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CASE NUMBER: 16-2-19140-1 SEA
Department 4

Noted for Consideration:
With Oral Argument

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JULIUS TERRELL, as an individual and as a
representative of the class,

Plaintiff,

v.

COSTCO WHOLESALE CORP.,

Defendant.

NO. 16-2-19140-1 SEA

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

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I. INTRODUCTION

Plaintiff and Class Counsel¹ have litigated this action for years, engaged in mediation and extensive negotiations with Defendant, and ultimately achieved a favorable settlement on behalf of the Settlement Class (“Class”). The Settlement provides for direct monetary benefits for Class Members—despite significant hurdles to recovery had this litigation proceeded. These benefits to the Class could not have been achieved absent Class Counsel’s time, effort, and skill, as well as Plaintiff’s participation in the case. Accordingly, the Class Representative and Class Counsel seek Court approval of the following payments in connection with the Settlement: (1) attorneys’ fees to Class Counsel in the amount of \$830,000, which is one-third of the settlement fund; (2) \$17,780.12 to reimburse Class Counsel for their out-of-pocket, documented expenses; (3) settlement administration costs to JND Administration not to exceed \$179,822, and (4) a service payment of \$3,500 to the Class Representatives.

The requested amount of attorneys’ fees is reasonable, and constitutes one-third Settlement Fund. The requested litigation costs, administration expenses, and service awards are also reasonable. Plaintiff and Class Counsel thus respectfully request that this Court grant their motion.

II. BACKGROUND

A. Summary of Claim and Settlement

Plaintiff filed this lawsuit on August 10, 2016 in this Court, alleging that Defendant’s employment application procedures did not comply with the requirements of the Fair Credit Reporting Act (“FCRA”). Declaration of E. Michelle Drake ¶ 2 (“Drake Declaration”). Costco removed the case to federal court and then immediately moved to dismiss, asserting that Plaintiff lacked Article III standing to proceed on his claims in federal court. The district court

¹ Unless otherwise explicitly defined herein, all capitalized terms have the same meanings as those set forth in the Parties’ Settlement Agreement (Ex. A to Declaration of E. Michelle Drake in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Settlement Agreement”)).

1 initially denied Costco's motion to dismiss, but then remanded after the Ninth Circuit amended
2 a decision that was central to the court's prior order. *Id.* ¶ 3.

3 After remand, the parties stipulated to vacate the trial date and brief two threshold legal
4 issues central to the case: whether Plaintiff has standing to assert his FCRA claim in Washington
5 state court and whether Costco violated Section 1681b(b)(2) of the FCRA by procuring a
6 consumer report on Plaintiff without first providing Plaintiff with a disclosure that complied with
7 the FCRA. The parties agreed to a stipulated set of facts for purposes of the motions. *Id.* ¶ 4.

8 Costco moved to dismiss, arguing that Plaintiff lacked standing because he failed to
9 identify any concrete harm he suffered as a result of Costco's alleged FCRA violation and did not
10 allege any actual damages on behalf of himself or class members. Plaintiff opposed, arguing that
11 federal notions of standing and subject matter jurisdiction are irrelevant in Washington courts,
12 where Article III of the United States constitution does not apply. Plaintiff argued that, in
13 Washington state court, parties whose legal rights are violated may sue when the applicable statute
14 allows them to do so. The parties also filed cross-motions for summary judgment on the validity of
15 Costco's disclosure form. Plaintiff argued that Costco's background check disclosure form violated
16 Section 1681b(b)(2) of the FCRA, while Costco contended that it complied. *Id.* ¶ 5.

17 After fully briefing the threshold legal issues, the parties agreed to enter into settlement
18 negotiations before the Court ruled on the motions. Prior to mediating, Plaintiff requested and
19 Costco agreed to share information regarding the size of the potential settlement class, as well
20 as information about its background check practices and policies throughout the class period.
21 *Id.* ¶ 6. On January 26, 2018, the parties mediated with Rodney A. Max of Upchurch Watson
22 White & Max. After a full day of hard-fought negotiations, the parties agreed to the terms of a
23 class action settlement. *Id.* ¶ 7.

24 The claims in this case were far from risk-free. Plaintiff is confident in the strength of
25 his case but also aware of the risk created by Costco's pending motion to dismiss and summary
26 judgment motion. Moreover, even if Plaintiff prevailed on these motions, he would still have

1 had to prove that Costco’s violation of the FCRA was willful, which would require the parties
2 to undergo discovery and an additional summary judgment motion, if not a jury trial. A FCRA
3 plaintiff can recover only when the defendant has acted negligently or willfully, and when the
4 defendant’s violation was at most negligent, recovery is limited to actual damages. 15 U.S.C.
5 §§ 1681n(a)(1), 1681o(a)(1). Because Plaintiff did not allege any actual damages, he would
6 have been required to prove that Costco’s conduct was willful to recover statutory damages for
7 himself and any purported class. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201,
8 212 (E.D. Pa. 2011) (proving willfulness in FCRA case was “a high hurdle to clear” and
9 weighed in favor of settlement approval). Plaintiff’s challenges in this case, as Costco
10 highlighted in its pending motions, included the fact that there is no clear appellate controlling
11 authority resolving the novel issues of statutory interpretation presented by this case.

12 In the settlement, Costco will pay a total of \$2,490,000 to the Settlement Class as a
13 common fund. Under no circumstance will any amount of this fund revert to Costco. The
14 settlement fund will be used to pay (1) Individual Settlement Payments to Class Members, (2) a
15 Service Payment to Plaintiff, if approved by the Court, (3) settlement administration expenses,
16 and (4) Court-approved attorneys’ fees and costs. Settlement Agreement, ¶ 3.1.

17 Given the risks and expense of continued litigation, the settlement provides a very fair
18 recovery for Class Members and avoids further delay. Class Members are likely to recover a
19 considerable portion of what they could have recovered in litigation. While the precise recovery
20 per Class Member cannot be known until the claims process is complete, Class Members are
21 likely to recover between \$25 and \$175, depending on the claims rate. Drake Decl. ¶ 8.² This
22 recovery compares very favorably with other settlements that have been preliminarily approved
23 in similar FCRA class actions. *See Patrick v. Interstate Management Co., LLC*, No. 8:15-cv-
24 1252, ECF No. 42 (M.D. Fla. Jan. 14, 2016) (class member recovery of \$16.40); *Manuel v.*

25
26 ² The deadline for class members to submit claims will not expire until May 14, 2018, and the
final claims rate and per-claimant recovery will therefore not be known until that time. Drake
Decl. ¶ 9

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

6 The Court granted preliminary approval to the Settlement, preliminarily certified the
7 Settlement Class, appointed Terrell Marshall Law Group PLLC and Berger & Montague, P.C.
8 as Class Counsel, appointed JND Legal Administration (“JND”) as Settlement Administrator,
9 and directed the parties to provide notice to the Settlement Class. Notices have been mailed to
10 the Class Members, and pursuant to ¶ 5.5 of the Settlement Agreement, the Administrator plans
11 on sending up to two email and mail reminder notices. Plaintiff now brings this motion for fees,
12 costs and payment to the named plaintiff.

13 **B. Class Counsel’s Experience and Efforts to Secure Benefits for the Class**

14 The specific qualifications of Class Counsel are set forth in the accompanying
15 Declaration of E. Michelle Drake and are incorporated herein. As a result of their experience in
16 this area, Class Counsel were able to efficiently and effectively litigate this action and had the
17 credibility necessary to negotiate a fair and reasonable settlement on behalf of the Class.

18 Class Counsel has worked without compensation or reimbursement for their time and
19 out-of-pocket expenses necessary to position this case for settlement. Drake Decl. ¶ 10. Before
20 taking on this case, Plaintiff and Class Counsel negotiated a customary one-third contingency
21 fee, with the understanding that this amount was an appropriate incentive for Class Counsel to
22 take on the financial risks involved in the representation. *Id.* ¶ 11. Class Counsel also agreed to
23 _____

24 ³ See also *Aceves v. Autozone Inc.*, No. EDCV 14-2032-VAP (DTBx), ECF No. 58 (C.D. Cal.
25 Nov. 18, 2016) (\$20 per disclosure class member); *Foltz v. Guitar Center Stores, Inc.*, No.
26 2:14-cv-04308-NKL, ECF Nos. 41 & 48 (W.D. Mo. July 10, 2015 & Dec. 30, 2015) (\$35 gross
recovery per class member); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467, ECF
No. 37 (S.D. Tex. Nov. 5, 2015) (\$10 per disclosure class member); *Patrick v. Interstate Mgmt.*
Co., LLC, No. 8:15-cv-1252-T-33AEP, ECF Nos. 42 & 49 (M.D. Fla. Jan. 14, 2016 & Apr. 29,
2016) (\$16.40 gross recovery per disclosure class member).

1 advance all costs of this litigation. *Id.* ¶ 12. Plaintiff and Class Counsel agreed that Class
2 Counsel would receive reimbursement for its costs from the value of a successful settlement or
3 judgment. *Id.* In the event that Class Counsel did not successfully resolve this matter, Class
4 Counsel would have been paid nothing and would have been required to absorb all costs that
5 were advanced as well as the value of their time.

6 Although the parties settled this case in the pre-trial stage, Class Counsel has invested a
7 substantial amount of time and resources investigating and litigating this action. *Id.* ¶ 14. Many
8 of the tasks performed by Class Counsel are not evident based solely upon a review of the
9 docket in this matter, as much of the litigation of this action took place outside the courtroom.
10 *Id.*

11 Tasks performed by Class Counsel thus far include: (1) investigating the claims; (2)
12 meeting and communicating regularly with Plaintiff; (3) researching and drafting the
13 complaint; (4) researching and drafting a response to Defendant's motion to dismiss in federal
14 court; (5) researching and drafting a response to Defendant's motion to dismiss in this court;
15 (6) researching and drafting a the cross motions on partial summary judgment in this court; (7)
16 exchanging and reviewing pre-mediation discovery; (8) researching and drafting a mediation
17 briefs (9) preparing for and participating in mediation sessions; (10) engaging in extended
18 settlement negotiations with Defendant; (11) drafting the Settlement Agreement and class
19 notices; (12) researching and drafting the preliminary approval brief; (13) overseeing
20 administration of the Settlement; and (14) responding to calls from Class Members with
21 questions about the Settlement. Drake Decl. ¶ 15.

22 Class Counsel's fee entries demonstrate the amount of time devoted to each of these
23 tasks and how Class Counsel's lodestar was calculated. *See Drake Decl.*, Ex. A. To date, Class
24 Counsel's combined lodestar is \$222,400.30. Drake Decl. ¶ 16. Class Counsel also anticipates
25 contributing additional time and effort to this case if the Settlement is finally approved. *Id.*
26 ¶ 17. Additional tasks Class Counsel expects to perform include continuing to oversee the

1 administration of the Settlement, researching and drafting final approval papers, preparing for
2 the final fairness hearing, and traveling to and arguing at the final fairness hearing. *Id.*

3 Importantly, Class Counsel’s lodestar also does not reflect the full extent of Class
4 Counsel’s efforts outside of this case that ultimately benefited the Class. For example, Class
5 Counsel has expended hundreds of hours researching standing issues and monitoring cases
6 interpreting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). Drake Decl. ¶ 18. Class Counsel
7 monitors every new FCRA case that is filed in federal court on a daily basis. *Id.* Class Counsel
8 has tracked every such case that has resulted in any meaningful litigation around the issue of
9 standing, and has compiled a comprehensive compendium of all post-*Spokeo* district court
10 opinions in FCRA cases. *Id.* Class Counsel has also monitored every appellate court decision
11 mentioning *Spokeo*, including both FCRA and non-FCRA cases, and has compiled a
12 compendium of those cases as well. *Id.* These efforts, none of which were specifically billed to
13 this case, but each of which consumes a significant amount of Class Counsel’s time, provided
14 tremendous benefits to the Class. They enabled Class Counsel to negotiate a substantial and
15 meaningful settlement of this case, by comparing it to other FCRA cases, and by distinguishing
16 it from other cases that settled for less or were resolved adversely to the plaintiffs. They also
17 allowed Class Counsel to effectively and efficiently oppose Defendant’s motions to dismiss and
18 for summary judgment, and to effectively assess the reasonability of the recovery in this matter.
19 None of these efforts are reflected in Class Counsel’s time records in this case (or in any other
20 case).⁴ Class Counsel’s past successes, experience, and virtually unparalleled knowledge of the
21 FCRA, FCRA cases, and the state of the law regarding standing under the FCRA allowed Class
22 Counsel to reach a favorable Settlement with efficiency and appropriate risk analysis.

23 To date, Class Counsel has also collectively incurred \$17,780.12 in out-of-pocket
24 litigation costs. *Id.* ¶ 22. All of these costs were necessarily incurred and are of the type

25 _____
26 ⁴ While none of Counsel’s time in these efforts is billed to a case, the online research costs
incurred are divided evenly between Counsel’s pending FCRA cases, including this case. Drake
Dec. ¶ 19.

1 typically reimbursed by paying clients. *Id.* The estimated costs of settlement administration in
2 this matter (which are not included in the litigation cost totals) are anticipated not to exceed
3 \$179,822 and were also reasonably incurred. *Id.* ¶ 25.

4 III. ARGUMENT AND AUTHORITY

5 A. The Requested Attorneys' Fees and Costs are Fair and Reasonable

6 Class Counsel requests that the Court approve a payment of \$830,000 in fees as well as
7 \$17,780.12 for their actual, documented, out-of-pocket expenses. As is set forth below, Class
8 Counsel's request warrants approval. Class Counsel fully disclosed to the Class their intent to
9 request fees and costs, and the amount and manner in which such fees and costs would be paid,
10 in the Court-approved notice.

11 1. The Requested Fee Payment Is Reasonable

12 Where, as here, counsel to a class action seek fees from the common fund, courts have
13 discretion to employ either the lodestar method or the percentage-of-recovery method. *Bowles*
14 *v. Washington Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). Where, as here, a
15 common fund has been created for the benefit of class members, the percentage of the fund
16 method is preferred. *Id.* Class Counsel's request for fees is reasonable under either analysis.

17 a. *The Percentage of the Fund Analysis Supports Counsel's Fee Request*

18 The benchmark in Washington for an award of fees calculated pursuant to the
19 "percentage of the fund" method is between 20% and 30% of the fund. *See City of Seattle v.*
20 *Okeson*, 137 Wn. App. 1051, 2007 WL 884827 at *7 (2007) (unpublished) ("Twenty to
21 thirty percent of the recovery is a typical benchmark used in awarding attorney fees under the
22 common fund doctrine, but that figure can be adjusted based on the circumstances of the
23 case."). However, courts in this state can and do award more than 35%. *See A.M. v. Moda*
24 *Health Plan, Inc.*, C 14-1191 TSZ, 2015 WL 9839771, at *3 (W.D. Wash. Nov. 3, 2015)
25 (awarding fee of 35% of settlement fund). Here, Class Counsel seek 33% of the common fund,
26 similar to fees that have been approved in the state and in similar cases across the country. *See*

1 *id.*; *King v. Gen. Info. Serv., Inc.*, No. 10-cv-6850, ECF No. 126 (E.D. Penn. Nov. 4, 2014)
2 (awarding counsel one-third of fund in FCRA class action); *Ford v. CEC Entm't Inc.*, No.
3 14CV677 JLS (JLB), 2015 WL 11439033, at *1 (S.D. Cal. Dec. 14, 2015) (awarding fee of
4 one-third in FCRA class action); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR,
5 2006 WL 3312024, at *1 (D. Or. Nov. 13, 2006) (awarding 30% in FCRA class action).

6 b. *Lodestar Analysis Supports Counsel's Fee Request*

7 While the percentage approach provides an independent ground for granting the fee
8 request, a “cross-check” under the lodestar method also demonstrates that counsel’s request is
9 reasonable. *See Manual for Complex Litigation (Fourth) (“MCL 4th”) § 14.121* (noting “[a]
10 number of courts favor the lodestar as a backup or cross-check on the percentage method when
11 the fees might be excessive”). “Under the lodestar/multiplier method, the district court first
12 calculates the ‘lodestar’ by multiplying the reasonable hours expended by a reasonable hourly
13 rate. *See generally Bowers v. Transam. Title Ins. Co.*, 100 Wn.2d 581, 597–99, 675 P.2d 193,
14 203–04 (1983). The court may then enhance the lodestar with a ‘multiplier,’ if necessary, to
15 arrive at a reasonable fee.” *Id.* Upward adjustments may be appropriate based on the results
16 obtained, the quality of representation, or the delay in payment to class counsel. *MCL 4th §*
17 *14.13*, at 257.

18 Here, Class Counsel have devoted over 513 hours to the investigation, development,
19 litigation and resolution of this case, incurring over \$222,400.30 in fees. Drake Decl. ¶ 16.
20 Class Counsel spent considerable time investigating the claims of the proposed class members,
21 researching and analyzing legal issues, briefing dispositive motions, and engaging in settlement
22 negotiations. *Id.* ¶ 15. Class Counsel’s work was essential to ensure the successful prosecution
23 and settlement of this complex action. *Id.*

24 Class Counsel’s lodestar calculations also are based on reasonable hourly rates.
25 In assessing the reasonableness of an attorney’s hourly rate, courts consider whether the
26 claimed rate is “in line with those prevailing in the community for similar services by lawyers

1 of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895
2 n.11 (1994). Class Counsel are experienced, highly regarded members of the bar with extensive
3 expertise in the area of class actions and complex litigation involving claims like those at issue
4 here. *See* Drake Decl. Decl. ¶ 26. Similar rates have been approved numerous times in class
5 action cases brought in both the Western District of Washington and King County Superior
6 Court. *See, e.g., Carideo v. Dell, Inc.*, No. 06-cv-01772, ECF No. 162 (W.D. Wash. Dec. 17,
7 2010) (Judge Robart approving as reasonable a fee petition which included rates ranging from
8 \$175 to \$600); *Barnett v. Wal-Mart Stores, Inc.*, No. 01-2-24553-8 (King Co., July 20, 2009)
9 (Judge Spector approving fee request based on rates ranging from \$100 to \$760); *Splater v.*
10 *Thermal Ease Hydronic Systems, Inc.*, No. 03-2-33553-3 (King Co., July 31, 2009) (Judge
11 Washington approving fee request based on rates ranging from \$100 to \$760); *Hartman v.*
12 *Comcast Business Communications, LLC*, No. 10-0413, ECF No. 106 (W.D. Wash Dec. 8,
13 2011) (Judge Lasnik approving Plaintiff’s counsel’s fee request based on rates ranging from
14 \$180 to \$650). In light of the detailed breakdown provided by counsel in her declarations, and
15 the arguments offered above, Class Counsel submit that their lodestar calculations are based on
16 reasonable rates.

17 Class Counsel’s requested fee of \$830,000 represents a 3.73 multiplier on their total
18 lodestar to date. Drake Decl. ¶ 16. Class Counsel’s requested multiplier is reasonable where, as
19 here, Plaintiff requests a reasonable percentage of the common fund. *See Bowles*, 121 Wn.2d at
20 72–73 (approving multiplier of three where plaintiff’s fee request was found reasonable using
21 percentage-of-the-fund method); *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051, n. 6
22 (9th Cir. 2002) (finding that in approximately 83% of cases surveyed by the court, the
23 multiplier was between 1.0 and 4.0 and affirming a multiplier of 3.65); *McIntosh v. McAfee,*
24 *Inc.*, No. 06-cv-7694, 2009 WL 673976, at *2 (N.D. Cal. 2009) (recognizing a range from “2 to
25 4 or even higher”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal.
26 1995) (“[m]ultipliers in the 3-4 range are common”). Furthermore, all of the factors courts

1 consider when awarding multipliers, *see MCL 4th* § 14.13, at 257, are satisfied here. Class
2 Counsel have achieved a terrific result for the Settlement Class. Defendant must pay
3 \$2,490,000 for the benefit of the Settlement Class despite strong defenses to class certification
4 and liability. No funds will revert to Defendant. Throughout the litigation, Class Counsel
5 provided high quality representation in a case that turned out to be quite complex. Finally,
6 Class Counsel took this case on a contingency basis and have devoted nearly two years to
7 prosecuting it with no guarantee they would ever be paid for their efforts — a review of the
8 motions pending before this Court prior to settlement more than illustrates the risk Counsel
9 took in taking on this case. Drake Decl. ¶ 13. The delay and risk involved more than justifies
10 the multiplier requested here.

11 2. The Requested Costs Payment Is Reasonable

12 The Settlement Agreement provides that up to one third of the Gross Settlement
13 Amount, plus reasonable out-of-pocket expenses may be deducted to reimburse Class Counsel
14 for the reasonable costs incurred litigating this case, and a reasonable amount for the Class
15 Administrator for sending notices and administering the settlement. Settlement Agreement ¶¶
16 7.2, 7.3. To date, Class Counsel have expended more than \$17,780.12 in litigation expenses
17 related to the prosecution of this action, including filing and service expenses, copying costs,
18 and computer research costs, and mediation expenses. Drake Decl. ¶ 22, Ex. B. These modest
19 out-of-pocket costs were necessary to secure the resolution of this litigation. *See In re Immune*
20 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (S.D. Cal. 2007) (finding that costs such
21 as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized
22 legal research fees, and mediation expenses are relevant and necessary expenses in a class
23 action litigation); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
24 “those out-of-pocket expenses that would normally be charged to a fee paying client”) (internal
25 citations omitted); *Absher Const. Co. v. Kent Sch. Dist. No. 415*, 79 Wash. App. 841, 848, 917
26 P.2d 1086, 1090 (1995) (online legal research fees recoverable as costs).

1 As Counsel's expense records show, all of the costs incurred were reasonable and
2 necessary to the successful conclusion of this litigation. *See* Drake Decl. 22, Ex. B. These costs
3 include: filing fees, legal research, service of process, mediation expenses, and FedEx costs.
4 These types of expenses are routinely reimbursed by the courts as noted above, thus Counsel's
5 requested costs should be awarded.

6 In sum, an award of \$830,000 in fees is reasonable under both the "percentage of the
7 fund" and the "lodestar" method. An award of \$17,780.12 in litigation expenses is also
8 reasonable.

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

10 Plaintiff also requests a service payment of \$3,500 for Plaintiff in recognition of his
11 efforts on behalf of the Class, which included assisting counsel with the investigation, litigation
12 and settlement. Service payments "are intended to compensate class representatives for work
13 undertaken on behalf of a class" and "are fairly typical in class action cases." *In re Online*
14 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted); *see Probst v.*
15 *State of Washington Dep't of Ret. Sys.*, 150 Wn. App. 1062, 2009 WL 1863993, at *6 (2009)
16 (unpublished) (affirming payment of \$7500 to named plaintiff). Such awards are intended to
17 compensate class representatives for work done on behalf of the class, to make up for financial
18 or reputational risk undertaken in bringing the action, and to recognize their willingness to act
19 as private attorneys general.

20 Here, Plaintiff has expended significant time and effort in this matter, consistently
21 putting the Class Members' interests first. Plaintiff provided documentation regarding his
22 experiences with Defendant, was prepared to travel and sit for depositions, stayed abreast of
23 developments in the case, and evaluated the Settlement Agreement. Drake Decl. ¶ 23. As a
24 result of Plaintiff's efforts, and his willingness to pursue this action, substantial benefits have
25 been achieved on behalf of the Settlement Class.
26

1 Moreover, the requested service payment of \$3,500 is relatively modest compared to
2 awards granted in other complex litigation. *See, e.g., Probst*, 150 Wash. App. 1062 (approving
3 service payment of \$7500); *Ralston v. Mortg. Inv'rs Grp., Inc.*, No. 08-cv-536, 2013 WL
4 5290240, at *5 (N.D. Cal. Sept. 19, 2013) (approving service payment of \$12,500); *In re*
5 *Netflix Privacy Litig.*, No. 11-cv-379, 2013 WL 1120801, at *11 (N.D. Cal. March 18, 2013)
6 (approving service awards of \$6,000 for each named plaintiff); *Vedachalam v. Tata*
7 *Consultancy Servcs. Ltd.*, No. 06-cv-0963, 2013 WL 3929129, at *7 (N.D. Cal. July 18, 2013)
8 (approving service awards of \$25,000 and \$35,000).

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

10 4. The Settlement Administrator's Fee Should Be Approved.

11 Class Counsel also seeks the Court's approval to pay Settlement Administration costs,
12 not to exceed \$179,822, out of the Settlement Fund. *See Newberg on Class Actions* § 12:20 (5th
13 ed.) ("The[] costs of paying the claims administrator, processing the claims, providing notice to
14 the class, and generally administering the settlement is typically deducted from the settlement
15 fund."). In choosing a settlement administrator to handle the notice and claims process in this
16 matter, Class Counsel sought competitive bids from three reputable firms. Drake Decl. ¶ 24.
17 Class Counsel determined that JND's bid was fair and reasonable. *Id.* The requested settlement
18 administration costs cover, among other things, expenses incurred or estimated to be incurred
19 for mailing and emailing notices, processing claims and opt-outs, issuing checks, postage,
20 corresponding with Class Members, and phone and web support. Declaration of Jennifer M.
21 Kough ¶ 17. Given that this settlement involved 113,839 Class Members, the requested
22 administration costs are fair and reasonable.

1 Plaintiff therefore respectfully request that the Court approve distribution of Settlement
2 Administration costs not to exceed \$179,822 to JND.

3 **IV. CONCLUSION**

4 Class counsel achieved an excellent result for 113,839 Class Members in this complex
5 case. Counsel did this work with no guarantee of being compensated for their time and effort.
6 To the contrary, payment of their fees has always been contingent on a successful recovery of
7 damages, creating a substantial risk of nonpayment. Given the results achieved in this actions,
8 and the work counsel performed in achieving it, the payment of fees and costs provided for in
9 the Settlement Agreement is reasonable and fair. For these reasons, Plaintiff respectfully
10 requests that the Court grant his motion for attorneys' fees, costs, and service payment.

11 RESPECTFULLY SUBMITTED AND DATED this 27th day of April, 2018.

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