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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 JEFFREY CHEN,

24 Plaintiff,

25 v.

26 CHASE BANK USA, N.A., and DOES 1-
27 100,

28 Defendants.

Case No. 3:19-cv-01082-JSC

**PLAINTIFF’S MOTION FOR AN AWARD OF
ATTORNEYS’ FEES AND COSTS AND
CLASS REPRESENTATIVE INCENTIVE
AWARD**

Date: June 25, 2020

Time: 9:00 AM

Judge: Hon. Jacqueline Scott Corley

Courtroom: E-15th Floor

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NOTICE OF MOTION AND MOTION

1
2 PLEASE TAKE NOTICE that on June 25, 2020, at 9:00 AM, before the Hon. Jacqueline
3 Scott Corley, in Courtroom E, 15th Floor of the San Francisco Courthouse of the United States
4 District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco,
5 California, Plaintiff Jeffrey Chen and Plaintiff’s Counsel¹ will and hereby do, move the Court,
6 under Rule 23 of the Federal Rules of Civil Procedure, for an Order granting their application for
7 an award of attorneys’ fees and costs and an incentive award to the Class Representative in this
8 action.

9 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points
10 and Authorities below, the Joint Declaration of Plaintiff’s Counsel filed herewith, the papers filed
11 in support of the Motion for Final Approval, the record in this case, and any additional argument
12 or evidence the Court may consider.

13
14 DATED: March 24, 2020

RESPECTFULLY SUBMITTED,

**GALLO LLP
DARR LAW LLC
VALERIAN LAW, P.C.**

15
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17
18 By: /s/ Dominic Valerian
19 Dominic Valerian
20 Attorneys for Plaintiff

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¹ “Plaintiff’s Counsel” are Ray Gallo of Gallo LLP (“GALLO”), Alexander Darr of Darr Law
LLC (“DARR”), and Dominic Valerian of Valerian Law, P.C. (“VALERIAN”).

MEMORANDUM OF POINTS AND AUTHORITIES**1. Introduction**

Pursuant to the settlement (the “Settlement”) reached between Plaintiff Jeffrey Chen and Defendant Chase Bank USA, N.A. now known as JPMorgan Chase Bank, N.A. (“Chase”), Plaintiff and Plaintiff’s Counsel respectfully request the Court approve this application for attorneys’ fees and costs and an incentive award to the Class Representative. Plaintiff’s Counsel seek an attorneys’ fees award of \$176,473.93, representing a “negative” multiplier of .67 on counsel’s lodestar of \$263,957.50 (as of March 9, 2020), and reimbursement of \$8,526.07 in out-of-pocket expenses. The requested amount is fair, adequate, and reasonable based upon the relief achieved in this action, the work required to obtain such relief, the contingent nature of the representation, and the other relevant factors. Plaintiff’s Counsel further request an incentive award of \$5,000—the amount deemed presumptively reasonable in this District—for Class Representative Jeffrey Chen for the risk he undertook in bringing these claims and his significant involvement in this litigation over the past year and a half.

2. Case History

Plaintiff’s Counsel began investigating this matter in November 2018 when Mr. Chen brought it to their attention. (*See* Joint Declaration of Plaintiff’s Counsel (“Joint Decl.”) ¶ 6.) Before bringing suit, Plaintiff’s Counsel reviewed Mr. Chen’s documentary evidence, researched applicable law, and thoroughly evaluated Mr. Chen’s claims. (*Id.*)

On January 28, 2019, Mr. Chen filed this lawsuit in Alameda County Superior Court. (Dkt. No. 1-1.) The Complaint alleges that Chase denied Mr. Chen’s credit card application and sent him an adverse action notice citing “previous unsatisfactory relationship with this bank” as the sole reason for denying his credit application. (Dkt. No. 1-1 ¶¶ 12-13, 18-19, Ex. A.) The Complaint alleges that Chase violated ECOA’s notice provision, 15 U.S.C. § 1691(d), because the adverse action notice it sent Mr. Chen did not include the specific reason(s) for the adverse action taken or disclose Mr. Chen’s right to a statement of those reasons. (Dkt. No. 1-1 ¶¶ 12-17, 35.) The Complaint seeks certification of a nationwide class of persons to whom Chase sent a letter giving “previous unsatisfactory relationship with this bank” as the only reason for denying a

1 credit application between January 28, 2014 and the date of class certification, punitive damages
2 of up to \$500,000 (the statutory cap), injunctive relief, and attorneys' fees and costs. (*Id.* ¶ 23;
3 Prayer for Relief ¶¶ 1-3.) Chase removed the case to the Northern District of California, it was
4 assigned to this Court, and the parties consented to the jurisdiction of a magistrate judge pursuant
5 to 28 U.S.C. § 636(c). (Dkt. Nos. 9, 16.)

6 On March 6, 2019, Chase moved to dismiss the Complaint on the grounds that: (1) its
7 reason for denying Mr. Chen's application was sufficiently specific, and (2) Mr. Chen lacked
8 statutory standing because he did not allege discrimination or confusion. (Dkt. No. 8.) Plaintiff
9 filed his Opposition on March 20, 2019 (Dkt. No. 19) and the Court heard oral argument on April
10 25, 2019. On May 6, 2019, the Court issued an Order denying Chase's Motion to Dismiss
11 because: (1) Plaintiff need not allege discrimination to fall within the zone of interests protected
12 by ECOA's notice requirement, (2) Plaintiff plausibly alleged confusion (assuming *arguendo* that
13 ECOA imposed such a requirement), and (3) Plaintiff adequately alleged that Chase's statement
14 of reasons lacked the specificity ECOA requires. (Dkt. No. 23.)

15 The parties exchanged initial disclosures on May 23, 2019 and each side served written
16 discovery requests shortly thereafter. (Joint Decl. ¶ 9.) Chase answered the Complaint on May 28,
17 2019. (Dkt. No 28.) An initial case management conference was held on May 30, 2019, at which
18 the Court scheduled an early motion for summary judgment based on Chase's contention that Mr.
19 Chen lacked statutory standing and received a sufficiently specific adverse action notice because
20 he allegedly knew why his credit application was denied. (Joint Decl. ¶ 9.)

21 On June 18, 2019, the parties scheduled a full day of mediation with Hon. Wayne D.
22 Brazil (Ret.) for July 17, 2019 at JAMS in San Francisco. (Joint Decl. ¶ 10.) To facilitate the
23 mediation and conserve resources, the parties agreed to stay formal discovery and informally
24 exchange information. (*Id.*) As part of this exchange, Chase produced approximately 650 pages of
25 records pertaining to its relationship with Mr. Chen and provided the size of the class and the
26 number of at-issue letters it sent during the class period. (*Id.*) A week before the mediation, the
27 parties submitted and exchanged detailed mediation statements, which thoroughly analyzed the
28

1 relevant law, facts, and the litigation risks both sides face. (*Id.*)

2 On July 17, the parties spent a full day in mediation with Judge Brazil. (Joint Decl. ¶ 11.)
 3 The parties did not reach an agreement that day but made substantial progress and continued to
 4 negotiate over the following weeks. (*Id.*) The parties reached a settlement in principle on August
 5 9, 2019. (*Id.*) Chase prepared the first draft of the settlement agreement and sent it to Plaintiff's
 6 Counsel on September 18, 2019. (*Id.*) Two months of extensive negotiations concerning the final
 7 terms of the Settlement followed. (*Id.*) On November 22, 2019, the parties executed a
 8 comprehensive Class Action Settlement Agreement and Release. (*Id.*)

9 Plaintiff filed his Preliminary Approval Motion on November 22, 2019 and the Court
 10 heard the matter on December 12, 2019. (Joint Decl. ¶ 12.) At the preliminary approval hearing,
 11 the Court requested several revisions to the settlement agreement and expressed concern with the
 12 cost of settlement administration. (*Id.*)

13 After the preliminary approval hearing, the parties revised the settlement agreement to
 14 address the Court's concerns and obtained additional settlement administration bids. (Joint Decl.
 15 ¶ 13.) On January 13, 2020, Plaintiff's Counsel submitted a revised Class Action Settlement
 16 Agreement and Release (Dkt. No. 51, Ex. 1 ("Agreement")) and summarized the updated bid
 17 from the proposed settlement administrator Kurtzman Carson Consultants LLC ("KCC"). (Joint
 18 Decl. ¶ 13.) KCC's revised proposal capped administration costs at \$52,000 contingent upon
 19 there being no changes to the projected scope of work, a class size of 18,183 members, 95% of
 20 class members receiving email notification, mailed notification being sent to approximately 7,000
 21 class members, and a 10% claims rate.² (*Id.*) On January 16, 2020, having considered the parties'
 22 supplemental submission, the Court granted preliminary approval of the Settlement. (Dkt. No 52.)

23 **3. The requested attorneys' fees are fair, reasonable, and appropriate.**

24 In a class action settlement, a court may award reasonable attorneys' fees and costs as
 25 authorized by law or by the parties' agreement. *See* Fed. R. Civ. P. 23(h). Plaintiff's Counsel are
 26

27 ² Plaintiff's Counsel had previously estimated the claims rate at 7% based on an average claims
 28 rate of 7.37% in four similar cases involving consumer finance claims that KCC identified. (Dkt.
 No. 43 at 13:20.)

1 entitled to recover their reasonable attorneys’ fees in this action because: (1) the Settlement
 2 provides for Chase to pay Class Counsel’s fees and costs in an amount awarded by the Court of
 3 up to \$185,000 (Agreement § 3.4(a)), (2) Plaintiff is entitled to recover his attorneys’ fees for
 4 bringing a successful action under the Equal Credit Opportunity Act (15 U.S.C. § 1691e(d)), and
 5 (3) Plaintiff satisfies the criteria for an award of attorneys’ fees under California Code of Civil
 6 Procedure § 1021.5.³

7 The lodestar method is the appropriate method of determining attorneys’ fees here as the
 8 fees are being paid separately from the class relief and the Settlement includes a significant
 9 injunctive component that is not easily monetized. *See, e.g., In re Bluetooth Headset Liab. Litig.*
 10 (*“Bluetooth”*), 654 F.3d 935, 941 (9th Cir. 2011) (“The ‘lodestar method’ is appropriate in class
 11 actions brought under fee-shifting statutes ... where the relief sought – and obtained – is often
 12 primarily injunctive in nature and thus not easily monetized.”). Under the lodestar method, a
 13 “lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably
 14 expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate
 15 for the region and for the experience of the lawyer.” *Bluetooth*, 654 F.3d at 941 (citing *Staton v.*
 16 *Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)). The district court may adjust this lodestar figure
 17 “upward or downward by an appropriate positive or negative multiplier reflecting a host of
 18 reasonableness factors.” *Id.* at 941-42 (citations and internal quotation marks omitted). These
 19 factors include the quality of representation, the benefit obtained for the class, the complexity and
 20 novelty of the issues presented, the risk of nonpayment, and the preclusion of other employment
 21

22 ³ California Code of Civil Procedure § 1021.5 authorizes an award of attorneys’ fees “to a
 23 successful party ... in any action which has resulted in the enforcement of an important right
 24 affecting the public interest if . . . a significant benefit, whether pecuniary or nonpecuniary, has
 25 been conferred on the general public or a large class of persons . . .” Cal. Code Civil Proc. §
 26 1021.5. This action satisfies each of these requirements. *See, e.g., Beasley v. Wells Fargo Bank*,
 27 235 Cal. App. 3d 1407, 1418 (1991) (action challenging bank fees as a liquidated damage
 28 qualified as a consumer protection action with important public interests at stake) (overruled on
 other grounds); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1171 (C.D. Cal. 2010)
 (consumers seeking to vindicate a \$1,000–\$2,000 repair could not be expected to litigate against
 Hyundai’s demonstrably robust and resourceful defenses thus necessity and financial burden of
 private enforcement made §1021.5 award appropriate).

1 by the attorney. *Id.* at 942 n.7. Courts employing the lodestar method need not perform a
 2 “crosscheck” using the percentage method. *In re Hyundai and Kia Fuel Economy Litigation*, 926
 3 F.3d 539, 571 (9th Cir. 2019).

4 While Plaintiff bears the burden of proving that the hours and rates were reasonable and
 5 that a multiplier is appropriate, “the determination of fees ‘should not result in a second major
 6 litigation,’ and ‘trial courts need not, and indeed should not, become green-eyeshade
 7 accountants.’ Rather, the ‘essential goal in shifting fees (to either party) is to do rough justice, not
 8 to achieve auditing perfection.’” *Parsons v. Ryan*, ___ F.3d ___, 2020 WL 466709, at *11 (9th
 9 Cir. Jan. 29, 2020) (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)).

10 **A. Plaintiff’s Counsel’s hourly rates are reasonable.**

11 “The first step in the lodestar analysis requires the court to determine a reasonable hourly
 12 rate for the fee applicant’s services. This determination involves examining the prevailing market
 13 rates in the community charged for similar services by lawyers of reasonably comparable skill,
 14 experience, and reputation.” *Cotton v. City of Eureka*, 889 F.Supp.2d 1154, 1167 (N.D. Cal.
 15 2012). The “relevant community” for the purposes of determining the reasonable hourly rate is
 16 the district in which the lawsuit proceeds. *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997).
 17 Evidence of prevailing market rates may include declarations by the plaintiff’s attorneys and rate
 18 determinations in other cases. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d
 19 403, 407 (9th Cir. 1990).

20 Plaintiff requests that the Court approve the following hourly rates for attorneys and a
 21 paralegal who worked on this matter:

Professional	Firm	Position	Hourly Rate	Years of Experience
Ray Gallo	GALLO	Partner	\$750	28
Dominic Valerian	GALLO / VALERIAN	Partner	\$550	14
Alexander Darr	DARR	Partner	\$475	9
Marc van Anda	GALLO	Paralegal	\$225	8

1 (Joint Decl. ¶ 27.) Counsel’s rates are well within or below the prevailing rates in this district for
 2 personnel of comparable experience, skill, and reputation litigating class actions and courts in this
 3 district have approved Gallo, Valerian, and Van Anda’s rates before. (*Id.* ¶¶ 32-37 (summarizing
 4 Plaintiff’s Counsel’s qualifications), ¶ 39 (summarizing the approval of Gallo, Valerian, and Van
 5 Anda’s rates in *Tsyn v. Wells Fargo Advisors, LLC*, No. 14-cv-02552-LB (N.D. Cal. Nov. 1,
 6 2018), *Matera v. Google LLC*, No. 5:15-cv-04062-LHK (N.D. Cal. Feb. 9, 2018), and *Bottoni v.*
 7 *Sallie Mae, Inc.*, No. C 10-03602 LB, 2013 WL 12312794 (N.D. Cal. Nov. 21, 2013)); *see also*
 8 *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07–05923 WHA, 2015 WL 2438274, at *5 (N.D.
 9 Cal. May 21, 2015) (finding hourly rates between \$475-\$975 for partners and \$300-\$490 for
 10 associates reasonable in a consumer class action)); *see also In re Magsafe Apple Power Adapter*
 11 *Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *12 (N.D. Cal. Jan. 30, 2015) (“In the Bay
 12 Area, reasonable hourly rates for partners range from \$560 to \$800, for associates from \$285 to
 13 \$510, and for paralegals and litigation support staff from \$150 to \$240.”); *Wilson v. Tesla, Inc.*,
 14 No.17-cv-03763-JSC, 2019 WL 2929988, at *12 (N.D. Cal. 2019) (approving hourly rates of
 15 \$742 for a 2002 graduate and \$455 for a 2012 graduate in a wage and hour class action).

16 **B. The time expended by Plaintiff’s Counsel was reasonable.**

17 Plaintiff’s Counsel have spent 510.5 hours prosecuting and resolving the claims in this
 18 case through March 9, 2020 and expect to expend at least 20 more hours through the resolution of
 19 this action. (Joint Decl. ¶¶ 27-28.) Contemporaneous time entries reflecting the work by
 20 Plaintiff’s Counsel are attached as Exhibit 1 to the Declaration of Plaintiff’s Counsel. (*Id.* ¶ 29.)
 21 Plaintiff’s Counsel’s time was spent on the following tasks, among others: (1) investigating and
 22 evaluating Plaintiff’s claims and preparing the Complaint, (2) successfully opposing Chase’s
 23 Motion to Dismiss, (3) preparing for and participating in mediation, (4) researching and analyzing
 24 legal and factual issues, (5) negotiating and documenting the Settlement Agreement, and
 25 (6) seeking Court approval of the Settlement. (*Id.* ¶¶ 30, Ex. 1.)

26 The time Plaintiff’s Counsel devoted to this case was reasonable given the stakes, the
 27 novelty and complexity of the issues presented, and the substantial resources Chase dedicated to
 28

1 defending this case. (Joint Decl. ¶ 31.) Plaintiff's Counsel prosecuted the claims efficiently and
 2 effectively, timely engaged in settlement discussions, and minimized any duplication of work by
 3 limiting the work to a small number of attorneys and staff. (*Id.*)

4 **C. The relevant factors support a greater multiplier than Plaintiff's Counsel seek here.**

5 Plaintiff's Counsel's combined lodestar through March 9, 2020 is \$263,957.50. (Joint
 6 Decl. ¶ 27.) Plaintiff's Counsel's request for attorneys' fees of \$176,473.93 thus reflects a
 7 "negative" multiplier of .67 on their lodestar. The relevant factors, including the quality of
 8 representation, the benefit obtained for the class, the complexity and novelty of the issues
 9 presented, the risk of nonpayment, and the preclusion of other employment, support a
 10 significantly greater multiplier. Accordingly, even if the Court reduces Plaintiff's Counsel's
 11 lodestar for any reason, the requested fee is warranted.

12 **(1) *Quality of Representation and Benefit Obtained for the Class***

13 The Settlement provides for Chase to pay "Settlement Class Consideration" of \$244,659
 14 for: (1) payments to the Settlement Class ("Net Settlement Class Consideration"), (2) a Class
 15 Representative Incentive Award of up to \$5,000, and (3) Notice and Settlement Administration
 16 Costs. (Agreement §§ 2.3, 3.2, 3.3.) KCC estimated the cost of settlement administration at
 17 \$52,000 (based on a 10% claims rate) in its winning administration bid and subsequently
 18 estimated taxes at roughly \$1,000.⁴ (Joint Decl. ¶ 15.) With settlement administration costs of
 19 \$52,000, taxes of roughly \$1,000, and a \$5,000 incentive award, the Net Settlement Class
 20 Consideration would be approximately \$186,659.⁵ (*Id.*) Under 15 U.S.C. § 1691e(b), Chase's
 21 potential liability on Class Members' punitive damages claims is capped at \$500,000, so Net
 22 Settlement Class Consideration of \$186,659, would amount to approximately 37% of the
 23 Settlement Class's potential monetary recovery. (Joint Decl. ¶ 16.)

24 The Court will also enjoin Chase, for five years from the date of final approval, from
 25

26 _____
 27 ⁴ Taxes were inadvertently omitted from the computation of the estimated cost of settlement
 administration in the Motion for Preliminary Approval. (*Id.*)

28 ⁵ These preliminary figures and Plaintiff's Counsel's assessment of the Settlement are subject to
 change after the claims process is complete and settlement administration costs are fixed. (*Id.*)

1 using the phrases “‘previous unsatisfactory relationship with this bank’ and ‘previous
2 unsatisfactory relationship with us or one of our affiliates’ in adverse action notices as the sole
3 reason for denying credit card applications or otherwise taking an adverse action in connection
4 with a Chase credit card account.” (Agreement § 3.5.)

5 This represents fair, reasonable, and adequate relief given Chase’s maximum damages
6 exposure and the risks of continued litigation, including the possibility that a court or jury could:
7 (1) find that Chase did not act recklessly as is likely required for a punitive damages award, or (2)
8 adopt a subjective standard to assess whether an applicant is “aggrieved” or whether a statement
9 of reasons is “specific, which could make it challenging to certify a class or demonstrate
10 standing.⁶ (Joint Decl. ¶¶ 18-22.) In addition, the injunction should put an end to the challenged
11 conduct and help effectuate ECOA’s purpose of providing credit applicants with a “pervasive and
12 valuable educational benefits” for at least five years. *See Fischl v. General Motors Acceptance*
13 *Corp.*, 708 F.2d 143, 146 (5th Cir. 1983) (quoting S. Rep. No. 94-589, 94th Congress).

14 Plaintiff’s Counsel Ray Gallo and Dominic Valerian are experienced in the field of
15 consumer class action litigation and Mr. Darr is experienced litigating ECOA cases. (Joint Decl.
16 ¶¶ 32-36.) Plaintiff’s Counsel used their skill and experience in this case to identify the potential
17 liability in Chase’s adverse action notices, prevail on Chase’s Motion to Dismiss, and negotiate a
18 fair settlement for Plaintiff and the Class. Plaintiff’s Counsel achieved these results in the face of
19 determined opposition from a sophisticated defendant with ample resources, highly qualified
20 defense counsel from Covington & Burling LLP, and numerous potential defenses. *See Barbosa*
21 *v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (C.D. Cal. 2013) (“The quality of opposing
22 counsel is important in evaluating the quality of Class Counsel’s work.”)

23 **(2) Complexity and Novelty of the Issues Presented**

24 This case presents numerous novel issues, including: (1) whether Mr. Chen must plead or
25

26 _____
27 ⁶ *See Ramirez v. Transunion LLC*, No. 17-17244, ___ F.3d ___, 2020 U.S. App. LEXIS 6338, at
28 *7 (9th Cir. Feb. 27, 2020) (“every member of a class certified under Rule 23 must satisfy the
basic requirements of Article III standing at the final stage of a money damages suit when class
members are to be awarded individual monetary damage”).

1 prove discrimination or confusion to fall within the “zone of interests” protected by ECOA,
2 (2) whether Chase’s conduct raised the unjustifiably high risk of violating ECOA necessary for
3 reckless liability and punitive damages under 15 U.S.C. § 1691e(b), and (3) whether an objective
4 or subjective standard governs the determination of whether an applicant is “aggrieved” under 15
5 U.S.C. § 1691e(a) and whether a statement of reasons is “specific” under 15 U.S.C. § 1691(d).
6 (Joint Decl. ¶ 23.) Each of these issues presents novel questions of statutory interpretation that
7 required Plaintiff’s Counsel to thoroughly research and analyze ECOA’s text, implementing
8 regulations, legislative history, and caselaw. (*Id.*)

9 **(3) Risk of Non-Payment**

10 The representation provided by Plaintiff’s Counsel in this action has been wholly
11 contingent. (Joint Decl. ¶ 24.) By the time of the hearing on this motion, Plaintiff’s Counsel will
12 have been prosecuting these claims for approximately 1.5 years, invested approximately 530
13 hours, and incurred thousands of dollars in out-of-pocket costs to obtain the Settlement. (*Id.* ¶¶ 6,
14 27-28, 40.)

15 In taking this matter on a contingent basis, Plaintiff’s Counsel assumed considerable risk.
16 (Joint Decl. ¶ 25.) Chase could have prevailed in motion practice, at trial or on appeal, resulting
17 in no relief for Class Members and no fees or cost recovery for Plaintiff’s Counsel. (*Id.*) As
18 discussed in the preceding sections, this action presents numerous novel legal issues that could
19 preclude Plaintiff from certifying a class, prevailing on liability, or recovering monetary damages.
20 (*Id.*) Plaintiff’s Counsel’s risk was further exacerbated by ECOA’s \$500,000 punitive damages
21 cap, which has been in place since 1976. *See* P. L. 94-239, § 6, 90 Stat. 253 (March 23, 1976).
22 The time and resources Plaintiff’s Counsel devoted to this action on a purely contingent basis and
23 the accompanying risk support the requested fee.

24 **(4) Preclusion of Other Employment**

25 Plaintiff’s Counsel GALLO, DARR, and VALERIAN are each small firms with three or
26 fewer attorneys. (Joint Decl. ¶ 26.) Each firm regularly declines potentially meritorious
27 contingency cases and limits the amount of hourly work it takes on to litigate the cases it accepts.
28

1 (*Id.*) GALLO declines more than 95% of unsolicited inquiries from prospective clients who
2 contact the firm seeking assistance. (*Id.*) Accordingly, the more than 500 hours Plaintiff's
3 Counsel devoted to this matter is time that Plaintiff's Counsel could and would have spent on
4 other billable matters had they not taken this case. (*Id.*)

5 **4. The Court should award the requested costs.**

6 Plaintiff's Counsel are entitled to recover their out-of-pocket costs pursuant to the
7 Settlement Agreement and ECOA. *See* 15 U.S.C. § 1691e(d); (Dkt. No. 51, Ex. 1 Agreement
8 § 3.4); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover
9 reasonable expenses that would typically be billed to paying clients in non-contingency matters).
10 Plaintiff's Counsel seek to recover their out-of-pocket costs in the amount of \$8,526.07 as
11 itemized in Exhibit 2 to the Joint Declaration of Plaintiff's Counsel. (Joint Decl. ¶ 40.) These
12 modest costs were incurred solely in connection with this litigation, were reasonably necessary to
13 the prosecution of this action, and should be reimbursed. (*Id.* ¶ 41.)

14 **5. The requested Class Representative Incentive Award is reasonable and**
15 **should be approved.**

16 The Agreement provides for an incentive of award of up to \$5,000. (Agreement § 3.3(a).)
17 As the Ninth Circuit has recognized, "named plaintiffs, as opposed to designated class members
18 who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton*, 327 F.3d at
19 977; *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards "are fairly
20 typical in class action cases"). Such awards are "intended to compensate class representatives for
21 work done on behalf of the class [and] make up for financial or reputational risk undertaken in
22 bringing the action." *Rodriguez*, 563 F.3d at 958; *see also Van Vranken v. Atl. Richfield Co.*, 901
23 F. Supp. 294, 299-300 (N.D. Cal. 1995). In this District, service awards in the amount of \$5,000
24 per class representative are standard and "presumptively reasonable." *See In re LinkedIn User*
25 *Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015); *Dyer v. Wells Fargo Bank, N.A.*, 303
26 F.R.D. 326, 335 (N.D. Cal. 2014); *Deaver v. Compass Bank*, No. 13-00222 JSC, 2015 WL
27 4999953, at *9 (N.D. Cal. Aug. 21, 2015); *Harris v. Vector Mktg. Corp.*, Case No. 08-cv-5198-
28 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012).

1 Class Representative Jeffrey Chen has actively participated in this matter since bringing it
2 to Plaintiff's Counsel's attention in November 2018. (Joint Decl. ¶ 42.) Mr. Chen provided
3 Plaintiff's Counsel with documents and information about his relationship with Chase, assisted
4 with the preparation of formal and informal discovery responses, stayed abreast of case
5 developments, and participated in settlement discussions. (*Id.*) Throughout his participation in
6 this matter, Mr. Chen has been responsive to counsel's requests and prioritized his responsibilities
7 to the class. (*Id.*) Mr. Chen estimates that he has spent more than 40 hours on this case. (*Id.*) Mr.
8 Chen also ran the risk of paying Chase's costs if he lost and gave up significant financial privacy
9 for the benefit of the class. (*Id.*) Accordingly, the requested service award of \$5,000 is reasonable
10 and justified.

11 **6. Conclusion**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court: (a) award
13 Plaintiff's Counsel attorneys' fees of \$176,473.93 and expenses of \$8,526.07, with such amount
14 to be paid by Chase as set forth in the Settlement; and (b) grant a service award in the amount of
15 \$5,000 for the Class Representative.

16
17 DATED: March 24, 2020

RESPECTFULLY SUBMITTED,

**GALLO LLP
DARR LAW LLC
VALERIAN LAW, P.C.**

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21 By: /s/ Dominic Valerian
22 Dominic Valerian
23 Attorneys for Plaintiff
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