

FILED
LOS ANGELES SUPERIOR COURT

NOV 17 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY *N. Navarro* Deputy
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

KAREN LOPEZ, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

SETERUS, INC., a Delaware corporation;
IBM LENDER BUSINESS PROCESS
SERVICES, INC., a corporation of
unknown origin; INTERNATIONAL
BUSINESS MACHINES CORPORATION,
a New York corporation; and DOES |
through 10, inclusive,

Defendants.

Case No.: BC484297

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

1 **I. BACKGROUND**

2 Plaintiff Karen Lopez filed this action against Defendants on May 9, 2012
3 alleging the following causes of action: (1) Violation of California Business &
4 Professions Code section 17200 et seq.; (2) Breach Of Covenant Of Good Faith And
5 Fair Dealing; (3) Unjust Enrichment; and (4) Fraud. Plaintiffs filed the operative
6 Fourth Amended Complaint on February 25, 2016, which added Plaintiff Doris
7 Melendez as a second named plaintiff.

8 Plaintiffs are mortgagors who borrowed money from Defendants Seterus, Inc.,
9 IBM, and IBM Lender Business Services, Inc. Plaintiffs allege that Defendants
10 systematically and improperly charged them late fees for all monthly payments made
11 on the last day of each grace period.

12 Counsel represents that Defendants produced responses to pre-certification
13 formal discovery responses in 2015. Plaintiffs took the depositions of three of
14 Defendants' persons most knowledgeable related to Defendants' policies and practices
15 concerning the accounting of late fees, the administration of late fees, and the
16 transaction processing of customer payments. The parties attended mediation on
17 November 22, 2016 but were unable to negotiate a settlement.

18 It is further represented that Defendants produced a sample of loan customer
19 documents and data for 2,200 loan customers across California, Florida, New York, and
20 Texas who mailed at least one loan payment and were assessed at least one late charge
21 during the relevant time period from May 7, 2010 (when Defendants started servicing
22 loans) to April 20, 2017 (date of production). The documents and data for these 2,200
23 customers included: (1) Defendants' payment transaction history from the two loan
24 software servicing programs it used during the relevant time period, PULSE and MSP,
25 dating back to May 7, 2010, which provides payment due dates, payment posting dates,

1 and all late charge assessments; (2) manually entered loan servicing notes for each loan
2 customer; and (3) 3.2 terabytes of files from Defendants' Securities Connection, Inc.
3 ("SCI") database, which included mail correspondence, mortgage notes, account
4 statements, and scanned check images. Plaintiff also subpoenaed documents and data
5 from Defendants' two lock box vendors BNY Mellon and TransCentra and took the
6 depositions of their persons most knowledgeable on topics related to the processing of
7 Defendants' customers' mail payments.

8 Counsel contends that at the parties' second mediation, it became apparent that
9 each side used different methodologies to analyze the sample data of the 2,200 loan
10 customers, which netted different estimates of Defendants' potential exposure. After
11 the second unsuccessful mediation, Plaintiffs retained a data consultant and expert
12 statistician to analyze and compare the check images data with the corresponding
13 payment transaction history produced by Defendants. Plaintiffs' expert consultant
14 identified each late fee assessed to loan customers and searched for check payments that
15 were received on the same day the late fee was assessed or within several days before
16 the late fee was assessed. The identified late fees were then screened to ensure they
17 were assessed during the same month as the corresponding due date, which allowed
18 Plaintiffs to narrow the analysis to late fees that were improperly charged when a check
19 payment was received before expiration of the initial 15-day grace period. Plaintiffs
20 took the deposition of Defendants' statistical expert, Jeffrey Kinrich of Analysis Group,
21 Inc., and received documents relating to Analysis Group's analysis of Defendants' late
22 fee exposure. Defendants also took Plaintiffs' depositions and the deposition of
23 Plaintiffs' statistical expert, Dr. Robert Fountain.

1 On May 15, 2019, the parties participated in a third, full-day mediation with
2 Hon. Louis M. Meisinger (Ret.). With the mediator's guidance, the parties were able to
3 negotiate a proposed settlement of Plaintiffs' claims.

4 On July 23, 2020, counsel filed a partially executed copy of the Settlement
5 Agreement attached as Exhibit 1 to the Declaration of Raul Perez ISO Prelim ("Perez
6 Decl. ISO Prelim"). On December 2, 2020, the Court issued a checklist of items for the
7 parties to address and continued preliminary approval. The matter was transferred from
8 Department 7 to Department 11 on December 22, 2021, and again transferred to
9 Department 17 on February 1, 2021.

10 On May 6, 2021, counsel filed a Motion for Preliminary Approval accompanied
11 by an unexecuted "Amended" Settlement Agreement attached Exhibit 1 to the
12 Declaration of Raul Perez ISO Prelim ("Perez Supp. Decl. ISO Prelim").

13 On May 28, 2021, the Court issued a checklist of items for the parties to address
14 and continued preliminary approval. In response, on September 17, 2021, counsel filed
15 the Supplemental Declaration of Raul Perez ISO Prelim ("Perez 2nd Supp. Decl. ISO
16 Prelim"). On September 30, 2021, counsel filed a fully executed Settlement Agreement
17 attached as Exhibit 1 to the Declaration of Raul Perez ISO Prelim ("Perez 3rd Supp.
18 Decl. ISO Prelim").

19 On October 12, 2021, the Court continued preliminary approval for further
20 briefing. In response, on October 21, 2021, counsel filed a partially executed Settlement
21 Agreement attached as Exhibit 1 to the Supplemental Declaration of Raul Perez ISO
22 Prelim ("Perez 4th Supp. Decl. ISO Prelim").

23 The preliminary approval matter came on for further hearing on November 15,
24 2021. At that time, the Court and counsel discussed the desirability of sending notice in
25 English and Spanish and the need for a fully executed Settlement Agreement.

1 Supplemental papers were filed December 16 and 17, 2021, including a fully executed
2 Second Supplemental Declaration of Raul Perez attaching same and an indication that
3 administration costs were estimated to be \$70,391.60. (See Ex. 3 to Perez Decl. filed
4 December 16, 2021).

5 The settlement was preliminarily approved on December 21, 2021, subject to
6 certain conditions, with which there has been compliance. On May 17, 2022, Plaintiffs'
7 counsel submitted a notice to the Court regarding a delay in the mailing of the Notice of
8 class action settlement. On June 22, 2022, the administrator CPT Group, Inc. filed a
9 declaration with the Court stating that the Class List contained possibly duplicate
10 records for 353 sets of Class Members, the review and confirmation of which would
11 extend the time needed for the administrator to finalize the Class List. On July 8, 2022,
12 the Court entered an order approving an amended schedule for settlement
13 administration and the Final Approval Hearing.

14 In July 2022, notice was given to the Class Members as ordered (see Declaration
15 of Emilio Cofinco).

16 Plaintiffs' motion for final approval of the Settlement Agreement, including for
17 payment of fees, costs, and a service award to the named plaintiffs came on for hearing
18 on October 14, 2022 at which time the Court and counsel discussed issues raised in the
19 Court's "checklist" issued prior to hearing. The matter was continued for the
20 submission of supplemental material related to billing rates, filed November 7 and 8,
21 2022.¹

22 Having considered the motion and argument of counsel the Court now rules.
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24
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¹ These appear to be duplicative filings.

1 Now before the Court is Plaintiffs' motion for final approval of the Settlement
2 Agreement, including for payment of fees, costs, and a service award to the named
3 plaintiffs.
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5 **II. THE TERMS OF THE SETTLEMENT**

7 **A. SETTLEMENT CLASS DEFINITION**

8 "Class Member(s)" or "Settlement Class" means all persons: (i) who owned
9 property (including mobile homes) in California, Texas, Florida, or New York during
10 the Class Period; and (ii) whose mortgage on property (including mobile homes) in
11 California, Texas, Florida, or New York was serviced by Defendant Seterus, Inc. at any
12 time during the Class Period; and (iii) who made at least one regularly scheduled
13 monthly mortgage payment by mailing the full payment amount (including principal,
14 interest, and escrow amounts owed) to any of the following addresses: PO Box 7162,
15 Pasadena, CA 91109-7162; PO Box 54420, Los Angeles, CA 90054-0420; PO Box
16 11790, Newark, NJ 071021-4790; and (iv) for which Defendants' records reflect such
17 payment was received within one day after the expiration of the Class Member's grace
18 period (e.g. a payment received up until the 17th of day of the month for a grace period
19 that expired on the 16th of the month); and (v) who were assessed a late fee by
20 Defendants. (¶4.)

21 "Class Period" means the period from May 9, 2008 to June 28, 2019. (¶5.)

22 At preliminary approval, the class size was estimated to be at least 12,000 Class
23 Members. (Decl. of Perez ISO Prelim filed September 17, 2021, ¶5.) In fact the class
24 size is approximately 18,800 Class Members. (Decl. of Emilio Cofinco ¶5).
25

1 **B. THE MONETARY TERMS OF SETTLEMENT**

2 The essential monetary terms are as follows:

- 3 • The Class Settlement Amount (“CSA”) is **\$2,999,999.99** (¶7).
- 4 • The Net Settlement Amount (“Net”) (**\$1,409,608.39**) is the CSA less:
- 5 ○ Up to **\$1,500,000** for attorney fees and costs (¶39);
- 6 ▪ Of this amount, **\$100,000** is the maximum estimated for attorney
- 7 costs (*Ibid.*);
- 8 ○ Up to **\$20,000** (\$10,000 each) for a service award to the proposed class
- 9 representative (¶40.); and
- 10 ○ Estimated **\$70,391.60** for settlement administration costs (Ex. 3 to Perez
- 11 Decl. filed December 16, 2021.)
- 12 • Assuming the Court approves all maximum requested deductions, approximately
- 13 **\$1,409,499.99** will be available for distribution to participating class members.
- 14 The highest individual settlement payment is \$1,236.54 and the average is
- 15 approximately \$75.00. (Confico Dec. ¶19).
- 16 • There is no Claim Requirement. (¶15.)
- 17 • The settlement is not reversionary. (¶41.)
- 18 • Individual Settlement Share Calculation: Individual Settlement Payments will be
- 19 calculated and apportioned from the Net Settlement Amount based on the
- 20 amount of Late Fees assessed during the Class Period. Specific calculations of
- 21 Individual Settlement Payments will be made as follows:
- 22 ○ Defendants will calculate the total amount of Late Fees assessed to each
- 23 Class Member during the Class Period (“Individual Late Fees”) and the
- 24 aggregate total amount of Late Fees assessed to Class Members during
- 25 the Class Period (“Class Late Fees”). (¶42.a)

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- To determine each Class Member’s estimated “Individual Settlement Payment,” the Settlement Administrator will use the following formula:
Net Settlement Amount x Individual Late Fees ÷ Class Late Fees. (¶42.b)
- The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount. (¶42.c)
- Tax Withholdings: 100% as miscellaneous income. (¶49.)

- Funding and Payment of the Settlement: Defendants will deposit the Class Settlement Amount within 30 calendar days of the Effective Date. (¶24.) Within 45 calendar days of the Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class Members; (ii) Plaintiffs; and (iii) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. (¶45.)
- Uncashed Settlement Payment Checks: Funds represented by Individual Settlement Payment checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than 180 calendar days after issuance will be tendered to the State Controller’s Office, Unclaimed Property Division. (¶47.)

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1 **C. TERMS OF RELEASES**

- 2 • Upon the date on which Defendant fully funds the Settlement, and except as to
3 such rights or claims as may be created by the Settlement Agreement, each
4 Participating Class Member shall fully and forever release and discharge all of
5 the Released Parties, or any of them, from each of the Released Claims during
6 the Class Period. (¶46)

7 ○ “Released Claims” means any and all liabilities, rights, claims, actions,
8 causes of action, demands, damages, costs, attorneys’ fees, losses, and
9 remedies, whether known or unknown, existing or potential, suspected or
10 unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that
11 result from, arise out of, are based upon, or relate to the conduct,
12 omissions, duties or matters that were or could have been alleged in the
13 Action arising out of, or related to, late fees, including but not limited to
14 the Late Fees, assessed by Defendants during the Class Period. (¶18.)

15 ○ “Released Parties” means Defendants; their past or present officers,
16 directors, shareholders, employees, agents, principals, heirs,
17 representatives, accountants, auditors, consultants, insurers and reinsurers,
18 and their respective successors and predecessors in interest, subsidiaries,
19 affiliates, parents and attorneys, if any. (¶19.)

- 20 • The named Plaintiffs will also provide a general release and a waiver of the
21 protections of Cal. Civ. Code §1542. (¶25.)

- 22 • The releases are effective upon the date on which Defendant fully funds the
23 Settlement. (¶¶25, 46.)

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1 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

2 “Before final approval, the court must conduct an inquiry into the fairness of the
3 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
4 settlement agreement after the final approval hearing, the court must make and enter
5 judgment. The judgment must include a provision for the retention of the court's
6 jurisdiction over the parties to enforce the terms of the judgment. The court may not
7 enter an order dismissing the action at the same time as, or after, entry of judgment.”
8 Cal. Rules of Court, rule 3.769(h).

9 As discussed more fully in the Order conditionally approving the settlement, “[i]n
10 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
11 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
12 action. The purpose of the requirement [of court review] is the protection of those class
13 members, including the named plaintiffs, whose rights may not have been given due
14 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
15 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
16 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
17 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
18 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
19 extent necessary to reach a reasoned judgment that the agreement is not the product of
20 fraud or overreaching by, or collusion between, the negotiating parties, and that the
21 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
22 quotation marks omitted].

23 “The burden is on the proponent of the settlement to show that it is fair and
24 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” See *Wershba, supra*, 91
3 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
4 1802. Notwithstanding an initial presumption of fairness, “the court should not give
5 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
6 116, 130. “Rather, to protect the interests of absent class members, the court must
7 independently and objectively analyze the evidence and circumstances before it in order
8 to determine whether the settlement is in the best interests of those whose claims will be
9 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
10 that determination, the court should consider factors such as “the strength of plaintiffs’
11 case, the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the extent
13 of discovery completed and stage of the proceedings, the experience and views of
14 counsel, the presence of a governmental participant, and the reaction of the class
15 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
16 the court is free to engage in a balancing and weighing of factors depending on the
17 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

18 **A. A PRESUMPTION OF FAIRNESS EXISTS**

19 The Court preliminarily found in its Order of December 21, 2021 that the
20 presumption of fairness should be applied. No facts have come to the Court’s attention
21 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
22 presumption of fairness as set forth in the preliminary approval order.

23 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

24 The settlement was preliminarily found to be fair, adequate and reasonable.
25 Notice has now been given to the Class. The notice process resulted in the following:

1 Number of class members: 18,800

2 Number of notices mailed: 18,800

3 Number of undeliverable notices: 171

4 Number of opt-outs: 6

5 Number of objections: 0

6 Number of participating class members: **18,794**

7 (Declaration of Emilio Cofinco (“Cofinco Decl.”) ¶¶ 5-19.)

8 The Court finds that the notice was given as directed and conforms to due process
9 requirements.

10 At hearing the Court questioned whether the increase in the number of class
11 members affected the fairness of the settlement but was advised that it did not because
12 the settlement amount was calculated based on the total late fees assessed, which did
13 not vary irrespective of the number of such persons who paid those fees.

14 Given the reactions of the Class Members to the proposed settlement and for the
15 reasons set for in the Preliminary Approval order, the settlement is found to be fair,
16 adequate, and reasonable.

17 **C. CLASS CERTIFICATION IS PROPER**

18 For the reasons set forth in the preliminary approval order, certification of the
19 Class for purposes of settlement is appropriate.

20 **D. ATTORNEY FEES AND COSTS**

21 Class Counsel requests **\$1,500,000 total** for attorney fees and litigation costs.
22 (Motion for Attorneys’ Fees at 2:2-5.) Specifically, counsel requests a fee amount of
23 **\$1,406,162.08** (i.e., \$1,500,000 minus requested costs) and **\$93,837.92** in costs. (*Id.* at
24 12:3-5.)

1 Courts have an independent responsibility to review an attorney fee provision and
2 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular*
3 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.) In determining the appropriate
4 amount of a fee award, courts may use the lodestar method, applying a multiplier where
5 appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.)
6 Alternatively, a percentage calculation is permitted in common fund cases. (*Laffitte v.*
7 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)

8 Here, the **\$1,406,162.08** fee request is approximately 46.9% of the Class
9 Settlement Amount, which is a far greater percentage than the average fee award in class
10 actions. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [noting
11 that whether the percentage method or the lodestar method is used, fee awards average
12 around one-third of the recovery, and that 25% is the benchmark].)

13 In the fee motion, Class Counsel seeks fees pursuant to the lodestar method.
14 (Motion for Attorneys' Fees at pp. 7-8.) A lodestar is calculated by multiplying the
15 number of hours reasonably expended by the reasonable hourly rate. (*PLCM Group,*
16 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096 (*PLCM*)). "Generally, '[t]he lodestar
17 is calculated using the reasonable rate for comparable legal services in *the local*
18 *community* for noncontingent litigation of the same type, multiplied by the reasonable
19 number of hours spent on the case.'" (*Environmental Protection Information Center v.*
20 *Dept. of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 248, quoting *Nichols*
21 *v. City of Taft* (2007) 155 Cal.App.4th 1233, 1242-1243.)

22 As to the reasonableness of the rate and hours charged, trial courts consider
23 factors such as "the nature of the litigation, its difficulty, the amount involved, the skill
24 required in its handling, the skill employed, the attention given, the success or failure,
25 and other circumstances." (*PLCM, supra*, 22 Cal.4th at p. 1096.) "The evidence should

1 allow the court to consider whether the case was overstaffed, how much time the
2 attorneys spent on particular claims, and whether the hours were reasonably expended.”
3 (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.)

4 The hourly rates for Capstone APC are between \$600 per hour and \$950 per hour.
5 (Decl. of Raul Perez ISO Final ¶9.) Attorney Perez represents that 2,641 hours of work
6 were done by eight attorneys at his firm, and attaches a complete print out of the hours
7 done and attorneys working on the matter, along with a summary of the billing records
8 for the action and lists of the major tasks performed. (*Id.* at pp. 4-11.) Based on
9 counsel’s representation, the lodestar is approximately \$1,781,155, implying a multiplier
10 of approximately 0.8. (*Id.* at ¶9.) In his Supplemental Declaration Perez represents that
11 his firm’s rates have been approved as “reasonable” in other counties (Contra Costa,
12 Merced, Stanislaus, San Diego, Kern) in 2022 and provides the orders confirming same.

13 Counsel notes that this litigation has been ongoing for 10 years and that they had
14 to contend not only with attempts to defeat the action, but also novel and complex issues
15 such as whether California’s choice-of-law rules permit application of California law to a
16 multi-state class, and if so, whether the Constitution permits application of California law
17 to a multi-state class. (Motion for Attorneys’ Fees at 12:25-13:16.) They argue that a
18 positive lodestar multiplier of 1.5 or greater would have normally been justified under
19 these circumstances, and that the negative multiplier of 0.8 here is reasonable in
20 comparison. (*Id.* at 13:17-20.)

21 Perez also argues that his firm’s rates are in line with the adjusted Laffey Matrix
22 attached in support of the request. (*Id.* at ¶12, Exhibit 1 thereto.) However, the Laffey
23 Matrix reference relied upon is of limited usefulness as it does not break down for area of
24 practice or geography. *Cf. Stratton v. Beck*, 9 Cal. App. 5th 483, 496, (2017) (hourly rate
25 of \$450 was proper where lawyer had decades of experience in labor matters and

1 presented evidence of rates of \$500 to \$800 per hour—charged by similarly experienced
2 labor lawyers in the Los Angeles area); *Davis v. Brown Shoe Co.* (E.D. Cal.) 2015 U.S.
3 Dist. LEXIS 149010 (rates for experienced wage and hour lawyers in Los Angeles \$695-
4 \$395 per hour); *Ruiz v. JCP Logistics, Inc.* (C.D. Cal. Aug. 12, 2016, No. SACV 13-
5 1908-JLS (ANx)) 2016 U.S. Dist. LEXIS 189280, at *28-30.) (rejecting Laffey matrix
6 and setting \$600 per hour for experienced wage and hour class action counsel).

7 Nonetheless, the **\$1,406,162.08** fee request represents a reasonable fee award in
8 consideration of the lodestar multiplier, the duration of the case and the work performed
9 on it, and the novel and complex issues faced. Further, the notice expressly advised
10 class members of the estimated total fee and cost request of \$1,500,000, and no one
11 objected. (Cofinco Decl. ¶16, Exhibit A thereto.) Accordingly, the Court awards fees in
12 the amount of **\$1,406,162.08**.

13 Class Counsel requests **\$93,837.92** in costs. (Motion for Attorneys' Fees at
14 13:22-14:25.) This is less than the cost estimate of \$100,000 stated in the Settlement
15 Agreement (¶39). Costs include: Mediation Fees (\$25,370), Court Reporters,
16 Transcripts & Depositions (\$21,858.60), Court Fees, Courier Fees, Filings & Service of
17 Process (\$9,867.57), expert fees(\$9,210) and travel expenses (\$10,283.53). (Perez Decl.
18 ISO Final ¶13.)

19 The costs appear to be reasonable and necessary to the litigation, are reasonable
20 in amount, and were not objected to by the class. For the foregoing reasons, costs of
21 **\$93,837.92** are approved.

22 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

23 A service (or incentive) fee award to a named class representative must be
24 supported by evidence that quantifies the time and effort expended by the individual and
25 a reasoned explanation of financial or other risks undertaken by the class representative.

1 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
2 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
3 [“Criteria courts may consider in determining whether to make an incentive award
4 include: (1) the risk to the class representative in commencing suit, both financial and
5 otherwise; (2) the notoriety and personal difficulties encountered by the class
6 representative; (3) the amount of time and effort spent by the class representative; (4) the
7 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
8 class representative as a result of the litigation. (Citations.)”].

9 Here, the Class Representatives request enhancement awards of **\$10,000 each**,
10 totaling **\$20,000**. (Motion for Attorneys’ Fees at 15:6-11.) They urge that the awards
11 are appropriate for the following reasons:

12 Plaintiff Lopez represents that her contributions to the action include: responding
13 to discovery, searching for and producing documents, being in regular contact with her
14 counsel regarding the status of her lawsuit, and providing her counsel with any
15 information or documents they asked for. This included responding to her counsel’s
16 requests in preparing for two mediations and Plaintiffs’ Motion for Class Certification.
17 On February 28, 2021, she had her deposition taken, which lasted a full day. She met
18 with her counsel for several hours to prepare for the deposition and subsequently
19 reviewed her deposition transcript for accuracy. She estimates spending 50 to 60 total
20 hours on the action. (Declaration of Karen Lopez filed September 17, 2021, ¶¶ 13, 16.)
21 She also represents that she suffered hardship from her status as the lead class
22 representative, as due to the litigation, Defendant Seterus ceased communications with
23 her, leaving her without recourse to address issues with her mortgage loan as well as
24 causing difficulty in refinancing her mortgage. She asserts that she had “constant stress”
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1 during the years that Seterus serviced her loan, exacerbated by the filing of her lawsuit.
2 (*Id.* at ¶14.)

3 Plaintiff Melendez represents that her contributions to the action include:
4 responding to discovery, searching for and producing documents, being in regular
5 contact with her counsel regarding the status of her lawsuit, and providing her counsel
6 with any information or documents they asked for. This included responding to her
7 counsel's requests in preparing for two mediations and Plaintiffs' Motion for Class
8 Certification. On March 11, 2019, she had her deposition taken, which lasted a full day.
9 She met with her counsel for several hours to prepare for the deposition and
10 subsequently reviewed her deposition transcript for accuracy. She estimates spending 40
11 to 50 total hours on the action. (Declaration of Doris Melendez filed September 17,
12 2021, ¶¶ 12, 14.)

13 At oral argument counsel stressed that plaintiffs have participated in this litigation
14 for many years and have, as a result of their actions, secured recovery for thousands of
15 class members nationwide.

16 In light of these facts the service awards are approved.

17 **F. SETTLEMENT ADMINISTRATION COSTS**

18 The Settlement Administrator, CPT Group, Inc., requests **\$70,500** in
19 compensation for its work in administrating this case. (Cofinco Decl. ¶21.) At the time
20 of preliminary approval, costs of settlement administration were estimated to be
21 approximately \$70,391.60, based on the original estimated class size of 12,000 (Ex. 3 to
22 Perez Decl. filed December 16, 2021.) Class Members were provided with notice of the
23 estimated amount of \$70,500 and did not object. (Cofinco Decl. ¶16, Exhibit A thereto.)

24 Accordingly, settlement administration costs are approved in the amount of
25 **\$70,500.**

1 **IV. CONCLUSION AND ORDER**

2 The Court hereby:

- 3 (1) Grants class certification for purposes of settlement;
- 4 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 5 (3) Awards **\$1,406,162.08** in attorney fees and costs to Class Counsel, Capstone
6 Law APC;
- 7 (4) Awards **\$93,837.92** in litigation costs to Class Counsel;
- 8 (5) Awards **\$10,000 each** as Class Representative Service Awards to Karen Lopez
9 and Doris Melendez;
- 10 (6) Awards **\$70,500** in settlement administration costs to CPT Group, Inc.;
- 11 (7) Orders class counsel to provide notice to the class members pursuant to
12 California Rules of Court, rule 3.771(b); and
- 13 (8) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
14 Settlement Funds for August 25 2023. ^{at 8:30 am} Final Report is to be filed five ~~court~~
15 days in advance.
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18 Dated: 11/16/22



19 MAREN E. NELSON

20 Judge of the Superior Court

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