

Colleen Fewer, CSB #323808
Email: cfewer@bm.net
BERGER MONTAGUE PC
505 Montgomery Street, Suite 625
San Francisco, CA 94111
Telephone: (800) 424-6690

[Additional Counsel Appear on Signature Page]

Class Counsel

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PAULA SPARKMAN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

COMERICA BANK, a foreign corporation, and
CONDUENT STATE & LOCAL SOLUTIONS,
INC., a foreign corporation,

Defendants.

NO. 4:23-cv-02028-DMR

**NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR
ATTORNEYS’ FEES, COSTS AND
SERVICE AWARD**

The Honorable Donna M. Ryu

CLASS ACTION

DATE: December 11, 2025
TIME: 1:00 p.m.
LOCATION: Courtroom 4 – 3rd Floor

TO: CLERK OF THE COURT: and

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on December 11, 2025, at 1:00 p.m., in Courtroom 4,
3rd Floor, of the Oakland Courthouse for the U.S. District Court for the Northern District of
California, 1301 Clay Street, Oakland, California 94612, Plaintiff Paula Sparkman will move for
an award of attorneys’ fees in the amount of \$489,000, which is equal to 25% of the \$1,956,000
settlement fund. Ms. Sparkman also requests reimbursement of \$56,164 in litigation costs and a
\$10,000 service award. This motion will be based on this Notice of Motion, the Memorandum of

1 Points and Authorities, the declarations of Blythe H. Chandler, Michelle Drake, Daniel
2 Schlanger, and Paula Sparkman, the records and file in this action, and on such other matters as
3 may be presented before or at the hearing.

4 DATED this 9th day of October, 2025.

5 TERRELL MARSHALL LAW GROUP PLLC

6 By: /s/ Blythe H. Chandler

7 Beth E. Terrell, CSB #178181
8 Email: bterrell@terrellmarshall.com
9 Blythe H. Chandler, *Admitted Pro Hac Vice*
10 Email: bchandler@terrellmarshall.com
11 936 North 34th Street, Suite 300
12 Seattle, Washington 98103-8869
13 Telephone: (206) 816-6603
14 Facsimile: (206) 319-5450

15 Colleen Fewer, CSB #323808
16 Email: cfewer@bm.net
17 BERGER MONTAGUE PC
18 505 Montgomery Street, Suite 625
19 San Francisco, CA 94111
20 Telephone: (800) 424-6690

21 E. Michelle Drake, *Admitted Pro Hac Vice*
22 Email: emdrake@bergermontague.com
23 BERGER MONTAGUE PC
24 1229 Tyler Street NE, Suite 205
25 Minneapolis, MN 55413
26 Telephone: (612) 594-5999
27 Facsimile: (612) 584-4470

Daniel A. Schlanger, *Admitted Pro Hac Vice*
Email: dschlanger@consumerprotection.net
SCHLANGER LAW GROUP LLP
60 East 42nd Street, 46th Floor
New York, New York 10165
Telephone: (212) 500-6114
Facsimile: (646) 612-7996

Class Counsel

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

	Page
I. INTRODUCTION	1
II. BACKGROUND	2
A. Ms. Sparkman and Class Counsel dedicated substantial time and resources to this case.....	2
B. Class Counsel negotiated a settlement that provides significant monetary relief.....	3
C. Class Counsel negotiated a settlement that provides meaningful prospective relief for Settlement Class members who request reimbursement for unauthorized charges on their Way2Go debit cards in the future	4
III. ARGUMENT	4
A. The percentage-of-the-fund method is the appropriate method for determining a reasonable attorneys’ fee in this case.....	4
1. A fee award of 25% of the Settlement Fund will fairly compensate Class Counsel for their work on behalf of the Settlement Class.....	6
a. Class Counsel achieved an excellent settlement for the class.....	6
b. Class Counsel assumed a significant risk of no recovery	7
c. Class Counsel’s skill and quality of work delivered valuable monetary and prospective relief to the Class	8
d. Awards in similar cases show the requested fee is reasonable ...	9
2. A lodestar crosscheck confirms that the requested fee is reasonable	9
a. Class Counsel’s rates are consistent with rates in the community for similar work performed by attorneys of comparable skill, experience, and reputation.....	10
B. Class Counsel’s litigation costs were necessarily and reasonably incurred	12
C. Ms. Sparkman requests a service award of \$10,000.....	12
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

Page

CASES

1

2

3

4 *700 Valencia St. LLC v. Farina Focaccia & Cucina Italiana, LLC,*
 No. 15-CV-04931-JCS, 2018 WL 783930 (N.D. Cal. Feb. 8, 2018) 10, 11

5

6 *Aguilar Auto Repair, Inc. v. Wells Fargo Bank, N.A.,*
 No. 23-CV-06265-LJC, 2025 WL 1753509 (N.D. Cal. May 23, 2025)..... 5

7

8 *Bailey v. Kinder Morgan G.P., Inc.,*
 No. 18-CV-03424-TSH, 2020 WL 5748721 (N.D. Cal. Sept. 25, 2020) 14

9

10 *Barrett v. Apple Inc.,*
 No. 5:20-CV-04812-EJD, 2025 WL 1002786 (N.D. Cal. Apr. 3, 2025)..... 10, 14

11

12 *Boeing Co. v. Van Gemert,*
 444 U.S. 472 (1980)..... 4

13

14 *Carlin v. DairyAmerica, Inc.,*
 380 F. Supp. 3d 998 (E.D. Cal. 2019)..... 12

15

16 *De La Torre v. CashCall, Inc.,*
 No. 08-CV-03174-MEJ, 2017 WL 5524718 (N.D. Cal. Nov. 17, 2017) 9

17

18 *Fleming v. Impax Lab'ys Inc.,*
 No. 16-CV-06557-HSG, 2022 WL 2789496 (N.D. Cal. July 15, 2022) 10

19

20 *Gonzalez v. City of Maywood,*
 729 F.3d 1196 (9th Cir. 2013) 10

21

22 *Hefler v. Wells Fargo & Co.,*
 No. 16-cv-05479-JST, 2018 WL 6619983 (N.D. Cal. Dec. 18, 2018) 10

23

24 *Hopson v. Hanesbrands Inc.,*
 No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr. 3, 2009) 14

25

26 *In re Anthem, Inc. Data Breach Litig.,*
 No. 15-MD-02617-LHK, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018)..... 15

27

In re Apple Inc. Device Performance Litig.,
 50 F.4th 769 (9th Cir. 2022) 12

In re Bluetooth Headset Prods. Liab. Litig.,
 654 F.3d 935 (9th Cir. 2011) 5, 6

1 *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*,
 2 109 F.3d 602 (9th Cir. 1997)5
 3 *In re Google Location Hist. Litig.*,
 4 No. 5:18-CV-05062-EJD, 2024 WL 1975462 (N.D. Cal. May 3, 2024)..... 10
 5 *In re Hyundai & Kia Fuel Econ. Litig.*,
 6 926 F.3d 539 (9th Cir. 2019)5, 6
 7 *In re ImmunityBio, Inc. Sec. Litig.*,
 8 No. 3:23-CV-01216-GPC-VET, 2025 WL 1686263 (S.D. Cal. June 16, 2025)8
 9 *In re Mego Fin. Corp. Sec. Litig.*,
 10 213 F.3d 454, 463 (9th Cir. 2000) 15
 11 *In re Nat'l Collegiate Athletic Ass'n*,
 12 No. 4:14-MD-2541-CW, 2017 WL 6040065, at *3 (N.D. Cal. Dec. 6, 2017)7, 14
 13 *In re Omnivision Techs., Inc.*,
 14 559 F. Supp. 2d 1036 (N.D. Cal. 2008)8
 15 *In re Online DVD-Rental Antitrust Litig.*,
 16 779 F.3d 934 (9th Cir. 2015)*passim*
 17 *In re PFA Ins. Mktg. Litig.*,
 18 No. 4:18-CV-03771 YGR, 2024 WL 1145209 (N.D. Cal. Feb. 5, 2024)..... 10, 14
 19 *In re Pacific Enters. Sec. Litig.*,
 20 47 F.3d 373 (9th Cir. 1995)8
 21 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
 22 19 F.3d 1291 (9th Cir. 1994)4
 23 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*,
 24 No. 2672 CRB (JSC), 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017).....7, 10
 25 *Knight v. Red Door Salons, Inc.*,
 26 No. 08-01520, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009)9
 27 *Lofton v. Verizon Wireless (VAW) LLC*,
 No. C 13-05665 YGR, 2016 WL 7985253 (N.D. Cal. May 27, 2016).....7, 9
Moreno v. City of Sacramento,
 534 F.3d 1106 (9th Cir. 2008)9

1 *Nelipa v. TD Bank, N.A.*,
2024 WL 3017141 (E.D.N.Y. June 17, 2024) 7, 8

2 *Rhom v. Thumbtack, Inc.*,
3 No. 16-CV-02008-HSG, 2017 WL 4642409 (N.D. Cal. Oct. 17, 2017) 15

4 *Rivas v. BG Retail, LLC*,
5 No. 16-CV-06458-BLF, 2020 WL 264401 (N.D. Cal. Jan. 16, 2020) 10

6 *Rodriguez v. W. Publishing*,
7 563 F.3d 948 (9th Cir. 2009) 12, 13

8 *Sanders v. LoanCare, LLC*,
9 No. CV 18-9376 PA, 2020 WL 8365241 (C.D. Cal. Dec. 4, 2020) 9

10 *Smith v. CRST Van Expedited, Inc.*,
11 No. 10-CV-1116- IEG WMC, 2013 WL 163293 (S.D. Cal. Jan. 14, 2013)..... 13

12 *Staton v. Boeing Co.*,
13 327 F.3d 938 (9th Cir. 2003)*passim*

14 *Villegas v. J.P. Morgan Chase & Co.*,
15 No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012) 14

16 *Vizcaino v. Microsoft Corp.*,
17 290 F.3d 1043 (9th Cir. 2002) 6, 7, 8

18 *Welch v. Metro. Life Ins. Co.*,
19 480 F.3d 942 (9th Cir. 2007) 11

20 *Wong v. Arlo Techs., Inc.*,
21 No. 5:19-CV-00372-BLF, 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021) 10

22 *Zamora v. Lyft, Inc.*,
23 No. 3:16-cv-02558-VC, 2018 WL 4657308 (N.D. Cal. Sept. 26, 2018) 9

24 *Zepeda v. PayPal, Inc.*,
25 No. C 10-1668 SBA, 2017 WL 1113293 (N.D. Cal. Mar. 24, 2017) 9

RULES

26 Rule 23(h) 12

OTHER AUTHORITIES

27 5 Rubenstein & Newberg on Class Actions § 17:1 (6th ed. June 2025 update) 14

I. INTRODUCTION

1
2 This class action arose because Defendants Comerica Bank and Conduent State & Local
3 Solutions, Inc. used form letters to deny Plaintiff Paula Sparkman’s and 5,768 class members’
4 claims for reimbursement of unauthorized charges to their Way2Go prepaid debit cards after
5 cursory investigation found “conflicting information.” Ms. Sparkman alleges that Defendants’
6 denials violated the Electronic Funds Transfer Act (EFTA) and that their standardized
7 procedures violate the California Unfair Competition Law and breach their duty of good faith
8 and fair dealing under their form contract.

9 The case settled after nearly two years of litigation. Class Counsel moved expeditiously
10 to build their case. Through targeted discovery, they gathered the documents, data, and testimony
11 they needed to support class certification and prove the merits of Ms. Sparkman’s claims.
12 Ultimately, this work allowed Class Counsel to negotiate an excellent settlement for the Class,
13 avoiding further cost and delay in obtaining a recovery for the Class.

14 Class Counsel have dedicated over 1,200 hours of attorney and paralegal time to this case
15 over the course of two years on a contingency basis with no guarantee of payment. Class
16 Counsel also paid over \$56,164 in out-of-pocket expenses that include, among other things,
17 deposition, mediation, and expert costs. At all times, Ms. Sparkman has remained informed and
18 involved in the matter, providing valuable insight into the facts and circumstances that gave rise
19 to her claims.

20 The Settlement provides significant monetary and injunctive relief for Settlement Class
21 Members. Defendants will pay \$1,956,000 into a non-reversionary Settlement Fund. This sum
22 will enable Settlement Class Members to recover 73.58% of their alleged actual damages
23 automatically, without having to file claim forms. Conduent has also agreed to make meaningful
24 changes to its practices, including revising its procedures to no longer use “conflicting
25 information” as a reason for denying California Way2Go cardholders’ unauthorized transaction
26 disputes and re-training its fraud investigators.

1 To compensate them for their efforts, Class Counsel request a benchmark fee award of
2 25% of the Settlement Fund, or \$489,000. This request reflects a 0.59 negative multiplier on
3 their lodestar.

4 Class Counsel also request reimbursement of \$56,164 in litigation costs, and Court
5 approval of a service award for Ms. Sparkman of \$10,000 for her work on behalf of the
6 Settlement Class. Ms. Sparkman has actively participated in this action by responding to written
7 discovery requests, sitting for a deposition, and assisting in counsel's investigation and
8 settlement decisions. A service award of \$10,000 is reasonable compensation for Ms.
9 Sparkman's willingness to step forward and represent the interests of all Settlement Class
10 Members.

11 II. BACKGROUND

12 A. Ms. Sparkman and Class Counsel dedicated substantial time and resources to this 13 case.

14 Ms. Sparkman filed this case in April 2023, alleging that Conduent State & Local
15 Solutions, Inc. and Comerica Bank violated the EFTA and the UCL, and breached their contract
16 with Way2Go cardholders when they denied cardholders' requests for reimbursement for
17 unauthorized transactions based on cursory investigations and "conflicting information." ECF 1.

18 Defendants twice sought to dismiss Ms. Sparkman's claims, but Class Counsel largely
19 defeated both motions. ECF 36, 62. Class Counsel built a record supporting both class
20 certification and the merits of Ms. Sparkman's claims. They served seven sets of discovery
21 requests on the two Defendants and reviewed over 8,500 pages of documents and cardholder
22 records produced in response. Chandler Decl. ¶ 3. They subpoenaed documents from the
23 California Department of Child Support Services. *Id.* ¶ 4. Class Counsel also retained data
24 scientist Jonathan Jaffe to analyze Conduent's cardholder data, identify proposed class members,
25 and calculate their damages. *Id.* ¶ 5. They deposed five Conduent employees, including the
26 employees who handled Ms. Sparkman's claims, the Director of Claims, and the Director of
27 Fraud Prevention, as well as Defendants' expert. *Id.* ¶ 6.

1 Ms. Sparkman was a dedicated and indispensable participant throughout the litigation. She
2 has invested significant effort on behalf of the class, including by responding to Defendants' four
3 sets of written discovery requests, attending mediation, and traveling to sit for an in-person
4 deposition. *Id.* ¶ 3; Sparkman Decl. ¶¶ 4, 6. These activities have required her to repeatedly
5 relive a difficult chapter in her life. Sparkman Decl. ¶¶ 8-10.

6 The parties began to discuss potential resolution of the case before class certification. On
7 November 11, 2024, the parties mediated with the Honorable Jose Linares (Ret.) but were unable
8 to agree to settlement terms. Chandler Decl. ¶ 7. Class Counsel completed briefing and filed Ms.
9 Sparkman's motion for class certification eleven days after the mediation. ECF 89.

10 After continued discussion and before Defendants responded to the class certification motion,
11 the parties agreed to the key terms of this settlement. Over the following months, the parties
12 finalized the settlement terms and Ms. Sparkman moved for preliminary approval. ECF 111.

13 **B. Class Counsel negotiated a settlement that provides significant monetary relief.**

14 The Settlement requires Defendants to pay \$1,956,000 into a Settlement Fund. ECF 111-
15 1. If the attorneys' fees, litigation costs, and service award are approved as requested, Settlement
16 Class Members will recover 73.58% of their actual damages. ECF 122 ¶ 12. Class members do
17 not have to file claims to receive their share of the fund. Settlement Award payments will be
18 equal to the Settlement Class Member's EFTA Dispute amount divided by the value of all
19 Settlement Class Members' EFTA dispute amounts, multiplied by the net Settlement Fund. ECF
20 111-1, IV.8.

21 The Settlement Fund is non-reversionary. Any funds remaining after distributions to the
22 Settlement Class shall be disbursed *cy pres* to the Consumer Federation of California. ECF 111-
23 1, IV.9. The Consumer Federation of California is a non-profit organization dedicated to
24 protecting consumers, including consumers' rights in financial transactions.

1 **C. Class Counsel negotiated a settlement that provides meaningful prospective relief**
 2 **for Settlement Class members who request reimbursement for unauthorized**
 3 **charges on their Way2Go debit cards in the future.**

4 Defendants have also agreed to change their dispute handling practices. Moving forward,
 5 Conduent will no longer use “conflicting information” as a reason for denying California
 6 Way2Go cardholders’ unauthorized transaction disputes. And Conduent will re-train its fraud
 7 investigators consistent with that change. ECF 111-1, IV.6. These changes provide meaningful
 8 relief for the many Settlement Class members who remain cardholders and may need to dispute
 9 future unauthorized charges.

10 **III. ARGUMENT**

11 **A. The percentage-of-the-fund method is the appropriate method for determining a**
 12 **reasonable attorneys’ fee in this case.**

13 The common fund doctrine is an equitable exception to the American rule that litigants
 14 must bear their own attorneys’ fees. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). It is
 15 well settled that “a lawyer who recovers a common fund for the benefit of persons other than
 16 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Id.* The
 17 “common fund” doctrine “rests on the perception that persons who obtain the benefit of a lawsuit
 18 without contributing to its cost are unjustly enriched at the successful litigant’s expense.” *Id.* A
 19 court with jurisdiction over the fund can “prevent this inequity by assessing attorney’s fees
 20 against the entire fund, thus spreading fees proportionately among those benefited by the suit.”
 21 *Id.*

22 In such cases, “the common fund doctrine ensures that each member of the winning party
 23 contributes proportionately to the payment of attorneys’ fees.” *Staton v. Boeing Co.*, 327 F.3d
 24 938, 967 (9th Cir. 2003); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
 25 1300 (9th Cir. 1994) (“those who benefit from the creation of the fund should share the wealth
 26 with the lawyers whose skill and effort helped create it”).

27 Courts in the Ninth Circuit have discretion to award attorneys’ fees using either the
 percentage of the fund method or the lodestar method when settlement of a class action creates a

1 common fund. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019). The
2 method a district court chooses to use, and its application of that method, must achieve a
3 reasonable result. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir.
4 2011) (“Though courts have discretion to choose which calculation method they use, their
5 discretion must be exercised so as to achieve a reasonable result.”). As the Ninth Circuit has
6 instructed, “[r]easonableness is the goal, and mechanical or formulaic application of either
7 method, where it yields an unreasonable result, can be an abuse of discretion.” *In re Coordinated*
8 *Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997).

9 The Ninth Circuit and district courts in this Circuit have recognized that the percentage-
10 of-the-fund method is the appropriate method for calculating fees when counsel’s effort has
11 created a common fund. *See, e.g., In re Bluetooth*, 654 F.3d at 942 (“Because the benefit to the
12 class is easily quantified in common-fund settlements, we have allowed courts to award attorneys
13 a percentage of the common fund in lieu of the often more time-consuming task of calculating
14 the lodestar.”); *Aguilar Auto Repair, Inc. v. Wells Fargo Bank, N.A.*, No. 23-CV-06265-LJC,
15 2025 WL 1753509, at *8 (N.D. Cal. May 23, 2025) (the “recognized advantages” of the
16 percentage method include the “relative ease of calculation, alignment of incentives between
17 counsel and the class, a better approximation of market conditions in a contingency case, and the
18 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
19 prolonging the litigation”). Both methods support settlement here. The percentage-of-the-fund
20 method is an appropriate method for determining a reasonable fee in this case because the benefit
21 to the Settlement Class can be quantified. Class Counsel’s efforts secured a Settlement Fund of
22 \$1,956,000, in addition to significant prospective relief. Using the percentage method in this
23 case will recognize Class Counsel’s efficiency and their efforts to achieve the highest possible
24 recovery for the Settlement Class.

25 The lodestar method also establishes the reasonableness of Class Counsel’s requested fee
26 because the requested \$489,000 reflects a negative 0.59 multiplier on Class Counsel’s \$832,036
27 lodestar.

- 1 1. A fee award of 25% of the Settlement Fund will fairly compensate Class Counsel
2 for their work on behalf of the Settlement Class.

3 The Ninth Circuit has held that 25% of the gross settlement amount is the benchmark for
4 attorneys' fees awarded under the percentage-of-the-fund method. *In re Hyundai*, 926 F.3d at
5 570; *see also In re Bluetooth*, 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as
6 the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any
7 ‘special circumstances’ justifying a departure.”). The percentage may be adjusted up or down
8 based on the court’s consideration of “all of the circumstances of the case” including whether the
9 Settlement provides injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-1049
10 (9th Cir. 2002). The relevant circumstances include (1) the results achieved for the class, (2) the
11 risk counsel assumed, (3) the skill required and the quality of the work, (4) the contingent nature
12 of the fee, (5) whether the fee is above or below the market rate, and (6) awards in similar cases.
13 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015). Consideration of
14 the relevant circumstances supports a fee award equal to the Ninth Circuit benchmark. Class
15 Counsel have not included the value of the injunctive relief in calculating the total value of the
16 fund, which further supports their request for an award at the 25% benchmark.

17 a. *Class Counsel achieved an excellent settlement for the class.*

18 “The benefit obtained for the class” is “foremost among [the] considerations” when
19 determining the reasonableness of attorneys’ fees in a class action.” *In re Bluetooth*, 654 F.3d at
20 942. This settlement is an excellent result for the Class. Without having to file claims forms,
21 Settlement Class Members will recover the majority – 73.58% – of the money they lost to
22 unauthorized transactions for which Defendants denied them reimbursement. For many class
23 members, this figure will be hundreds of dollars, and for some it will be thousands. ECF 111-1,
24 Ex. C. Moreover, Conduent has agreed to practice changes that will provide meaningful relief to
25 Settlement Class members who may need to dispute unauthorized charges on their Way2Go
26 debit cards in the future. This factor weighs in favor of Class Counsel’s fee request.
27

1 **b.** *Class Counsel assumed a significant risk of no recovery.*

2 Class Counsel’s fee request also reflects that the case was risky and handled on a
3 contingency basis. *In re Online DVD*, 779 F.3d at 954-55; *Vizcaino*, 290 F.3d at 1048; *see also*
4 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 2672 CRB
5 (JSC), 2017 WL 1047834, at *3 (N.D. Cal. Mar. 17, 2017) (“It is an established practice to
6 reward attorneys who assume representation on a contingent basis with an enhanced fee to
7 compensate them for the risk that they might be paid nothing at all.”).

8 Class Counsel represented Plaintiffs and the Settlement Class entirely on a contingent
9 basis. *See* Chandler Decl. ¶ 19; Drake Decl. ¶ 3; Schlanger Decl. ¶ 8. They devoted more than
10 1,200 hours to litigating this case, foregoing opportunities to work on other cases, and now
11 request a fee that is a fraction of their lodestar. Chandler Decl. ¶¶ 19, 22; Drake Decl. ¶ 7;
12 Schlanger Decl. ¶ 27. Moreover, Class Counsel faced the very real risk they would not recover
13 any fees and costs. *Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL
14 7985253, at *1 (N.D. Cal. May 27, 2016) (awarding fees above the benchmark where, absent
15 settlement, “there would remain a significant risk that the Settlement Class may have recovered
16 less or nothing...”). “The risk that further litigation might result in plaintiffs not recovering at
17 all, particularly a case involving complicated legal issues, is a significant factor in the award of
18 fees.” *In re Nat’l Collegiate Athletic Ass’n*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *3
19 (N.D. Cal. Dec. 6, 2017).

20 When Class Counsel agreed to represent Ms. Sparkman as a proposed class
21 representative, no court had ever certified claims under the Electronic Funds Transfer Act
22 (EFTA) for a financial institution’s wrongful denials of reimbursement for unauthorized
23 transactions. To this day, the only decision certifying such claims in a litigation class is in a case
24 being litigated by members of Class Counsel’s team. *See Nelipa v. TD Bank, N.A.*, 2024 WL
25 3017141, at *8 (E.D.N.Y. June 17, 2024) (recommending certification and noting that neither
26 party could identify any case addressing whether to certify “a class that consists of consumers
27 who contend that a bank erroneously denied their reimbursement claims relating to allegedly

1 unauthorized transactions, in violation of the EFTA”), *certification of narrowed EFTA class*
2 *granted by Nelipa v. TD Bank, N.A.*, No. 1:21-cv-01092 (Docket Text Order) (Sept. 30, 2025).

3 The lack of authority on the feasibility of certification of EFTA claims made class counsel’s risk
4 of non-payment high in this case.

5 This case settled before briefing on class certification was complete. The outcome of that
6 motion remained uncertain. Moreover, while Ms. Sparkman is confident in the strength of her
7 evidence on the merits, the course of further litigation is always unpredictable. And even if she
8 were to prevail at trial, a probable appeal would further delay relief to the Settlement Class.

9 These risks weigh in favor of Class Counsel’s fee request.

10 *c. Class Counsel’s skill and quality of work delivered valuable monetary and*
11 *prospective relief to the Class.*

12 “Prosecuting complex class actions takes skill and experience.” *In re ImmunityBio, Inc.*
13 *Sec. Litig.*, No. 3:23-CV-01216-GPC-VET, 2025 WL 1686263, at *14 (S.D. Cal. June 16, 2025)
14 *citing In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). Class Counsel
15 were able to litigate this case effectively and efficiently because of their experience in litigating
16 consumer class action cases. Chandler Decl. ¶ 16. Class Counsel relied on this depth of
17 experience to defend against multiple motions to dismiss, conduct targeted discovery, and
18 negotiate a settlement that capitalized on the claims’ strengths while taking into account the risks
19 of continued litigation. *Id.*

20 Class Counsel’s skill delivered substantial monetary relief to Settlement Class Members
21 and important practice changes by Conduent. ECF 111-1, VI.1-6. The injunctive relief will reach
22 far beyond the Settlement Class to all Way2Go cardholders who dispute unauthorized charges.
23 This type of non-monetary benefit to the broader public is relevant in analyzing the
24 reasonableness of a fee request. *Vizcaino*, 290 F.3d at 1049 (prospective practice changes are the
25 sort of “non-monetary benefits conferred by the litigation” that support a requested fee); *In re*
26 *Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (considering “nonmonetary benefits”
27 in determining a reasonable fee).

1 Class Counsel’s ability to negotiate a favorable settlement despite the vigorous
 2 opposition of Defendants’ counsel also supports their fee request. *See Lofton*, 2016 WL 7985253,
 3 at *1 (the “risks of class litigation against an able defendant well able to defend itself vigorously”
 4 support an upward adjustment in the fee award); *Knight v. Red Door Salons, Inc.*, No. 08-01520,
 5 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) (where defense counsel “understood the legal
 6 uncertainties in this case, and were in a position to mount a vigorous defense,” the favorable
 7 settlement was a “testament to Plaintiffs’ counsel’s skill”). This factor weighs in favor of Class
 8 Counsel’s fee request.

9 *d. Awards in similar cases show the requested fee is reasonable.*

10 Courts in this circuit have awarded fees equal to the 25% benchmark or higher in many
 11 similar consumer class action settlements. *See, e.g., Sanders v. LoanCare, LLC*, No. CV 18-9376
 12 PA, 2020 WL 8365241, at *9 (C.D. Cal. Dec. 4, 2020) (awarding 25% of settlement fund, or
 13 \$850,000, in FDCPA and UCL settlement); *De La Torre v. CashCall, Inc.*, No. 08-CV-03174-
 14 MEJ, 2017 WL 5524718, at *13 (N.D. Cal. Nov. 17, 2017) (awarding a fee equal to 40% of a
 15 \$1.5 settlement fund in UCL class action); *Zepeda v. PayPal, Inc.*, No. C 10-1668 SBA, 2017
 16 WL 1113293, at *21 (N.D. Cal. Mar. 24, 2017) (“fee awards in other consumer class actions
 17 support the conclusion that a fee award based on 25% of the Settlement Fund is reasonable and
 18 appropriate”); *see also Zamora v. Lyft, Inc.*, No. 3:16-cv-02558-VC, 2018 WL 4657308, at *3
 19 (N.D. Cal. Sept. 26, 2018) (“fee awards of approximately 33½% are typical for settlements up to
 20 \$10 million.”). This factor weighs in favor of Class Counsel’s fee request.

21 2. A lodestar crosscheck confirms that the requested fee is reasonable.

22 In the Ninth Circuit, courts may use a rough calculation of the lodestar as a crosscheck to
 23 assess the reasonableness of an award based on the percentage method. *Vizcaino*, 290 F.3d at
 24 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar
 25 may provide a useful perspective on the reasonableness of a given percentage award.”). The
 26 court calculates the “lodestar figure” by multiplying the number of hours reasonably expended
 27 by a reasonable rate. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). “The

1 aim is to ‘do rough justice, not to achieve auditing perfection.’” *Hefler v. Wells Fargo & Co.*,
 2 No. 16-cv-05479-JST, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018).

3 Class Counsel’s fee request is below their actual lodestar of \$832,036—which, as
 4 discussed below, is based on reasonable rates and a reasonable number of hours. This represents
 5 a “negative” multiplier of approximately 0.59. “[A] multiplier below 1.0 is below the range
 6 typically awarded by courts and is presumptively reasonable.” *Wong v. Arlo Techs., Inc.*, No.
 7 5:19-CV-00372-BLF, 2021 WL 1531171, at *11 (N.D. Cal. Apr. 19, 2021) (approving fees of
 8 25% of \$1.25 million settlement fund, which amounted to 0.43 of counsel’s lodestar); *see also*
 9 *Rivas v. BG Retail, LLC*, No. 16-CV-06458-BLF, 2020 WL 264401, at *8 (N.D. Cal. Jan. 16,
 10 2020) (“A negative multiplier ‘suggests that the negotiated fee award is a reasonable and fair
 11 valuation of the services rendered to the class by class counsel.’” (citation omitted)).

12 *a. Class Counsel’s rates are consistent with rates in the community for*
 13 *similar work performed by attorneys of comparable skill, experience, and*
 14 *reputation.*

15 In determining a reasonable hourly rate, courts look at the prevailing market rates in the
 16 relevant community, which is the forum in which the district court sits. *Gonzalez v. City of*
 17 *Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). Courts in this district have approved hourly rates
 18 up to \$1,600 for partners. *See In re Google Location Hist. Litig.*, No. 5:18-CV-05062-EJD, 2024
 19 WL 1975462, at *15 (N.D. Cal. May 3, 2024) (finding rates between \$420 and \$1300 for
 20 attorneys to be reasonable); *Barrett v. Apple Inc.*, No. 5:20-CV-04812-EJD, 2025 WL 1002786,
 21 at *3 (N.D. Cal. Apr. 3, 2025) (finding rates between \$500 and \$1,545 for attorneys reasonable);
 22 *Fleming v. Impax Lab’ys Inc.*, No. 16-CV-06557-HSG, 2022 WL 2789496, at *9 (N.D. Cal. July
 23 15, 2022) (finding rates of \$760 to \$1325 for partners and \$175 to \$520 for associates to be
 24 within prevailing market rates); *In re PFA Ins. Mktg. Litig.*, No. 4:18-CV-03771 YGR, 2024
 25 WL 1145209, at *24 (N.D. Cal. Feb. 5, 2024) (approving rates of \$400 to \$1195 for attorneys);
 26 *see also In re Volkswagen*, 2017 WL 1047834, at *5 (finding rates up to \$1600 for partners
 27 reasonable); *Hefler*, 2018 WL 6619983, at *14 (finding rates of \$245 to \$350 reasonable for
 paralegals); *700 Valencia St. LLC v. Farina Focaccia & Cucina Italiana, LLC*, No. 15-CV-

1 04931-JCS, 2018 WL 783930, at *4 (N.D. Cal. Feb. 8, 2018) (finding rate of \$335 reasonable for
2 paralegal with 10 years of experience).

3 Class Counsel's declarations describe the basis for their hourly rates, including their
4 education, experience, and reputation in the legal community. Counsel set their rates for
5 attorneys and staff members based on a variety of factors, including, among others: the
6 experience, skill and sophistication required for the types of legal services typically performed;
7 the rates customarily charged in the markets where legal services are typically performed; and
8 the experience, reputation and ability of the attorneys and staff members. *See* Chandler Decl.
9 ¶ 24; Drake Decl. ¶ 5; Schlanger Decl. ¶¶ 12-22. The rates Class Counsel charged for attorneys
10 and staff members working on this matter ranged from \$250 to \$1180. Chandler Decl. ¶ 22;
11 Drake Decl. ¶ 7; Schlanger Decl. ¶ 27. Because counsel's hourly rates are in line with rates
12 approved in similar cases in this district, counsel's hourly rates are reasonable and appropriate
13 for calculating the lodestar. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007)
14 (affidavits by plaintiffs' counsel and fee awards in other cases are sufficient evidence of
15 prevailing market rates). Moreover, since Class Counsel's fee request is just a fraction of their
16 lodestar, a crosscheck would continue to support the reasonableness their requested fee award
17 even if their hourly rates were substantially lower. Class Counsel spent a reasonable number of
18 hours litigating the case.

19 The detailed time records attached to Class Counsel's declarations show that the time
20 Class Counsel devoted to investigation, discovery, motion practice, and achieving a favorable
21 settlement is reasonable. Since the inception of this case over two years ago, Class Counsel have
22 diligently prosecuted this action on behalf of the Settlement Class. Class Counsel opposed two
23 motions to dismiss, filed two amended complaints, reviewed the over 8,500 pages of documents
24 that Defendants produced, took five depositions and defended one, and filed a class certification
25 motion.

26 Class Counsel have exercised billing judgment in removing from their time records any
27 time that was arguably administrative or duplicative. For example, Terrell Marshall has removed

1 all document preparation and filing work done by legal secretaries, all work done by timekeepers
2 with fewer than 20 hours of time in the case, and more than 130 hours billed by a junior associate
3 on work that was significantly revised by a supervising partner. Chandler Decl. ¶ 21.

4 In all, Class Counsel dedicated over 1,200 hours to the investigation, development,
5 litigation, and resolution of this case. *See* Chandler Decl. ¶ 22; Drake Decl. ¶ 7; Schlanger Decl.
6 ¶ 27. As in every case, counsel will spend additional hours to see this case through to final
7 resolution, including the work necessary to prepare the motion for final approval, attend the
8 hearing on final approval, and respond to inquiries from members of the Settlement Class. *Id.*
9 ¶ 18.

10 **B. Class Counsel’s litigation costs were necessarily and reasonably incurred.**

11 Rule 23(h) allows courts to award costs authorized by law or the parties’ agreement.
12 Attorneys who create a common fund are entitled to reimbursement of their out-of-pocket
13 expenses so long as they are reasonable, necessary and directly related to the work performed on
14 behalf of the class. *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785 (9th Cir. 2022);
15 *see also Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) (approving
16 reimbursements for “filing fees, copying, postage, document storage, depositions, travel, experts,
17 transcripts, computer research, the cost of the mediator, and common-fund contributions.”).

18 Class Counsel have provided the Court with billing records that itemize their litigation
19 costs or group them by category. These costs, including \$10,329 incurred for an expert to
20 perform the analyses essential to proving Defendants’ liability and damages, as well as
21 mediation, deposition, filing and electronic research costs, total \$56,164. Chandler Decl. ¶ 24;
22 Drake Decl. ¶ 9; Schlanger Decl. ¶ 25.

23 **C. Ms. Sparkman requests a service award of \$10,000.**

24 Ms. Sparkman is eligible for a reasonable service award. *Staton*, 327 F.3d at 977. The
25 Ninth Circuit has explained that service awards that are “intended to compensate class
26 representatives for work undertaken on behalf of a class ‘are fairly typical in class action cases.’”
27 *In re Online DVD*, 779 F.3d at 943 (quoting *Rodriguez v. W. Publishing*, 563 F.3d 948, 958-59

1 (9th Cir. 2009)). The awards recognize the effort class representatives expend, the financial or
2 reputational risk they undertake in bringing the case, and their willingness to act as private
3 attorneys general. *W. Publishing*, 563 F.3d at 958-59. The factors courts consider include the
4 class representative's actions to protect the interests of the class, the degree to which the class
5 has benefitted from those actions, the time and effort the class representative expended in
6 pursuing the litigation, and any risk the class representative assumed. *Staton*, 327 F.3d at 977;
7 *see also Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116- IEG WMC, 2013 WL 163293, at
8 *6 (S.D. Cal. Jan. 14, 2013) (addressing incentive award criteria). Additional considerations
9 include the “number of named plaintiffs receiving incentive payments, the proportion of the
10 payments, relative to the settlement amount, and the size of each payment,” *Staton*, 327 F.3d at
11 977.

12 Unlike unnamed Settlement Class Members, who are passive beneficiaries of the
13 representatives' efforts on their behalf, named class representatives agree to be the subject of
14 discovery, including making themselves available as witnesses at deposition and trial, and
15 subject themselves to other obligations of named parties. Service payments, which serve as
16 premiums in addition to any claims-based recovery from the settlement, promote the public
17 policy of encouraging individuals to undertake the responsibility of representative lawsuits.

18 Ms. Sparkman contributed significantly to the success of this litigation by serving as the
19 sole representative of the class. When Ms. Sparkman experienced substantial financial and
20 emotional hardship as a result of Defendants' practices, she sought out experienced class counsel
21 to challenge those practices on behalf of herself and others similarly situated. Sparkman Decl. ¶
22 3. For over two years, Ms. Sparkman has taken seriously her responsibilities to class members
23 and dedicated significant time to protecting the class's interests. She has devoted at least fifty
24 hours to work on behalf of the class. *Id.* ¶ 5. Her commitment included many hours working with
25 her attorneys on the factual allegations, gathering documents relating to her claim for
26 reimbursement and interactions with Defendants, and attending multiple mediation sessions. *Id.*
27 ¶¶ 4, 7. She also spent many hours preparing to be deposed and drove four hours from her home

1 to attend her deposition in person. *Id.* ¶ 6. Throughout the litigation, Ms. Sparkman regularly
2 communicated with counsel about case status and strategy. *Id.* ¶ 4. These activities required her
3 to regularly revisit an exceedingly difficult moment in her life, resurfacing the anxiety and
4 humiliation that she experienced in the wake of Defendants’ actions. *Id.* ¶¶ 8-10.

5 A \$10,000 service award is reasonable and appropriate in this case. Class Counsel
6 requested this amount in their motion for preliminary approval and the Settlement Class has
7 received notice of the request. ECF 111; ECF 129-1 at 11. This district has treated \$5000
8 incentive payments as “presumptively reasonable.” *See Villegas v. J.P. Morgan Chase & Co.*,
9 No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012); *see also*
10 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3,
11 2009) (“In general, courts have found that \$5000 incentive payments are reasonable). Higher
12 awards, however, have become common practice. *See* 5 Rubenstein & Newberg on Class
13 Actions § 17:1 (6th ed. June 2025 update) (“Empirical evidence shows that incentive awards are
14 now paid in most class suits and average between \$10,000 to \$15,000 per class representative.”).
15 In recent years, courts in this district have approved service awards of \$10,000 or more in
16 circumstances similar to those in this case. *See, e.g., Barrett*, 2025 WL 1002786, at *4
17 (approving \$10,000 service awards for four plaintiffs who “made considerable efforts” in the
18 case by reviewing pleadings and discovery responses, responding to discovery requests,
19 communicating with Class Counsel, and sitting for depositions and observing that such an award
20 was “consistent with others in this district.”); *In re PFA Ins. Mktg. Litig.*, 2024 WL 1145209, at
21 *26 (approving of \$10,000 service award for class representative who “contributed significantly
22 to the prosecution of this action.”); *Bailey v. Kinder Morgan G.P., Inc.*, No. 18-CV-03424-TSH,
23 2020 WL 5748721, at *9 (N.D. Cal. Sept. 25, 2020) (approving a \$10,000 service award); *In re*
24 *Nat’l Collegiate Athletic Ass’n*, 2017 WL 6040065, at *11 (awarding \$20,000 to each of four
25 class representatives based on Class Counsel’s declaration detailing representative’s dedication
26 of time and close work with Class Counsel throughout the litigation).

1 Additional factors make a \$10,000 award particularly appropriate in this case. First, Ms.
 2 Sparkman bore the burden of class representation alone. *Staton*, 327 F.3d at 977 (listing the
 3 “number of named plaintiffs receiving incentive payments” as a relevant factor in assessing an
 4 incentive award); *cf. In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL
 5 3960068, at *31 (N.D. Cal. Aug. 17, 2018) (approving service awards of \$5000 for 76 named
 6 plaintiffs and \$7500 for 29 named plaintiffs and observing that the “smaller amounts ... likely
 7 reflect ‘the number of named plaintiffs receiving [service] payments’”); *In re Online DVD-*
 8 *Rental Antitrust Litig.*, 779 F.3d at 947–48 (\$5000 service awards for nine class representatives).
 9 Second, the proposed \$10,000 service award represents just .51% of the Settlement Fund. *See In*
 10 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving service awards
 11 totaling .56% of the Settlement Fund); *Rhom v. Thumbtack, Inc.*, No. 16-CV-02008-HSG, 2017
 12 WL 4642409, at *8 (N.D. Cal. Oct. 17, 2017) (an award equal to 1-2% of the settlement fund
 13 was consistent with other court-approved enhancements.”); *In re Anthem, Inc. Data Breach*
 14 *Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *31 (approving service payments
 15 representing “only 0.52% of the Settlement Fund”).

16 A \$10,000 service award is reasonable and appropriate recognition of Ms. Sparkman’s
 17 contribution to the litigation.

18 IV. CONCLUSION

19 Class Counsel request that the Court approve a fee award of \$489,000, which represents
 20 25% of the Settlement fund, and reimbursement of \$56,164 in litigation costs. Plaintiff requests a
 21 service award of \$10,000 in recognition of her representation of the Settlement Class in this case.

22 //

23 //

24 //

25 //

26 //

27 //

1 RESPECTFULLY SUBMITTED AND DATED this 9th day of October, 2025.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Blythe H. Chandler

4 Beth E. Terrell, CSB #178181
5 Email: bterrell@terrellmarshall.com
6 Blythe H. Chandler, *Admitted Pro Hac Vice*
7 Email: bchandler@terrellmarshall.com
8 936 North 34th Street, Suite 300
9 Seattle, Washington 98103-8869
10 Telephone: (206) 816-6603
11 Facsimile: (206) 319-5450

12 Colleen Fewer, CSB #323808
13 Email: cfewer@bm.net
14 BERGER MONTAGUE PC
15 505 Montgomery Street, Suite 625
16 San Francisco, CA 94111
17 Telephone: (800) 424-6690

18 E. Michelle Drake, *Admitted Pro Hac Vice*
19 Email: emdrake@bergermontague.com
20 BERGER MONTAGUE PC
21 1229 Tyler Street NE, Suite 205
22 Minneapolis, MN 55413
23 Telephone: (612) 594-5999
24 Facsimile: (612) 584-4470

25 Daniel A. Schlanger, *Admitted Pro Hac Vice*
26 Email: dschlanger@consumerprotection.net
27 SCHLANGER LAW GROUP LLP
60 East 42nd Street, 46th Floor
New York, New York 10165
Telephone: (212) 500-6114
Facsimile: (646) 612-7996

Class Counsel