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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**JEFFREY A. ALMADA, on
behalf of himself and of all other
similarly situated class members,**

Plaintiff,

v.

KRIGER LAW FIRM, A.P.C.,

Defendant.

Case No.: 3:19-cv-02109-TWR-MDD

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S UNOPPOSED
MOTION FOR ATTORNEYS’
FEES, COSTS AND SERVICE
AWARD**

Final Approval/Fairness Hearing

Date: January 26, 2023

Time: 1:30 p.m.

Courtroom: 3A

Judge: Hon. Todd W. Robinson



TABLE OF CONTENTS

Page No.

1

2

3 TABLE OF AUTHORITIES.....iii

4 I. INTRODUCTION 1

5

6 II. SUMMARY OF PLAINTIFF’S ATTORNEYS’ FEES2

7 A. SUMMARY CHART OF CLASS COUNSEL’S TIME SPENT PROSECUTING THE CASE ..3

8 B. CATEGORIZED TIME RECORDS3

9 C. REASONABLENESS OF HOURLY RATES3

10 1. Experience of Counsel and Hourly Rates.....4

11 i. Abbas Kazerounian – Founding Partner4

12 ii. Robert Hyde – Partner5

13 iii. David J. McGlothlin – Managing Partner5

14 iv. Yana A. Hart – Managing Associate.....6

15 v. Pamela E. Prescott - Associate7

16 vi. Alan Gudino - Associate7

17 vii. Evangeline Dech - Associate.....7

18 viii. Brian Attard - Associate.....7

19 2. Attorneys’ Fees Survey and Supporting Case Law8

20 D. THE LODESTAR METHOD SUPPORTS CLASS COUNSEL’S REQUESTED FEES AND

21 COSTS 10

22 1. Results Obtained..... 11

23 2. Contingency Fee 13

24 3. Complexity of the Issues 14

25 4. Class Counsel’s Experience, Reputation, and Ability 15

26 5. Arm’s Length Negotiations 15

27 6. Reasonable Risk Multiplier of Less Than One..... 16

28 7. The Risks of Litigation Also Support the Requested Fees 17





1 8. The Skill Required and Quality of Work Performed Support the Requested
2 Fees18
3 E. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS SHOULD NOT BE NOT
4 BASED ON THE PERCENTAGE OF THE COMMON FUND20
5 III. CLASS COUNSELS’ REQUEST FOR LITIGATION COSTS OF \$21,493.57
6 IS REASONABLE AND COMPENSABLE22
7 IV. A SERVICE AWARD OF \$2,500.00 TO THE NAMED PLAINTIFF IS
8 REASONABLE.....23
9
10 V. CONCLUSION25
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



TABLE OF AUTHORITIES

Cases	Page No.
<i>Aarons v. BMW of N. Am., LLC</i> , 2014 U.S. Dist. LEXIS 118442 (C.D. Cal. Apr. 29, 2014).....	9
<i>Acosta v. Patenaude & Felix</i> , No. 19-cv-954-CAB-BGS, 2020 U.S. Dist. LEXIS 165852, (S.D. Cal. Sep. 10, 2020)	12
<i>Afewerki v. Anaya Law Grp.</i> , No. CV 14-07132-RGK (JPRx), 2021 U.S. Dist. LEXIS 55953, (C.D. Cal. Mar. 24, 2021)	5
<i>Aikens v. Cisneros</i> , No. 5:17-cv-02462-JLS-SP, 2020 U.S. Dist. LEXIS 258044, (C.D. Cal. Jan. 2, 2020)	21
<i>Allagas v. BP Solar Int'l, Inc.</i> , No. 3:14-cv-00560-SI (EDL), 2016 U.S. Dist. LEXIS 187785 (N.D. Cal. Dec. 22, 2016)	25
<i>Almada v. Krieger Law Firm, A.P.C.</i> , No. 2155275, 2022 U.S. App. LEXIS 1946 (9th Cir. Jan. 24, 2022)	5
<i>Barani v. Wells Fargo Bank, N.A.</i> , No. 12-cv-02999-GPC-KSC (S.D. Cal. Mar. 6, 2015)	20
<i>Barbano v. JP Morgan Chase Bank, N.A.</i> , No. EDCV 19-1218 JGB (SPx), 2021 U.S. Dist. LEXIS 204354, (C.D. Cal. Oct. 18, 2021)	6, 7
<i>Baumrind v. Brandstorm, Inc.</i> , 30-202001160083-CU-MC-CXC, 2021 Cal. Super. LEXIS 9571 (Sup. Ct. Orange County Dec. 3, 2021)	7



1 *Blackhawk Pine Retail v. V.*,
 2 2016 Pa. Dist. & Cnty. Dec. LEXIS 17408 (Pa. C.P. June 22, 2016)8
 3 *Blum v. Stevenson*,
 4 465 U.S. 866, (1994)4
 5 *Brown v. Mandarich Law Grp., LLP*,
 6 No. 13-cv-04703-JSC, 2014 U.S. Dist. LEXIS 47020, 2014 WL 1340211 (N.D.
 7 Cal. April 2, 2014)9
 8 *Buccellato v. AT&T Operations, Inc.*,
 9 No. C10-00463-LHK, 2011 U.S. Dist. LEXIS 111361 (N.D. Cal. June 30, 2011)...9
 10 *Calderon v. Wolf Firm*,
 11 No. SACV 16-1266-JLS (KESx), 2018 U.S. Dist. LEXIS 42054, (C.D. Cal. Mar.
 12 13, 2018)..... 11
 13 *Camacho v. Bridgeport Fin., Inc.*,
 14 523 F.3d 973 (9th Cir. 2008)4, 21
 15 *Capps v. Law Offices of Peter W. Singer*,
 16 No. 15- cv-02410-BAS(NLS), 2016 U.S. Dist. LEXIS 161137, (S.D. Cal. Nov. 21,
 17 2016) 12
 18 *Cellphone Termination Fee Cases*,
 19 186 Cal. App. 4th 1380 (Cal. Ct. App. 2010)23
 20 *Chambers v. Whirlpool Corp.*,
 21 214 F. Supp. 3d 877, 2016 WL 5922456 (C.D. Cal. 2016) 10
 22 *Cohorst v. BRE Properties, Inc.*
 23 2011 WL 7061923 (S.D. Cal. 2011)25
 24 *Cordy*,
 25 2014 U.S. Dist. LEXIS 59484, (N.D. Cal. Apr. 28, 2014)22, 25
 26 *Costa v. Comm'r of SSA*,
 27 690 F.3d 1132 (9th Cir. 2012)..... 14
 28 *Davis v. City and County of San Francisco*,



1 976 F.3d 1536 (9th Cir. 1992)4
 2 *Davis v. Hollins Law*,
 3 25 F. Supp. 3d 1292 (E.D. Cal. 2014).....8
 4 *Dibish v. Ameriprise Fin. Servs.*,
 5 2015 Pa. Dist. & Cnty. Dec. LEXIS 432 (Pa. C.P. 2015).....8
 6 *Edwards v. Ford Motor Co.*,
 7 2016 U.S. Dist. LEXIS 59651 (S.D. Cal. Jan. 22, 2016).....24
 8 *Fischel v. Equitable Life Assur. Society of U.S.*,
 9 307 F.3d 997, (9th Cir. 2002).....13, 16
 10 *Glass v. UBS Fin. Servs., Inc.*,
 11 2007 WL 221862 (N.D. Cal. 2007)13
 12 *Hanlon v. Chrysler Corp.*,
 13 150 F.3d 1011 (9th Cir. 1998).....1, 10, 15, 16
 14 *Hensley v. Eckerhart*,
 15 461 U.S. 424 (1983)11
 16 *Hinkle v. Sports Research Corp.*,
 17 No. 37-2020-00001422-CU-NP-NC, 2021 Cal. Super. LEXIS 34 (Sup. Ct. San
 18 Diego March 21, 2021)5
 19 *Holman v. Experian Info. Sols., Inc.*,
 20 No. 11-cv-0180 CW (DMR), 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. Dec. 12,
 21 2014)9
 22 *Holmes v. NCO Fin. Sys.*,
 23 No. 10-cv-2543-H (RBB), 2014 U.S. Dist. LEXIS 201696, (S.D. Cal. June 23,
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 26 No. 17-cv-637-LM (D.N.H. Jan. 6, 2020)19
 27 *In re Consumer Privacy Cases*,
 28 175 Cal. App. 4th22



1 *In Re Equity Funding Corp. Sec. Litig.*,
 2 438 F.Supp. 1303 (C.D. Cal. 1977)20
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 13 2005 U.S. Dist. LEXIS 1355519
 14 *Kearney v. Hyundai Motor Am.*,
 15 No. SACV 09-1298-JST, 2013 WL 3287996 (C.D. Cal. June 28, 2013).....9
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 19 No. CV 12-08238 AWT (PJWx), 2015 U.S. Dist. LEXIS 88270 (C.D. Cal. July 7,
 20 2015)23, 25
 21 *Kottle v. Unifund CCR, LLC*,
 22 992 F. Supp. 2d 982 (C.D. Cal. 2014).....2
 23 *Lemp v. Seterus, Inc.*,
 24 2022 U.S. Dist. LEXIS 57819, 2022 WL 912960 (E.D. Cal., March 29, 2022)15
 25 *Lemus v. H&R Block Enters. LLC*,
 26 No. C 09-3179 SI, 2012 U.S. Dist. LEXIS 128514 (N.D. Cal. Sep. 10, 2012)17
 27 *Lindenbaum v. NCO Fin. Sys.*,
 28 2011 U.S. Dist. LEXIS 78069, 2011 WL 2848748 (E.D. Pa. July 18, 2011).....8



1 *Louie v. Kaiser Found. Health Plan, Inc.*,
 2 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008)24
 3 *Lu v. United States*,
 4 No. CV 01-01758 CBM (Ex), 2014 U.S. Dist. LEXIS 77789 (C.D. Cal. May 23,
 5 2014) 10
 6 *Lundell v. Dell, Inc.*,
 7 CIVA C05-3970 JWRS, 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006 16
 8 *Malta v. Fed. Home Loan Mortg. Corp.*,
 9 No. 10-CV-1290 BEN (NLS), 2013 U.S. Dist. LEXIS 15731 (S.D. Cal. Feb. 4,
 10 2013)20
 11 *Marr v. National Credit Systems, Inc.*,
 12 5:17-cv-02208-GW-GJS, (C.D. Cal. January 9, 2019).....7
 13 *McCurley v. Royal Sea Cruises, Inc.*,
 14 No. 17-cv-00986-BAS-AGS, 2020 U.S. Dist. LEXIS 227110, (S.D. Cal. Dec. 3,
 15 2020)9, 20
 16 *Milliron v. T-Mobile USA, Inc.*,
 17 2009 WL 3345762 (D.N.J. Sept. 14, 2009) 16
 18 *Moore v. Verizon Communs. Inc.*,
 19 No. C 09-1823 SBA, 2014 U.S. Dist. LEXIS 19145 (N.D. Cal. Feb. 13, 2014)....17
 20 *Moreno v. City of Sacramento*,
 21 534 F.3d 1106 (9th Cir. 2008)..... 14
 22 *Morrison v. Express Recovery Services, Inc. d/b/a Clear Management Solutions*,
 23 No. 1:17-cv- 00051-CW-DAO6
 24 *Newman v. Jm Bullion*,
 25 2022 Cal. Super. LEXIS 37967 (Sup. Ct. Kern County, June 30, 2022).....5
 26 *Nguyen v. HOVG, LLC*,
 27 2015 U.S. Dist. LEXIS 124019 (S.D. Cal. Sept. 15, 2015).....8
 28 *Nwabueze v. AT&T Inc.*,



1 No. C 09-01529 SI, 2013 U.S. Dist. LEXIS 169270 (N.D. Cal. Nov. 27, 2013)25

2 *Odom v. ECA Mktg.*,

3 No. EDCV 20-851 JGB (SHKx), 2021 U.S. Dist. LEXIS 246032, (C.D. Cal. Dec.

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5 *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*,

6 688 F.2d 615 (9th Cir. 1982).....15

7 *Omnivision*,

8 559 F. Supp. 2d.....11, 13, 14, 18, 19

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10 303 F.R.D. 356 (E.D. Cal. Oct. 8, 2014).....23

11 *Ordick v. UnionBancCal Corp.*,
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17 905 F. Supp. 2d 1017 (C.D. Cal. 2012)9

18 *POM Wonderful, LLC v. Purely Juice, Inc.*,

19 No. CV 07-2633, 2008 U.S. Dist. LEXIS 110460, 2008 WL 4351842 (C.D. Cal.

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22 No. 37-2020-00011841-CU-BT-CTL, 2022 Cal. Super. LEXIS 19407 (Super. Ct.

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28 (N.D. Cal. Sept. 23, 2013).....9



1 *Rodriguez v. West Publishing Corp.*,
 2 563 F.3d 948 (9th Cir. 2009)23
 3 *Ronquillo-Griffin v. TransUnion Rental Screening Sols., Inc.*,
 4 2019 U.S. Dist. LEXIS 79021 (Southern District of California May 9, 2019).....7
 5 *Salazar v. Midwest Servicing Grp., Inc.*,
 6 No. CV 17-0137 PSG (KSX), 2018 U.S. Dist. LEXIS 172934, 2018 WL 4802139,
 7 (C.D. Cal. Oct. 2, 2018)12
 8 *Sanchez v. Frito-Lay, Inc.*,
 9 2015 U.S. Dist. LEXIS 102771 (E.D. Cal. Aug. 5, 2015)23
 10 *Sandoval v. Tharaldson Emp. Mgmt., Inc.*,
 11 2010 WL 2486346 (C.D. Cal. June 15, 2010)16
 12 *Schuchardt v. Law Office of Rory W. Clark*,
 13 314 F.R.D. 673 (N.D. Cal. 2016).....11, 12
 14 *Schutz v. Costco Wholesale Corp.*,
 15 No. 19-CV-00990 DMS (WVG), 2022 U.S. Dist. LEXIS 57745, (S.D. Cal. Mar.
 16 29, 2022)17
 17 *Serrano v. Unruh*,
 18 32 Cal. 3d 621 (1982)4
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 20 327 F.3d 938 (9th Cir. 2003).....23, 25
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 23 2012).....4
 24 *Tait v. BSH Home Appliances Corp.*,
 25 No. SACV 10-0711-DOC (ANx), 2015 U.S. Dist. LEXIS 98546, (C.D. Cal. July
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 28 No. 2:10-cv-2507 KJM DAD, 2012 U.S. Dist. LEXIS 87013, (E.D. Cal. June 21,



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5 2011 U.S. Dist. LEXIS 165813,. (N.D. Cal. Nov. 21, 2011).....22

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9 290 F.3d..... 13, 18

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11 2006 U.S. Dist. LEXIS 76558 (E.D. Cal. Oct. 19, 2006)25

12 Statutes

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22 Rules

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1 **I. INTRODUCTION**

2 In accordance with the Court’s August 22, 2022 Order, granting preliminary
3 approval of the proposed class action settlement (the “Preliminary Approval Order,” Dkt.
4 No. 76), plaintiff Jeffrey A. Almada (“Plaintiff”) submits this timely motion for attorneys’
5 fees, costs and service award in connection with the proposed class action settlement with
6 defendant Kriger Law Firm, A.P.C. (“Defendant” or “Kriger”) (jointly, the “Parties”).

7 As noted in Plaintiff’s motion for preliminary approval of class action settlement
8 (“Preliminary Approval Motion,” Dkt. No. 75-1), the agreement reached in this action
9 was a product of prolonged arm’s length negotiations, including a full-day mediation
10 session with Mr. Doug Glass, Esq. of Signature Resolution (“Mr. Glass”) lasting over
11 eight hours. *See id.* at pp. 27. Such negotiations, especially those before a seasoned
12 mediator, serve as “independent confirmation” of the reasonableness of the settlement’s
13 terms, including the attorneys’ fees, costs, and service award sought by this Motion. *See*
14 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). In the Settlement
15 Agreement filed at Dkt. No. 75-3 (“Agr.”), Defendant agreed not to oppose any motion
16 for Class Counsel’s attorney’s fees and costs so long as such motion does not seek an
17 award greater than \$240,000. *See* Agr. § III.P. Notably, Class Counsel’s fees and costs as
18 well as Plaintiff’s service award were negotiated *separate and apart* from the Settlement
19 Class Member’s recovery. *Id.* § II.F. This means that each Settlement Class Member is
20 guaranteed a \$450 Settlement Payment, regardless of the amount ultimately awarded in
21 fees, costs and for Plaintiff’s Service Award. *Id.*

22 Through this Motion, Plaintiff seeks Court approval of: (1) the *combined*
23 attorneys’ fees and litigation costs of Class Counsel in the amount of \$240,000; and (2) a
24 Service Award to Plaintiff in the amount of \$2,500. *Id.* at §§ III.O, III.P. As stated herein
25 and as detailed in the supporting declarations, the requested sums are fair and reasonable
26 as they resulted from arm’s-length negotiations and are further supported by the lodestar
27 methodology as well as the *Kerr* Factors. *See* Declaration of Abbas Kazerounian
28 (“Kazerounian Decl.”), ¶¶ 8-14; Declaration of Pamela E Prescott (“Prescott Decl.”), ¶¶
8-11. As such, Plaintiff respectfully requests that Class Counsel be awarded \$240,000 in

1 attorneys' fees and costs, and that the Court award Plaintiff \$2,500 as a Service Award
 2 for his time and effort assisting in prosecuting this case over the course of several years.

3 **II. SUMMARY OF PLAINTIFF'S ATTORNEYS' FEES**

4 "In a certified class action, the court may award reasonable attorneys' fees and
 5 nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P.
 6 23(h) (emphasis added). Both the Rosenthal Fair Debt Collection Practices Act
 7 ("RFDCPA"), Cal Civ. Code Section 1788.17, *et seq.* and the Fair Debt Collection
 8 Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* are fee shifting statutes that provide
 9 for the recovery of attorneys' fees and costs to the prevailing party. *See Kottle v. Unifund*
 10 *CCR, LLC*, 992 F. Supp. 2d 982, 984 (C.D. Cal. 2014). Plaintiff prays for attorneys' fees
 11 in the First Amended Complaint ("FAC") under Cal. Civ Code § 1788.30(c) (RFDCPA)
 12 and 15 U.S.C. § 1692k(a)(3) (FDCPA). *See* FAC, Dkt. No. 15, at pp 11-12. As a result,
 13 for class action settlements involving a fee shifting statute such as these, the lodestar
 14 method is the appropriate methodology to assess the reasonableness of the requested fees
 15 and costs. *See Kottle*, 992 F. Supp. 2d at 984.

16 As part of the Settlement, the parties negotiated a maximum amount of attorneys'
 17 fees and costs that Plaintiff would seek, which is capped at \$240,000. *See* Arg. §§ II.F,
 18 III.P. Plaintiff's requested attorneys' fees and costs are not based on a percentage of the
 19 Common Fund, but rather are based on Class Counsel's lodestar. As a result, any moneys
 20 paid to Class Counsel for attorneys' fees and costs will not dilute the moneys available to
 21 Settlement Class Members. As discussed at length herein, Plaintiff is entitled to recover
 22 reasonable attorneys' fees, expenses and costs under both the FDCPA and the RFDCPA
 23 as the prevailing party in this action. Plaintiff is also entitled to recover Plaintiff's
 24 attorneys' fees and costs pursuant to the Parties' Settlement Agreement. *See* Arg. §§ II.F,
 25 III.P. Defendant does not oppose Plaintiff's request for fees and costs since the Parties
 26 agreed that Plaintiff could request up to \$240,000. *Id.* Therefore, Class Counsel's request
 27 for attorneys' fees and costs should be granted in its entirety as such request is fair and
 28 reasonable.

A. Summary Chart of Class Counsel’s Time Spent Prosecuting the Case

Below is a summary chart of the time Plaintiff’s counsel² spent working on this case as of October 17, 2022. The chart includes a reasonable estimate of anticipated hours through the fairness hearing (scheduled for January 26, 2023).

	Hours	Rate	Total
Abbas Kazerounian (Partner)	154.10 hours	\$785/hour	\$120,968.50
Robert Hyde (Partner)	140.00 hours	\$785/hour	\$109,900
David J. McGlothlin (Partner)	4.30 hours	\$600/hour	\$2,580
Yana A. Hart (Managing Associate)	244.20 hours	\$450/hour	\$109,890
Pamela E. Prescott (Associate)	118 hours	\$400/hour	\$47,200
Alan Gudino (Associate)	132.00 hours	\$350/hour	\$46,200
Evangeline Dech (Associate)	21.10 hours	\$250/hour	\$5,275
Brian Attard (Associate)	4.90 hours	\$250/hour	\$1,225
TOTALS:	818.60 hours		\$443,238.50

B. Categorized Time Records

Courts may “rely on summaries submitted by the attorneys and [the court] need not review actual billings,” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005), cited approvingly in *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007) (“[H]ere, counsel have provided sworn declarations from attorneys attesting to the experience and qualifications of the attorneys who worked on the case, the hourly rates, and the hours expended.”). Thus, Class Counsel describe in their respective declarations the amount of attorney hours incurred in this litigation, by category. *See*, Kazerounian Decl., ¶¶ 17, 111, 115, 122, 126; Prescott Decl., ¶ 18; Declaration of Robert Hyde (“Hyde Decl.”) at ¶ 13; Declaration of David McGlothlin (“McGlothlin Decl.”) at ¶ 7. Detailed billing records will be provided upon the Court’s request.

C. Reasonableness of Hourly Rates

The hourly rates here are reasonable. In assessing the reasonableness of an attorney’s hourly rate, courts consider whether the claimed rate is “in line with those

² Omitted from this summary is the over 80 hours of work spent by Class Counsel’s support staff. The time records for Managing Associate Ryan McBride (who spend .30 hours on this action) have also been zeroed out for purposes of this motion.

1 prevailing in the community for similar services by lawyers of reasonably comparable
 2 skill, experience and reputation.” *Blum v. Stevenson*, 465 U.S. 886, 895, n.11 (1994);
 3 *Davis v. City and County of San Francisco*, 976 F.3d 1536, 1546 (9th Cir. 1992); *Serrano*
 4 *v. Unruh*, 32 Cal. 3d 621, 643 (1982); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
 5 979 (9th Cir. 2008). “Affidavits of the plaintiff’s attorney and other attorneys regarding
 6 prevailing fees in the community, and rate determinations in other cases, particularly
 7 those setting a rate for plaintiff’s attorney, are satisfactory evidence of the prevailing
 8 market rate.” *Stirling v. Genpact Servs., LLC*, No. 2:11-cv-06369-JHN-MANx, 2012
 9 U.S. Dist. LEXIS 196197, at *4 (C.D. Cal. May 2, 2012).

10 Here, the experience of Class Counsel, the attorneys’ fee survey, declarations
 11 submitted by local attorneys (*see* Declarations of Schuyler Hoffman, Esq. (“Hoffman
 12 Decl.”) and Edward S. Diab, Esq. (“Diab Decl.”) submitted herewith), and case law
 13 support the requested hourly rates.

14 **1. Experience of Counsel and Hourly Rates**

15
 16 Plaintiff’s counsel are experienced, highly regarded members of the bar with
 17 extensive experience in the area of class actions and complex litigation involving
 18 consumer claims like those at issue here under the FDCPA and RFDCPA.

19 **i. *Abbas Kazerounian – Founding Partner***

20 Mr. Kazerounian has considerable experience litigating complex consumer class
 21 action cases, including those involving FDCPA and RFDCPA claims. *See* Kazerounian
 22 Decl., ¶¶ 45, 52. Mr. Kazerounian has lectured on the FDCPA and RFDCPA as an
 23 adjunct professor at California Western School of Law for over eight years, where he
 24 teaches a three-credit consumer law course. *Id.* at ¶ 58. Mr. Kazerounian has also
 25 successfully argued before the Ninth Circuit Court of Appeals in various consumer
 26 actions demonstrating his subject matter expertise in this area of law. *Id.* at ¶¶ 45-47.

27 In this action, Mr. Kazerounian has incurred a total of 134.10 hours so far and
 28 anticipates incurring an additional 20 hours through the final approval hearing. *Id.* at ¶¶

1 17-18. Mr. Kazerounian's requested rate of \$785.00 for this matter is reasonable in light
 2 of his experience and similar rates previously approved for Mr. Kazerounian in other
 3 complex class action cases. *See, e.g., R.O., et al. v. Rady Children's Hospital - San*
 4 *Diego*, No. 37-2020-00011841-CU-BT-CTL, 2022 Cal. Super. LEXIS 19407 (Super.
 5 Ct. San Diego May 10, 2022) (approved at rate of \$775 per hour); *Hinkle v. Sports*
 6 *Research Corp.*, No. 37-2020-00001422-CU-NP-NC, 2021 Cal. Super. LEXIS 34
 7 (Sup. Ct. San Diego March 21, 2021) (approving rate of \$730 per hour); *see also,*
 8 Kazerounian Decl., ¶¶ 21-31. Just recently, in June of 2022, Mr. Kazerounian was
 9 finally approved at the requested rate of \$795 per hour. *See Newman v. Jm Bullion,*
 10 2022 Cal. Super. LEXIS 37967 (Sup. Ct. Kern County, June 30, 2022). The requested
 11 rate is further supported by the rate of pay of other similarly experienced attorneys in
 12 the general geographic area. Kazerounian Decl., ¶ 131, **Exhibit 2** attached thereto.

13 **ii. Robert Hyde – Partner**

14 Mr. Hyde has devoted his nearly 20 years of litigation experience exclusively to
 15 consumer protection cases, including complex class actions for unfair debt collection
 16 practices, such as this one. *See, e.g., Afewerki v. Anaya Law Grp.*, No. CV 14-07132-
 17 RGK (JPRx), 2021 U.S. Dist. LEXIS 55953, at *5 (C.D. Cal. Mar. 24, 2021) (approved
 18 at rate of \$595); *Torres v. Bernstein, Shapiro & Assocs., LLC*, No. 2:10-cv-2507 KJM
 19 DAD, 2012 U.S. Dist. LEXIS 87013, at *16 (E.D. Cal. June 21, 2012) (approved at
 20 rate of \$355 back in 2012 for an FDCPA and RFDCPA case). Mr. Hyde contributed
 21 significantly to the resolution of this action with his work on Plaintiff's appeal to the
 22 Ninth Circuit. *See Almada v. Krieger Law Firm, A.P.C.*, No. 2155275, 2022 U.S. App.
 23 LEXIS 1946 (9th Cir. Jan. 24, 2022). Mr. Hyde has also worked on numerous appeals
 24 and has extensive experience writing appellate briefs. *See Hyde Decl.* at ¶¶ 15-22.

25 **iii. David J. McGlothlin – Managing Partner**

26 Mr. McGlothlin has significant experience in litigating consumer class actions,
 27 including FDCPA and RFDCPA cases. *See McGlothlin Decl.* at ¶¶ 14, 20. Mr.
 28 McGlothlin has incurred 4.30 hours in this litigation (*see id.* at ¶¶ 6-7). His hourly rate

1 of \$600 for this matter is reasonable in light of his years of complex litigation experience
 2 and rates approved in prior cases. *See, e.g., Barbano v. JP Morgan Chase Bank, N.A.*,
 3 No. EDCV 19-1218 JGB (SPx), 2021 U.S. Dist. LEXIS 204354, at *24-25 (C.D. Cal.
 4 Oct. 18, 2021) (approving an hourly rate of \$475 per hour); *Morrison v. Express*
 5 *Recovery Services, Inc. d/b/a Clear Management Solutions*, case number 1:17-cv-
 6 00051-CW-DAO (approving an hourly rate of \$450 per hour for attorney's fees in a
 7 FDCPA class action); *see also* McGlothlin Decl., ¶ 11. Mr. McGlothlin's requested
 8 rate is further supported by the rate of pay of other similarly experienced attorneys in
 9 the general geographic area. Kazerounian Decl., ¶ 131 and **Exhibit 2** thereto; *see also*,
 10 Hoffman Decl., ¶ 8; Diab Decl., ¶ 9.

11 **iv. Yana A. Hart – Managing Associate**

12 Ms. Hart, a former associate, has extensive experience litigating consumer cases
 13 including class actions. *See* Kazerounian Decl., ¶¶ 119-124. She has practiced almost
 14 exclusively in consumer law, with over 95% of her practice dedicated to complex class
 15 actions and individual consumer matters. *Id.* at ¶ 120. Prior to leaving the firm, Ms.
 16 Hart's was promoted to managing associate, where she litigated numerous cases as lead
 17 counsel on behalf of consumers in an individual and class action basis. *Id.* Ms. Hart
 18 spent 244.20 hours in this litigation and her hourly rate of \$450 for this matter based
 19 on her experience at the time in civil litigation is reasonable. *Id.* at 121. Such an award
 20 is supported by previous fee awards to Ms. Hart as well as the rate of pay of other
 21 similarly experienced attorneys in the general geographic area. Kazerounian Decl., ¶
 22 131 and **Exhibit 2** thereto; *see also*, Hoffman Decl., ¶ 9; Diab Decl., ¶ 10. *See also*,
 23 *Odom v. ECA Mktg.*, No. EDCV 20-851 JGB (SHKx), 2021 U.S. Dist. LEXIS 246032,
 24 at *18 (C.D. Cal. Dec. 22, 2021) (approved at an hourly rate of \$350); *Ronquillo-Griffin*
 25 *v. TransUnion Rental Screening Sols., Inc.*, 2019 U.S. Dist. LEXIS 79021 (Southern
 26 District of California May 9, 2019) (approved at \$295 per hour); *Marr v. National*
 27 *Credit Systems, Inc.*, 5:17-cv-02208-GW-GJS, Dkt. 55 (C.D. Cal. January 9, 2019)
 28 (approved at rate of \$275).



v. Pamela E. Prescott - Associate

Ms. Prescott has substantial experience litigating consumer cases including class actions. See Prescott Decl., ¶¶ 15-17, 22, 27-30. She has devoted her entire legal career exclusively to litigating consumer protection cases, including handling complex class actions. *Id.* Ms. Prescott spent 88 hours in this litigation and anticipates incurring an additional 30 hours through final approval. *Id.* at ¶¶ 18-19. Ms. Prescott’s hourly rate of \$400 is reasonable based on her experience, and the comparable rates to other attorneys in the same field and geographic location. Prescott Decl., ¶¶ 13-17, 22-30; see also, **Exhibit 2** to Kazeronian Decl.; see also, Hoffman Decl., ¶ 9; Diab Decl., ¶ 10. Such an award is also supported by her previous fee awards. See *Baumrind v. Brandstorm, Inc.*, 30-202001160083-CU-MC-CXC, 2021 Cal. Super. LEXIS 9571 (Sup. Ct. Orange County Dec. 3, 2021) (approved rate of \$250).

vi. Alan Gudino - Associate

Mr. Gudino, a former associate at the firm, has experience litigating consumer cases including consumer class actions. See Kazerounian Decl., ¶¶ 108-113. He spent 132.00 hours in this litigation and his hourly rate of \$350 for this matter based on his experience is reasonable. *Id.* Such an award is also supported by a previous fee award. See *Odom v. ECA Mktg.*, 2021 U.S. Dist. LEXIS 246032 (Central District of California December 22, 2021) (finding class counsel’s hourly rates to be reasonable where Mr. Gudino requested \$295 per hour).

vii. Evangeline Dech - Associate

Ms. Dech, a former associate at the firm, has experience litigating consumer cases including class actions. See Kazerounian Decl., ¶ 114-118. She spent 21.10 hours in this litigation and her hourly rate of \$250 for this matter based on her experience is fair and reasonable based on the hourly rates billed by similar attorneys with the same level of experience. *Id.* at **Exhibit 2**. See also, Hoffman Decl., ¶ 9; Diab Decl., ¶ 10.

viii. Brian Attard - Associate

Mr. Attard, a former associate at the firm, has experience litigating consumer

1 cases including class actions. *See* Kazerounian Decl., ¶ 125-129. He spent 4.90 hours
 2 in this litigation and his hourly rate of \$250 for this matter based on his experience is
 3 fair and reasonable based on the hourly rates billed by similar attorneys with the same
 4 level of experience. *Id.*; *see also*, **Exhibit 2**; Hoffman Decl., ¶ 9; Diab Decl., ¶ 10.

5 **2. Attorneys' Fees Survey and Supporting Case Law**

6 A 2017-2018 survey, which is four years old, was conducted of consumer
 7 advocates across the country to determine the rates charged by attorneys practicing in
 8 the area of consumer protection.³ The survey supports the billing rates requested
 9 herein as the average billing rate data in the survey, grouped by both region and years
 10 in practice, and is consistent with the declarations of counsel that regularly practice in
 11 California. This survey, as well as previous versions of the survey, has been accepted
 12 by various Courts across the country in determining reasonable billing rates. *See Uhl*
 13 *v. Colvin*, 2016 U.S. Dist. LEXIS 78779 (E.D. Cal. June 16, 2016); *Nguyen v. HOVG,*
 14 *LLC*, 2015 U.S. Dist. LEXIS 124019, at *5 (S.D. Cal. Sept. 15, 2015); *Davis v. Hollins*
 15 *Law*, 25 F. Supp. 3d 1292, 1299 (E.D. Cal. 2014); *Blackhawk Pine Retail v. V.*, 2016
 16 Pa. Dist. & Cnty. Dec. LEXIS 17408 (Pa. C.P. June 22, 2016); *Dibish v. Ameriprise*
 17 *Fin. Servs.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 432, *17-18 (Pa. C.P. 2015);
 18 *Lindenbaum v. NCO Fin. Sys.*, 2011 U.S. Dist. LEXIS 78069, 2011 WL 2848748
 19 (E.D. Pa. July 18, 2011). Page 234 of this Survey shows that consumer attorneys in
 20 the San Diego area billed between \$452 and \$700 per hour. *See* Kazerounian Decl., ¶
 21 131 (**Exhibit 2**). Page 228 of this Survey shows that consumer attorneys in the Los
 22 Angeles – Long Beach – Anaheim area billed between \$383 and \$787 per hour. *Id.*
 23 These ranges are in line with those rates sought by counsel and constitutes further
 24 justification for their hourly rates.

25 Case law further supports the hourly rates for Class Counsel and their support
 26

27 ³ Pages 228, 234 and 236 of this survey are attached as **Exhibit 2** to Mr. Kazerounian's
 28 accompanying declaration. The entirety of the 598-page survey can be accessed
 online at <https://burdgelaw.com/wp-content/uploads/2021/11/US-Consumer-Law-Attorney-Fee-Survey-Report-w-Table-of-Cases-091119.pdf>.

1 staff. See *McCurley v. Royal Sea Cruises, Inc.*, No. 17-cv-00986-BAS-AGS, 2020 U.S.
2 Dist. LEXIS 227110, at *5 (S.D. Cal. Dec. 3, 2020) (approving hourly rates of \$425 an
3 hour for fourth year associate and \$625-725 an hour for the partners working on the
4 case); *Holman v. Experian Info. Sols., Inc.*, No. 11-cv-0180 CW (DMR), 2014 U.S.
5 Dist. LEXIS 173698, at *11 (N.D. Cal. Dec. 12, 2014) (approving hourly rates
6 between \$450 and \$750 as reasonable for complex consumer litigation); *Palmer v. Far*
7 *West Collection Servs., Inc.*, No. C-04-03027 RMW, 2008 U.S. Dist. LEXIS 105703,
8 2008 WL 5397140, at *1 (N.D. Cal. Dec. 18, 2008) (finding a billing rate of \$325 to
9 \$465 per hour reasonable); *Brown v. Mandarich Law Grp., LLP*, No. 13-cv-04703-
10 JSC, 2014 U.S. Dist. LEXIS 47020, 2014 WL 1340211, at *2 (N.D. Cal. April 2,
11 2014) (finding a billing rate of \$350 to \$450 per hour reasonable); *Rivera v. Portfolio*
12 *Recovery Assocs.*, No. C 13-2322 MEJ, LLC, 2013 U.S. Dist. LEXIS 136002, 2013
13 WL 5311525, at *3 (N.D. Cal. Sept. 23, 2013) (finding a billing rate of \$300 to \$450
14 per hour reasonable); *Aarons v. BMW of N. Am., LLC*, 2014 U.S. Dist. LEXIS 118442
15 (C.D. Cal. Apr. 29, 2014) (supporting hourly rates for partners up to \$775 in consumer
16 class action); *Kearney v. Hyundai Motor Am.*, No. SACV 09-1298-JST, 2013 WL
17 3287996, at *8 (C.D. Cal. June 28, 2013) (authorizing hourly rates for attorneys
18 ranging from \$650-\$800 in consumer class action); *Pierce v. County of Orange*, 905
19 F. Supp. 2d 1017 (C.D. Cal. 2012) (approving hourly rates ranging from \$450 to \$825
20 per hour in ADA litigation); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-
21 LHK, 2011 U.S. Dist. LEXIS 111361 (N.D. Cal. June 30, 2011) (approving uptimes
22 to \$740 per hour for attorneys); *POM Wonderful, LLC v. Purely Juice, Inc.*, No. CV
23 07-2633, 2008 U.S. Dist. LEXIS 110460, 2008 WL 4351842, *4 (C.D. Cal. Sept. 22,
24 2008) (finding rates of \$475 to \$750 for partners and \$275 to \$425 for associates
25 reasonable); *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 2016 WL 5922456,
26 at *14 (C.D. Cal. 2016) (approving hourly rates between \$485 and \$750 per hour); *Lu*
27 *v. United States*, No. CV 01-01758 CBM (Ex), 2014 U.S. Dist. LEXIS 77789, at *14
28 (C.D. Cal. May 23, 2014) (finding that an hourly rate of \$725 was appropriate for a

1 partner who has successfully litigated numerous cases on the trial and appellate levels,
 2 written various articles, spoken at bar association events, and was a finalist for Trial
 3 Lawyer of the Year for the Consumer Attorneys Association of Los Angeles).

4 Therefore, the hourly rates for Class Counsel are reasonable because they are
 5 commensurate with the average hourly rates charged by other similarly experienced
 6 attorneys in California, including practicing in the same area of law.

7 **D. The Lodestar Method Supports Class Counsel's Requested Fees and**
 8 **Costs**

9 Plaintiff's attorneys' combined lodestar, when including a reasonable number of
 10 additional anticipated hours through fairness hearing and overseeing any contingent *cy*
 11 *pres* distribution of unclaimed funds, is \$443,238.50, based upon 818.60 hours.
 12 Kazerounian Decl., ¶ 18 (154.10 hours); Prescott Decl., ¶ 19 (118 hours); McGlothlin
 13 Decl., ¶ 7 (4.30 hours); Hyde Decl., ¶ 13 (140 hours); 132.00 hours incurred by Alan
 14 Gudino (Kazerounian Decl., ¶ 110); 21.10 hours incurred by Evangeline Dech (*Id.* at ¶
 15 115); 244.20 hours incurred by Yana A. Hart (*Id.* at ¶ 121); and 4.90 hours incurred by
 16 Brian Attard (*Id.* at ¶ 125-126). Such lodestar certainly supports the reasonableness of
 17 the requested fee award as the lodestar substantially exceeds what Class Counsel is
 18 requesting in attorneys' fees.

19 The relevant lodestar factors support the requested *combined* award of attorneys'
 20 fees and costs of \$240,000, which consists of litigation costs of \$21,493.57 thus far. The
 21 first step in the lodestar-multiplier approach is to multiply the number of hours counsel
 22 reasonably expended by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. Once the
 23 raw lodestar figure is determined, the Court may then adjust that figure based on its
 24 consideration of "enhancement" factors (or "*Kerr* Factors"), such as: (1) the results
 25 obtained; (2) whether fee is fixed or contingent; (3) the complexity of the issues
 26 involved; (4) the preclusion of the other employment due to acceptance of the case; and,
 27 (5) the experience, reputation, and ability of the attorneys. *See Kerr v. Screen Extras*
 28 *Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

1 **1. Results Obtained**

2 The “result obtained” for the class is generally considered to be the most
3 important factor in determining the appropriate fee award. *See Hensley v. Eckerhart*,
4 461 U.S. 424, 435 (1983); *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial
5 Center, *Manual for Complex Litigation*, § 27.71, p. 336 (4th Ed. 2004) (the “fundamental
6 focus is on the result actually achieved for class members”) (citing Fed. R. Civ. P. 23(h)
7 committee note). This factor supports the *combined* expenses and attorneys’ fee request
8 of \$240,000. Class Counsel were able to negotiate a statewide settlement on behalf of
9 approximately 293 “individuals in California who received a Form Letter from
10 Defendant between November 4, 2018 and November 4, 2019” Agr. § II.T. This
11 settlement will provide much-needed relief to all Settlement Class Members and the
12 Class Representative. With a high anticipated claims rate, Settlement Class Members
13 here are expected to each receive a check for \$450.00. Indeed, Settlement Class
14 Members who do not timely exclude themselves will receive a Settlement Cash
15 Payment. As explained below, and in the Motion for Preliminary Approval (Dkt. No.
16 75-1, pp. 30-31), \$450 per Settlement Class Member is reasonable considering other
17 similar FDCPA and RFDCPA class settlements and the risks of this particular case,
18 including potential defenses raised by Defendant. *See, e.g., Schuchardt v. Law Office of*
19 *Rory W. Clark*, 314 F.R.D. 673, 678 (N.D. Cal. 2016) (finally approving approximate
20 \$14 payment to each of the 930 settlement class members for violation of Section
21 1692g(a)(4) of the FDCPA); *Calderon v. Wolf Firm, No. SACV 16-1266-JLS (KESx)*,
22 2018 U.S. Dist. LEXIS 42054, at *5 (C.D. Cal. Mar. 13, 2018) (preliminarily approving
23 payment of \$15.66 to each of the 114 class members for FDCPA and RFDCPA
24 violation).

25 The Parties diligently litigated this action for over three years since the action was
26 commenced on November 4, 2019 (Dkt. No. 1). Subsequently, the Parties, through
27 counsel, engaged in extensive discovery (including both written discovery and
28 depositions), and both Parties filed motions for summary judgment (which Plaintiff

1 appealed; *see* Dkt. Nos. 26-27, 44) weighing the strengths and weaknesses of each side’s
2 respective legal arguments concerning Defendant’s potential liability and defenses, and
3 the strength of Plaintiff’s claims. After the Ninth Circuit ruled favorably on Plaintiff’s
4 appeal, the Parties reached an agreement to settle the case after they participated in an
5 all-day private mediation session with Mr. Glass in March of 2022. Kazerounian Decl.,
6 ¶¶ 8-12. In the months following the mediation, the Parties continued their good faith
7 settlement efforts (with the continued assistance of Mr. Glass) and ultimately finalized
8 the settlement terms on May 11, 2022. *Id.* at ¶ 10.

9 The Settlement secured by Plaintiff (and Class Counsel) provides a significant
10 recovery for Settlement Class Members as compared to similar FDCPA and RFDCPA
11 cases, despite the uncertainty of recovery in similar class actions. *See, e.g., Acosta v.*
12 *Patenaude & Felix*, No. 19-cv-954-CAB-BGS, 2020 U.S. Dist. LEXIS 165852, at *13
13 (S.D. Cal. Sep. 10, 2020) (finally approving a \$3 settlement payment to class members
14 in a FDCPA case); *Capps v. Law Offices of Peter W. Singer*, No. 15- cv-02410-
15 BAS(NLS), 2016 U.S. Dist. LEXIS 161137, at *21 (S.D. Cal. Nov. 21, 2016)
16 (preliminarily approving a \$66.70 payment to class members based off of an
17 anticipated class size of 174 for an FDCPA and RFDCPA case); *Schuchardt v. Law*
18 *Office of Rory W. Clark*, 314 F.R.D. 673, 684 (N.D. Cal. 2016)
19 (approving FDCPA settlement of \$13,610 for a class of 901 members, resulting in
20 recovery of \$15.10 per claimant); *Salazar v. Midwest Servicing Grp., Inc.*, No. CV 17-
21 0137 PSG (KSX), 2018 U.S. Dist. LEXIS 172934, 2018 WL 4802139, at *4 (C.D.
22 Cal. Oct. 2, 2018) (approving award of \$20.00 per class member).

23 The payout here of \$450 per Settlement Class Member is an excellent result for
24 the Settlement Class Members, as: (1) the value offered is a compromise of the
25 maximum statutory damages each class member could receive in this matter, which
26 would otherwise be highly contested and require vigorous litigation efforts, and (2)
27 the value offered is substantially better when compared to other similarly approved
28 settlements, where the per class member recovery varied from \$3.00 to \$66.70.

2. Contingency Fee

Attorneys are entitled to a larger fee award when their compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1048-1050 (courts reward successful class counsel in contingency cases “for taking risk of nonpayment by paying them a premium over their normal hourly rates”), *see also Omnivision*, 559 F.Supp. 2d at 1047. “It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for . . . contingency cases.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). This ensures competent representation for plaintiffs who may not otherwise be able to afford it. *Id.* The risk inherent in contingency representation is a critical factor. The Ninth Circuit stresses that “[i]t is an abuse of discretion to fail to apply a risk multiplier when...there is evidence that the case was risky.” *Fischel v. Equit. Life Assurance Soc’y*, 307 F.3d 997, 1008 (9th Cir. 2002); *see also Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, *16 (N.D. Cal. 2007).

Here, Class Counsel took this matter entirely on a contingency fee basis and have incurred \$21,493.57 thus far in litigation costs (excluding the additional \$10,000 anticipated in Administration Costs; *see* Arg. §§ II.F, III.P), and may incur minor additional expenses through final approval for any chambers copies of a motion for final settlement approval, for example (as well as traveling to San Diego for the final approval hearing). Kazerounian Decl., ¶ 35-36. Class Counsel filed this action in 2019 with the knowledge that they would be required to devote numerous hours of work to the case with no guarantee of success. Kazerounian Decl., ¶ 15. Class Counsel prosecuted this matter on a purely contingent basis while agreeing to advance all necessary expenses knowing that Class Counsel would only receive a fee if there were a recovery. *Id.* In pursuit of this litigation, Class Counsel have spent considerable outlays of time and money over more than three years: (1) investigating the action; (2) engaging in motion practice; (3) conducting extensive discovery, including depositions; (4) briefing a contested motion for class certification and preparing for oral argument; (5)

1 opposing Defendant’s motion for summary judgment; (6) appealing the Court’s order
 2 granting Defendant’s motion for summary judgment; (7) negotiating the Settlement over
 3 a period of months, including mediation with Mr. Glass; and (8) overseeing
 4 administration of the Settlement thus far, including, for example, ensuring that class
 5 notice went out timely and that the settlement website was timely established. Class
 6 Counsel expended hundreds of hours of time and many resources despite knowing there
 7 was a risk they would never be compensated, especially considering the difficulty
 8 associated with obtaining and maintaining class certification.

9 In addition to incurring \$21,493.57 in litigation costs, Class Counsel have already
 10 spent nearly 800 hours of work on this matter. *See* Kazerounian Decl., ¶¶ 19-20; Prescott
 11 Decl., ¶ 21. Thus, Plaintiff’s counsels’ “substantial outlay, when there is a risk that none
 12 of it will be recovered, further supports the award of the requested fees” in this matter.
 13 *Omnivision*, 559 F. Supp. 2d at 1047. *See also Costa v. Comm’r of SSA*, 690 F.3d 1132,
 14 1136 (9th Cir. 2012) (reiterating the Ninth Circuit’s previous position that “lawyers
 15 are not likely to spend unnecessary time on contingency fee cases in the hope of
 16 inflating their fees’ because ‘the payoff is too uncertain’ . . . As a result, courts should
 17 generally defer to the ‘winning lawyer’s professional judgment as to how much time
 18 he was required to spend on the case.’”) quoting *Moreno v. City of Sacramento*, 534
 19 F.3d 1106, 1112-13 (9th Cir. 2008).

20 This factor therefore supports the fee request, given Class Counsel’s several
 21 hundred hours of work to date without the guarantee they would obtain a recovery.

22 **3. Complexity of the Issues**

23 FDCPA and RFDCPA class action litigation is often complex, and several
 24 courts have declined to certify class actions for alleged violations of the FDCPA and
 25 RFDCPA. *See Lemp v. Seterus, Inc.*, 2022 U.S. Dist. LEXIS 57819, 2022 WL 912960
 26 (E.D. Cal., March 29, 2022) (denying class certification of a FDCPA and RFDCPA
 27 class based on issues of commonality and predominance). This case presented several
 28 legal and factual challenges. Defendant has aggressively pursued various defenses and

1 has highly contested liability, creating significant risks of continued litigation in this
 2 matter. *See, e.g.*, Dkt. Nos. 26-38, 40. Defendant vigorously challenged class
 3 certification in contending that Plaintiff did not satisfy the commonality, typicality,
 4 adequacy, predominance, and superiority requirements for class certification. *See* Dkt.
 5 No. 32. Thus, were litigation to continue without settlement, Plaintiff is certain that
 6 Defendant would continue to vigorously defend this action. This is because Defendant
 7 continues to deny any “liability and wrongdoing” in this action and believes that it has
 8 substantial factual and legal defenses to all claims and class allegations raised by
 9 Plaintiff. *See* Agr. § I.E; *see also*, Dkt. No. 32. These challenges therefore favor the
 10 requested fee award.

11 **4. Class Counsel’s Experience, Reputation, and Ability**

12 As explained above, Plaintiff’s Counsel are very experienced in consumer class
 13 actions under the FDCPA and RFDCPA. *See* Section II(c)(1) above and the declarations
 14 of counsel submitted herewith. This factor supports approval of the fee award.

15 **5. Arm’s Length Negotiations**

16 While attorneys’ fee provisions included in class action settlements are subject
 17 to the determination of whether the provision is fundamentally fair, adequate and
 18 reasonable, the Ninth Circuit has opined that “the court’s intrusion upon what is
 19 otherwise a private consensual agreement negotiated between the parties to a lawsuit
 20 must be limited to the extent necessary to reach a reasoned judgment that the agreement
 21 is not the product of fraud or overreaching by, or collusion between, the negotiating
 22 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
 23 concerned.” *Hanlon*, 150 F.3d at 1027 (citing *Officers for Justice v. Civil Serv. Comm’n*
 24 *of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *see also* *Lundell*
 25 *v. Dell, Inc.*, CIVA C05-3970 JWRS, 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006).

26 In *Hanlon*, the Ninth Circuit went on to state that where settlement terms,
 27 including attorneys’ fees, are reached through formal mediation, the Court may rely
 28

1 upon the mediation proceedings “as independent confirmation that the fee was not the
 2 result of collusion or a sacrifice of the interests of the class.” *Hanlon*, 150 F.3d at 1029.
 3 *See also Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *5 (D.N.J. Sept. 14,
 4 2009) (noting “the participation of an independent mediator in settlement negotiation
 5 virtually insures that the negotiations were conducted at arm’s length and without
 6 collusion between the parties”); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL
 7 2486346, at *6 (C.D. Cal. June 15, 2010) (“the assistance of an experienced mediator
 8 in the settlement process confirms that the settlement is non-collusive”). *See also* 2
 9 *McLaughlin on Class Actions*, § 6:7 (8th ed.) (“A settlement reached after a
 10 supervised mediation receives a presumption of reasonableness and the absence of
 11 collusion”). According to the Preliminary Approval Order, the Agreement is “fair,
 12 reasonable, and adequate” and “resulted from arm’s-length negotiations.” Dkt. No. 76,
 13 p. 2. Class Counsel continue to believe and contend that this settlement was the product
 14 of good faith and spirited negotiations. *See, e.g.*, Kazerounian Decl., ¶ 12. This
 15 settlement is a result of extensive arm’s length negotiations, including a full-day
 16 mediation session with Mr. Glass (an experienced mediator). Mr. Glass was
 17 instrumental in conducting a mediation as an unbiased third-party neutral.

18 **6. Reasonable Risk Multiplier of Less Than One**

19
 20 “A district court generally has discretion to apply a multiplier to the attorney’s
 21 fees calculation to compensate for the risk of nonpayment. It is an abuse of discretion
 22 to fail to apply a risk multiplier, however, when (1) attorneys take a case with the
 23 expectation that they will receive a risk enhancement if they prevail, (2) their hourly
 24 rate does not reflect that risk, and (3) there is evidence that the case was risky.” *Fischel*
 25 *v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002) (citation
 26 omitted); *see In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300-1301
 27 (9th Cir. 1994) (noting that “courts have routinely enhanced the lodestar to reflect the
 28 risk of non-payment in common fund cases” and finding district court’s failure to apply

1 multiplier to lodestar calculation was abuse of discretion where case was “fraught with
2 risk and recovery was far from certain”).

3 Courts within have often applied a risk multiplier of between 1 and 2 in complex
4 litigation. *See e.g., Schutza v. Costco Wholesale Corp.*, No. 19-CV-00990 DMS
5 (WVG), 2022 U.S. Dist. LEXIS 57745, at *12 (S.D. Cal. Mar. 29, 2022) (applying a
6 1.2 multiplier given risk of case); *Lemus v. H&R Block Enters. LLC*, No. C 09-3179
7 SI, 2012 U.S. Dist. LEXIS 128514, at *3 (N.D. Cal. Sep. 10, 2012) (applying a 1.3
8 risk multiplier in wage and hour class action settlement) (Illston); *Moore v. Verizon*
9 *Communs. Inc.*, No. C 09-1823 SBA, 2014 U.S. Dist. LEXIS 19145, at *24 (N.D. Cal.
10 Feb. 13, 2014) (applying a risk multiplier of 1.58 in consumer unauthorized billing
11 settlement). Here, Plaintiff’s counsels’ lodestar is \$443,238.50 when including a
12 reasonable estimate of additional attorney hours anticipated to be incurred (and does
13 not include costs). This lodestar exceeds the \$240,000 requested by Plaintiff for an
14 award of attorneys’ fees and costs. Consequently, this amounts to a negative risk
15 multiplier of approximately 0.55.⁴

16 Thus, the relevant factors lean highly in favor of the combined award of
17 attorneys’ fees and expenses sought of \$240,000, which essentially works out to a
18 request for \$208,506.43 as attorneys’ fees (as Plaintiff will likely incur \$31,493.57 in
19 costs after paying for the Administration Costs).

20 7. The Risks of Litigation Also Support the Requested Fees

21 “The risk that further litigation might result in Plaintiffs not recovering at all,
22 particularly a case involving complicated legal issues, is a significant factor in the award
23 of fees.” *Omnivision*, 559 F. Supp. 2d at 1046-47; *see also, Vizcaino*, 290 F.3d at 1048
24 (risk of dismissal or loss on class certification is relevant to evaluation of a requested
25 fee). Here, Defendant has aggressively pursued its defenses asserted in its Answer (*see*
26

27 ⁴ Were hours incurred by litigation support staff counted (they are not counted here in
28 counsel’s lodestar calculation), the total firm lodestar would be much higher than
\$443,238.50, as litigation support staff at the firm spent over a combined 80 hours
working on this matter. Kazerounian Decl., ¶¶ 19-20.

1 Dkt. No. 19) and has highly contested liability, creating significant risks of continued
 2 litigation in this matter. Were litigation to continue without settlement, Plaintiff is certain
 3 that Defendant would continue to vigorously defend this action. *See* Agr. § I.E. In
 4 opposition to Plaintiff’s motion for class certification, Defendant argued in opposing the
 5 motion for class certification that Plaintiff’s proposed class definition was not
 6 sufficiently defined, and also contested commonality, typicality, and adequacy. *See* Dkt.
 7 No. 32. If litigation were to proceed without the settlement here, the Court would need
 8 to rule on a contested motion for class certification. Should that motion be granted,
 9 Plaintiff would then move toward proving his case at trial, and Defendant would
 10 continue to vigorously defend against Plaintiff’s claims—as it has done since 2019—
 11 and try and decertify the class and prepare for trial.

12 Conversely, if the class were not certified, no recovery would be achieved for the
 13 individual class members. *See Vizcaino*, 290 F.3d at 1048 (addressing importance of
 14 the risk of a denial of class certification in evaluating the attorneys’ fees request). It is
 15 also evident that continued litigation without approval of the settlement would result in
 16 great expense and risk to both parties regardless of the outcome. Although Plaintiff and
 17 Class Counsel strongly believed that they would prevail on the merits and that
 18 certification of at least some class would be granted, they recognize the significant risks
 19 of litigating on behalf of the absent class members here, as explained above and in the
 20 Preliminary Approval Motion (Dkt. No. 75-1, at pp 30).

21 Thus, in considering the Settlement, the Parties carefully balanced the risks of
 22 continuing to engage in protracted and contentious litigation against the benefits to the
 23 Settlement Class, including the deterrent effects it would have. The risks of continued
 24 litigation depict the strong results obtained for the Settlement Class here and further
 25 supports the reasonableness of the Plaintiff’s request for attorneys’ fees.

26 **8. The Skill Required and Quality of Work Performed Support the**
 27 **Requested Fees**

28 The “prosecution and management of a complex [] class action requires unique

1 legal skills and abilities” that are to be considered when evaluating fees. *Omnivision*,
2 559 F. Supp. 2d at 1047. *See also In Re: Heritage Bond*, 2005 U.S. Dist. LEXIS 13555,
3 at *63-64 (“The ‘prosecution and management of a complex national class action
4 requires unique legal skills and abilities.’”). This case has required a great degree of skill
5 and familiarity with FDCPA and RFDCPA given the complex legal and factual issues at
6 play and the substantial analysis conducted by Class Counsel of Defendant’s records,
7 data, and potential liability. A great degree of skill was also required in litigating this
8 case for over three years, conducting multiple rounds of discovery, taking or defending
9 depositions, and participating in extensive motion practice, including a motion for
10 summary judgment and a fully briefed motion for class certification as well as
11 succeeding on an appeal.

12 Class Counsel here possess the necessary level of skill required in pursuing this
13 action. This is because Class Counsel are experienced litigators who have been appointed
14 “class counsel” in many FDCPA, RFDCPA and related consumer class action cases.
15 They have also successfully prosecuted numerous FDCPA, RFDCPA and other complex
16 consumer class actions in which they have secured noteworthy recoveries. *See*
17 *Kazerounian Decl.* ¶¶ 45, 52, 55; *Prescott Decl.*, ¶¶ 22, 30-31. Courts have recognized
18 Kazerouni Law Group, APC’s dedication and quality work in consumer cases.
19 *Kazerounian Decl.* ¶¶ 32-34. For instance, the court in *Holt v. Foodstate, Inc.*, No. 17-
20 cv-637-LM (D.N.H. Jan. 6, 2020) expressed that “[c]lass counsel [at Kazerouni] are
21 highly qualified and experienced in consumer class actions, including false advertising
22 claims.” *Id.* at ¶ 32. The same court also stated that Mr. Kazerounian “[h]as
23 participated in over 50 consumer protection class action suits in the last several years
24 and he also has received extensive training in consumer protection litigation, has given
25 presentations on the subject, including teaching a law school course on consumer law.”
26 *Id.* Judge Bashant also noted that Mr. Kazerounian and his co-counsel are “skilled,
27 experienced class action litigators very familiar to this Court.” *McCurley*, 2020 U.S.
28 Dist. LEXIS 227110, at *6.

1 In *Barani v. Wells Fargo Bank, N.A.*, No. 12-cv-02999-GPC-KSC (S.D. Cal.
 2 Mar. 6, 2015), the court similarly opined that the attorneys at Kazerouni Law Group
 3 “are very seasoned” in handling class actions. Kazerounian Dec., ¶ 34. Another court
 4 noted that Mr. Kazerounian “has experience in commercial litigation and large-scale
 5 products liability litigation.” *Malta v. Fed. Home Loan Mortg. Corp.*, No. 10-CV-1290
 6 BEN (NLS), 2013 U.S. Dist. LEXIS 15731, at *9 (S.D. Cal. Feb. 4, 2013). An extensive
 7 list of some of the cases in which Class Counsel and Kazerouni Law Group, APC have
 8 been appointed class counsel can be found in Class Counsel’s accompanying
 9 declarations. Considering the foregoing, Class Counsel’s proven track record
 10 demonstrates the quality of the work they performed in this action and the skill they
 11 have generally exhibited in successfully prosecuting large, complex class action cases.

12 The quality of opposing counsel is also important in evaluating the quality of Class
 13 Counsel’s work. *See In Re Equity Funding Corp. Sec. Litig.*, 438 F.Supp. 1303, 1337
 14 (C.D. Cal. 1977) (recognizing that when “plaintiffs’ attorneys in this class action have
 15 been up against established and skillful defense lawyers, [they] should be compensated
 16 accordingly.”) Here, Defendant was represented by counsel with extensive experience
 17 handling complex cases and who defending the action vigorously.⁵ The ability of Class
 18 Counsel to obtain a favorable settlement despite the quality of defense counsel’s work
 19 further demonstrates the high quality of Class Counsel’s work.

20 Therefore, Class Counsel’s efforts and experience here have contributed to the
 21 favorable settlement and recovery obtained in this matter.

22 **E. Plaintiff’s Request for Attorneys’ Fees and Costs Should Not Be Not**
 23 **Based on the Percentage of the Common Fund**

24 The Ninth Circuit recognizes two methods of determining the amount of
 25 attorneys’ fees that should be awarded from a common fund generated through class
 26 action litigation: (1) percentage-of-recovery method and (2) the lodestar/multiplier

27 ⁵ *See, e.g.*, <https://www.mpbf.com/practice/litigation/> (last visited Oct. 21, 2022)
 28 (noting opposing counsel’s litigation experience with complex cases);
<https://www.mpbf.com/attorney/john-p-girarde/> (last visited Oct. 21, 2022) (same).

1 method. *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295
 2 (9th Cir. 1994). When a statute dictates that the prevailing plaintiff may recover their
 3 attorneys’ fees and costs from the opposing side, it is referred to as a “fee-shifting”
 4 statute. *Tait v. BSH Home Appliances Corp.*, No. SACV 10-0711-DOC (ANx), 2015
 5 U.S. Dist. LEXIS 98546, at *30 (C.D. Cal. July 27, 2015). Under California law, in
 6 fee-shifting cases, “the primary method for establishing the amount of ‘reasonable’
 7 attorney fees is the lodestar method.” *Id.* (internal citation omitted). This means that in
 8 FDCPA and RFDCPA cases (like the present case) where attorneys’ fees are provided
 9 by statute, “[d]istrict courts must calculate awards for attorneys’ fees using the lodestar
 10 method” *Aikens v. Cisneros*, No. 5:17-cv-02462-JLS-SP, 2020 U.S. Dist. LEXIS
 11 258044, at *16 (C.D. Cal. Jan. 2, 2020) citing *Camacho v. Bridgeport Fin., Inc.*, 523
 12 F.3d 973, 978 (9th Cir. 2008).

13 Here, Plaintiff’s request for attorneys’ fees and costs should be based on Class
 14 Counsel’s lodestar as opposed to a percentage of the recovery method. Such method is
 15 appropriate in this case for three main reasons. First, Plaintiff’s claims in this action are
 16 based on the FDCPA and RFDCPA (both of which are considered “fee shifting statutes”
 17 that provide for attorneys’ fees), which requires a court to only consider the lodestar
 18 method when evaluating the reasonableness of the requested fees. *See, e.g., Aikens*,
 19 2020 U.S. Dist. LEXIS 258044, at *16; *Tait*, 2015 U.S. Dist. LEXIS 98546, at *30.

20 Second, this is not a true “common fund” case because the Settlement Class
 21 Members’ recovery is not impacted in any way by the amount of fees awarded to Class
 22 Counsel. Indeed, Defendant has agreed to pay each of the 293 Settlement Class
 23 Members \$450 (for a total of \$131,850.00) *separate and apart* from its agreement to
 24 not oppose Class Counsel’s request for attorneys’ fees and costs so long as it does not
 25 exceed \$240,000. *See Arg. § II.F (“Class Counsel’s Attorneys’ Fees and Costs . . . in*
 26 *the amount up to \$240,000 [and] any Service Award ordered by the Court (not to exceed*
 27 *\$2,500) are expressly **excluded from the Common Fund.**”)* (emphasis added). As a
 28 result, the amount received by Class Counsel is independent from the amount received

1 by the Settlement Class Members. *See Tait*, 2015 U.S. Dist. LEXIS 98546, at *35
 2 (noting that “[u]nlike in a common fund settlement” a whatever amount of fees is
 3 awarded to class counsel, it will not affect the amount going to class members”); *In re*
 4 *Consumer Privacy Cases*, 175 Cal. App. 4th at 557 (finding “a fee award may not be
 5 justified solely as a percentage of the recovery when that award will not come from the
 6 settlement fund”).

7 Third, the *Kerr* Factors discussed herein have been satisfied and are “considered
 8 in calculating the lodestar.” *Tait*, 2015 U.S. Dist. LEXIS 98546, at *35 As such,
 9 “although calculation of the lodestar amount focuses on class counsel’s billing time and
 10 billing rate . . . the amount of recovery to the class will be factored into the
 11 determination of class counsel's reasonable fee.” *Id.*

12 **III. CLASS COUNSELS’ REQUEST FOR LITIGATION COSTS OF** 13 **\$21,493.57 IS REASONABLE AND COMPENSABLE**

14 The significant litigation expenses Class Counsel incurred in this case were
 15 necessary and reasonable to secure the resolution of this litigation. *See e.g., In re Immune*
 16 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding that costs
 17 such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs,
 18 computerized legal research fees, and mediation expenses are relevant and necessary
 19 expenses in class action litigation). Counsel believe that the costs incurred in this matter
 20 are fair and reasonable. The reasonable litigation costs requested of \$21,493.57 (as of
 21 October 14, 2022) are itemized in, and supported by, Plaintiffs’ counsels’ expense
 22 report attached as **Exhibit 1** to Abbas Kazerounian’s Declaration. *See Valentine*, 2011
 23 U.S. Dist. LEXIS 165813, at *18. (N.D. Cal. Nov. 21, 2011) (adopting magistrate
 24 recommendation to reimburse class counsel’s out-of-pocket expenses of \$63,678 in
 25 consumer privacy settlement); *Cordy*, 2014 U.S. Dist. LEXIS 59484, at *6 (N.D. Cal.
 26 Apr. 28, 2014) (approving class counsel’s expense reimbursement of \$53,455).
 27 Notably, Class Counsel anticipates that an additional \$10,000 in costs will be incurred
 28 for Administration, making the total costs about \$31,493.57 to be paid from the
 requested \$240,000 in combined attorneys’ fees and costs requested.

1 Class Counsel respectfully request that the Court approve all litigation expenses
 2 incurred in this action because they were reasonably incurred, the costs requested are
 3 in the context of settlement rather than a judgment (*see* Fed. R. Civ. 54), and the
 4 Settlement Agreement allows for such recovery (Agr. § III.P). *See Klee v. Nissan N.*
 5 *Am., Inc.*, No. CV 12-08238 AWT (PJWx), 2015 U.S. Dist. LEXIS 88270, at *42 (C.D.
 6 Cal. July 7, 2015) (“Because the settlement agreement anticipated the recovery of these
 7 litigation costs, the court approves the request for reimbursement.”). Class Counsel are
 8 entitled to reimbursement of reasonable “nontaxable costs that are authorized by law
 9 or by the parties’ agreement.” Fed. R. Civ. P. 23(h); *see also Van Vranken v. Atl.*
 10 *Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs in
 11 class action settlement). Importantly, “courts throughout the Ninth Circuit regularly
 12 award litigation costs and expenses - including reasonable travel expenses . . .”
 13 *Sanchez v. Frito-Lay, Inc.*, 2015 U.S. Dist. LEXIS 102771, at *49 (E.D. Cal. Aug. 5,
 14 2015); *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. Oct. 8, 2014) (citations
 15 omitted).

16 **IV. A SERVICE AWARD OF \$2,500.00 TO THE NAMED PLAINTIFF IS**
 17 **REASONABLE**

18 As the Ninth Circuit has recognized, “named Plaintiffs, as opposed to designated
 19 class members who are not named Plaintiffs, are eligible for reasonable incentive
 20 payments.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *Rodriguez v. West*
 21 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards “are fairly typical
 22 in class action cases”). “Such awards are intended to compensate class representatives
 23 for work done on behalf of the class [and] make up for financial or reputational risk
 24 undertaken in bringing the action.” *Id.*⁶ Modest service (or incentive) awards, such as
 25 the one requested here, promote the public policy of encouraging individuals to
 26 undertake the responsibility of representative lawsuits. A court should approve a service
 27

28 ⁶ *See Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393-94 (Cal. Ct. App. 2010) (explaining purpose of a service award).

1 award when it finds that it is not the product of collusion and does not come at the
2 expense of the remaining class members. *Louie v. Kaiser Found. Health Plan, Inc.*,
3 2008 U.S. Dist. LEXIS 78314, at *17-18 (S.D. Cal. 2008).

4 On or about June 3, 2019, Defendant attempted to collect a debt due and/or
5 owed by Plaintiff by sending Plaintiff (and Settlement Class Members) a form debt
6 collection letter (the “Form Letter”). The Form letter stated that if Plaintiff wished to
7 dispute the Debt it must be in *writing* within 30 days of receipt of the letter, which
8 Plaintiff contends is in violation of the FDCPA, and the RFDCPA. Plaintiff feels
9 strongly about protecting his rights under FDCPA and RFDCPA. By coming forward
10 to prosecute his claims on behalf of the class for over three years, Plaintiff has spent a
11 considerable amount of time and effort. *See* Declaration of Jeffrey Almada (“Almada
12 Decl.”) at ¶¶ 4-20.

13 In addition, Plaintiff subjected himself to public attention and has actively
14 engaged in this action since 2019. Plaintiff’s efforts include, for example: (1) speaking
15 with his attorneys for the initial consultation; (2) participating in phone calls regarding
16 fact-finding efforts with his attorneys and discovery responses; (3) providing a
17 declaration in support of class certification; (4) reviewing the settlement agreement and
18 discussing it with his counsel; (5) submitting a declaration in support of preliminary
19 settlement approval; and now (6) submitting this declaration in support of the motion
20 for attorneys’ fees, costs and service award. Almada Decl., ¶¶ 12-20. Plaintiff will
21 continue to participate in the class action settlement as necessary.

22 Therefore, Plaintiff is requesting a modest service award of \$2,500.00, which is
23 reasonable and notably lower than service awards approved in similar cases. *See e.g.*
24 *Edwards v. Ford Motor Co.*, 2016 U.S. Dist. LEXIS 59651, at *33-34) (S.D. Cal. Jan.
25 22, 2016) (“A review of similar cases indicates that a \$5,000 incentive award is
26 reasonable here.”); *Holmes v. NCO Fin. Sys.*, No. 10-cv-2543-H (RBB), 2014 U.S.
27 Dist. LEXIS 201696, at *20 (S.D. Cal. June 23, 2014) citing *Staton*, 327 F.3d 938,
28 976 (9th Cir. 2003) (noting service awards range from \$2,000 to \$5,000); *In re Nexus*

1 *6P Prods. Liab. Litig.*, No. 17-cv-02185-BLF, 2019 U.S. Dist. LEXIS 197733, at *41-
 2 43 (N.D. Cal. Nov. 12, 2019) (noting service awards range from \$2,000 to \$10,000);
 3 *Reed v. 1-800 Contacts, Inc.*, 2014 WL 29011, at *10 (S.D. Cal. 2014) (finding
 4 \$10,000 service award reasonable in CIPA case); *Cohorst*, 2011 WL 7061923, at *23
 5 (finding service payments of \$5,000 to three class representatives in CIPA case
 6 reasonable); *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2013 U.S. Dist. LEXIS
 7 169270, at *39 (N.D. Cal. Nov. 27, 2013) (\$5,000 service award reasonable); *Allagas*
 8 *v. BP Solar Int'l, Inc.*, No. 3:14-cv-00560-SI (EDL), 2016 U.S. Dist. LEXIS 187785,
 9 at *10-11 (N.D. Cal. Dec. 22, 2016) (service awards between \$3,500 and \$7,500
 10 reasonable); *Klee*, 2015 U.S. Dist. LEXIS 88270, at *43 (\$5,000 service award);
 11 *Cordy*, 2014 U.S. Dist. LEXIS 59484, at *7 (\$8,000 service award in consumer
 12 matter); *Ordick v. UnionBancCal Corp.*, 2012 U.S. Dist. LEXIS 171413, at *11 (N.D.
 13 Cal. Dec. 3, 2012) (awarding \$5,000 to named plaintiff where “the settlement was
 14 reached at the early stages of litigation”).

15 Such compensation, through a service award, also provides the economic
 16 motivation to induce potential plaintiffs to lend their names and support to class
 17 actions generally. *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558 at *26
 18 (E.D. Cal. Oct. 19, 2006). Thus, the amount requested by Plaintiff here as a service
 19 award of \$2,500 is in line with similar awards.

20 **V. CONCLUSION**

21 Plaintiff respectfully requests that the Court (i) award Class Counsel \$240,000
 22 in *combined* attorneys’ fees and expenses; and (ii) approve of a service award of \$2,500
 23 to Mr. Almada for his efforts in representing the settlement class members. The
 24 language of a proposed order granting this request for attorneys’ fees, costs and service
 25 award will be included in a proposed order that will accompany a future motion for
 26 final approval of class action settlement,⁷ as noted in the Settlement Agreement.

27
 28 ⁷ The deadline to file Plaintiff’s motion for final approval of class action settlement is December 15, 2022 (*see* Dkt. No. 76).

1 Dated: October 21, 2022

Respectfully Submitted,
KAZEROUNI LAW GROUP, APC

2
3 By: /s Abbas Kazerounian
4 Abbas Kazerounian, Esq.
5 *Attorneys for Plaintiff*
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