IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, WILLIAM GREEN, BRENDA BOLEY, MIGUEL PADILLA, and VICTORIA DAWKINS, Plaintiffs, v. CARRINGTON MORTGAGE SERVICES, LLC, Defendants.	Case No. 1:20-cv-02369-RDB

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

PLEASE TAKE NOTICE that on November 10, 2022 at 11:00AM, in Courtroom 5D at the United States District Court for the District of Maryland located at 101 West Lombard Street in Baltimore, MD 21201, before the Honorable Richard D. Bennet, Plaintiffs Ashly Alexander and Cedric Bishop, together with Plaintiffs Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, respectfully move this court to award Settlement Class Counsel attorneys' fees of $7,272,759.46 and reimbursement of costs in the amount of $15,138.96. In addition, Plaintiffs move for Service Awards of $5,000 for each of Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins.

This motion and memorandum are supported by the Declarations of Kristen Simplicio, James Kauffman, and Phillip Robinson.[1]

[1] Before the November 10, 2022 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.

Dated: September 27, 2022

Respectfully submitted,

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I. INTRODUCTION

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins (the "Plaintiffs") submit this memorandum in support of Plaintiffs' Motion for Award of Attorneys' Fees, Costs, and Service Award. This action consolidates three separate lawsuits against Defendant Carrington Mortgage Services, LLC ("Carrington"), in which the Plaintiffs challenged Carrington's practice of charging and collecting "Pay-to-Pay fees,"— or "Convenience fees"– processing fees imposed on residential borrowers paying their monthly mortgage by phone or online. After Plaintiffs filed and vigorously litigated their lawsuits, prevailing in a landmark case before the Fourth Circuit Court of Appeals, Carrington agreed to establish a cash common fund of $18,181,898.65, worth approximately 35% of the $51,891,139.18 in fees collected by Carrington from Settlement Class Members in the class period, and agreed to refrain from collecting these fees for at least three years after the date judgment is entered, an act that will save Settlement Class Members at least $26 million. Thus, the monetary value of this Settlement to the Settlement Class Members is over $44 million.

Now, in this Motion, Plaintiffs seek an award of $7,287,898.42 in attorneys' fees and costs, which is comprised of $7,272,759.46 in attorneys' fees, and $15,138.96 in reimbursable costs. The amount in attorneys' fees represents 16.5% of the $44,181,898.65 overall value 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, Carrington initially prevailed on its motions to dismiss in two of the cases, and, in the third, the class members faced the threat of being compelled to arbitration after an appeal to the Eleventh Circuit in a related case. Thus, at all times during the litigation, the likelihood of any relief was highly uncertain, and yet, Named Plaintiffs and Class Counsel

were able to achieve one of the largest settlements of its kind after months of negotiations, which culminated in a fourteen-hour mediation session.

Despite the risk, with their skill and commitment to excellence, Class Counsel vigorously litigated this case at every step, in multiple forums and jurisdictions, 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, as it is one of the largest of its kind, particularly when accounting for the valuable changed practices that benefits the Class Members each month. *See* ECF No. 53-2, App'x A.

Plaintiffs each also seek a $5,000.00 service award, for a total of $35,000.00 to the seven Plaintiffs (Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins) for their service in representing and zealously advocating on behalf of Class Members. The Named 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 Named Plaintiffs, the attorneys' fees, costs, and service awards sought in this Motion are reasonable. For all of the reasons set forth herein, Plaintiffs requests that the Court grant these awards.

II. BACKGROUND

The history of the three cases and related matters is set forth at section II in Plaintiffs' Motion for Preliminary Approval, ECF No. 53-1, and in more detail in Class Counsel's accompanying

declarations. *See generally* Simplicio Decl. ¶¶ 4-36 and Exs. A1-A7;[2] Robinson Decl. ¶¶ 3, 10-16, 19, 21-27. Briefly, however, the Plaintiffs note that this matter consolidates three actions as follows:

***Thomas-Lawson* Litigation**: On December 16, 2019, Plaintiffs Thomas-Lawson (Maryland), Boley (Texas), Padilla (California), and Green (New York) initiated a class action in this Court, *see* Case No. 1:19-CV-03567-CCB (D. Md.), bringing claims under federal and state law, which was transferred to the Central District of California on August 18, 2020. *See* Simplicio Decl., Ex. A3 (docket for *Thomas-Lawson v. Carrington Mortg. Servs. LLC*, 2:20-cv-07301-ODW (C.D. Cal.)), Dkt. 1. Among other things, Carrington moved to compel arbitration and dismiss the claims; the district court denied the former and granted the latter. The Plaintiffs appealed, and the case was fully briefed. *See generally id.,* Ex. A4 (docket for *Thomas-Lawson v. Carrington Mtg. Servs., LLC*, 21-55459 (9th Cir.)). The Consumer Financial Protection Bureau ("CFPB") filed an amicus in support of the Plaintiffs in the Ninth Circuit. *See id.* at Dkt. 22. The matter is stayed and will be dismissed upon final entry of judgment here. *See id.* at Dkt. 54. *See also* Simplicio Decl. ¶¶ 4-11, 23, 29.

***Dawkins* Litigation**: On May 20, 2020, Plaintiff Dawkins initiated a class action in the Southern District of Florida, alleging violations of Florida law and breach of contract. *See id.,* Ex. A5 (docket for *Dawkins v. Carrington Mortg. Servs. LLC*, 1:20-CV-60998-RAR (S.D. Fla.)), Dkt. 1. On May 26, 2020, another plaintiff filed a similar lawsuit against Carrington in that district. *See* Ex. A6 (docket for *Attix v. Carrington Mortgage Services, LLC*, Case No. 20-cv-22183-UU (S.D. Fla.) ("*Attix*")). Carrington moved to dismiss and to compel arbitration in both cases, while Class Counsel and Dawkins filed various procedural motions to address the overlapping nature of the cases. *See generally* Simplicio Decl. ¶¶ 4, 12-16. After the *Attix* court denied Carrington's motion to compel arbitration,

[2] Because this settlement resolves three lawsuits, two of which involved appeals, and the fee petition encompasses work performed and connected to activity in multiple matters, the complete dockets for the various cases discussed in more detail herein are attached as Exhibits A1-A7 to the Simplicio Declaration.

Dawkins was stayed, and Carrington filed an appeal to the Eleventh Circuit. *See* Ex. A7 (docket for *Carrington Mortgage Services, LLC v. Attix*, 2020-13575). On May 26, 2022, the Eleventh Circuit granted Carrington's appeal, compelling the matter to arbitration. *See Attix v. Carrington Mortg. Servs., LLC*, 35 F.4th 1284 (11th Cir. 2022). *See also* Simplicio Decl. ¶¶ 15-16.

***Alexander* Litigation:** On July 10, 2020, Plaintiff Alexander initiated a class action lawsuit in the Circuit Court of Baltimore County, Maryland alleging violations of Maryland law; Carrington removed, and on September 8, Plaintiffs filed an amended complaint, adding Plaintiff Bishop and claims under federal law. *See* Ex. A1 (*Alexander v. Carrington Mortg. Servs., LLC*, 1:20-CV-02369-RDB (D. Md.)), Dkts. 1, 3, 20. This Court granted Carrington's motion to dismiss, *see* Dkt. 33, which Plaintiffs appealed. *See generally* A2 (docket for *Alexander v. Carrington Mortg. Servs., LLC*, Case No. 20-2359 (4th Cir.)). On January 19, 2022, the Fourth Circuit reversed. *See Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370 (4th Cir. 2022). *See also* Robinson Decl. ¶¶ 3, 10-16, 19, 21-27; Simplicio Decl. ¶¶ 4, 17-22.

The Parties in all matters agreed that a consolidated settlement was in the best interest of all involved in this action and in this Court, as it would ensure efficient resolution, and reduce class member confusion. As described in more detail in the Motion for Preliminary Approval, *see* ECF No. 53-1 at § III, under the settlement, the class is entitled to two primary benefits: (i) a $18,181,898.65 cash common fund; and (ii) $25,920,000.00 additional relief to the class members for "a three year period following the entry of the Preliminary Approval Order," during which time Carrington will refrain from charging or collecting Pay-to-Pay fees, but continue to accept payments by telephone, IVR, and the Internet. *See* ECF No. 53-4, Settlement Agreement, at §§ II(II), IV(C). Settlement funds would be automatically mailed to Class Members without the need to make a claim. Every Class Member will receive $5 for the first Pay-to-Pay fee paid, with the remainder of the cash Common Fund distributed pro-rata to those who paid more than one fee, based on the total amounts paid.

Thus, approximately $2.2 million of the cash Common Fund will be spent ensuring every Class Member receives a $5 refund for the first fee paid, and the balance will be distributed to those who incurred multiple fees.

Carrington's business records, which are required under Federal and State regulations to be able to identify all fees imposed and collected on, show that it collected an average of $8.64 million a year in Pay to Pay fees from Class Members during the last four years, Robinson Decl. ¶ 19. Carrington's agreement under the Settlement to provide internet and phone payment options free of charge for at least three years will save Class Members prospectively at least $26 million. More likely than not Class Members will use a free payment option more than they did previously when there was a fee charged, increasing the monetary benefit to Class Members from the settlement. Thus, the total gross benefit to the Class achieved by Class Counsel here is at least $44,181,898.65. Robinson Decl. ¶ 19; Kauffman Decl. ¶17.

III. ARGUMENT

A. The Class Representatives Service Award Should be Approved.

Plaintiffs seek service awards in the amount of $5,000 to each of Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, 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., Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (incentive awards are intended to compensate class representatives for work done on behalf of the class and to make up for financial or reputational risk undertaken in bringing the action); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466 (W.D. Va. 2011) (incentive award are routinely approved in class actions to encourage socially beneficial litigation by compensating named plaintiffs for any

personal risk they undertook); *Shealy v. Hughes*, No. 2:10-cv-714-DCN, 2011 U.S. Dist. LEXIS 173615 (D.S.C. Oct. 24, 2011) (observing that named plaintiffs are "an essential ingredient of any class action" and incentive awards are appropriate to induce an individual to participate in worthy class action lawsuits); *Speaks v. U.S. Tobacco Coop.*, No. 5:12-CV-729-D, 2018 U.S. Dist. LEXIS 26597 (E.D.N.C. Feb. 20, 2018) (approving incentive awards); *McClaran v. Carolina Ale House Operating Co., LLC*, No. 3:14-cv-03884-MBS, 2015 U.S. Dist. LEXIS 112985 (D.S.C. Aug. 26, 2015) (same).[3]

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. ¶ 34. And they were exposed to other risks like having their claims forced into arbitration or undercut by legislation promoted the Defendant's regulator to legalize the disputed fees. Robinson Decl. ¶¶ 12, 14. In addition, Plaintiffs risked 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. ¶¶ 34-35

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 Carrington, all support approval of the requested service

[3] The proposed service award amounts are also in the range typically approved in this District. *See Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 469 (D. Md. 2014) (collecting cases).

awards. And the requested service awards are a tiny fraction of the amount obtained for the Class. Even taken collectively, a total of $35,000 equates to approximately 0.002% 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 $7,272,759.46, which is equal to 16.5% of the "the full value of the benefit to each absentee member" obtained through the "entire judgment fund." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980). This amount of attorneys' fees is consistent with Fourth 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). In this Circuit, there are two methods commonly used for calculating an attorneys' fee award in a class action settlement: the lodestar method and the "percentage of the recovery" method. *See Jernigan v. Protas, Spivok & Collins, LLC*, No. CV ELH-16-03058, 2017 WL 4176217, at *2 (D. Md. Sept. 20, 2017); *In re Interior Molded Doors Indirect Purchaser Antitrust Litig.*, No. 3:18-cv-00850-JAG, 2021 U.S. Dist. LEXIS 218589, 2021 WL 5195089 (E.D. Va. July 27, 2021). Courts may award fees under either method, and for each, "the goal is to make sure that counsel is fairly compensated." *Jernigan*, 2017 WL 4176217, at *2 (internal quotations omitted).

That said, the percentage of recovery method "is preferred because it aligns the interests of class counsel with the class . . . by tying attorney's fees to the result achieved, rather than hours

expended by the attorneys." *In re Interior Molded Doors Indirect Purchaser Antitrust Litig.*, 2021 WL 5195089, at *2; *see also Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-333, 2019 WL 7066834, at *4 (M.D.N.C. Dec. 23, 2019) ("[D]istrict courts in the Fourth Circuit 'overwhelmingly' prefer the percentage method in common-fund cases."); *Jones v. Dominion Resources Services, Inc.*, 601 F. Supp. 2d 756, 759 (S.D. W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."); *Kidrick v. ABC Television & Appliance Rental*, No. 3:97-cv-69, 1999 WL 1027050, at *1 (N.D. W. Va. 1999) ("Where there is a common fund in a class settlement, application of a percentage method to calculate an attorney's fee award is now favored."); *Manuel v. Wells Fargo Bank, N.A.*, No. 14-cv-238, 2016 WL 1070819, at *5 (E.D. Va. Mar. 15, 2016) (same); *Good v. West Virginia-American Water Co.*, No. 14-1374, 2017 WL 2884535, at *20 (S.D. W. Va. July 6, 2017) (collecting cases approving of the use of the percentage method).

The percentage method also minimizes the need to evaluate the reasonableness of attorneys' fees *ex post*, which is both time consuming and often hard to do, *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 437 (D. Md. 1998) ("[C]ourts have become increasingly critical of the lodestar method, which requires scrutiny of Class Counsel's billing practices—a time consuming process—whereas the percentage method is more akin to the common litigation practice of setting contingency fees based on a percentage of the recovery."); *Strang v. JHM Mortgage Sec. Ltd. Partnership*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("[T]he percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases."). And the percentage method transfers the burden of financing lawsuits and other risks from claimants to attorneys who are better able to bear them. Indeed, the Supreme Court has long held that an attorney who recovers a common fund can assess his or her fee against the entire fund. *See Boeing*, 444 U.S. at 478. (1980). And some Circuits even mandate the use of the percentage-of-the-fund method.

See Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

Additionally, in analyzing the reasonableness of any fee award as compared to the recovery, the court "must also consider the value of the non-monetary relief when evaluating the overall benefit to the class." *See Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *5 (D. Md. Jan. 28, 2020); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014); *Kruger v. Novant Health, Inc.*, No. 1:14-CV-208, 2016 WL 6769066, at *3 (M.D.N.C. Sept. 29, 2016) ("Considering the non-monetary benefits and relief created by counsel's efforts is important because it encourages attorneys to obtain meaningful affirmative relief."). This practice accords with the approach taken by other courts around the country. *See, e.g., Harris v. Chevron U.S.A., Inc.*, No. 6:19-CV-00355-SPS, 2020 WL 8187464, at *3 (E.D. Okla. Feb. 27, 2020)("In valuing the result obtained for purposes of determining a reasonable fee to award under the Tenth Circuit's percentage of recovery method, it is well-established that the fee award should be based on the total economic benefit bestowed on the class")(collecting authorities from multiple circuits); *Carlotti v. ASUS Computer Int'l*, No. 18-CV-03369-DMR, 2019 WL 6134910, at *12 (N.D. Cal. Nov. 19, 2019) ("The Ninth Circuit has used the value of injunctive relief in estimating attorneys' fees where the agreement confers 'a clearly measurable benefit.'")(quoting *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003)).

To determine the reasonableness of a fee request, courts take into consideration the following factors, which were laid out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), and adopted by the Fourth Circuit in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978), and *Allen v. United States*, 606 F.2d 432, 436 n.1 (4th Cir. 1979): (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorneys' opportunity cost in pressing the instant litigation; (5) the customary fee for like work; (6) the attorneys' expectations at the outset of the litigation; (7) the time

limitations imposed by the client or circumstances; (8) the amount in controversy and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorney fee awards in similar cases. *See Grissom v. The Mills Corp.*, 549 F.3d 313, 321 (4th Cir. 2008); *see also Durm v. Am. Honda Fin. Corp.*, No. WDQ-13-223, 2015 WL 6756040, at *6 (D. Md. Nov. 4, 2015).

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

Plaintiffs' requested award of 16.5 percent of the total settlement monetary value is fair and reasonable, consistent with Fourth Circuit precedent, and is in line with awards in similar cases. As set forth below, a review of the *Johnson* factors demonstrates that the requested fee is reasonable. *See Grissom*, 549 F.3d at 321.

a. The Contingent Nature of the Case Supports the Fee Request.

In evaluating the *Johnson* factors, courts must take into consideration the contingent nature of any attorneys' fee award, because "[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk" of uncertainty. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010) (Wilkinson, J.); *see also In re Interior Molded Doors Indirect Purchaser Antitrust Litig.*, 2021 WL 5195089, at *2 (highlighting the weight that should be given to a contingency arrangement in assessing the fairness of fees; explaining, "[i]ncentives for counsel to undertake worthy class action lawsuits are important because class actions serve to provide relief when it would be inefficient for an individual to pursue a claim"). In *Abrams*, the Fourth Circuit made clear that it was an abuse of discretion to overlook the fact that lawyers had taken a case on contingency in conducting the analysis of the *Johnson* factors. *See* 605 F.3d at 245 ("Fixing a lodestar fee in this contingency case was error and threatens to nullify the considerable advantages of contingency arrangements.").

Here, the risk incurred by Class Counsel in pursuing this litigation was significant. Robinson Decl. ¶¶ 3, 12, 14; Simplicio Decl. ¶¶ 32-33. The first case was filed in December 2019, when the law was still uncertain, and remained so at the time the second and third cases, brought on behalf of different classes, were filed in 2020. And once on file, Class counsel faced significant challenges in all three jurisdictions—initially losing motions to dismiss in two of them, and dealing with procedural challenges in the third, caused in part by uncertainty over arbitration agreements that may have bound portions of the Class. Rather than walk away from the fight, Class Counsel incurred even more risk in challenging the denials of the motions to dismiss before two separate appellate courts: in this matter, before the Fourth Circuit, on questions of Maryland law, and in *Thomas-Lawson*, before the Ninth Circuit, on questions of federal law, as well as California, Maryland, and Texas state law. Because Class Counsel appreciated the importance of the legal questions at stake in the appeals, the services of noted appellate firm, Gupta Wessler PLLC, were retained.[4] *See* Simplicio Decl. ¶¶ 19, 32-33.

Not only was Class Counsel litigating on contingency *two separate appeals* to establish that the class members had a claim for relief under the federal and state debt collection laws at issue, Class Counsel took on this litigation while facing additional risk from *a third appeal* arising out of a case related to the *Dawkins* matter, in connection with a motion to compel arbitration by Carrington. While a judge in a related case in that district court resolved an identical motion favorably for the plaintiff, Carrington appealed, and the *Dawkins* matter was stayed. Thus, even if Class Counsel had prevailed on the merits in their appeals before the Fourth and Ninth Circuits, classwide recovery and a fee award could be thwarted if Carrington were to prevail before the Eleventh Circuit, and sought to force the claims of several Plaintiffs, along with those of a substantial portion of the class, into arbitration on

[4] Gupta Wessler PLLC was retained only for purposes of the appellate briefing in the Ninth Circuit, and is being compensated for their work under a separate arrangement with Class Counsel, but more information can be supplied upon request.

an individual basis based on the Circuit split that developed. Robinson Decl. ¶ 12; Simplicio Decl. ¶ 33.

Nevertheless, Class Counsel still vigorously pursued two appeals on a contingency basis. In the district courts and appellate courts, Class Counsel invested significant time and resources to tackle the challenging legal issues arising under state and federal law. And, while Carrington agreed to settle this matter before extensive discovery and further motion practice occurred, Class Counsel understood when taking on the appeals that there remained a risk that they could be litigating these matters for several years without guarantee of payment. Consistent with *Abrams*, Plaintiffs believe 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." 605 F.3d at 246.

b. The Other *Johnson* Factors Support the Fee Request.

As set forth below, the fairness of the requested fee award is further supported by the other *Johnson* factors.

Amount in controversy and results. Class Counsel obtained excellent results for the Class, such that the amount in controversy and results obtained support approval. Class Members are automatically entitled to receive cash refunds, without having to jump through hoops to submit claims. The cash portion of the Common Fund represents 35% of the Pay-to-Pay fees collected during the class period—an excellent result that compares favorably to other settlements in this space. *See* App'x A. As Appendix A makes clear, there have been a number of settlements against other mortgage loan servicers over their Pay-to-Pay fee practices, and only in a few instances, were higher percentage recoveries achieved, and all involved much smaller classes and collectors. In cases involving larger servicers and classes, not only is the percentage of damages obtained here among the highest, but it includes more in the way of prospective relief than any other comparable settlement. While we know

from the informal discovery received in this case a conservative value of the prospective future relief, it is also likely that the true future value to the Class Members will be greater since they are more likely to pay over the phone or by the Internet each month when they learn the service is free. Robinson Decl. ¶ 21.

Moreover, the Settlement ensures that every Class Member will receive $5 for the first Pay-to-Pay fee they incurred, with the balance distributed pro-rata. As there are approximately 440,000 class members, $2.2 million of the cash Common Fund will be spent on this portion of relief, leaving nearly $16 million to compensate Class Members for subsequent fees and pay attorneys' fees and costs. Thus, Class Counsel's requested fee award will not reduce any Class Member's recovery for the first violation—arguably the most valuable claim, in that anyone paying a subsequent time would have been on notice of the fee schedule, which was an aspect of Carrington's defense.

Quality of the work, novelty and difficulty of questions raised, and skill required to properly perform legal services. The quality and skill of Class Counsel's work prosecuting this challenging litigation also warrants approval of the requested fee—satisfying the first three *Johnson* factors. Class Counsel briefed and argued the *Alexander* appeal, successfully prevailing before the Fourth Circuit in a unanimous opinion. In addition, with the assistance of Gupta Wessler PLLC in *Thomas-Lawson*, Class Counsel persuasively briefed the issues before the Ninth Circuit as well. And their work attracted the interest of the Consumer Financial Protection Bureau ("CFPB"), which filed an amicus brief in support of the *Thomas-Lawson* plaintiffs at the Ninth Circuit. See Simplicio Decl., Ex. A4, Dkt. 22. Further, counsel in this case successfully defeated the arbitration claims advanced in the other actions while this appeal was pending which strengthen this action on behalf of all class members given that Carrington was pursuing arbitration in other Circuits. Robinson Decl. ¶ 12.

Opportunity cost, risk of nonpayment, attorney expectations, and desirability of litigation. The fourth, sixth, and tenth *Johnson* factors also warrant approval of the fee request. In

addition to the reasons discussed in section III.B.1, *supra*, Plaintiffs emphasize that it would not have been economically feasible for Plaintiffs to retain lawyers on an hourly basis or to pay the costs of this litigation, which would quickly surpass the amount in controversy for an individual plaintiff. *Cf. Abrams,* 605 F.3d at 246 ("Access to the courts would be difficult to achieve without compensating attorneys for that risk.").

Experience, reputation, and ability of counsel. The experience, reputation, and ability of Class Counsel also warrant approval of the requested award, satisfying the ninth *Johnson* factor. The four lawyers designated as Co-Lead Class Counsel are Phillip Robinson (Consumer Law Center LLC); James Kauffman (Bailey & Glasser LLP); and Kristen Simplicio and Hassan Zavareei (Tycko & Zavareei LLP), and each is highly experienced in litigating complex class actions, having recovered millions of dollars for consumers nationwide. All attorneys 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 servicers over their Pay-to-Pay fees and servicing practices. *See* Robinson Decl. ¶¶ 4-5; Simplicio Decl. ¶¶ 5, 37-38; Kauffman Decl. ¶¶ 5-8. 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. *See* Simplicio Decl. ¶ 40; Robinson Decl. ¶ 22; Kauffman Decl. ¶15. Thus, this factor supports approval of the requested sum.

Nature and length of professional relationship. Class Counsel has represented Plaintiffs for three years, and during that time, have worked closely to prosecute this litigation in the best interests of the Class. Class Counsel and Plaintiffs regularly conferred via telephone and email. The nature and length of their professional relationship supports approval of the fee request. *See* Robinson Decl. ¶¶ 3, 10-15, 25-27, 31; Kauffman Decl. ¶¶10-16; Simplicio Decl. ¶ 36.

Customary fee for like work and fee awards in similar cases. Finally, the customary fees for like work and awards in similar cases support approval of the requested fee award. In this Circuit, "[f]ees awarded under 'the percentage-of-recovery' method in settlements under $100 million have ranged from 15% to 40%." *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 685 (D. Md. 2013). Courts in this District have approved awards of 40 percent of the fund in other cases arising out of violations of debt collection laws. *See, e.g.*, *Jernigan*, 2017 WL 4176217 (approving a 40% of the fund award in an FDCPA action). And in a variety of cases on behalf of debtors, courts in this District have approved a 40% of the fund award where, as here, the monetary relief was paired with other, valuable injunctive relief. *See, e.g.*, *Bradshaw v. Hilco Receivables, LLC*, No. 1:10-cv-00113 (D. Md. May 29, 2012), Dkt. 74; *Baker v. Sunshine Financial Group, LLC.*, No. 1:11-cv-02028 (D. Md. October 26, 2012), Dkt. 34; *Tyeryar v. Main St. Acquisition Corp.*, No. 1:11-cv-00250 (D. Md. January 24, 2012), Dkt. 24; *Johnson v. Midland Funding, LLC*, No. 1:09-cv-02391 (D. Md. March 10, 2011), Dkt. 41.[5] *See also* Robinson Decl. ¶¶ 20-21.

The requested fee percentage of 16.5% of the monetary value provided by the settlement is at the low end of the range generally approved by courts. Even if the Court were to only consider the cash portion of the settlement, the requested fee is 40% of the cash provided to Class Members and within the higher end of the range. More importantly however, Class Counsel also achieved valuable injunctive relief, which should be considered in evaluating the requested fee as a percentage of the total monetary value of the settlement. *See Kelly*, 2020 WL 434473, at *5; *see also Boeing Co.*, 444 U.S. at 479 (explaining that in common fund cases, the fee to be awarded should be based on "the full value of the benefit to each absentee member" obtained through the "entire judgment fund); *Decohen*, 299

[5] Maryland state courts have approved similar settlements. *See, e.g.*, *Rand v. Main Street Acquisition Corp.*, No. 24-C-13-004864 (Md. Cir. Ct. Baltimore City March 18, 2015), Dkt. 40; and *Turner v. Asset Acquisition Group*, LLC, No. 24-C-13-004861 (Md. Cir. Ct. Baltimore City May 11, 2015), Dkt. 32.

F.R.D. at 481 (explaining that both valuable non-monetary relief and monetary relief should be taken into account when evaluating the appropriateness of a requested fee award) While some servicers in other settlements modified their practices during the course of the litigation, ECF No. 53-2, App'x A, they remained free to resume charging Pay-to-Pay fees at any time if expressly allowed by law or contract. Here, however, Class Counsel secured Carrington's agreement, as a contractual condition of the settlement, to stop charging Pay-to-Pay fees for three years for the benefit of all Class Members and others. Thus, the settlement ensures that if the law were to change to expressly permit these fees, Settlement Class Members will still enjoy several years of freedom from these fees, saving $26 million or more.[6] Thus, when the conservative $26 million value of the future changed practices obtained is taken into account, the requested fees here are just 16.5% of the entire settlement value—well below the range for similar cases.

c. Plaintiffs' Counsel Invested Considerable Time in Pursuing This Litigation.

District courts awarding fees under a percentage-of-recovery method are not required to engage in any analysis of the attorneys' lodestar, and even where they do, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Singleton*, 976 F. Supp. 2d at 682 (internal quotations omitted). *See also Boyd*, 299 F.R.D.at 467 (citing *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006)).

As noted above, the *Johnson* factors strongly support awarding the requested fees on a percentage of the fund basis, and no further cross-check should be necessary.

[6] There is some risk that Carrington would resume charging Pay-to-Pay fees after this litigation ended. During the last legislative session, the Maryland Commissioner of Financial Regulation sought legislation to permit servicers to charge these fees. *See* Robinson Decl. at ¶ 14. While that legislation failed, should similar legislation be enacted in the future—either in Maryland or any other state, Carrington will still be bound under the terms of this Settlement and will be unable to immediately resume the practice of charging Pay-to-Pay fees.

That said, because this litigation spanned three district courts and two appellate courts, required attention to litigation in the related case before the Eleventh Circuit, involved the retention of outside appellate counsel for work before the Ninth Circuit, and presented a number of questions under state and federal law, Class Counsel briefly summarizes their work here for the Court's benefit.

Beginning in late 2019, Class Counsel undertook the following efforts:

- Drafting and filing three class action complaints on behalf of different classes of borrowers, as set forth in section II, *supra*, followed by an amended complaint in *Alexander*, and a consolidated complaint for purposes of this settlement;
- Working with co-counsel on the formulation of case strategy, including appellate strategy;
- Opposing Carrington's motions to dismiss in all three actions;
- Opposing Carrington's motion to compel arbitration in *Dawkins* and *Thomas-Lawson*;
- Filing various procedural motions in *Dawkins*, pertaining to a pending related case;
- Briefing the opening and reply briefs in the appeals in *Thomas-Lawson* and *Alexander*;
- Preparing for oral argument in *Alexander*;
- Monitoring legal developments in the related matter before the Eleventh Circuit, as well as at administrative agencies and in other cases involving other mortgage loan servicers;
- Preparing various routine filings, status reports, and other administrative papers;
- Communicating with Plaintiffs regarding the status of the case and other matters;
- Meeting-and-conferring with Carrington's counsel regarding various case management matters;

- Engaging in numerous pre-mediation discussions with Carrington's counsel that spanned many months, and included thorough data analysis on the fees paid by Class members;
- Drafting a mediation statement and participating in a fourteen-hour mediation session;
- Negotiating and drafting the Settlement Agreement along with corresponding documents, including claim forms, summary notice, and long-form notice;
- Filing the motion for preliminary approval and supporting documents, including a proposed preliminary approval order and a proposed final judgment;
- Securing stays in *Thomas-Lawson* and *Dawkins* as part of efforts to consolidate the three matters, and filing routine status reports with those courts on this settlement;
- Supervising the work of the Claims Administrator; and
- Preparing this herein motion and supporting documentation.

Simplicio Decl. ¶¶4-31; Robinson Decl. ¶¶ 3, 10-12, 21, 23, 25-27; Kauffman Decl. ¶¶13-16. The hours spent on these tasks were appropriately expended and necessary to achieve the significant benefit obtained as a result of this litigation. *Id.*

Candidly, Counsel represents that the lodestar expended is lower than the fee requested, and should the Court wish to undertake a full lodestar cross-check, Class Counsel will provide more detail upon request. Robinson Decl. ¶ 23; Simplicio Decl. ¶ 41. That said, a multiplier in this instance is particularly appropriate, given the risk incurred. *See, e.g.*, *Abrams*, 605 F.3d at 246 ("[P]laintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever."); *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 844 (E.D. Va. 2016) (skill required in complex cases involving complicated issues of fact and law also weighs in favor of

supporting the substantial attorneys' fees award); *Singleton*, 976 F. Supp. 2d at 683 ("Plaintiffs' attorneys . . . reached a favorable settlement after evaluating the strengths and weaknesses of the respective positions and negotiating with sophisticated defense attorneys.").

Furthermore, here, Class Counsel's ability to resolve this case when they did given all the risks (*see e.g.* Robinson Decl. ¶¶ 12, 14) warrants an upward multiplier. *See Singleton*, 976 F. Supp. 2d at 683. In particular, multipliers are typically awarded where counsel is able to achieve meaningful results early in the litigation. *Id.* While the appeals were necessary to establish that the Settlement Class had legal claims for relief, Class Counsel was able to secure an excellent result shortly after the Fourth Circuit resolved *Alexander*, without incurring the significant expense of electronic discovery, class certification briefing, expert discovery, and any summary judgment or trial work.

Moreover, it should be noted that if Class Counsel had not secured the settlement when it did, Class Counsel may have increased its lodestar in further litigation on behalf of a much smaller class, while a huge portion of the Settlement Class may have received nothing. That is because on May 26, 2022—just one month after Class Counsel secured Carrington's agreement, after a fourteen-hour mediation session, to establish the $18 million common fund and to change its future practices, and just *one day* after the Settlement Agreement was signed—the Eleventh Circuit reversed the denial of Carrington's motion to compel arbitration in a related case. *See Attix*, 35 F.4th at 1289. Thus, if Class Counsel had not secured the results when it did, it is questionable whether Carrington would have agreed to resolve this matter at all, and a large percentage of Class Members may have been forced to pursue individual arbitrations and the same result might have put the Class Members' claims at risk in the *Dawkins* appeal as well

To dedicate the time and resources to litigating these actions, Class Counsel had to forego taking work on other contingency cases to dedicate a team of experienced class action attorneys and their staff to this case. In other words, the time spent litigating these matters over the last three years

had forced counsel to preclude other employment—a factor weighing in favor of a positive multiplier. Given the extensive effort Class Counsel spent in litigating the three actions and the litigation risks Class Counsel has taken on, any multiplier in this case would comfortably fit within the range approved by courts in this Circuit and elsewhere.[7]

3. 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.*, *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (stating such costs may include reasonable expenses "normally charged to a fee-paying client"); *Boyd*, 299 F.R.D. at 468 ("It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award." (citing *Kabore v. Anchor Staffing, Inc.*, No. L-10-3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012))). *See also* D. Md. L. R. App'x B ¶ 4 ("Generally, reasonable out-of-pocket expenses . . . are compensable at actual cost."). Class Counsel's requested costs are itemized in Class Counsel's declarations. *See* Simplicio Decl. ¶ 42, Ex. B; Robinson Decl. ¶ 33; Kauffman Decl. ¶21. These expenses, which include filing fees and mediation costs, are reasonable. Thus, the Court should award Plaintiffs the requested costs.

[7] *Skochin v. Genworth Fin., Inc.*, No. 3:19-CV-49, 2020 WL 6536140, at *10 (E.D. Va. Nov. 5, 2020) (finding a potential lodestar multiplier of 9.5 reasonable for cross-check purposes); *Halcom v. Genworth Life Ins. Co.*, No. 3:21-CV-19, 2022 WL 2317435, at *13 (E.D. Va. June 28, 2022) (finding multiplier of 8.4 reasonable for cross-check purposes); *Berry v. Wells Fargo & Co.*, No. 3:17-CV-00304-JFA, 2020 WL 9311859, at *15 (D.S.C. July 29, 2020) (awarding $19 million dollar fee award in common fund settlement, which resulted in a multiplier of 4.25); *Spartanburg Reg'l Health Services District, Inc. v. Hillenbrand Industries, Inc.*, No. 7:03-cv-2141, 2006 WL 8446464 (D.S.C. Aug. 15, 2016); *Lloyd v. Navy Federal Credit Union*, No. 3:17-cv-01280 (S.D. Cal. 2019); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-cv-04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005); *New Eng. Carpenters Health Benefits Fund v. First Databank*, No. 05-cv-11148, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009); *In re Doral Financial Corp. Securities Litigation*, No. 05-cv-4014 (S.D.N.Y. Jul. 17, 2007); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013).

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 $35,000 in service awards for the named Plaintiffs, $7,272,759.46 in attorneys' fees for Settlement Class Counsel, and $15,138.96 in reasonable costs.

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Respectfully submitted,

/s/ Kristen G. Simplicio

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