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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MAUDER and ALICE CHAO; DEOGENESO and GLORINA PALUGOD, and MARITZA PINEL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

AURORA LOAN SERVICES, LLC,

Defendant.

No. 10-cv-03118-SBA

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT[1]

Date: January 13, 2015
Time: 1:00 p.m.
Place: Courtroom 210
Judge: Hon. Saundra B. Armstrong

[1] A proposed order is not filed with this motion as it will be included in the proposed order for final approval of class action settlement to be filed on or before December 29, 2014.

NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that at 1:00 p.m. on January 13, 2015, or as soon as the matter may be heard by the Honorable Saundra B. Armstrong, United States District Court, located at 1301 Clay Street, Oakland, CA 94612, Plaintiffs and Class Counsel will and hereby do move the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order awarding fees and costs to Class Counsel and service awards to representative plaintiffs.

This motion is based on the points and authorities cited in the accompanying memorandum, the contemporaneously-filed Declarations of Class Counsel, the Declarations of Representative Plaintiffs, the May 15, 2014, Declaration of Thomas E. Loeser in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the arguments of Class Counsel; and all files, records and proceedings in this matter.

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I. INTRODUCTION

Plaintiffs Mauder and Alice Chao, Degeneso and Glorina Palugod, and Maritza Pinel ("Plaintiffs") respectfully move this Court for an order granting: (1) attorneys' fees in the amount of $1,575,000.00, representing thirty percent (30%) of the $5.25 million non-reversionary Gross Settlement Fund that Defendant Aurora Loan Services has agreed to pay to resolve the claims against it in this litigation; (2) reimbursement of $185,883 in expenses that Class Counsel incurred in successfully prosecuting the claims in this action; (3) a maximum of $85,000 in claims administration fees and costs to Gilardi & Co., the Court-appointed Claims Administrator, pursuant to the Court's Preliminary Approval Order; and (4) service awards in the amount of $7,500 per Class Representative Plaintiff. Therefore, the overall settlement distribution proposed in this motion is as follows:

Gross Settlement Fund	$5,250,000.00	100%
Attorneys' Fees	($1,575,000.00)	30%
Attorneys' Expenses	($185,883.00)	3.54%
Service Awards	($37,500.00)	0.71%
Settlement Administration	($85,000.00)	1.62%
Net Distribution to the Class	$3,366,617.00	64.13%

II. SUMMARY OF ARGUMENT

The proposed distribution set forth above is fair and reasonable and should be approved. The undersigned law firms – Hagens Berman Sobol Shapiro LLP ("HB"), Law Office of Andrew Oldham ("Oldham"), Abtahi Thigpen LLP ("Abtahi"), and Richardson, Patrick, Westbrook & Brickman, LLC ("RPWB") (collectively, "Class Counsel") – have litigated this Case tenaciously for over four years, fronting all costs and working on a contingency basis against the effectively boundless resources of what was the Lehman Brothers empire. At every stage of this litigation, Aurora – through nationally recognized class action defense counsel – vigorously contested Plaintiffs' claims, Plaintiffs' discovery requests, and Plaintiffs' efforts to certify their claims as a class action. However, Class Counsel persevered and ***expended thousands of hours prosecuting this case***, including reviewing over ***eight million pages of documents***; preparing for and taking or defending ***approximately a dozen depositions***; and preparing and submitting voluminous filings in opposition to ***four different dispositive motions***, and in support of ***two motions for class***

certification, among other countless discovery disputes and filings. *See* Declaration of Thomas E. Loeser in Support of Plaintiffs' Motion For Attorneys' Fees and Service Awards ("11/14/14 Loeser Decl."), ¶ 8. Only as a result of these considerable efforts, has Aurora agreed to a class action settlement that will provide substantial monetary relief to the Settlement Class.[2]

Based on these considerable efforts, the substantial risks assumed by Class Counsel, and the excellent results obtained, the requested fee award is reasonable and appropriate. Indeed, the requested 30% fee ***is substantially less than Class Counsel's total lodestar***, for a fractional multiplier of .65, which further validates the reasonableness of the fee request.[3]

Class Counsel also incurred substantial costs in prosecuting this litigation, including for consulting experts; deposition reporting and transcripts; travel; and litigation support vendors. The single largest driver of litigation expenses was the over $144,000 spent by Class Counsel on storing and making available for review the eight million pages of electronic documents that Aurora produced in discovery. Class Counsel's request for reimbursement of $185,883 for expenses is fully supported by applicable law. Further, the Claims Administrator estimates that its fees and costs related to settlement administration are $76,000.00[4] and, in any event, will not exceed $85,000.00, which is reasonable and should be approved.

Finally, the $7,500.00 service awards requested for the Named Plaintiffs are reasonable in light of the benefit afforded to the Settlement Classes, the time and effort these individuals expended in furtherance of the litigation, the personal and emotional toll that the aggressive defense of the case by Aurora took on them personally, and the risks they endured to vindicate not only their rights, but the rights of all absent Class members. *See Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, at *108-109 (N.D. Cal. Apr. 1, 2011).

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[2] The Settlement creates a non-reversionary common fund of $5,250,000 for the benefit of the Class. Importantly, Aurora effectively no longer exists. All of its assets have been sold and the proceeds paid in the Lehman Bros. bankruptcy estate. The only employees at Aurora are tasked with winding it down. This is the only case known to Class Counsel, of hundreds that were filed against Aurora concerning its loan servicing, that Aurora has agreed to settle on a class-wide basis.

[3] This fractional lodestar multiplier even follows an across-the-board reduction of Class Counsel's lodestar by 20% at each firm to account for the mere possibility of duplication of effort by the firms.

[4] The Claims Administrator may incur additional costs associated with mailing checks to Class members, and any additional fees and expenses incurred will be submitted to the Court for approval.

For these reasons and as set forth in detail below, Plaintiffs respectfully submit that the requested attorneys' fees and expenses, settlement administration expenses, and service awards are fair and reasonable under applicable legal standards, and should be granted by this Court.

III. PROCEDURAL HISTORY

Plaintiffs filed separate class action complaints in August 2010 (No. 10-cv-3118 (N.D. Cal.) and No. 10-cv-3383 (N.D. Cal.)). By Orders dated August 30, and September 13, 2011, the Court largely denied motions to dismiss in the separate cases. Plaintiffs thereafter filed a consolidated complaint incorporating the claims upheld by the Court in the original separate class actions. A Second Consolidated Amended Complaint ("SCAC") was filed on October 4, 2012, and is the operative complaint in this Action. *See* May 15, 2014, Declaration of Thomas E. Loeser in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("5/15/14 Loeser Decl."), ¶ 6.

The SCAC asserts claims against Aurora for (1) Rescission and Restitution (based on fraudulent inducement); (2) Rescission and Restitution (based on failure of consideration); (3) Breach of Contract; (4) Breach of the Implied Covenant of Good Faith and Fair Dealing; (5) Unjust Enrichment; (6) Unfair Debt Collection Practices ("Rosenthal Act"), CAL. CIV. CODE §§ 1788, *et seq.*; and (7) the California Unfair Competition Law ("UCL"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.* Among other things, Plaintiffs alleged that Aurora's Workout Agreements fraudulently induced Plaintiffs and the Settlement Class to make payments to Aurora under the false hope that Aurora would provide an opportunity for Settlement Class Members to cure the arrearages on their mortgage loans with Aurora.

The case was vigorously litigated for over four years. The Named Plaintiffs were *each deposed* and produced extensive discovery. Aurora's Rule 30(b)(6) witnesses were deposed and Aurora produced ***over eight million pages of electronic discovery***, all of which was reviewed by Plaintiffs. There were four separate Rule 12 motions, numerous discovery motions and disputes – including an attempt by Aurora to depose Class Counsel – contested motions for leave to amend, motions to strike, and class certification motions. There were innumerable telephonic meet and confer sessions between the parties. 5/15/14 Loeser Decl., ¶ 8; 11/14/14 Loeser Decl., ¶ 8.

In discovery, Aurora: (a) responded to numerous written discovery requests made by Plaintiffs and propounded extensive written discovery to Plaintiffs; (b) produced multiple versions of extensive loan level data (the "Class Data") to Plaintiffs concerning its customers who were sent Workout Agreements during the Class Period (*i.e.*, the Settlement Class Members); and (c) produced Rule 30(b)(6) witnesses for deposition on certain key topics. 5/15/14 Loeser Decl., ¶ 9.

In particular, the Class Data contained detailed information regarding, *inter alia*, Settlement Class Members' Workout Agreements with Aurora, including: (a) the date of Workout Agreements sent to Settlement Class Members; (b) the amount of any payments made to Aurora under Workout Agreements; (c) the amount of any payments made after the term of a Workout Agreement had expired; (d) whether the borrower was given a HAMP trial plan or Aurora repayment plan after completion of the Workout Agreement; and (d) whether the property underlying the loan associated with a Workout Agreement was foreclosed, as well as additional data. 5/15/14 Loeser Decl., ¶ 10.

Plaintiffs filed a renewed Motion for Class Certification, which the Court has held in abeyance. On November 19, 2013, by order of Court, the Parties and their counsel participated in a Settlement Conference before United States Magistrate Judge Nathaniel Cousins (the "Settlement Conference Process"). In reaching the Settlement Agreement, Class Counsel cooperated with each other and coordinated their efforts and resources to further the best interests of the Settlement Class Members. 5/15/14 Loeser Decl., ¶¶ 11-12.

The Settlement Conference Process has continued to the present. The Parties did not reach an agreement in the initial all-day mediation session with Magistrate Judge Cousins, but continued their discussions thereafter. The Parties eventually reached an agreement in principle and, on December 20, 2013, executed a Memorandum of Understanding with respect to certain material terms. The Parties executed a settlement agreement in mid-February, 2014, but thereafter, a revised data set from Aurora required renegotiation of certain terms of the agreement. The Parties worked diligently to reach a revised resolution in light of the revised data from Aurora. As a result of this Settlement Conference Process, the analysis of the extensive discovery and revised Class Data produced by Aurora, and subsequent negotiations between the Parties with respect to the terms and conditions of this Agreement, the Parties agreed to settle this Action according to the terms of the Agreement

attached as Exhibit A to the 5/15/14 Loeser Decl.

Following the Court's preliminary approval of the Settlement Agreement, additional cooperation of the parties was necessary to refine and fully understand the Class Data and to revise the Class Notice in light of certain Class members having more than one Aurora loan. On September 30, 2014, the Court approved the revised Class Notice, and on October 15, 2014, Class Notice was mailed to 15,135 potential Class member addresses and 8,100 potential Class member emails. *See* 11/14/14 Loeser Decl., Ex. B (Gilardi case report).

This was a vigorously litigated lawsuit. Class Counsel's investigation and the responses to Aurora's vegirous defense of this lawsuit required extensive work by and assistance from Class Representative Plaintiffs. *See* Declarations of G. Palugod, D. Palugod, A. Chao, M. Chao, and M. Pinel, filed concurrently with this motion.

IV. TERMS OF SETTLEMENT

The Agreement resolves the claims of Plaintiffs and the Settlement Class Members relating to Aurora's SFA practices and provides for substantial monetary relief that would not otherwise be available. Because Aurora is no longer an operating entity and no longer services mortgage loans, there was no benefit to obtaining injunctive relief on behalf of the Settlement Class Members. The key terms of the Agreement are described in detail in Plaintiff's Unnoposed Motion for Preliminary Approval (Dkt. No. 218) and incorporated herein by reference. The Settlement Agreement is not conditioned on the Court's approval of the requested fees, expenses or service awards in any amount.

V. UPDATE ON NOTICE PROCESS

Following the Court's preliminary approval of the Agreement, on October 15, 2014, Settlement Class Members were sent notice of the Settlement by first-class mail to their last-known mailing address, as well as by email (where last known email addresses are available from Aurora or obtained through searches by the Claims Administrator) in the form of the Notice of Settlement as amended by the Court pursuant to the Order dated September 30, 2014. To date, Class Counsel has responded to dozens of telephone and email questions from notice recipients to assist them in understanding their options in response to the Class Notice. *See* 11/14/14 Loeser Decl., ¶ 38. The

Claims Administrator has fielded 345 phone calls and responded to 65 information requests by email. *See* 11/14/14 Loeser Decl., ¶ 39 and Ex. B.

As of the filing of this motion, there have been no objections and 4 settlement opt-outs, out of 15,135 Class Notices sent. *See id.*

VI. ARGUMENT

A. The Standard of Review

It is well settled that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393 (1970); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 123 (1885). The purpose of this doctrine is that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) ("*WPPSS*"). These principles are particularly important in complex litigation, where private enforcement is a necessary component of legal compliance. *See, e.g.*, *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Haw. v. Standard Oil Co. of Cal.*, 405 U.S. 251, 266 (1972); *Perma Life Mufflers, Inc. v. Int'l Parts Corp.*, 392 U.S. 134, 139 (1968). Fee awards in successful cases, such as this one, encourage meritorious class actions, and thereby promote private enforcement of, and compliance with, consumer laws.

In considering the amount of attorneys' fees for class counsel where there is a common fund, "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). '"[S]ince the proper amount of fees is often open to dispute and the parties are compromising precisely to avoid litigation, the [district] court need not inquire into the reasonableness of the fees at even the high end with precisely the same level of scrutiny as when the fee amount is litigated."' *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 922 (9th Cir. 2014) (quoting *Staton v. Boeing* Co., 327 F.3d 938, 966 (9th Cir. 2003)).

When using the percentage method, twenty-five percent (25%) is the "benchmark" fee award

in this Circuit, but this amount may be adjusted when "special circumstances" warrant a departure. *In re Bluetooth*, 654 F.3d at 942. Factors that may be considered in making such a departure include: (1) the result obtained; (2) the effort expended by counsel; (3) counsel's experience; (4) counsel's skill; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7) the reaction of the class; (8) non-monetary or incidental benefits, including helping similarly situated persons nationwide by clarifying certain laws; and (9) comparison with counsel's lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002); *Dickerson v. Cable Commc'ns, Inc.*, 2013 WL 6178460, at *4 (D. Or. Nov. 25, 2013) (Simon, J.).[5]

Under either the percentage or the lodestar method, the court must exercise its discretion "to achieve a reasonable result." *In re Bluetooth*, 654 F.3d at 942. Because reasonableness is the goal, "mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002).

B. Thirty Percent of the Gross Settlement Fund to Class Counsel Is a Reasonable Fee Award in this Case

Here, each of the *Vizcaino* factors weigh in favor of granting approval of Plaintiffs' application for a five percent enhancement of the benchmark fee award to 30% of the Gross Settlement Fund. Indeed, even a 30% fee award will not fully compensate Class Counsel for their time, as their lodestar exceeds the amount of the requested fee by over 50%. Accordingly, the requested fee amount is reasonable, appropriate, and well-justified, and should be approved.

1. Class Counsel Have Achieved an Outstanding Monetary Settlement

The results obtained support the requested fee. As noted in Plaintiffs' Motion for Preliminary Approval, the Settlement represents an excellent result for the Class. As a result of Class Counsel's efforts, Aurora has already paid into a common settlement fund totaling $5.25 million for the benefit of the Class. The amount of this fund represents 100% of the statutory maximum recovery under Plaintiffs' Rosenthal Act claim ($500,000), as well as a significant

[5] Indeed, in granting preliminary approval of the Settlement Agreement, the Court recognized the 25% benchmark ***and recognized that this may be a case where departure from the benchmark is warranted***. *See* Dkt. No. 225 at 7:8-18.

percentage of the total payments made by Restitution Class members to Aurora during and following the term of their SFAs (approximately $25 million). Moreover, this amount is ***non-reversionary***; any residual resulting from uncashed checks will not be returned to Aurora, but will either be redistributed to Class members or will revert to a Court-approved *cy pres* recipient depending on the remaining amount. Finally, it is a ***claims-paid*** settlement, meaning Class members will ***automatically*** receive their checks, they are not required to return a claim form or any other material to the Claims Administrator.[6]

It is important to note that Aurora is, at present, a defunct entity. Its entire loan servicing portfolio has been sold to other loan servicers. Its website is no longer in operation. Its successor, Aurora Commercial Corp., exists only to completing the wind down of Aurora's affairs.[7]

Taking account of the monetary recovery in the Settlement, as well as the litigation achievements of Class Counsel, it is clear that Class Counsel have provided a significant benefit to the Class. Given the results obtained and the amount of effort required to achieve that result, the requested fee award is reasonable. *See Laguna*, 753 F.3d at 922 (affirming district court decision to find attorneys' fee award to be fair, reasonable, and adequate because, in part, it was "significantly below the lodestar amount…").

2. Class Counsel Has Expended Thousands of Hours Litigating On Behalf of the Class

Class Counsel's effort also supports the requested fee. As noted above, *see supra*, Section III, and in the 11/14/14 Loeser Decl., and the 5/15/2014 Loeser Decl., this case was vigorously contested by Aurora, and Class Counsel expended extraordinary efforts to marshal the complex and voluminous discovery and documentary evidence required to prove their claims on the merits, defeat multiple and serial dispositive motions, and bring their motions for class certification.

To date, Class Counsel has spent more than 6,000 hours of attorney and staff time on this case. *See* 11/14/14 Loeser Decl., ¶ 20; Abtahi Decl., ¶ 16; Oldham Decl., ¶ 21; Tuck Decl., ¶ 19. As discussed above, Class Counsel: (1) investigated Plaintiffs' claims and interviewed numerous

[6] Though they are permitted to submit proof that they made payments in addition to those set forth in Aurora's records, *i.e.*, to *increase* the amount they are entitled to under the Settlement if Aurora's records are incomplete.

[7] *See* www.auroracommercial.com (last visited October 24, 2014).

witnesses who were affected by Aurora's SFA policies and practices; (2) drafted the complaints; (3) responded to *four* motions to dismiss; (4) served and responded to discovery; (5) reviewed and analyzed over eight million pages of documents produced by Auora; (6) took or defended nine depositions; (7) filed discovery motions and engaged in extensive negotiations regarding the scope of discovery; (8) defended an attempt to depose and disqualify Class Counsel; (9) engaged and consulted leading damages and industry experts; (10) prepared and filed detailed motions for class certification; (11) performed detailed damages calculations; (12) prepared for and attended mediation sessions; (13) negotiated a comprehensive class action settlement with Aurora; (14) filed a motion for preliminary approval of the Settlement; (15) coordinated mailing of the Settlement Notice to the Settlement Class; (16) consulted with Plaintiffs throughout the litigation; and (17) responded to inquiries from Settlement Class Members. *See* 11/14/14 Loeser Decl., ¶¶ 8, 19; Abtahi Decl., ¶¶ 7, 22; Oldham Decl., ¶¶ 6, 20; Tuck Decl., ¶¶ 6, 17. Class Counsel is fully prepared to ensure that the case is brought to a conclusion following final approval, including ensuring that settlement checks are sent out to Settlement Class Members.

The efforts undertaken by Class Counsel to obtain this Settlement on behalf of the Settlement Class support the requested fee.

3. Class Counsel's Experience and Skill Supports the Requested Fee

Class Counsel's skill and experience also weigh in favor of granting the requested fee. As detailed below, Class Counsel have substantial experience prosecuting large-scale complex class actions, and have been leading advocates in litigation across the country against the nation's largest banks. By leveraging their combined litigation expertise and resources, Class Counsel were able to work together efficiently and cooperatively, and were able to successfully litigate against what was once one of the most powerful financial institutions in the world (Lehman Bros.), which was represented by a top defense firm.

Hagens Berman is a nationally recognized law firm specializing in complex class action litigation on behalf of plaintiffs. (5/15/2014 Loeser Decl., Ex. C.) Hagens Berman has played leading roles in major class action cases for approximately twenty years, resulting in recoveries totaling many billions of dollars for the firm's clients and the classes it has represented. *See id.*

Specifically to this case, Hagens Berman has been actively involved in the successful prosecution of class action lawsuits alleging abuses in the area of mortgage modifications by major financial institutions throughout the country. *See* 11/14/14 Loeser Decl., ¶ 6. For example, Hagens Berman served as Co-Lead Counsel in a mortgage modification action against Wells Fargo, which recently received final court approval of settlement and a complete recovery of damages under the Rosenthal Act. *See id*. Hagens Berman is currently litigating another action in this District against Wells Fargo concerning its HAMP mortgage modification practices. *See id.* Hagens Berman has been appointed as lead counsel in multiple consumer cases and other litigation in a variety of industries by numerous courts across the country, including in class action cases involving mortgage lending. *See id.* The experience and skill of Class Counsel are set forth in detail in the 5/15/14 Loeser Decl., the 11/14/14 Loeser Decl., and the declarations (and exhibits) of Andrew Oldham, Ali Abtahi, and Christopher Tuck, filed concurrently with this motion.

The experience of Class Counsel, and the skill they have shown in litigating this case (and other mortgage-related cases), further supports the requested 30% fee award here.

4. Class Counsel Assumed Significant Risks in Light of the Complexity of the Legal and Factual Issues in this Case

The requested fee award is even more reasonable considering the risks and complexity of this litigation. *See Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant circumstance" in applying the percentage fund method); *accord*, *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470-71 (2d Cir. 1974) ("[D]espite the most vigorous and competent of efforts, success is never guaranteed."). Large-scale consumer cases of this type are, by their very nature, complicated and time-consuming. Here, Class Counsel prosecuted this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk. *See* 11/14/14 Loeser Decl., ¶ 8.

In addition, Class Counsel overcame multiple attacks on the pleadings, and discovery obstacles, and had undertaken to twice brief class certification motions before this Court, a rigorous process that required significant legal, factual and expert analysis. There has been at all times the real possibility of an unsuccessful outcome and no fee of any kind, despite the significant costs

advanced by Class Counsel on behalf of the Class. This risk was significantly heightened by the closure of Aurora, the sale of all its assets, and the payment of Aurora's remaining liquidity into the Lehmon Bros. bankruptcy estate. To Class Counsel's knowledge, this case is the first mortgage modification class action for a California class where a class-wide settlement has been obtained. There were undoubtedly risks in proceeding with the litigation, and Class Counsel have hedged against these risks by locking in substantial gains for Settlement Class Members. Accordingly, the risk of non-payment and the complexity of the issues in this case further support Class Counsel's requested fee.

5. The Reaction of The Class to Date Supports the Requested Fee

The Court-approved notice informed Settlement Class Members that Class Counsel would seek an award of attorneys' fees up to 30% of the Gross Settlement Fund, plus expenses. *See* Dkt. No. 219-2 at 2. The notice also informed Settlement Class Members of their ability to object to the fee and expense request.[8] *Id.* at 5. To date, however, there are no objections to Class Counsel's request for attorneys' fees (although approximately 15,100 notices were mailed to Settlement Class Members). (11/14/14 Loeser Decl., ¶ 39.) This is another factor for the Court's consideration, and weighs heavily in favor of approving Class Counsel's fee request. *See, e.g., Mark v. Valley Ins. Co.*, 2005 WL 1334374, at *2 (D. Or. May 31, 2005) (considering as factor on motion for final approval the absence of objections by class members to settlement). The paucity of objections by Class Members to Class Counsel's fee and expense request to date further supports finding that it is reasonable.

6. Class Counsel's Lodestar Supports the Requested Fee

A comparison with Class Counsel's lodestar further demonstrates that the requested fee is reasonable. *See Vizcaino*, 290 F.3d at 1050 ("the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted"). The purpose of the lodestar cross-check is as a tool to help assess whether special circumstances justify deviating from the benchmark fee award. *See id.*; *In re Bluetooth*, 654 F. 3d at 942. The "cross-check calculation need entail neither

[8] This brief and supporting documentation are being filed prior to the objection deadline and will also be posted on the website established for the Settlement, in compliance with the Ninth Circuit's directive in *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 994-95 (9th Cir. 2010).

mathematical precision nor bean counting…. [courts] may rely on summaries submitted by the attorneys and need not review actual billing records." *Covillo v. Specialty's Café*, 2014 U.S. Dist. LEXIS 29837, at *21-22 (N.D. Cal. Mar. 6, 2014) (quoting *In re Rite Aid Corp. Secs. Litig.*, 396 F. 3d 294, 306-07 (3d Cir. 2005)). Here, the cross-check shows that the 30% request will not result in an unreasonable windfall fee regardless of any plausible adjustments to the lodestar. Specifically, Class Counsels' aggregate combined lodestar (after an across-the-board 20% reduction to account for the possibility of duplication of effort across the four firms) is approximately $2.4 million to date (not including time that remains to be spent through final approval and to work with the Claims Administrator), broken down by firm as follows:

	Rate Range	Hours	Lodestar
Hagens Berman	$170-$900	2,228	$883,730
Andrew Oldham	$150 - $550	1,766	$689,288
Abtahi Thigpen	$375 - $550	1,639	$563,070
Richardson Patrick Westbrook & Brickman	$120 - $600	920	$274,695
Total	(avg.) $368	**6,553**	**$2,410,783**

See 11/14/14 Loeser Decl., ¶¶ 16-34, Ex. A; Abtahi Decl., ¶¶ 13-21, Ex. B; Oldham Decl., ¶¶ 16-28, Ex. B; Tuck Decl., ¶¶ 14-27, Ex. B. Summary descriptions of the work performed by each attorney and paralegal together with summaries of their backgrounds are provided in the accompanying declarations of Class Counsel. *See id*.

Class Counsel's lodestars are all based on routine, contemporaneous timekeeping. *See id.* Moreover, the above lodestar amounts are ***net*** amounts that reflect the exercise of billing discretion, as each firm has written off time by timekeepers with *de minimus* billings to this case, as well as additional time. ***And each firm has taken a 20% lodestar write-off to account for the possibility of duplication of effort across the four firms***. 11/14/14 Loeser Decl., ¶¶ 19, 33; Abtahi Decl., ¶ 21; Oldham Decl., ¶ 28; Tuck Decl., ¶ 27. Many of the timekeepers have had their hourly rates approved in this and other district courts in connection with comparable fee applications, and are within the range of rates normally and customarily charged by attorneys and paralegals of similar qualifications and experience in cases of this kind. 11/14/14 Loeser Decl., ¶ 21; Abtahi Decl., ¶ 17; Oldham Decl., ¶ 22; Tuck Decl., ¶ 20.

The lodestar cross-check supports an enhancement to the benchmark fee award in this case because Class Counsel's lodestar exceeds the requested fee and results in a multiplier substantially less than 1, roughly 0.65. This fractional multiplier is far less than the typical range for successful common fund cases like this. Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases. *See Vizcaino*, 290 F.3d at 1051 n.6 (finding that, in approximately 83 percent of the cases surveyed by the Court, the multiplier was between 1.0 and 4.0, with a "bare majority … 54% … in the 1.5–3.0 range"). Accordingly, the fact that the lodestar cross-check results in a multiplier that is far less than those typically awarded in common fund cases further supports Class Counsel's fee request as reasonable. *See Cordy v. USS-POSCO Indus.*, 2014 WL 1724311, at *2 (N.D. Cal. Apr. 28, 2014) (approving fee award of 30% of common fund where lodestar exceeded requested fee and lodestar cross-check resulted in a multiplier of .95).

7. Awards in Similar Cases Demonstrate that Class Counsel Seek a Reasonable Fee Award

As described above, Class Counsel's request for a 30% fee is reasonable under the circumstances and is justified by the *Vizcaino* factors. Since establishing the 25% benchmark in *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989), courts within the Ninth Circuit have routinely awarded fees above this benchmark in various types of complex litigation. *See, e.g.*, *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award equal to 33% of fund); *Walsh v. Kindred Healthcare*, 2013 WL 6623224, at *3 (N.D. Cal. Dec. 16, 2013) (awarding 30% of $8.25 million settlement fund in a consumer class action where additional injunctive relief was obtained); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 149692, at *2 (N.D. Cal. Jan. 14, 2013) (30%); *Dennings v. Clearwire Corp*, 2013 WL 1858797, at *6-8 (W.D. Wash. May 3, 2013) (approving fees amounting to 35.78% of the common fund); *Meijer, Inc. v. Abbott Labs.*, No. 4:07-cv-05985, Docket No. 514 (N.D. Cal. Aug. 11, 2011) (33 1/3%).[9] Indeed, more than one district court in this Circuit has recognized that "in most

[9] *See also Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 49482 (N.D. Cal. Apr. 22, 2010) (awarding fee of 30% of the $15 million settlement fund); *In re CV Therapeutics, Inc. Secs. Litig.*, 2007 U.S. Dist. LEXIS 98244 (N.D. Cal. Apr. 4, 2007) (30%); *In re Pac. Enters. Secs. Litig.*, 47 F.3d at 379 (affirming award equal to 33% of common fund); *Brailsford v. Jackson Hewitt Inc.*, 2007 U.S. Dist. LEXIS 35509 (N.D. Cal. May 3, 2007) (awarding fee equal to 30% of settlement fund); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *59 n.12 (C.D. Cal.

common fund cases, the award exceeds [the 25%] benchmark." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047-48 (N.D. Cal. 2007) (referencing *Activision*, 723 F. Supp. at 1377-78, and stating that '"nearly all common fund awards range around 30%' … [and] 'absent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate should be set at 30%'"); *see also Vedachalam v. Tata Consultancy Servs., Ltd.*, 2013 WL 3941319, at *2 (N.D. Cal. Jul. 18, 2013) (noting that 30% of common fund is "well within the usual range of percentages awarded in similar cases," and citing the "many cases in this circuit that have granted awards of 30% or more").

VII. THE COURT SHOULD APPROVE REIMBURSEMENT OF CLASS COUNSEL'S EXPENSES

Class Counsel seek reimbursement of their out-of-pocket litigation expenses, which they advanced throughout the course of this litigation, in the amount of $185,883 to be paid from the Gross Settlement Fund. These expenses are itemized and described in the accompanying Class Counsel declarations, which affirm that they were reasonable and necessary to the litigation. *See* 11/14/14 Loeser Decl., ¶ 35; Abtahi Decl., ¶ 22; Oldham Decl., ¶ 29; Tuck Decl., ¶ 28. The single largest driver of these expenses was the over $144,000 spent on storing and making available for review the over eight million pages of ESI discovery produced by Aurora. *See* 11/14/14 Loeser Decl., ¶ 35. Other expenses include filing fees, travel costs, mediator fees, deposition fees, and expert costs. *See id.*

These expenses have been reasonably and necessarily incurred and are recoverable from the proceeds of the common fund.[10] *See, e.g.*, *Wininger v. SI Mgmt., L.P.*, 301 F.3d 1115, 1120-21 (9th Cir. 2002) (noting that "jurisdiction over a fund allows for the district court to spread the costs of the litigation among the recipients of the common benefit"); *Vincent v. Hughes Air West, Inc.*,

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Jun. 10, 2005) (noting that more than 200 federal cases have awarded fees higher than 30%); *Hernandez v. Kovacevich "5" Farms*, 2005 U.S. Dist. LEXIS 48605, at *25-31 (E.D. Cal. Sept. 30, 2005) (33.3% fee); *Linney v. Cellular Alaska P'ship*, 1997 U.S. Dist. LEXIS 24300, at *20 (N.D. Cal. Jul. 18, 1997) (33.3% fee); *In re Activision Secs. Litig.*, 723 F. Supp. 1373, 1379 (N.D. Cal. 1989) (32.8% fee) (decided after *Paul, Johnson*, 886 F.2d 268).

[10] Insofar as litigation expenses may continue to accrue between now and final approval (*i.e.*, expenses associated with this motion, any responses thereto, and attendance at the final approval hearing), Class Counsel may submit a supplementary request updating their expenses. However, even though Class Counsel will undoubtedly spend numerous additional hours in administering the settlement after final approval, Class Counsel will not seek reimbursement for that additional time.

557 F.2d 759, 769 (9th Cir. 1977); *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement.").

The Settlement Notices that were mailed to members of the Settlement Class expressly stated that Class Counsel would seek to recover expenses to be approved by the Court as well as the fees and costs of the Claims Administrator. *See* Dkt. No. 219-2 at 2. As noted above, there are currently no objections from Settlement Class Members to Class Counsel's request for expenses (out of approximately 15,132 who were sent a notice). *See* 11/14/14 Loeser Decl., ¶ 39. This further demonstrates that the request for expense reimbursement and costs of the claims administration is reasonable. Accordingly, the Court should grant the expense reimbursement to Class Counsel.

VIII. THE COURT SHOULD APPROVE THE FEES AND EXPENSES OF THE CLAIMS ADMINISTRATOR

By this Motion, Class Counsel also seek approval of no more than $85,000.00 in claims administration fees and costs incurred by the Claims Administrator to effectuate the Court-approved notice of this settlement and claims process. *See* 11/14/14 Loeser Decl., ¶ 37. In its Preliminary Approval Order, the Court approved Gillardi & Co., LLC as the Claims Administrator, and approved the proposed notice plan as providing the "best notice practicable," and "reasonably designed to reach all individuals who would be bound by the Settlement." Dkt. No. 225 at ¶ 8. Since preliminary approval of the settlement, the Claims Administrator has followed the notice plan as set forth in the Court's order, and has incurred fees and costs in doing so.

The Claims Administrator's fees and costs to date are $36,584.90. Declaration of Kenneth Jue on Behalf of Claims Administrator at ¶ 6; Ex. A. These fees reflect the scope of services requested to be performed in connection with the notice and claim process, including coordinating and distributing approximately 15,135 class notices by U.S. Mail; processing address updates and preparing for remailing of over 1,100 class notices returned as undeliverable; establishing a settlement website where Settlement Class Members can review case documents and access claim

forms; processing returned claim forms; and establishing a toll free phone support center. Gilardi & Co. estimates that future administrative costs (associated with processing disputes, opt-outs, and objections, and telephone, email support and distribution services) will not exceed $48,415.10.[11] *Id.* at ¶ 7.

The notice that was sent to approximately 15,135 Settlement Class Members advised that the fees and costs of the Claims Administrator would be paid from Gross Settlement Fund, Dkt. No. 219-2 at 2, and to date, there have been no objections on that basis. *See* 11/14/14 Loeser Decl., ¶ 39. The Court should approve the fees and costs of the Claims Administrator as reasonable and necessary to effectuate the Settlement.

IX. THE PROPOSED SERVICE AWARDS TO THE CLASS REPRESENTATIVES ARE REASONABLE

The Agreement provides for service awards to the Class Representatives ($7,500) as compensation for their services as Class Representatives. Class Representatives were active participants in this contentious litigation for over four years. They had to search for and review their own documents, as well as documents contained in Aurora's loan files that concerned their loans. They listened to and reviewed recordings of their own calls to Aurora and those made on their behalf. They were deposed at length and contentiously. They attended the mediation session which led to the Agreement, and were consulted throughout the litigation and settlement process. Class Representatives were of substantial assistance to Class Counsel in prosecuting this action on behalf of all of the Settlement Class Members. 5/15/14 Loeser Decl., ¶¶ 28-30. The Class Representative Plaintiffs describe the work they did in prosecuting this action in their declarations filed with this motion. *See* G. Palugod Decl., D. Palugod Decl., A. Chao Decl., M. Chao Decl., M. Pinel Decl. (collectively, the "Class Rep. Declarations"). The requested service awards are reasonable and should be granted. *See, e.g., Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995).

The Ninth Circuit and other federal courts have repeatedly approved the award of service payments to class representatives to recognize their time, efforts, and the risks they undertake on behalf of a class. *See, e.g., Rodriguez v. West Pub'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)

[11] Class Counsel will provide the Court with an updated fees and expense number for the Claims Administrator at the final fairness hearing.

(service awards "are fairly typical in class action cases"); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007); *Van Vranken*, 901 F. Supp. at 300. Service awards are generally provided after a settlement or verdict has been achieved. *Rodriguez*, 563 F.3d at 959. Such awards 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 to recognize their willingness to act as private attorneys general. *Id.* at 958-959.

Under *Staton*, such awards should be evaluated using "relevant factors, includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, … the amount of time and effort the plaintiff expended in pursuing the litigation … and reasonabl[e] fear[s of] workplace retaliation." *Staton*, 327 F.3d at 977 (internal quotation marks and citation omitted). District courts are required to scrutinize "all incentive awards to determine whether they destroy the adequacy of the class representatives." *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013). Here, the Class Representatives satisfy the Ninth Circuit's requirements for service awards. *See also Van Vranken*, 901 F. Supp. at 300 (approving $50,000 participation award for the representative Plaintiff).

The Class Representatives took very real steps to advance the interests of the Settlement Class Members in this litigation. 5/15/14 Loeser Decl., ¶¶ 28-30; Class Rep. Declarations. They searched their files and produced their documents and other information they had relating to their claims against Aurora. *See id*. They were each deposed at length over a three-day period. *See id.* They actively participated in the prosecution of the case, including reviewing pleadings and documents concerning their loans and engaging in multiple telephone and email exchanges with Class Counsel. Moreover, they took the extraordinary step of agreeing to serve as Class Representatives, with all of the attendant duties, and by agreeing to put the interests of the Class ahead of their own. *See id*. They were kept informed of developments in the case, and when asked, they were always willing to review documents and filings related to the case and provide their views and insights. They participated in the mediation and settlement process, including personally attending the all-day mediation session with Judge Cousins. *See id.* As a result of their

continued efforts, the Settlement Class Members will benefit from substantial monetary relief.

This litigation would not have been possible without the Plaintiffs' involvement in bringing their claims to the attention of Class Counsel and assisting throughout the litigation in their duties as Class Representatives. *See In re Cont'l Ill. Secs. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992) ("Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable.").

Comparing the amount to which the Class has benefitted from the Plaintiffs' representation to the amount of the proposed awards is a compelling argument in favor of approving the awards: the $37,500.00 in total service awards requested represents less than one percent (0.7%) of the common fund. Additionally, the requested service awards in this case are modest compared to the awards granted in other complex litigation in this District and Circuit.[12]

The proposed service awards also do not implicate the concerns expressed by the Ninth Circuit in *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157 (9th Cir. 2013). In *Radcliffe*, evidence indicated that class counsel used "conditional incentive awards" to coerce support for the settlement. *See id*. at 1164-65. Here, the Settlement Agreement did not provide for conditional incentive awards. Class Counsel never used incentive awards to pressure class representatives to accept the proposed settlement. *See* 11/14/14 Loeser Decl., ¶¶ 14-15; Oldham Decl., ¶¶ 14-15; Abtahi Decl., ¶¶ 11-12; Tuck Decl., ¶¶ 11-13. On the contrary, Plaintiffs understood and agreed that their duty was to represent the interests of the Class as a whole, and that their support for the

[12] *See, e.g.*, *Razilov v. Nationwide Mut. Ins. Co.*, 2006 WL 3312024, at *2-4 (D. Or. Nov. 13, 2006) (approving incentive award of $10,000 as reasonable); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 WL 671334 (D. Or. Feb. 26, 2007) (finding an incentive award of $10,000 reasonable, when awards to unnamed class members were as little as $150); *Ralston v. Mortg. Investors Group, Inc.*, 2013 WL 5290240, at *5 (N.D. Cal. Sept. 19, 2013) (approving service payment of $12,500); *Vedachalam*, 2013 WL 3941319 (approving service awards of $25,000 and $35,000 for class representatives); *Meijer, Inc. v. Abbott Labs*, No. 4:07-cv-05985, Docket No. 514 (N.D. Cal. Aug. 11, 2011) (granting award of $60,000 per class representative on $52 million settlement); *Lewis v. Wells Fargo & Co.*, No. 08-2670, Docket No. 315 (N.D. Cal. Apr. 29, 2011) (approving service awards of $22,000 and $20,000 for named plaintiffs); *In re CV Therapeutics*, No. 03-3709, 2007 U.S. Dist. LEXIS 98244, at *5 (approving $26,000 award "for reimbursement of time and expenses incurred in representing the class").

Settlement was in no way contingent on whether the Court chose to award them any reimbursement for the time they invested in the lawsuit. *See id.*; *See also* A. Chao Decl., ¶¶ 24-25; M. Chao Decl., ¶¶ 6-7; G. Palugod Decl., ¶¶ 25-26; D. Palugod Decl., ¶¶ 6-7; M. Pinel Decl., ¶¶ 24-25.

In addition, although the amount of the service awards was disclosed in the Notice, to date, there are no objections from Settlement Class Members to the request for service awards. 11/14/14 Loeser Decl., ¶ 39. For all of these reasons, the Court should award the $7,500 service awards for each Class Representative Plaintiff requested here.

X. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court award (1) attorneys' fees to Class Counsel in the amount of $1,575,000 (*i.e.*, thirty percent of the $5,250,000 Gross Settlement Fund); (2) reimbursement of $185,883 in expenses that Class Counsel incurred in connection with the prosecution of this action; (3) up to $85,000 in claims administration fees and costs to Gillardi & Co., LLC; and (4) service awards of $7,500 for each of the Named Class Representative Plaintiffs.

Dated: November 14, 2014

Respectfully submitted,

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