

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JACKERLY MCFADDEN, CELINDA LAKE,  
MARY MONTGOMERY, and LILLIAN  
NELSON, *On Behalf of Themselves and All  
Others Similarly Situated,*

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC,  
d/b/a MR. COOPER,

Defendant.

Case No. 1:20-cv-00166

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FEES,  
COSTS, AND SERVICE AWARDS**

**PLEASE TAKE NOTICE** that on March 8, 2024 at 1:00PM, at the United States District Court for the District of Columbia located at 333 Constitution Avenue N.W., Washington, D.C. 20001, before the Honorable Emmet G. Sullivan, Plaintiffs Jackerly McFadden, Celinda Lake, Mary Montgomery, and Lillian Nelson, respectfully move this court to award Settlement Class Counsel attorneys' fees of \$1,195,751.33 and reimbursement of costs in the amount of \$19,512.77. In addition, Plaintiffs move for Service Awards of \$7,000 for each of Plaintiffs Jackerly McFadden, Celinda Lake, Mary Montgomery, and Lillian Nelson.

This motion and memorandum are supported by the Declarations of Kristen Simplicio and James Kauffman.<sup>1</sup>

Dated: January 8, 2024

Respectfully submitted,

/s/ Kristen G. Simplicio  
Hassan A. Zavareei  
Kristen G. Simplicio

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<sup>1</sup> Before the March 8, 2024 fairness hearing, Class Counsel will file a motion for final approval of the class settlement, and will include with that a proposed order that addresses both the settlement as a whole as well as the fee and cost award sought herein.

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**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. BACKGROUND ..... 2

III. ARGUMENT ..... 3

    A. The Named Plaintiffs' Service Award Should be Approved. .... 3

    B. Settlement Class Counsel's Requested Fee Award is Fair, Reasonable, and  
    Appropriate. .... 4

        1. Legal Standard for Awarding Attorneys' Fees ..... 5

        2. Awarding Percentage-of-the-Fund Fees Is Appropriate. .... 7

            a. The Size of the Fund Created and the Number of Persons  
            Benefited Support Approval of Class Counsel's Fee Request..... 7

            b. The Complexity and Duration of this Case, the Significant Time  
            and Effort Devoted, and the Skill and Efficacy of Class Counsel  
            Support the Fee Request. .... 8

            c. Class Counsel Have Faced a Significant Risk of Non-Payment... 10

            d. The Award Sought in this Case is Reasonable When Compared to  
            Fee Awards in Similar Cases. .... 10

            e. Objections to the Settlement. .... 11

        3. A Lodestar Cross-Check, Although Not Required, Would Only Confirm  
        the Reasonableness of the Requested Fee. .... 11

        4. Plaintiffs' Counsel Should Be Awarded Costs. .... 12

IV. CONCLUSION..... 12

**TABLE OF AUTHORITIES****Cases**

<i>Boeing Co. v. Van Gemert</i> 444 U.S. 472 (1980).....	5
<i>Ceccone v. Equifax Info. Servs. LLC</i> No. 13-CV-1314 (KBJ), 2016 WL 5107202 (D.D.C. Aug. 29, 2016) .....	4
<i>Fed. Nat’l Mortg. Ass’n Sec., Derivative, &amp; “ERISA” Litig.</i> F. Supp. 3d 94 (D.D.C. 2013) .....	9
<i>Health Republic Ins. Co. v. United States</i> 58 4th 1365 (Fed. Cir. 2023).....	5, 11
<i>In re Abrams &amp; Abrams, P.A.</i> 605 F.3d 238 (4th Cir. 2010) .....	10
<i>In re Baan Co. Sec. Litig.</i> 288 F. Supp. 2d 14 (D.D.C. 2003).....	11
<i>In re Black Farmers Discrimination Litig.</i> 953 F. Supp. 2d 82 (D.D.C. 2013).....	6, 9, 11, 12
<i>In re Equifax Inc. Customer Data Sec. Breach Litig.</i> 999 F.3d 1247 (11th Cir. 2021) .....	7
<i>In re Lorazepam &amp; Clorazepate Antitrust Litig.</i> 2003 WL 22037741 (D.D.C. June 16, 2003).....	3, 5, 7, 12
<i>In re Rite Aid Corp. Sec. Litig.</i> 396 F.3d 294 (3d Cir. 2005) .....	6, 7
<i>In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.</i> 56 F.3d 295 (1st Cir. 1995).....	6
<i>In re Vitamins Antitrust Litig.</i> No. MISC. 99-197(TFH), MDL 1285, 2001 WL 34312839 (D.D.C. July 16, 2001) .....	10
<i>Kifafi v. Hilton Hotels Ret. Plan</i> 999 F. Supp. 2d 88 (D.D.C. 2013).....	11, 12
<i>Kinard v. East Capitol Family Rental, L.P.</i> 331 F.R.D. 206 (D.D.C. 2019).....	3, 4
<i>Little v. Wash. Metro. Area Transit Auth.</i> 313 F. Supp. 3d 27 (D.D.C. 2018).....	6
<i>Meyer v. Panera Bread Co.</i> No. 17-cv-2565 (EGS/GMH), 2019 WL 11271381 (D.D.C. Mar. 6, 2019) .....	12
<i>Nunez v. BAE Sys. San Diego Ship Repair Inc.</i> 292 F. Supp. 3d 1018 (S.D. Cal. 2017).....	6

*Radosti v. Envision EMI, LLC*  
 760 F. Supp. 2d 73 (D.D.C. 2011)..... 3, 10

*Rogers v. Lumina Solar, Inc.*  
 No. 18-cv-2128 (KBJ), 2020 WL 3402360 (D.D.C. June 19, 2020)..... 3, 4

*Silverman v. Motorola Sols., Inc.*  
 739 F.3d 956 (7th Cir. 2013) ..... 10

*Swedish Hosp. Corp. v. Shalala*  
 1 F.3d 1261 (D.C. Cir. 1993)..... 5, 6, 12

*Trombley v. Nat’l City Bank*  
 826 F. Supp. 2d 179 (D.D.C. 2011)..... 7

*Voulgaris v. Array Biopharma, Inc.*  
 60 F.4th 1259 (10th Cir. 2023) ..... 5

*Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*  
 396 F.3d 96 (2d Cir. 2005) ..... 6

*Wells v. Allstate Ins. Co.*  
 557 F. Supp. 2d 1 (D.D.C. 2008)..... 3, 12

**Other Authorities**

*Manual for Complex Litig.* § 14.121 (4th ed. 2004) ..... 5

**Rules**

FED. R. CIV. P. 23(h) ..... 5

## I. INTRODUCTION

Plaintiffs Jackerly McFadden, Celinda Lake, Mary Montgomery, and Lillian Nelson (the “Plaintiffs”) submit this memorandum in support of Plaintiffs’ Motion for Award of Attorneys’ Fees, Costs, and Service Award. This action against Defendant Nationstar Mortgage LLC, d/b/a/ Nationstar (“Nationstar”) challenges Nationstar’s practice of charging and collecting “convenience fees” or “Pay-to-Pay fees” to borrowers who pay their mortgage online or over the phone. After Plaintiffs vigorously litigated this case for over three years, Nationstar agreed to establish a cash common fund of \$3,587,254 and to refrain from collecting these fees for approximately two years while continuing to offer free electronic payment services to borrowers.

Now, in this Motion, Plaintiffs seek an award of \$1,215,264.10 in attorneys’ fees and costs, which is comprised of \$1,195,751.33 in attorneys’ fees, and \$19,512.77 in reimbursable costs. The amount in attorneys’ fees represents 33.33% of the \$3,587,254 common fund provided to Class Members under the settlement. The award of this percentage is supported by the outstanding results achieved for the Class Members’ benefit and the significant risk incurred in taking on a complex class action like this one on a contingency basis. Indeed, at all times during the litigation, the likelihood of any relief was highly uncertain, and yet, Plaintiffs and Class Counsel were able to achieve significant relief for the Class. Despite the risk, with their skill and commitment to excellence, Class Counsel vigorously litigated this case at every step, and they delivered excellent results for the Class while working efficiently and expending reasonable time and resources. Indeed, the Settlement compares favorably to settlements in similar cases against major mortgage loan servicers, and the relief to Class Members is at the higher range of comparable settlements. *See* ECF No. 75-2, App’x A.

Plaintiffs each also seek a \$7,000.00 service award, for a total of \$28,000.00 to the four Plaintiffs (Jackerly McFadden, Celinda Lake, Mary Montgomery, and Lillian Nelson) for their

service in representing and zealously advocating on behalf of Class Members. The Plaintiffs played an active role every step of the way, supporting Class Counsel, advocating for the relief sought by the Class Members, and contributed significantly to the end result.

In light of the work performed by Class Counsel and the substantial time, effort, and personal sacrifice of the Plaintiffs, the attorneys' fees, costs, and service awards sought in this Motion are reasonable. For all of the reasons set forth herein, Plaintiffs request that the Court grant these awards.

## **II. BACKGROUND**

The history of the case is set forth at section II in Plaintiffs' Motion for Preliminary Approval, ECF No. 75-1, and in more detail in Class Counsel's accompanying declaration. *See generally* ECF No. 75-3, Simplicio Decl. in Supp. Of Mot. for Prelim. Approval ¶¶ 4-15.

As described in more detail in the Motion for Preliminary Approval, *see* ECF No. 75-1 at § III, under the settlement, the class is entitled to two primary benefits: (i) a \$3,587,254 common fund, from which all payments to Class Members, all Administrative Costs, any taxes owed by the Gross Settlement Amount, and Fee and Expense award approved by the Court, and any Service Awards to the named Plaintiffs; and (ii) injunctive relief to the Class Members, by which Nationstar agreed not to charge or collection Convenience Fees from borrowers for a period of approximately two years. *See* ECF No. 75-3, Settlement Agreement, at § 5. The Settlement consists of three parts: (1) a "D.C. Component" of \$1,441,750, which represents \$250 for each of the 5,767 instances in which a D.C. Class Member paid a Fee that are known to Defendant at the time of settlement; (2) a "Nationwide Component" of \$1,966,213, which represents 35% of the \$5,617,750 in Fees known to Defendant to have been paid by members of the Nationwide Class at the time of settlement; and (3) a "Residual Component" of \$179,291 to be used to cover Administrative Costs

and other court-approved attorneys' expenses. *Id.* at § 5.1. Settlement Class Members will not have to submit claims or take any other affirmative step to receive benefits under the Settlement.

### III. ARGUMENT

#### A. The Named Plaintiffs' Service Award Should be Approved.

Plaintiffs seek service awards in the amount of \$7,000 to each of Plaintiffs Jackerly McFadden, Celinda Lake, Mary Montgomery, and Lillian Nelson, for their service in representing and zealously advocating on behalf of Class Members. As an initial matter, public policy favors the service awards requested here. Service awards further the public interest by encouraging consumers like Plaintiffs to take on the reputational risk to formally challenge unfair business practices. *See, e.g., Kinard v. East Capitol Family Rental, L.P.*, 331 F.R.D. 206, 217 (D.D.C. 2019) (“Courts in this Circuit regularly approve service awards to compensate plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”) (internal quotation marks omitted); *Radosti v. Envision EMI, LLC*, 760 F. Supp. 2d 73, 78 (D.D.C. 2011) (same); *Rogers v. Lumina Solar, Inc.*, No. 18-cv-2128 (KBJ), 2020 WL 3402360, at \*12 (D.D.C. June 19, 2020) (same).<sup>2</sup>

The Plaintiffs here worked with counsel to provide information regarding their experiences and claims, including conducting searches of personal records and financial documents. They incurred significant risk in bringing a multi-million-dollar class action lawsuit against the company servicing their home loans. Not only was there a possibility that a winning defendant might try to recover costs, the Plaintiffs here faced reputational risk. *Simplicio Decl. in Supp. of Fee Petition*

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<sup>2</sup> The proposed service award amounts are also in the range typically approved in this District. *See Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 8-9 (D.D.C. 2008) (approving incentive awards of \$10,000 per named plaintiff); *In re Lorazepam & Clorazepate Antitrust Litig.*, No. MDL 1290(TFH), 99MS276(TFH), Civ. 99-0790(TFH), 2003 WL 22037741, at \*11 (D.D.C. June 16, 2003) (approving incentive awards of \$20,000 per named plaintiff).



(“Simplicio Decl.”) ¶ 26. While courts in this District have at times awarded class representatives less than the requested \$7,000,<sup>3</sup> here, there are unique considerations involved in bringing a lawsuit against a mortgage servicer, such as servicing disruptions and other customer service challenges. In particular, loan servicers typically bar their customer service representatives from communicating with borrowers in active litigation; while these instructions are often necessary to prevent any improper communications between represented parties, it also poses unique challenges and delays for those borrowers who have customer service needs during the pendency of the litigation. Plaintiffs here incurred those risks and among other things, were required to route servicing questions through Counsel. *See* Simplicio Decl. ¶¶ 27-28.

The personal risks and sacrifices undertaken by Plaintiffs in bringing their cases, the substantial time they invested in the case, and their critical contributions to the outstanding results for the Class, along with their release of claims against Nationstar, all support approval of the requested service awards. And the requested service awards are a tiny fraction of the amount obtained for the Class. Even taken collectively, a total of \$28,000 equates to approximately 0.78% of the total settlement. Coupled with Plaintiffs’ diligent work on behalf of the Class, the reasonableness of the amounts sought further supports approval of the requested awards.

**B. Settlement Class Counsel’s Requested Fee Award is Fair, Reasonable, and Appropriate.**

In light of these results, Class Counsel request that fees be awarded as a percentage of the recovery. They seek a fee award of \$1,195,751, which is equal to 33% of the cash value of the settlement. That said, Nationstar stopped charging fees to any borrower in the country during the

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<sup>3</sup> *See, e.g., Kinard v. East Capitol Family Rental, L.P.*, 331 F.R.D. 206, 217 (D.D.C. 2019) (approving \$5,000 individual service awards for four named plaintiffs); *Rogers*, 2020 WL 3402360, at \*12 (approving \$5,000 service award to named plaintiff); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-CV-1314 (KBJ), 2016 WL 5107202, at \*14 (D.D.C. Aug. 29, 2016) (same).

pendency of the lawsuit, providing additional valuable relief to class members in the form of free online and phone payment options. This additional benefit should be taken into account when assessing fairness. See *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980) (noting that fees should be based on “the full value of the benefit to each absentee member” obtained through the “entire judgment fund”). This amount of attorneys’ fees is consistent with D.C. Circuit authority in common fund cases where class counsel secure excellent results in a high-risk, complex case.

### 1. Legal Standard for Awarding Attorneys’ Fees

The Federal Rules of Civil Procedure provide that in a certified class action, the Court may award reasonable attorneys’ fees “that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Courts have a duty to ensure that claims for attorneys’ fees are reasonable.” *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741, at \*7. Courts have identified two approaches for assessing the reasonableness of class counsel’s fee request: the lodestar method and the “percentage of the fund” method. *See, e.g., Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266 (D.C. Cir. 1993).

Between these two approaches, courts, overwhelmingly prefer the percentage of the fund approach in common fund cases. *See Manual for Complex Litig.* § 14.121 (4th ed. 2004) (“[T]he vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases.”); *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1263 (10th Cir. 2023). (“We have ... express[ed] a preference for the percentage-of-the-fund approach.”). The lodestar method, in contrast, is “used generally outside the common-fund context,” such as when a defendant is obligated to pay fees under a fee-shifting statute. *Health Republic Ins. Co. v. United States*, 58 4th 1365, 1371 (Fed. Cir. 2023).

Courts use the percentage of the fund approach for good reason. It replicates the market, is easy to apply, and “helps to align more closely the interests of the attorneys with the interests of

the parties by discouraging inflation of attorney hours and promoting efficient prosecution and early resolution of litigation, which clearly benefits both litigants and the judicial system.” *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 88 (D.D.C. 2013) (cleaned up); *see Little v. Wash. Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (expanding on the same); *see also, e.g., Nunez v. BAE Sys. San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1055 (S.D. Cal. 2017) (“Many courts and commentators have recognized that the percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.”); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (“The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation,” whereas “the lodestar [method] creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits.” (cleaned up)); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (“[U]se of the POF method in common fund cases is the prevailing praxis” due to its “distinct advantages.”).

The preference for the percentage-of-the-fund approach is so strong that some circuits, like the D.C. Circuit, have essentially mandated its use in common-fund cases. *See Swedish Hosp.*, 1 F.3d at 1271 (“[A] percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases”); *In re Equifax Inc. Customer Data Sec. Breach*

*Litig.*, 999 F.3d 1247, 1278 (11th Cir. 2021) (“[I]n common fund settlements like this one, an attorney’s fee award shall be based upon a reasonable percentage of the fund established for the benefit of the class.”) (cleaned up); *Rite Aid*, 396 F.3d at 306 (“[T]he percentage of common fund approach is the proper method of awarding attorneys’ fees.”). This case calls for the same approach.

## **2. Awarding Percentage-of-the-Fund Fees Is Appropriate.**

“While this Circuit has not yet developed a formal list of factors to be considered in evaluating fee requests under the percentage-of-recovery method, other jurisdictions have delineated factors that courts should consider in evaluating fee requests.” *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741, at \*8. Courts typically consider seven factors: (1) the size of the fund created and the number of persons benefited, (2) the presence or absence of substantial objections by class members to the settlement terms or fees requested by counsel, (3) the skill and efficiency of the attorneys involved, (4) the complexity and duration of litigation, (5) the risk of nonpayment, (6) the time devoted to the case by plaintiffs’ counsel, and (7) awards in similar cases. *Id.*; *see also Trombley v. Nat’l City Bank*, 826 F. Supp. 2d 179, 204 (D.D.C. 2011). As set below, these factors demonstrate that the requested fee is reasonable.

### **a. The Size of the Fund Created and the Number of Persons Benefited Support Approval of Class Counsel’s Fee Request.**

Class Counsel obtained excellent results for the Class, such that the size of the fund created and the number of persons benefited support approval. The Settlement provides relief to 72,555 Nationstar accountholders. Class Members are automatically entitled to receive cash refunds, without having to jump through hoops to submit claims. The common fund of \$3,587,214 consists of three parts, representing (1) \$250 for each of the 5,767 instances in which a D.C. Class Member paid a Fee (the D.C. Component of \$1,441,750); (2) 35% of the

\$5,617,750 in Fees (the Nationwide Component of \$1,966,213); and (3) \$179,291 to cover Administrative Costs and other court-approved attorneys' expenses (the Residual Component). The injunctive relief in this case stops Nationstar from charging Pay-to-Pay Fees for approximately two years while continuing to offer free electronic payment services to borrowers. This injunctive relief will save Class Members significant monetary expense as they pay their mortgages in the future.

**b. The Complexity and Duration of this Case, the Significant Time and Effort Devoted, and the Skill and Efficacy of Class Counsel Support the Fee Request.**

Class Counsel's work prosecuting this challenging litigation also warrants approval of the requested fee. This case was initiated on January 22, 2020. ECF No. 1. Nationstar moved to dismiss the complaint on March 30, 2020, which Plaintiffs opposed on April 13, 2020. ECF Nos. 13, 15. Nationstar filed its reply in support of its motion to dismiss on April 20, 2020. ECF No. 18. On July 30, 2021, Magistrate Judge Faruqui issued a report and recommendation denying Nationstar's motion to dismiss (ECF No. 42), which the Court adopted on March 31, 2022. ECF No. 51. Defeating Nationstar's motion to dismiss in full demonstrates Class Counsel's skill in navigating the complex legal issues presented by cases involving Pay-to-Pay fees. *See* *Simplicio* Decl. ¶¶ 9.

The parties mediated before Stephen J. Dalesio for six hours on March 23, 2023. *See* *Simplicio* Decl. ¶¶ 16-17. In the months prior to this mediation, the parties had numerous discussions and conducted informal discovery. *See* *Simplicio* Decl. ¶ 15; Declaration of James L. Kauffman in Supp. of Fee Petition ("Kauffman Decl.") ¶ 13. Following that first mediation, the parties continued to negotiate and exchange information, including additional discovery and legal argument. *See* *Simplicio* Decl. ¶ 17; Kauffman Decl. ¶ 15. The parties formally mediated Plaintiffs' claims again before Stephen J. Dalesio for another four hours on July 12, 2023, and in

the days that followed, reached an agreement in principle. *See* Simplicio Decl. ¶ 17; Kauffman Decl. ¶ 15.

In the nearly four years since this case was initially filed, Class Counsel have spent over 1,280 hours litigating this case and negotiating and finalizing this Settlement which, as described in section III.B.2.a, *supra*, represents substantial recovery for the Class. Class Counsel are highly experienced in litigating complex class actions, having recovered millions of dollars for consumers nationwide. Class Counsel and their firms have been appointed class counsel, lead counsel, or settlement class counsel in numerous consumer class actions, and each has been involved in other matters against loan services over their Pay-to-Pay Fees and servicing practices. *See* Simplicio Decl. ¶¶ 4, 30-31; Kauffman Decl. ¶¶ 5-7. Class Counsel’s experience litigating class actions, including in the mortgage industry space, allowed them to fully understand the issues attendant to such litigation, value the risks of continued litigation, and resolve the case in a manner that achieves all the goals of the litigation.

Further, Class Counsel faced a formidable group of lawyers – first from Buckley LLP, and then from Troutman Pepper LLP – who tenaciously defended this case on every possible ground. Defeating defense counsel’s arguments in its motion to dismiss and then successfully negotiating this Settlement “called for a host of skills by class counsel.” *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d at 92; Simplicio Decl. ¶¶ 8-9, 15-21; Kauffman Decl. ¶ 14; *see also Fed. Nat’l Mortg. Ass’n Sec., Derivative, & “ERISA” Litig.*, F. Supp. 3d 94, 112 (D.D.C. 2013) (“[T]he best testament to their effectiveness was their ability to successfully resolve this exceedingly complex case and secure the . . . settlement . . . while battling opposing counsel at the very top of the defense bar.”). Thus, these three factors strongly support the requested fee.

**c. Class Counsel Have Faced a Significant Risk of Non-Payment.**

When lawyers take a case on contingency, their percentage fee must compensate them “for the risk of nonpayment.” *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). “The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.” *Id.*

Here, the risk incurred by Class Counsel in pursuing this litigation was significant. Plaintiffs faced the risk that their claims would be extinguished at the motion to dismiss stage. Although Class Counsel successfully defeated Nationstar’s motion to dismiss, they faced the possibility that the Class’s claims would be narrowed by a motion for summary judgment, at trial, or on a subsequent appeal. *Simplicio Decl.* ¶ 20. Class Counsel also faced the possibility that class certification could be denied, or that Plaintiffs would not maintain class status through trial. *Id.* Class Counsel understood that they could be litigating this matter for several years without guarantee of payment. Therefore, Plaintiffs believe that the requested fee award represents “due consideration” for this risk that Class Counsel incurred, given that at every step of the way, “success was by no means assured and the size of any settlement or judgment was unpredictable.” *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010).

**d. The Award Sought in this Case is Reasonable When Compared to Fee Awards in Similar Cases.**

The award sought in this case, representing 33.33% of the common fund, supports approval. Generally speaking, “one-third recovery is a common percentage arrived at in contingency cases.” *In re Vitamins Antitrust Litig.*, No. MISC. 99-197(TFH), MDL 1285, 2001 WL 34312839, at \*12 (D.D.C. July 16, 2001); *see also Radosti*, 760 F. Supp. 2d at 78 (“a 33% award is consistent with the award in other common fund cases from this district”).

Further, a 33.33% fee award is consistent with other settlements involving Pay-to-Pay fees. *See* ECF No. 75-2, App'x A. Fourteen of the twenty Pay-to-Pay settlements compiled by Class Counsel involved attorneys' fees of 33.33% or more of the settlement amount. *Id.*

**e. Objections to the Settlement.**

As of the date of this filing, Class Counsel is unaware of any objections to the fee provision of the Settlement. *Simplicio Decl.* ¶ 23. Although Settlement Class Members have additional time to object to the Settlement and Class Counsel's fee request, at present, this factor favors approval of Class Counsel's request for attorneys' fees.

**3. A Lodestar Cross-Check, Although Not Required, Would Only Confirm the Reasonableness of the Requested Fee.**

Courts sometimes use a "lodestar cross-check" to further inform the reasonableness of a percentage of the fund fee award. *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d at 101. Such a cross-check is not required by D.C. Circuit precedent. *Id.*; *see also Kifafi v. Hilton Hotels Ret. Plan*, 999 F. Supp. 2d 88, 95-96 (D.D.C. 2013). However, district courts may employ a lodestar cross-check at their discretion to confirm the reasonableness of a fee request. *Kifafi*, 999 F. Supp. 2d at 96. Should the Court elect to utilize a lodestar cross-check, Class Counsel's fee here is likewise eminently reasonable.

When courts elect to conduct a cross-check, they do so "by dividing the proposed fee award by a lodestar calculation, resulting in a lodestar multiplier." *Health Repub. Ins. Co. v. United States*, 58 4th 1365, 1372 (Fed. Cir. 2023). Class Counsel's lodestar through December 31, 2023 (nine days before this fee application) is \$902,935.4. *Simplicio Decl.* ¶ 33; *Kauffman Decl.* ¶ 18. Therefore, the lodestar multiplier in this case is 1.32—a modest lodestar that is well within the range approved in this Circuit. *See, e.g., In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 19-20 (D.D.C. 2003) ("a multiplier of 2.0 or less falls well within a range that is fair and



reasonable”); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d at 102 (“[s]uch a multiplier—less than two times the lodestar—is unremarkable in common fund cases”); *Swedish Hosp.*, 1 F.3d at 1263, 1272 (approving fee award approximately 3.3 times the lodestar amount); *Meyer v. Panera Bread Co.*, No. 17-cv-2565 (EGS/GMH), 2019 WL 11271381, at \*10 (D.D.C. Mar. 6, 2019) (approving a fee award representing a 1.87 lodestar multiplier). In fact, “multiples ranging up to four are frequently awarded in common fund cases where the lodestar method is applied.” *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741, at \*9 (internal quotation marks omitted). Applying a lodestar cross-check, therefore, confirms that the award sought by Class Counsel is neither unusual nor unreasonable.

#### **4. Plaintiffs’ Counsel Should Be Awarded Costs.**

Class Counsel is entitled to reimbursement of reasonable out-of-pocket expenses and costs in prosecution of the Class’s claims and obtaining a settlement. *See, e.g., Kifafi*, 999 F. Supp. 2d at 104 (“In addition to being entitled to reasonable attorney’s fees, class counsel in common fund cases are also entitled to reasonable litigation expenses from that fund.”) (cleaned up); *Wells*, 557 F. Supp. 2d at 8 (same). Class Counsel’s requested costs are itemized in Class Counsel’s supporting declarations. *See* Simplicio Decl. ¶ 34, Ex. A; Kauffman Decl. ¶ 23. These expenses, which include filing fees and mediation costs, are reasonable. Thus, the Court should award Plaintiffs the requested costs.

#### **IV. CONCLUSION**

The service awards, attorneys’ fees, and costs sought in this Motion are all lawful, fair, and reasonable in light of the amount of work the named Plaintiffs and Class Counsel contributed in furtherance of the extraordinary results achieved for the Class. Accordingly, the Court should approve Plaintiffs’ request for \$28,000 in service awards for the named Plaintiffs, \$1,195,751.33 in attorneys’ fees for Settlement Class Counsel, and \$19,512.77 in reasonable costs.

Dated: January 8, 2024

Respectfully submitted,

*/s/ Kristen G. Simplicio*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JACKERLY MCFADDEN, CELINDA LAKE,  
MARY MONTGOMERY, and LILLIAN  
NELSON, *On Behalf of Themselves and All  
Others Similarly Situated,*

Plaintiffs,

v.  
NATIONSTAR MORTGAGE LLC,  
d/b/a MR. COOPER,

Defendant.

Case No. 1:20-cv-00166

**DECLARATION OF KRISTEN G. SIMPLICIO IN SUPPORT OF PLAINTIFFS’  
MOTION FOR FEES, COSTS, AND SERVICE AWARDS**

I, Kristen G. Simplicio, declare:

1. I am an attorney admitted to practice in the State of California, a partner at Tycko & Zavareei (“TZ”), and counsel of record for Plaintiffs and the Class in this case. I have personal knowledge of all of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.

2. I make this Declaration in support of Plaintiffs’ Motion for Fees, Costs, and service awards. In this declaration, I discuss, in the following order: (I) the litigation history and the associated legal services provided by TZ, including expected work under the Settlement Agreement; (II) the risks borne by TZ and the Plaintiffs; and (III) TZ’s experience and other supporting information regarding the application for attorneys’ fees and costs.

**I. History of the Matters Resolved in this Settlement**

3. Below, I detail the nature of this lawsuit, and the work performed in connection with these lawsuits by TZ and in coordination with Bailey Glasser LLP (“BG”).

4. The work done to file the lawsuit in January 2020 and litigate it to settlement was part of work done by my firm in connection with a series of lawsuits against mortgage loan servicers for the collection of Pay-to-Pay fees from residential borrowers. *See Austin v. Lakeview Loan Servicing*, No. 1:20-cv-01296-RDB (D. Md.); *Bingham v. Caliber Home Loans*, No. 1:20-cv-00338-TDS-LPA (M.D.N.C.); *Brown v. Lakeview Loan Servicing*, No. 3:20-cv-00280-FDW-DSC (W.D.N.C.); *Brown v. PennyMac Loan Services*, No. 5:20-cv-01052-FMO(KKx) (C.D. Cal.); *Cheney v. Lakeview Loan Servicing*, No. 3:20-cv-03016 (N.D. Cal.); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-MMC(N.D. Cal.); *Owoc v. LoanCare LLC*, No. 20-cv-60805-RS (M.D. Fla.); *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Lembeck v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-VC (N.D. Cal.), *Lange v. Arvest Central Mortgage Co.*, No. 4:20-cv-293-LPR (E.D. Ark.); and *Miller v. Arvest Central Mortgage Co.*, No. 20-010342-CA-01 (Fla. Cir. Ct., Miami-Dade Cty.) (collectively “Related Litigation”). Each of these cases was filed with my co-counsel, James Kauffman of BG. As discussed in more detail in the concurrently filed Declaration of James Kauffman, Mr. Kauffman and BG had filed several other similar cases against other mortgage loan services before our two firms worked on these matters.

5. Throughout the work on this Lawsuit and the Related Litigation, TZ worked closely with BG, to formulate case strategy. Work was divided between the firms to avoid duplication of efforts while ensuring all firms remained apprised of the status of and deadlines in all cases. In the course of billing, efforts were also undertaken to ensure that work performed that collectively benefited these Lawsuits as well as Related Litigation was not disproportionately being attributed to the Lawsuits herein. Rather, the billing records and work performed herein do not reflect every hour of work performed that directly benefited this

litigation; rather, counsel was able to occasionally rely on templates or research done in conjunction with cases that moved slightly ahead of this case.

**A. The Complaint and Early Motion Practice.**

6. On January 22, 2020, Plaintiffs Jackerly McFadden and Cassandra Wilson filed the instant action. Plaintiff McFadden alleged Mr. Cooper violated the Fair Debt Collection Practices Act, and related claims under Florida state law, as well as common law claims. Plaintiff Wilson alleged Mr. Cooper violated various District of Columbia statutes, as well as breached its contract with her and a nationwide class of borrowers of Federal Housing Agency (“FHA”) loans.

7. Prior to filing this matter, attorneys at my firm spent substantial time investigating the factual and legal bases for the matters set forth in the complaints. Attorneys here, working with BG, interviewed potential class members, reviewed information about the fees charged by Mr. Cooper on its website, reviewed documents provided by the Plaintiffs and other potential class members, and researched the applicable law.

8. After filing, TZ worked with BG to negotiate various stipulations and case management documents. Due to the COVID-19 pandemic, this Court’s operations were reduced, and Nationstar’s time to respond to the Complaint extended. On March 30, 2020, Nationstar filed a 30-page motion to dismiss all causes of action. TZ and BG divided up responsibility for the drafting of the two opposition briefs, which was filed two weeks later.

9. On July 30, 2021, Magistrate Judge Faruqi issued a lengthy Report and Recommendation, denying the motion to dismiss in full. Nationstar filed objections, and TZ and BG prepared the response. On March 31, 2022, this Court adopted the Magistrate’s recommendations in full.

10. During the two year period when the parties awaited a ruling on the motion to dismiss, TZ worked with BG to take steps to move the case forward. With BG, TZ engaged in regular negotiations with counsel for Nationstar in efforts to open discovery and/or schedule a Rule 16 conference, and entered into various stipulations, including those to extend the deadline, set by the local rules, for Plaintiffs to file for class certification. Our firms also stayed abreast of legal developments in other pay-to-pay cases, and both parties filed several notices of related authority with the court. As discussed in the next section, other efforts were taken to advance the litigation.

**B. Plaintiff Substitution, Discovery, and Class Certification Efforts**

11. Beginning in the summer of 2021, TZ and BG began to undertake efforts to prepare for class certification. While discovery was not yet open, in the months that followed, we took various steps to ensure that once pleadings were resolved, we could move for class certification as quickly as possible. We retained a mortgage servicing expert, collected publicly available information, outlined the class certification motion, and engaged in efforts to plan for the needed discovery. TZ and BG divided up this work.

12. After the Court denied the motion to dismiss, in April 2022, the parties held a 26(f) conference and negotiated the conference report. TZ took the lead on these efforts with BG's assistance and input. TZ also drafted discovery requests, which BG reviewed.

13. In the spring of 2022, Ms. Wilson passed away, and Nationstar's counsel was promptly notified, who agreed to permit the filing of an amended complaint with a substitute plaintiff. BG took the lead on vetting additional substitute plaintiffs and preparing the amended complaint with TZ's input. Because the parties had begun settlement negotiations, as discussed in more detail in paragraphs 15-21, the amended complaint naming the current three DC

plaintiffs (Celinda Lake, Mary Montgomery, and Lillian Nelson) was first provided to Nationstar in the summer of 2022, and filed later, on December 16, 2022.

14. Around this time, TZ started drafting the motion for class certification, while BG and TZ both participated in efforts to prepare the expert report and take discovery. Discovery was slowed in part because of the uncertainty over the status of the plaintiffs and the change in counsel by Nationstar in May 2022, and also because the parties had begun discussing settlement.

### **C. Settlement Efforts**

15. Beginning in the spring and summer of 2022, James Kauffman and I began discussing settlement with counsel for Nationstar. In the months that followed, the parties held numerous, sometimes contentious, arms-length discussions on settlement.

16. In March 2023, the parties attended a mediation with a respected mediator, Stephen J. Dalesio. Based on our review of the informal discovery, as well as our expertise in the relevant law, TZ and BG prepared a thorough and persuasive mediation statement. We shared the mediation statement with Nationstar in advance of the mediation, and reviewed Nationstar's mediation statement.

17. After approximately six hours of negotiations, the parties ended the mediation without resolution but the parties remained in regular communication to try to settle the case. In July, the parties again participated in a short, four-hour mediation, and an agreement in principal was reached shortly after that.

18. The long negotiation process was due in part to challenges in culling settlement class member data. TZ and BG undertook efforts to understand how Nationstar maintained data, and in particular, how it maintained historical records on portfolios of certain acquired mortgage

borrowers. Moreover, Nationstar had settled other class action lawsuits with borrowers over its pay-to-pay fee practices, some of which overlapped in part with the classes here, and efforts had to be undertaken to ensure that released claims were not covered in this class, but that all non-released claims were reflected in the data. We undertook significant efforts to verify data that was provided, including analyzing publicly available data from other Nationstar lawsuits and settlements and consulting a mortgage servicing expert.

19. The information provided by Nationstar was similar to the information that we would have sought through the formal discovery process. Because TZ and BG have litigated and settled numerous class actions involving mortgage servicers and fees, we understand what information is critical to determine damages and evaluate the strength of the underlying case.

20. The negotiations were hard-fought. While TZ and BG were prepared to continue with litigation rather than accept a settlement that would not be in the best interests of the Settlement Class, we understood at the time that there would be significant risks in proceeding with litigation. For instance, we faced the possibility that the Class's claims would be narrowed by a motion for summary judgment, at trial, or on a subsequent appeal. In addition, we faced the possibility that class certification could be denied, or that Plaintiffs would not maintain class status through trial. The material terms of the Settlement, including the amount of the common fund and the injunctive relief, achieves an excellent result as compared to similar settlements of its kind.

21. In August and September 2023, TZ and BG worked on finalizing the settlement and preparing for preliminary approval. My firm sought bids from claims administrators and reviewed and analyzed the various proposals to ensure a cost-effective, but thorough notice plan. TZ and BG also drafted and negotiated the written terms of the Settlement Agreement



before the Court, including the proposed Class Notice and proposed Preliminary Approval Order and Final Approval Order, over the next several weeks. Class Counsel prepared the first draft of the Settlement and exhibits, and the Parties negotiated over email and telephone until the written Settlement Agreement was complete. And a motion for preliminary approval was prepared, along with supporting declarations.

22. Since preliminary approval, the firms have divided responsibilities on overseeing class notice, handling class member inquiries, and preparing this fee petition. Each firm drafted their respective declarations.

23. The firms will endeavor to divide up the remaining responsibilities. While I am currently unaware of any objections to the settlement, should there be any, additional time will be needed to respond. Other necessary responsibilities include:

- Preparation of the motion for final approval;
- Communicating with the Plaintiffs and class members regarding the status of the settlement;
- Preparing for, appearing for, and arguing the motion for final approval;
- Overseeing the distribution of settlement funds to class members.

## **II. Risks Borne By TZ and the Plaintiffs**

24. In accepting this case, TZ bore considerable risk. TZ took this case on a fully contingent basis, meaning that we were not paid for any of our time, and that we paid all costs and out of pocket expenses without any reimbursement to date. From the outset, TZ recognized that it would be contributing a substantial amount of time and advancing significant costs in prosecuting this class action, with no guarantee of compensation or recovery, in the hopes of

prevailing against a well-funded defense. During the pendency of the litigation, TZ turned away other work.

25. The theories advanced in this case were novel and challenging. Some district courts had accepted Nationstar's reading of a key issue on the FDCP, district courts were split on the viability of the breach of contract theory as to FHA borrowers, and Plaintiffs' theories under DC law had not been fully tested. There were questions over whether a class could be certified and maintained through trial. And Nationstar has been ably represented by seasoned litigators throughout the litigation – first by those at Buckley LLP and later at Troutman Pepper LLP.

26. In the course of TZ's work on these matters, attorneys at TZ, including me, communicated with the Plaintiffs. In my view, the Plaintiffs took on substantial risk by bringing claims against the company that currently services their home loans. In all class action cases, plaintiffs incur a substantial amount of risk, and some unique challenges were present here. As is the case in all class actions, there was a possibility that a winning defendant might try to recover costs. And the Plaintiffs here not only undertook reputation risk from proceeding with a public lawsuit that involved claims entangled with their personal assets and financial matters, but Plaintiffs had to share private, financial documents, such as bank records and mortgage documents, to pursue the lawsuit.

27. In addition, loan servicers typically bar their customer service representatives from communicating with borrowers in active litigation; while these instructions are often necessary to prevent any improper communications between represented parties, it also poses unique challenges and delays for those borrowers who have customer service needs during the pendency of the litigation. Plaintiffs here incurred those risks and among other things, were

required to route servicing questions through Counsel. Because of the impact of the COVID pandemic, mortgage servicing issues arose more frequently than would be typical, and at times, the assistance of our firms was needed to ensure servicing matters were addressed.

28. TZ and BG retained the first of the Plaintiffs more than four years ago, and during that time, have worked closely with them, regularly conferred via telephone and email, both to provide assistance in ensuring their servicing needs were met and to keep them apprised on the litigation and get additional information to pursue their claims.

### **III. TZ's Experience and Other Relevant Information**

29. A true and correct copy of the firm resume of TZ was attached to the Declaration of Kristen G. Simplicio in Support of Plaintiffs' Motion for Preliminary Approval, filed September 28, 2023, at ECF No. 75.

30. Mr. Zavareei and I were named Settlement Class Counsel in the following pay-to-pay settlements, all of which have been finally approved: *Phillips et al. v. Caliber Home Loans, Inc.* No. 0:19-cv-2711-WMW-LIB (D. Minn.); *Elbert v. RoundPoint Mortgage Servicing Corporation*, No. 3:20-cv-250-MMC (N.D. Cal); *Fernandez v. Rushmore Loan Management Services*, No. 8:21-cv-621-DOC-(KESx) (C.D. Cal.); *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW-KS (C.D. Cal.); *Lembeck v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-VC (N.D. Cal.).

31. TZ was named Class Counsel, Lead Counsel, or Settlement Class Counsel in the following consumer class actions: *Shannon Schulte, et al. v. Fifth Third Bank*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.);

*Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.); *Wong v. TrueBeginnings LLC d/b/a True.com*, No. 3-07 Civ. 1244-N (N.D. Tex.); *Geis v. Airborne Health, et. al.*, Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); *Dennings, et al. v. Clearwire Corporation*, No. 2:10-cv-01859 (W.D. Wash.); *In Re: Higher One Oneaccount Marketing And Sales Practices Litigation*, No. 3:12-md-02407 (VLB) (D. Conn.); *Galdamez v. I.Q. Data International, Inc.*, No. 15-cv-1605 (E.D. Va.); *Brown v. Transurban USA*, No. 15-cv-494 (E.D. Va.), *Gatinella et al. v. Michael Kors (USA)*, 14-cv-5731 (S.D.N.Y); *Grayson, et al. v. General Electric Company*, 3:13-cv-1799 (D. Conn.); *Farrell, et al. v. Bank of America, N.A.*, No. 3:16-00492 (S.D. Cal.); *In re: APA Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, No. 1:16-cv-02900 (N.D. Ill.); *Scott, et al. v. JPMorgan Chase & Co.*, No. 17-cv-249 (D.D.C.); *In re Think Finance, LLC, et al.*, No. 17-bk-

33964 (Bankr. N.D. Tex.); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495 (E.D. Va.); and *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio). Each of these actions has resulted in a settlement that has been finally approved.

32. I believe the experience of the TZ lawyers on this matter, as well as my colleagues, in litigating class actions, including in the mortgage industry space, allowed us to fully understand the issues attendant to such litigation, value the risks of continued litigation, and resolve the case in a manner that achieves all the goals of the litigation.

33. As of December 31, 2023, nine days before this fee application, TZ's lodestar is \$426,995.50. TZ has maintained contemporaneous time records in this case, and further information on lodestar is available to the Court upon request. In my opinion, the time spent by attorneys and staff of TZ was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour, TZ attorneys and staff worked efficiently and avoided unnecessary work.

34. Tycko & Zavareei also carried some of the costs in this litigation—taking on this risk for the putative class members. Specifically, Tycko & Zavareei incurred \$4,30.72 in unreimbursed case-related expenses, including expenses related to filing, travel, copying, and case administration. Expenses are accounted for and billed separately and are not duplicated in my firm's professional billing rate. TZ has not received reimbursement for expenses incurred in connection with this litigation. The actual expenses incurred in the prosecution of this case is reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all actual expenses incurred. These expenses were necessary to prosecuting litigation of this size and complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in large-scale class actions.

Indeed, because Tycko & Zavareei was responsible for advancing all expenses incurred, Tycko & Zavareei had a strong incentive not to spend any funds unnecessarily. An itemized list of Tycko & Zavareei's expenses is attached hereto as **Exhibit A**.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed in Washington, DC on January 8, 2024.

/s/ Kristen G. Simplicio  
Kristen G. Simplicio

# **EXHIBIT A**

<b>Tycko &amp; Zavareei LLP Expenses</b>		
<b>Date</b>	<b>Description</b>	<b>Value</b>
11/30/2023	November 2023 court document retrieval from Pacer	\$1.50
10/31/2023	October 2023 court document retrieval from Pacer	\$1.30
9/30/2023	September 2023 court document retrieval from Pacer	\$1.20
9/30/2023	September 2023 Westlaw online research	\$57.78
9/28/2023	Package delivered by Fedex from TZ to Chambers of Hon. Emmet G. Sullivan/District of Columbia District Court	\$34.32
8/31/2023	August 2023 Westlaw online research	\$8.25
8/31/2023	August 2023 court document retrieval from Pacer	\$1.30
7/31/2023	July 2023 court document retrieval from Pacer	\$1.40
7/31/2023	July 2023 Westlaw online research	\$8.97
6/30/2023	June 2023 court document retrieval from Pacer	\$1.00
5/31/2023	May 2023 court document retrieval from Pacer	\$1.30
4/30/2023	April 2023 court document retrieval from Pacer	\$1.40
3/31/2023	March 2023 court document retrieval from Pacer	\$1.40
3/31/2023	K. Simplicio - local travel to/from Mr. Cooper mediation	\$88.00
3/31/2023	March 2023 Westlaw online research	\$77.61
2/28/2023	February 2023 Westlaw online research	\$9.01
2/28/2023	February 2023 court document retrieval from Pacer	\$1.30
1/31/2023	January 2023 court document retrieval from Pacer	\$1.50
12/31/2022	December 2022 court document retrieval from Pacer	\$1.30
12/31/2022	Photocopies (2022)	\$0.75
11/30/2022	November 2022 court document retrieval from Pacer	\$1.40
9/30/2022	3rd Quarter 2022 court document retrieval from Pacer	\$4.30
6/30/2022	June 2022 Westlaw online research	\$21.97
6/30/2022	June 2022 Westlaw online research	\$75.70
6/30/2022	2nd Quarter 2022 court document retrieval from Pacer	\$9.80
6/23/2022	Uber to DC Superior Court's Probate Division	\$15.25
6/23/2022	Reimbursement for case documents retrieve from the DC Superior Court's Probate Division	\$9.41
4/30/2022	April 2022 Westlaw online research	\$100.27
4/30/2022	April 2022 Westlaw online research	\$6.05
3/31/2022	1st Quarter 2022 court document retrieval from Pacer	\$6.00
12/31/2021	December 2021 Westlaw online research	\$1,698.70
12/31/2021	4th Quarter 2021 court document retrieval from Pacer	\$7.30
11/30/2021	November 2021 Westlaw online research	\$191.12
10/31/2021	October 2021 Westlaw online research	\$173.57
10/28/2021	LoopUp conference calls in August 2021	\$10.38
9/30/2021	3rd Quarter 2021 Pacer court document retrieval	\$9.60
9/16/2021	Pacer Document Retrieval	\$54.90
8/31/2021	Aug 2021 Westlaw online research	\$35.68
8/16/2021	LoopUp conference calls in June 2021	\$2.32



7/31/2021	July 2021 Westlaw online research	\$118.19
6/30/2021	April 2021 Westlaw online research	\$302.12
3/31/2021	1st Quarter 2021 court document retrieval from Pacer	\$4.00
3/30/2021	Federal express delivery on 3/11/21	\$25.73
3/1/2021	Court document retrieval from Pacer in 4th Quarter 2020	\$0.60
12/30/2020	Conference calls during the month of October 2020	\$1.35
11/30/2020	Court document retrieval during the 3rd quarter 2020	\$2.90
8/31/2020	Pacer 2nd quarter court document retrieval	\$11.80
8/1/2020	Westlaw Online Legal Research in July 2020	\$64.46
7/1/2020	Westlaw online research in June 2020	\$2.18
7/1/2020	Westlaw online research in June 2020	\$74.83
6/26/2020	Pro hac vice application for V. Prentice with Courts/USCA-DC-N Washington, DC	\$100.00
6/26/2020	Pro hac vice application with Courts/USCA-DC-N-Washington, DC	\$100.00
6/1/2020	Westlaw online research during May 2020	\$146.56
5/29/2020	Court document retrieval from Pacer	\$0.20
5/1/2020	Westlaw online research in April 2020	\$190.60
4/30/2020	Photocopies	\$0.45
4/14/2020	Postage	\$0.50
3/31/2020	Photocopies	\$3.75
3/26/2020	Federal express delivery on 2/29/20	\$36.20
3/26/2020	Postage	\$0.50
3/20/2020	Postage	\$0.65
2/29/2020	Photocopies	\$0.15
2/26/2020	Filing fee with Courts/USCA-DC on 1/22/20	\$400.00
2/1/2020	Westlaw online research in January 2020	\$30.29
1/31/2020	Photocopies	\$5.10
1/21/2020	Postage	\$1.30
1/6/2020	Postage	\$1.00
1/6/2020	Postage	\$1.00
<b>TOTAL:</b>		<b>\$4,360.72</b>

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JACKERLY MCFADDEN, CELINDA LAKE,  
MARY MONTGOMERY, and LILLIAN  
NELSON, *On Behalf of Themselves and All  
Others Similarly Situated,*

Plaintiffs,

v.  
NATIONSTAR MORTGAGE LLC,  
d/b/a MR. COOPER,

Defendant.

Case No. 1:20-cv-00166

**DECLARATION OF JAMES L. KAUFFMAN IN SUPPORT OF PLAINTIFFS’  
MOTION FOR ATTORNEYS’ FEES, EXPENSES AND SERVICE AWARDS**

I, James L. Kauffman, declare:

1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice before this Court as counsel of record for Plaintiffs and the Settlement Class in this case. I have personal knowledge of all the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.

**BAILEY & GLASSER LLP**

2. Bailey & Glasser LLP was founded in 1999 and has an established reputation for successfully prosecuting and defending multimillion dollar cases, including complex class actions. With seventeen offices across the country from Boston, MA to Oakland, CA, our lawyers routinely handle high-stake litigation and other lawyers call upon our firm routinely because of our unique blend of resources and trial experience.

3. My firm, Bailey & Glasser, has years of experience litigating class actions, including consumer financial class actions, ERISA, and securities cases and has obtained

millions of dollars in restitution and debt forgiveness for consumers by successfully asserting state and federal consumer credit law claims on their behalf. A partial listing of those cases includes the following:

- *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in “airport fee tolls” which Uber did not pay to California airports).
- *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
- *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
- *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
- *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).
- *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed

- repossession notices).
- *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
  - *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
  - *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
  - *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
  - *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
  - *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
  - *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
  - *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
  - *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
  - *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).

- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).
- *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

#### **EXPERIENCE**

4. I am licensed and in good standing to practice law in the State of Florida, State of Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I obtained my J.D. from the University of Florida Levin College of Law in December 2002. For more than 20 years, I have served as class and appellate counsel in a wide variety of cases including deceptive trade practices, securities fraud, ERISA, and consumer protection. I am a member of Public Justice, the Florida Bar Association, the Arkansas Bar Association, and the American Association of Justice (AAJ).

5. I was appointed as lead class counsel in one of the first filed class action lawsuits in the country to challenge Pay-to-Pay fees, *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910 (Fla. Cir. Ct. Palm Beach Cty.). *Montesi* was heavily litigated and resulted in class

certification over the defendant's opposition. It resulted in a \$1.75 million class settlement of Florida borrowers, which represented 35% of the amount collected by Seterus during the class period.

6. Bailey Glasser is among a handful of law firms litigating cases involving Convenience Fees across the country and is in the forefront of that litigation.

7. I was appointed as class counsel by the district courts in other class actions involving Pay-to-Pay Fees, which obtained settlement was finally approved: *Torliatt v. Ocwen Loan Servicing, LLC et. al*, No. 3:19-cv-04303-WHO (N.D. Cal.) (approved), *Caldwell v. Freedom Mortgage Corp.*, No. 3:19-cv-02193-N (N.D. Tex.) (approved); *Elbert v. Roundpoint Mortgage Servicing, Corp.*, No. 3:20-cv-00250-MMC (N.D. Cal.) (approved); *Fernandez v. Rushmore Loan Servicing*, Case No. 8:21-cv-00621-DOC (C.D. Cal.) (approved); *Lembeck v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-VC (N.D. Cal.) (approved); *Phillips v. Caliber Home Loans*, No. 0:19-cv-02711 (D. Minn.) (approved); *Pierce v. Statebridge Co.*, No.1:20-cv-117 (M.D.N.C.) (approved); *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW (C.D. Cal.) (approved); *Alexander v. Carrington Mortgage Services, LLC*, Case No. 1:20-cv-2369-TEB (D. Md.) (approved); *Vannest v. Nationstar Mortgage, LLC*, 5:21-cv-00086 (N.D. W.Va.); *Thacker v. PHH Mortgage Corp.*, No. 5:21-cv-00174-JPB (N.D. W.Va.); *Prettyman v. U.S. Bank, N.A.*, 5:22cv293-JPB (N.D. W.Va.); and *Six v. LoanCare, LLC*, 2022 WL 16747291, at \*4 (S.D. W. Va. Nov. 7, 2022)..

8. A firm resume for Bailey Glasser is attached as Exhibit A.

#### **ATTORNEYS' FEES AND COSTS**

9. Bailey Glasser ("BG") attorneys and paralegals started working on this case in 2019, before the original complaint in this matter was filed in January 2020 in this Court, *McFadden, et al. v. Nationstar Mortgage, LLC d/b/a Mr. Cooper*, Case No. 1:20-cv-00166-EGS

(D. D.C.). Prior to filing the original complaint, BG worked with Tycko & Zavareei (“TZ”) to investigate the facts and legal claims asserted in the action. Attorneys and paralegals from BG and TZ are referred herein as “Class Counsel.”

10. Class Counsel undertook its representation in this matter on a contingent basis under an agreement with the Plaintiffs that Class Counsel would seek a percentage-based recovery. Class Counsel have not received any compensation for their work to this point.

11. Class Counsel worked closely together amongst each other on this matter. Our firms endeavored to divide work based on which firm’s attorneys had the most experience in a given area. In addition, tasks were assigned and the labor divided so as to avoid duplication of work.

12. Class Counsel’s efforts to date include, without limitation: pre-filing investigation; drafting and filing the complaints; drafting oppositions to Defendant’s motion to dismiss and/or stay actions; preparing for and arguing the opposition to Defendant’s motion to dismiss, preparing Initial Disclosures, Interrogatories and Requests for the Production of Documents; preparing various procedural filings; meeting-and-conferring with Defendant’s counsel regarding various case management matters; preparing an anticipated motion for class certification; working with experts in support of the anticipated motion for class certification; filing the motion for preliminary approval and supporting documents, including a proposed preliminary approval order and a proposed final judgment; supervising the work of the Claims Administrator; responding to the inquiries of class members; and preparing this motion and the motion for final approval and supporting documentation.

13. Settlement Discovery included extensive data relevant to the size of the class and the aggregate amount of Convenience Fees paid to Defendant by class members during the

relevant period. Prior to settlement negotiations, I spent considerable time over several weeks reviewing the nuances of the data provided with Defendant's counsel. These pre-mediation discussions occurred by phone as well as over Zoom teleconference and allowed the parties to focus their negotiations on an agreed scope and amount in controversy during the mediation.

14. The negotiation process in this matter was informed by the numerous settlements that I and my co-counsel reached with mortgage servicing defendants in other Pay-to-Pay cases. Class Counsel and counsel for Defendant were each well informed about the settlements that were reached in the other cases mentioned above where I have acted as class counsel. At the same time, each side vigorously advanced their respective claims and defenses.

15. With the assistance of an experienced mediator, Stephen Dalesio, the parties mediated over several sessions. The parties were committed to the mediation process and their counsel continued for several weeks, until a term sheet was signed. The Settlement was only reached after intense litigation and protracted negotiations conducted by informed, experienced counsel on both sides who were thoroughly familiar with the factual and legal issues.

16. Each member of the Settlement Class who does not opt out will receive their share of the \$3,587,254 Settlement Fund.

17. Class Counsel's work in this case led to an excellent result for the Settlement Class. In my opinion, the time expended, and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation and fair resolution of this matter. The work Class Counsel performed and the results they achieved in this litigation reflect their skill and experience in this field and in complex class litigation.



18. The following chart shows the lodestar amount for BG's attorneys and paralegals through December 31, 2023. I reviewed the time entries, excluded any timekeepers with less than 10 hours, and removed any duplicative work entries. BG's lodestar is as follows:

<b>Name</b>	<b>Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Marshall, Jonathan R.	Partner	11.00	1,057.00	11,627.00
Mason, Arnold S.	Paralegal	16.30	239.00	3,895.70
Kipnis, Patricia M.	Partner	34.10	1,057.00	36,043.70
Milhoan, Denise L.	Paralegal	1.70	239.00	406.30
Kauffman, James L.	Partner	340.00	878.00	298,520.00
Woods, Victor S.	Senior Associate	38.40	1,057.00	40,588.80
Pierre, Vanessa K.	Paralegal	123.50	239.00	29,516.50
Littles, Britney A.	Associate	16.40	777.00	12,742.80
Bunn, James O.	Associate	80.80	437.00	35,309.60
Doze, Mariah T.	Law Clerk	30.50	239.00	7,289.50
		<b>692.70</b>		<b>475,939.90</b>

19. Time records were kept contemporaneously. For each task performed, BG timekeepers accounted for their time in the 1/10th of an hour (6 minute) increments and included a brief narrative of the work performed. They did not "block-bill."

20. Should the Court require, BG will provide its time records, which were kept contemporaneously and reviewed for duplicative or erroneous entries.

21. BG's rates are the market rates for these timekeepers based on the position and years of experience for each timekeeper consistent with the Laffey Matrix, which can be found here: <http://www.laffeymatrix.com/see.html>.

22. In addition, BG's lodestar does not include additional work to be performed by Class Counsel, including: continued correspondence with Settlement Class Members and supervision of the work of the Claims Administrator; preparing for and attending the hearing on the motion for final approval; attending to miscellaneous case management responsibilities,

including any status reports that this Court may order; and supervising any post-approval distribution of the settlement.

23. BG also incurred \$15,152.05 in unreimbursed case-related expenses. These expenses do not include expenses for legal research, copying, or meals, which were incurred by BG but are not sought to be reimbursed. An itemized list of BG's expenses is as follows:

Description	Amount
Arbitrators/Mediators	3,068.75
Court Fees	299.90
Experts/Consultants	11,700.00
Mailing/Delivery	83.40
TOTAL	<b>15,152.05</b>

24. Plaintiffs Jackerly McFadden, Celinda Lake, Mary Montgomery and Lillian Nelson each actively participated in this action. They have each assisted Class Counsel's investigation, conferred with Class Counsel on settlement, and were ready, willing and able to testify at trial.

25. I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct.

Executed this 8th day of January, 2024 in Washington D.C.

/s/ James L. Kauffman  
James L. Kauffman

# **EXHIBIT A**

## Exhibit A

**BAILEY & GLASSER** LLP

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### FIRM RESUME

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Bailey & Glasser brings a trial-focused litigation approach to its wide-ranging and successful class action and mass torts practice. The firm has the resources, experience and expertise to go toe-to-toe with some of the wealthiest corporations in the world. We litigate class action cases involving predatory mortgage lending, illegal loan servicing, antitrust violations, breaches of warranty, employee rights, mismanaged pension funds, ERISA, and a host of other consumer and employee matters.

The firm concentrates its litigation practice in the areas of complex commercial mass torts and class action litigation. The firm currently represents among others the States of Florida, Montana, Ohio, Oklahoma, and West Virginia, individual consumers, and retirement plan investors throughout the United States. The firm has substantial experience in successfully prosecuting multi-million dollar cases, including complex class actions and mass torts.

Our lawyers are equally comfortable and adept in the role of plaintiff or defendant. We bring a trial-focused approach to litigation to vigorously protect the interests of clients. We represent government and businesses, as well as individual plaintiffs and defendants, and lawyers throughout the country call upon the firm to access our unique blend of resources and trial experience.

The firm concentrates its practice in the areas of complex commercial and class action litigation, with a particular emphasis in energy and finance. We currently represent individual and classes of consumers, and a variety of corporate entities throughout the United States. The firm has substantial experience in successfully prosecuting and defending multimillion-dollar cases, including complex class actions.

## BAILEY GLASSER'S REPRESENTATIVE CASES

### Loan Servicing and Lending Class Action Representation:

- *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.) (final approval of class settlement of Florida borrowers who paid Pay-to-Pay fees for \$1.75 million).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- *Bacardi v. Select Portfolio Servicing, Inc.*, Case No. 1:16-cv-23381-RNS (class counsel for settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$380,000 recovery for borrowers). *Blake v. Seterus, Inc.*, Case No. 16-cv-21225-JLK (S.D. Fla. (2018 class action settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$527,000 recovery for borrowers).
- *Paneque v. Bank of America, N.A.*, Case No. 1:16-cv-21212-DPG (S.D. Fla.) (2018 class action settlement of case involving challenge to reinstatement quotes, resulting in \$625,000 recovery for borrowers).
- *Shore v. JP Morgan Chase Bank, N.A., et al.*, Case No. 16-cv-60125-JIC (S.D. Fla.) (\$400,000 recovery for borrowers as a result of reinstatement quotes).
- *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).

## **BAILEY & GLASSER** LLP

### Other Class Action Representation:

- Jessop v. Bankers Trust Company, et al., Case No. 2:14-cv-00916 (D. Utah) (\$19.8 million settlement recovery in 2017 on behalf of employee stock ownership plan participants for ERISA claims).
- Krakauer v. Dish Network, L.L.C., Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- Cummins v. H & R Block, Inc., Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- Tadeballi v. Uber Technologies, Inc., Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in "airport fee tolls" which Uber did not pay to California airports).
- Navelski v. International Paper Company, Case No. Case No. 3:14-cv-445 MCR/CJK (N.D. Fla.) (certified class on behalf of homeowners of 317 homes in a neighborhood alleged to be flooded by Defendant's dam breaking).
- Wieland v. Bring Care Home, Inc., C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- Thomas v. Home Credit Corp., Inc., 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- Desai v. Charvat, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
- Roberts v. Walgreen Co., et al., Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
- Glover v. Bank of America, N.A., C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
- Powers v. Santander Consumer USA, Inc., Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).

## **BAILEY & GLASSER** LLP

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### Other Class Action Representation (cont.):

- Ross v. CitiFinancial Auto Ltd., Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- Morris v. Merck Sharp & Dahme Corp., Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- Hall v. Capital One Auto Fin., Inc., Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- Brailsford v. Jackson Hewitt, Inc., Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- Hardwick v. Rent-A-Center, Inc., Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- Shonk v. SG Sales Co., Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- Lowe v. Ford Motor Credit, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- Brailsford v. Jackson Hewitt, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- Malacky v. Huntington Nat'l Bank, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- Mey v. Herbalife Int'l, Inc., Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- Cooley v. F.N.B. Corp., Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- Dillon v. Chase, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- Deem v. Ames True Temper, Inc., Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).

**BAILEY GLASSER** LLP



Partner

**James L. Kauffman**

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James L. Kauffman concentrates his practice on complex business litigation and class actions specifically in the areas of consumer protection, business litigation, and securities. James has represented consumers, investors, state attorneys general, municipalities, and whistleblowers in a wide variety of disputes in both court and arbitration forums across the country.

Notably, James represented shareholders in one of the largest securities litigation matters in history, *In re Initial Public Offerings Security Litigation* (21 MC 92) (SDNY), a case that involved 309 tech-bubble IPOs and 55 investment brokerage defendants and recovered \$586 million.

James regularly speaks at business tort seminars across the country and also on nationally syndicated radio and television shows. He covers topics such as financial industry regulation, consumer fraud, ERISA, and whistleblower protection.

He is also actively involved in the community and provides pro bono legal services to Laugh for Sight, a non-profit organization that raises money for eye disease research through comedy benefits in Los Angeles and New York City.

**Government Service / Previous Employment**

Financial Advisor, Morgan Stanley (1999)

**Practice Areas**

Arbitration & Dispute Resolution

Business & Finance

Class Actions

Commercial Litigation

Consumer Litigation

ERISA, Employee Benefits & Trust Litigation



## **BAILEY GLASSER**

### **Education**

J.D., University of Florida Fredric G. Levin College of Law, 2002, *cum laude*

B.S.B.A., University of Florida, 1998

### **Admissions**

District of Columbia

Florida

Arkansas

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Eleventh Circuit

US District Court, Northern District of Florida

US District Court, Southern District of Florida

US District Court, Middle District of Florida

US District Court, Eastern District of Arkansas

US District Court, Western District of Arkansas

US District Court, Eastern District of Michigan

### **Representative Matters**

- Obtained \$19.8 million recovery of employees' retirement benefits from trustee and individual officers of a closely held private company.
- Represented a borrower challenging estimated attorney's fees tacked onto his mortgage loan in *Prescott v. Seterus*, a case that involved two separate appeals to the US Court of Appeals for the Eleventh Circuit; work resulted in two significant appellate opinions that strengthened nationwide consumer debt collection law and led to industry-wide reform, and this precedent paved the way for several recoveries for borrowers from their banks or loan servicers where James served as class counsel.
- Obtained \$586 million recovery for shareholders against 309 IPO companies and 55 investment banks in one of the largest securities fraud litigations in history.
- Obtained \$20 million recovery for shareholders against semiconductor supplier company in connection with the backdating of employee stock option grants.
- Represented shareholders against certain officers and directors who participated in a massive Medicare fraud. Resulted in significant corporate reforms and removal of CEO, CFO and General Counsel.

**BAILEY GLASSER** LLP



Partner

**Jonathan R. Marshall**

Charleston, WV  
209 Capitol Street  
Charleston, WV 25301  
T: 304.340.2295 F: 304.342.1110  
jmarshall@baileyglasser.com

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Jonathan R. Marshall focuses his practice on solving complex problems for individuals, other lawyers, and business owners. His approach to sophisticated legal work involves a team centered orientation where creative and experienced lawyers, subject matter experts, and technology leaders are leveraged to create practical and valuable solutions for clients.

In keeping with this philosophy, Jonathan has led federal and state mass tort and class action litigations in a dozen states. He has tried multiple mass and class actions to verdict.

Through a mixture of jury verdicts, settlements, and creative solutions, he has helped his clients avoid liability and provided hundreds of millions of dollars to his clients.

Jonathan leads the firm's Consumer Litigation Group, which focuses on numerous areas of consumer law including debt collection, predatory lending, TCPA, and wage-and-hour class actions.

Jonathan is a Director of the Center for Consumer Law and Education at West Virginia University College of Law, where he also teaches.

He is also a founder and co-chairman of the Consumer Law Division of the West Virginia Association for Justice and a frequent speaker at seminars on consumer law issues.

**Awards & Accolades**

2017 Member of the Year Award Recipient, West Virginia Association of Justice

2016 Consumer Advocate of the Year Award Recipient, West Virginia Association of Justice

**Practice Areas**

Appellate Advocacy

Arbitration & Dispute Resolution

Banking & Financial Services

## **BAILEY GLASSER**

Class Actions  
Commercial Litigation  
Consumer Litigation  
Electronically Stored Information (ESI)  
Energy - Oil & Gas  
Labor & Employment  
MDL Panels  
Sexual Abuse & Harassment  
Telephone Consumer Protection Act (TCPA)

### **Education**

J.D., West Virginia University College of Law, 2007, Order of the Coif  
B.A., West Virginia University, 2003, *summa cum laude*, Phi Beta Kappa, Outstanding Senior

### **Admissions**

West Virginia  
Illinois  
US Supreme Court  
US Court of Appeals for the Fourth Circuit  
US District Court, Northern District of West Virginia  
US District Court, Southern District of West Virginia  
US District Court, Northern District of Illinois  
US District Court, District of Colorado  
US District Court, Northern District of Florida  
US Bankruptcy Court, Northern District of West Virginia  
US Bankruptcy Court, Southern District of West Virginia

### **Representative Matters**

- Served as class counsel in approved class settlements totaling more than \$100 million, in dozens of state and federal cases; successfully litigated cases involving a range of consumer issues including predatory lending, debt collection, loan origination, and TCPA claims.
- *Exemplar recent contested cases include: Dijkstra v. Carenbauer* (N.D. W. Va.) (court awarded class more than \$2.6 million after granting affirmative summary judgment in mortgage loan case alleging violations of the West Virginia Consumer Credit and Protection Act; settled on appeal).

## **BAILEY GLASSER**

- *Alig v. Quicken* (N.D. W. Va.) (court certified class and awarded each class member \$3,500 for defendant's practice of sending appraisers estimated home values; presently on appeal).
- *Exemplar loan servicing cases settled in last two years include: Henry v. Ocwen* (class action settlement for \$1.975 million in case alleging debt collection violations under West Virginia Consumer Credit and Protection Act); *Perez v. Figi's* (S.D. W. Va.) (same; \$1.7 million settlement); *Snuffer v. Liberty University*, (Circuit Court of Raleigh County, W. Va.) (same; more than \$1.947 million settlement); *Cox v. BB&T Co.* (S.D. W. Va.) (same; \$861,355 settlement).
- *Additional high-stakes class settlements include: Dunlap v. Wells Fargo* (Circuit Court of Lincoln County, West Virginia) (consumer class action resulting in \$9 million cash settlement, plus millions of dollars in debt relief, interest rate reductions and credit repair provided as part of the settlement); *In re Monitronics* (N.D. W. Va.) (\$28 million TCPA class action settlement).
- Led more than 45 certified wage and hour class actions.
- Negotiated confidential resolutions to more than 50 high-stakes contractual disputes among business owners over a three-month period.
- Tried a West Virginia flood case to a verdict of over \$1 million, and on appeal changed the measure of damages for real property law that had been West Virginia law for over three decades, a victory for successful West Virginia landowners.

### **Community and Professional Activities**

Director, Center for Consumer Law and Education, West Virginia University College of Law

Co-Chair and Founding Member, West Virginia Association for Justice Consumer Law Division

Co-Chair Education Committee, National Association of Consumer Advocates

President of the Board of Directors, West Virginia Land Trust

**BAILEY GLASSER** LLP



Partner  
**Elizabeth Ryan**

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Elizabeth Ryan concentrates her practice on class actions, representing consumers challenging unfair lending practices and violations of state and federal consumer protection statutes, as well as employees challenging violations of wage and hour laws. Elizabeth also represents whistleblowers in False Claims Act cases involving fraud against the government.

Throughout her career, she has focused on protecting the rights of those victimized by unfair business and employment practices.

Elizabeth also serves as the Diversity Partner for the firm.

**Clerkships**

Law Clerk, Hon. Nan R. Huhn, DC Superior Court, 1986

**Practice Areas**

Consumer Litigation

Labor & Employment

Telephone Consumer Protection Act (TCPA)

**Education**

J.D., The Catholic University of America Columbus School of Law, 1985

B.A., College of the Holy Cross, 1981

**Admissions**

Massachusetts

US Court of Appeals for the First Circuit

US Court of Appeals for the Fourth Circuit

## **BAILEY GLASSER**

US District Court, District of Massachusetts

### **Representative Matters**

- Represented a class of borrowers challenging repossession notices in *Williams v. American Honda*, a case that involved appeals to the US Court of Appeals for the First Circuit and the Massachusetts Supreme Judicial Court; resulted in a reported decision confirming that lenders must give borrowers accurate information about their potential deficiency liability.
- Represented multiple classes of home health care workers who were not paid for their required travel time to go to patients' homes, resulting in settlements that returned hundreds of thousands of dollars in unpaid wages.
- Represented a class of purchasers of a generic vitamin supplement who alleged the supplement's label falsely claimed it was effective in slowing the progression of age-related macular degeneration, resulting in nationwide settlement.

### **Community and Professional Activities**

National Association of Consumer Advocates

Women's Bar Association

Volunteer Lawyers Project

Public Justice

**BAILEY GLASSER** LLP



Partner

**Patricia Mulvoy Kipnis**

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Trish Kipnis concentrates her practice on consumer class actions, complex litigation, and appellate advocacy. As an experienced litigator, she pursues consumer claims on behalf of state and national classes. Trish regularly handles cases stemming from a full range of deceptive, unfair, and fraudulent business practices.

Trish particularly enjoys the research, innovation, and writing components of her legal practice: from developing and alleging claims, persuading the courts and adversaries of the merits of those claims, and achieving results for her clients in the courtroom or at the negotiating table. She has served on class counsel teams for dozens of certified class actions and helped successfully resolve many of these matters.

**Awards & Accolades**

2017 Distinguished Advocate Award, Support Center for Child Advocates

**Clerkships**

Law Clerk, Hon. Anita B. Brody, US District Court for the Eastern District of Pennsylvania (2003 - 2004)

**Government Service / Previous Employment**

Adjunct Professor of Legal Analysis, Writing and Research, Rutgers School of Law – Camden (2011 - 2012)

Judicial Intern, Hon. Edmund V. Ludwig, US District Court for the Eastern District of Pennsylvania (2001)

**Practice Areas**

Appellate Advocacy

Arbitration & Dispute Resolution

## **BAILEY GLASSER**

Commercial Litigation  
Consumer Litigation  
Medical Device & Drugs  
Telephone Consumer Protection Act (TCPA)

### **Education**

J.D., University of Pennsylvania Law School, 2003, Moot Court Board Chairperson; Editor, *Journal of International Economic Law*; Legal Writing Instructor  
M.S.I., University of Michigan School of Information, 1999  
B.A., Swarthmore College, 1997, Honors

### **Admissions**

New Jersey  
West Virginia  
Pennsylvania  
US Supreme Court  
US Court of Appeals for the Fourth Circuit  
US District Court, District of New Jersey  
US District Court, Western District of Pennsylvania  
US District Court, Eastern District of Pennsylvania  
US District Court, Southern District of West Virginia  
US District Court, Northern District of West Virginia

### **Representative Matters**

- Court awarded class more than \$2.6 million after granting affirmative summary judgment in mortgage loan case alleging violations of the West Virginia Consumer Credit and Protection Act (*Dijkstra v. Carenbauer* (N.D. W. Va.))
- Court certified class and awarded each class member \$3,500 for defendant's practice of sending appraisers estimated home values; presently on appeal (*Alig v. Quicken* (N.D. W. Va.))
- Obtained class action settlement for \$1.975 million in case alleging debt collection violations under West Virginia Consumer Credit and Protection Act (*Henry v. Ocwen* (S.D. W. Va.))
- Obtained reversal of summary judgment before Florida's District Court of Appeal, arguing novel issue of qualified civil immunity in wrongful death case (*Martinez v. Taurus Int'l Mfg.*, 251 So.3d 328 (Fla. DCA 3d 2018))



**BAILEY GLASSER** LLP

- Obtained reversal in the US Court of Appeals for the Eleventh Circuit when the court found that that under § 1681i(a) of the Fair Credit Reporting Act, a consumer may recover actual damages even if the defendant credit reporting agency did not publish the consumer's false credit information to a third party (*Collins v. Experian*)

**Community and Professional Activities**

Lecturer in Law, University of Pennsylvania Law School

Volunteer on behalf of abused and neglected children referred to the Support Center for Child Advocates in Philadelphia