

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF CLARK

AMANDA DOUGHERTY, individually and as
a representative of the class,

Plaintiff,

v.

BARRETT BUSINESS SERVICES, INC.,

Defendant.

NO. 17-2-05619-1

**PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE
SERVICE AWARD**

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I. INTRODUCTION

Plaintiff Amanda Dougherty, individually and on behalf of the Class Members (“Plaintiff” or “Class Representative”), and Class Counsel have litigated this action for over four years, engaged in mediation and extensive negotiations with Defendant Barrett Business Services, Inc. (“BBSI”), and ultimately achieved a favorable settlement on behalf of the Settlement Class.¹ The settlement provides for direct monetary benefits for Class Members and creates a non-reversionary \$1,500,000 common fund despite significant hurdles to recovery had this litigation proceeded. Based on the current claims rate and estimates of administrative costs, if the requested fees, costs, and service awards are granted, participating Class Members will receive an estimated \$200. These benefits to the Class could not have been achieved absent Class Counsel’s time, effort, and skill, as well as Plaintiff’s participation in the case. Accordingly, the Class Representative and Class Counsel seek Court approval of the following payments in connection with the Settlement: (1) attorneys’ fees to Class Counsel in the amount of \$500,000, which is one-third of the settlement fund; (2) \$28,752.51 to reimburse Class Counsel for their out-of-pocket, documented expenses; and (3) a service payment of \$3,500 to the Class Representative.

The requested fees, litigation costs, and service award are also reasonable. Plaintiff and Class Counsel thus respectfully request that this Court grant their motion.

II. BACKGROUND

20 The procedural history of this case and the Settlement are discussed at length in
21 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement filed on May 28, 2019.
22 This brief highlights Class Counsel’s and the Class Representative’s efforts to secure the
23 settlement which provides a significant recovery for the Class. The settlement provides for a
24 \$1,500,000 common fund to be distributed among participating Class Members. Based on the
25

26

¹ Unless otherwise explicitly defined herein, all capitalized terms have the same meanings as those set forth in the Parties’ Settlement Agreement (Ex. A to Drake Prelim. Decl. (“Settlement Agreement”)).

1 current claims rate of 7.9%, if the requested fees, costs, and service award are approved, Class
2 Members will receive checks for approximately \$200. The settlement is a significant
3 achievement and could not have been accomplished but for the efforts of Class Counsel and the
4 Class Representative.

5 **A. Class Counsel’s Efforts to Secure the Settlement.**

6 This case is over four years old and was vigorously litigated up until the point of
7 settlement. To briefly summarize the facts, Plaintiff and Class Representative Amanda
8 Dougherty applied for a job at Merry Maids. The Merry Maids franchise contracted with the
9 Baltimore branch office of BBSI to provide various HR functions. As part of her job
10 application, Plaintiff completed a background check authorization form that included BBSI’s
11 logo at the top. Plaintiff alleged that that the background check form failed to comply with the
12 Fair Credit Reporting Act’s (“FCRA”) requirement that before a person can procure a
13 background check for employment purposes, the person must make “a clear and conspicuous
14 disclosure . . . in a document that consists solely of the disclosure, that a consumer report may
15 be obtained for employment purposes.” 15 U.S.C. § 1681b(b)(2)(A)(i). Plaintiff filed this case
16 seeking statutory damages of \$100 to \$1000 for Defendant’s alleged willful violation of the
17 FCRA, 15 U.S.C. § 1681n.

18 As set forth in the Declaration of E. Michelle Drake (“Drake Decl.”) filed with this
19 motion, Class Counsel are experienced FCRA litigators. E. Michelle Drake and John Albanese
20 from Berger Montague have worked extensively on FCRA class actions, in particular class
21 actions involving the criminal background check industry. (Drake Decl. ¶ 10.) They have
22 litigated over 40 FCRA class actions, and routinely speak nationally on the FCRA and class
23 action litigation. (*Id.* ¶¶ 8, 10.) Berger Montague monitors every new FCRA case that is filed in
24 court on a daily basis, tracks every FCRA class action case, and reads every FCRA opinion
25 issued anywhere in the country. (*Id.* ¶ 18.) Similarly, Terrell Marshall Law Group are
26

1 experienced class action practitioners and have served as class counsel in a number of FCRA
2 matters. (Drake Decl. ¶ 12.)

3 Class Counsel took this case on a contingent basis with no guarantee of recovery with a
4 one-third contingency fee. (Drake Decl. ¶ 13.) Class Counsel also agreed to advance all costs of
5 this litigation. (*Id.*) Class Counsel have worked on this matter for over four years without
6 compensation or reimbursement for their time and out-of-pocket expenses. (*Id.*) In the event
7 that Class Counsel did not successfully resolve this matter (and as described below, this case
8 was risky), Class Counsel would have been paid nothing.

9 Although the parties settled this case in the pre-trial stage, Class Counsel have invested
10 a substantial amount of time (over 800 hours to date) and resources investigating and litigating
11 this hotly contested action, including \$28,752.51 in out-of-pocket costs. (Drake Decl. ¶¶ 15, 19
12 & Exs. C, D.) Tasks performed by Class Counsel thus far include: (1) investigating the claims;
13 (2) researching and drafting the complaint; (2) opposing Defendant's motion to stay; (3)
14 opposing and arguing Defendant's motion for judgment on the pleadings; (4) opposing
15 Defendant's first motion for interlocutory appeal; (5) propounding discovery and reviewing
16 Defendant's responses; (6) numerous meet and confers regarding discovery responses; (7)
17 drafting and winning a motion to compel; (8) responding to Defendant's discovery requests; (9)
18 opposing Defendant's motion to transfer; (10) opposing and arguing Defendant's motion for
19 summary judgment; (11) opposing Defendant's second motion for interlocutory appeal; (12)
20 deposing BBSI's corporate representative; (13) attending an all-day mediation and preparing a
21 robust mediation statement; (14) preliminary work on a motion for class certification in the event
22 that the matter did not settle; (15) engaging in subsequent settlement negotiations with Defendant;
23 (16) issuing subpoenas to the background check companies used by Defendant to get Class Member
24 contact information; (17) preparing the settlement documents for approval; and (18) overseeing
25 settlement administration and responding to class member inquiries. (*Id.* ¶ 17.).

1 But for these extensive efforts by Class Counsel, Class Members would have received no
2 recovery in this case.

3 **B. Class Representative Amanda Dougherty’s Significant Role**

4 Plaintiff Amanda Dougherty played a valuable role in bringing this litigation to a
5 successful conclusion. As set forth in her attached declaration (Declaration of Amanda
6 Dougherty (“Dougherty Decl.”)), Ms. Dougherty: (1) assisted with Class Counsel’s
7 investigation of the facts; (2) reviewed the complaint prior to filing; (3) provided documents to
8 Class Counsel; (4) responded to written discovery requests from Defendant; (5) consulted with
9 Class Counsel during the course of settlement negotiations; (6) reviewed and approved the
10 Settlement Agreement; and (7) communicated regularly with Counsel and provided input and
11 answers to questions whenever needed. (Dougherty Decl. ¶¶ 5-6, 10). By participating in this
12 case, Ms. Dougherty has publicized her offense history, which in Class Counsel’s experience,
13 many consumers are unwilling to do. (*Id.* ¶ 8.) She estimates that she has devoted over 40
14 hours to the case over the past four years. (*Id.* ¶ 7.) The Settlement’s allowance for a service
15 payment of up to \$3,500 reflects Ms. Dougherty’s initiative in pursuing the action, the risks
16 associated with attaching her names to this litigation, and the time she has invested in the case.

17 **C. Class Member Reaction to the Settlement**

18 Notice and claims forms were distributed to Settlement Class Members for whom
19 contact information could be determined via mail and email and reminder notices have also
20 been sent via mail and email. Thus far, Settlement Class Members’ response to the settlement
21 has been positive. As of August 23, 2019, there have been 3,880 claims submitted, which
22 results in a claims rate of approximately 7.9%. The claims deadline is not until September 17,
23 2019, and the claims have not yet been reviewed to eliminate duplicate or incomplete claims.
24 Plaintiff will provide an update regarding the final claims rate prior to the final approval
25 hearing. No class members have objected and no class members have requested exclusion. This
26 motion is being filed prior to the objection deadline of September 17, 2019 so that Class

1 Members have an opportunity to voice any concerns regarding the amounts requested and will
2 be promptly posted to the settlement website.

3 **D. The Settlement Agreement’s Provisions for Attorneys’ Fees, Costs, and a Service
4 Award**

5 The Settlement allows for Class Counsel to seek an amount in attorneys’ fees not to
6 exceed one-third of the settlement fund, as well as reimbursement of litigation expenses.
7 Settlement Agreement §§ 7.3, 9.3. The Settlement also allows for a service payment of \$3,500
8 for Ms. Dougherty, to compensate her for the time she devoted to this litigation and the risk she
9 undertook in stepping forward as the class representative. *Id.*, § 7.4. Any fees and costs
10 approved by the Court will be deducted from the settlement fund before distributions are made
11 to qualified Class Members. *Id.*, § 4.2. The settlement is not contingent on approval of either
12 the requested attorneys’ fees or Ms. Dougherty’s service payment. *Id.*, §§ 7.3.1, 7.4.1.

13 **III. STATEMENT OF ISSUES**

14 Should the Court grant the requested attorneys’ fees, costs, and service award?

15 **IV. EVIDENCE RELIEF UPON**

16 Ms. Dougherty relies upon the Declarations of E. Michelle Drake and Amanda
17 Dougherty and the exhibits attached thereto and the documents filed in connection with
18 Plaintiffs’ Motion for Preliminary Approval.

19 **V. ARGUMENT AND AUTHORITY**

20 **A. The Requested Attorneys’ Fees and Costs are Fair and Reasonable**

21 Class Counsel requests that the Court approve a payment of \$500,000 in fees as well as
22 \$28,752.51 for their actual, documented, out-of-pocket expenses. As set forth below, Class
23 Counsel’s request warrants approval. Class Counsel fully disclosed to the Class their intent to
24 request fees and costs to be paid from the settlement fund in the Court-approved notice.

25 **1. The Requested Fee Payment Is Reasonable**

26 Where, as here, counsel to a class action seek fees from the common fund, courts have
discretion to employ either the lodestar method or the percentage-of-recovery method. *Bowles*

1 *v. Washington Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). When determining
2 the appropriate fee from a common fund, percentage-of-the-fund method is preferred. *Id.* As a
3 matter of public policy, awarding fees from the common fund promotes “greater access to the
4 judicial system” by making it easier for class action plaintiffs to obtain counsel. *Id.* Class
5 Counsel’s request for fees is reasonable under either analysis.

6 a. *The Percentage of the Fund Analysis Supports Counsel’s Fee Request*

7 Under the “percentage of recovery” method attorneys are awarded a reasonable
8 percentage of the total recovery, “often in the range of 20 to 30 percent.” *Bowles*, 121 Wn.2d at
9 72; *see also City of Seattle v. Okeson*, 137 Wn. App. 1051, 2007 WL 884827 at *7 (2007)
10 (unpublished) (“Twenty to thirty percent of the recovery is a typical benchmark used in
11 awarding attorney fees under the common fund doctrine, but that figure can be adjusted based
12 on the circumstances of the case.”). However, courts in this state can and do award more than
13 30%. *See A.M. v. Moda Health Plan, Inc.*, C 14-1191 TSZ, 2015 WL 9839771, at *3 (W.D.
14 Wash. Nov. 3, 2015) (awarding fee of 35% of settlement fund). Here, Class Counsel seek 33%
15 of the common fund, similar to fees that have been approved in the state and in similar cases
16 across the country. *See id.*; *Terrell v. Costco Wholesale Corp.*, No. 16-2-10140-1 SEA, Order
17 Approving Award of Attorneys’ Fees and Costs (King Cty. Sup. Ct. June 19, 2018) (awarding
18 one-third of fund in FCRA case) (attached to Drake Decl. as Ex. E) (hereinafter “*Costco*
19 *Order*”); *see also, Johnson v. Midwest Logistics Sys., Ltd.*, No. 11-cv-1061, 2013 WL 2295880,
20 at *6 (S.D. Ohio May 24, 2013) (same); *Flores v. Express Servs., Inc.*, No. 14-cv-03298, 2017
21 WL 1177098 (E.D. Pa. Mar. 30, 2017) (same); *Smith v. Res-Care, Inc.*, No. 13-cv-5211, 2015
22 WL 6479658, at *8 (S.D. W.Va. Oct. 27, 2015) (same); *Serrano v. Sterling Testing Sys., Inc.*,
23 711 F. Supp. 2d 402, 421 (E.D. Pa. 2010) (same).

24 The settlement in this case is strong. Class Members will be paid approximately \$200
25 based on the current claims rate. This recovery compares very favorably with other settlements
26 that have been preliminarily approved in similar FCRA class actions. *See Patrick v. Interstate*

1 *Management Co., LLC*, No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. Jan. 14, 2016) (class
2 member recovery of \$16.40); *Manuel v. Wells Fargo Bank, N.A.*, No. 3:14-cv-238, ECF No.
3 118 (E.D. Va. Dec. 17, 2015) (class member recovery of \$35); *Landrum v. Acadian Ambulance*
4 *Serv., Inc.*, No. 14-cv-1467, ECF No. 37 (S.D. Tex. Nov. 5, 2015) (class member recovery of
5 \$10); *Walker v. McClane/Midwest, Inc.*, No. 2:14-CV-04315, ECF No. 26 (W.D. Mo. July 20,
6 2015) (class member recovery of \$24).

7 The recovery is more impressive given that the claims in this case were far from risk-
8 free. Plaintiff is confident in the strength of her case but also aware of the risk created by
9 BBSI's defenses. If litigation had continued, BBSI would have continued to press its argument
10 that Ms. Dougherty lacked standing to bring her claims. According to BBSI, in denying its
11 motion for summary judgment the Court did not definitively rule that Ms. Dougherty has
12 standing. While Ms. Dougherty is confident in her arguments, there is no Washington appellate
13 court authority on what a plaintiff must show to establish standing to bring an FCRA claim in
14 superior court.

15 Further, Plaintiff would have had to prove that BBSI's violation of the FCRA was
16 willful, which would require the parties to undergo additional discovery and an additional
17 summary judgment motion, if not a jury trial. An FCRA plaintiff can recover only when the
18 defendant has acted negligently or willfully, and when the defendant's violation was at most
19 negligent, recovery is limited to actual damages. 15 U.S.C. §§ 1681n(a)(1), 1681o(a)(1).
20 Because Plaintiff did not allege any actual damages, she would have been required to prove that
21 BBSI's conduct was willful to recover statutory damages for herself and any purported class.
22 *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (proving
23 willfulness in FCRA case was "a high hurdle to clear" and weighed in favor of settlement
24 approval). The plaintiff's chances of success, judged at the outset of the litigation, are a
25 relevant factor in determining the reasonableness of a request fee. *Bowers*, 100 Wn.2d at 601.

1 When Plaintiff filed this suit, there was no clear appellate controlling authority resolving some
2 of the issues of statutory interpretation presented by this case.

3 Further, obtaining class certification and maintaining certification through trial is
4 always risky. And here BBSI would have argued that differences in the procedures and
5 authorization forms used by its more than 60 different branch offices would present difficult
6 management issues in maintaining a class action under CR 23(b)(3); *Amchem Prod., Inc. v.*
7 *Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class
8 certification, a district court need not inquire whether the case, if tried, would present
9 intractable management problems.”)

10 Continued litigation would also be expensive and time-consuming. Ms. Dougherty
11 would have had to move for class certification, prevail at trial, and prevail in any appeal before
12 she or the other members of the class would ever have recovered anything. *See Nat’l Rural*
13 *Telecommc’ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The Court
14 shall consider the vagaries of litigation and compare the significance of immediate recovery by
15 way of the compromise to the mere possibility of relief in the future, after protracted and
16 expensive litigation.” (citation omitted)).

17 Despite these obstacles, Class Counsel was able to achieve a settlement that pays
18 participating Class Members a fair amount for their claims. That is a testament to Class
19 Counsel’s skill and dedication in this matter.

20 b. *Lodestar Analysis Supports Counsel’s Fee Request*

21 While the percentage approach provides an independent ground for granting the fee
22 request, a “cross-check” under the lodestar method also demonstrates that counsel’s request is
23 reasonable. *See Manual for Complex Litigation* (Fourth) (“*MCL 4th*”) § 14.121 (noting “[a]
24 number of courts favor the lodestar as a backup or cross-check on the percentage method when
25 the fees might be excessive”). “Under the lodestar/multiplier method, the district court first
26 calculates the ‘lodestar’ by multiplying the reasonable hours expended by a reasonable hourly

1 rate. *See generally Bowers v. Transam. Title Ins. Co.*, 100 Wn.2d 581, 597–99, 675 P.2d 193,
2 203–04 (1983). The court may then enhance the lodestar with a ‘multiplier,’ if necessary, to
3 arrive at a reasonable fee.” *Id.* Upward adjustments may be appropriate based on the results
4 obtained, the quality of representation, or the delay in payment to class counsel. *MCL 4th §*
5 14.13, at 257.

6 Here, Class Counsel have devoted over 836 hours to the investigation, development,
7 litigation, and resolution of this case, incurring \$329,208.70 in fees. (Drake Decl. ¶ 15 & Ex.
8 C.) Class Counsel spent considerable time investigating the claims of the proposed class
9 members, researching and analyzing legal issues, briefing numerous motions, engaging in
10 discovery, and engaging in settlement negotiations. Class Counsel’s work was essential to
11 ensure the successful prosecution and settlement of this complex action.

12 Class Counsel’s lodestar calculations also are based on reasonable hourly rates.
13 In assessing the reasonableness of an attorney’s hourly rate, courts consider whether the
14 claimed rate is “in line with those prevailing in the community for similar services by lawyers
15 of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895
16 n.11 (1994). Class Counsel are experienced, highly regarded members of the bar with extensive
17 expertise in the area of class actions and complex litigation involving claims like those at issue
18 here, and Class Counsel’s hourly rates range from \$350-\$725 for attorneys to \$100-\$280 for
19 paralegal and support staff time. Similar rates have been approved numerous times in class
20 action cases. *See, e.g., Costco Order* (approving similar rates for Berger Montague and Terrell
21 Marshall); *Carideo v. Dell, Inc.*, No. 06-cv-01772, ECF No. 162 (W.D. Wash. Dec. 17, 2010)
22 (Judge Robart approving as reasonable a fee petition which included rates ranging from \$175 to
23 \$600); *Barnett v. Wal-Mart Stores, Inc.*, No. 01-2-24553-8 (King Cnty. Sup. Ct. July 20, 2009)
24 (Judge Spector approving fee request based on rates ranging from \$100 to \$760); *Splater v.*
25 *Thermal Ease Hydronic Systems, Inc.*, No. 03-2-33553-3 (King Cnty. Sup. Ct. July 31, 2009)
26 (Judge Washington approving fee request based on rates ranging from \$100 to \$760); *Hartman*

1 *v. Comcast Business Communications, LLC*, No. 10-0413, ECF No. 106 (W.D. Wash. Dec. 8,
2 2011) (Judge Lasnik approving Plaintiff’s counsel’s fee request based on rates ranging from
3 \$180 to \$650).

4 Class Counsel’s requested fee of \$500,000 represents a 1.52 multiplier on their total
5 lodestar to date. Class Counsel’s requested multiplier is reasonable where, as here, Plaintiff
6 requests a reasonable percentage of the common fund. *See Bowles*, 121 Wn.2d at 72–73
7 (approving multiplier of three where plaintiff’s fee request was found reasonable using
8 percentage-of-the-fund method); *Bowers*, 100 Wn.2d at 601 (concluding award of 50%
9 premium on lodestar to reflect the contingent nature of success in the case not an abuse of
10 discretion); *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051, n. 6 (9th Cir. 2002) (finding
11 that in approximately 83% of cases surveyed by the court, the multiplier was between 1.0 and
12 4.0 and affirming a multiplier of 3.65); *McIntosh v. McAfee, Inc.*, No. 06-cv-7694, 2009 WL
13 673976, at *2 (N.D. Cal. 2009) (recognizing a range from “2 to 4 or even higher”); *Van*
14 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (“[m]ultipliers in the
15 3-4 range are common”). Furthermore, all of the factors courts consider when awarding
16 multipliers, *see MCL 4th* § 14.13, at 257, are satisfied here. Class Counsel have achieved an
17 excellent result for the Settlement Class. Defendant must pay \$1,500,000 for the benefit of the
18 Settlement Class despite strong defenses to class certification and liability. No funds will revert
19 to Defendant. Throughout the litigation, Class Counsel provided high quality representation in
20 a complex case. Finally, Class Counsel took this case on a contingency basis and have devoted
21 over four years to prosecuting it with no guarantee they would ever be paid for their efforts
22 delay and risk involved more than justifies the multiplier requested here.

23 Finally, the Washington Supreme Court has said that the factors set out in Rule of
24 Professional Conduct 1.5(a) may also guide a court’s analysis of the reasonableness of a fee
25 request. *See Mahler v. Szucs*, 135 Wn.2d 398, 433 n.20 (1998) (overruled on other grounds).
26 Those factors include the novelty and difficult of the question involved and the skill requisite to

1 perform the legal services properly, whether the representation precludes other employment by
2 the lawyer, the fee customarily charged in the locality for similar legal services, and the amount
3 involved and the results obtained. Here, the case raised novel and difficult questions of law,
4 which demanded litigators with the skill and experience of Class Counsel, Class Counsel's
5 work on this matter precluded work on other matters, a one-third fee in contingency cases is
6 customary in this State, and Class Counsel obtained excellent results for the Class. *See Costco*
7 *Order* at ¶ 6.

8 2. The Requested Costs Should Be Reimbursed

9 To date, Class Counsel have expended \$28,752.51 in litigation expenses related to the
10 prosecution of this action, including filing and service expenses, copying costs, travel, and
11 computer research costs, and mediation expenses. (Drake Decl. ¶ 19 & Ex. D.). As Counsel's
12 expense records show, all of the costs incurred were reasonable, necessary to the successful
13 conclusion of this litigation and are the types of costs normally charged to a paying client.
14 These types of expenses are routinely reimbursed and thus Counsel's requested costs should be
15 awarded *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (S.D. Cal.
16 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage,
17 telephone and fax costs, computerized legal research fees, and mediation expenses are relevant
18 and necessary expenses in a class action litigation); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th
19 Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be
20 charged to a fee paying client") (internal citations omitted); *Absher Const. Co. v. Kent Sch.*
21 *Dist. No. 415*, 79 Wash. App. 841, 848, 917 P.2d 1086, 1090 (1995) (online legal research fees
22 recoverable as costs).

23 3. The Named Plaintiff's Service Award Should Be Approved

24 Plaintiff also requests a service payment of \$3,500 for Plaintiff in recognition of her
25 efforts on behalf of the Class, which included assisting counsel with the investigation, litigation
26 and settlement. Service payments "are intended to compensate class representatives for work

1 undertaken on behalf of a class” and “are fairly typical in class action cases.” *In re Online*
2 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted); *see Probst v.*
3 *State of Washington Dep’t of Ret. Sys.*, 150 Wn. App. 1062, 2009 WL 1863993, at *6 (2009)
4 (unpublished) (affirming payment of \$7500 to named plaintiff). Such awards are intended to
5 compensate class representatives for work done on behalf of the class, to make up for financial
6 or reputational risk undertaken in bringing the action, and to recognize their willingness to act
7 as private attorneys general.

8 Here, Plaintiff has expended significant time and effort in this matter, consistently
9 putting the Class Members’ interests first. Plaintiff provided documentation regarding her
10 experiences with Defendant, was prepared to travel and sit for depositions, stayed abreast of
11 developments in the case, and evaluated the Settlement Agreement. (Dougherty Decl. ¶¶ 5-9.)
12 As a result of Plaintiff’s efforts, and her willingness to pursue this action, substantial benefits
13 have been achieved on behalf of the Settlement Class.

14 Moreover, the requested service payment of \$3,500 is relatively modest compared to
15 awards granted in other complex litigation. *See, e.g., Probst*, 150 Wash. App. 1062 (approving
16 service payment of \$7500); *Ralston v. Mortg. Inv’rs Grp., Inc.*, No. 08-cv-536, 2013 WL
17 5290240, at *5 (N.D. Cal. Sept. 19, 2013) (approving service payment of \$12,500); *In re*
18 *Netflix Privacy Litig.*, No. 11-cv-379, 2013 WL 1120801, at *11 (N.D. Cal. March 18, 2013)
19 (approving service awards of \$6,000 for each named plaintiff); *Vedachalam v. Tata*
20 *Consultancy Servcs. Ltd.*, No. 06-cv-0963, 2013 WL 3929129, at *7 (N.D. Cal. July 18, 2013)
21 (approving service awards of \$25,000 and \$35,000).

22 Accordingly, the service award is fully justified, reasonable, and should be awarded.

23 VI. CONCLUSION

24 Class counsel achieved an excellent result for over 40,000 Class Members in this
25 complex case. Class Counsel did this work with no guarantee of being compensated for their
26 time and effort. To the contrary, payment of their fees has always been contingent on a

1 successful recovery of damages, creating a substantial risk of nonpayment. Given the results
2 achieved in this actions, and the work counsel performed in achieving it, the payment of fees
3 and costs provided for in the Settlement Agreement is reasonable and fair. For these reasons,
4 Plaintiff respectfully requests that the Court grant her motion for attorneys' fees, costs, and
5 service payment.

6 RESPECTFULLY SUBMITTED AND DATED this 30th day of August, 2019.

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