case on a contingent basis and to the preclusion of other work and at considerable financial risk. The proposed multiplier is particularly appropriate because Class Counsel request a fee at the Ninth Circuit's benchmark of 25% of the settlement and will continue to respond to class members calls and work with the settlement administrator through final approval and distribution of the settlement funds.

**D. Class Counsel's costs were reasonably incurred.**

Rule 23(h) authorizes courts to award costs authorized by law or the parties' agreement. Attorneys who create a common fund are entitled to reimbursement of their out-of-pocket expenses so long as they are reasonable, necessary and directly related to the work performed on behalf of the class. *Vincent v. Hughes Air W.*, 557 F.2d 759, 769 (9th Cir. 1977); *see also Corson v. Toyota Motor Sales U.S.A., Inc.*, No. CV 12-8499-JGB, 2016 WL 1375838, at *9 (C.D. Cal. Apr. 4, 2016) ("Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research,

postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable"); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (awarding costs for document review, depositions, and experts).

Class Counsel's $208,245.67 in costs were reasonably incurred. More than half of the litigation costs for which Class Counsel seek reimbursement are expert witness fees. Class Counsel also reasonably incurred expenses related to provision of notice to the Class, and general litigation expenses, including for travel, deposition transcripts, photocopying, legal research, and mail. Terrell Decl. ¶ 35; Gatens Decl. ¶ 36. The costs for which Class Counsel seek reimbursement were reasonably incurred over more than six years of litigation.

**E. The requested incentive award is reasonable.**

"Incentive awards that are intended to compensate class representatives for work undertaken on behalf of a class are fairly typical in class action cases." *Online DVD-Rental*, 779 F.3d at 943 (quotation and internal marks omitted). Incentive awards are generally approved so long as the awards are reasonable and do not undermine the adequacy of the class representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013) (finding incentive award must not "corrupt the settlement by undermining the adequacy of the class representatives and class counsel"). Where a settlement "provide[s] no guarantee

that the class representatives would receive incentive payments, leaving that decision to later discretion of the district court," an incentive award may be appropriate." *Online DVD-Rental*, 779 F.3d at 943 (approving $5,000 incentive award to class representatives and distinguishing Radcliffe).

Ms. Jordan requests an incentive award of $20,000, or an amount the Court deems appropriate. Settlement Agreement § IV.1. Ms. Jordan's support of the settlement is independent of any service award and not conditioned on the Court awarding any particular amount or any award at all, in stark contrast to Radcliffe. Terrell Decl. ¶ 42. Ms. Jordan has expended significant time assisting class counsel in this case over the past six years. Nationstar propounded nine separate sets of written discovery to Plaintiff in this matter. Ms. Jordan diligently assisted Class Counsel in responding to all written discovery applicable to her. ECF No. 362 at ¶ 4. Nationstar deposed Ms. Jordan. *Id*. In addition, in the Spring of 2013, Ms. Jordan rejected a settlement offer from Nationstar of $25,000 because it would have provided no relief to the Class. *Id.* The case settled shortly before trial, and Ms. Jordan had already prepared with Class Counsel to testify at each of the scheduled trials. *Id*. An incentive award of $20,000 is reasonable and in line with awards approved by federal courts in Washington and elsewhere. *See, e.g.*, *In re Nat'l Collegiate Athletic Ass'n*, 2017 WL 6040065, at *11 (awarding $20,000 incentive awards to each of four class representatives and collecting

cases approving similar awards); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329–30 & n.9 (W.D. Wash. 2009) (collecting decisions approving awards ranging from $5,000 to $40,000); *Sykes v. Mel Harris & Assoc., LLC*, 09 Civ. 8486 (DC), 2016 WL 3030156, at *18 (S.D.N.Y. May 24, 2016) (approving $30,000 incentive awards where plaintiffs "took on significant risks in rejecting" offers of judgment); *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-01156-LMM, 2017 WL 416425, at *3 (N.D. Ga. Jan. 30, 2017) (approving $20,000 service awards and noting that the class representatives rejected offers of judgment that would have compensated them more than this service award and therefore put the class's interest above his or her own).

## IV. CONCLUSION

Class Counsel respectfully request that the Court awards them attorneys' fees of $4,250,000 and costs of $208,245. Class Counsel respectfully request that the Court award Plaintiff Laura Jordan a service award of $20,000.

RESPECTFULLY SUBMITTED AND DATED this 25th day of January, 2019.

TERRELL MARSHALL LAW GROUP PLLC

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**CERTIFICATE OF SERVICE**

I, Beth E. Terrell, hereby certify that on January 25, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I further certify that I caused true and correct copies of the foregoing to be served via U.S. First Class Mail, postage prepaid upon the following:

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