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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**VALERIE LEMBECK, ROBERT LANGE,  
and ANDREW MILLER**, *on behalf of themselves  
and all others similarly situated,*

Plaintiff,

v.

**ARVEST CENTRAL MORTGAGE CO.,**

Defendant.

Case No. 3:20-cv-03277-VC

**NOTICE OF MOTION AND MOTION  
FOR FEES, COSTS, AND SERVICE  
AWARDS; MEMORANDUM IN  
SUPPORT**

Date: August 12, 2021  
Time: 2:00 p.m.  
Courtroom:  
Judge: Vince Chhabria

Date Filed: May 14, 2020  
Trial Date: None set

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**TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on August 12, 2021 in the Courtroom of Hon. Vince Chhabria of the United States District Court for the Northern District of California, Plaintiffs Valerie Lembeck, Robert Lange, and Andrew Miller (“Plaintiffs”) will move, and do move, for an Order approving service awards for the Plaintiffs and Class Counsel’s reasonable attorneys’ fees and costs.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Kristen Simplicio (“Simplicio Decl.”), the Declaration of James Kauffman (“Kauffman Decl.”) submitted herewith, as well as Plaintiffs’ Motion for Preliminary Approval and supporting papers, and all other documents or arguments as the Court may consider.

Dated: June 15, 2021

Respectfully submitted,

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1 **I. INTRODUCTION**

2 Plaintiffs Valeria Lembeck, Robert Lange, and Andrew Miller (“Plaintiffs” or “Class  
3 Representatives”), by and through Class Counsel, respectfully submit this memorandum in support of  
4 Plaintiffs’ Motion for Fees, Costs, and Service Awards (“Motion”). Plaintiffs bring this Motion because  
5 the time and effort spent by Plaintiffs and Class Counsel resulted in a \$1,474,314 Common Fund and  
6 resolution of Plaintiffs’ and the Settlement Class’s claims deriving from Defendant Arvest Central  
7 Mortgage Company’s (“Arvest”) practice of charging fees for making mortgage payments online or  
8 over the phone (“Pay-to-Pay Fees”). The Settlement also includes important and valuable injunctive  
9 relief as Arvest has agreed to cease charging Pay-to-Pay Fees in California, Florida, and Texas for at  
10 least three years, an additional \$2,500,000 in value to the Settlement Class. The Common Fund, which  
11 represents approximately 49% of damages, will provide automatic cash payments to Settlement Class  
12 Members, pay Administrative Costs to provide notice and administer the settlement, and, if approved  
13 by the court, pay Fees and Expense and Service awards that are the subject of this motion.

14 Specifically, Plaintiffs seek a total of \$491,388 for their Counsel for reasonable fees and  
15 reimbursable costs. Importantly here, the Common Fund is not the only relief achieved for the Class  
16 Members in this case. The settlement also requires that Arvest cease charging Pay-to-Pay Fees in  
17 California, Florida, and Texas for at least three years after entry of Final Approval Order, regardless of  
18 whether subsequent changes in the law authorize such fees. While the total requested amount is one-  
19 third of the monetary relief sought, when factoring in the valuable injunctive relief obtained, it  
20 represents just 12.4% of the common benefit to the Settlement Class. Additionally, the requested fee  
21 amount is reasonable because it is less than what Class Counsel will incur in lodestar in this case through  
22 final approval and the oversight of the distribution of the common fund. Indeed, that lodestar is  
23 currently \$444,404.80 as of June 12, and Class Counsel estimates that total lodestar will approach  
24 \$500,000 at the time of the completion of the litigation. After accounting for the \$16,148.45 costs  
25 incurred, the ultimate fee award of \$475,239.55 will certainly exceed lodestar at the completion of this  
26 case.

27 Class Counsel’s extensive work in this case led to the settlement that the Court preliminarily  
28 approved on March 23, 2021. The settlement obtained compares favorably to other settlements



1 obtained in similar cases against major mortgage loan services. *See* App’x A. From inception to now,  
2 Class Counsel has expended substantial time and resources by, among other things, investigating the  
3 factual and legal bases for this suit, meeting with Plaintiffs, researching novel legal theories to draft  
4 three class action complaints, briefing contested motions to dismiss in three different states that  
5 implicated complex and novel areas of law, briefing a successful motion for remand in one state,  
6 preparing and appearing for multiple court appearances, interviewing class members, initiating  
7 discovery, appearing at hearings, participating in an all-day mediation with a mediator and several other  
8 settlement discussions, and negotiating, drafting, and finalizing the Settlement Agreement and  
9 associated paperwork.

10 Counsel has undertaken the costs and time of this litigation on a pure contingency basis and  
11 therefore has paid out-of-pocket for expenses and has not received payment for their work to-date.  
12 Counsel took on these risks fully aware that Arvest vigorously denied all charges and intended to fully  
13 and aggressively litigate this case across three states, every step of the way. Recovery was therefore far  
14 from certain, and even if secured, certain to be delayed for many years.

15 Plaintiffs also seek reasonable service awards for the time they spent and the risks they took in  
16 bringing and participating in this litigation. Plaintiffs provided critical assistance to counsel, including  
17 by participating in meetings with counsel to provide factual information for the complaints, sharing  
18 confidential and sensitive information, such as mortgage paperwork and bank statements, and reviewing  
19 pleadings and settlement papers. Indeed, Plaintiffs did so at great personal risk to themselves, not only  
20 to their reputations, but because Arvest owned the servicing rights to Plaintiffs’ home loans. And  
21 Plaintiffs also made substantial personal sacrifices because they often had to take time away from work  
22 or caretaking responsibilities to meet with counsel and litigate this case on behalf of the entire Class.  
23 Plaintiffs seek service awards of \$5,000 each, an amount consistent with reasonable and just service  
24 awards in the Ninth Circuit. *See In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)  
25 (upholding award to named plaintiff \$5,000 in case with \$1.725 million total recovery); *Willner v.*  
26 *Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at \*8 (N.D. Cal. June 22, 2015) (“Many courts  
27 in the Ninth Circuit have also held that a \$5,000 incentive award is “presumptively reasonable.”)  
28 (citations omitted).

1 Plaintiffs submit that their requested fees, costs, and service awards are especially appropriate  
2 because Plaintiffs and their Counsel achieved outstanding relief as to the primary allegation in their  
3 complaint. Plaintiffs alleged that Arvest had a practice of charging and collecting illegal processing fees  
4 from borrowers paying their monthly mortgage by phone or online. With the settlement, Arvest as  
5 agreed to a settlement amount that represents 49.7% of the total \$2,966,198 pay-to-pay fees collected  
6 by Arvest from the class during the class period—the highest percentage obtained of any similar  
7 settlement. *See* App’x A. The Settlement Class Members do not have to submit claims or take any other  
8 affirmative steps to receive benefits under the Settlement. Each Settlement Class Member who paid at  
9 least one Pay-to-Pay Fee during the Class Period shall be entitled to receive a *pro rata* share of the  
10 Settlement Fund. SA § IV.B. For each loan on which a Settlement Class Member has paid Pay-to-Pay  
11 Fees, the Settlement Administrator shall allocate the amount of the Net Settlement Fund that represents  
12 the proportional amount of Pay-to-Pay Fees charged by Arvest within the Class Period on that loan. *Id.*

13 The Settlement Agreement also includes critical injunctive relief that directly resolves Plaintiffs’  
14 claims of collecting pay-to-pay fees. As of January 1, 2021, as a result of this lawsuit, Arvest ceased  
15 charging or collecting pay-to-pay fees to any borrower in the United States. And as a result of the  
16 Settlement in this case, Arvest has agreed to refrain from charging or collecting such fees from  
17 borrowers for at least three years after the entry of a Final Approval Order, regardless of whether  
18 subsequent changes in law authorize such fees. SA § IV.C. Now, Settlement Class Members whose  
19 loans are still serviced by Arvest will be able to make payments online or over the phone without  
20 incurring an additional fee. Arvest collected an average of approximately \$820,000 a year from  
21 Settlement Class Members, and thus, injunctive relief is significant for Settlement Class Members  
22 because it may result in \$2.5 million or more in savings over the next three years.

23 Finally, if the amount of remaining funds following a secondary distribution is impracticable or  
24 infeasible, the remaining funds will be distributed to the *Cy Pres* Recipient, NeighborWorks America, a  
25 501(c)(3) charitable organization that works with nonprofits around the country on housing issues,  
26 including ensuring homeowners have access to financial health resources pertaining to their mortgages.

27 In sum, and as explained below, in light of the significant work performed by Class Counsel  
28 and the substantial time, effort, and personal sacrifice of the named Plaintiffs, the fee, cost, and service

1 awards sought in this Motion are reasonable. For all of the reasons set forth herein, Plaintiffs  
2 respectfully request that the Court grant these awards.

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

5 **A. THE CLASS REPRESENTATIVES' SERVICE AWARDS SHOULD BE**  
6 **APPROVED.**

7 This Court should approve a \$5,000 Service Award to each Plaintiff in just, fair, and reasonable  
8 recognition of their contributions on behalf of the Class. In deciding whether to approve such an award,  
9 a court should consider: “(1) the risk to the class representative in commencing suit, both financial and  
10 otherwise; (2) the notoriety and personal difficulty encountered by the class representative; (3) the  
11 amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5)  
12 the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”  
13 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); *see also* N.D. Cal. Procedural  
14 Guidance for Class Action Settlement (“N.D. Cal. Guidance”) ¶ 7. Further, as a matter of public policy,  
15 representative service awards are necessary to encourage consumers to take on the reputational risk to  
16 formally challenge unfair business practices. *See, e.g., Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59  
17 (9th Cir. 2009) (upholding award of service awards to class representatives as they “compensate class  
18 representatives for work done on behalf of the class, to make up for financial or reputational risk  
19 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private  
20 attorney general”); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL 4755371, at \*5  
21 (N.D. Cal. Oct. 4, 2012) (finding service award justified for plaintiffs “lending their names to this case,  
22 and thus subjecting themselves to public attention”); *Miletak v. Allstate Ins. Co.*, No. C 06-03778 JW,  
23 2012 WL 12924933, at \*2 (N.D. Cal. July 12, 2012) (same); *In re CenturyLink Sales Pract. & Sec. Litig.*,  
24 No. CV 17-2832, 2020 WL 7133805, at \*13 (D. Minn. Dec. 4, 2020) (awarding service award because  
25 “Class Representatives participated and willingly took on the responsibility of prosecuting the case and  
26 publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both  
27 the public and media”).  
28

1 Plaintiffs took on a substantial risk by bringing claims against the company that currently  
2 serviced their home loans, and undertook reputational risk, as their association with these lawsuits is  
3 publicly available. *Simplicio Decl.* ¶ 17. Plaintiffs also worked with counsel to provide information  
4 regarding their experiences and claims to enable them to join this case and represent a class throughout  
5 litigation that has progressed for over a year. *Id.* Plaintiffs conducted searches of their personal records  
6 and shared sensitive information, including bank records and mortgage documents. *Id.* And Plaintiffs  
7 remained actively involved in the litigation after the Settlement was reached. *Id.*

8 These personal risks and sacrifices, substantial time invested into the matter, and critical  
9 contributions to the outstanding results for the Class, along with their release of claims against  
10 Defendant, all support approval of \$5,000 service awards to each of the three Class Representatives.  
11 Service awards of \$5,000 are well within the range of reasonableness in this District. *See, e.g., Mego*, 213  
12 F.3d at 463; *Willner*, 2015 WL 3863625, at \*8; *Wolf v. Permanente Med. Grp., Inc.*, No. 3:17-CV-05345-VC,  
13 2018 WL 5619801, at \*1 (N.D. Cal. Sept. 14, 2018) (approving service award in the amount of \$7,500  
14 to named plaintiff and \$2,500 to opt-in Plaintiff); *Jabbari v. Wells Fargo & Co.*, No. 15-CV-02159-VC,  
15 2018 WL 11024841, at \*6 (N.D. Cal. June 14, 2018) (finding proposed service award of \$5,000 to each  
16 named plaintiff fair and reasonable); *Guilbaud v. Sprint Nextel Corp.*, No. 3:13-CV-04357-VC, 2016 WL  
17 7826649, at \*4 (N.D. Cal. Apr. 15, 2016) (approving service award of \$10,000 for each of the four  
18 named Plaintiffs); *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936, 2015 WL 758094 at \*7 (N.D. Cal.  
19 Feb 20, 2015) (awarding \$5,000 to named plaintiffs); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293,  
20 \*6 (S.D. Cal. Jan. 14, 2013) (finding \$15,000 incentive payments for three Class representatives well  
21 within the range awarded in similar cases). *See also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive*  
22 *Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (an empirical  
23 study of incentive awards to class action plaintiffs has determined that the average aggregate incentive  
24 award within a consumer class action case is \$29,055.20, and that the average individual award is  
25 \$6,358.80). Consistent with these cases, and in recognition of the time, effort, and substantial personal  
26 risk taken on behalf of the Class, Plaintiffs request that the Court award the requested service awards.

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

2           **1. Legal Standard**

3           The Settlement Agreement provides for the payment of attorneys’ fees and expenses from the  
4 common fund. Having reached a common fund settlement, Plaintiffs’ Counsel is entitled to seek an  
5 award of fees and expenses from the fund. *See Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir.  
6 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990). Plaintiffs thus request  
7 an award of attorneys’ fees and costs in the amount of one third (33.33%) of the Gross Settlement  
8 Fund, or \$491,388.

9           Under Ninth Circuit standards, it is appropriate for a district court to analyze an attorney’s fee  
10 request and issue an award either based on (1) the “lodestar” method or (2) by making an award as a  
11 percentage of the total benefit made available to the settlement class, including costs, fees, and injunctive  
12 relief. *See, e.g., Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Nwabueze v.*  
13 *AT&T, Inc.*, No. C 09-01529 SI, 2014 WL 324262, at \*2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v. Youngblood*,  
14 No. CV-F-07-0474 DLB, 2011 WL 10483569, at \*11-12 (E.D. Cal. Sept. 2, 2011). Plaintiffs’ request  
15 here is both a reasonable share of the common fund, and closely in line with the fees of \$444,404.80  
16 and costs of \$16,148.45 incurred by Plaintiffs’ counsel in the litigation of these three matters.<sup>1</sup>

17           **2. Plaintiffs’ Counsel’s Requested Fee is a Reasonable Percentage of The**  
18           **Common Fund.**

19           Where a settlement involves a common fund, courts typically award attorneys’ fees based on a  
20 percentage of the total settlement. *See State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *see also In*  
21 *re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming attorney’s fee award of 33% of the  
22 recovery); *Morris v. Lifescan, Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (affirming attorney’s fee award of  
23 33% of the recovery). Indeed, the percentage method is the preferred approach in common fund cases.

24  
25 <sup>1</sup> An attorney is entitled to “recover as part of the award of attorney’s fees those out-of-pocket that  
26 would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)  
27 (internal quotation marks omitted). To support an award of costs, plaintiff should file an itemized list  
28 of their expenses by category, listing the total amount advanced for each category, allowing the Court  
to assess whether the expenses are reasonable. *See Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-  
JCS, 2011 WL 1230826, at \*30 (N.D. Cal. Apr. 1, 2011); N.D. Cal. Guidance ¶ 6.

1 *Vizcaino*, 290 F.3d at 1050 (noting “the primary basis of the fee award remains the percentage  
2 method”).<sup>2</sup>

3 In the Ninth Circuit, the benchmark for an attorney fee is 25% of the **total settlement value**,  
4 including **both monetary and non-monetary recovery**. See *Six Mexican Workers*, 904 F.2d at 1311; see  
5 also *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (“[W]here the value to individual class members  
6 of benefits deriving from injunctive relief can be accurately ascertained . . . courts [may] include such  
7 relief as part of the value of a common fund for purposes of applying the percentage method . . .”).<sup>3</sup>

8 In other words, Ninth Circuit precedent requires courts to award attorneys’ fees based on the total  
9 benefits made available to class members rather than the amount actually claimed. See *Young v. Polo*  
10 *Retail, LLC*, 2007 WL 951821, at \*8 (N.D. Cal. Mar. 28, 2007) (citing *Williams v. MGMPathe Commc’ns*  
11 *Co.*, 129 F.3d 1026 (9th Cir. 1997) (finding “district court abused its discretion in basing attorney fee  
12 award on actual distribution to class” instead of amount being made available)). Cf. *Allen v. Bedolla*, 787  
13 F.3d 1218, 1225 (9th Cir. 2015) (holding that a district court should make findings as to the value of  
14 non-monetary relief when making a fee award conditioned at least in part on that relief). Accordingly,  
15 when determining the value of the settlement, courts consider both the monetary and nonmonetary

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16 <sup>2</sup> See also, e.g., *In re ECOTality, Inc. Secs. Litig.*, No. 13-cv-03791-SC, 2015 WL 5117618, at \*3 (N.D. Cal.  
17 Aug. 28, 2015) (finding percentage approach to be the “typical method of calculating class fund  
18 fees”); *Evans v. Linden Research, Inc.*, No. C-11-01078 DMR, 2014 WL 1724891, at \*5 (N.D. Cal. Apr.  
19 29, 2014) (same); *Taylor v. Meadowbrook Meat Co., Inc.*, No. 3:15-CV-00132-LB, 2016 WL 4916955, at \*5  
20 (N.D. Cal. Sept. 15, 2016) (“Where the settlement involves a common fund, courts typically award  
21 attorney’s fees based on a percentage of the total settlement.”); Principles of the Law of Aggregate  
Litigation, § 3.13(b) (American Law Institute, 2010) (“[A] percentage of the fund approach should be  
the method utilized in most common-fund cases, with the percentage being based on both the  
monetary and nonmonetary value of the judgment or settlement.”).

22 <sup>3</sup> See also *In re: Easysaver Rewards Litig.*, No. 09-cv-02094-BAS-WVG, 2016 WL 4191048, at \*2, \*4-5  
23 (S.D. Cal. Aug. 9, 2016) (approving attorneys’ fee award worth 22.7% of \$38 million total settlement  
24 amount, which included both “a \$12.5 million non-reversionary cash fund plus \$20.00 merchandise  
25 credits automatically sent” to class members); *In re Lloyd’s Am. Tr. Fund Litig.*, No. 96 Civ. 1262 RWS,  
26 2002 WL 31663577, at \*8 (S.D.N.Y. Nov. 26, 2002) (approving attorneys’ award of fees and expenses  
27 totaling “approximately 28% of the total settlement value,” which included \$8.5 million in cash and  
28 \$11.5 million in debt reduction); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 46-47 (E.D. Pa. 2000)  
(approving attorneys’ fee award of “one-third of the net settlement, plus one third of the interest  
accrued on the fund as of the date of disbursement,” where total settlement value included both \$5.97  
million in cash and \$1.3 million in loan forgiveness); *Jacobs v. Huntington Bancshares Inc.*, No. 11-CV-  
000090 (Oh. Com. Pl. June 2, 2017) (approving attorneys’ fee award of 40% of the total settlement  
value, where settlement included a cash fund of \$8,975,000 and a debt forgiveness fund of \$7 million).

1 benefits conferred under the settlement terms. *See, e.g., Staton*, 327 F.3d at 972-74; *Hartless v. Clorox Co.*,  
2 273 F.R.D. 630, 645 (S.D. Cal. 2011), *aff'd*, 473 F. App'x 716 (9th Cir. 2012); *Pokorny v. Quixtar, Inc.*,  
3 2013 WL 3790896, \*1 (N.D. Cal. July 18, 2013), *appeal dismissed* (Sept. 13, 2013) (“The court may  
4 properly consider the value of injunctive relief obtained as a result of settlement in determining the  
5 appropriate fee.”); *In re Netflix Privacy Litig.*, 2013 WL 1120801, at \*7 (N.D. Cal. Mar. 18, 2013)  
6 (settlement value “includes the size of the cash distribution, the cy pres method of distribution, and the  
7 injunctive relief”), *appeal dismissed* (Dec. 19, 2013).

8           Moreover, even without factoring in the value of injunctive relief, many cases have found that  
9 upwards of 30% of the immediate monetary benefits, *i.e.*, the common fund, is an appropriate range,  
10 particularly where that fund is less than ten million. *See, e.g., Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918,  
11 923 (9th Cir.) (“[T]he district court acted within its proper discretion when it found that the settlement  
12 contains significant benefits for Plaintiffs beyond the cash recovery, and thus that the award, at about  
13 a third of the lodestar amount, was reasonable.”), *vacated on other grounds*, 772 F.3d 608 (9th Cir. 2014);  
14 *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-CV-04960-VC, 2015 WL 12977077, at \*1 (N.D.  
15 Cal. Aug. 21, 2015) (“[I]n light of the many cases in this circuit that have granted fee awards of 30% or  
16 more’, it is ‘well within the usual range of percentages awarded.’”) (quoting *Vedachalam v. Tata Consultancy*  
17 *Servs., Ltd*, No. C 06-0963 CW, 2013 WL 3941319, at \*2 (N.D. Cal. July 18, 2013) and collecting cases  
18 awarding 30% or more); *Van Vranken.*, 901 F. Supp. at 297-98 (collecting cases); *see also Johnson v. Gen.*  
19 *Mills, Inc.*, 2013 WL 3213832, at \*6 (C.D. Cal. June 17, 2013) (awarding a fee award of 30% of the  
20 settlement fund).

21           Here, because the injunctive relief of three years of changed practices can be roughly valued at  
22 \$2.5 million, the requested fee (after taking into account costs) of \$475,239.55 is only 11.9% of the total  
23 settlement value of \$3,974,314. Although the fee equates to 32.23% of the \$1,474,314 in monetary relief  
24 obtained, that percentage is also well within the range of the cited similar cases. Indeed, the fee request  
25 here compares to the one in *Miller*, where class counsel sought and was awarded \$1.575 million in a  
26 food labeling settlement involving a \$5.25 million common fund, and label changes valued at as much  
27 as \$13.46 million. 2015 WL 758094, at \*4-5. Thus, the fee award there was 30% of the monetary value  
28 of a much larger common fund, but 8.9% of the total settlement value when accounting for the value

1 of injunctive relief. *See id.* And should the Court decide for some reason to not include the value of  
2 injunctive relief, a 7.23% upward deviation from the 25% benchmark is appropriate here given that it  
3 is the only settlement against a major mortgage loan servicer to obtain case refunds of nearly 50% of  
4 fees paid, and it is the first to include injunctive relief stopping a major mortgage loan servicer from  
5 charging Pay-to-Pay Fees for any length of time. *See* App’x A.

6 Moreover, the risk in this litigation was high. While this Court agreed and accepted Plaintiffs’  
7 view of the law, other courts have not. Indeed, identical arguments were rejected recently by a court in  
8 the Central District of California. *See Thomas-Lawson v. Carrington Mortg. Servs., LLC*, No. 2:20-cv-07301-  
9 ODW-EX, 2021 WL 1253578 (C.D. Cal. Apr. 5, 2021). Notably, several of the attorneys representing  
10 Arvest also represent the mortgage loan servicer in that matter, and an appeal is pending. This decision  
11 illustrates that success here was far from certain, and the fact that the Settlement Class here will be  
12 compensated quickly, without protracted litigation or appeals, notwithstanding this uncertainty further  
13 supports a slight upward deviation from the 25% benchmark. *See Vizcaino*, 290 F.3d at 1050  
14 (recognizing risk as a relevant circumstance for awarding fee above 25% benchmark); *Taylor v. Shippers*  
15 *Transp. Express, Inc.*, No. CV1302092BROPLAX, 2015 WL 12658458, at \*16 (C.D. Cal. May 14, 2015)  
16 (holding that 33% was reasonable given the result, the risk, and counsel’s time investment); *Vedachalam*,  
17 2013 WL 3941319, at \*2 (fee request of 30% appropriate given risks undertaken by Class Counsel).

18 **3. Plaintiffs’ Counsel’s Requested Fee Is Also Reasonable When Measured**  
19 **Using the Lodestar Method.**

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



1 1989)). However, should the Court elect to utilize a lodestar cross-check, Class Counsel's fee here is  
2 likewise eminently reasonable.

3 Under the lodestar approach, "[t]he lodestar (or touchstone) is produced by multiplying the  
4 number of hours reasonably expended by counsel by a reasonable hourly rate." *Lealao v. Beneficial*  
5 *California, Inc.*, 82 Cal. App. 4th 19, 26 (2000). Plaintiffs' Counsel's lodestar through June 12, 2021 (three  
6 days before the date of this application) is approximately \$444,404.80. (Simplicio Decl., ¶ 23; Kauffman  
7 Decl. ¶ 10 (tables showing hours worked by timekeeper).) Because this settlement consolidates three  
8 separate actions, Plaintiffs' Counsel's hours to date reflect work performed in three states. Their efforts  
9 to date included, without limitation:

- 10 • Pre-filing investigation;
- 11 • Drafting and filing three class action complaints;
- 12 • Opposing three motions to dismiss, including preparing for and arguing at one hearing;
- 13 • Drafting and filing a successful motion for remand and reply in one matter;
- 14 • Drafting and filing a case management conference statement, and attending a related case  
15 management conference;
- 16 • Preparing various case management stipulations, status reports, and other routine filings;
- 17 • Meeting-and-conferring with Defendant's counsel regarding various case management  
18 matters;
- 19 • Drafting and serving discovery requests and initial disclosures;
- 20 • Drafting a comprehensive mediation statement, and participating in an all-day mediation;
- 21 • Negotiating and drafting the Settlement Agreement along with corresponding  
22 documents, including claim forms, summary notice, and long-form notice;
- 23 • Filing the motion for preliminary approval and supporting documents, including a  
24 proposed preliminary approval order and a proposed final judgment;
- 25 • Reviewing and responding to correspondence from Settlement Class Members;
- 26 • Supervising the work of the Claims Administrator; and
- 27 • Preparing this motion and supporting documentation.

1 (Simplicio Decl., ¶¶ 3-17; Kauffman Decl. ¶¶ 11-28.) In addition, before the final approval hearing,  
 2 Class Counsel's efforts will also include, without limitation:

- 3 • Continued correspondence with Settlement Class Members and supervision of the work  
 4 of the Claims Administrator;
- 5 • Preparing a motion for final approval;
- 6 • Researching and drafting a reply memorandum to this motion;
- 7 • Opposing objections, if any; and
- 8 • Preparing post-settlement filings in accordance with this Court's local rules and standing  
 9 orders.

10 (Simplicio Decl., ¶¶ 16, 28; Kauffman Decl. ¶¶ 20-28.) Indeed, Class Counsel estimates that more than  
 11 60 hours of work will be required to see this matter to completion, and that number assumes that no  
 12 objections will be filed. (Simplicio Decl. ¶ 28.) These additional hours will almost certainly increase  
 13 lodestar by at least \$30,000 and likely more. (Id. ¶ 28.) Thus, while the lodestar through June 12 is  
 14 approximately \$30,000 less than the amount in fees sought, it is likely that by the time this matter is  
 15 closed, the total lodestar will be slightly over, the amount received.

16 Of further note, Plaintiffs' lodestar does not include activities by Class Counsel in related pay-  
 17 to-pay litigation, which enabled Class Counsel to gain expertise and litigate this matter more efficiently.  
 18 (Simplicio Decl., ¶ 5; Kauffman Decl. ¶ 10.)

19 As attested to in Class Counsel's declarations, Class Counsel's rates are the prevailing rates in  
 20 the appropriate legal markets, and are reasonable. (Simplicio Decl., ¶ 24; Kauffman Decl. ¶ 27.)  
 21 "Affidavits of the plaintiff[s] attorney and other attorneys regarding prevailing fees in the community,  
 22 and rate determinations in other cases, particularly those setting a rate for the plaintiff[s] attorney, are  
 23 satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896  
 24 F.2d 403, 407 (9th Cir. 1990). To be conservative, Plaintiff's Counsel calculated their lodestar using the  
 25 LSI Laffey Matrix, which provides market rates for attorneys and staff working in the Washington D.C.  
 26 area. "[T]he Laffey matrix rates likely fall below reasonable billing rates in the Bay Area based on the  
 27 locality pay differential between this geographic location and the Washington- Baltimore area." *Carlotti*  
 28 *v. Asus Comput. Int'l*, No. 18-cv-03369-DMR, 2020 U.S. Dist. LEXIS 108917, at \*17 (N.D. Cal. June 22,

2020) (citing and summarizing *Brinker v. Normandin's*, Case No. 14-cv-03007- EJD, 2017 U.S. Dist. LEXIS 25670, 2017 WL 713554, at \*2 (N.D. Cal. Feb. 23, 2017), as well as other relevant authorities).

Baily Glasser LLP and Tycko & Zavareei LLP both regularly use and obtain approval for the Laffey matrix billing rates. (Simplicio Decl., ¶ 25; Kauffman Decl. ¶ 24.) The rates charged by Class Counsel have been deemed reasonable in connection with the approval of their fee applications in other recent matters. *Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017) (approving Tycko & Zavareei rates as “reasonable and commensurate with those charged by attorneys with similar experience in the market”); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075, at \*6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7, 2018), Dkt. 179; *In re Think Finance, LLC*, et al., No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014). (Simplicio Decl., ¶ 25; Kauffman Decl. ¶ 24.)

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

Class Counsel’s current rates are also appropriate given the deferred and contingent nature of counsel’s compensation. See *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998) (“[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in payment . . .” (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *In re Washington Pub. Power Supply Sys. Sec. Litig.*,

1 19 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has discretion to compensate delay in payment  
2 in one of two ways: (1) by applying the attorneys’ current rates to all hours billed during the course of  
3 litigation; or (2) by using the attorneys’ historical rates and adding a prime rate enhancement.”). Using  
4 current rates, rather than historical rates, will fairly compensate counsel for the significant risk of  
5 nonpayment taken on in connection with this matter.

6 Factoring in both work to date, as well as the remaining work to be done to bring this matter  
7 to completion, Plaintiffs’ Counsel’s lodestar will likely incur another \$50,000. (Simplicio Decl. ¶ 28.)  
8 Thus, Plaintiffs’ Counsel’s lodestar will be more than the requested fee award of \$475,239.55 at final  
9 approval. Although courts in this Circuit routinely award lodestar multipliers, Class Counsel’s requested  
10 fee award of \$475,239.55 effectively produces a negative multiplier when compared to the expected  
11 lodestar of \$444,404.80 plus an additional \$50,000, further underscoring the reasonableness of the  
12 request. *See, e.g., Vizcaino*, 290 F.3d at 1051-52 (approving of 3.65 multiplier and citing multipliers as  
13 high as 19.6); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D. Cal. 2015) (listing multipliers as high as 5.2  
14 among “the range of acceptable lodestar multipliers”); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326,  
15 334 (N.D. Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range  
16 of 1.0–4.0.”); *Van Vranken*, 901 F. Supp. at 298 (“Multipliers in the 3–4 range are common in lodestar  
17 awards for lengthy and complex class action litigation.”).

#### 18 **4. Plaintiffs’ Counsel Should Be Awarded Costs.**

19 As part of Plaintiffs’ Counsel’s \$491,388 fee and cost request, Plaintiffs’ Counsel additionally  
20 requests that the Court grant its application for reimbursement of \$ 16,148.45 in expenses incurred in  
21 connection with the prosecution of this Litigation. These expenses are itemized in the Simplicio and  
22 Kauffman Declarations. (Simplicio Decl., ¶ 26, Ex. A; Kauffman Decl. ¶ 29.) Plaintiffs’ Counsel is  
23 typically entitled to reimbursement of all reasonable out-of-pocket expenses and costs in prosecution  
24 of the claims and in obtaining a settlement. *See Harris*, 24 F.3d at 19; *Vincent v. Hughes Air West*, 557 F.2d  
25 759, 769 (9th Cir. 1977).

1 **III. CONCLUSION**

2 For all of these reasons, Plaintiffs respectfully request that the Court approve their request for  
3 a service award of \$5,000 to each of the four Class Representatives and for a fee and cost award of  
4 \$491,388 for Class Counsel.

5 Dated: June 15, 2021

6 Respectfully submitted,

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