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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

RYAN DALEY, and individual, and ISAAK CURRY, an individual, each on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

GREYSTAR REAL ESTATE PARTNERS, LLC, a Delaware limited liability company; GREYSTAR MANAGEMENT SERVICES, L.P., a Delaware corporation; GREYSTAR RS WEST, LLC, a Delaware limited liability company,

Defendants.

Case No.: 2:18-CV-00381-SMJ

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

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I. INTRODUCTION

Consistent with the parties' settlement agreement, Class Representatives Ryan Daley and Isaak Curry and Class Counsel request that the Court award attorneys' fees and costs of $625,000 and further approve combined statutory damages and service award payments of $2,500, each, for Class Representatives Daley and Curry. The Class Representatives and Class Counsel vigorously litigated this case for a substantial amount of time before negotiating a settlement that required Defendants to establish a settlement fund in the amount of $2,500,000, which will be used to pay the class members, class administration costs, class representative incentives, and attorneys' fees and costs. (ECF No. 127, ¶ 6). If the Court approves the settlement, and all class members make a valid claim, $1,770,000 will be divided evenly by the 80,942 class members resulting in a payment of $21.86. (ECF No. 127, ¶ 7).

Class Counsel has devoted a substantial number of hours to the prosecution of this case. (ECF No. 138, ¶ 29, Ex. A). In addition, the fee request includes the amount in litigation costs that Class Counsel has incurred. (ECF No. 138, ¶ 30). The combined statutory damages and service award payments Class Representatives seek are reasonable and equal to or less than the commonly applied Ninth Circuit 25 percent benchmark. Accordingly, the Class

Representatives and Class Counsel request that the Court grant their motion. This motion is not opposed by the Defendants.

II. ARGUMENT AND AUTHORITY

A. Plaintiffs and Class Counsel vigorously litigated on behalf of the Class.

Before filing this lawsuit, Class Counsel spent many months investigating the facts and researching the applicable law. (ECF No. 127, ¶ 3). This investigation included gathering information about Plaintiffs' experiences with the Defendants, Defendants' practices and business structure, obtaining and reviewing extensive documentation supporting their claims, and researching applicable statutes, regulations, and case law to develop applicable legal theories. (ECF No. 127, ¶ 3).

Thereafter, on December 11, 2018, Plaintiff Representatives Daley and Curry, on behalf of themselves and all others similarly situated, filed a Complaint against various Greystar entities (collectively "Greystar" or "Defendants") alleging violations of the Washington Residential Landlord Tenant Act, RCW 59.18, *et seq*., in the United States District Court Eastern District of Washington. (ECF No. 1). Once in litigation, the parties engaged in discovery and extensive motion practice, including multiple dispositive motions filed by the Defendants under a variety of theories, a heavily contested class certification motion, and objection to Magistrate Dimke's recommendations. (ECF No. 127, ¶ 3).

On August 13, 2020, this Court certified a class consisting of: All persons who applied to rent any property in the state of Washington where the rental property, on the date of application, was owned or managed by Defendants, who paid a tenant screening fee to Defendants or their affiliates, between June 9, 2016, and August 13, 2020. (ECF No. 96).

In November 2019, the parties participated in all-day mediation, with a final arms-length settlement agreement achieved only after continued negotiations that went on for months after the formal mediation was completed. (ECF No. 127, ¶¶ 4, 5, 6).

B. Plaintiffs and Class Counsel negotiated an outstanding settlement for Class members.

Following mediation with Louis Peterson on November 9, 2020, and extensive negotiations thereafter, the parties reached a class-wide settlement agreement. (ECF No. 127, ¶ 4). The settlement requires Defendants to establish a settlement fund in the amount of $2,500,000, which will be used to pay the class members, class administration costs, class representative incentives, and attorneys' fees and costs. (ECF No. 127, ¶ 6). If the Court approves the settlement, and all class members make a valid claim, $1,770,000 will be divided evenly by the 80,942 class members resulting in a payment of $21.86 per class member. (ECF No. 127, ¶ 7). Given the alleged uncertainty of the claims, in addition to the open

question at that time regarding which statute of limitations applies to the Plaintiffs' claims, the result is exceptional.

As part of the settlement agreement reached, Defendants agreed not to contest service awards of $2,500 to each Representative Plaintiff and Class Counsel attorneys' fees and costs up to $625,000. (ECF No. 127, ¶¶ 9, 10). Defendants also agreed to pay all class administration costs under $100,000 which the parties are on track to accomplish. (ECF 127, ¶ 8).

C. Class Counsel requests a reasonable award of attorneys' fees and costs.

"Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co*., 327 F.3d 938, 963 (9th Cir 2003) (quoting Fed. R. Civ. P. 23(e)). "The plain text of [Fed. R. Civ. P. 23(h)] requires that any class member be allowed an opportunity to object to the fee 'motion' itself." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-994 (9th Cir. 2010). Class Counsel are submitting their fee motion in advance of final approval, as required by *In re Mercury Interactive Corp.*, and will address any objections in their motion for final approval.

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1. The percentage-of-the-fund method is the appropriate calculation for attorney's fees in this case.

District courts have discretion to use either the percentage-of-the-fund method or the lodestar method to calculate a reasonable attorneys' fee from a common fund established by a class action settlement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d at 993-994.The method a district court chooses to use, and its application of that method, must achieve a reasonable result. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result."). As the Ninth Circuit has instructed, "[r]easonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *In re Coord. Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997). Notwithstanding, the percentage-of-the-fund method is generally considered the appropriate method for calculating fees when, as in this case, a common fund has been created. *See, e.g., In re Bluetooth*, 654 F.3d at 942 ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the

lodestar."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (observing that "use of the percentage method in common fund cases appears to be dominant" and discussing its advantages over the lodestar method).

Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is generally 25 percent. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942; *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir.1989); *see also Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (citing *3 Newberg on Class Actions*, § 14.03 (20–30 percent is usual common fund award) and *In re GNC Shareholder Litigation: All Actions*, 668 F.Supp. 450, 452 (W.D.Penn.1987) (awarding 25 percent attorneys' fees from common settlement fund of over two million dollars)).

Notwithstanding the 25 percent benchmark, Ninth Circuit courts have routinely approved percentages larger than the benchmark. *See, e.g., In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming an award equal to 33 percent of the common fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460, 463 (9th Cir. 2000) (affirming award of attorneys' fees equal to 33 percent of the total recovery); *Brown v. Consumer Law Assoc., LLC*, No. 11-CV-0194-TOR, 2013 WL 2285368, at *4 (E.D. Wash. May 23, 2013) (30 percent of the common fund); *In re HQ Sustainable Maritime Indus., Inc. Derivative Litig., No. C11-910*

RSL, 2013 WL 5421626, at *3 (W.D. Wash. Sept. 26, 2013) (30 percent of the common fund); *In re Activision Secs. Litig.*, 723 F. Supp. 1373, 1379 (N.D. Cal. 1989) (32.8 percent); *In re Ampicillin Antitrust Litig*., 526 F. Supp. 494, 500 (D.D.C. 1981) (45 percent of $7.3 million settlement fund); *Dennings v. Clearwire Corp*., No. C10-1859JLR, 2013 U.S. Dist. LEXIS 64021 (W.D. Wash. May 3, 2013) (35.78 percent fee).

This holds true even in instances where the class recovery runs into the millions of dollars. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (confirming award of 33.33 percent of the $1.75 million recovery); *Brown v. Consumer Law Assoc., LLC*, No. 11-CV-0194-TOR, 2013 WL 2285368, at *4 (awarding 30 percent of the $1.15 million common fund); *In re Activision Secs. Litig.*, 723 F. Supp. at 1379 (awarding 32.8 percent in fees and expenses of the near $4.75 million settlement).

Here, the percentage-of-the-fund method is the appropriate method for determining a reasonable fee in this case. The benefit to the class is easily quantified. Class Counsel's efforts resulted in a $2,500,000 common fund, which will be distributed to all class members who make a claim, and includes administration expenses, Court-approved fees, and Court-approved service awards. (ECF No. 127, ¶¶ 8, 9, 10).

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

As noted above, The Ninth Circuit has instructed that 25 percent is "a proper benchmark figure," with common fund fees typically ranging from 20 to 30 percent of the fund. *In re Coordinated Pretrial Proc. in Petroleum Prod. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) (citation omitted). A district court must "adequately explain" the special circumstances justifying departure from the 25 percent benchmark. *In re Bluetooth*, 654 F.3d at 942. The 25 percent benchmark is the starting point for the analysis, and the percentage may be adjusted up or down based on the court's consideration of "all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048. The relevant circumstances include (1) the results achieved for the class, (2) the risk counsel assumed, (3) the skill required and the quality of the work, (4) the contingent nature of the fee, (5) whether the fee is above or below the market rate, and (6) awards in similar cases. *Id*. at 1048–50. Consideration of "the circumstances of the case," *Vizcaino*, 290 F.3d at 1048, confirms that an award at the 25 percent benchmark is appropriate. Awarding the 25 percent benchmark rate ensures that attorneys are not penalized for efficient litigation on meritorious claims.

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a. Class Counsel achieved an excellent result for the class.

The Settlement Agreement requires Defendants to pay $2,500,000 into the Settlement fund and all Settlement Class Members who make a valid claim will be entitled to compensation in the amount of $21.86. (ECF 127, ¶ 6). This recovery represents 21.67 percent of the maximum discretionary damage the Court could award, exceeding similar settlements approved by other courts. *Cavnar v. BounceBack, Inc.*, No. 2:45-CV-235-RMP, ECF No. 154 (E.D. Wash. Sept. 15, 2015)[1] (approving settlement providing 15.6 percent of alleged unlawful collection fees paid by class members alleging FDCPA and Consumer Protection Act violations); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (affirming the district court's approval of a settlement estimated to be worth between 16.67 and 50 percent of class members' estimated losses). The amount of recovery per class member is also not affected by Class Counsels' request for attorneys' fees and the Class Representatives' request for incentive awards, as Defendants have agreed to pay those awards in their requested amounts if approved by the Court. (ECF 127, ¶¶ 9, 10).

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[1] Attorney Kirk D. Miller was one of the appointed class counsel in this case. In order to facilitate the settlement, all plaintiff attorneys on this case accepted approximately ½ of Lodestar attorney fees.

b. Class Counsel assumed significant risk in prosecuting this action for nearly three (3) years.

Class Counsel's fee request reflects that the case was risky and handled on a contingency basis. *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 954-55 (9th Cir. 2015). Class Counsel invested hundreds of hours of work into the case over for nearly three years and also advanced significant litigation costs. (ECF No. 138, ¶ 30); *Vizcaino*, 290 F.3d at 1048; *see also Jenson v. First Tr. Corp*., No. CV 05-3124 ABC, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that any recovery ultimately would be obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of expenses, is important to determining a proper fee award.") (internal citation omitted).

Class Counsel represented Plaintiffs and the Class entirely on a contingent basis. (ECF No. 138, ¶ 23; ECF No. 139, ¶ 6). Courts recognize that awarding contingent fees that often exceed fees for services provided on a non-contingent basis is necessary to encourage counsel to take on contingency the cases of plaintiffs who otherwise could not afford to pay hourly fees. *In re Wash. Public Power Supply Sys. Secs. Litig*., 19 F.3d 1291, 1299 (9th Cir. 1994). Here, as in many consumer class actions, there was also a very real risk that Class Counsel would not recover their fees and costs at all. *See Bund v. Safeguard Properties*,

Inc., 2018 WL 5112642 (W.D. Wash. Oct. 19, 2018) (class action case decertified and dismissed after years of litigation, without attorneys receiving any fees).

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

Class Counsels' work in this case included several successful defenses to Defendants' multiple dispositive motions and attempts to evade class certification. Class Counsel proceeded with a novel claim which had never been brought in a class action context, and with no prior case law established. Class Counsel pioneered this cause of action to represent a class of litigants who are historically underserved in the legal community and whose individual damages would likely not inspire many other attorneys in this region to meet with them, much less consider representing them. Class Counsels' skill and experience allowed them to gather the evidence necessary to overcome Defendants' multiple efforts to defeat the Plaintiffs' claim, obtain class certification, and ultimately apply pressure on Defendants to settle the case for $2,500,000.

d. Class Counsels' requested fee is at the market rate and consistent with awards in similar consumer cases.

Washington courts routinely award attorneys' fees of more than 25 percent of the common in consumer class actions, an umbrella of law that tenant-sided class actions fall under. *See e.g.*, *Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161–66, 240 P.3d 790 (2010) (40 percent contingency fee based on the $5

million settlement was fair and reasonable); *Ikuseghan v. Multicare Health Sys*., 2016 WL 4363198 (W.D. Wash. Aug. 16, 2016) (awarding 30 percent of common fund); *Vizcaino*, 290 F.3d at 1047 (affirming award of 28 percent of the common fund by United States District Court for the Western District of Washington); *Desio v. Emercon Elec. Co.*, No. 2:15-CV-00346-SMJ, ECF No. 84 (E.D. Wash. Feb. 7, 2018) (awarding 25 percent of the common fund).

Here, Plaintiffs and Class Counsel request attorneys' fees and costs totaling $625,000. (ECF No. 138, ¶ 29, Ex. A). The request is 25 percent of the $2,500,000 common fund and is not contested by Defendants. (ECF No. 127, ¶¶ 6, 10). Class Counsels' requested $625,000 in attorneys' fees and expenses is at Ninth Circuit benchmark, and less than or equal to amounts awarded in similar cases. *See Alan Hirsch et al., Awarding Attorneys' Fees and Managing Fee Litigation*, 82-83 (Federal Judicial Center 3d ed. 2015) (explaining that the percentage method "helps ensure that the fee award will simulate marketplace rates, since most common fund cases are handled on a contingency basis").

3. The lodestar method as a cross-check illustrates that Class Counsels' request for attorneys' fees is reasonable.

One way that a court may demonstrate that its use of a particular method or the amount awarded is reasonable is by conducting a cross-check using the other method. For example, a cross-check using the lodestar method "can confirm that a

percentage of recovery amount does not award counsel an exorbitant hourly rate." *Bluetooth,* 654 F.3d at 945 (quoting *In re Gen. Motors Corp. Pick–Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 821 n. 40 (3d Cir. 1995)).

The lodestar method may be employed where, a fee-shifting statute authorizes "the award of fees to ensure compensation for counsel undertaking socially beneficial litigation." *Bluetooth,* 654 F.3d at 941. Here, the certified claim arises under a statute that provides for fee-shifting to encourage litigation in the public interest. *See* RCW 59.18.257 (RLTA).

The Ninth Circuit also recognizes that the lodestar method is appropriate "when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six {6} Mexican Workers,* 904 F.2d at 1311. "Under the lodestar/multiplier method, the district court first calculates the 'lodestar' by multiplying the reasonable hours expended by a reasonable hourly rate." *In re Wash. Pub. Power,* 19 F.3d at 1295 n.2; *see also Staton,* 327 F.3d at 965. "There is a 'strong presumption' that the lodestar figure represents the reasonable fee." *Byles v. Ace Parking Mgmt., Inc.,* No. C160834-JCC, 2019 WL 3936663, at 1 (W.D. Wash. Aug. 20, 2019).

If circumstances warrant, the court may adjust the lodestar to account for other factors which are not subsumed within it. *Staton,* 327 F.3d at 965 & n.17.

Upward adjustments may be appropriate "to account for several factors, including … the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, the risk of nonpayment, and any delay in payment." *Manual for Complex Litigation (Fourth* 2004*)* ("MCL") § 14.122, p. 195-96; *see also In re Bluetooth*, 654 F.3d at 942. The lodestar-multiplier method confirms the propriety of the requested fee in this matter.

Class Counsel have submitted detailed declarations and time records with this motion. The time records include the number of hours worked, the work performed, and the attorney or staff member who performed the work. Because the case is not yet concluded, the total time spent by counsel to resolve this case continues to increase. (ECF No. 139, ¶ 15). As the declarations and time records so far show, Class Counsel spent over 470 hours on this litigation. (ECF No. 138, ¶ 29, Ex. A). These hours, multiplied by the attorneys' and staff members' usual hourly rates, result in a lodestar of $215,645.55, prior to any multiplier. In addition, class administration and attorney time is far from completed in this case and the total hours spent by counsel will increase through the final fairness hearing, currently set for January 11, 2022. (ECF No. 139, ¶ 15; ECF No. 130).

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a. Class Counsels' fee request is reasonable compared to the Lodestar calculation.

In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded." *Vizcaino*, 290 F.3d at 1051 n.6. Courts find higher multipliers appropriate when using the lodestar method as a cross-check for an award based on the percentage method. *See, e.g., Steiner v. Am. Broad Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding a multiplier of approximately 6.85 to be "well within the range of multipliers that courts have allowed" when cross-checking a fee based on a percentage of the fund); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (finding that a multiplier of 3.6 was "well within the acceptable range" and explaining that "[m]ultipliers in the 3-4 range are common"); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc., No. 16-CV-03698-NC*, 2018 WL 2183253, at *7 (N.D. Cal. May 11, 2018) (finding a 4.375 multiplier to be reasonable in cross-checking a fee of 25 percent of a settlement fund). Here, Class Counsel requests an adjustment from Lodestar (2.89 multiplier) less than the Ninth Circuit's 4x benchmark, which makes the fee request presumptively reasonable.

Courts may consider the following factors when assessing the reasonableness of a multiplier: "(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal

service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases." *Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67, 70 (9th Cir. 1975); *see also Vizcaino*, 290 F.3d at 1051 (noting that the district court found a 3.65 multiplier to be reasonable after considering the factors in *Kerr*). Application of these factors confirms that a multiplier of 2.89 is reasonable and appropriate in this case. Class Counsel took this case on a contingent basis and to the preclusion of other work and at considerable financial risk.

The unopposed fee requested in this case is particularly appropriate because Class Counsel does not request any fee exceeding the Ninth Circuit's benchmark of 25 percent of the settlement, and counsel will continue to respond to class members calls and work with the settlement administrator through final approval and distribution of the settlement funds.

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b. Class Counsel expended a reasonable number of hours litigating this case.

The more than 470 hours that Class Counsel devoted to investigation, discovery, motion practice, and achieving a favorable settlement are reasonable. *See Moreno v. City of Sacramento,* 534 F.3d 1106, 1111 (9th Cir. 2008) ("The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client."). Class Counsel spent a substantial amount of time investigating Plaintiffs' claims before filing this lawsuit. (ECF No. 127, ¶ 3). This investigation included gathering information about Plaintiffs' experiences and Defendants' practices and business structure, reviewing related documentation, and researching applicable statutes, regulations, and case law to develop applicable legal theories. (ECF No. 127, ¶ 3).

After the Complaint was filed, the parties engaged in discovery and extensive motion practice, including multiple contested dismissal and class certification motions. (ECF No 127, ¶ 3). Class Counsel spent significant time on motion practice. Plaintiffs' claims were novel, and their motion for class certification was hard fought, with Defendants challenging several of Fed R. Civ. P. 23's requirements. (ECF 64). After the class was certified, the parties proceeded

to mediation, with a final settlement agreement finally being reached through continued negotiations several months later. (ECF No. 127, ¶¶ 4, 5, 6).

Negotiating a settlement that provides Settlement Class Members with significant monetary compensation required considerable effort. Class Counsel prepared for the formal mediation by compiling damages models from Defendants' available data and preparing argument for Plaintiffs' novel claim. Negotiations continued for months after the formal mediation. The parties ultimately agreed to a settlement that requires Defendants to establish a settlement fund in the amount of $2,500,000, which will be used to pay the class members, class administration costs, class representative incentives, attorneys' fees and costs, and will ensure that Greystar ceases collecting information from, and charging fees to prospective tenants without first providing certain required disclosures. (ECF No. 127, ¶ 6).

Class Counsel reviewed their time records and exercised billing judgment to reduce time that arguably could have been more efficiently spent and to eliminate purely administrative time. (ECF No. 139, ¶ 13). A court may reduce the overall number of hours only when it specifically finds that the work was "unnecessarily duplicative." *Moreno,* 534 F.3d at 1113. "One certainly expects some degree of duplication as an inherent part of the process. There is no reason why the lawyer should perform this necessary work for free." *Id.* at 1112. Courts are particularly reluctant to reduce hours for duplication where, as here, counsel worked on a

contingency fee basis. *Id.* As the Ninth Circuit noted, "lawyers are not likely to spend unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee." *Id.* Thus, "[b]y and large, the court should defer to the winning lawyer's professional judgment as to how much time was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Id.*

c. Class Counsels' rates are consistent with community rates for similar attorneys' work of comparable skill, experience, and reputation.

In determining a reasonable rate, the court considers the "experience, skill and reputation of the attorney requesting fees." *Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996). Courts also look at the prevailing market rates in the relevant community, which is the forum in which the district court sits. *Gonzalez v. City of Maywood,* 729 F.3d 1196, 1205 (9th Cir. 2013). Courts approve rates that are comparable to "the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." *Welch v. Metro. Life Ins.* Co., 480 F.3d 942, 946 (9th Cir. 2007); *see also Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005) (hourly rates are reasonable if they fall within the range of "prevailing market rates in the relevant community" given "the experience, skill, and reputation of the attorney"). Courts

consider declarations from Class Counsel and fee awards in other cases as evidence of prevailing market rates. *Welch,* 480 F.3d at 947.

This district, in cases involving consumer class actions from more than eight years ago, approved contingent rates above the requested rates in this matter. *Brown v. Consumer Law Assocs. LLC*, Case No. CV-11-0194-TOR, ECF Nos. 211, 212 & 227 (approving rates up to $540); *Bronzich v. Persels & Assocs., LLC*, Case No. CV-10-00364-TOR (E.D. Wash. Jan. 25, 2013), ECF Nos. 296, 297 & 311 (approving rates up to $530). This district has additionally approved non-contingent rates in a non-complex motion to dismiss of $425 for a senior attorney (billed to client at $745 per hour) and $300 per hour for a junior attorney (billed to client at $495 per hour). *Gordon v. Robinhood Financial, LLC*, Case No. CV-19-00390-TOR (E.D. Wash. Apr. 1, 2020), ECF No. 29. In the Western District, courts have regularly approved as reasonable hourly rates billed by attorneys up to $650, paralegals up to $185, and litigation staff up to $125. *See* Final Approval Order and Final Judgment at 7, *Miller v. PSC, Inc.*, No. 3:17-CV-05864-RBL (W.D. Wash. Jan. 10, 2020), ECF No. 75 (approving partner rates of $400-$550 per hour, associate rate of $325 per hour, paralegal rate of $175, and litigation staff rate of $125 per hour); *Nugussie v. HMS Host N. Am.*, No. 2:16-CV-00268, 2018 WL 9662641, at 1 (W.D. Wash. Feb. 22, 2018) (approving attorney rates ranging from $310 to $565); *Paulson v. Principal Life Ins. Co.*, No. 16-5268 RJB, 2017

WL 4843837, at 4 (W.D. Wash. Oct. 26, 2017) (approving attorney rates of $450-$500 and a paralegal rate of $185); *Rinky Dink v. World Business Lenders, LLC*, No. 2:14-CV-0268-JCC (W.D. Wash. May 31, 2016), ECF No. 92 at 7-8 (approving partner rates of $500 -$650 per hour, associate rates of $250-$400 per hour, paralegal rate of $250, and litigation staff rates of $100-$200).

Class Counsels' hourly rates of $425-$525, paralegals at $125, and $90 for litigation staff are well within, if not below, the prevailing market range. (ECF No. 138, ¶¶ 23, 24; ECF No. 139, ¶ 12; ECF No. 140, ¶¶ 12, 13). Class Counsel have provided the Court with declarations describing the basis for their hourly rates, including their education, legal experience, and reputation in the legal community. (ECF Nos. 138-140). Counsel set the rates for attorneys and staff members based on a variety of factors, including the experience, skill and sophistication required for the types of legal services typically performed, the rates customarily charged in the market, and the experience, reputation and ability of the attorneys and staff members. (ECF Nos. 138-140). Because they are in line with rates approved in this district, Class Counsel's hourly rates are reasonable.

D. Class Counsels' costs were necessarily and reasonably incurred.

Class Counsels' fee request includes reimbursement of the $1,618.05 in litigation costs they expended in prosecuting this case. As courts in this circuit have recognized, "[t]he Ninth Circuit allows recovery of pre-settlement litigation

costs in the context of class action settlement. Reimbursement of reasonable costs is fully in keeping with applicable law." *Arthur v. Sallie Mae, Inc.*, No. 10-CV-00198-JLR, 2012 WL 4076119, at 2 (W.D. Wash. Sept. 17, 2012) (internal citations omitted); *see also Corson v. Toyota Motor Sales U.S.A., Inc.*, No. CV 12-8499-JGB, 2016 WL 1375838, at 9 (C.D. Cal. Apr. 4, 2016) ("Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable"); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at 6 (N.D. Cal. Feb. 6, 2013) (awarding costs for document review, depositions, and experts). Class Counsel provided the Court with a chart listing their costs by category. ECF No. 138, ¶ 30).

E. Class Representatives request reasonable service awards.

Service awards are "fairly typical in class actions." *Barovic v. Ballmer*, Nos. C14-0540 JCC, *et al.*, 2016 WL 199674, at 5 (W.D. Wash. Jan. 13, 2016) (citation omitted). They "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Service awards "help promote the public policy of encouraging

individuals to undertake the responsibility of representative lawsuits." *Byles*, 2019 WL 3936663, at 2; *see also Grace v. Apple, Inc.*, No. 17-CV-00551-LHK, 2021 WL 1222193, at 7 (N.D. Cal. Mar. 31, 2021) ("Unlike the Eleventh Circuit in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020), the Ninth Circuit has not held that service awards violated Supreme Court decisions from the 1800s. Thus, like other courts in this district, this Court declines to follow *Johnson*.)" (citation omitted). The criteria courts consider when determining whether to make an incentive award and the amount of the award include the risk to the class representative, both financial and otherwise, the notoriety and personal difficulties encountered by the class representative, the amount of time and effort spent, the duration of the litigation, and the personal benefit enjoyed by the class representative as a result of the litigation. *Carideo v. Dell, Inc.*, No. 06-CV-01772-PET, 2010 WL 11530555, at 3 (W.D. Wash. Dec. 17, 2010).

Class Representatives Daley and Curry each request combined statutory damage and service award payments of $2,500 in recognition of their service to the Class. (ECF 127, ¶ 9). Daley and Curry assisted in investigating the Defendants' practices, drafting the complaint, and participated extensively with Class Counsel in negotiating an agreed settlement in this matter. Their requested service awards are below the Ninth Circuit's "presumptively reasonable" benchmark of $5,000 and should be awarded. *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*,

No.16-MD-02752-LHK, 2020 WL 4212811, at 5 (N.D. Cal. July 22, 2020); *see also Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-CV-00356 JLR, 2019 WL 5536824, at 3 (W.D. Wash. Oct. 25, 2019) (approving service award of $10,000); *Carr v. United Healthcare Servs., Inc.*, No. 2:15-CV-1105 JLR, 2017 WL 11458425, at 2 (W.D. Wash. June 2, 2017) (approving $5,000 service award); *Barovic*, 2016 WL 199674, at 5 (approving service awards of $5,000); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (compiling settlements with service awards).

III. CONCLUSION

For the foregoing reasons, the Representative Plaintiffs and Class Counsel request the Court to grant their motion.

RESPECTFULLY SUBMITTED and DATED this 27th day of August, 2021.

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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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