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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RYAN RICHARDS, RUBA AYOUB,
BRANDY TERBAY AND TRACY
CUMMINGS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CHIME FINANCIAL, INC., GALILEO
FINANCIAL TECHNOLOGIES, INC., and
THE BANCORP INC.,

Defendants.

CASE NO. 4:19-cv-06864

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES,
COSTS, AND EXPENSES, AND SERVICE
AWARDS**

NOTICE OF MOTION

PLEASE TAKE NOTICE Plaintiffs Ryan Richards, Ruba Ayoub, Brandy Terbay, and Tracy Cummings (“Plaintiffs” or “Settlement Class Representatives”) will and hereby do respectfully move the Court for entry of an Order (1) awarding attorneys’ fees, costs, and expenses in the total amount of \$750,000.00, and (2) service awards to each of the Settlement Class Representatives in the amount of \$500 per Settlement Class Representative.

Plaintiffs’ motion is based on this notice; the accompanying Memorandum of Points and Authorities and all attachments thereto; and all records, pleadings and papers filed in this Action. This Motion is unopposed by Defendants.

DATED: December 30, 2020

Respectfully submitted,

/s/ John A. Yanchunis

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17 1, 2011) 23

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Action was brought by Plaintiffs, individually and on behalf of a class of similarly situated customers, against Defendants Chime Financial, Inc. (“Chime”), The Bancorp Inc. (“Bancorp”), and Galileo Financial Technologies, LLC (formerly known as Galileo Technologies, Inc.) (“Galileo”) (collectively, “Defendants”), arising from an intermittent disruption in service that some account holders experienced for portions of the period of time between October 16, 2019 and October 19, 2019 (the “Service Disruption”).¹ After extensive discussions, including multiple settlement conferences with United States Magistrate Judge Laura Beeler, and an exchange of information regarding the facts surrounding the Service Disruption, the Parties reached a resolution of this Action. Significantly, the proposed Amended² Settlement Agreement (“Settlement” or “Settlement Agreement”) provides substantial relief to address the claims of the Settlement Class, including \$5,960,563.00 in payments that have already been made to Settlement Class Members for any inconveniences and losses resulting from the Service Disruption, and up to an additional \$5.5 million on a claims-made basis—split between two alternative tiers of compensation (Tiers 1 and 2) available to the Settlement Class—against which Settlement Class Members may file claims for losses resulting from the Service Disruption. *See* SA § IV.1-3.

Having obtained valuable relief for the Settlement Class, Settlement Class Representatives Ryan Richards, Ruba Ayoub, Brandy Terbay, and Tracy Cummings respectfully request that the Court enter an Order that awards (a) \$750,000.00 to Class Counsel for attorneys’ fees and reimbursement of costs and expenses pursuant to Section X.2 of the Amended Settlement Agreement (“Settlement” or “SA”), and (b) incentive awards of \$500.00 to each Settlement Class Representative as provided for by Section X.1 of the Settlement. Under the terms of the Settlement, any award of attorneys’ fees, costs, and expenses and service awards to the Settlement Class

¹ Unless otherwise noted, capitalized terms used herein are defined in the Amended Stipulation of Agreement and Settlement and Release, as previously filed at ECF No. 45-4.

² At the Court’s direction, the parties prepared and filed an Amended Stipulation of Agreement and Settlement and Release that addressed the concerns raised by the Court at the preliminary approval hearing. *See* (ECF No. 45).

1 Representatives is to be paid separate and apart from the monetary relief being provided to the Class,
2 and as a consequence, will not diminish the relief being made available to the Class.

3 The amount sought is reasonable in light of the complexities of the litigation, the contingent
4 risk assumed by Class Counsel, the results achieved for the Settlement Class, and the work
5 performed by Class Counsel. The requested fee represents approximately 6% of the total Settlement
6 value and a multiplier of 2.467 on Class Counsel’s combined lodestar and costs and expenses to date
7 (were the Court to employ the lodestar analysis). The work of Class Counsel is not yet complete, as
8 additional hours will be required to respond to objections (if any), prepare for the final fairness
9 hearing, supervise the claims administration process until the final checks are distributed to
10 Settlement Class Members, and handle any appeals that might be filed by objectors.

11 For the reasons set forth in greater detail below, Plaintiffs respectfully submit that the
12 requested attorneys’ fees, cost and expense reimbursements, and Service Awards are fair and
13 reasonable, and should be approved.

14 **II. OVERVIEW OF THE LITIGATION AND PROPOSED SETTLEMENT**

15 **A. Background**

16 Chime is an online-only service started in 2013 as an alternative to traditional brick and
17 mortar banks.³ Since its inception, Chime has attracted more than five million new account holders,
18 giving it the largest customer base of any digital challenger bank in the U.S.⁴ Chime markets
19 primarily to millennials and others who make \$35,000 to \$70,000 a year—the segment of the
20 population that relies heavily on debit cards to pay for everyday expenses while attempting to stay
21 within budget.⁵ One of Chime’s biggest selling points to its cost sensitive customers has been its “no
22 hidden fees” approach to creating a transaction account—meaning no overdraft fees, no monthly
23

24 _____
25 ³ As used herein, when discussing accounts and services “Chime” refers to the Chime products and
26 services. When referring to a party, “Chime” refers to Defendant Chime Financial, Inc.

27 ⁴ *Chime now has 5 million customers and introduces overdraft alternative*, Tech Crunch, September
28 4, 2019, <https://techcrunch.com/2019/09/04/chime-now-has-5-million-customers-and-introduces-overdraft-alternative/>

⁵ *This branchless bank quadrupled its customer base to 4 million in a single year*, CNBC, June 17,
2019 <https://www.cnbc.com/2019/06/12/chime-has-quadrupled-its-customer-base-to-4-million-in-a-single-year.html>

1 maintenance or service fees, no minimum balance, and no charges on foreign transactions.⁶ Critical
2 to Chime's success is providing customers immediate access to their funds with minimal cost.
3 Chime customers receive a debit card, a Spending Account (aka checking account), a Savings
4 Account, and a phone App that is iPhone and Android compatible. Chime is the program manager
5 for deposit accounts administered by Bancorp, for which Galileo acts as a processor (the
6 "Accounts"). SA § I.A.

7 From October 16, 2019 to October 19, 2019, some Chime accountholders experienced
8 intermittent disruptions in service. For example, for approximately four and a half non-consecutive
9 hours during the Service Disruption, card purchases for certain members were unavailable; and for
10 approximately 60 hours, certain members could not transfer money from their Chime accounts.
11 These issues were intermittent during the Service Disruption period and did not impact all Chime
12 customers. Rather, in connection with the Action and the Settlement, Defendants have identified
13 approximately 528,000 accountholders that had an account open with Chime during the Service
14 Disruption who experienced a transaction failure or had an account or card locked during the Service
15 Disruption. SA § III.1.

16 Immediately upon learning of the Service Disruption, Class Counsel worked vigorously to
17 remedy the harms imposed on the Settlement Class. This Action was filed on October 22, 2019.
18 (ECF No. 1). Upon filing, Chime and Bancorp received a demand from Lead Class Counsel seeking
19 compensation for impacted customers. In recognition of the pendency of this Action and having
20 received the demand, Settlement Class Members with an active Chime account received a credit to
21 their account in the amount of ten dollars (\$10.00), on or about November 14, 2019. SA § IV.1.a.
22 Moreover, Settlement Class Members with an active Chime account who incurred certain transaction
23 fees during the Service Disruption received a credit to cover those fees. SA § IV.1.b. The total
24 amount already paid to the Settlement Class from Plaintiffs' efforts is \$5,960,563.00. SA § IV.1.c.
25
26

27 _____
28 ⁶ *Chime Bank disrupting the banking industry with fintech*, MarketWatch, January 31, 2019,
<https://www.marketwatch.com/press-release/chime-bank-disrupting-the-banking-industry-with-fintech-2019-01-31>

1 On February 6, 2020, counsel for the Parties attended an initial settlement conference in front
2 of United States Magistrate Judge Laura Beeler. The conference was held in San Francisco,
3 California to discuss the facts and the law underlying the Action. Counsel for the Parties engaged in
4 discussions regarding the factual circumstances of the case, as well as potential strengths and
5 weaknesses of the allegations in support of, and defenses to, the Action. Following that meeting,
6 counsel for Plaintiffs made a settlement demand on Defendants to resolve this matter. SA § I.D;
7 (ECF No. 40-8 ¶ 18).

8 During the months that followed, counsel for the Parties continued discussions via multiple
9 telephone conferences and correspondence exchanges. Counsel continued to exchange proposals
10 and discuss resolution, as disclosed to the Court in their Stipulation and Proposed Order to extend
11 the case stay on March 19, 2020. (ECF No. 30). On May 7, 2020, after weeks of additional
12 negotiations, Counsel for the Parties attended an additional settlement videoconference in front of
13 Judge Beeler to discuss preliminary settlement terms and structure. On May 12, 2020, with the
14 assistance of Judge Beeler, the Parties reached an agreement in principle with regard to the material
15 terms of the proposed settlement, as memorialized in this Settlement Agreement. (ECF No. 40-8
16 ¶ 19).

17 On August 7, 2020, Plaintiffs filed their Motion for Preliminary Approval. (ECF No. 40). On
18 September 24, 2020, a preliminary approval hearing was held. *See* (ECF Nos. 43 & 44). At the
19 hearing, the Court raised concerns regarding whether “Section IX Paragraph 2 of the settlement
20 agreement regarding the scope of the release should be removed or clarified, as well as whether the
21 language requiring objectors to include the number of times the objector or her counsel has objected
22 to a class action in Section VII Paragraph 4 should be removed.” (ECF No. 44). As directed by the
23 Court, the parties met and conferred regarding these issues, and, on October 8, 2020, filed an
24 Amended Settlement Agreement along with revised notices containing the revised release and
25 objection related language. (ECF No. 45). On October 28, 2020, this Court granted the Motion for
26 Preliminary Approval. (ECF No. 46). A further order, setting the relevant settlement related
27 deadlines, was entered on November 10, 2020. (ECF No. 48).
28

1 **B. Overview of the Proposed Settlement**

2 As explained in the Motion for Preliminary Approval, in addition to the benefits already
3 afforded to the Settlement Class, the Settlement provides two alternative tiers of relief to
4 compensate Settlement Class Members for inconveniences and losses as a result of the Service
5 Disruption. These alternative tiers allow Settlement Class Members to make a claim for either
6 undocumented losses (Tier 1) or for documented losses (Tier 2). Defendants have agreed to pay
7 allowed claims under Tiers 1 and 2 of up to \$5.5 million, but in any event will make a minimum
8 settlement fund payment of \$1,500,000, taking into account claimed amounts under either Tier,
9 which \$1,500,000 will not revert to Defendants. Should amounts claimed under Tier 1 and Tier 2,
10 when combined, fail to exhaust the \$1,500,000 fund, any difference between the claimed amounts
11 and \$1,500,000 will be subject to a *cy pres* distribution to the East Bay Community Law Center or
12 such other *cy pres* recipient or recipients as directed and agreed to by the Court. SA § IV. Subject
13 to the terms of the Settlement Agreement, Defendants are not creating a settlement fund beyond the
14 \$1.5 million dollars but instead will only pay validated claims up to the Tier Maximums. Should
15 the amounts claimed not reach the Tier Maximums, Defendants will retain those funds.

16 Defendants will also separately bear the costs of class notice and other costs associated with
17 administering the Settlement at a fixed sum price of no more than \$250,000. SA § VI.3.

18 Defendants will also separately pay Class Counsel’s attorneys’ fees, costs, and expenses, not to
19 exceed \$750,000 in the aggregate, and Service Awards not to exceed \$500 per Settlement Class
20 Representative. These fees, costs, and expenses, and the Service Awards, will be paid by
21 Defendants separate and apart from the relief provided to Settlement Class Members; that is, the
22 fees, cost, and expenses and Service Awards will not in any way reduce the benefits and payments
23 to the Settlement Class Members provided by the Settlement Agreement. SA § X.1-2.

24 **III. ARGUMENT**

25 **A. The Parties’ Agreed Fee Amount Should be Given Deference**

26 Rule 23(h) provides that in a class action settlement, “the court may award reasonable
27 attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed.
28 R. Civ. P. 23(h). As the Supreme Court has explained: “A request for attorney’s fees should not

1 result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.”
2 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Thus, litigants are encouraged to resolve fee issues
3 by agreement as long as the amount is reasonable. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
4 (9th Cir. 1998); *see also In re M.D.C. Holdings Sec. Litig.*, No. CV 89-0090, 1990 WL 454747, at *4
5 (S.D. Cal. Aug. 30, 1990) (“Because this Court believes the parties should be encouraged to settle all
6 their disputes as part of the settlement . . . including the amount of the fee . . . if the agreed-to fee
7 falls within a range of reasonableness, it should be approved as part of the negotiated
8 settlement . . .”); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL
9 4755371, at *1 (N.D. Cal. Oct. 4, 2012) (“The award of Class Counsel’s fees and costs will be paid
10 directly by Defendants and will not affect the injunctive relief benefiting the Class. Under these
11 circumstances, the Court finds that the agreed amounts for attorneys’ fees and expenses, and service
12 awards for the Class Representatives, are presumed to be reasonable.”).

13 In the Settlement Agreement, Defendants agreed to pay “attorneys’ fees, costs, and expenses
14 awarded by the Court to Class Counsel separately from and in addition to the Settlement Relief up to
15 seven hundred fifty thousand dollars (\$750,000.00).” (SA § X.2). The Parties’ Agreement is that
16 the award of attorneys’ fees, costs, and expenses will not impact the monetary relief to be made
17 available to the Settlement Class, and is to compensate Class Counsel for the services they have
18 performed in the past as well as services they may be required to perform in the future through final
19 implementation of the Settlement. Pursuant to the Settlement Agreement, Plaintiffs now apply for a
20 total fee, cost, and expense award of \$750,000.00, which accounts for the attorneys’ fees for both the
21 law firms representing Plaintiffs (who have amassed to date a collective lodestar of \$295,915.20),
22 and the reimbursement of their cumulative litigation expenses (which to date total \$8,146.75). *See*
23 Declaration of John Yanchunis, attached hereto as **Exhibit 1**, at ¶¶ 12, 23.

24 In light of the policy favoring settlement of fee disputes, it is appropriate to account for the
25 fact that “the parties are compromising to avoid litigation.” *Laguna v. Coverall N. Am.*, 753 F.3d
26 918, 922 (9th Cir. 2014), *vac’d on other grounds*, 772 F.3d 608 (9th Cir. 2014). Accordingly, the
27 Ninth Circuit holds that “the court need not inquire into the reasonableness of the fees . . . with
28 precisely the same level of scrutiny as when the fee amount is litigated.” *Id.* (quoting *Staton v.*

1 *Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003)) (internal quotations omitted). Thus, while the Court
2 must conduct an inquiry into the reasonableness of the fee request, the parties' negotiated agreement
3 as a reasonable attorneys' fees request should be given substantial weight. Plaintiffs' fee request,
4 negotiated at arm's length by the parties, is reasonable considering the work performed (and
5 remaining to be performed) and the results achieved, and is consistent with similar awards recently
6 approved in this Circuit. The settlement is the product of strenuous and efficient efforts by Class
7 Counsel in a case involving complex issues of fact and law.

8 **B. The Court Should Apply the Percentage of the Fund Method**

9 "Under Ninth Circuit law, the district court has discretion in common fund cases to choose
10 either the percentage-of-the-fund or the lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d
11 1043, 1047 (9th Cir. 2002); *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th
12 Cir. 2011) (same). "[T]he choice between lodestar and percentage calculation depends on the
13 circumstances, but [] 'either method may ... have its place in determining what would be reasonable
14 compensation for creating a common fund.'" *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d
15 1301, 1311 (9th Cir. 1990) (ellipsis in original) (quoting *Paul, Johnson, Alston & Hunt v. Graulty*,
16 886 F.2d 268, 272 (9th Cir. 1989)). The Ninth Circuit also "encourage[s] courts to guard against an
17 unreasonable result by cross-checking their calculations against a second method." *In re Bluetooth*,
18 654 F.3d at 944-45.

19 Where the percentage-of-recovery method is employed, it is well established that 25% of the
20 common fund is the benchmark award of attorney's fees. *See, e.g., In re Bluetooth*, 654 F.3d at 942
21 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award,
22 providing adequate explanation in the record of any 'special circumstances' justifying a
23 departure."); *Six Mexican Workers*, 904 F.2d at 1311 (same). "The 25% benchmark rate, although a
24 starting point for analysis, may be inappropriate in some cases." *Vizcaino*, 290 F.3d at 1048. Upward
25 departures may be warranted in particular circumstances, while downward departures may be
26 warranted, for instance, where there is no "realistic risk of nonrecovery." *In re Quantum Health Res.*,
27 962 F. Supp. 1254, 1257-58 (C.D. Cal. 1997). Whether upward or downward, departures from the
28

1 25% “starting point” require consideration of the relevant factors at play in each instance. *In re*
2 *Bluetooth*, 654 F.3d at 942.

3 Under the lodestar method, a “lodestar figure is calculated by multiplying the number of
4 hours the prevailing party reasonably expended on the litigation (as supported by adequate
5 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In*
6 *re Bluetooth*, 654 F.3d at 941 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)). The
7 Court may adjust this lodestar figure “upward or downward by an appropriate positive or negative
8 multiplier reflecting a host of ‘reasonableness’ factors.” *Id.* at 941-42.

9 Whether the Court utilizes the 25% benchmark amount or some other rate, the award must be
10 supported “by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290
11 F.3d at 1048. The Ninth Circuit has identified five factors that may inform this inquiry: (1) the
12 results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the
13 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in
14 similar cases. *Id.* at 1048-50.

15 The nature of this action warrants application of percentage-of-the-fund approach as the
16 principal method determining the reasonableness of Settlement Class Counsel’s fee request. As
17 courts recognize, this method “is commonly used in the legal marketplace to determine attorneys’
18 fees in contingency fee cases.” *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018
19 WL 3960068, at *5 (N.D. Cal. Aug. 17, 2018). Further, the novel and complex nature of this action
20 affords a dearth of established precedent and other guidance by which to employ the lodestar
21 method. *See id.* (“[T]he combination of novel legal issues and technical subject matter present in the
22 instant [data breach] case counsels against the lodestar method because there is no set baseline
23 against which to compare whether hours were reasonably expended.”). Other considerations also
24 command using the percentage approach here, including (1) replicating more accurately the manner
25 that plaintiffs’ lawyers practice outside of the class action context, (2) ensuring that class counsel’s
26 interests are more directly aligned with the interests of the class, (3) rewarding counsel for assuming
27 the risks of litigating a matter, and (4) avoiding the trappings often associated with the lodestar
28

1 method, such as encouraging counsel to bill time and to find reasons to do so. *See* 5 Newberg on
 2 Class Actions §§ 15:62, 15:65 (5th ed. 2018); *see also In re Anthem*, 2018 WL 3960068, at *5-6; *In*
 3 *re Equifax Inc. Customer Data Sec. Breach Litig.*, 1:17-MD-2800-TWT, 2020 WL 256132, at *36
 4 (N.D. Ga. Jan. 13, 2020).

5 Here the Settlement provides for a constructive common fund. As explained above,
 6 \$5,960,563.00 has already been paid or credited to Settlement Class Members as part of the class
 7 relief in this case. SA § IV.1.c. Settlement Class Members can also make claims for losses under
 8 Tiers 1 and 2 up to an aggregate total \$5.5 million. SA §§ IV.2.c., IV.3.c, and IV.5. Likewise,
 9 Defendants are separately paying for: (1) the costs of notice and administration of up to \$250,000.00,
 10 (SA §§ VI.3, VII.8), these requested attorneys' fees, costs, and expenses of up to \$750,000.00; and
 11 up to \$500 in service awards per Settlement Class Representative, an additional up to \$2,000, (S.A.
 12 §§ X.1, X.2). Such separate payment by Defendants for notice and administration, fees and costs,
 13 and service awards, should be included in valuing the total benefit to the class and hence the total
 14 constructive fund from which Plaintiffs' fee request is judged because if such amounts were not paid
 15 separately, class members would have to pay them directly out of the fund. *Manual for Complex*
 16 *Litigation* § 21.7 at 335 (4th ed.) ("If an agreement is reached on the amount of a settlement fund
 17 and a separate amount for attorney's fees and expenses ... the sum of the two amounts ordinarily
 18 should be treated as a settlement fund for the benefit of the class.")⁷

19
 20 ⁷ *See also, e.g., Chieftain Royalty Co. v. XTO Energy Inc.*, CIV-11-29-KEW, 2018 WL 2296588, at
 21 *2 (E.D. Okla. Mar. 27, 2018) (noting that the "750,000 in administration, notice and distribution
 22 costs . . . is a significant benefit to the Settlement Class as such funds would otherwise be paid from
 23 the Gross Settlement Fund"); *In re classmates.com Consol. Litig.*, C09-45RAJ, 2012 WL 3854501,
 24 at *7 (W.D. Wash. June 15, 2012) ("Class counsel argues that the common fund should also include
 25 about \$1.5 million in settlement administration costs that Classmates has paid or will
 26 pay Because Classmates' payment of these costs relieves the class of the burden of these
 27 expenses, the court may consider them as part of the common fund."); *In re Kentucky Grilled*
 28 *Chicken Coupon Mktg. & Sales Practices Litig.*, 09 C 7670, 2011 WL 13257072, at *5 (N.D. Ill.
 Nov. 30, 2011) ("[T]he common-fund doctrine applies to the entire sum recovered by class counsel
 for purposes of settling a class action lawsuit. Because the costs of class action litigation necessarily
 include the costs of notice, administration of the settlement fund, incentive awards, and attorneys'
 fees, and because the settling defendants in these types of lawsuits have agreed to pay these costs 'in
 exchange for release of [their] liability,' the court finds that such costs are reasonably viewed as
 having been paid 'for the benefit of the class.'") (citations omitted); *cf, e.g., Johnston v. Comerica*

1 The Ninth Circuit has recognized this constructive common fund approach. In *Shaffer v.*
2 *Cont'l Cas. Co.*, 362 Fed. Appx. 627 (9th Cir. 2010), the court noted that:

3 Here, no cash fund exists. However, class counsel's expert actuary
4 estimated the value of class benefits to be \$24–33 million. Of the \$5
5 million for costs, attorneys' fees, and incentive payments, about
6 \$4.4 million represents attorneys' fees. Thus, attorneys' fees
7 represent about 13–18% of the value of class benefits—well below
8 the 25% benchmark.

9 *Id.* at 631–32. Other courts in the Ninth Circuit and in this District have likewise recognized the
10 constructive common fund approach.⁸

11 “To calculate appropriate attorneys' fees under the constructive common fund method, the
12 court looks to the maximum settlement amount that could be claimed.” *Evans*, 2014 WL 1724891,
13 at *6 (citing *Nwabueze*, 2013 WL 6199596, at *11).⁹ This is done by aggregating all amounts

14 *Mtg. Corp.*, 83 F.3d 241, 245-46 (8th Cir. 1996) (“Even if the fees are paid directly to the attorneys,
15 those fees are still best viewed as an aspect of the class' recovery.”); *David v. American Suzuki*
16 *Motor Corp.*, 2010 WL 1628362 at *8 n.14 (S.D. Fla. Apr. 15, 2010) (“While I recognize that the fee
17 award requested by Class Counsel will be paid separately by Defendants and is not drawn from a
18 ‘common fund’ in the traditional sense, there is authority directing ‘district courts to exercise their
19 equitable jurisdiction to review counsel-fee arrangements negotiated in connection with class-action
20 settlements—even where the counsel fees are not taken from a common fund but are instead paid
21 separately by a class-action defendant.”) (quoting *Duhaime v. John Hancock Mut. Life Ins. Co.*, 183
22 F.3d 1, 4 (1st Cir.1999)).

23 ⁸ See, e.g., *Evans v. Linden Research, Inc.*, C-11-01078 DMR, 2014 WL 1724891, at *6 (N.D. Cal.
24 Apr. 29, 2014) (“The court will evaluate the requested fee under the percentage method and analyze
25 the recovery obtained as a constructive common fund.”); *Nwabueze v. AT & T Inc.*, C 09-01529 SI,
26 2013 WL 6199596, at *11 (N.D. Cal. Nov. 27, 2013) (“Where, as here, a settlement does not create a
27 common fund from which to draw, the Ninth Circuit may analyze the case as a ‘constructive
28 common fund’ for fee-setting purposes.”) (citing *Bluetooth*, 654 F.3d at 940–41); *Guschausky v. Am.*
Family Life Assur. Co. of Columbus, 851 F. Supp. 2d 1252, 1259 (D. Mont. 2012), *vacated on other*
grounds, CV 10-59-H-DWM, 2012 WL 4849688 (D. Mont. Oct. 11, 2012) (“While the settlement
might not have created a traditional common fund, it created a constructive common fund There
is not a definitive sum of money that has been set aside for settlement claims, but the Court can
reasonably estimate the settlement value, as explained above. That sum, when aggregated with the
independent payment of attorney's fees, creates a constructive common fund.”) (internal citations
omitted) (citing *Lobatz v. U.S. W. Cellular of California, Inc.*, 222 F.3d 1142, 1147 (9th Cir. 2000)).

⁹ See also *Nwabueze*, 2013 WL 6199596, at *11 (“To calculate appropriate attorneys' fees under the
constructive common fund method, the Court should look to the maximum settlement amount that
could be claimed.”) (citing *Lopez v. Youngblood*, No. CV–F–07–0474 DLB, 2011 WL 10483569, at
*12 (E.D. Cal. Sept. 1, 2011); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, No. 06–02069, 2011
WL 31266, at *5 n.5 (N.D. Cal. Jan. 5, 2011)).

1 payable under the settlement, including, for example, potential claims-made payments, amounts for
 2 fees and costs, and amounts for notice and administration. *See, e.g., Evans*, 2014 WL 1724891, at
 3 *6 (aggregating amounts to be repaid to class members in cash, amounts to be repaid in virtual
 4 currency, amounts to be otherwise paid in cash or virtual currency, as well as amounts for fees and
 5 costs and notice costs, to reach a total settlement value against which the fee request was analyzed).

6 All combined, the relief made available via the Settlement amounts to \$12,462,563.¹⁰
 7 Plaintiffs' fee, cost, and expense request of \$750,000.00 represents just 6% of this total—an
 8 eminently reasonable request considering the 25% benchmark in this Circuit. Even if the Court were
 9 only to consider the amounts already provided (\$5,960,563.00), the amounts for notice and
 10 administration (\$250,000), and the required minimum payment of \$1.5 million related to Tiers 1 and
 11 2—amounts which Defendants are required to pay (or have already paid) and are not dependent on
 12 claims rates or other contingencies—it amounts to \$7,710,563, making Plaintiffs' request only 9.7%
 13 of the total. Again, a sum far below the 25% benchmark.

14 Accordingly, considering the substantial amounts made available via the Settlement, Plaintiffs'
 15 fee request is fair and reasonable, representing only 6% of the constructive common fund, and should
 16 be granted. Moreover, as set out below, consideration of the factors articulated in *Vizcaino* counsels
 17 strongly in favor of an award at or above the Ninth Circuit's 25% benchmark, further militating in
 18 favor of Plaintiffs' request for an award of less than 10%. *Vizcaino*, 290 F.3d at 1048-50.

20 1. The Results Achieved and the Risk of Litigation

21 “The overall result and benefit to the class from the litigation is the most critical factor in
 22 granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008);
 23 *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor” in considering the
 24 reasonableness of fee request is “degree of success obtained”).

25 Here, if the Parties had been unable to resolve this case through settlement, the litigation
 26 would likely have been protracted and costly. Although Plaintiffs and Class Counsel believe that the

27 ¹⁰ \$5,960,563 (relief already provided) + \$5,500,000 (total available under Tiers 1 and 2) + \$250,000
 28 (notice and administration costs) + \$750,000 (attorneys' fees, costs, and expenses) + \$2,000 (service
 awards) = \$12,462,563

1 claims asserted are meritorious, continued litigation against Defendants posed significant risks that
 2 made any recovery uncertain. At the outset, continued litigation of this matter would require the
 3 Court to resolve several separate threshold questions concerning the viability of the litigation. First,
 4 the Court would have to decide the question of the arbitrability of Plaintiffs' claims. Defendants
 5 have maintained that this provision should be enforced and that all claims should be submitted to
 6 individual arbitration proceedings. A victory by Defendants would have likely ended any relief being
 7 made available to any one class member as it is highly improbable that any class member would
 8 have pursued their claims in arbitration based on the amount of any one class member's claim and
 9 the costs of the arbitration. And gone with it would have been Class Counsel's ability to recover a
 10 fee. Next, pursuant to the express terms of the agreement between Chime and Settlement Class
 11 Members, any claims arising from outages, such as the Service Disruption, are barred. If the Named
 12 Plaintiffs had been able to overcome these difficult hurdles, the Court would have to turn to the
 13 question of class certification and Defendants' contention that individualized factual inquiries and
 14 damages and legal variation among the laws of the states would preclude class certification. (ECF
 15 No. 40-8 ¶ 30–32). "Even if plaintiff[s] were to prevail at trial, there is a real risk that plaintiff[s]
 16 could recover nothing." *Spann I*, 314 F.R.D. at 327.¹¹

17 In light of these difficult issues, the Settlement's monetary benefits are significant, going
 18 well beyond the potential litigated recovery. Class members already received benefits without taking
 19

20 ¹¹ For example, Defendants would likely contend that temporary loss of access to funds, without
 21 more, is not compensable harm. *See, e.g., In re Sony Gaming Network & Customer Data Breach and*
 22 *Security Litig.*, 903 F. Supp. 2d 942, 963 (S.D. Cal. 2012) (rejecting negligence claim because
 23 nothing in the agreement suggested a duty to provide uninterrupted service); *Turner v Talbert*, 2011
 24 WL 4479766, *2 (M.D. La. 2011) (temporary account freeze was not compensable injury); *Kuhns v.*
 25 *Scottrade*, 868 F.3d 711, 718 (8th Cir. 2017) ("Massive class action litigation should be based on
 26 more than allegations of worry and inconvenience") (holding no contract damages absent allegation
 27 of misuse or information); *Jones v. Commerce Bank, N.A.*, 2006 WL 2642153, *2 (S.D.N.Y. 2006)
 28 ("Plaintiff has submitted no evidence that she suffered any compensable injury stemming from the
 loss of access to these funds between May 22, 2005 and June 9, 2005"); *Rudolph v. Hudson's Bay*
Co., 2019 WL 2023713, *8 (S.D.N.Y. 2019) ("Rudolph does not identify any such injury that arose
 from the brief freeze placed on her own account. Absent an allegation of how an account freeze
 resulted in a loss to Rudolph, the claim that she was injured by the temporary inability to access her
 account does not demonstrate injury."); *Miller v. Bank of Am. N.T. & S.A.*, 2014 WL 5091897, *11
 (Cal. Super. 2014) ("temporary inability to access an account, without more, does not constitute
 'actual damages,'" under California Consumer Legal Remedies Act, and "Plaintiff provides no way
 to calculate compensation under this theory—and it is compensation, as such, which is the essence
 of damages available under the CLRA.").

1 any action; Defendants made the Courtesy Payment and Transaction Credit benefits available
2 automatically and immediately, in the sum of \$5,960,563. Further, under the Settlement, Settlement
3 Class Members can receive compensation for losses without the burden of providing any
4 documentation to support their damages. Settlement Class Members with more significant losses
5 may file supporting documentation to seek greater relief. Combined, and subject to the terms of the
6 Agreement, Tiers 1 and 2 provide up to \$5.5 million in additional relief available to Settlement Class
7 Members submitting valid claims. Considering the significant threshold challenges, this is an
8 exceptional result. (ECF No. 40-8 ¶¶ 33–35).

9 Moreover, the Settlement’s terms meet the demands in the Complaint. All Class Members
10 received monetary benefits under the Courtesy Payment and Transaction Credit provisions of the
11 Settlement and Class Members with losses may elect to file a claim under Tier 1 or Tier 2 for
12 additional monetary relief. SA § IV.2–3. These terms strongly suggest that Class benefits were not
13 traded for individual benefits. *See Hendricks v. Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL
14 5462423, at *10 (N.D. Cal. Sept. 29, 2016).

15 Importantly, the Settlement provides immediate and significant benefits for Settlement Class
16 Members they otherwise may not receive, providing virtually everything Plaintiffs sought in the
17 Complaint.

18 In evaluating the Settlement’s benefits, it is of course relevant to consider the amount that
19 Settlement Class Members will recover individually. Settlement Class Members with an active
20 Chime account previously received a credit to their account in the amount of \$10.00 and those who
21 incurred certain transaction fees during the Service Disruption received a credit to cover those fees.
22 Settlement Class Members may also file claims for reimbursement of financial or other losses
23 suffered as a result of the Service Disruption. Subject to offsets for amounts previously provided,
24 Settlement Class Members who do not wish to submit supporting documentation, but attest to having
25 losses, will be eligible for a payment of up to \$25.00. Subject to the same offset, Settlement Class
26 Members with more significant losses and who provide Reasonable Documentation of such losses
27 will be eligible for a payment of up to \$750.00. (ECF No. 40-8 ¶ 33).

28

1 And, as explained in the Motion for Preliminary Approval, the Settlement’s benefits are also
2 well within the range of settlements approved in the quite similar consumer class actions of *Fuentes*
3 *v. UniRush, LLC*, No. 1:15-cv-08372, ECF No. 49 (S.D.N.Y. Sept. 12, 2016) (Final Approval Order)
4 (“*RushCard*”) and *Lewis v. Green Dot Corporation*, Case No. 2:16-cv-03557, ECF No. 109 (Final
5 Approval Order) (C.D. Cal. Nov. 22, 2017) (“*Green Dot*”). *See* (ECF No. 40 at 23–24).

6 Here, the Settlement more likely than not provides 100 percent of losses sustained by any
7 individual consumer. Based on Class Counsel’s experience in those prior cases, the \$750 individual
8 cap, and the \$5.5 million aggregate cap, considering the relief already provided to all Settlement
9 Class Members, should be sufficient to recompense legitimate individual claims. (ECF No. 40-8 ¶
10 41).

11 While there are striking similarities between *RushCard*, *Green Dot*, and the present matter,
12 there are also differences that highlight the more favorable benefits that Settlement Class Members
13 are receiving under the presently proposed Settlement. The Chime Service Disruption was the result
14 of intermittent technical issues that led to some Chime account holders losing account access for
15 different (and intermittent) lengths of time. This is significantly more limited—and inherently
16 individualized—than what occurred in *RushCard* or *Green Dot*. (ECF No. 40-8 ¶ 42). Further, the
17 Service Disruption in this case was briefer than in *RushCard* (two weeks) and in *Green Dot*. *Id.*
18 Similar to the proposed Settlement, the *RushCard* settlement provided class members with tiered
19 reimbursements for losses related to the service disruption. Class members who submitted
20 reasonable documentation were eligible to receive payment of up to \$500, and class members who
21 did not submit documentation were eligible to receive payment of up to \$100. The proposed
22 Settlement here increases the maximum for documented losses to \$750 per Class Member. In *Green*
23 *Dot*, class members who submitted reasonable documentation were, like here, eligible to receive
24 payment of up to \$750, and those who did not were eligible to receive payment of up to \$100.
25 Additionally, the proposed Settlement provides a minimum settlement contribution of \$1,500,000 for
26 Tier 1 and 2 claims combined, a term not present in *RushCard*. This minimum is *in addition to* the
27 \$5,960,563 already paid under the Courtesy Payment and Transaction Credit provision of the
28 Agreement.

1 While most class actions are complex and involve some risk, Class Counsel settled this
2 litigation with a substantial benefit to the Class against the backdrop of Defendants' arbitration
3 provision that they contend is applicable to the class claims here. (SA § XIII.2.) Had Defendants
4 advanced a demand for arbitration, and based upon the small recoveries potentially possible in
5 successful arbitrations, as well as considering the substantial costs to litigate individual arbitrations,
6 it is unlikely that any consumer would have sought relief through the arbitration process. In
7 addition, in the absence of arbitration, a trial would have added years to the resolution of this case
8 because of the legal and factual issues raised and the likelihood of appeals. *See Roberts v.*
9 *Electrolux Home Prods., Inc.*, No. 12-1644-CAS-FBKx, 2014 WL 4568632, at *24-25 (C.D. Cal.
10 Sept. 11, 2014 (acknowledging “the complexity of the case” and “novelty of issues presented
11 (including the sophisticated engineering concepts involved in this case)”).

12 The total Settlement value here of \$12,462,563 is substantial by any measure. This is
13 particularly true given the real risk that Plaintiffs could have recovered nothing if litigation had
14 continued due to the arbitration provision and the proof of damages that could be recovered in this
15 case not being certain. (ECF No. 40-8 ¶ 24).

16 **2. The Skill Required and the Quality of Work**

17 In setting fee awards, courts also consider counsel's experience and skill. *Hanlon*, 150 F.3d
18 at 1029; *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016), *aff'd in part*,
19 *vacated in part, remanded*, 980 F.3d 645 (9th Cir. 2020). Here, the reputation, experience, and
20 ability of Class Counsel were essential to the litigation's success. Their record in similar class
21 actions and complex litigation, and their commitment of resources to this action, made credible their
22 commitment to pursue this case until they achieved a fair result. Their skill in investigating the
23 claims and negotiating a favorable resolution was essential to achieving the benefits under the
24 Settlement. Moreover, the comprehensive and detailed provisions of the Settlement agreement, and
25 the favorable relief provided pursuant to a notice and claims process, demonstrate the skill applied
26 by Class Counsel.

3. The Contingent Nature of the Fee and Financial Burden on Plaintiffs

Contingency risk is one of the primary fee analysis factors. *Chambers*, 214 F. Supp. 3d at 902 (stating “one extremely important factor ... is the contingent nature of success; for every successful ... action brought, several more may be lost, and in these no fee will be received.”) (citing *White v. City of Richmond*, 559 F. Supp. 127, 133 (N.D. Cal. 1982)); *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-1300 (9th Cir. 1994) (“Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.”); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)). As noted above, Defendants maintained that there was an arbitration provision that applied to Plaintiffs’ class claims, and Defendants adamantly denied (and continue to deny) any wrongdoing, much less a legal entitlement to class certification or any recovery. The path to establishing liability was particularly challenging given these risks. Class Counsel invested \$295,915.20 in lodestar in a case that could have failed, and advanced over \$8,146.75 in litigation expenses.

Class Counsel prosecuted this case on a pure contingent-fee basis, advancing all expenses on the understanding that they would receive a fee only if the case was successful. In all, Class Counsel and their staffs have spent approximately 379 hours investigating, analyzing, researching, litigating, and negotiating a favorable resolution of this case, as well as incurring \$8,146.75 in necessary litigation expenses. Class Counsel expended these resources despite the genuine risk that they would never be compensated at all. Moreover, the suit was highly risky because, unlike most class actions, here only one case was filed by a small, cohesive team of counsel, and Class Counsel faced Defendants with ample resources to vigorously fight the litigation. Presumably, if this case were viewed as a “slam dunk,” other members of the class action bar would have piled on and filed numerous copycat cases, as often occurs in widely-publicized consumer cases. Defendants vigorously contested the factual basis of Plaintiffs’ claims. Class Counsel faced risks not only in proving their claims but also in getting a class certified and proving damages.

1 And yet, ample works remains to be completed, including obtaining final approval, and
2 responding to objections and defending against any potential appeals related thereto.

3 **4. Awards in Similar Cases**

4 The amount for attorneys' fees, costs, and expenses is identical or less than that awarded in
5 the similar cases, *RushCard* and *Green Dot*. In *RushCard*, the court awarded \$1,500,000 in fees,
6 costs, and expenses. *See RushCard*, ECF No. 49 at ¶ 10. In *Green Dot*, the court awarded \$750,000
7 in fees, costs, and expenses. *See Green Dot*, ECF No. 109 at 16–20. Accordingly, the amount
8 requested here is half of that awarded in *RushCard*, and the same as that awarded in *Green Dot*.

9 **C. The Request is Reasonable Under the Lodestar Cross-Check**

10 The accompanying declarations of John Yanchunis and Joshua Watson state the hours
11 worked and billing rates used to calculate Class Counsel's lodestar. *See* Exhibit 1 at ¶ 13; Exhibit 2
12 at ¶ 6. As described in the declarations and the exhibits thereto, Class Counsel and their staffs have
13 spent approximately 397 hours working this case, for a total unadjusted lodestar of approximately
14 \$295,915.20 to date, exclusive of costs. These calculations reflect the amount of time Class Counsel
15 spent working to ensure effective representation on behalf of the Settlement Class, including: pre-
16 suit investigation and analysis; interviewing members of the class to determine how those members
17 were affected by the problems associated with the Service Disruption; reviewing and analyzing
18 information produced by Defendants; preparing for and participating in settlement discussions;
19 participating in a number of telephonic settlement negotiations; drafting settlement documents;
20 drafting papers in support of preliminary approval of the Settlement; working with the Class
21 Administrator and Defendants' counsel to implement the notice program; and working with the class
22 in connection with notice and administration issues. *Id.* Class Counsel expect to devote further time
23 to this matter through the implementation of the Settlement, including additional time spent on
24 notice and administration issues, responding to inquiries from class members, participating in the
25 final approval hearing, responding to objections and related appeals (if any), and overseeing
26 distribution of benefits to the Settlement Class.

27 Class Counsel devoted a reasonable amount of professional time to this case. *Caudle v.*
28 *Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Circ. 2000). The declarations attest that Class

1 Counsels' reported hours were accurate and reasonably incurred in connection with the prosecution
2 and settlement of this matter, and that their firms require their attorneys and other professionals to
3 maintain daily, contemporaneous time records, and summarizing the number of hours billed by each
4 attorney and that attorney's hourly rate. All of this work is compensable. *Blackwell v. Foley*, 724 F.
5 Supp. 2d 1068, 1081 (N.D. Cal. 2010) ("An attorney's sworn testimony that, in fact, it took the time
6 claimed ' . . . is evidence of considerable weight on the issue of the time required . . .'") (citation
7 omitted) (alterations in original).

8 Class Counsel were required to spend considerable time investigating the issues in this
9 litigation. Those efforts were critical to the success of this case. Class Counsel conducted a pre-
10 litigation investigation into the Service Disruption, discussed the impact of the Service Disruption
11 with Chime's customers, researched potential legal claims, and prepared and filed the complaint.
12 Thereafter, Class Counsel engaged in extensive negotiations with Defendants regarding the Service
13 Disruption that ultimately resulted in the Settlement. These tasks were done for the benefit of
14 Plaintiffs and the Class they represent, and the time spent was reasonable. Plaintiffs, thus,
15 respectfully submit that all such time should be considered for compensation in the cross-check
16 analysis.¹² Moreover, additional work will be required by Class Counsel, as noted above.

17 Class Counsel's lodestar is not bloated by unnecessary duplication or inefficiencies. The
18 number of attorneys and firms working on this case was small. The team was a tightly-knit group of
19 lawyers, who had experience working with each other, and most of whom had experience
20 prosecuting the similar *RushCard* and *Green Dot* actions. Class Counsel endeavored to prevent
21 duplication of work and avoid inefficiencies that might otherwise have resulted from multiple firms
22 working on this case. Tasks were managed so as to promote efficiency and ensure continuity.
23 Because complex litigation often requires a team structure, courts have compensated time spent in
24

25 ¹² See *Hensley*, 461 U.S. at 435-36; *Cabrales v. Cnty. of Los Angeles*, 935 F.2d 1050, 1052-53 (9th
26 Cir. 1991); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (Cal. 2001) (fee award should be "fully
27 compensatory [and] absent circumstances rendering the award unjust, an attorney fee award should
28 ordinarily include compensation for *all* the hours reasonably spent.") (emphasis in original); *Browne*
v. American Honda Motor Co., No. 09-06750-MMM-DTBx, 2010 WL 9499073, at *10-11 (C.D.
Cal. Oct. 5, 2010) (awarding fees for pre-filing and post-filing investigation, including
communicating with class members).

1 collaborative efforts.¹³ Class Counsel should not be punished for their efficiency in litigating this
2 matter via use of the lodestar cross-check, especially here where their percentage of the fund request
3 is so imminently reasonable.

4 Not only were the hours spent by Class Counsel reasonable in light of the needs of the case,
5 but their work served the public good by securing significant relief that the consumer protection
6 statutes were intended to provide.¹⁴ Based on the foregoing, Plaintiffs respectfully request that the
7 Court find that the hours Class Counsel worked were reasonable and necessary to the successful
8 prosecution of this action.

9 The rates sought are likewise reasonable. “[T]he determination of a reasonable hourly rate is
10 not made by reference to the rates actually charged the prevailing party[,]” but rather, “by reference
11 to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel
12 charge their paying clients for legal work of similar complexity.” *Welch v. Metro. Life Ins. Co.*, 480
13 F.3d 942, 946 (9th Cir. 2007) (internal quotation marks omitted). The court must determine the
14 reasonable hourly rate in the context of rates charged in “the relevant community[,]” which is “the
15 forum in which the district court sits.” *See Chambers*, 214 F. Supp. 3d at 896 (quoting *Camacho v.*
16 *Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) . The hours expended and the rate should be
17 supported by adequate documentation and other evidence. *Hanlon*, 150 F.3d at 1029.

18 As set forth in the attached declarations, Class Counsel are well-credentialed, greatly
19 experienced in consumer class action litigation, including in service disruption related cases, and
20

21
22 ¹³ *See Horsford v. Board of Trustees*, 132 Cal. App. 4th 359, 397, 33 Cal. Rptr. 3d 644 (2005)
23 (finding time reasonable where multiple attorneys represented plaintiffs to prepare notes, attend
24 conferences to discuss strategies, and assign tasks, as part of a “supervision structure within the
25 plaintiffs’ litigation team”); *Building a Better Redondo, Inc. v. City of Redondo Beach*, 203 Cal.
26 App. 4th 852, 872 n.14, 137 Cal. Rptr. 3d 622 (2012) (compensating counsel for inter-office
27 communications as “some conferences between counsel might be expected, particularly in a case of
28 some complexity”).

¹⁴ *See Center for Biological Diversity v. Cnty. of San Bernardino*, 185 Cal. App. 4th 866, 897-98,
111 Cal. Rptr. 3d 374 (2010) (declining to reduce an award of attorneys’ fees where the plaintiff
“achieved its primary objective”; noting such a reduction ‘would impede the Legislature’s intent of
‘encouraging attorneys to act as private attorneys general and vindicate important rights affecting the
public interest.’” (citing *Ketchum*, 24 Cal. 4th at 1133-34)).

1 have received similar rates in other cases around the country, including within this Circuit and
2 District.¹⁵

3 The Court previously reviewed Class Counsel’s background and experience in conjunction
4 with the Order preliminarily approving the Settlement. *See* (ECF No. 46 at 10). Counsel’s hourly
5 rates are set forth in the attached declarations. The rates of the partners who prosecuted this case
6 range from \$750 – \$950 and the rates of associates and senior counsel range from \$450–\$658.
7 These hourly rates are reasonable and consistent with what attorneys of comparable skill charge for
8 complex litigation in the Northern District of California.

9 In light of the results achieved given the risks involved, as well as the other *Vizcaino* factors
10 explained above, the attendant multiplier resulting from a lodestar analysis is also reasonable.

11 Once the lodestar figure has been calculated, “the Court must decide whether to adjust the
12 ‘presumptively reasonable’ lodestar figure based upon the factors listed in *Kerr v. Screen Extras*
13 *Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976), that have not been
14 subsumed in the lodestar calculation.” *Goldkorn v. Cnty. Of San Bernardino*, No. 06-707-VAP-
15 OPx, 2012 WL 476279, at *9 (C.D. Cal. Feb. 13, 2012) (citing *Caudle*, 224 F.3d at 1028-29). The
16 *Kerr* “enhancement” factors include: (1) the time and labor required; (2) the novelty and difficulty of
17 the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion
18 of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6)
19 whether the fee is fixed or contingent; (7) time limitations imposed by the client or the

20
21 ¹⁵ *See, e.g., In re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK, 2020 WL
22 4212811, at *26 (N.D. Cal. July 22, 2020) (approving as reasonable rates of class counsel, which
23 included \$900 for John Yanchunis, and \$550 for Mr. Barthle, and finding as reasonable: “billing
24 rates for partners range from about \$450 to \$900, depending on seniority level,” “billing rates for
25 non-partner attorneys, including of counsel, associates, and staff/project attorneys, range from about
26 \$160 to \$850, with most under \$500,” and “billing rates for paralegals range from \$50 to \$380”); *In*
27 *re: Equifax Inc. Customer Data Security Breach Litigation*, Case No 1:17-md-02800-TWT, ECF
28 956 at 105 (N.D. Ga. Jan. 13, 2020), (approving as reasonable rates of class counsel, which included
\$950 for John Yanchunis, and approving rates ranging from \$750 - \$1050 for lead counsel); *Walters*
v. Kimpton Hotel & Restaurant, No. 3:16-cv-05387, ECF 117 (N.D. Cal. July 11, 2019), *id.*, ECF
113-1 (May 8, 2019) (identifying Morgan and Morgan rates of \$864-950 for partners, \$450-636 for
associates, \$196 for paralegals, and \$300 for investigators); *Dyer v. Wells Fargo Bank, N.A.*, No.
3:13-cv-02858, ECF 51 at 10 (N.D. Cal. Oct. 22, 2014); *id.*, ECF 43-1 (July 11, 2014) (identifying
Morgan and Morgan rates of \$900 for John Yanchunis, \$550 for associate).

1 circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and
 2 ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the
 3 professional relationship with the client; and (12) awards in similar cases.

4 Class Counsel seeks \$750,000.00 in attorneys’ fees, costs, and expenses against a current
 5 lodestar of about \$295,915.20, and costs and expenses of \$8,146.75, which would represent a 2.467
 6 multiplier—were a lodestar analysis employed here.¹⁶ In the Ninth Circuit, multipliers “ranging
 7 from one to four are frequently awarded in common fund cases when the lodestar method is
 8 applied.” *Vizcaino*, 290 F.3d at 1051 n. 6 (approving multiplier of 3.65 and citing cases approving
 9 multipliers averaging 3.32 and as high as 19.6); *see also Parkinson v. Hyundai Motor Am.*, 796 F.
 10 Supp. 2d 1160, 1170 (C.D. Cal. 2010) (“Where appropriate, multipliers may range from 1.2 to 4 or
 11 even higher.”) (citations omitted); *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123
 12 (C.D. Cal. 2008) (awarding 5.2 multiplier; citing cases approving multipliers ranging from 4.7 to
 13 19.6); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (multiplier of 3.6
 14 was “well within the acceptable range for fee awards in complicated class action litigation” and
 15 stating that “[m]ultipliers in the 3-4 range are common”). Moreover, as reiterated in *Moore v.*
 16 *Verizon Communs. Inc.*, No. 09-1823, 2014 WL 588035, at *6 (N.D. Cal. Feb. 14, 2014):

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

Pursuant to the factors discussed above in connection with the percentage analysis, Plaintiffs
 and their counsel submit that a multiplier of 2.467 would also be appropriate in this case were the

¹⁶ Excluding the costs and removing them from the total amount sought for fees the multiplier equals 2.506.

1 Court to use the lodestar approach. Plaintiffs submit, however, that the percentage of the fund is the
2 proper analysis here.

3 **D. The Expenses of Class Counsel Are Reasonable**

4 Recovery of litigation costs in the context of class action settlements is allowed in the Ninth
5 Circuit. *See Staton*, 327 F.3d at 974. Attorneys may recover the out-of-pocket costs they reasonably
6 incurred in investigating, prosecuting, and settling this case. *See In re Media Vision Tech. Sec.*
7 *Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S.
8 375, 391-92 (1970)); *Staton*, 327 F.3d at 974. While Class Counsel's requested \$750,000.00 is
9 inclusive of costs and expenses, and Class Counsel make no separate request for the reimbursement
10 of costs and expenses (SA § X.2), an inquiry into the reasonableness of these expenses is
11 appropriate.

12 Attorneys in a contingency case are entitled to "recover as part of the award of attorney's
13 fees those out-of-pocket expenses that would normally be charged to a fee-paying client." *Harris v.*
14 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted). Class Counsel here incurred \$8,146.75
15 in unreimbursed, out-of-pocket costs expenses in this action. *See* Exhibit 1 at ¶¶ 24–25; Exhibit 2 at
16 ¶ 11–12. These expenses include costs advanced in connection with investigating the claims, travel,
17 photocopying, PACER, and other customary litigation expenses. *Id.* These costs were necessary for
18 the investigation, prosecution, and settlement of this action. They should be reimbursed in full.
19 *Reed v. 1-800 Contacts*, No. 12-cv-02359, 2014 WL 29011, at *10 (S.D. Cal. Jan. 2, 2014) (finding
20 requested litigation expenses reasonable and proportionate to the attorneys' fees requested).

21 **E. The Requested Service Awards are Reasonable and Should Be Approved**

22 The Ninth Circuit has recognized that "named plaintiffs, as opposed to designated members
23 who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton*, 327 F.3d at
24 977; *Rodriguez v. W. Pub'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009 (service awards "are fairly
25 typical in class action cases"). Such awards are "intended to compensate class representatives for
26 work done on behalf of the class [and] make up for financial or reputational risk undertaken in
27 bringing the action." *Id.*; *see also Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 157, 163 (9th
28 Cir. 2013) ("Incentive awards are payments to class representatives for their service to the class in

1 bringing the lawsuit.”). Service awards should be awarded based upon the Court’s required inquiry
2 into criteria including the amount of time and effort spent on the litigation, the duration of the
3 litigation, and the degree of personal gain obtained as a result of the litigation. *See Van Vranken*,
4 901 F. Supp. at 299; *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *6
5 (N.D. Cal. Sept. 26, 2013); *Wilson v. Airborne, Inc.*, No. 07-cv-00770, 2008 U.S. Dist. LEXIS
6 110411, at *36-37 (C.D. Cal. Aug. 13, 2008). So long as the service awards do not create a conflict
7 of interest between the representatives and class members, modest payments to named plaintiffs for
8 their services as class representatives are customary and commonly approved. *See, e.g., Van*
9 *Vranken*, 901 F. Supp. at 300; *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463
10 (9th Cir. 2000) (approving \$5,000 service awards); *Wren v. RGIS Inventory Specialists*, No. C-06-
11 05778-JCS, 2011 WL 1230826, at *36 (N.D. Cal. Apr. 1, 2011) (“As Plaintiffs correctly note, there
12 is ample case law finding \$5,000 to be a reasonable amount for an incentive payment.”).

13 As part of the Settlement Agreement, Defendants have agreed to pay, subject to court
14 approval, a service award to each Settlement Class Representative in the modest amount of \$500 in
15 recognition of the time and effort they personally invested in this lawsuit. (SA § X.1). The
16 requested Service Awards are reasonable and appropriate. Each of the Settlement Class
17 Representatives has served the Settlement Class well. The Settlement Class Representatives lent
18 their names to this case and thereby subjected themselves to public attention, including being forever
19 linked to the litigation in any internet searches using their names. In addition, each of them
20 participated in numerous conferences with their attorneys, reviewed (suggesting edits as appropriate)
21 and authorized the filing of the class action complaint in this action, produced relevant documents
22 and information to Class Counsel, and evaluated and supported the proposed settlement. *See Exhibit*
23 *1 at ¶¶ 29–31.*

24 The \$500 awards sought will not affect the benefits provided to any consumers covered by
25 the Settlement, and fall at the lower end of the spectrum of amounts awarded in comparable cases.
26 *See, e.g., Hawthorne v. Umpqua Bank*, No. 11-6700, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28,
27 2015) (“Many courts in the Ninth Circuit have also held that a \$5,000 incentive award is
28 ‘presumptively reasonable.’”) (citation omitted); *In re Mego Fin. Corp.*, 213 F.3d at 457, 463

1 (service awards of \$5,000); *Resnick v. Frank*, 779 F.3d 934, 941 (9th Cir. 2015) (approving service
2 awards of \$5,000 to class representatives in a consumer case).

3 In light of the Plaintiffs' willingness to step forward on behalf of consumers on a class-wide
4 basis, the Court should grant the requested Service Awards, which Defendants have agreed to pay
5 separate and apart from the relief to the Settlement Class.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order (1)
8 approving the payment of \$750,000.00 in attorneys' fees, costs, and expenses to Class Counsel, (2)
9 approving Service Awards in the amount of \$500 to each of the four Settlement Class
10 Representatives, and (3) granting Class Counsel and Settlement Class Representatives such other
11 and further relief as is appropriate

12
13 DATED: December 30, 2020

Respectfully submitted,

14 **MORGAN & MORGAN**
15 **COMPLEX LITIGATION GROUP**

16 /s/ John A. Yanchunis
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26 ***Attorneys for Plaintiffs and***
27 ***Class Counsel***

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CERTIFICATE OF SERVICE

I hereby certify that December 30, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed December 30, 2020.

/s/ John A. Yanchunis
John A. Yanchunis
MORGAN & MORGAN COMPLEX
LITIGATION GROUP
201 N. Franklin Street,
7th Floor Tampa, FL 33602
Telephone: 813/223-5505
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Exhibit 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 RYAN RICHARDS, RUBA AYOUB,
5 BRANDY TERBAY AND TRACY
6 CUMMINGS, on behalf of themselves and all
others similarly situated,

7 Plaintiffs,

8 vs.

9 CHIME FINANCIAL, INC., GALILEO
10 FINANCIAL TECHNOLOGIES, INC., and
11 THE BANCORP INC.,

12 Defendants.

CASE NO. 4:19-cv-06864

13 **DECLARATION OF JOHN YANCHUNIS IN SUPPORT OF**
14 **PLAINTIFFS’ UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES**
15 **AND SERVICE AWARDS**

16 I, John Yanchunis, hereby declare pursuant to 28 U.S.C. § 1746 that the following is true
17 and correct:

18 1. I am one of the attorneys for the Settlement Class Representatives and the
19 Settlement Class in this case.¹ I submit this declaration in support of the Plaintiffs’ Motion for
20 attorneys’ fees, costs, and expenses, and service awards. The facts herein stated are true of my
21 own personal knowledge and if called to testify to such facts, I could and would do so competently.

22 2. My practice—which began after completing a two-year clerkship with United
23 States District Judge Carl O. Bue, Jr., Southern District of Texas—has concentrated on complex
24
25
26
27

28

¹ Unless otherwise noted, capitalized terms used herein are defined in the Amended Stipulation of Agreement and Settlement and Release, as previously filed at ECF No. 45-4.

1 litigation and spans over 38 years, including consumer class actions for more than two-thirds of
2 that time.

3 3. I lead the National Consumer Class Action section of Morgan & Morgan's
4 Complex Litigation Group. Morgan & Morgan is among the largest, if not the largest, exclusively
5 plaintiffs law firms in the United States, employing over 700 lawyers and 3,000 support staff, who
6 serve consumers in 50 offices across 14 states. Morgan & Morgan is comprised of well-seasoned
7 and experienced trial lawyers who have recovered groundbreaking, multi-million-dollar verdicts,
8 as well as attorneys who have held significant roles in government and public service, including
9 the former Governor of Florida, a former member of Congress, and a member of President William
10 J. Clinton's Cabinet. Morgan and Morgan lawyers have played pivotal roles in shaping class-
11 action jurisprudence across the country.
12

14 4. For more than 35 years, my practice has concentrated on complex litigation,
15 including consumer class actions for more than two-thirds of that time. I currently serve, by
16 appointment of Judge Lucy Koh, as lead counsel in perhaps the largest class action lawsuit in
17 history: *In re: Yahoo! Customer Data Security Breach Litigation*, No. 16-md-02752-LHK (N.D.
18 Cal.). I also serve, or have served, in leadership positions in the following Multidistrict cases: *In*
19 *re Capital One Customer Data Security Breach Litigation*, Case No.: 1:19-md-2915 (ED. Va.)
20 (Co-Lead Counsel); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-
21 2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final approval of \$380.5
22 million fund); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-
23 mc-01394-ABJ (D.D.C.) ("OPM") (member of the Executive Committee) (dismissal on standing
24 grounds recently reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer*
25 *Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final
26 judgment entered approving a settlement on behalf of a class of 40 million consumers with total
27
28

1 value of \$29,025,000); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D.
2 Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class
3 of approximately 100 million consumers upheld by the 8th Circuit); and *In re: Ford Fusion and*
4 *C-Max Fuel Economy Litigation*, No. 13-md-2450 (S.D.N.Y.) (liaison counsel), amongst others.

5
6 5. I served as co-lead counsel in *Fuentes, et al. v. UniRush, LLC*, et al., No. 1:15-cv-
7 08372 (S.D.N.Y.) (“*RushCard*”), before the Honorable J. Paul Oetken, and in *Lewis v. Green Dot*
8 *Corporation*, Case No. 2:16-cv-03557 (C.D. Cal.) (“*Green Dot*”), before the Honorable Fernando
9 Olguin, both of whom granted final approval of settlements substantially similar to the proposed
10 Settlement in the present matter, and the experience of litigating and resolving those cases on a
11 class basis was of great assistance to me and my co-counsel in litigating this case.

12
13 6. I have also achieved noteworthy results in recent class action settlements. For
14 example, I served as co-lead counsel in the MDL case *In re The Home Depot, Inc. Customer Data*
15 *Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (consumer class cases)
16 which was settled for \$ 19.5 million, and lead counsel in the following data-breach class cases.
17 Likewise, in the Yahoo Data Breach case—in which I was appointed Lead Counsel—we recently
18 achieved final approval of a settlement for \$117.5 million. I also served on the Executive
19 Committee overseeing the consumer class, the financial institution class, and the shareholder
20 derivative litigation pending against Target Corporation in *In re Target Corporation Customer*
21 *Data Security Breach Litigation*, MDL No. 2522 (D. Minn.). As a member of the Overall
22 Executive Committee, I also served on the Executive Committee of the consumer class case and
23 assisted in its prosecution and the negotiation of a class settlement.

24
25
26 7. As a result of my experience in insurance and complex litigation, beginning in
27 2005, I was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a
28 member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial

1 Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida)
2 in their investigations of the insurance industry on issues concerning possible antitrust activity and
3 other possible unlawful activities regarding the payment of undisclosed compensation to insurance
4 brokers. I served as lead regulator counsel and worked with a core group of state Attorneys
5 General from the National Association of Attorneys General, which were selected to conduct the
6 investigations. The insurance regulator for Florida was the only insurance regulator in the group.
7
8 The litigation that was filed and the related investigations netted millions of dollars in restitution
9 for Florida consumers and resulted in significant changes in the way commercial insurance is sold
10 in Florida and across the country.

11
12 8. During my career, I have tried numerous cases in state and federal courts, including
13 one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991
14 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the
15 case pended, I served as lead counsel for several insurance companies, regarding coverage for
16 asbestos and environmental claims. The case was tried in three phases over several years
17 beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that
18 followed a judgment in favor of my clients.
19

20 9. It is my opinion that the Settlement reached by the Parties in this matter provides
21 significant monetary benefits to Settlement Class Members that are rationally based upon the
22 amount of actual harm suffered by the Settlement Class as a result of the Service Disruption. The
23 Settlement was reached as a result of extensive, arm's length negotiations between experienced
24 counsel.
25

26 10. The Settlement provided \$5,960,563.00 in payments and credits without Settlement
27 Class Members having to take any action, and up to an additional \$5.5 million which Class
28 Members can file claims for. Additionally, separate and apart from the relief to the Settlement

1 Class, the Defendants are paying all costs associated with notice and settlement administration, of
 2 up to \$250,000.00, any Service Awards to the Settlement Class Representatives up to \$500 each,
 3 and any award of attorneys' fees, costs, and expenses up to \$750,000.

4 11. I assert that the attorneys' fees and expenses sought by Class Counsel are
 5 reasonable and constitute fair and reasonable compensation for undertaking this case on a
 6 contingency basis, and for obtaining substantial relief for Plaintiffs and the Settlement Class.
 7

8 **I. CLASS COUNSEL'S PROFESSIONAL TIME**

9 12. As of December 29, 2020, Class Counsel has spent approximately 379 hours
 10 working on this case, for a total lodestar amount of \$295,915.20. My firm's time records were
 11 prepared from contemporaneous, daily time records prepared and maintained by my firm, which
 12 are available at the request of the Court.
 13

14 13. Each attorney and firm has provided me with their lodestar in this case as set forth
 15 in the charts below and the declaration of Mr. Watson, filed in tandem with the instant motion.
 16

17 **Morgan & Morgan**

Name	Position	Hours	Rate	Lodestar
John Yanchunis	Partner	125.30	\$950	\$119,035.00
Patrick A. Barthle	Associate	128.40	\$658.00	\$84,487.20
Marcio Valladares	Partner	96.30	\$864.00	\$83,203.20
Michael Braun	Partner	0.10	\$894.00	\$89.40
Jennifer Cabezas	Paralegal	15.20	\$202.00	\$3,070.40
TOTAL		365.30		\$289,885.20

Clayo C. Arnold, PC

Name	Position	Hours	Rate	Lodestar
Clayo C. Arnold	Partner	0.6	\$750	\$450
Joshua H. Watson	Associate	12	\$450	\$5,400
Para-Professional Staff	Staff	1.2		\$180
TOTAL		13.8		\$6,030

14. Due to the amount of privileged information contained in the hourly billing records, those detailed records are not attached here, but can be provided *in camera* should this Court wish to review them. However, a further breakdown of the number of hours billed by category of task is attached hereto as this declaration's **Exhibit A** for all billers at the Morgan & Morgan firm, and is contained within the declaration of Mr. Watson at its paragraph 6.

15. The hourly rates for the partners, associates and professional staff are the same as the rates that would be charged for these services by our firms in non-contingent matters (excluding pro bono or other special considerations).

16. The rates sought by the professionals and paraprofessionals at my firm are consistent with their credentials, level of experience, and past awards, as set out below:

- a. Patrick A. Barthle – 8 years in practice. Mr. Barthle graduated, *cum laude*, with a double major in History and Criminology from the University of Florida in 2009. While at UF, he was inducted into the Phi Beta Kappa Honor Society. Mr. Barthle graduated *summa cum laude* from Washington and Lee University School of Law in 2012. He was a Lead Articles Editor for the Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society. Before joining Morgan & Morgan in 2015, Mr. Barthle worked at one of the

1 country's largest law firms, Greenberg Traurig, LLP, and then served as a
2 judicial law clerk for two years to the Honorable Mary S. Scriven, United States
3 District Judge, Middle District of Florida. Mr. Barthle was selected as a Florida
4 Super Lawyer Rising Star in 2019 and 2020 in the field of Class Actions. Mr.
5 Barthle's resume, further detailing his experience, is attached hereto as **Exhibit**

6 **B.**

7
8 b. Marcio W. Valladares – 23 years in practice. Mr. Valladares was born in
9 Managua, Nicaragua and immigrated to the United States during Nicaragua's
10 civil war. In 1990, Marcio obtained a Bachelor of Science degree in psychology
11 from the University of Florida. In 1993, he obtained his Juris Doctor degree,
12 magna cum laude, from Florida State University. He served as a judicial law
13 clerk to the Honorable Steven D. Merryday, United States District Judge,
14 Middle District of Florida, and then served as a judicial law clerk to the
15 Honorable Susan H. Black, United States Circuit Court Judge, Court of Appeals
16 for the Eleventh Circuit. Prior to joining Morgan and Morgan, Marcio served
17 as an Assistant United States Attorney for the Middle District of Florida.
18

19
20 c. Michael Braun. Mr. Braun has represented shareholders and consumers in class
21 action litigation for the past 25 years, and has served as lead or liaison counsel
22 in well over a hundred cases. He was named Lawyer of the Year in 2000 by
23 California Lawyer Magazine, and a Super Lawyer from 2005-2019 by Los
24 Angeles Magazine. Mr. Braun is a graduate of the London School of
25 Economics, Loyola Law School, The Hague Academy of International Law and
26 the University of California at Los Angeles. Mr. Braun is a member of the
27 California, New York and District of Columbia bars, and is also licensed as an
28

1 English Solicitor. Representative cases include: *In re Complete Management*
2 *Inc. Sec. Litig.*, Master File No. 99 Civ. 1454 (NRB) (S.D.N.Y.) (recovery of
3 \$11.0 million); *In re Cybermedia, Inc. Securities Litigation*, Master File No.
4 98-1811CBM (Ex) (C.D. Ca.) (recovery of \$10.5 million); *Lopez v. American.*
5 *Express Bank*, Case No. 09-cv-07335 (C.D. CA) (class-wide recovery on behalf
6 of AMEX credit card holders over imposition of improper interest rates);
7 *Thurston v. Brooks College, Ltd.*, Case No. NC036756 (Los Angeles County
8 Superior Court 2005) (class-wide recovery for students who were subject to
9 misrepresentations about the quality of their education and job prospects after
10 graduation); *Larsen v. Trader Joe's Company*, Case No. 11-cv-5188 (N.D. Cal.
11 2011)(class-wide recovery on behalf of consumers deceived by “100% natural”
12 claims on food labels).

- 13
14
15 d. Jennifer Cabezas – Paralegal. Ms. Cabezas is a paralegal with more than 15
16 years of experience. She obtained her Associates in Arts, paralegal studies from
17 Keiser University in 2007, and later obtained her Bachelors in Arts in Criminal
18 Justice from Florida International University in Miami, Florida. She assisted
19 the attorneys with document preparation, court filings, mediation materials and
20 other clerical tasks. Ms. Cabezas’s billing rate reflects her ordinary and
21 customary rate. Her billing rate has been approved for paralegals of her
22 experience level by other state and federal courts.

23
24
25 17. The billable rates charged by the attorneys and other professionals in my law
26 firm, as set forth herein, have been approved by other federal and state courts, including in the
27 following:

- 28 a. *In re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK,

1 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (approving as reasonable
2 rates of class counsel, which included \$900 for John Yanchunis, and \$550 for
3 Mr. Barthle, and finding as reasonable: “billing rates for partners range from
4 about \$450 to \$900, depending on seniority level,” “billing rates for non-
5 partner attorneys, including of counsel, associates, and staff/project attorneys,
6 range from about \$160 to \$850, with most under \$500,” and “billing rates for
7 paralegals range from \$50 to \$380”);

- 8 b. *In re: Equifax Inc. Customer Data Security Breach Litigation*, Case No 1:17-
9 md-02800-TWT, ECF 956 at 105 (N.D. Ga. Jan. 13, 2020), (approving as
10 reasonable rates of class counsel, which included \$950 for John Yanchunis,
11 and approving rates ranging from \$750 - \$1050 for lead counsel).
- 12 c. *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387, ECF 117 (N.D.
13 Cal. July 11, 2019), *id.*, ECF 113-1 (May 8, 2019) (identifying Morgan and
14 Morgan rates of \$864-950 for partners, \$450-636 for associates, \$196 for
15 paralegals, and \$300 for investigators);
- 16 d. *Finerman v. Marriott Ownership Resorts, Inc.*, No. 3:14-cv-01154, ECF 222
17 (M.D. Fla. Aug. 15, 2018); *id.*, ECF 222 (May 7, 2018) (identifying Morgan
18 and Morgan rates of \$950 for John Yanchunis, \$450-864 for associates, \$196
19 for paralegals, and \$300 for investigators);
- 20 e. *Sanborn v. Nissan N. Am., Inc.*, No. 0:14-cv-62567, ECF 200 at 3 (S.D. Fla.
21 Jan. 6, 2017); *id.*, ECF 195-3 at 4 (Oct. 14, 2016) (identifying Morgan and
22 Morgan rates of \$950 for John Yanchunis, \$450 for associate); and,
- 23 f. *Dyer v. Wells Fargo Bank, N.A.*, No. 3:13-cv-02858, ECF 51 at 10 (N.D. Cal.
24 Oct. 22, 2014); *id.*, ECF 43-1 (July 11, 2014) (identifying Morgan and
25 Morgan rates of \$900 for John Yanchunis, \$550 for associate).

16 18. Class Counsel made significant efforts toward the efficient allocation of work
17 between them. Partners in the firms coordinated their work assignments on a regular basis to
18 prevent unnecessary duplication of work.

19 19. Having the attorneys and firms serving as Class Counsel work on the case together
20 added substantial value to the case, as borne out by the ultimate relief achieved for the Class. Class
21 Counsel were able to work together to develop sophisticated and effective strategies for pursuing
22 the claims of Plaintiff and the Classes.

23 20. The work performed in this case was reasonable and necessary to the prosecution
24 and settlement of this case. Class Counsel conducted a factual investigation during the prosecution
25 of this action. Because of their comprehensive evaluation of the facts and law, Class Counsel was
26 able to settle this case for a very substantial sum. Class Counsel provided Class Members with
27
28

1 substantive and certain relief much sooner than if litigation of this matter had continued.

2 21. As settlement administration is ongoing, and based on my experience in previous
3 consumer protection class actions, the lodestar figures reported herein will meaningfully increase
4 by the time the settlement is completely and finally administered, as well as in responding to
5 objections if any, obtaining final approval, and defending the final judgment on appeal, if needed.
6

7 **II. CLASS COUNSEL'S EXPENSES**

8 22. This litigation required Class Counsel to advance costs. Where corporate
9 defendants and their attorneys are well funded, as was true here and in most national consumer
10 protection cases, this type of litigation can prove to be expensive and risky. Because the risk of
11 advancing costs in this type of litigation is significant, doing so is often cost prohibitive to many
12 attorneys.
13

14 23. As of December 29, 2020, my firm expended costs of approximately \$6,724.75,
15 and Mr. Watson's firm expended costs of \$1,422.00, as reflected in his declaration, for a total of
16 \$8,146.75. These expenses are reflected in the books and records of each firm. These books and
17 records are prepared from expense vouchers and check records and are an accurate record of the
18 expenses incurred. All of the expenses incurred were reasonable and necessary for the effective
19 and efficient prosecution of this case.
20

21 24. A further breakdown of my firm's costs and expenses is below:
22

Description	Subtotals	Totals Per Category
Professional Services		\$54.50
PACER	\$54.50	
Copies & Printing		\$1.75
Black and White Printing / Copies	\$1.75	
Travel Expenses		\$6,668.50
John Yanchunis	\$3,853.40	
Patrick Barthle	\$2,815.10	

	Total
--	--------------

	\$6,724.75
--	-------------------

1

2

3 **III. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES**

4 25. In accordance with best practices and the terms of the Settlement, the Parties waited
5 to negotiate attorneys' fees, costs, and expenses, and the service awards until agreement was
6 reached on all of the substantive terms of the Settlement.

7 26. Class Counsel prosecuted this case on a contingent-fee basis with no guarantee of
8 recovery. Each firm was forced to forgo other employment in order to devote the time necessary
9 to pursue this litigation. Class Counsel advanced expenses with the understanding that we would
10 be paid a fee and receive reimbursement for expenses only if successful.

11 27. The request of \$750,000 for attorneys' fees, costs, and expenses represents a
12 multiplier of 2.467 to Class Counsel's combined lodestar, costs, and expenses to date.² However,
13 when this amount is considered as a percentage of the total value of the Settlement, the requested
14 fees and expenses are less than 6% of the total Settlement value.

15

16

17 **IV. SERVICE AWARDS TO THE SETTLEMENT CLASS REPRESENTATIVES**

18 28. Each of the Settlement Class Representatives was advised on their obligations as a
19 class representative to select adequate and skilled counsel, to cooperate with counsel, and to place
20 the interests of the class on a level equal to or above his or her own interests. The Settlement Class
21 Representatives have met and continue to meet these obligations, cooperating fully with counsel
22 to fulfill their fiduciary duties to the class.

23 29. The Settlement Class Representatives have kept in close contact with Class
24 Counsel, assisting counsel and acting on behalf of the class by providing information helpful for
25 the prosecution of this action, reviewing pleadings, and reviewing and approving the terms of the
26

27

28

² \$295,915.20 (fees) + \$8,146.75 (costs) = \$304,061.95. $750,000 \div \$304,061.95 = 2.467$

1 Settlement. The Settlement Class Representatives have done everything asked of them during the
2 pendency of this case. They have always been concerned about obtaining a result that was best for
3 the Settlement Class.

4 30. The requested Service Awards of \$500 for each of the Settlement Class
5 Representatives are reasonable and just given their involvement in this case.
6

7 **V. CONCLUSION**

8 31. For the above reasons, it is my considered opinion as a seasoned and experienced
9 class action lawyer that the requested attorneys' fees and costs of Class Counsel, and Service
10 Awards to the Settlement Class Representatives, are reasonable and appropriate.

11 32. On behalf of Plaintiffs and Class Counsel, I respectfully request that the Court
12 award the requested attorneys' fees and costs and incentive awards.
13

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
15 and correct.
16

17 Executed this 30th of December, 2020 at Tampa, Florida.
18

19 By: /s/ John A. Yanchunis
20 John A. Yanchunis, Esq.
21
22
23
24
25
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27
28

Exhibit A

Categories

- (1) Administrative claim/Complaint/Pre-complaint legal investigation
- (2) Post-Complaint fact/legal research, investigation and discovery
- (3) Motion Practice
- (4) Pleadings
- (5) Trial Court Hearings
- (6) Intermediate Appeals
- (7) Supreme Court Appeal
- (8) Settlement discussions, strategy, mediation sessions, etc.
- (9) Settlement Agreement and ancillary documents
- (10) Notice and Claims Oversight, contact with class members
- (11) Fee Petition/Final Approval

PARTNERS (P) and ASSOCIATES (A)	1	2	3	4	5	6	7	8	9	10	11	ALL HOURS	HOURLY RATE	TOTAL LODESTAR
John A. Yanchunis (P)	8.90	0.30	24.60	3.30	9.50			45.80	21.50	9.10	2.30	125.30	\$950.00	\$119,035.00
Marcio Valladares (A)	0.40		90.00	0.40					4.20	1.30		96.30	\$864.00	\$83,203.20
Michael Braun (A)	0.10											0.10	\$894.00	\$89.40
Patrick A. Barthle (A)	2.70	1.30	61.40	0.50	1.20			36.10	12.30	3.00	9.90	128.40	\$658.00	\$84,487.20
ATTORNEY TOTAL												350.10		\$286,814.80
PARALEGALS														
Jennifer Cabezas	1.00		9.80		1.10			1.20	0.40		1.70	15.20	\$202.00	\$3,070.40
PARALEGAL TOTAL												15.20		\$3,070.40
TOTAL	13.10	1.60	185.80	4.20	11.80	0.00	0.00	83.10	38.40	13.40	13.90	365.30		\$289,885.20

Exhibit B

Patrick A. Barthle II

Admitted to Florida Bar, 2012

EMPLOYMENT

Morgan & Morgan Complex Litigation Group, National Consumer Class Action Section, Tampa, Florida, Attorney (August 2015 – Present)

United States District Court, Middle District of Florida, Judicial Law Clerk for the Hon. Mary S. Scriven (Sept. 2013 – Aug. 2015)

Greenberg Traurig, LLP, Tampa Fla., Associate Attorney (Sept. 2012 – Sept. 2013)

EDUCATION

University of Florida, B.A., History and Criminology, *cum laude*, 2009. Member, Phi Beta Kappa Honor Society; President, St. Augustine Catholic Student Center.

Washington and Lee University School of Law - J.D., *summa cum laude*, 2012. Member, Order of the Coif; Member, Phi Alpha Delta Legal Honor Society; Lead Articles Editor, Wash. & Lee Law Review; President, W&L Law Families.

RECENT SPEAKING ENGAGEMENTS

NetDiligence Cyber Risk Forum. June 2018, Philadelphia, PA
Panelist: Unauthorized Use of Personal Data

American Association for Justice: Advanced 30(b)(6) Seminar. Nov. 2018, Washington, D.C.
Speaker - 30(b)(6): Data Breach Cases

HarrisMartin's Marriott Data Breach Litigation Conference. Jan. 2019, Miami, FL
Panelist: Damage Models and Settlements in Data Breach Cases

Mass Torts Made Perfect, 2019 Fall Seminar. Oct. 2019, Las Vegas, NV
Speaker – The Common Issues Class: Rule 23(c)(4)

REPRESENTATIVE RELEVANT CASES

Mr. Barthle actively assisted in the prosecution of the following class action matters:

- *Torres v. Wendy's Int'l., LLC*, No. 6:16-cv-210 (M.D. Fla.) (data breach class action, appointed as Class Counsel, final approval granted)
- *Swaney v. Regions*, 2:13-cv-00544-JHE (N.D. Ala.) (TCPA class action, final approval granted, appointed Class Counsel).
- *Peterson v. Apria Healthcare Group, Inc.*, 6:19-cv-00856 (M.D. Fla.) (TCPA class action, final approval granted, appointed Class Counsel).
- *Abdelmessih v. Five Below Inc.*, Case No. 2:19-cv-1487 (E.D. Pa.) (data breach class action, final approval granted, appointed Class Counsel)
- *Morrow v. Quest*, No.: 2:17-cv-0948(CCC)(JBC) (D.N.J.) (healthcare data breach class action, final approval granted, appointed Class Counsel)
- *Walters v. Kimpton Hotel & Rest. Grp., LLC*, No. 3:16-cv-5387-VC (N.D. Cal.) (data breach class action, final approval granted)
- *Finerman v. Marriott Ownership Resorts*, No. 3:14-cv-1154-TJC-MCR (M.D. Fla.) (consumer fraud class action, final approval granted)
- *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (data breach class action, final approval granted)
- *Grasso v. Electrolux Home Products, Inc.*, No. 8:16-cv-00911-CEH-TGH (M.D. Fla.) (product defect and consumer fraud class action, final approval granted)
- *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.) (data breach class action, final approval granted)
- *In re Equifax, Inc. Customer Data Sec. Breach Litigation*, 1:17-md-02800 (N.D. Ga.) (data breach class action, final approval granted)
- *In re. Brinker Data Incident Litigation*, No. 3:18-cv-00686 (M.D. Fla.) (data breach class action, pending)
- *Adkins. v. Facebook, Inc.*, No. C 18-05982 WHA (JSC) (N.D. Cal.) (data breach class action, preliminary approval granted)
- *Cotter v. Checkers Drive-In Restaurants, Inc.*, No. 8:19-cv-0386-VMC-CPT (M.D. Fla.) (data breach class action, preliminary approval granted)
- *In re Office of Pers. Mgmt. Data Breach*, No. 1:15-mc-01394-ABJ (D.D.C.) (data breach class action, pending)
- *In re Citrix Data Breach Litigation*, No. 0:19-cv-61350-RKA (S.D. Fla.) (data breach class action, pending)
- *In re Capital One Customer Data Security Breach Litigation*, Case No.: 1:19-md-2915 (E.D. Va.) (data breach class action, pending).
- *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (data breach class action, pending)

ACHIEVEMENTS AND RECOGNITIONS

Florida Super Lawyers Rising Star – 2019, 2020

Exhibit 2

1 Clayeo C. Arnold, SBN 65070
2 Joshua H. Watson, SBN 238058
3 **CLAYEO C. ARNOLD, PC**
4 865 Howe Avenue
5 Sacramento, CA 95825
6 Telephone: (916) 777-7777
7 Facsimile: (916) 924-1829
8 Email: jwatson@justice4you.com

9 Attorneys for Plaintiffs

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13

14 RYAN RICHARDS, RUBA AYOUB,
15 BRANDY TERBAY AND TRACY
16 CUMMINGS, on behalf of themselves
17 and all others similarly situated,

18 Plaintiffs,

19 vs.

20 CHIME FINANCIAL, INC.,
21 GALILEO FINANCIAL
22 TECHNOLOGIES, INC., and THE
23 BANCORP INC.,

24 Defendants.

25 Case No.: 4:19-cv-06864-HSG

26 **DECLARATION OF JOSHUA H.**
27 **WATSON IN SUPPORT OF**
28 **MOTION FOR AN AWARD OF**
ATTORNEY FEES AND COSTS

1 I, Joshua H. Watson, declare the following to be true:

- 2 1. I am an attorney licensed to practice in the State of California and admitted
3 before the U.S. District Court for the Northern District of California. I am
4 an attorney at Clayeo C. Arnold, PC, attorneys of record for Plaintiff
5 Richard Chime in this matter. I have personal knowledge of the matters
6 stated in this declaration. If called to testify, I could and would testify as
7 stated herein.
- 8 2. Clayeo C. Arnold, PC served as local counsel in this matter for out of state
9 counsel at Morgan & Morgan. I was informed as to the stages of the
10 proceeding, and assisted with initial pleadings, local rules, and as needed or
11 requested. I am personally aware of the details regarding the work of
12 Clayeo C. Arnold, PC in this matter.
- 13 3. Clayeo C. Arnold, PC is the principal attorney for the firm, and provided
14 assistance with planning, consulting, and as needed or requested.
- 15 4. The subparagraphs below address the experience and qualifications of
16 counsel and staff that worked on this matter on behalf of the claimants. (I
17 am informed and believe after appropriate inquiry that the statements
18 concerning others' qualifications are correct and accurate.)
- 19 a. Clayeo C. Arnold has been practicing trial law in Sacramento since
20 1975. Mr. Arnold is a member of the American Board of Trial
21 Advocates, a past president of the Capitol City Trial Lawyers
22 Association, and an active member of the Consumer Attorneys of
23 California. Mr. Arnold's experience includes many seven-figure
24 judgments and settlements, providing a solid financial foundation
25 from which the firm established itself as able to fund and prosecute a
26 full caseload of matters in a number of practice areas, including
27 class-action litigation. Mr. Arnold was previously awarded attorney
28

1 fees in the lodestar rate of \$750 per hour by Judge Gutierrez in the
2 U.S. District Court for the Central District of California. *See*, Order
3 approving settlement and granting fees, 2:16-cv-03780-PSG-AJW,
4 ECF No 104, Dated 8/22/17, pp 17-18, 24-25.

5 b. I, Joshua H. Watson, graduated from University of California,
6 Hastings College of the Law in 2005 in the top 25% of the class. I
7 earned an additional certificate in public interest law. I received
8 various subject matter awards, and a faculty scholarship. I have
9 taken a dozen cases to completion through trial. I am admitted to
10 practice in California, and maintain my admissions in US District
11 Courts for the Eastern, Northern, and Central Districts of California.
12 I am admitted to the Ninth Circuit. I have been admitted on a case-
13 specific basis in various states, including New York, New Jersey,
14 Louisiana, West Virginia, and Minnesota. I have practiced before the
15 Judicial Panel on Multidistrict Litigation. I am a member of the
16 Federal Bar Association, and have spoken on trial practice at an
17 annual convention of Consumer Attorneys of California. I have
18 served as local class counsel in a number of national class actions,
19 including the Facebook data breach matter, and the Google Plus Data
20 Litigation. Much of my current work includes mass torts, and I
21 currently represent hundreds of clients in matters such as the PG&E
22 Wildfire litigation. I also practice in employment discrimination and
23 wage & hour. I am co-lead counsel in the FLSA/class matter of
24 *Mishra v Cognizant* in the Eastern District of California, Case No.
25 2:17-cv-01785-TLN-EFB, which recently received final approval for
26 a settlement of over \$5.7M without any objection from a collective of
27 714 employees. I have previously been awarded attorney fees in the
28

1 lodestar rate of \$450 per hour by Judge Gutierrez in the U.S. District
2 Court for the Central District of California. *See*, Order approving
3 settlement and granting fees, 2:16-cv-03780-PSG-AJW, ECF No
4 104, Dated 8/22/17, pp 17-18, 24-25. I was awarded this same rate in
5 2020 in the matter of *Mishra v. Cognizant, supra* (final order
6 pending) in the Eastern District of California.

7 c. Two para-professionals employed by Clayeo C. Arnold PC worked
8 on this matter. The qualifications of each such staff member meets or
9 exceeds the requirements for “paralegal.” One has earned a law
10 degree. The other has been a paraprofessional for several years.

11 5. I am readily familiar with the policies, practices, and systems of the firm
12 where I practice, Clayeo C. Arnold PC, with regard to recording work
13 activities for the purposes of attorney fee motions. The work by attorneys
14 and staff is reflected in contemporaneously produced records. Some of
15 these records are recorded by hand on paper, and later input into computer
16 software maintained by the firm. Some are created automatically by the
17 firm’s software systems. Some are manually created at the time work is
18 performed. Each such record is created at or near the time of the work
19 performed in the ordinary course of business. At the conclusion of the case,
20 records exist reflecting the work performed in the matter. In matters such
21 as this one where a fee motion is submitted, the contemporaneously created
22 information from the firm’s software systems is compiled into an Excel
23 spreadsheet itemizing the work performed. The Excel spreadsheet is then
24 audited by counsel, and the lodestar is calculated.
25
26
27
28

1 6. In this matter, my lodestar calculations were as follows:

2 By Person:

	Rate	Hours	Billing
3 Clayeo C. Arnold	\$750 / hr	0.6	\$ 450
4 Joshua H. Watson	\$450 / hr	12	\$5,400
5 Para-Professional	\$125 / hr	1.2	\$ 180
6 Staff			
7 Total		13.8	\$6,030

8
9
10 By Category of Work:

Category	Hours	Billing
11 Prefiling Investigation	1.1	\$555
12 Complaint	3.6	\$1,620
13 Service of Complaint	1.6	\$360
14 Pleadings/Pro Hac Vice	1.9	\$855
15 Motion Drafting	3.4	\$1,590
16 Settlement	2.2	\$1,050
17		
18		
19 Total	13.8	\$6,030

20
21 7. I have cross-checked the requested billing rates against the industry-
22 standard Real Rate Report. As summarized by Judge Gutierrez in the
23 Central District: “The Real Rate Report identifies attorney rates by
24 location, experience, firm size, areas of expertise and industry, as well as
25 specific practice areas and is based on actual legal billing, matter
26 information, and paid and processed invoices from more than 80
27 companies. [] Courts have found that the Real Rate Report is ‘a much better
28

1 reflection of true market rates than self-reported rates in all practice
2 areas.’[]” *Retta v Millennium Food Products*, Order approving settlement
3 and granting fees, 2:16-cv-03780-PSG-AJW, ECF No 104, Dated 8/22/17,
4 pp 17-18.

5 8. The Real Rate Report provides ranges for billing rates in quartiles. The
6 billing rates below reflect the range of rates, as reported for 2018, from the
7 first to third quartiles, which captures the majority of the bell curve for
8 billing rates, thereby excluding billing rates on either end of the spectrum:

9 a. Partners, Associates, and Paralegals, Generally (Nationwide)

10 i. Partner: \$380-\$845

11 ii. Associate: \$275-\$588

12 iii. Paralegal: \$125-\$268

13 9. Because the Real Rate Report is sold for about \$500, it is not filed with this
14 declaration. However, I can provide a copy to the Court if desired.

15 10. The rates requested in this matter, aside from being within the range
16 approved for subject counsel previously, fit well within the nationwide
17 range in the Real Rate Report, and reflect conservative billing rates.

18 a. Mr. Arnold, with over 40 years of trial experience and having
19 established a regional litigation firm seeks \$750 per hour, which is
20 less than the third quartile for partners.

21 b. Mr. Watson, with a dozen trials and a complex tort practice spanning
22 multiple states seeks \$450 per hour, which less than the third quartile
23 for associates.

24 c. Staff time is billed at the first quartile for para-professionals, \$125
25 per hour.

26 11. I am readily familiar with the policies, practices, and systems of the firm
27 where I practice, Clayeo C. Arnold PC, with regard to recording expenses
28

1 incurred in litigation. Expenses are reported to the firm's accounting
 2 department when incurred, and a copy of any applicable proof of payment
 3 is filed in the accounting department's file for the matter. The accounting
 4 department stores a running index of all costs for each matter electronically.
 5 At the conclusion of a matter, the accounting department runs a report in the
 6 electronic system to generate an itemized list of expenses. Counsel the
 7 reviews and audits the expense list prior to seeking any reimbursement of
 8 costs by a client or from a common fund. I have audited the cost bill in this
 9 matter. The firm seeks reimbursement for the following costs:

Description	Amount
Filing Fees (Complaint and Pro Hac Vice)	\$ 1,020.00
Process Server Fees	\$ 402.00
TOTAL COSTS	\$ 1,422.00

10
11
12
13
14
15
16 12.I have excluded from this request costs incurred for copies and access to
17 legal databases.
18

19 The foregoing is true and correct under penalty of perjury pursuant to the laws of
20 the United States of America and the State of California. Executed on
21 December 30, 2020 in Sacramento, California.
22

23 Signed: /s/ Joshua H. Watson
24 Joshua H. Watson
25
26
27
28