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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 AGUILAR AUTO REPAIR, INC. and
21 CENTRAL COAST TOBACCO CO., LLC,
22 individually and on behalf of all others
23 similarly situated,

24 Plaintiffs,

25 v.

26 WELLS FARGO BANK, N.A., PRIORITY
27 TECHNOLOGY HOLDINGS, INC.,
28 PRIORITY PAYMENT SYSTEMS, LLC and
THE CREDIT WHOLESALE COMPANY,
INC.,

Defendants.

Case No. 3:23-cv-06265-LJC

Honorable Magistrate Judge Lisa J. Cisneros

**PETITION FOR ATTORNEYS' FEES,
COSTS, AND INCENTIVE AWARDS**

Date: May 20, 2025

Time: 10:30 AM

Courtroom: G – 15th Floor

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 20, 2025, at 10:30 AM, the undersigned will
3 appear before the Honorable Magistrate Judge Lisa J. Cisneros in Courtroom G, 15th Floor, of the
4 United States District Court for the Northern District of California, 450 Golden Gate Avenue, San
5 Francisco, California 94102, and shall then and there present the Petition for Attorneys' Fees,
6 Costs, and Incentive Awards.

7 Plaintiffs and Class Counsel move the Court for an order awarding Class Counsel
8 attorneys' fees in the amount of \$6,500,000 and costs in the amount of \$33,437.25 and incentive
9 awards of \$7,500 to each of the two Plaintiffs. This petition is based on the following
10 Memorandum of Points and Authorities, as well as all records and papers on file in this action,
11 any oral argument, and any other evidence that the Court may consider in hearing this petition.

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INTRODUCTION

1
2 The settlement secured by Class Counsel here is the second-highest amount ever
3 recovered for a class under the California Invasion of Privacy Act (“CIPA”). Moreover, the
4 compensation rate per class member will far exceed all other large CIPA settlements. Here,
5 approximately 92,668 class members received approximately 149,010 calls. *See* Declaration of
6 Jacie C. Zolna (“Zolna Decl.”) at ¶ 10, attached as Ex. A. Thus, the settlement provides a
7 recovery of \$210.43 per class member and \$130.86 per call. *Id.* at ¶ 12. Based on anticipated
8 claims rates, class members will likely receive individual settlement payments in the *thousands of*
9 *dollars each*, even *after* the payment of requested attorneys’ fees, costs, and incentive awards. *Id.*

10 CIPA settlements that exceed \$100 per class member—like this one—are extremely rare.
11 Most CIPA class actions settle in the range of less than \$1 to approximately \$60 per class
12 member. *Id.* at ¶ 14. The recovery rates secured by Class Counsel here are also extremely unusual
13 given the overall size of this settlement. Only a handful of CIPA class actions have settled for
14 over \$10 million (as this one does) and they all involved hundreds of thousands or millions of
15 class members with recovery rates as low as \$1.06 per member. *Id.* at ¶ 13. The settlement
16 reached here far exceeds that benchmark. In addition to this record-breaking monetary relief,
17 Class Counsel also secured prospective relief that prohibits future calls from being recorded
18 without disclosure.

19 In recognition of their work and risk in prosecuting this case on behalf of the class, Class
20 Counsel petitions the Court for an award of attorneys’ fees in an amount equal to one-third
21 (33.33%) of the Settlement Fund. This request is fair and reasonable considering the benefits
22 Class Counsel secured for the class, the novel and difficult nature of the claims asserted, and the
23 risks undertaken in prosecuting this lawsuit. The named Plaintiffs have also admirably fulfilled
24 their duties as class representatives, including taking on the risk of being named plaintiffs and
25 traveling to Oakland for the settlement conference with Magistrate Judge Ryu. For these reasons,
26 Class Counsel respectfully requests the Court to award the requested attorneys’ fees and costs, as
27 well as the incentive awards for the named Plaintiffs.

28

FACTUAL AND PROCEDURAL BACKGROUND

A. Defendants and the payment processing industry.

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) runs a nationwide payments processing business. *See* Amended Complaint at ¶ 2 (Doc. 29). This business processes millions of credit and debit card transactions around the country every day. *Id.* Every business in the United States that accepts payment by Visa or Mastercard must have a relationship with a bank, like Wells Fargo, that is a member of the Visa or Mastercard payment networks. *Id.* at ¶ 29. These banks employ sales and marketing companies called Independent Sales Organizations (“ISOs”) or Member Service Providers (“MSPs”) to manage, market, and sell their credit and debit card processing services to businesses. *Id.* at ¶¶ 3, 33. The payments processing industry is self-regulated by Visa and Mastercard. *Id.* at ¶ 6. Both of these payment networks publish extensive regulations that define the roles of banks, processors, and sales companies. *Id.*

In this case, Defendants The Credit Wholesale Company, Inc. (“Wholesale”) and Priority Technology Holdings, Inc. and Priority Payment Systems, LLC (together, “Priority”) were ISO/MSPs of Wells Fargo. *Id.* at ¶ 35. Priority was a much larger “processor” that provided technological expertise to Wells Fargo in addition to doing sales and marketing for the bank. *Id.* Priority also managed and supervised the work of Wholesale, a smaller ISO/MSP that focused exclusively on soliciting merchants. *Id.* at ¶¶ 36-38. It did so by employing telemarketers to make cold calls to merchants around the country. *Id.* at ¶ 39. The purpose of these calls was to schedule in person appointments with a sales representative who would attempt to sell Wells Fargo’s payment processing services. *Id.* at ¶ 40. Wholesale recorded these appointment-setting phone calls without ever warning the recipients. *Id.* at ¶¶ 43-49.

B. Class Counsel’s investigation of and prior litigation involving privacy violations in the payment processing industry.

For several years, Class Counsel has actively investigated privacy violations by ISOs in the payment processing industry. *See* Zolna Decl. at ¶ 4. ISOs, however, are generally smaller telemarketing companies against whom it would be difficult to recover any judgment or even a modest settlement in a CIPA case. *Id.* Class Counsel developed a legal theory that would hold the

1 larger banks and processors vicariously liable for the acts of their ISO, relying in part on the Visa
2 and Mastercard rules. *Id.* To the Class Counsel’s knowledge, no such legal theory had ever been
3 advanced in a CIPA case. *Id.*

4 In 2016, the Firm tested this legal theory in a class action lawsuit against, among others,
5 Wells Fargo, one of its processors, and one of its ISOs on behalf of California businesses whose
6 phone conversations were recorded without consent in violation of CIPA. *Id.* at ¶ 5. Wells Fargo
7 and the other defendants moved for sanctions against plaintiffs and Class Counsel asserting that
8 the suit was frivolous. *Id.* That motion was denied, as were numerous motions to dismiss, and the
9 Firm proceeded to prosecute the suit for six years. *Id.* After class certification was fully briefed
10 and awaiting a ruling, the suit settled for a total of \$78,000,000, which represents the largest
11 settlement ever in a CIPA class action. *Id.*¹

12 **C. The current lawsuit.**

13 This lawsuit was filed in state court on October 10, 2023 on behalf of a proposed class of
14 small businesses in California who received sales appointment-setting calls from Wholesale. *See*
15 Complaint (Doc. 1-2). The lawsuit alleges, among other things, that Wells Fargo and Priority
16 were in a principal-agent relationship with Wholesale and that, in the scope of that relationship,
17 Wholesale violated CIPA by recording telemarketing calls without any warning that the recording
18 was occurring. On December 4, 2023, Wells Fargo removed the suit to the United States District
19 Court for the Northern District of California. *See* Notice of Removal (Doc. 1). On February 16,
20 2024, Plaintiffs filed an amended complaint. *See* Amended Complaint (Doc. 29).

21 The Parties agreed to participate in an Early Settlement Conference and, as part of that
22 process, exchanged information, including, but not limited to, the contracts amongst Defendants
23 and data on call volume obtained from third parties via subpoena. The parties also exchanged
24 lengthy and substantive mediation statements, which spelled out their respective factual and legal
25 positions. On August 15, 2024, the Parties participated in an Early Settlement Conference before

26 _____
27 ¹ Class Counsel’s concern about bringing suit solely against an ISO for CIPA violations proved
28 correct. The ISO in the *Wang* case declared bankruptcy during the litigation, which resulted in the
ISO being dismissed from the case entirely. *See* Zolna Decl. at ¶ 6.

1 Magistrate Judge Donna M. Ryu during which the Parties made progress toward, but were unable
2 to reach, a settlement. The Parties thereafter continued to engage in settlement discussions with
3 the assistance of Magistrate Judge Ryu, which resulted in the Parties reaching the settlement set
4 forth herein. It is estimated that the class includes approximately 92,668 potential members who
5 received approximately 149,010 calls. *See* Zolna Decl. at ¶ 10. The average length of the calls at
6 issue is approximately 45 seconds, with many lasting less than 15 seconds. *Id.*

7 SUMMARY OF SETTLEMENT TERMS

8 Defendants will pay \$19,500,000 (the “Settlement Fund”) to create a non-reversionary
9 common fund for the benefit of the class. *See* Settlement Agreement at ¶ 1, attached as Ex. B.
10 Defendants will also pay settlement administration costs up to \$200,000. *Id.* at ¶ 10. Each class
11 member who does not opt-out shall be eligible for a cash payment for each call that is covered
12 under the class definition (“Eligible Call”). *Id.* at ¶ 2. To receive a settlement payment, class
13 members need to submit a claim form either by mail or online. *Id.* at ¶ 4. The claim form is
14 simple and non-cumbersome, and postage is pre-paid for its return mailing to the Settlement
15 Administrator. *Id.* at ¶ 7.a. and Ex. 1. Each settlement payment will be in an amount equal to the
16 Net Settlement Fund divided by all Eligible Calls that were made to class members who submit a
17 claim up to a maximum of \$5,000 for each Eligible Call. *Id.* at ¶ 2.² Class members who received
18 multiple Eligible Calls are entitled to a settlement payment for each Eligible Call. *Id.*

19 The parties agreed to retain Verita Global (the “Settlement Administrator”) to administer
20 the settlement. *Id.* at ¶ 5. A postcard notice will be sent by first class mail to each class member.
21 *Id.* at ¶ 7.a. A Long Form Notice will also be published on the settlement website. *Id.* For any
22 notice that is returned with a forwarding address, the notice and claim form will be re-mailed to
23 the updated address. *Id.* at ¶ 7.b. For any notice that is returned without forwarding address
24 information, the Settlement Administrator will use commercially reasonable efforts to locate a
25 new address for the class member to mail the notice and claim form. *Id.* The Settlement
26 Administrator will also publish a website that will include the Settlement Agreement, the

27 ² CIPA provides for statutory damages up to \$5,000 per violation. *See* Cal. Penal Code §
28 637.2(a)(1).

1 Amended Complaint, the Long Form Notice, and other relevant documents, and will have the
2 ability to accept claims online. *Id.* at ¶ 8. Notice of the settlement will also be published via the
3 internet, which will contain a link to the settlement website *Id.* at ¶ 7.c. The Settlement
4 Administrator will maintain a toll-free number to receive calls regarding the settlement. *Id.* at ¶ 9.
5 Class members may opt-out or object to the settlement. *Id.* at ¶¶ 19-20

6 The settlement includes several features designed to ensure that the entire fund is
7 distributed to the class. For example, if the initial claims rate is insufficient to exhaust the entire
8 Net Settlement Fund at the maximum payment of \$5,000 per Eligible Call, then an additional
9 opportunity for class members to submit a claim will be provided. *Id.* at ¶ 28. All reasonable
10 efforts will also be used to ensure that class members who submit a claim receive and cash their
11 settlement checks, including the reissuance of checks. *Id.* at ¶ 16. If funds still remain after 18
12 months, the Settlement Administrator will distribute those funds on a *pro rata* basis to class
13 members who submitted a claim. *Id.* at ¶ 30. Only after those efforts have been exhausted will
14 any remainder be remitted to the Electronic Frontier Foundation (“EFF”) as a *cy pres* recipient,
15 whose mission includes protecting privacy interests and “fight[ing] illegal surveillance.” *Id.*; *see*
16 *also* EFF website, <https://www.eff.org/about>; *McCabe v. Six Continents Hotels, Inc.*, No. 12-CV-
17 04818 NC, 2016 WL 491332, at *2 (N.D. Cal. Feb. 8, 2016) (approving EFF as *cy pres* recipient
18 in CIPA settlement). Under no circumstances will any of the Settlement Fund revert to
19 Defendants. *See* Settlement Agreement at ¶¶ 28, 30.

20 ARGUMENT

21 A. The requested award of attorneys’ fees is fair and reasonable.

22 1. *Attorneys’ fees should be awarded using the percentage of the fund method.*

23 Considering the record-breaking monetary benefits conferred on the class, the risks
24 undertaken by Class Counsel, and Class Counsel’s unique knowledge and experience in this area
25 of the law, the requested attorneys’ fees and costs are fair and reasonable and should be approved.
26 Federal courts sitting in diversity, like here, apply state law in determining both a party’s rights to
27 attorneys’ fees and the method of calculating them. *See Mangold v. Cal. Pub. Util. Comm’n*, 67
28

1 F.3d 1470, 1478 (9th Cir. 1995). The California Supreme Court has endorsed the percentage of
2 the fund method in awarding fees when class counsel’s efforts have created a common fund for
3 the benefit of the class:

4 We join the overwhelming majority of federal and state courts in holding that
5 when class action litigation establishes a monetary fund for the benefit of the class
6 members, and the trial court in its equitable powers awards class counsel a fee out
7 of that fund, the court may determine the amount of a reasonable fee by choosing
8 an appropriate percentage of the fund created. The recognized advantages of the
percentage method—including relative ease of calculation, alignment of
incentives between counsel and the class, a better approximation of market
conditions in a contingency case, and the encouragement it provides counsel to
seek an early settlement and avoid unnecessarily prolonging the litigation.

9 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 503 (2016). Indeed, “the percentage-of-the-
10 benefit approach [is] the preferred method for determining fees in common fund cases.” *Lealao v.*
11 *Beneficial California, Inc.*, 82 Cal. App. 4th 19, 31 (2000).

12 “While the California Supreme Court recognized the Ninth Circuit’s twenty-five
13 benchmark for percentage awards in common fund cases, no such benchmark has been adopted
14 under California law.” *Ramirez v. Merrill Gardens, LLC*, No. 1:22-CV-00542-SAB, 2024 WL
15 3011142, at *25 (E.D. Cal. June 11, 2024) (citing *Laffitte*, 1 Cal. 5th 480 (affirming award of fees
16 to class counsel in the amount of 33.33% of the \$19,000,000 fund)). Rather, “California courts
17 routinely award attorneys’ fees of one-third of the common fund.” *Beaver v. Tarsadia Hotels*, No.
18 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *9 (S.D. Cal. Sept. 28, 2017) (citing cases).

19 In line with California precedent, Class Counsel requests attorneys’ fees in the amount of
20 one-third (\$6,500,000) of the \$19,500,000 common fund. The requested fees are more than
21 reasonable considering the substantial benefits conferred on the class. As noted above, CIPA class
22 actions typically settle in the range of less than \$1 to \$60 per class member. A small number of
23 exceptional CIPA settlements have settled in the range of \$100-\$150 per class member. The
24 settlement here—\$210.43 per class member—far exceeds even the largest, outlier settlements.
25 Moreover, even *after* payment of the requested fees, costs, and incentive awards, class members
26 will likely receive individual settlement payments in the *thousands of dollars*—all for an intrusion
27 of privacy that lasted, on average, 45 seconds. Assuming a 10% claims rate, the settlement will

1 provide a recovery of nearly \$70,000 per hour of privacy intrusion.³ Under any standard, Class
 2 Counsel obtained a phenomenal and unprecedented result that more than justifies the requested
 3 attorneys' fees.

4 Even under Ninth Circuit law, its 25% benchmark can be adjusted upward depending on
 5 “(1) the result obtained; (2) the risk involved in the litigation; (3) the contingent nature of the fee;
 6 (4) counsel’s efforts, experience, and skill; and (5) awards made in similar cases.” *Carlin v.*
 7 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1019 (E.D. Cal. 2019) (citing *Vizcaino v. Microsoft*
 8 *Corp.*, 290 F.3d 1043 (9th Cir. 2002)). These factors also support the requested attorneys’ fees.
 9 Indeed, “in most common fund cases, the award exceeds that benchmark.” *In re Stable Rd.*
 10 *Acquisition Corp.*, No. 2:21-CV-5744-JFW(SHKX), 2024 WL 3643393, at *13 (C.D. Cal. Apr.
 11 23, 2024) (citation omitted).

12 “First, the overall result and benefit to the class from the litigation is the most important
 13 factor in granting a fee award.” *Ramirez v. Trans Union, LLC*, No. 12-CV-00632-JSC, 2022 WL
 14 17722395, at *10 (N.D. Cal. Dec. 15, 2022). Here, Class Counsel secured a record-breaking
 15 settlement that will result in settlement payments to class members in the thousands of dollars
 16 each. Defendants will also pay up to \$200,000 in administration costs, an amount that would
 17 typically be paid from the fund and reduce class member payments. *See In re Online DVD-Rental*
 18 *Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015). The settlement also provides for prospective
 19 relief to prevent future privacy violations. *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir.
 20 2003) (“[T]he injunctive relief obtained [is] a ‘relevant circumstance’ in determining what
 21 percentage of the common fund class counsel should receive as attorneys’ fees[.]”).

22 In short, the “exceptional recovery ... weighs heavily in favor of a greater-than-
 23 benchmark award of attorney fees.” *Carlin*, 380 F. Supp. 3d at 1020; *see also Medeiros v. HSBC*
 24 *Card Servs., Inc.*, No. CV1509093JVSAFMX, 2017 WL 11632870, at *9 (C.D. Cal. Oct. 23,

25
 26 ³ This figure was calculated as follows: 10% of 149,010 calls = 14,901. Net Settlement Fund of
 27 \$12,950,000 (\$19,500,000 - \$6,500,000 in attorney’s fees, \$35,000 in costs, and \$15,000 in
 28 incentive awards) divided by 14,901 class = \$869.07 average settlement payment per call. Using
 the average length of 45 seconds per call and extrapolating the \$869.07 average settlement
 payment per call to a total of one hour equals \$69,525.60 per hour.

1 2017) (awarding fees of 33.33% in \$13,000,000 CIPA settlement because the “results achieved
2 exceed the gross per capita recovery in many other recently approved CIPA cases”); *Judson v.*
3 *Goldco Direct, LLC*, No. CV196798PSGPLAX, 2021 WL 8462049, at *7 (C.D. Cal. June 11,
4 2021) (one-third fee award justified in TCPA case where class members would receive \$850).

5 Second, the risks involved in the litigation were significant. The vicarious liability theory
6 advanced by Plaintiffs is novel and untested and was complicated by Defendants’ contracts that
7 purport to disclaim any principal-agency relationship. *See* Defendants’ contracts, attached as
8 Group Ex. C. Class certification was also far from certain given the long line of cases denying
9 certification of claims under Cal. Penal Code § 632. *See Hataishi v. First Am. Home Buyers Prot.*
10 *Corp.*, 223 Cal. App. 4th 1454, 1467 (2014); *Kight v. CashCall, Inc.*, 231 Cal. App. 4th 112
11 (2014); *Torres v. Nutrisystem, Inc.*, 289 F.R.D. 587 (C.D. Cal. 2013). Defendants also raised
12 constitutional and other issues, not to mention a case of this size and complexity would take years
13 to resolve. This factor also favors the requested fee award. *See Medeiros*, 2017 WL 11632870, at
14 *10 (noting “multiple risks” involved in CIPA litigation, including class certification, “that the
15 calls ... would not qualify as ‘confidential communications,’ consent, and that “aggregated
16 statutory damages would violate due process”).

17 Third, Class Counsel undertook this case entirely on a contingent basis with no guarantee
18 of payment. This risk should not be viewed in hindsight of a successful settlement, which was
19 never guaranteed. At the outset, Class Counsel had to commit to spending years prosecuting this
20 suit, without compensation, all while forgoing other opportunities to do so. This was a risky
21 endeavor considering the untested legal theories involved and aggressive defendants who sought
22 sanctions the last time Class Counsel brought such a suit. This factor, therefore, favors the
23 requested attorneys’ fees.

24 Fourth, Class Counsel has unique experience with privacy violations in the payment
25 processing industry having spent years investigating these practices. *See Zolna Decl.* at ¶ 4. Class
26 Counsel developed a first of its kind legal theory that would hold the banks and processors
27 vicariously liable for the acts of their ISO, making such suits financially viable to pursue when
28

1 they otherwise would not be. *Id.* Class Counsel also successfully prosecuted a previous suit
2 against some of the same defendants here, which resulted in the largest settlement by total dollar
3 amount ever under CIPA. *Id.* at ¶ 5. The ability to secure such a substantial settlement in this case
4 early in the litigation was a direct result of Class Counsel’s track record, experience and
5 knowledge of the payment processing industry, and demonstrated wherewithal to prosecute such
6 suits to conclusion. Because Class Counsel has “‘intimate knowledge of the case,’ and applied
7 their unique skills to obtain favorable results, this factor should weigh in favor of an increase in
8 the benchmark rate.” *Carlin*, 380 F. Supp. 3d at 1021.

9 Lastly, a fee award in the amount of one-third of the fund compares favorably to awards
10 made in similar privacy and telemarketing cases. *See, e.g., Medeiros*, 2017 WL 11632870
11 (awarding fees of 33.33% of \$13,000,000 settlement fund in CIPA case); *In re Vizio, Inc.,*
12 *Consumer Priv. Litig.*, No. 816ML02693JLSKES, 2019 WL 12966638, at *4-6 (C.D. Cal. July
13 31, 2019) (awarding fees of 33% of \$17,000,000 settlement fund in privacy case that included
14 CIPA claims); *Dakota Med., Inc. v. RehabCare Grp., Inc.*, No. 114CV02081DADBAM, 2017
15 WL 4180497, at *7-8 (E.D. Cal. Sept. 21, 2017) (awarding fees in the amount of one-third of
16 \$25,000,000 fund “because it [was] the third-largest TCPA settlement in the Ninth Circuit in
17 recent years” and class members received “payment of approximately \$7.00 for each violation[,]”
18 which is “more on a per-violation basis than many TCPA settlements”); *Vandervort v. Balboa*
19 *Cap. Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (33% award of fees in TCPA class
20 settlement); *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, 1:16-cv-11223 (N.D.
21 Ill.) at Docs. 654 and 687 (33.33% fee award in CIPA settlement).

22 For all these reasons, the fee award requested by Class Counsel is fair and reasonable.

23 **2. A lodestar cross-check is not appropriate under the circumstances.**

24 Under both California and Ninth Circuit law, a lodestar cross-check is disfavored when
25 class counsel secures an early, strong settlement. *See Laffitte*, 1 Cal. 5th at 506 (“[T]rial courts
26 have discretion to ...forgo a lodestar cross-check and use other means to evaluate the
27 reasonableness of a requested percentage fee”); *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x
28

1 628, 630 (9th Cir. 2020) (“This Court has consistently refused to adopt a crosscheck requirement,
2 and we do so once more.”) (citing cases). “A lodestar cross-check is not required in this circuit,
3 and in some cases is not a useful reference point.” *Craft v. Cnty. of San Bernardino*, 624 F. Supp.
4 2d 1113, 1122 (C.D. Cal. 2008) (awarding \$6,375,000 in fees even though lodestar was
5 \$1,200,000); *see also Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
6 (“[A] court is not required to reduce a percentage recovery just because it is substantially higher
7 than the lodestar.”).

8 This is particularly true here where Class Counsel achieved one of the best, if not the best,
9 settlements ever under CIPA at an early stage of the proceedings. As courts routinely
10 acknowledge, when class counsel “achieve[s] substantial results for the class at an early stage of
11 litigation[,] *** [u]se of a lodestar calculation would punish Plaintiff’s counsel for the early
12 proposed settlement, and thus may impede settlement efforts in similar cases.” *Lewis v. Starbucks*
13 *Corp.*, No. 2:07-CV-00490-MCEDAD, 2008 WL 4196690, at *7 (E.D. Cal. Sept. 11, 2008); *see*
14 *also Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *16 (N.D. Cal.
15 Jan. 26, 2007), *aff’d*, 331 F. App’x 452 (9th Cir. 2009) (“Under the circumstances presented here,
16 where the early settlement resulted in a significant benefit to the class, the Court finds no need to
17 conduct a lodestar cross-check.”); *Rankin v. Am. Greetings, Inc.*, No. 2:10-CV-01831-GGH, 2011
18 WL 13239039, at *2 (E.D. Cal. July 6, 2011) (“[I]n accordance with Ninth Circuit precedents,
19 district courts within the Ninth Circuit have recognized that a lodestar cross check need not be
20 performed where plaintiff’s counsel achieves a significant result through an early settlement.”).

21 Here, Class Counsel achieved a substantial and record-breaking settlement that will
22 provide class members with thousands of dollars each—and did so efficiently and relatively early
23 in the litigation. Requiring a lodestar cross-check under such circumstances is unwarranted and
24 would only encourage parties to litigate cases for years in lieu of early settlement efforts.

25 But even if a lodestar cross-check was performed, the requested fees would result in a
26 current multiplier of 6.99, not including additional time that will be spent on final approval and
27 administering the settlement, which is within the acceptable range in the Ninth Circuit. *See Zolna*
28

1 Dec. at ¶¶ 16-20; Declaration of Jennie Anderson (“Anderson Decl.”) at ¶ 4, attached as Ex. D;
 2 *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (surveying lodestar
 3 multipliers applied to fee awards in common fund cases, “finding a range of .6-19.6”); *Steiner v.*
 4 *Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming fee award based on lodestar
 5 multiplier of 6.85, finding that it “falls well within the range of multipliers that courts have
 6 allowed”); *Vidrio v. United Airlines, Inc.*, No. CV 15-7985 PSG (MRWX), 2023 WL 11932248,
 7 at *11 (C.D. Cal. June 29, 2023) (awarding fees in the amount of one-third of the fund, finding
 8 that multiplier of 15 was justified because “Class Counsel ... achieved an extraordinary result”);
 9 *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2020 WL 1904533, at *21 (N.D. Cal.
 10 Apr. 17, 2020) (awarding 33.33% fee award, finding that lodestar multipliers of 13.42, 15.42, and
 11 18.15 were “within the surveyed acceptable range in the Ninth Circuit”). Thus, Class Counsel’s
 12 fees are justified even under a lodestar analysis.⁴

13 **B. The costs expended were fair and reasonable.**

14 The costs incurred were also reasonable and necessary. *See* Zolna Decl. at ¶ 18 and Ex. 3;
 15 Anderson Decl. at ¶ 7. All of these costs were necessary to properly prosecute this action.
 16 Accordingly, the Court should also approve the reimbursement of \$33,437.25 in costs.

17
 18
 19 ⁴ Class Counsel’s hourly rates—\$825 for a partner with 14 years of experience, \$950 for partner
 20 with 23 years of experience, and \$1,600 for managing partner with over 50 years of experience—
 21 are consistent with the market rate for class action lawyers in California and elsewhere. *See In re*
 22 *Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prod. Liab. Litig.*, MDL No. 2672 CRB
 23 (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving hourly rates for class
 24 counsel ranging as high as \$1,600 for partners and \$790 for associates); *Ramirez v. Trans Union,*
 25 *LLC*, No. 12-CV-00632-JSC, 2022 WL 17722395, at *9 (N.D. Cal. Dec. 15, 2022) (finding
 26 hourly rates of \$1,325, \$1,200, and \$985 to be “in line with rates prevailing in this community for
 27 similar services by lawyers of reasonably comparable skill, experience and reputation”); *Wit v.*
 28 *United Behavioral Health*, No. 14-cv-02346-JCS, 2022 WL 45057, at *7 (N.D. Cal. Jan. 5, 2022)
 (approving rates ranging from \$625 to \$1,145 for partners and counsel and \$425 to \$650 for
 associates); *see also* Rubino, Kathryn, *Want An Elite Senior Partner On Your Case? Be Ready To*
Pay \$3000 An Hour, ABOVE THE LAW, <https://abovethelaw.com/2024/09/want-an-elite-senior-partner-on-your-case-be-ready-to-pay-3000-an-hour/> (noting that some law firms are charging
 hourly rates as high as \$3,000 and “senior partners billing rates will average \$2,100 in 2024, with
 partners averaging \$1,900/hour *** third-year associates with rates over \$1,000 *** [and] first-
 year associates are approaching \$1,000 at a handful of firms”).

1 **C. The requested incentive awards are fair and reasonable.**

2 The proposed incentive awards of \$7,500 to each of the two named Plaintiffs are fair and
3 reasonable and should also be approved. “Incentive *awards* are fairly typical in class action
4 cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (italics in original).
5 “Such awards ... are intended to compensate class representatives for work done on behalf of the
6 class, to make up for financial or reputational risk undertaken in bringing the action, and,
7 sometimes, to recognize their willingness to act as a private attorney general.” *Id.* at 958-59.

8 Here, Plaintiffs took the initiative to be named in the lawsuit and stayed actively involved
9 in the litigation, routinely communicating with Class Counsel, and reviewing pleadings and other
10 case materials. *See* Declaration of Francisco Aguilar, attached as Ex. E; Declaration of Wyatt
11 Miller, attached as Ex. F. The principals of both Plaintiffs also attended and were active
12 participants in the Early Settlement Conference before the Magistrate Judge Donna M. Ryu. *Id.*
13 The Early Settlement Conference lasted all day and required out of town travel for both Plaintiffs
14 and an overnight stay in Oakland, California, which interfered with Plaintiffs’ ability to operate
15 their small businesses on these days. *Id.* The incentive awards sought for Plaintiffs are not
16 conditioned on their support for the settlement. *Id.*

17 Accordingly, the relatively modest incentive awards of \$7,500 each are more than
18 justified. Indeed, the requested incentive awards are comparable to or less than what courts
19 typically award in CIPA and other privacy class cases. *See McCabe*, 2016 WL 491332, at *2
20 (approving incentive awards of \$7,500 and \$10,000 in CIPA class settlement); *Mirkarimi v.*
21 *Nevada Prop. 1, LLC*, No. 12CV2160 BTM (DHB), 2016 WL 795878, at *6 (S.D. Cal. Feb. 29,
22 2016) (approving \$30,000 incentive award in CIPA class settlement); *Reed v. 1-800 Contacts,*
23 *Inc.*, No. 12-CV-02359 JM BGS, 2014 WL 29011, at *10 (S.D. Cal. Jan. 2, 2014) (approving
24 \$10,000 incentive award in CIPA class settlement); *Dakota Med., Inc. v. RehabCare Grp., Inc.*,
25 No. 114CV02081DADBAM, 2017 WL 4180497, at *12 (E.D. Cal. Sept. 21, 2017) (approving
26 \$15,000 incentive award in TCPA class settlement).

27 The incentive awards, therefore, should also be approved

28

CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Cook, State of Illinois. My business address is 30 N. LaSalle St., Suite 2300, Chicago, Illinois 60602.

On February 27, 2025, I served a true copy of the following document described as **PETITION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS** on all parties to this action, listed below, **BY CM/ECF NOTICE OF ELECTRONIC FILING**. I electronically filed the document with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules:

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Executed on February 27, 2025, in Chicago, Illinois.

/s/ Jacie C. Zolna
Jacie C. Zolna

Ex. A

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 AGUILAR AUTO REPAIR, INC. and
21 CENTRAL COAST TOBACCO CO., LLC,
22 individually and on behalf of all others
23 similarly situated,

24 Plaintiffs,

25 v.

26 WELLS FARGO BANK, N.A., PRIORITY
27 TECHNOLOGY HOLDINGS, INC.,
28 PRIORITY PAYMENT SYSTEMS, LLC and
THE CREDIT WHOLESALE COMPANY,
INC.,

Defendants.

Case No. 3:23-cv-06265-LJC

**DECLARATION OF JACIE C. ZOLNA IN
SUPPORT OF PETITION FOR
ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS**

1 I, Jacie C. Zolna, declare as follows:

2 1. I am a partner at Myron M. Cherry & Associates, LLC (the “Firm”) and represent
3 Plaintiffs in *Aguilar Auto Repair, Inc., et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-
4 06265-LJC pending in the United States District Court for the Northern District of California (the
5 “Lawsuit”). I have personal knowledge of the facts set forth in this declaration and, if called to
6 testify, could and would testify competently thereto.

7 2. I have been practicing law since 2002. I received my J.D. from DePaul University
8 College of Law where I graduated with honors and was a member of the DePaul Law Review. I
9 am admitted to the Illinois Bar, the Minnesota Bar, the United States District Court for the
10 Northern District of Illinois, and the Seventh Circuit Court of Appeals. I have successfully argued
11 cases before both the Illinois Appellate Court and the Seventh Circuit Court of Appeals. On two
12 occasions, in 2013 and 2017, I was presented the Award for Excellence in *Pro Bono* Service by
13 the United States District Court for the Northern District of Illinois for outstanding *pro bono* and
14 public interest representation.

15 3. I and others in the Firm have wide experience in class actions and complex
16 litigation. The Firm has represented plaintiffs and defendants in a variety of substantive litigation
17 including, without limitation, class actions, civil rights, contract, privacy, antitrust, fraud,
18 securities actions, environmental, and tort cases.

19 4. For the past several years, the Firm has been investigating privacy violations by
20 Independent Sales Organizations (“ISOs”) in the payment processing industry, including practices
21 that violate the California Invasion of Privacy Act (“CIPA”). A major hurdle to bringing a CIPA
22 suit against an ISO, however, is that ISOs are generally smaller telemarketing companies against
23 whom it would be difficult to recover any judgment or even a modest settlement. After studying
24 the payment industry and the Visa and Mastercard rules that govern that industry, the Firm
25 developed a legal theory that would hold the larger banks and processors vicariously liable for the
26 acts of their ISO. This legal theory was based on, among other things, the Visa and Mastercard
27 rules. To the Firm’s knowledge, no lawsuit had ever been brought to remedy CIPA violations
28

1 using this legal theory.

2 5. As a result of this research and investigation, the Firm brought a class action
3 lawsuit against, among others, Wells Fargo, one of its processors, and one of its ISOs on behalf of
4 California businesses whose phone conversations were recorded without consent in violation of
5 CIPA. *See C.S. Wang v. Wells Fargo Bank, N.A.*, 16-cv-11223 (N.D. Ill.). Wells Fargo and the
6 other defendants moved for sanctions against plaintiffs and our Firm asserting that the suit was
7 frivolous. That motion was denied, as were numerous motions to dismiss, and the Firm proceeded
8 to prosecute the suit for six years. After class certification was fully briefed and awaiting a ruling,
9 the suit settled for a total of \$78,000,000, which represents the largest settlement ever in a CIPA
10 class action. The *Wang* settlement included 500,790 class members who collectively received
11 1,603,445 calls.

12 6. The Firm's concern about bringing suit solely against an ISO for these CIPA
13 violations proved correct in the *Wang* case. The ISO in that case declared bankruptcy during the
14 litigation, which resulted in the ISO being dismissed from the case entirely.

15 7. The Firm has been substantively involved in several other class actions and
16 complex matters. For example, I and others in the Firm were appointed class counsel in
17 *McKenzie-Lopez et al. v. City of Chicago*, No. 15 CH 4802 (Circuit Court of Cook County,
18 Illinois) (challenging the manner in which the City of Chicago operated and enforced its speed
19 and red light camera program, which resulted in settlement valued at over \$125 Million); *Midwest*
20 *Medical Records Association, Inc. v. Brown*, No. 15 CH 16986 (Circuit Court of Cook County,
21 Illinois) (class action seeking the return of unlawful filing fees collected by the Cook County
22 Clerk of Court, which resulted in a settlement that provided full refunds to class members, as well
23 as injunctive relief preventing the Clerk from charging the fee in the future); *Ehret v. Uber*
24 *Technologies, Inc.*, No. 3:14-cv-113-EMC (N.D. Cal.) (consumer fraud action based on
25 misrepresentations regarding gratuity charge, which resulted in settlement that provided full
26 refunds to consumers); and *Otero v. Dart, et al.*, No. 12-cv-3148 (N.D. Ill.) (challenge to the

1 Sherriff of Cook County’s release procedures for individuals acquitted of wrongdoing at trial,
2 which resulted in a settlement that required changes to the Sherriff’s release procedures, as well
3 as monetary payments to individual class members).

4 8. Over the years, our Firm has recovered hundreds of millions of dollars in verdicts
5 and settlements for the classes, individuals, and entities whom we have represented. A summary
6 of representative cases is attached as Ex. 1.

7 9. The Firm also devotes a significant amount of time to public interest issues,
8 including community affairs, political affairs, *pro bono* representation, and assisting indigent
9 individuals.

10 10. The parties retained Verita Global to administer the settlement. Verita Global
11 analyzed call records and other data to determine membership in the class. Based on that analysis,
12 Verita Global determined that there were approximately 92,668 potential class members who
13 received approximately 149,010 calls during the relevant time period. According to a survey of
14 the calls conducted by Wholesale’s counsel, the average length of the calls at issue were
15 approximately 45 seconds, with many lasting less than 15 seconds.

16 11. Based on our Firm’s research, the largest settlement of a CIPA class action prior to
17 this Lawsuit and our Firm’s recent settlement of the *Wang* case referenced above was
18 \$18,000,000 for a class of approximately 4,000,000 members (**\$4.50 per class member**). *See*
19 *Marenco v. Visa, Inc.*, C.D. Cal. Case No. 2:10-cv-08022.

20 12. The per class member settlement amount here is **\$210.43 per class member**
21 (\$19,500,000 / 92,668 class members) and \$130.86 per call (\$19,500,000 / 149,010 calls). Based
22 on an estimated claims rate of 8%-12%, it is anticipated that class members will receive an
23 average settlement payment of approximately **\$1,164.57—\$1,746.93 each** even after payment of
24
25
26
27

1 the requested attorneys' fees and costs and incentive awards.¹

2 13. Based on the Firm's research, most CIPA class actions settle for less than
3 \$10,000,000. The CIPA class action settlements we found that exceeded \$10,000,000 are as
4 follows:

- 5 • *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, 1:16-cv-11223 (N.D. Ill.)
6 (\$78,000,000 CIPA settlement for 500,790 class members, **\$155.75 per class member**).
- 7 • *Marenco v. Visa, Inc.*, C.D. Cal. Case No. 2:10-cv-08022 (\$18,000,000 CIPA settlement
8 for approximately 4,000,000 class members, **\$4.50 per class member**).
- 9 • *Mirkarimi v. Nevada Prop. 1, LLC*, No. 12CV2160 BTM (DHB), 2016 WL 795878 (S.D.
10 Cal. Feb. 29, 2016) (\$14,500,000 CIPA settlement for 100,541 class members, **\$144.22**
11 **per class member**).
- 12 • *Medeiros v. HSBC Card Servs., Inc.*, No. CV1509093JVSAFMX, 2017 WL 11632870
13 (C.D. Cal. Oct. 23, 2017) (\$13,000,000 CIPA settlement for approximately 1,700,000
14 class members, **\$7.65 per class member**).
- 15 • *Reed v. 1-800 Contacts, Inc.*, No. 12-CV-02359 JM BGS, 2014 WL 29011 (S.D. Cal. Jan.
16 2, 2014) (\$11,700,000 CIPA settlement for 99,884 class members, **\$117.14 per class**
17 **member**).
- 18 • *McCabe v. Six Continents Hotels, Inc.*, N.D. Cal. Case No. 3:12-cv-04818 (\$11,700,000
19 CIPA settlement for 698,000 class members, **\$16.76 per class member**).
- 20 • *In re Vizio, Inc., Consumer Priv. Litig.*, No. 816ML02693JLSKES, 2019 WL 12966638
21 (C.D. Cal. July 31, 2019) (\$17,000,000 settlement on behalf of approximately 16,000,000
22 class members (**\$1.06 per class member**) that brought claims under various privacy
23

24 ¹ These figures were calculated as follows: 8% of 92,668 class members = 7,413. Net Settlement
25 Fund of \$12,950,000 (\$19,500,000 - \$6,500,000 in attorney's fees, \$35,000 in costs, and \$15,000
26 in incentive awards) divided by 7,413 class members = \$1,746.93 average settlement payment per
27 class member at an 8% claims rate. 12% of 92,668 class members = 11,120. Net Settlement Fund
of \$12,950,000 divided by 11,120 class members = \$1,164.57 average settlement payment per
class member at a 12% claims rate.

1 statutes of a number of different states, including CIPA).²

2 Additional information about these settlements are contained in Exhibits 2-3 of my prior
3 declaration submitted in connection the preliminary approval motion. *See* Declaration of Jacie C.
4 Zolna in Support of Plaintiffs' Motion for Certification of Settlement Class and Preliminary
5 Approval of Class Action Settlement (Doc. 79-1).

6 14. Numerous other CIPA class actions have settled for less than the cases referenced
7 above and at significantly lower per class member amounts than the settlement reached here. *See*,
8 *e.g.*, *Batmanghelich v. Sirius XM Radio, Inc.*, C.D. Cal. Case No. 2:09-cv-9190 (\$9,480,000
9 CIPA settlement for over 1,700,000 class members, **\$5.77 per class member**); *Roberts v.*
10 *Wyndham Hotels and Resorts, LLC*, N.D. Cal. Case No. 3:12-cv-05083 (\$7,325,000 CIPA
11 settlement for 115,770 for class members, **\$63.27 per class member**); *Cohorst v. BRE*
12 *Properties, Inc. et al.*, S.D. Cal. Case No. 3:10-cv-2666 (\$5,500,000 CIPA settlement for
13 1,170,584 class members, **\$4.70 per class member**); *Tobajian v. Allstate Corp.*, No. CV 23-753-
14 DMG (PDX), 2023 WL 6813321 (C.D. Cal. Sept. 21, 2023) (\$3,300,000 CIPA settlement for
15 130,005 class members, **\$25.38 per class member**); *Nader v. Capital One Bank (USA), N.A.*,
16 C.D. Cal. Case No. 2:12-cv-01265 (\$3,000,000 CIPA settlement for 1,100,000 class members,
17 **\$2.73 per class member**); *Knell v. FIA Card Services*, S.D. Cal. Case No. 3:12-cv-426
18 (\$2,750,000 CIPA settlement for 3,650,000 class members, **\$0.75 per class member**); *Hoffman v.*
19 *Bank of America*, S.D. Cal. Case No. 3:12-cv-00539 (\$2,600,000 CIPA settlement for over
20 1,400,000 class members, **\$1.86 per class member**); *Nguyen v. Vantiv, Inc.*, N.D. Cal. Case No.
21 3:15-cv-02436 (\$2,000,000 CIPA settlement for approximately 35,000 members, **\$57.14 per**

22 ² The percentage of class members in these cases who submitted a claim for a settlement payment
23 are as follows: *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, 1:16-cv-11223
24 (N.D. Ill.) (**11.25%** claims rate); *Marenco v. Visa, Inc.*, C.D. Cal. Case No. 2:10-cv-08022
25 (**3.81%** claims rate); *Mirkarimi v. Nevada Prop. 1, LLC*, No. 12CV2160 BTM (DHB), 2016 WL
26 795878 (S.D. Cal. Feb. 29, 2016) (**13.6%** claims rate); *Medeiros v. HSBC Card Servs., Inc.*, No.
27 CV1509093JVSAFMX, 2017 WL 11632870 (C.D. Cal. Oct. 23, 2017) (**13.8%** claims rate); *Reed*
v. 1-800 Contacts, Inc., No. 12-CV-02359 JM BGS, 2014 WL 29011 (S.D. Cal. Jan. 2, 2014)
(**13.7%** claims rate); *McCabe v. Six Continents Hotels, Inc.*, N.D. Cal. Case No. 3:12-cv-04818
(**5.2%** claims rate); *In re Vizio, Inc., Consumer Priv. Litig.*, No. 816ML02693JLSKES, 2019 WL
12966638 (C.D. Cal. July 31, 2019) (**4.1%** claims rate).

1 **class member).**

2 15. The Firm was required to spend a significant amount of its time and resources on
3 the Lawsuit, which interfered with the Firm’s ability to accept other opportunities. Due to its
4 breadth and complexity, the Lawsuit required lawyers at our Firm, including myself and
5 Benjamin Swetland, to work almost exclusively on this case for significant periods of time. This
6 posed a significant risk to our Firm since the lawyers who worked on this case otherwise would
7 have been involved in other matters or potential opportunities but for the demands this case took
8 on their time. We nonetheless undertook the prosecution of this suit after an analysis of the risks,
9 which were substantial, versus the potential reward of a contingent fee award.

10 16. Based on billing records that are kept in the ordinary course of business at the
11 Firm, the Firm has spent 979 attorney hours and \$888,112.50 in billable attorney time in
12 connection with the Lawsuit as of February 27, 2025. This amount does not include attorney time
13 that has not yet been accounted for or inputted into the Firm’s billing software, nor does it include
14 time that the Firm will spend on finalizing the final approval papers, attending the final approval
15 hearing, and attending to settlement administration issues. A summary of attorney time expended
16 by the Firm on this matter is attached as Ex. 2. *See In re Nat’l Collegiate Athletic Ass’n Athletic*
17 *Grant-in-Aid Cap Antitrust Litig.*, 768 F. App’x 651, 654 (9th Cir. 2019) (“[T]he district court
18 may rely on attorney fee summaries rather than actual billing records.”); *Bellinghausen v. Tractor*
19 *Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) (“[I]t is well established that ‘[t]he lodestar
20 cross-check calculation need entail neither mathematical precision nor bean counting ... [courts]
21 may rely on summaries submitted by the attorneys and need not review actual billing records.’”)
22 (citation omitted).

23 17. The Firm’s hourly billing rates are as follows:

24 Myron M. Cherry, Managing Partner with over 50 years of experience: \$1,600

25 Jacie C. Zolna, Partner with 23 years of experience: \$950

26 Benjamin R. Swetland, Partner with 14 years of experience: \$825

Ex. 1

REPRESENTATIVE CASES OF MYRON M. CHERRY & ASSOCIATES, LLC

CLASS ACTIONS & COMPLEX LITIGATION

C.S. Wang v. Wells Fargo Bank, N.A., 16-cv-11223 (N.D. Ill.): Class action on behalf of businesses whose phone conversations were illegally recorded without consent in violation of the California Invasion of Privacy Act (“CIPA”). The Firm was appointed class counsel and obtained a settlement of \$78 Million, which represents the largest settlement ever in a CIPA class action.

McKenzie-Lopez v. City of Chicago, 15 CH 4802 (Circuit Court of Cook County, Illinois)

Appointed class counsel in lawsuit challenging the manner in which the City of Chicago operated and enforced its speed and red-light camera program. Obtained first ever settlement in connection with the City’s traffic camera program that not only required changes to the City’s practices and other injunctive relief, but also monetary relief valued in excess of \$125 Million.

Mansfield v. Air Line Pilots Ass’n Int’l, 06-cv-6869 (N.D. Ill.)

The firm was appointed lead class counsel and recovered \$44 Million for a class of Senior Pilots of United Airlines in a class action, in which United Airlines was an intervening party, alleging that the defendant union improperly distributed the proceeds of \$550 Million in convertible notes it received as part of United Airline’s bankruptcy. According to published reports at the time, this settlement represented the largest amount ever paid by a union for violation of the duty of fair representation.

Ventas, Inc. v. Sullivan & Cromwell, 5232-02 (Sup. Ct., D.C.)

The firm prosecuted an action against a major Wall Street law firm, Sullivan & Cromwell, for legal malpractice resulting from advice given in connection with a complex corporate reorganization that required a payoff of public debt. Shortly before trial, the firm obtained a \$25.5 Million settlement, one of the largest settlements or verdicts recorded in a legal malpractice case.

Otero v. Dart, 12-cv-3148 (N.D. Ill.)

Lead class counsel in certified class action against the Sherriff of Cook County for alleged unconstitutional detention of individuals acquitted of wrongdoing at trial. The firm obtained an unprecedented settlement that required changes to the Sherriff’s release procedures, as well as monetary payments to individual class members.

Midwest Medical Records Assoc., Inc. v. Brown, 15 CH 16986 (Circuit Court of Cook County, Illinois)

Class action seeking the return of unlawful filing fees charged by the Cook County Clerk of Court. Obtained decision from the First District Appellate Court of Illinois finding that the voluntary payment doctrine does not apply to the payment of court filing fees. *Midwest Med. Records Ass’n, Inc. v. Brown*, 2018 IL App (1st) 163230. The firm was appointed class counsel and settled the case for \$5,218,155, an amount which represented full refunds for the class, as well as injunctive relief that prevented the Clerk from charging the fee at issue in the future.

Ehret v. Uber Technologies, Inc., 3:14-cv-113-EMC (N.D. Cal.)

Class counsel in certified class action against Uber for consumer fraud based on misrepresentations regarding gratuity charge. The firm obtained a settlement that provided a full refund to class members of the amount of the gratuity charge that Plaintiff claimed was unlawfully retained by Uber.

Jacobson v. Bd. of Ed. of City of Chicago, 94 L 5360 (Circuit Court of Cook County, Illinois)

The firm was retained by other attorneys to take over prosecution of class action brought on behalf of former Chicago public school principals who were unlawfully terminated as a result of a public act that was later

found to be unconstitutional. Due to the firm's efforts, the suit settled for \$2 Million, an amount sufficient to compensate almost all class members the full amount of their lost wages.

In re Chicago Sun-Times Circulation Litigation, 04 CH 9757 (Circuit Court of Cook County, Illinois)

The firm was appointed to the executive committee in a class action on behalf of defrauded purchasers of advertising space in the Chicago Sun Times, which resulted in a settlement of \$15 Million in cash and other benefits to the class.

Muniz v. Rexnord Corp., 04-cv-2405 (N.D. Ill.)

The firm was appointed co-lead counsel and obtained a \$15 Million settlement in a class action against multiple defendants alleging that they had caused toxins to contaminate the groundwater in an area covering approximately 1,000 homes.

Barnes v. Air Line Pilots Ass'n Int'l, 13-cv-6243 (N.D. Ill.)

The firm was appointed lead counsel in certified class action brought on behalf of United management pilots against their union challenging an improper methodology of distributing a lump sum payment of \$400 Million from United Airlines that was supposed to provide the pilots with retroactive pay. The firm obtained a settlement that compensated each class member with a significant portion of their lost pay.

Illinois ex rel. Zolna-Pitts v. ATI Holdings, LLC, 12 CH 27483 (Circuit Court of Cook County, Illinois)

The firm successfully prosecuted a whistleblower suit on behalf of former employee for alleged widespread insurance fraud in connection with the defendants' alleged practice of overbilling for physical therapy services.

PrimeCo Personal Comm., L.P., v. Ill. Commerce Comm'n, 98 CH 5500 (Circuit Court of Cook County, Illinois)

One of several firms working together on a class action challenging the constitutionality of a state statute enabling municipalities to enact ordinances imposing a fee or tax on wireless telephone users. After the Illinois Supreme Court affirmed the trial court's declaration that the fee was unconstitutional, our firm was instrumental in obtaining a partial settlement valued at approximately \$30 Million. After that, we successfully obtained not only class certification with respect to the plaintiffs, but also obtained certification of a defendant class, and then settled the remaining claims against the defendant class for approximately \$18 Million, for a total settlement of approximately \$48 Million.

DEFENSE AND GOVERNMENT INVESTIGATIONS

Contingent Commissions and Bid-Rigging Investigation of Insurance Industry

The firm was retained by the Illinois Department of Financial and Professional Regulation as a special examiner to assist in its investigation of contingent commissions and related practices, such as steering and bid-rigging, in the insurance industry, including Aon Corporation and Arthur J. Gallagher & Co. In addition to its factual investigation, the firm assisted in coordinating efforts with the Illinois Department of Financial and Professional Regulation and Attorney Generals. Approximately \$250 Million was obtained in settlements as a result of this coordinated effort.

Cheek v. United States, 498 U.S. 192 (1991)

The firm successfully argued the landmark case regarding the interpretation of willfulness under the criminal provisions of the Internal Revenue Code.

Castagnola v. Hewlett-Packard Company, 11-cv-5772, 2012 WL 2159385 (N.D. Cal. 2012)

The firm successfully defended a nationwide class action alleging deceptive advertising in connection with the online marketing of defendant's membership programs and obtained a dismissal of the case in its entirety and with prejudice.

Additional Government Investigations

The firm successfully represented companies and individuals being investigated by Attorney Generals, the Federal Trade Commission, and other government agencies throughout the United States, including in Illinois, California, New York, Florida, Texas, Arkansas, Missouri, Iowa, and Wisconsin.

NOTABLE PUBLIC INTEREST CASES

Konder v. Illinois High Sch. Ass'n, 1:24-cv-259 (N.D. Ill.)

The firm represented a hearing impaired student who was denied eligibility to compete on his high school wrestling team by the Illinois High School Association ("IHSA") because he transferred schools to accommodate his hearing disability. The firm obtained an injunction reinstating the student's eligibility for the remainder of the season where he took 3rd place in the State individual tournament and 2nd place in the team state tournament. The student went on to wrestle in college. The lawsuit was covered by several news outlets, including CBS Chicago, Fox Chicago, and WGN.

Lyon v. Illinois High Sch. Ass'n, 13-cv-00173, 2013 WL 140926 (N.D. Ill. 2013) dissolved, 2013 WL 309205 (N.D. Ill. 2013)

The firm obtained a temporary injunction against the Illinois High School Association ("IHSA") on behalf of a high school athlete enjoining the IHSA from prohibiting him from participating in his high school's wrestling program as a fifth-year senior. While the injunction was later dissolved, the student was allowed to wrestle the remainder of the regular season of his senior year. The lawsuit was profiled in the *Chicago Sun-Times* and on the front page of the *Chicago Daily Law Bulletin*.

Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Engineers, 191 F.3d 845 (7th Cir. 1999), rev'd, 531 U.S. 159 (2001)

In litigation and administrative proceedings, the firm stopped the construction of a huge landfill on a parcel of land in Cook and Kane counties. The litigation was pursued in Illinois Circuit, Appellate, and Supreme Courts, as well as the Federal District Court, the Seventh Circuit Court of Appeals, and the U.S. Supreme Court. The firm obtained an injunction and a subsequent order from the Seventh Circuit Court of Appeals banning the construction of the landfill. Although the U.S. Supreme Court later reversed, the firm assisted in negotiating a sale of the property to a government entity. The landfill was never built, and the land became a protected wetland preserve.

OTHER NOTABLE RESULTS

Siegler v. Illinois Superconductor Corp., 96 CH 5824 (Circuit Court of Cook County, Illinois)

The firm represented a client for breach of an oral contract for the purchase of securities. The firm obtained a unique, unprecedented decision from the Circuit Court of Cook County confirming that under the Uniform Commercial Code oral contracts for the purchase and sale of securities are enforceable. The firm tried the case and obtained a \$6.5 million judgment.

International Profit Associates, Inc. v. Paisola, 461 F. Supp. 2d 672 (N.D. Ill. 2006)

The firm obtained an injunction shutting down a website that was posting negative and defamatory information about one its clients and obtained a first-of-its-kind decision on internet law which continues to be cited around the Country.

Ex. 2

Summary of Attorney Time (Feb. 27, 2025)**Myron M. Cherry Associates, LLC*****Aguilar Auto Repair, Inc., et al. v. Wells Fargo Bank, N.A., et al.***, Case No. 3:23-cv-06265-LJC

Task	Hours
Pre-suit research and investigation	75.40
Drafting Complaint and Amended Complaint	61.90
Briefing Motion to Dismiss	25.20
Legal research, research memos, and investigation	150.00
Conferences / case strategy	48.50
General motion practice, including administrative motions, discovery disputes, case management statements, and other procedural motions	41.50
Drafting and/or responding to discovery, document review, and other discovery matters	72.00
Travel time to and attending Court hearings	21.50
Work on mediation statements / preparation for and attending settlement conferences and mediation	184.30
Drafting / edits to Settlement Agreement	32.00
Work on preliminary approval motion and proposed order / drafting and edits to class notices	103.30
Work on final approval motion and proposed order / work on petition for fees, costs, and incentive awards	52.50
Settlement administration	28.70
Data review and analysis	30.70
Other (including communicating with Plaintiffs and opposing counsel, communicating and coordination with local counsel, and other matters)	51.50
Total:	979.00

Ex. 3

2/27/2025
10:23 AM

Myron M. Cherry & Associates LLC
Pre-bill Worksheet (1)

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Selection Criteria

Clie.Selection	Include: Wholesale Payment (Phone Case)
Slip.Transaction Date	2/21/2022 - 2/28/2025
TIME.Selection	Include: Disbursements

2/27/2025
10:23 AMMyron M. Cherry & Associates LLC
Pre-bill Worksheet (1)

Page 2

Nickname Wholesale Payment (Phone Case) | 00330
 Full Name Hon. Lisa J. Cisneros
 Address U.S.D.C. - Northern District of California
 450 Golden Gate Avenue, 15th Floor
 San Francisco, CA 94102

Phone 1 Phone 2
 Phone 3 Phone 4

In Ref To Expenses/Disbursements Incurred in Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al., Case 3:23-cv-06265-AMO:

Total of billable time slips \$0.00

Date ID	TIMEKEEPER Expense	Price Markup %	Quantity	Amount	Total
11/10/2023 131989	Disbursements \$Process Server Process Service - Job #695606 on 11.1.23 - pd on 11/10/23 to Veritext - Inv# 6965417 chk#13925	131.25	1.000	131.25	Billable
11/10/2023 131990	Disbursements \$Process Server Process Service - Job #6295560 on 11.1.23 - pd on 11/10/23 to Veritext - - Inv# 6965420 chk#13925	131.25	1.000	131.25	Billable
11/10/2023 131991	Disbursements \$Process Server Process Service - Job #6295533 on 11.1.23 - pd on 11/10/23 to Veritext - - Inv# 6965763 chk#13925	131.25	1.000	131.25	Billable
11/10/2023 131992	Disbursements \$Process Server Process Service - Job #695623 on 11.1.23 - pd on 11/10/23 to Veritext - Inv# 6960443 chk#13925	125.00	1.000	125.00	Billable
1/1/2024 132755	Disbursements \$Westlaw West Law Monthly Information charges paid by EFT - January 2024	169.08	1.000	169.08	Billable
2/1/2024 132760	Disbursements \$Westlaw West Law Monthly Information charges paid by EFT - February 2024	215.70	1.000	215.70	Billable
2/2/2024 132215	Disbursements \$Filing Fees Reimbursement to Ben Swetland (re: Credit Card Payment to California Northern District Court - Pro Hac Vice admission of Benjamin Swetland, 12/8/2023)	328.00	1.000	328.00	Billable
3/6/2024 132337	Disbursements \$Call Recording Conference calling - GAN Conferencing - paid by CC on 3/6/24	8.54	1.000	8.54	Billable
3/21/2024 132380	Disbursements \$Outoftown Trip Reimburse J. Zolna, Chicago/San Francisco/Chicago (re: Case Management Conference 3/21/2024), Airfare, Hotel and Local Transportation.	2948.00	1.000	2,948.00	Billable

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10:23 AMMyron M. Cherry & Associates LLC
Pre-bill Worksheet (1)

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Wholesale Payment (Phone Case):Hon. Lisa J. Cisneros (continued)

Date ID	TIMEKEEPER Expense	Price Markup %	Quantity	Amount	Total
5/1/2024 132771	Disbursements \$Westlaw West Law Monthly Information charges paid by EFT - May 2024	1141.73	1.000	1,141.73	Billable
5/31/2024 132623	Disbursements \$Postage Postage Charges - May 2024	34.76	1.000	34.76	Billable
6/1/2024 132775	Disbursements \$Westlaw West Law Monthly Information charges paid by EFT - June 2024	186.21	1.000	186.21	Billable
6/30/2024 132626	Disbursements \$Copies/Inhouse Xerox Charges - June 2024	0.25	117.000	29.25	Billable
7/1/2024 132779	Disbursements \$Westlaw West Law Monthly Information charges paid by EFT - July 2024	1047.65	1.000	1,047.65	Billable
7/18/2024 132703	Disbursements \$Food\Beverage Dinner Meeting (re: mediation strategy).	74.00	1.000	74.00	Billable
8/1/2024 133048	Disbursements \$Westlaw Monthly information charges - August 2024 - Paid to Thomson Reuters West Publishing - by auto EFT	946.80	1.000	946.80	Billable
8/23/2024 132743	Disbursements \$Outoftown Trip M.M. Cherry - Chicago/San Francisco/Chicago, 8/14-16, 2024 (re: Settlement Mediation with Mag. Judge Ryu).	5035.02	1.000	5,035.02	Billable
8/23/2024 132744	Disbursements \$Outoftown Trip J. Zolna - Chicago/San Francisco/Chicago, 8/14-16, 2024 (re: Settlement Mediation with Mag. Judge Ryu).	3433.86	1.000	3,433.86	Billable
8/23/2024 132745	Disbursements \$Outoftown Trip Plaintiff, Francisco Aguilar, Long Beach CA/Oakland Int'l CA/Los Angeles CA, 8/14-15, 2024 (re: Settlement Mediation with Mag. Judge Ryu).	686.66	1.000	686.66	Billable
8/23/2024 132746	Disbursements \$Outoftown Trip Plaintiff, Wyatt Miller, Monterey CA/San Francisco/Monterey CA, 8/14-15, 2024 (re: Settlement Mediation with Mag. Judge Ryu).	978.60	1.000	978.60	Billable

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Pre-bill Worksheet (1)

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Wholesale Payment (Phone Case):Hon. Lisa J. Cisneros (continued)

Date ID	TIMEKEEPER Expense	Price Markup %	Quantity	Amount	Total
8/23/2024 132747	Disbursements \$Outoftown Trip B. Swetland - Chicago/San Francisco/Chicago, 8/14-16, 2024 (re: Settlement Mediation with Mag. Judge Ryu).	3421.66	1.000	3,421.66	Billable
8/23/2024 132946	Disbursements \$Outoftown Trip Payment to Plaintiff, Francisco Aguilar (re: Additional Travel and Hotel Expenses incurred during Mediation meeting in Oakland, CA 8/14-15/2024)	399.28	1.000	399.28	Billable
8/31/2024 132940	Disbursements \$Postage Postage - August 2024	3.43	1.000	3.43	Billable
8/31/2024 132942	Disbursements \$Copies/Inhouse Xerox Charges - August 2024	29.25	1.000	29.25	Billable
8/31/2024 132943	Disbursements \$Copies/Inhouse Xerox Charges - August 2024	37.75	1.000	37.75	Billable
9/1/2024 133052	Disbursements \$Westlaw Monthly information charges - September 2024 - Paid to Thomson Reuters West Publishing - by auto EFT	1709.56	1.000	1,709.56	Billable
9/30/2024 132941	Disbursements \$Postage Postage - September 2024	0.69	1.000	0.69	Billable
10/1/2024 133057	Disbursements \$Westlaw Monthly information charges - October 2024 - Paid to Thomson Reuters West Publishing - by auto EFT	233.09	1.000	233.09	Billable
11/1/2024 133111	Disbursements \$Westlaw Monthly information Fee - Nov 2024 - Paid by monthly EFT to Thomson Reuters West Publishing	3.97	1.000	3.97	Billable
11/5/2024 133036	Disbursements \$Copies/Inhouse Xerox Charges - October 2024	35.25	1.000	35.25	Billable
12/1/2024 133263	Disbursements \$Westlaw Monthly information charges paid to Thomson Reuters West Publishing by EFT December 2024	191.99	1.000	191.99	Billable

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10:23 AM

Myron M. Cherry & Associates LLC
Pre-bill Worksheet (1)

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Wholesale Payment (Phone Case):Hon. Lisa J. Cisneros (continued)

Date ID	TIMEKEEPER Expense	Price Markup %	Quantity	Amount	Total
12/20/2024 133135	Disbursements \$Outoftown Trip J. C. Zolna, Chicago/San Francisco/Chicago Airfare and local transportation (re: Preliminary Approval Hearing 12/19/2024)	2128.41	1.000	2,128.41	Billable
1/1/2025 133267	Disbursements \$Westlaw Monthly information charges paid to Thomson Reuters West Publishing by EFT January 2025	110.77	1.000	110.77	Billable
1/31/2025 133287	Disbursements \$Copies/Inhouse Xerox Charges - January 2025	0.25	64.000	16.00	Billable
2/14/2025 133292	Disbursements \$Outoftown Trip J. Zolna - Chicago/San Francisco/Chicago, 5/19 - 5/20/2025, (re: Final Approval Hearing).	3011.36	1.000	3,011.36	Billable
2/14/2025 133293	Disbursements \$Outoftown Trip B. Swetland - Chicago/San Francisco/Chicago, 5/19 - 5/20/2025, (re: Final Approval Hearing).	3553.87	1.000	3,553.87	Billable
2/21/2025 133310	Disbursements \$Outoftown Trip Wyatt Miller - Further reimbursement of travel/accommodation expenses incurred during 8/14-15/2024 trip to San Francisco (re: settlement mediation). MMCA Check #14121	96.21	1.000	96.21	Billable
TOTAL	Billable Costs				<u>\$32,765.15</u>
				Amount	Total
	Total of Fees (Time Charges)				\$0.00
	Total of Costs (Expense Charges)				\$32,765.15
	Total new charges				<u>\$32,765.15</u>
	Total New Balance				<u>\$32,765.15</u>

Ex. B

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into between Aguilar Auto Repair, LLC and Central Coast Tobacco Company, LLC (collectively, “Plaintiffs”), individually and in their representative capacity on behalf of the Settlement Class Members defined below, on the one hand, and Wells Fargo Bank, N.A. (“Wells Fargo”), Priority Technology Holdings, Inc. and Priority Payment Systems, LLC (together, “Priority”), and The Credit Wholesale Company, Inc. (“Wholesale”) (collectively, “Defendants”), on the other hand, subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and the Defendants are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

I. RECITALS

WHEREAS, on October 10, 2023, Plaintiffs filed a class action lawsuit against Defendants in the Superior Court of the State of California for the County of San Francisco;

WHEREAS, on December 4, 2023, Wells Fargo removed the suit to the United States District Court for the Northern District of California (the “Court”), which is now entitled *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 (the “Lawsuit”). The Lawsuit alleges, among other things, that Wells Fargo and Priority were in a principal-agent relationship with Wholesale and that, in the scope of that relationship, Wholesale violated Sections 632 and 632.7 of the California Invasion of Privacy Act (“CIPA”) by recording certain telephone calls to California businesses;

WHEREAS, Plaintiffs filed an amended complaint (the “Amended Complaint”) in the Lawsuit on February 16, 2024;

WHEREAS, the Parties agreed to participate in an Early Settlement Conference and, as part of that process, exchanged information, including, but not limited to, the contracts amongst Defendants and data on call volume obtained from third parties via subpoena;

WHEREAS, on August 15, 2024, the Parties participated in an Early Settlement Conference before the Magistrate Judge Donna M. Ryu during which the Parties were unable to reach a settlement;

WHEREAS, the Parties thereafter continued to engage in settlement discussions with the assistance of Magistrate Judge Donna M. Ryu, which resulted in the Parties reaching the settlement set forth herein;

WHEREAS, the terms and conditions of the settlement set forth herein were reached after extensive, *bona fide*, arm’s-length negotiations among the Parties by their respective attorneys and other representatives;

WHEREAS, the Parties have investigated the facts and have analyzed the relevant legal issues with regard to the claims and defenses asserted in the Lawsuit. Based on this investigation,

Plaintiffs believe the Lawsuit has merit while Defendants believe the Lawsuit has no merit, deny all liability, and deny that any class should be certified in the Lawsuit. The Parties also have each considered the uncertainties of trial and the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and delays associated with the continued prosecution of this complex litigation, and the likely appeals of any rulings in favor of either Plaintiffs or Defendants. After undertaking this investigation and analysis, counsel for Plaintiffs (“Class Counsel,” as identified in Paragraph 49 below) believe that it is in the best interest of Settlement Class Members (as defined in Paragraph 23 below) to enter into this Agreement;

NOW, THEREFORE, in consideration of the representations, covenants, and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged as evidenced by the execution of this Agreement, the Parties agree, subject to Court approval, as follows:

II. SETTLEMENT CLASS RELIEF

1. Settlement Fund: In exchange for the mutual promises and covenants in this Agreement, including without limitation, the release and dismissal of the Lawsuit as set forth in Paragraphs 21 and 22 below, Defendants shall pay an amount of Nineteen Million Five Hundred Thousand Dollars (\$19,500,000) (the “Settlement Payment”) to create a fund on behalf of Settlement Class Members (the “Settlement Fund”). The Settlement Payment, along with \$200,000 in Settlement Administration Costs as set forth in Paragraph 10 below, represents the total extent of Defendants’ monetary obligations under this Agreement. In no event shall Defendants’ total monetary obligation with respect to this Agreement exceed the Settlement Payment and \$200,000 in Settlement Administration Costs.

2. Settlement Class Member Payments: Each Settlement Class Member who does not elect to opt-out as set forth below in Paragraph 19 shall be eligible under this Agreement for a cash payment (the “Settlement Class Member Payment”) for each call that was received from Wholesale between October 22, 2014 through November 17, 2023 as described in the Settlement Class definition set forth below in Paragraph 23 (an “Eligible Call”). Each Settlement Class Member Payment will be in an amount equal to the “Net Settlement Fund” divided by all Eligible Calls that were made to Settlement Class Members who timely and validly submit a claim as described below, up to a maximum of Five Thousand Dollars (\$5,000) for each Eligible Call. “Net Settlement Fund” means the Settlement Fund less the amount of attorneys’ fees and costs awarded to Class Counsel, incentive awards awarded to Plaintiffs, and any Settlement Administration Costs in excess of \$200,000 as provided in Paragraph 10 below. Settlement Class Members who received multiple Eligible Calls are entitled to a Settlement Class Member Payment for each Eligible Call and the Settlement Administrator may include all Settlement Class Member Payments for any such Settlement Class Member in a single settlement check.

3. Prospective Relief: Wholesale agrees going forward that it will not record appointment-setting calls to phone numbers with California area codes unless it is disclosed at the outset of the call that the call is being recorded.

4. Claims Process: In order to receive a Settlement Class Member Payment, a Settlement Class Member must complete the Claim Form sent with the Notice as described below in Paragraph 7(a). or submit a claim online at the Settlement Website described below in Paragraph 8. Only one Claim Form is required for each Settlement Class Member even if the Settlement Class Member received and is eligible for payment for several Eligible Calls. The “Claims Deadline” for Settlement Class Members to submit a claim for a Settlement Class Member Payment shall be fifty-six (56) days after the Notice Date as set forth below in Paragraph 7(a). A claim shall be timely if postmarked or submitted online on or before the Claims Deadline. Claims postmarked or submitted online within seven (7) days after the Claims Deadline shall also be deemed timely and shall be eligible for a Settlement Class Member Payment.

III. SETTLEMENT CLASS NOTICE AND SETTLEMENT ADMINISTRATION

5. Retention of Settlement Administrator: Verita Global (the “Settlement Administrator”) will be retained as the settlement administrator. If Verita Global, LLC is unable or unwilling to be the settlement administrator then the Parties will jointly select a reputable settlement administrator to administer the notice and settlement or, absent an agreement by the Parties, one will be appointed by the Court. The costs and expenses of claims administration shall be overseen by Class Counsel. Defendants’ counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of settlement administration. The Settlement Administrator will file a declaration with the Court, as part of the final approval papers, stating that the notice procedures set forth in this Section III of the Agreement and the Preliminary Approval Order (defined below in Paragraph 6) were followed.

6. Settlement Class Member Data: No later than seven (7) days after entry of an order granting preliminary approval of this settlement that is without material change to this Agreement or the Proposed Preliminary Approval Order (defined below in Paragraph 24) (the “Preliminary Approval Order”), Defendants and Class Counsel shall provide all information reasonably requested by the Settlement Administrator in order for it to identify Settlement Class Members’ names, addresses, and other available contact information, as well as information that will assist in identifying Eligible Calls and the total number of Eligible Calls each Settlement Class Member received. As a condition to receiving information concerning the Settlement Class Members, the Settlement Administrator must execute an Agreed Confidentiality Order entered by the Court agreeing to treat the information regarding the Settlement Class Members in a confidential manner. The Settlement Administrator shall use commercially reasonable efforts to ensure the accuracy of Settlement Class Member addresses to use for purposes of sending notice as set forth below.

7. Settlement Class Notice:

a. Mailing of Settlement Class Notice: Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator shall mail postcard notice of this settlement to the Settlement Class Members via First Class Mail in the form attached hereto as **Ex. 1** (the “Notice”). The Notice shall also include a claim

form (the “Claim Form”), also in the form attached as Ex. 1, which Class Members can detach, sign, and mail to the Settlement Administrator, postage pre-paid. As used in this Settlement Agreement, the “Notice Date” refers to the date on which the Settlement Administrator mails the Notice. A long form notice (the “Long Form Notice”) in the form attached hereto as **Ex. 2** will also be posted on the Settlement Website.

b. Follow-Up Mailings: For any Notice that is returned with a forwarding address, the Settlement Administrator shall update that Settlement Class Member’s address for purposes of administering this settlement and re-mail the Notice and Claim Form to the updated address. For any Notice that is returned without forwarding address information, the Settlement Administrator shall use commercially reasonable efforts to locate a new address for the Settlement Class Member. If such a search produces an updated address, the Settlement Administrator shall update that Settlement Class Member’s address for purposes of administering this settlement and re-mail the Notice and Claim Form to the updated address.

c. Publication Notice: Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator shall publish on the internet the publication notice (“Publication Notice”). The impressions of the Publication Notice will be distributed on desktop and mobile devices via various websites in the manner recommended by the Settlement Administrator. The form and content of the Publication Notice shall be substantially as follows:

If you received a call from The Credit Wholesale Company, Inc. between October 22, 2014 through November 17, 2023 you may be eligible for a cash payment from a class action settlement.

<p>CLICK HERE FOR MORE INFORMATION OR TO SUBMIT A CLAIM [link to Settlement Website]</p>

8. Settlement Administration Website: Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator shall develop and activate a settlement administration website (the “Settlement Website”). The Settlement Website shall post a copy of the Amended Complaint, the Long Form Notice, this Agreement, and any other materials the Parties agree to include, and shall be designed and constructed to electronically accept Claim Forms from Settlement Class Members for a Settlement Class Member Payment. The Settlement Administrator shall secure a URL for the Settlement Website approved by the Parties. The content and format of the website will be agreed upon by the Parties.

9. Settlement Call Center: The Settlement Administrator shall designate a toll-free number for receiving calls related to the settlement (the “Settlement Call Center”). Anyone may call the Settlement Call Center from anywhere in the United States to ask questions of the Settlement Administrator about the settlement. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Settlement Call Center shall be maintained from the date that is twenty-one (21) days after entry of the Preliminary Approval

Order until thirty-five (35) days after the Final Settlement Date as defined below in Paragraph 15.

10. Cost of Settlement Administration: Costs and expenses of settlement administration shall be paid by Defendants up to Two Hundred Thousand Dollars (\$200,000). Any Settlement Administration Costs in excess of \$200,000 shall be paid from the Settlement Fund. Such costs shall include, but not be limited to: (i) preparing, mailing, and monitoring all necessary notices and related documents; (ii) developing, maintaining, and operating the Settlement Website; (iii) communicating with and responding to Settlement Class Members; (iv) processing claims submitted by Settlement Class Members and computing settlement payments for Settlement Class Members; (v) distributing payments to Settlement Class Members; (vi) the cost of mailing, obtaining, and administering Form W9's, (vii) postage costs; (viii) costs associated in locating Settlement Class Members and reissuing checks; (ix) fees and costs incurred for any vendors or other third parties in the administration of the settlement; (x) tax obligations in connection with interest earned on the Settlement Fund; (xi) the costs of the CAFA Notice (as defined below in Paragraph 11); (xii) costs of establishing and maintaining an escrow account for the Settlement Payment; and (xiii) other fees and costs reasonably incurred in administering the settlement contemplated herein (collectively, the "Settlement Administration Costs").

11. CAFA Notice: Defendants shall comply with and timely send all notices required under 28 U.S.C. § 1715 (the "CAFA Notice"), but may delegate that responsibility to the Settlement Administrator.

12. Processing Submitted Claims and the Settlement Class Member Report: The Settlement Administrator shall employ reasonable procedures to process each claim submitted by a Settlement Class Member and to determine whether it is a valid claim that was submitted in accordance with the directions on the Claim Form or Settlement Website and satisfies the conditions of eligibility for a Settlement Class Member Payment as set forth in this Agreement. Within twenty-one (21) days after the Claims Deadline, the Settlement Administrator shall provide Class Counsel and counsel for Defendants with a report setting forth the identity of all Settlement Class Members who validly and timely submitted a claim for a Settlement Class Member Payment and for each such Settlement Class Member: (i) the total number of Eligible Calls for which the Settlement Class Member submitted a claim to receive a Settlement Class Member Payment, and (ii) the total amount of the Settlement Class Member Payment for that Settlement Class Member (the "Settlement Class Member Report"). The Settlement Class Member Report shall also state the total amount of all Settlement Class Member Payments.

IV. FUNDING AND TIMING OF SETTLEMENT

13. Funding of Settlement: Within fourteen (14) days after the entry of the Preliminary Approval Order, Defendants shall remit to the Settlement Administrator the entire amount of the Settlement Payment (\$19,500,000) and Defendants' portion of Settlement Administration Costs (\$200,000). The Settlement Administrator shall hold these funds in escrow and shall disburse them in accordance with the terms of this Agreement. If this Settlement is deemed or declared invalid or void *ab initio* for any reason, including the reasons set forth in

Paragraphs 26 and 27 below, the Settlement Administrator shall immediately refund the Settlement Payment and Defendants' portion of Settlement Administration Costs to Defendants less any amounts already expended by the Settlement Administrator on Settlement Administration Costs.

14. Timing of Settlement Class Member Payments: The Settlement Administrator shall mail the Settlement Class Member Payments to Settlement Class Members within twenty-one (21) days after the Final Settlement Date (as defined below in Paragraph 15).

15. Final Settlement Date: The "Final Settlement Date" shall be the thirty-first (31st) day after the Court enters a final and appealable order and/or judgment approving this Agreement that is without material change to this Agreement or the Proposed Final Approval Order (defined below in Paragraph 21) (the "Final Approval Order"), but only if there is no appeal taken from the Final Approval Order. If an appeal is taken from the Final Approval Order, the Final Settlement Date shall be the date on which a reviewing court affirms the Final Approval Order, dismisses the appeal, or denies review and (i) all avenues of appeal and/or rehearing have been exhausted, or (ii) the time for seeking further appeals and/or a petition for rehearing has expired. If an appeal is taken from the Final Approval Order, then within fourteen (14) days of the filing of any such appeal, the Settlement Administrator shall deposit the Net Settlement Fund into a separate, interest-bearing account, which account must be reasonably acceptable to Class Counsel. If the Final Settlement Date occurs, the interest earned on this account shall serve to increase the Net Settlement Fund and, thus, individual Settlement Class Member Payments. If the Settlement is deemed or declared invalid or void *ab initio* for any reason, then the interest earned on this account shall be included in the refund to Defendants in accordance with Paragraph 13.

16. Reissuance of Checks for Settlement Class Member Payments: Settlement Class Members shall have ninety (90) days from the date a Settlement Class Member Payment check is issued in which to cash or deposit the check. Upon expiration of the ninety (90) day period set forth in the first sentence of this Paragraph, the Settlement Administrator shall re-issue checks to all Settlement Class Members who failed to cash or deposit their initial Settlement Class Member Payment check. These checks shall also have a ninety (90) day expiration period. The funds for Settlement Class Member Payment checks that remain uncashed or undeposited after this expiration date shall be maintained by the Settlement Administrator for a period of at least eighteen (18) months from the Final Settlement Date during which period of time Settlement Class Members who did not timely cash or deposit their Settlement Class Member Payment check shall be allowed to request the Settlement Administrator to re-issue the check upon reasonable verification that it is the actual Settlement Class Member or heir, successor, or executor to the Settlement Class Member. The Settlement Administrator shall use all reasonable efforts to ensure Settlement Class Member Payments are received and cashed by Settlement Class Members. If, at the expiration of the eighteen (18) month period after the Final Settlement Date, Settlement Class Member Payment checks still remain uncashed or undeposited, then any such remaining funds shall be considered "Residual Funds" and distributed in accordance with Paragraph 30 below.

V. INCENTIVE AWARDS AND CLASS COUNSEL'S FEES AND COSTS

17. Named Plaintiffs' Incentive Award: Class Counsel may petition the Court for incentive awards in the amount of Seven Thousand Five Hundred dollars (\$7,500) each to Plaintiffs Central Coast Tobacco Company, LLC and Aguilar Auto Repair, LLC. The incentive awards awarded by the Court shall be paid from the Settlement Fund. Within three (3) business days after the Final Settlement Date, the Settlement Administrator shall deliver to Class Counsel separate checks in the name of Central Coast Tobacco Company, LLC and Aguilar Auto Repair, LLC in the amount of their respective incentive awards awarded by the Court.

18. Class Counsel's Attorneys' Fees and Costs: Class Counsel will petition the Court for an award of attorneys' fees from the Settlement Fund not to exceed one-third (33.33%) of the Settlement Fund, as well as an additional amount to be paid from the Settlement Fund for actual costs. Class Counsel shall file such motion or petition supporting their request for attorneys' fees and costs with the Court no later than thirty-five (35) days prior to the deadline for Settlement Class Members to object to the settlement as set forth below in Paragraph 20. Defendants will not oppose this petition. Within three (3) business days after the Final Settlement Date, the Settlement Administrator shall remit to Class Counsel the entire amount of the attorneys' fees and costs awarded by the Court. If an appeal is taken from the Final Approval Order, however, then (i) within fourteen (14) days of the filing of any such appeal, the Settlement Administrator shall deposit the amount of attorneys' fees and costs awarded by the Court from the Settlement Fund into a separate, interest-bearing account, which account must be reasonably acceptable to Class Counsel; and (ii) the attorneys' fees and costs awarded to Class Counsel shall be disbursed from this interest-bearing account, including all interest, to Class Counsel within three (3) days after the Final Settlement Date. If the Settlement is deemed or declared invalid or void *ab initio* for any reason, then the interest earned on this account shall be included in the refund to Defendants in accordance with Paragraph 13.

VI. RIGHT TO OPT-OUT OR OBJECT

19. Exclusion/Opt-Out Elections: Settlement Class Members may elect not to be part of the Lawsuit and not to be bound by this Agreement (*i.e.*, "opt-out"). To make this election, Settlement Class Members must mail a written letter (the "Opt-Out Election") to the Settlement Administrator at an address specified in the Notice stating: (i) the name and case number of the Lawsuit: *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265; (ii) the name, address, and telephone number of the Settlement Class Member electing exclusion; (iii) if the Settlement Class Member is a business, the name and title of the person submitting the opt-out election for the Settlement Class Member and a representation that he or she has authority to do so on behalf of the Settlement Class Member; and (iv) a statement to the effect that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement. Opt-Out Elections must be postmarked no later than forty-nine (49) days after the Notice Date (the "Opt-Out Deadline"). Except for those Settlement Class Members who have properly and timely mailed an Opt-Out Election, all Settlement Class Members will be bound by this Agreement and the Final Approval Order. Within three (3) business days of receiving an Opt-Out Election, the Settlement Administrator shall provide counsel for Defendants and Class Counsel with a copy of the election and a report

indicating the number of Eligible Calls associated with the Settlement Class Member who made the election.

20. Objections: Any Settlement Class Member who has not submitted a timely Opt-Out Election and who wishes to object to the fairness, reasonableness, or adequacy of the proposed settlement, to the attorneys' fees and costs requested by Class Counsel, or the requested incentive awards, must do so by filing a written objection with the Court no later than forty-nine (49) days after the Notice Date (the "Objection Deadline"). It shall be the objector's responsibility to ensure timely receipt of any objection by the Court. To be considered by the Court, the objection must: must (i) clearly identify the case name and number (*Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265), (ii) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, and (iii) be filed or postmarked on or before the Objection Deadline. Settlement Class Members may retain counsel at their own expense to object to the settlement and/or appear at the final approval hearing. If a Settlement Class Member is not a sole proprietorship or is otherwise a separate business entity, it may be required to make its objection or appear at the final approval hearing through an attorney. If a Settlement Class Member makes an objection or appears at the final approval hearing through an attorney, the Settlement Class Member will be responsible for his or her personal attorney's fees and costs. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to this Agreement and shall not be permitted to object at the final approval hearing and shall be foreclosed from seeking any review of this settlement by appeal or other means.

VII. DISMISSAL AND RELEASE

21. Dismissal: In connection with the motion for final approval of the settlement, the Parties, through counsel, shall submit to the Court a proposed order granting final approval of the settlement and dismissal of the Lawsuit against Defendants with prejudice (the "Proposed Final Approval Order"). The Parties shall jointly agree on the contents of the Proposed Final Approval Order, which shall, among other things, provide that the Court will retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

22. Plaintiffs and Settlement Class Member Release.

a. Release Upon Final Approval Order: Upon entry of the Final Approval Order, Plaintiffs and each Settlement Class Member who has not timely submitted an Opt-Out Election, on behalf of themselves and each of their respective agents, administrators, employees, representatives, successors, assigns, trustees, joint venturers, partners, legatees, heirs, personal representatives, predecessors, and attorneys (collectively the "Releasing Parties"), hereby jointly and severally release and forever discharge Defendants and First Data Merchants Services, LLC ("First Data") and each of

their respective former, present, and future direct and indirect parents, affiliates, subsidiaries, successors, and predecessors and all of their respective former, present, and future officers, directors, shareholders, indemnitees, employees, agents, representatives, attorneys, accountants, auditors, independent contractors, successors, trusts, trustees, partners, associates, principals, divisions, insurers, reinsurers, members, brokers, consultants, and vendors and all persons acting by, through, under, or in concert with them, or any of them (collectively, the “Released Parties”), from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of, relating to, or in connection with the calls placed by Wholesale between October 22, 2014 through November 17, 2023 as described in the class definition set forth in Paragraph 23 below (“Eligible Calls”), including but not limited to claims for violation of CIPA, including but not limited to Section 632 and Section 632.7, or any other federal, state, or local statute, regulation, or common law relating to the Eligible Calls (the “Released Claims”).

b. Unknown Claims: Each Releasing Party acknowledges that it may hereafter discover facts different from, or in addition to, those which it now claims or believes to be true with respect to the Released Claims, and agrees that this Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional, or unknown facts. With respect to any and all Released Claims, each Releasing Party hereby expressly waives, and shall be deemed to have waived, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by California Civil Code Section 1542, which section reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Releasing Party further shall be deemed to have, and shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to California Civil Code Section 1542. This release applies to any claim any Releasing Party may have arising out of, relating to, or in connection with the Eligible Calls, whether that claim arises under CIPA or any other legal theory or cause of action relating to the calls. For example, if a Settlement Class Member believes that an Eligible Call violated some law other than CIPA or breached a contract, such a claim would be barred by this release. The Parties acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waivers are a material element of the Agreement of which this release is a part.

VIII. MISCELLANEOUS PROVISIONS

23. Settlement Class Definition: For settlement purposes, the Parties have agreed to define the settlement class as follows:

All businesses or individuals who received a telephone call from The Credit Wholesale Company, Inc. on a telephone in California between October 22, 2014 and November 17, 2023.

Excluded from the class are (i) the Judge and Magistrate Judge presiding over this Lawsuit and members of their immediate families, and (ii) Defendants and their employees, contracted sales agents, subsidiaries, parent companies, successors, and predecessors.

Any business or individual meeting the definition of this class shall be referred to herein as a “Settlement Class Member” and, collectively, as the “Settlement Class” or “Settlement Class Members.”

Defendants dispute that the putative class would be manageable or that issues common to the class predominate over individual issues and deny that the class should be certified on the claims asserted in the Lawsuit. However, solely for the purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the certification of the Settlement Class, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3). Preliminary certification of the Settlement Class for settlement purposes shall not be deemed a concession that certification of the putative class or any litigation class is appropriate, nor would Defendants be precluded from opposing class certification in further proceedings in the Lawsuit if this Agreement does not receive final approval. If the Final Settlement Date does not occur for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving Defendants. No agreements made by or entered into by Defendants in connection with this Agreement may be used by Plaintiffs, any Settlement Class Member, or any other persons or entities to establish any of the elements of class certification in any other proceedings against Defendants.

24. Preliminary Approval Motion: Upon full execution of this Agreement, Plaintiff will file a motion for preliminary approval of this class action settlement and to certify a Settlement Class in accordance with the terms of this Agreement. Defendants will not oppose a motion to certify the Settlement Class in accordance with the terms of this Agreement. The motion for preliminary approval shall submit to the Court a proposed order granting preliminary approval of the settlement and certification of the Settlement Class for settlement purposes. The Parties shall jointly agree on the contents of the proposed order (the “Proposed Preliminary Approval Order”).

25. Final Approval Hearing: Contemporaneously with the motion for preliminary approval of the settlement of the Lawsuit, the Parties shall request that the Court schedule a final approval hearing no earlier than thirty-five days (35) days after the Claims Deadline. No later than seven (7) days prior to the final approval hearing, Plaintiffs shall file a motion for final approval of the settlement and entry of the Proposed Final Approval Order. Plaintiffs shall

include with this motion a list of all Settlement Class Members who validly and timely submitted an Opt-Out Election.

26. Status of Lawsuit If Settlement Is Not Approved: This Agreement is being entered into for settlement purposes only. There is no settlement if (i) the Court conditions the preliminary or final approval of this settlement on any substantive modifications of this Agreement (other than modifications to the time periods and dates described herein, additional notice to the class, or other procedural aspects of the Agreement) that are not acceptable to all Parties; (ii) if the Court does not approve this Agreement or enter the Preliminary Approval Order or the Final Approval Order; or (iii) if the Final Settlement Date does not occur for any reason. In such event, then (i) this Agreement is terminated, will be deemed null and void *ab initio*, and no Party shall be bound by any of its terms; (ii) to the extent applicable, any preliminary order approving the settlement or certifying the Settlement Class shall be vacated; (iii) the Parties shall request that the Court, following a further conference with the Parties, establish a schedule for the continuation of the Lawsuit; (iv) there will have been no admission of liability or that a class should be certified and no waiver of any claim or defense of any kind whatsoever; and (v) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in the Lawsuit or in any other action for any purpose whatsoever.

27. Right to Set Aside Settlement: Defendants shall have the right to set aside or rescind this Agreement, in the sole exercise of their discretion, if Settlement Class Members who received more than one thousand (1,000) of the Eligible Calls opt out of the settlement. In order to exercise this right, Defendants must inform Class Counsel of their decision to set aside the settlement in writing within fourteen (14) days after the Opt-Out Deadline. In the event Defendants exercise their discretion to set aside the settlement, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this settlement and this Agreement shall have been made without prejudice to the Parties, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose. All Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the Parties to the Lawsuit shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement.

28. Additional Claims Period: If the number of Eligible Calls for which a claim was submitted pursuant to Paragraph 4 above is insufficient to exhaust the entire Net Settlement Fund at the maximum payment of Five Thousand Dollars (\$5,000) per Eligible Call, then an additional opportunity for Settlement Class Members to submit a claim shall be offered as follows: Within twenty-one (21) days after the Claims Deadline, the Settlement Administrator shall mail an additional communication and Claim Form to all Settlement Class Members who did not submit a claim and afford them an additional twenty-eight (28) days to submit a claim by mail or online. The Parties will jointly agree on the content of the communication. If, upon expiration of this additional claims period, the number of Eligible Calls for which a claim was submitted is insufficient to exhaust the entire Net Settlement Fund at the maximum payment of Five Thousand Dollars (\$5,000) per Eligible Call, then any such remaining funds shall be

considered “Residual Funds” and distributed in accordance with Paragraph 30 below. Under no circumstances will any of these amounts revert to any of the Defendants.

29. Settlement Class Member Payments Requiring Form W9: If the size of Settlement Class Member Payments requires the Settlement Administrator to obtain a Form W9 from Settlement Class Members, the Settlement Administrator shall use all reasonable efforts to obtain those forms from Settlement Class Members, including the mailing of additional communications to Settlement Class Members. If, at the expiration of the eighteen (18) month period after the Final Settlement Date, funds remain for Settlement Class Member Payments due to the Settlement Class Members’ failure to provide the Settlement Administrator with a Form W9, then any such funds shall be considered “Residual Funds” and distributed in accordance with Paragraph 30.

30. Distribution of Residual Funds and *Cy Pres*: No later than twenty (20) months after the Final Settlement Date, the Settlement Administrator shall distribute the Residual Funds, including those set forth in Paragraphs 16, 28, and 29, on a *pro rata* basis, based on Eligible Calls, to Settlement Class Members who submitted a Form W9; however, in no event will a Settlement Class Member receive payment per Eligible Call in excess of \$5,000. The costs associated with this subsequent distribution may be paid from the Residual Funds. Checks for these subsequent payments shall expire ninety (90) days from issuance. If checks for these payments remain uncashed or undeposited upon expiration date for these checks, or if funds remain after the *pro rata* distribution to Settlement Class Members who submitted a Form W9, then any such remaining funds (less final Settlement Administration Costs) shall be paid to the Electronic Frontier Foundation. Under no circumstances will any of these amounts revert to any of the Defendants.

31. Change of Time Periods: All procedural time periods and dates described in this Agreement are subject to the Court’s approval and subject to modification. These time periods and dates may be changed by the Court or by the Parties’ written agreement with or without notice to the Settlement Class as the Court may direct.

32. Weekend and Holiday Deadlines: If any deadline established by this Agreement falls on a weekend or court holiday, any such deadline shall be deemed to be extended to the next business day.

33. Binding on Successors: Plaintiffs represent and warrant that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release same. This Agreement binds and benefits the Parties’ respective successors, assigns, legatees, heirs, and personal representatives. This agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary to this Agreement.

34. Entire Agreement: This Agreement and the attached exhibits contain the entire agreement and understanding of the Parties with respect to the matters set forth herein, and constitute the complete, final, and exclusive embodiment of their agreement with respect to the

settlement of the Lawsuit. This Agreement and the attached exhibits supersede any and all prior agreements, negotiations, arrangements, or understandings, whether written or oral, express or implied, between them relating to the subject matter hereof. The Parties agree that there are no understandings with respect to the settlement of the Lawsuit, whether written, oral, express, implied, or otherwise, except as set forth in this Agreement and the attached exhibits, and that in entering into this Agreement, no Party has relied, or is entitled to rely, upon any promise, inducement, representation, statement, assurance, or expectation unless it is contained herein in writing.

35. Exhibits: The exhibits to this Agreement are integral parts of the Agreement and are incorporated into this Agreement as though fully set forth herein.

36. Recitals: The Recitals are incorporated by this reference and are part of this Agreement.

37. Modifications and Amendments: No amendment, change, or modification to this Agreement will be valid unless in writing signed by the Parties or their counsel.

38. Construction and Interpretation: Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement. This Agreement has been, and must be construed to have been, drafted by all the Parties to it so that any rule that construes ambiguities against the drafter will have no force or effect.

39. Counterparts: This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or PDF copies of executed copies of this Agreement shall be treated as originals.

40. Waiver: Except as set forth above with respect to the Claims Deadline, the Objection Deadline, the Opt-Out Deadline, and the right to set aside the settlement as set forth in Paragraph 27 above, no delay on the part of any Party in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude the further exercise thereof, or the exercise of any other right, power, or remedy. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

41. Governing Law: This Agreement shall be governed and interpreted in accordance with the laws of the State of California and without regard to conflicts of law principles.

42. Attorneys' Fees and Costs: Other than the payment of Class Counsel's attorneys' fees and costs in accordance with Paragraph 18 above and Settlement Administration Costs in accordance with Paragraph 10 above, each Party shall bear their own attorneys' fees and costs relating in any way to the Lawsuit or this Agreement, or the subject matter of any of them.

This Paragraph shall in no way affect any indemnification obligations or separate agreements among Defendants. It is intended only to clarify the obligations between Plaintiffs and Defendants. To the extent this Paragraph conflicts with any indemnification obligations or separate agreements among Defendants, those agreements shall control.

43. Taxes: Under no circumstances will Defendants have any liability for any taxes or tax expenses under this Agreement. Plaintiffs, Class Counsel, Settlement Class Members, and the recipients of any *cy pres* funds are responsible for any taxes on their respective recoveries or awards. Nothing in this Agreement, or statements made during the negotiation of its terms, shall constitute tax advice by Defendants or Defendants' counsel.

44. No Admission of Liability: This Agreement reflects the Parties' compromise and settlement of disputed claims. Defendants are entering into this Agreement in order to compromise and resolve disputed claims that they believe have no validity so as to avoid further litigation. Defendants, by entering into this Agreement, do not admit liability and, in fact, expressly deny liability. The provisions of this Agreement, and all related drafts, communications and discussions, and any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any Party. To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations, actions or proceedings connected with it, shall be admissible as evidence in this Lawsuit or any other pending or future civil, criminal, or administrative action or proceeding for any purpose whatsoever other than seeking preliminary and final approval of this Agreement or in any proceeding brought to enforce this Agreement.

45. Parties Represented by Counsel: The Parties acknowledge that: (i) Plaintiffs have been represented by independent counsel of their own choosing; (ii) Defendants have been represented by independent counsel of their own choosing; (iii) they have read this Agreement and are fully aware of its contents; and (iv) their respective counsel fully explained to them the Agreement and its legal effect. The Parties executed this Agreement voluntarily and without duress or undue influence, and intend to be legally bound by this Agreement.

46. Authorization: The Parties represent that they each have all necessary power and authority to enter into this Agreement and to carry out such Party's obligations hereunder. Each signatory below represents and warrants that he or she is fully entitled and duly authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing.

47. Other Communications: Neither the Parties nor their counsel will issue press releases or provide any other statements to the press regarding this settlement, unless all Parties, each in their sole discretion, agree to such press releases or statements. Neither the Parties nor their counsel will make a statement of any kind to any third party regarding the settlement prior to applying for preliminary approval, with the exception of communications with the Settlement Administrator or prospective Settlement Administrators. Neither the Parties nor their counsel shall include content concerning this settlement on their website(s), on social media platforms, or in any promotional publications concerning their services that includes the names of any of the Defendants, unless all Parties, each in their sole discretion, agree to such content.

Notwithstanding the foregoing, this provision (i) shall not prohibit Settlement Class Counsel from communicating with any Settlement Class Member regarding the Lawsuit or this settlement; and (ii) shall not apply to statements made by Defendants or their respective affiliates as part of filings with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 and any related disclosures or communications with shareholders or investors.

48. Support and Cooperation to Obtain Court Approval and in Administering the Settlement: The Parties agree, subject to their legal obligations, to support this Agreement and to cooperate to the extent reasonably necessary in producing information, executing any documents, or taking any additional actions which are consistent with and which may be necessary or appropriate to secure the Court's preliminary and final approval of this Agreement, or to effectuate the terms and administration of this Agreement.

49. Notice to Counsel: All notices to Class Counsel provided for herein shall be sent by overnight mail or courier and email to:

Myron M. Cherry
mcherry@cherry-law.com
Jacie C. Zolna
jzolna@cherry-law.com
Benjamin R. Swetland
bswetland@cherry-law.com
Myron M. Cherry & Associates, LLC
30 North LaSalle Street, Suite 2300
Chicago, Illinois 60602

All notices to counsel for Defendants provided for herein shall be sent by overnight mail or courier and email to:

John Peterson
john.peterson@polsinelli.com
Matthew S. Knoop
mknoop@polsinelli.com
Polsinelli PC
501 Commerce St., Ste. 1300
Nashville, Tennessee 37203
Counsel for Wells Fargo Bank, N.A.

Phyllis B. Sumner
psumner@kslaw.com
Billie B. Pritchard
bpritchard@kslaw.com
King & Spalding, LLP
1180 Peachtree Street, NE
Suite 1600

Atlanta, GA 30309

Counsel for Priority Technology Holdings, Inc. and Priority Payment Systems, LLC

Micah Nash

mnash@delawllp.com

William J. Edelman

wedelman@delawllp.com

Delahunty & Edelman, LLP

4 Embarcadero Center, Ste. 1400

San Francisco, California 94111

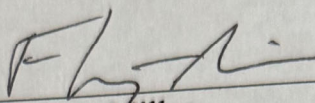
Counsel for The Credit Wholesale Company, Inc.

The notice recipients and addresses designated above may be changed by written notice.

The remainder of this page is intentionally left blank.

Dated: 22 Oct, 2024

CENTRAL COAST TOBACCO COMPANY, LLC



By: Wyatt Miller

Its:
Individually and in a representative capacity

Dated: _____, 2024

AGUILAR AUTO REPAIR, LLC

By: Frank Aguilar

Its:
Individually and in a representative capacity

Dated: _____, 2024

CLASS COUNSEL

Myron M. Cherry, as Class Counsel

Jacie C. Zolna, as Class Counsel

Benjamin R. Swetland, as Class Counsel

Dated: _____, 2024

CENTRAL COAST TOBACCO COMPANY, LLC

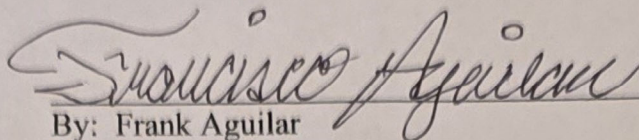
By: Wyatt Miller

Its:

Individually and in a representative capacity

Dated: 10/24, 2024

AGUILAR AUTO REPAIR, LLC



By: Frank Aguilar

Its:

Individually and in a representative capacity

Dated: _____, 2024

CLASS COUNSEL

Myron M. Cherry, as Class Counsel

Jacie C. Zolna, as Class Counsel

Benjamin R. Swetland, as Class Counsel

Dated: _____, 2024

CENTRAL COAST TOBACCO COMPANY, LLC

By: Wyatt Miller

Its:

Individually and in a representative capacity

Dated: _____, 2024

AGUILAR AUTO REPAIR, LLC

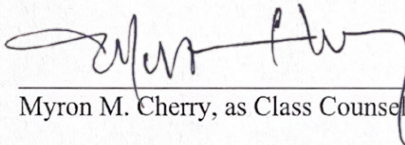
By: Frank Aguilar

Its:

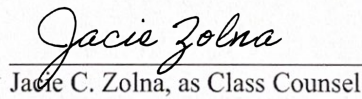
Individually and in a representative capacity

Dated: Oct. 21, 2024

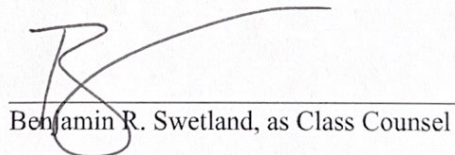
CLASS COUNSEL



Myron M. Cherry, as Class Counsel



Jacie C. Zolna, as Class Counsel



Benjamin R. Swetland, as Class Counsel

Dated: 10/30/2024, 2024

WELLS FARGO BANK, N.A.

Signed by:

Calvin Hoffman

By: Calvin Hoffman

Its: Executive Director

Dated: _____, 2024

PRIORITY TECHNOLOGY HOLDINGS, INC.

By:

Its:

Dated: _____, 2024

PRIORITY PAYMENT SYSTEMS, LLC

By:

Its:

Dated: October 29, 2024

THE CREDIT WHOLESALE COMPANY, INC

Mark T Hodges

By: Mark T Hodges

Its: CEO

Certificate Of Completion

Envelope Id: 6BF3397A90864AEEB2A34299997117C1	Status: Completed
Subject: Complete with DocuSign: 2024.10.29 - Wholesale Executed-c.pdf	
Source Envelope:	
Document Pages: 1	Signatures: 1
Certificate Pages: 3	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Tina Mitchell
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	420 Montgomery St.
	San Francisco, CA 94104
	Tina.M.Mitchell@wellsfargo.com
	IP Address: 159.45.71.18


Record Tracking

Status: Original	Holder: Tina Mitchell	Location: DocuSign
10/29/2024 1:26:12 PM	Tina.M.Mitchell@wellsfargo.com	

Signer Events

Calvin Hoffman
 calvin.hoffman@wellsfargo.com
 Executive Director
 Security Level: Email, Account Authentication (None)

Signature

Signed by:

AF61E0B85D76440...
 Signature Adoption: Pre-selected Style
 Using IP Address: 159.45.133.39
 Signed using mobile

Timestamp

Sent: 10/29/2024 1:26:52 PM
 Viewed: 10/29/2024 1:28:48 PM
 Signed: 10/30/2024 6:35:57 AM

Electronic Record and Signature Disclosure:
 Accepted: 10/29/2024 1:28:48 PM
 ID: 37fcb5fb-76ce-4310-931a-6bfccd416d69

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/29/2024 1:26:52 PM
Certified Delivered	Security Checked	10/29/2024 1:28:48 PM
Signing Complete	Security Checked	10/30/2024 6:35:57 AM
Completed	Security Checked	10/30/2024 6:35:57 AM

Payment Events **Status** **Timestamps**

Electronic Record and Signature Disclosure

Dated: _____, 2024

WELLS FARGO BANK, N.A.

By:
Its:

Dated: _____, 2024

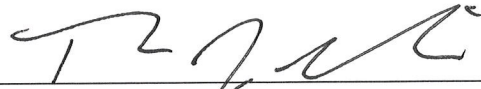
PRIORITY TECHNOLOGY HOLDINGS, INC.



By: Bradley J. Miller
Its: General Counsel and Chief Risk Officer

Dated: _____, 2024

PRIORITY PAYMENT SYSTEMS, LLC



By: Bradley J. Miller
Its: General Counsel and Chief Risk Officer

Dated: _____, 2024

THE CREDIT WHOLESALE COMPANY, INC

By:
Its:

Exhibit 1

You or your business are eligible to share in a \$19,500,000 settlement if you sign and return the attached claim form or if you submit a claim online at [insert settlement website address] by [date]. **The estimated minimum settlement payment is approximately \$ [] for each eligible call you received from The Credit Wholesale Company, Inc. and could be as high as \$5,000 per call, but you need to submit a claim to receive payment.**

Para una notificación en español, visite [insert settlement website address]

What is this notice about?

On [insert date], the United States District Court for the Northern District of California granted preliminary approval of this class action settlement. The Court directed the parties to send this notice. This notice summarizes the proposed settlement. A Long Form Notice, the settlement agreement, and other information can be viewed at [insert settlement website address].

What is the Lawsuit about?

The lawsuit, entitled *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 (the “Lawsuit”), alleges that The Credit Wholesale Company, Inc. (“Wholesale”) recorded certain calls to California residents without disclosing that the call was being recorded in violation of the California Invasion of Privacy Act. The Lawsuit further alleged that the purpose of these calls was to set appointments to sell credit card processing equipment and services on behalf of Wells Fargo Bank, N.A., Priority Technology Holdings, Inc., and Priority Payment Systems, LLC, all of whom, along with Wholesale, are named as defendants in the Lawsuit. Defendants deny any wrongdoing or liability in connection with the Lawsuit. The Court has not decided who is right.

How do you get a payment?

In order to receive a settlement payment you must complete and sign the attached claim form for yourself or your business and mail it to the settlement administrator, or you can submit your claim online at [insert settlement website address], by the DUE DATE of [insert date]. Settlement payments will only be issued if the proposed settlement is granted final approval by the Court.

Who is affected?

You may be eligible to receive a payment if you or your business received a call from Wholesale on a telephone in California between October 22, 2014 and November 17, 2023.

What are your other options?

If you do not want to be legally bound by the settlement, you may send a request for exclusion (“opt-out”). You will not receive any money, but you will keep your right to sue Defendants for the claims in this case. If you do not opt-out, you may object to the settlement. You will still be bound by the settlement if your objection is rejected. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the Lawsuit will continue. For details on how to opt-out or object, read the Long Form Notice available at [insert settlement website address]. Opt-outs and objections must be postmarked by [insert date]. The Court will hold a Fairness Hearing on [insert date and time] to consider whether to approve the settlement, attorneys’ fees up to one-third of the settlement fund, costs of approximately \$30,000-\$35,000, and incentive awards of \$7,500 to the two Plaintiffs. These amounts will be deducted from the \$19,500,000 settlement fund. You may ask to attend the Fairness Hearing, on your own or through counsel, but you do

not have to do so. The date and time of the final approval hearing may change without further notice to the class. You can check to see if the time, manner, or location of the final approval hearing has changed by accessing the Court docket in this case, for a fee, at <https://ecf.cand.uscourts.gov> or at [[insert settlement website address](#)].

Who are the lawyers for Plaintiffs and class members?

The following lawyers are serving as Class Counsel: Myron M. Cherry, Jacie C. Zolna, and Benjamin R. Swetland of Myron M. Cherry & Associates, LLC, 30 North LaSalle Street, Suite 2300, Chicago, Illinois 60602. Class Counsel can be contacted at jzolna@cherry-law.com or (312) 372-2100.

CLAIM FORM

Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al. Case No. 3:23-cv-06265
United States District Court for the Northern District of California

Claim ID:

PIN Code:

INSTRUCTIONS: Please sign below and return this Claim Form by mail. No postage is necessary if you detach and mail this postcard Claim Form.

In order to receive your settlement payment, you must submit your claim no later than [insert date] by mailing this Claim Form to the settlement administrator or by submitting a claim online at [insert website address]. If your settlement payment is in excess of \$600, you will be required by law to submit a Form W9 to the settlement administrator either by mail or secure online portal. In the event your settlement payment is in excess of \$600, further instructions will follow on how to submit your Form W9.

Call records reflect that you received at least one call from The Wholesale Credit Company, Inc. between October 22, 2014 and November 17, 2023. By signing below you affirm that you have the authority to submit this Claim Form on behalf of the person or business identified above, and that, to the best of your knowledge, during the timeframe referenced above the person(s) who received calls did so in California.

Dated: _____

Signature: _____

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AGUILAR AUTO REPAIR, LLC, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 3:23-cv-06265
)	
v.)	
)	
WELLS FARGO BANK, N.A., <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO THE PROPOSED SETTLEMENT OF A CLASS ACTION AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Call records indicate that you or your business received at least one telephone call from The Credit Wholesale Company, Inc. between October 22, 2014 and November 17, 2023. Based on those records, you or your business are eligible for a settlement payment if you sign and return a claim form or if you submit a claim online at [insert settlement website address] on or before [date].

The settlement provides for an **estimated minimum payment of approximately \$ [redacted] for each eligible call you received and could be as high as \$5,000 per call**, but you need to submit a claim as described below in order to be eligible to receive payment.

I. What is this notice about?

This Notice is being sent to notify you of a class action lawsuit regarding the recording of certain calls to California businesses. On [insert date], the Court preliminarily approved a settlement of the Lawsuit. The purpose of this Notice is to inform you of the Lawsuit and the proposed settlement. In addition, this Notice will advise you of what to do if you want to remain a part of the Lawsuit, what to do if you want to be excluded from the Lawsuit, and how joining or not joining the Lawsuit may affect your legal rights.

II. What is the Lawsuit about?

The class action lawsuit was filed on October 10, 2023 and is currently pending in the United States District Court for the Northern District of California, entitled *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 (the “Lawsuit”). The Lawsuit alleged that an independent sales organization named The Credit Wholesale Company, Inc. (“Wholesale”) recorded certain calls to California residents without disclosing the fact that the call was being recorded in violation of Sections 632 and 632.7 of the California Invasion of Privacy Act (“CIPA”). The Lawsuit further alleged that the purpose of these calls was to set in-person sales appointments with the businesses to sell credit card processing equipment and services on behalf of Wells Fargo Bank, N.A. (“Wells Fargo”) and Priority Technology Holdings, Inc. and Priority Payment Systems, LLC (together, “Priority”), all of whom, along with Wholesale, are named as defendants in the Lawsuit. Defendants deny any wrongdoing or liability in connection with the Lawsuit.

III. What are the benefits of the proposed settlement?

Under the proposed settlement, Defendants will make a payment of \$19,500,000 to create a fund on behalf of the Settlement Class Members (the “Settlement Fund”). Settlement Class Members who do not exclude themselves from the Lawsuit are eligible for a cash payment from the Settlement Fund for each call that is covered under the class definition set forth in Section VII below (an “Eligible Call” as defined in the Settlement Agreement). Settlement Class Members who received multiple Eligible Calls are entitled to a cash payment for each Eligible Call. The minimum cash payment for each Eligible Call is estimated to be approximately \$[redacted], but could be as high as \$5,000 per call depending on how many claims are submitted. It is not possible at this time, however, to know the exact amount of each payment. In addition to monetary relief, Defendant Wholesale has agreed not to record appointment-setting calls to California businesses unless it discloses at the outset of the call that the call is being recorded. Defendants will also pay settlement administration costs up to \$200,000.

IV. How do I receive a settlement payment?

In order to receive the cash payment described in this Notice you must complete and sign the claim form that was mailed to you and mail it to the Settlement Administrator, or you can submit your claim online through the settlement website at [insert settlement website address], by the DUE DATE of [insert date].

Regardless of whether you mail the claim form or submit a claim online, **you must do so by the DUE DATE of [insert date]** to be eligible to receive a payment. Settlement payments will only be issued if the proposed settlement is granted final approval by the Court. If your settlement payment is in excess of \$600, you will be required by law to submit a Form W9 to the Settlement Administrator either by mail or secure online portal in order to receive any payment in excess of \$600. In the event your settlement payment is in excess of \$600, further instructions will follow on how to submit your Form W9.

V. Why is there a proposed settlement?

The Court has not decided in favor of either side in the Lawsuit. Plaintiffs and Class Counsel believe the claims have merit. Defendants do not believe the claims have merit. Defendants are settling to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiffs and Class Counsel believe that the proposed settlement is in the best interest of Settlement Class Members because it provides appropriate recovery and other relief now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals, including the possibility of no recovery for Settlement Class Members whatsoever.

VI. What is a class action lawsuit?

A class action lawsuit is a legal action in which one or more people represent a large group, or class, of people. The purpose of a class action lawsuit is to resolve at one time similar legal claims of the members of the group.

VII. Who is in the class?

On [insert date], the Court certified the Lawsuit as a class action for settlement purposes and defined the class as follows:

All businesses or individuals who received a telephone call from The Credit Wholesale Company, Inc. on a telephone in California between October 22, 2014 and November 17, 2023.

Any business meeting this definition shall be referred to herein as a “Settlement Class Member” and, collectively, as the “Settlement Class” or “Settlement Class Members.”

VIII. When and where is the final approval hearing?

The final approval hearing has been set for [insert date and time] before the Honorable Araceli Martínez-Olguín in Courtroom 10 (19th Floor) at 450 Golden Gate Avenue, San Francisco, California 94102. The date and time of the final approval hearing may change without further notice to the class. You can check to see if the time, manner, or location of the final approval hearing has changed by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> or by checking the settlement website at [insert settlement website address].

The Court will hear any comments from the parties or objections concerning the fairness of the proposed settlement at the final approval hearing, including the amount requested for attorneys’ fees and costs or the requested incentive awards. You **do not** need to attend the final approval hearing to remain a Settlement Class Member or to obtain any benefits under the proposed settlement. You or your attorney may attend the hearing, at your own expense. You do not need to attend this hearing to have a properly filed and served written objection considered by the Court.

IX. How can I be excluded from the Lawsuit and the settlement?

Any Settlement Class Member has the right to be excluded from the Lawsuit by written request. If you wish to be excluded from the case, you must mail a written request to the Settlement Administrator at the address set forth below stating that you want to be excluded from the class. All exclusion requests must include (i) the name and case number of the Lawsuit: *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265; (ii) the name, address, and telephone number of the Settlement Class Member electing exclusion; (iii) if the Settlement Class member is a business, the name and title of the person submitting the opt-out election for the Settlement Class Member and a representation that he or she has authority to make such an election on behalf of the Settlement Class Member; and (iv) a statement to the effect that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement. A Settlement Class Member’s exclusion request must be postmarked no later than **the DUE DATE of [insert date]** and sent to the following address: [insert mailing address]. If you properly and timely elect to be excluded from the case, you will not have any rights as a Settlement Class Member pursuant to the proposed settlement, you will not be eligible to receive any monetary payment under the proposed settlement, you will not be bound by any further orders or the judgment entered in the Lawsuit, and you will remain able to pursue any claims alleged in the Lawsuit against Defendants on your own and at your own expense and with your own counsel. If you proceed on an individual basis after being excluded from the Lawsuit you may receive more, or less, of a benefit than you would otherwise receive under this proposed settlement or no benefit at all. If you do not exclude yourself from the case, you will be deemed to have consented to the Court’s jurisdiction and to have released the claims at issue against Defendants as explained below, and will otherwise be bound by the proposed settlement.

X. How can I object to the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the Lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the final approval hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (i) clearly identify the case name and number (*Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265), (ii) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, and (iii) be filed or postmarked on or before [insert date].

If a Settlement Class Member is not an individual or sole proprietorship or is otherwise a separate business entity, it may be required to make its objection or appear at the final approval hearing through an attorney. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to the Settlement Agreement and shall not be permitted to object at the final approval hearing and shall be foreclosed from seeking any review of this settlement by appeal or other means.

XI. What is the effect of final settlement approval?

If the Court approves the proposed settlement after the final approval hearing, it will enter a judgment dismissing the Lawsuit with prejudice and releasing all claims as described in this paragraph. If you do not exclude yourself from the case, the proposed settlement will be your sole mechanism for obtaining any relief. All Settlement Class Members who do not timely elect to opt out of the proposed settlement, and each of their respective agents, administrators, employees, representatives, successors, assigns, trustees, joint venturers, partners, legatees, heirs, personal representatives, predecessors, and attorneys release and forever discharge Defendants and First Data Merchants Services, LLC and each of their respective former, present, and future direct and indirect parents, affiliates, subsidiaries, successors, and predecessors and all of their respective former, present, and future officers, directors, shareholders, indemnitees, employees, agents, representatives, attorneys, accountants, auditors, independent contractors, successors, trusts, trustees, partners, associates, principals, divisions, insurers, reinsurers, members, brokers, consultants, and vendors and all persons acting by, through, under, or in concert with them, or any of them, from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of, relating to, or in connection with the calls placed by Wholesale between October 22, 2014 through November 17, 2023 as described in the class definition set forth above ("Eligible Calls"), including but not limited claims for violation of CIPA, including but not limited to Section 632 and Section 632.7, or any other federal, state, or local statute, regulation, or common law relating to the Eligible Calls.

If the proposed settlement is not approved, the Lawsuit will proceed as if no settlement had been reached. There can be no assurance that if the settlement is not approved and the Lawsuit resumes that Settlement Class Members will recover more than what is provided for under the proposed settlement or will recover anything at all.

XII. Who are the lawyers for Plaintiffs and class members?

The following lawyers ("Class Counsel") are serving as counsel for the Settlement Class:

Myron M. Cherry
mcherry@cherry-law.com
Jacie C. Zolna
jzolna@cherry-law.com
Benjamin R. Swetland
bswetland@cherry-law.com
Myron M. Cherry & Associates, LLC

30 North LaSalle Street, Suite 2300
Chicago, Illinois 60602
(312) 372-2100 (telephone)
(312) 853-0279 (facsimile)

From the beginning of the case to the present, Class Counsel has not received any payment for their services in prosecuting the Lawsuit or in obtaining this proposed settlement, nor have they been reimbursed for any out-of-pocket costs they have incurred. Class Counsel will apply to the Court for an award of attorneys' fees in the amount of no more than one-third (33.33%) of the Settlement Fund, as well as an additional amount for partial reimbursement of actual costs, which Class Counsel currently estimates will be between \$30,000-\$35,000. If the Court approves Class Counsel's petition for fees and costs, it will be paid from the Settlement Fund. Settlement Class Members will not have to pay anything toward the fees or costs of Class Counsel. You do not need to hire your own lawyer because Class Counsel is working on your behalf and will seek final approval of the settlement on behalf of the Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

Class Counsel may also petition the Court for incentive awards in the amount of \$7,500 each to the Settlement Class representatives who helped Class Counsel on behalf of the whole Settlement Class.

XIII. Where can I get more information about the Lawsuit?

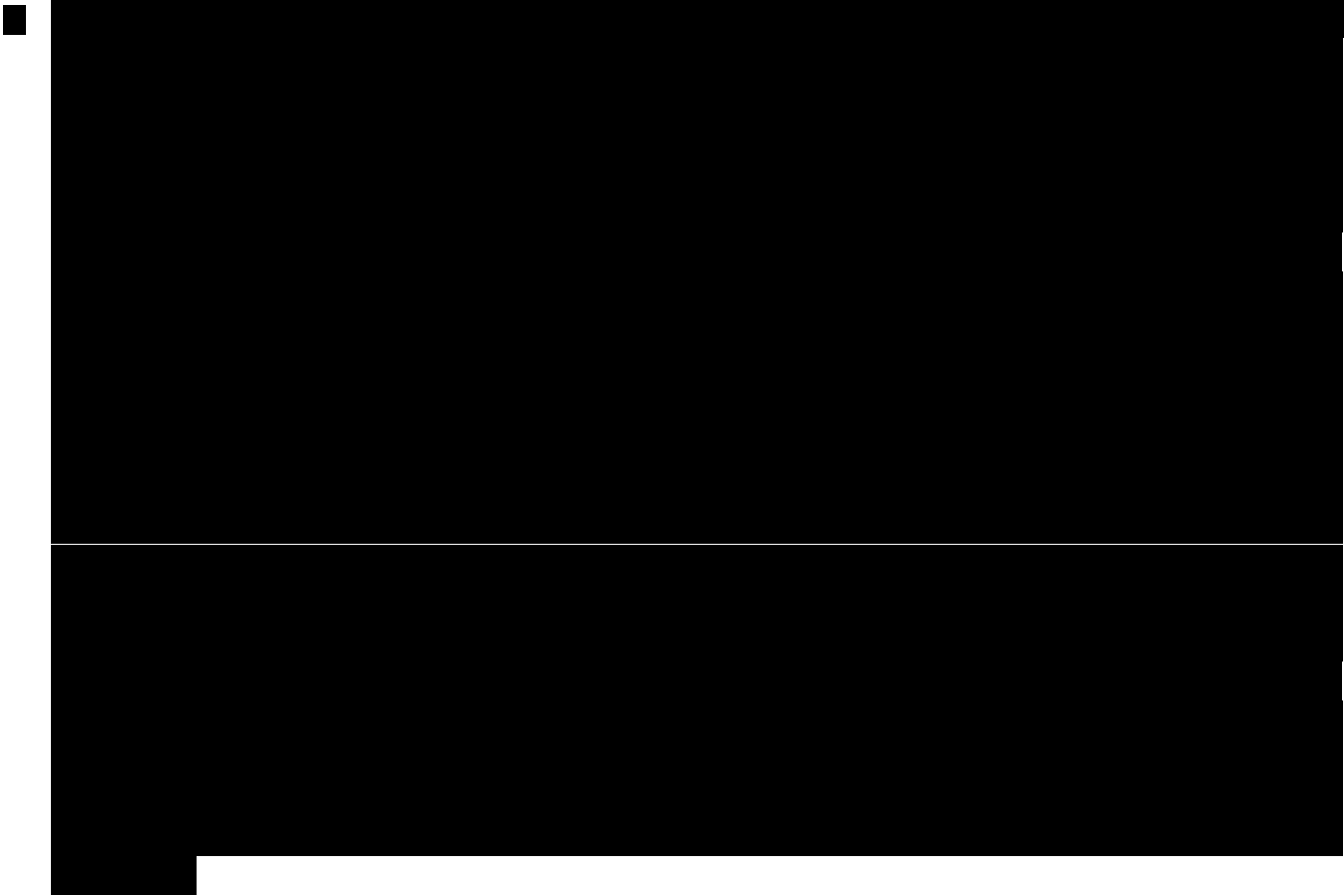
This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at [insert settlement website address], by contacting the Settlement Administrator at [REDACTED], by contacting Class Counsel listed above, by accessing the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE OR DEFENDANTS TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Dated: [INSERT DATE]

BY ORDER OF THE UNITED STATES DISTRICT COURT

Ex. C-1

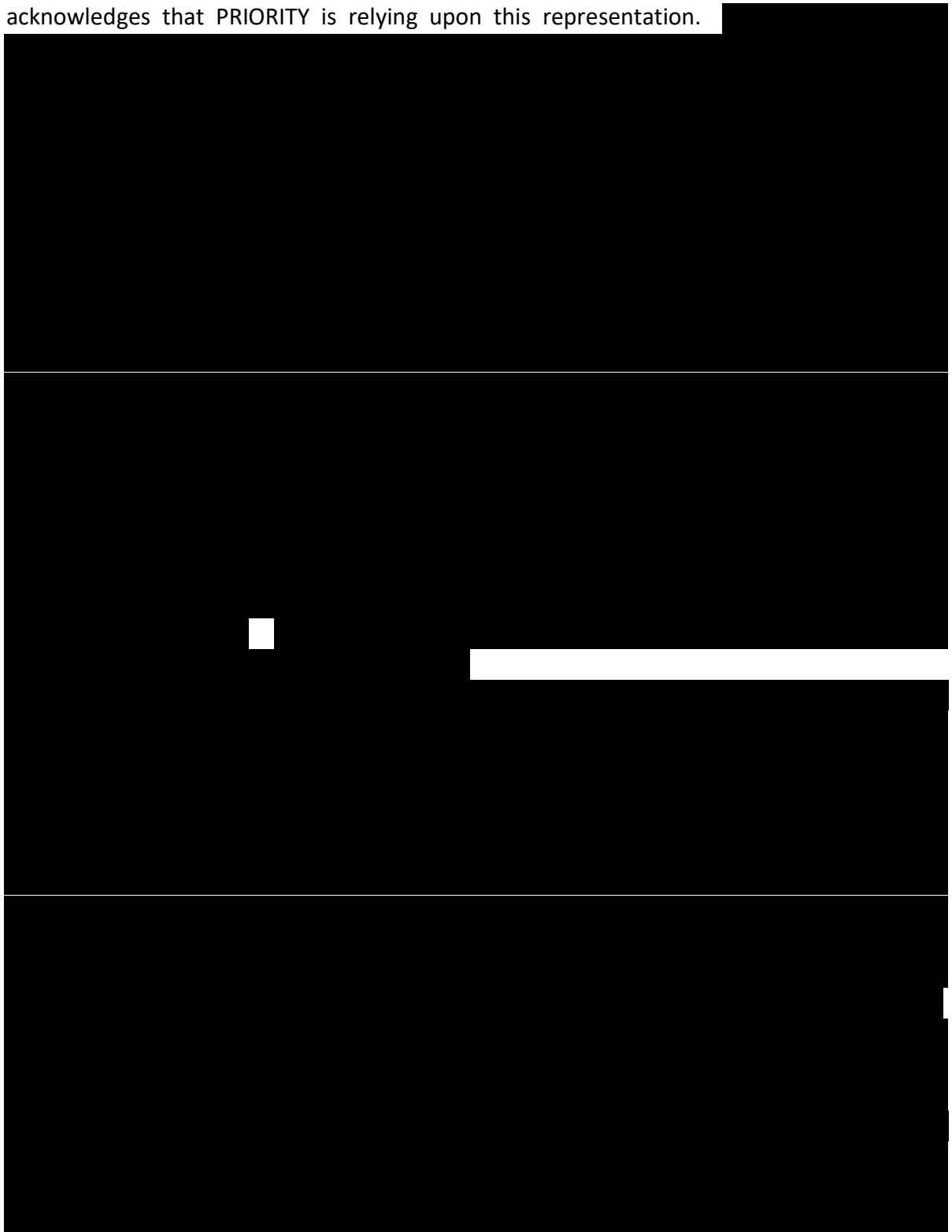


7. GENERAL.



c. No Partnership or Agency. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the parties hereto or be deemed to constitute PARTNER as an agent for PRIORITY or Member for any purpose whatsoever, except as provided herein. PARTNER is prohibited from acting as, or holding itself, himself, or herself out, as an agent of PRIORITY or Member. PRIORITY, Member, and PARTNER acknowledge and agree that this Agreement does not constitute or appoint PARTNER as an agent of either PRIORITY or Member for any purpose whatsoever, except as provided herein. PARTNER is an independent

contractor and not an employee of PRIORITY or Member. PARTNER expressly represents that it is an independent contractor under the laws of the United States and the common law and acknowledges that PRIORITY is relying upon this representation.



Ex. C-2

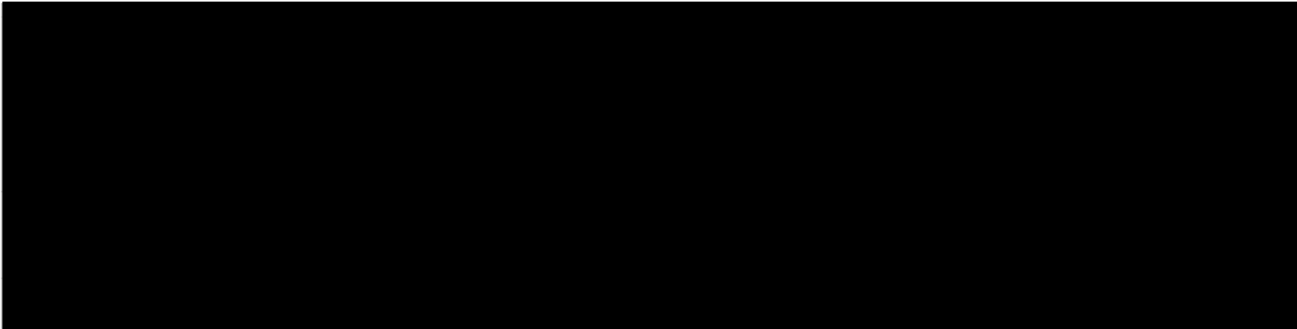


2. RELATIONSHIP OF THE PARTIES.

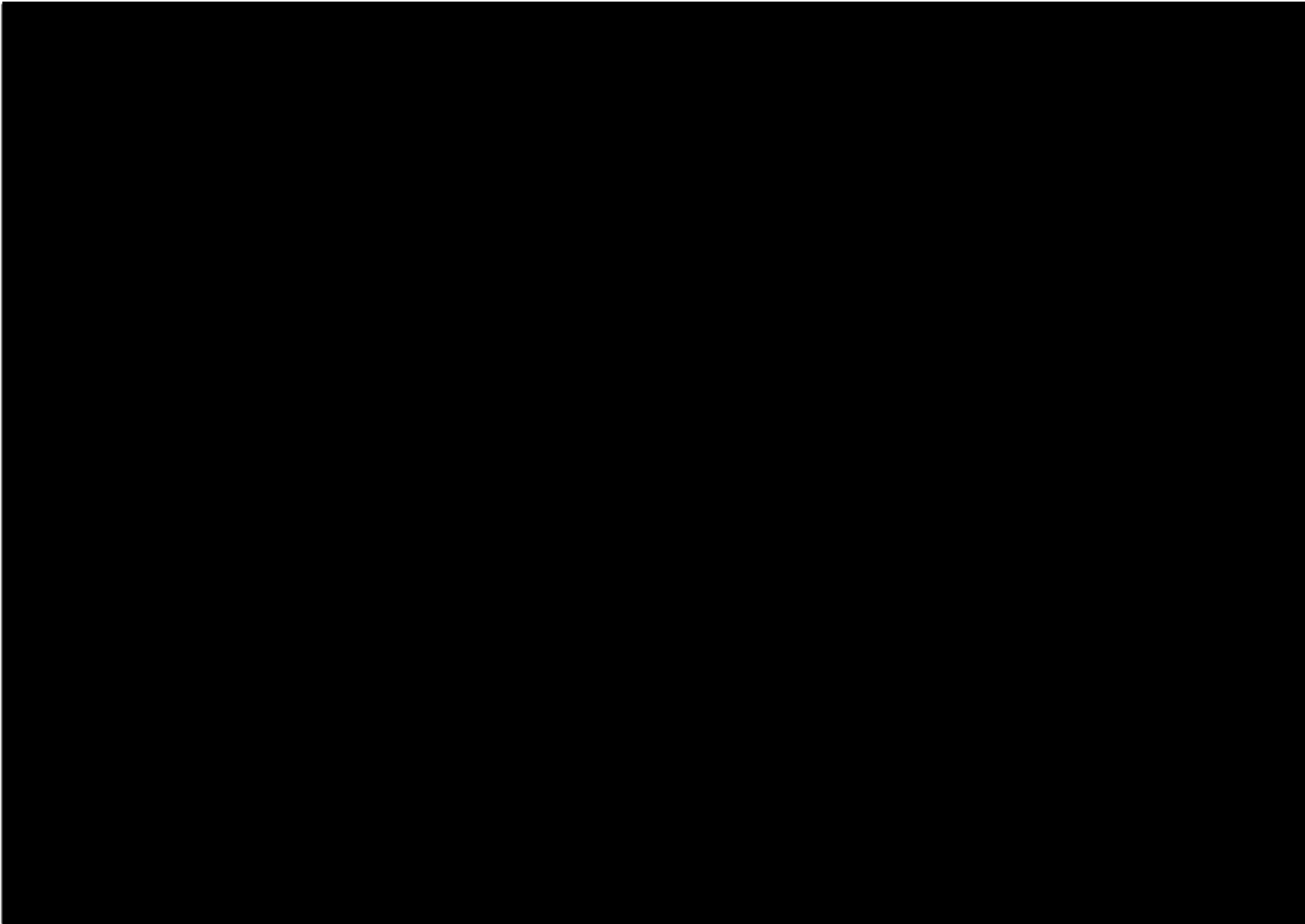
All of the Parties hereto acknowledge and agree that their respective relationship with one another is solely that of an independent contractor and nothing herein is intended to create, and will not be construed to constitute, a relationship of partnership, joint venture, co-ownership or otherwise as participants in a joint or common undertaking. Sub-ISO will have no power, right or authority, express or implied, to hold itself out as an agent of Servicers, or to represent, act for or on behalf of, or otherwise create or assume any obligation on behalf of, or binding upon, or make any representation or warranty, or create any liability or potential liability on behalf of Servicers.



Ex. C-3



12.2 Relationship of the Parties. SERVICERS and ISO agree that in performing their responsibilities pursuant to this Agreement they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partnership or joint venture or agency or any association for profit between SERVICERS and ISO. ISO is not authorized hereunder to hold itself out as an agent of SERVICERS or to inform or represent to any person that ISO has authority to bind or obligate SERVICERS or to otherwise act on behalf of SERVICERS. SERVICERS are not authorized hereunder to hold themselves as agents of ISO or to inform or represent to any person that SERVICERS have authority to bind or obligate ISO or to otherwise act on behalf of ISO. Neither ISO nor SERVICERS shall make any representation or warranty, or create any liability or potential liability on behalf of the other party, respectively.



Ex. D

1 Jennie Lee Anderson (SBN 203586)
2 **ANDRUS ANDERSON LLP**
3 155 Montgomery Street, Suite 900
4 San Francisco, California 94104
5 Tel: 415-986-1400
6 jennie@andrusanderson.com

7 Myron M. Cherry (SBN 50278)
8 Jacie C. Zolna (*pro hac vice*)
9 Benjamin R. Swetland (*pro hac vice*)
10 **MYRON M. CHERRY & ASSOC., LLC**
11 30 North LaSalle Street, Suite 2300
12 Chicago, Illinois 60602
13 Tel: 312-372-2100
14 mcherry@cherry-law.com
15 jzolna@cherry-law.com
16 bswetland@cherry-law.com

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 AGUILAR AUTO REPAIR, INC. and
21 CENTRAL COAST TOBACCO CO., LLC,
22 individually and on behalf of all others
23 similarly situated,

24 Plaintiffs,

25 v.

26 WELLS FARGO BANK, N.A., PRIORITY
27 TECHNOLOGY HOLDINGS, INC.,
28 PRIORITY PAYMENT SYSTEMS, LLC and
THE CREDIT WHOLESALE COMPANY,
INC.,

Defendants.

Case No. 3:23-cv-06265-LJC

**DECLARATION OF JENNIE LEE
ANDERSON IN SUPPORT OF PETITION
FOR ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS**

1 I, Jennie Lee Anderson, declare as follows:

2 1. I am a partner at Andrus Anderson LLP and represent Plaintiffs in *Aguilar Auto*
3 *Repair, Inc., et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 pending in the
4 United States District Court for the Northern District of California (the “Lawsuit”). I have
5 personal knowledge of the facts set forth in this declaration and, if called to testify, could and
6 would testify competently thereto.

7 1. I have been practicing law for more than 25 years with an emphasis on plaintiff-
8 side complex and class action litigation. I have extensive experience litigating class and complex
9 cases and have served as co-lead counsel, liaison counsel, and/or on plaintiff steering committees
10 in multiple state and nationwide class actions and mass torts involving product liability, antitrust,
11 consumer protection, and employment claims. I am well-versed in the applicable procedural
12 rules, including the Northern District of California’s Local Rules.

13 2. I graduated from University of California College of the Law - San Francisco in
14 1999. During law school, I was a judicial extern for the Honorable Martin J. Jenkins, United
15 States District Court for the Northern District of California and a law clerk at the San Francisco
16 plaintiffs’ firms of Rosen, Bien, Galvan & Grunfeld LLP and Lieff, Cabraser, Heimann &
17 Bernstein LLP. Upon graduating from law school, I became an associate at Lieff, Cabraser,
18 Heimann & Bernstein LLP, where I practiced in the employment discrimination, consumer
19 protection, and antitrust practice groups. I committed three years representing indigent inmates
20 on California’s death row with the Habeas Corpus Resource Center, and then went on to practice
21 with the law firm Robbins, Geller, Rudman & Dowd, LLP in its San Francisco office specializing
22 in complex securities and consumer class actions. In 2007, I founded Andrus Anderson LLP with
23 my law partner, Lori E. Andrus. My firm and I have been recognized as some of the best class
24 action attorneys in the United States. I have been honored as a Northern California Super Lawyer
25 consecutively since 2011, a top 50 women lawyers in Northern California, and by Law Dragon
26 500 as a top litigator in both plaintiff-side employment litigation and consumer protection class
27 actions. Attached hereto as Exhibit 1 is a true and correct copy of the law firm resume for Andrus

28

1 Anderson LLP, including a summary of the firm’s experience litigating complex class actions.

2 3. The time spent by my firm that forms the basis for this application for attorneys’
3 fees and costs was reasonable and necessary to the successful litigation of this case. These tasks
4 included reviewing and filing the complaint, assisting in motion practice and preparing
5 preliminary approval, class notice, and final approval, conducting legal research, advising co-
6 counsel on local rules and procedural matters, consulting with co-counsel on litigation strategy,
7 and participating in mediation and settlement negotiations.

8 4. My firm has spent 45 hours prosecuting this case as local counsel for a lodestar of
9 \$41,537.50, as recorded in contemporaneous time records regularly prepared and maintained by
10 the firm. The above does not include future time that will be required to see the case through final
11 approval and resolution.

12 5. My hourly rate is \$1,150. My firm’s hourly rates are reasonable and consistent with
13 rates charged for comparable work in this District. My firm’s rates have been approved by courts
14 in cases of similar complexity and are comparable to rates charged and upheld in similar cases in
15 the San Francisco Bay Area.

16 6. My firm has allocated its resources to the litigation of this Lawsuit, and the time
17 spent on this matter took time away from other representation opportunities. My firm also
18 shouldered risks by filing and litigating this case on a contingent fee basis.

19 7. To date, my firm has advanced \$672.10 in unreimbursed costs in pursuit of
20 Plaintiffs’ claims.

21 I declare, under penalty of perjury, under the laws of the United States of America that the
22 foregoing is true and correct. Executed this 27th day of February, 2025, in Jackson, Wyoming.

23 /s/ Jennie Lee Anderson
24 Jennie Lee Anderson

Ex. 1

ANDRUS ANDERSON LLP

155 Montgomery Street · Suite 900, San Francisco, California 94104
T: 415.986.1400 · F: 415.986.1474 · www.andrusanderson.com

The law firm of Andrus Anderson LLP (“Andrus Anderson”) has a diverse and thriving practice representing plaintiffs in consumer, employment, antitrust, and product liability cases. The law firm was founded in 2007 by partners Lori E. Andrus and Jennie Lee Anderson. The firm’s clients include individuals, classes and small businesses across the nation.

Examples of the firm’s leadership in complex class and mass actions are listed below.

Employment

a. *Forsyth, et al. v. HP Inc., et al.* Case No. 5:16-cv-04775 ED, United States District Court for the Northern District of California. Andrus Anderson partner Jennie Lee Anderson was co-lead counsel this nationwide and California age discrimination class action alleging an ongoing policy of replacing older workers with younger workers in violation of federal and California law. A class and collective action settlement in the amount of \$18 million was granted final approval in 2024. On average, each class and collective action member will received more than \$50,000.

b. *Rasmussen, et al., v. The Walt Disney Company, et al.*, Case No. 19STCV10974, Los Angeles Superior Court. Andrus Anderson is co-lead counsel representing class of women employees who allege that Disney refused to pay them equal to male employees doing equal work. Plaintiffs assert that Disney violated the California Equal Pay Act, the California Fair Employment and Housing Act, and the California Labor Code’s prohibition against pay secrecy, and also failed to pay wages as required.

c. *Refuerzo, et al. v. Southwest Airlines, Co.*, Case No. 3:22-cv-00868-JSC, United States District Court for the Northern District of California. Andrus Anderson and their co-counsel represent flight attendants who were penalized, and sometimes fired, for using Family Leave Act leave in violation of state and federal law. Plaintiffs seek monetary and injunctive relief in this ongoing class action.

d. *Coates v. Farmers Insurance Group*, Case No. 5:15-cv-01913 LHK, United States District Judge for the Northern District of California. Andrus Anderson partner Lori Andrus was lead counsel in this wage discrimination lawsuit brought on behalf of women attorneys in Farmers' Claims Litigation department who allege they were paid less than equally or less qualified men. The case resulted in a settlement of \$4 million in payments to class members, and also required Farmers to make a number of business practices changes designed to improve the working lives of Farmers' female litigators, and to increase transparency in Farmers' compensation systems.

e. *Harrison, et al. v. Strategic Experiential Group, et al.*, Case No. RG16807555, Alameda County Superior Court. Andrus Anderson and their co-counsel represented "brand ambassadors" and "logistics personnel" employed by the defendants to promote the Moet Hennessy USA and other brand's products at bars, restaurants, liquor stores, sporting events and other public venues to increase awareness of and sales of various liquor brands. Plaintiffs were misclassified as independent contractors in violation of California law and were routinely forced to work off the clock and overtime without compensation. The case resulted in class members being paid significant back pay and forced systemic change.

f. *Minns v. ACES, et al.*, Case No. 13-cv-03249 SI, United States District Court for the Northern District of California. Andrus Anderson and their co-counsel represented temporary

nurses in a class case seeking damages for failure to pay on a daily basis, unpaid transportation time and improper meal deductions in violation of California's labor laws. Ms. Andrus was appointed Class Counsel in the case.

g. *Freeman v. On Assignment Staffing Service, Inc.*, Case No. RG12652237, Alameda County Superior Court, State of California. Andrus Anderson and their co-counsel represented temporary nurses in a class case seeking damages for failure to pay on a daily basis, unpaid transportation time and improper meal deductions in violation of California's labor laws. Ms. Andrus was appointed Class Counsel in the matter.

h. *Kyriakakos v. Veolia Water North America, Inc.*, Case No. 10-00751, Alameda County Superior Court, State of California. Andrus Anderson represented wastewater and water treatment plant operator, lab technicians and mechanics in this wage and hour suit. Plaintiffs alleged that Veolia failed to pay its workers for all hours worked conducting remote monitoring tasks, time spent donning, doffing, and showering, and that Veolia violated California law with its meal and rest break policies.

i. *Bolton v. U.S. Nursing*, Case No. 12-CV-04466 LB, United States District Court for the Northern District of California. Andrus Anderson and their co-counsel represented temporary nurses in a class case seeking damages for failure to pay on a daily basis, unpaid transportation time and improper meal deductions in violation of California's labor laws. Andrus Anderson partner, Lori Andrus, was appointed Class Counsel in the case.

j. *Nelson et al., v. California State University, East Bay Foundation, Inc.*, Case No. RG09442869, Alameda County Superior Court, State of California. Andrus Anderson was lead counsel in this wage and hour litigation on behalf of English as a second language (ESL) teachers. In their complaint, the school's ESL teachers alleged that they were not paid for all

hours worked. Andrus Anderson obtained back pay for their clients and negotiated major changes in the practices and policies at California State University, East Bay, to ensure the ESL teachers are fairly compensated going forward.

Mass Tort/Personal Injury

a. *In re Social Media Adolescent Addiction Litigation*, Case No. 4:22-md-3047-YGR, United States District Court for the Northern District of California. Andrus Anderson represents children against major social media companies alleging that their algorithms are designed to addict users, especially children, and causing devastating harm. Ms. Anderson has been appointed Liaison Counsel in the coordinated litigation.

b. *In re National Prescription Opiate Litigation*, Case No. 1:17-md-02804-DAP, Northern District of Ohio United States District Court. Andrus Anderson represents ten cities and counties in these coordinated proceedings against the major opioid manufacturers and distributors for issuing false and misleading statements about risk of addiction and failure to report suspicious sales in violation of state and federal law.

c. *City and County of San Francisco v. Purdue Pharma, et al.*, 3:18-cv-7591 CRB. Ms. Anderson was part of the bellwether trial team representing the City and County of San Francisco in its case against manufacturers and distributors of opioids, which resulted in a plaintiff's verdict after a bench trial in 2022.

d. *Martin v. The Regents of the University of California*, Case No. RG19037605. Andrus Anderson represented a UC Berkeley Cheerleader who was concussed multiple times before she was medically cleared to return to play due to lack of appropriate protocols. The case settled days before trial for significant money damages and injunctive relief that will ensure the

Cheerleading team and coaches receive appropriate concussion training and that the program implement a concussion protocol.

e. *Proton Pump Inhibitor Litigation*, MDL No. 02789-CCC-MF, United States District Court for the District of New Jersey. Andrus Anderson represents plaintiffs in their claims against various manufacturers of Proton Pump Inhibitors (“PPI”) marketed and used for the treatment of gastroesophageal reflux disease (GERD) and other conditions caused by excess stomach acid. The complaints allege that defendants knew overuse of PPIs causes severe kidney injuries but continued to market the drugs for frequent or daily use. Ms. Anderson has been appointed to the Plaintiffs’ Steering Committee.

f. *Essure Product Cases*, JCCP 4887, Superior Court of California, Alameda County. Andrus Anderson represents women harmed by the Essure birth control device in these coordinated proceedings pending in California. Ms. Andrus has been appointed to the Plaintiffs’ Steering Committee

a. *In re RoundUp Products Liability Litigation*, MDL No. 2741, United States District Court for the Northern District of California. Andrus Anderson represents individuals suffering life-threatening injuries due to exposure to RoundUp pesticides in this MDL proceedings. Ms. Andrus has been appointed Liaison Counsel for Plaintiffs in the MDL.

g. *Yaz, Yasmin and Ocella Contraceptive Cases Coordinated Proceeding (JCCP) No. 4608*, pending in Los Angeles County Superior Court, State of California. Andrus Anderson represents dozens of clients bringing claims against Bayer Corporation, among others, for their injuries resulting from the use of Yaz, Yasmin or Ocella birth control. Ms. Andrus was appointed to the Plaintiffs’ Steering Committee in the case.

h. *In re Ortho Evra Products Liability Litigation*, MDL No. 1742, United States District Court for the Northern District of Ohio. Andrus Anderson represented more than twenty individual clients and was actively involved in the Multi-District Litigation (“MDL”) regarding the Ortho Evra birth control patch and women’s health problems resulting from the use of the Ortho Evra birth control patch. The Ortho Evra patch, manufactured by Ortho-McNeil and Johnson & Johnson, has been found to increase the risk of stroke and dangerous blood clots, and has been linked to strokes, heart attacks, and deaths in women. Ms. Andrus was appointed as a member of the MDL Plaintiffs’ Steering Committee.

Consumer Protection

k. *Siqueiros, et al. v. General Motors LLC*, Case No. 16-cv-07244-EMC, United States District Court for the Northern District of California. Andrus Anderson and their co-counsel represent owners of 2010-2013 GM vehicles fitted with GM’s defective Generation IV 5.3 Liter V8 Vortec 5300 engines. The vehicles defects lead to excessive oil consumption resulting in engine damage and placing consumers in danger. Ms. Anderson was on the trial team that achieved a plaintiff verdict of over \$102,000,000, after a jury trial in 2022.

l. *Kristen Nicodemus, et al., vs. Saint Francis Memorial Hospital, et al.*, San Francisco Superior Court Case No. CGC-13-531076 (“*Case*”), alleged that Ciox Health, LLC f/k/a Healthport Technologies, LLC’s (“Ciox/HealthPort”) charged copy-cost fees in excess of the “reasonable rates” set forth in California Evidence Code section 1158 (“Section 1158”) were improperly charged when responding to an attorney’s pre-litigation requests to a hospital for their client’s medical records in advance of litigation (“Section 1158 Requests”). Andrus Anderson LLP was co-lead counsel in the case. A settlement in 2020 provided refunds for overcharges.

m. *Ralston v. Mortgage Investors Group, Inc., Countrywide Home Loans, Inc., et al.*, Case No. 08-00536 JF, United States District Court for the Northern District of California. Ms. Anderson was co-lead counsel in this class action which resulted in a settlement of more than \$100,000,000 for California borrowers. The lawsuit alleged that Countrywide Home Loans Inc. and Mortgage Investors Group sold certain Pay Option ARM loans, while failing to disclose, among other critical information, the true interest rate on the loan and that negative amortization was certain to occur if the borrower adhered to the payment schedule provided by the defendants.

n. *Fox v. Nissan North American Inc.*, Case No. GCG-09-490470, California Superior Court, County of San Francisco. Ms. Anderson was co-lead counsel representing a class of California owners of 2001-2005 Nissan Pathfinders, Altimas and Sentras manufactured with defective power valve screws that are prone to loosen and detach, resulting in engine failure and/or loss of control of the vehicles. At settlement, Nissan notified class members of the defect and individual class members will receive \$500-\$3000 in compensation for their out-of-pocket expenses.

o. *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, Case No. 09-05418 RS, United States District Court for the Northern District of California, and *Washington v. Toyota Motor Sales, U.S.A., Inc.*, Superior Court of California, County of Santa Clara, Case No. 1-10-CV-164200. Ms. Anderson was class counsel representing a class of 2001-2003 Toyota RAV4 vehicle owners who experienced problems with the engine control modules (“ECMs”) or ECM-related damage to the transmissions. The settlement provided for an extended warranty and full reimbursement for class members who paid out-of-pocket to repair or replace the ECMs and/or transmissions.

p. *Honda/Michelin PAX Tire Litigation*. Andrus Anderson represented consumers in *Olson v. American Honda Motor Company, Inc.*, Case No. RG07341165, Alameda Superior Court; and

the federal cases consolidated into Multidistrict Litigation No. 1911, before Judge Roger Titus in the District of Maryland, where Andrus Anderson partner, Lori E. Andrus was appointed co-lead class counsel. The firm achieved a nationwide settlement, wherein class members were reimbursed for premature wear on their tires, received an extended warranty on PAX tires for the life of the vehicles, and additional safety features, including the opportunity to obtain a spare tire kit and enhanced emergency service. The litigation was expanded to include owners of certain Nissan vehicles equipped with the PAX Systems and tires.

Antitrust

a. *In re Lithium Ion Batteries Antitrust Litigation*, MDL No. 4:13-md-02420 YGR, United States District Court for the Northern District of California. Andrus Anderson represented indirect purchaser plaintiffs alleging that the major manufacturers of lithium ion batteries engaged in contract, combination or conspiracy to artificially inflate the prices of lithium ion batteries during the relevant time period. Ms. Anderson was appointed Liaison Counsel for the indirect purchaser plaintiffs in the coordinated proceedings.

b. *In re Cathode Ray Tube (CRT) Antitrust Litigation*, MDL No. 1917 SC, United States District Court for the Northern District of California. Andrus Anderson played a core role as counsel for the indirect purchaser class in this antitrust case against the major manufacturers of CRTs and CRT products, including televisions and monitors. The indirect purchaser plaintiffs allege that defendants engaged in contract, combination or conspiracy to artificially inflate the prices of CRTs during the relevant time period. The Court granted final approval of more than \$567 million in settlements in 2016.

c. *In re Domestic Air Travel Antitrust Litigation*, MDL No. 2656, United States District Court for the District of Columbia. Andrus Anderson represents a class of consumer who

purchased airline tickets for domestic travel directly from the defendants. The firm has performed significant case management and discovery in the case. Plaintiffs allege, among other things, that the four largest U.S. airlines conspired to raise ticket prices by agreeing to limit capacity on their flights.

d. *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 07-cv-01827 SI, United States District Court for the Northern District of California. Andrus Anderson played a significant role as class counsel for the indirect purchaser plaintiffs in this antitrust case against the major manufacturers of Thin Film Transistor Liquid Crystal Display panels (“TFT-LCD”) and TFT-LCD products, such as flat screen televisions and monitors. The indirect purchaser plaintiffs alleged that defendants engaged in contract, combination or conspiracy to artificially inflate the prices of TFT-LCD panels. Class counsel achieved settlements of more than \$1 billion on behalf of the indirect purchaser classes they represent.

e. *Precision Associates, Inc., et al. v. Panalpina World Transportation (Holding) Ltd., et al.*, Case No. 08-cv-00042 (JG) (VVP), United States District Court for the Eastern District of New York. Andrus Anderson represented plaintiffs who purchased freight forwarding services from freight forwarding companies. Plaintiffs allege that freight forwarders conspired to fix the price of associated surcharges in violation of federal antitrust laws.

f. *In re Transpacific Passenger Air Transportation Antitrust Litigation*, Case No. 07-cv-5634-CRB, in the United States District Court for the Northern District of California. Andrus Anderson performed significant work in the case, representing plaintiffs of transpacific airline travel who allege that the defendant airline carriers conspired to fix the prices of air passenger travel including associated surcharges.

Partner Biographies

JENNIE LEE ANDERSON

Jennie Lee Anderson has more than 20 years of experience representing plaintiffs in class actions, employment discrimination, wage theft, mass torts, personal injury, antitrust, and consumer protection matters. Ms. Anderson has proven herself an effective advocate and has led or held leadership roles in multiple state and nationwide litigations.

Prior to co-founding Andrus Anderson in 2007, Ms. Anderson practiced complex litigation in the San Francisco offices of Lief, Cabraser, Heimann & Bernstein, LLP and the law firm currently known as Robbins, Geller, Rudman & Dowd, LLP, where she prosecuted multiple class action and complex cases on behalf of plaintiffs in the areas of consumer protection, antitrust, employment, securities and product liability. In addition, Ms. Anderson has considerable knowledge of habeas corpus proceedings, having represented indigent inmates on death row at the Habeas Corpus Resource Center in San Francisco. Ms. Anderson has been recognized as a Northern California Super Lawyer for the last thirteen consecutive years. She has also been honored by Law Dragon 500 as a top litigator in both plaintiff-side employment litigation and consumer protection.

Outside the courtroom, Ms. Anderson on the Board of Governors for the American Association for Justice (“AAJ”) and is the past chair of the AAJ Class Action Litigation Group, of the AAJ Antitrust Litigation Group, and the AAJ Business Torts Section. Ms. Anderson is also a Past President of the National Civil Justice Institute and sits on the Board of Legal Aid at Work. She is a frequent author and lecturer on a variety of topics regarding class actions, employment and consumer protection law, and complex litigation.

Originally from Indianapolis, Indiana, Ms. Anderson earned her Bachelor of Arts degree from the University of Wisconsin-Madison in 1991 and her Juris Doctor degree from University of California, College of the Law SF in 1999.

LORI ERIN ANDRUS

Born in Lafayette, Louisiana, Andrus Anderson partner Lori E. Andrus is a member of the bars of California, the District of Columbia, and New York. She is admitted to practice in the United States District Courts for the districts of Northern, Southern, Central and Eastern Districts of California. Ms. Andrus has received Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Ms. Andrus has extensive experience representing consumers and employees in individual and class actions, in addition to her work representing individuals harmed by defective pharmaceutical and medical devices in mass tort litigation. In recognition of her effective leadership skills, Ms. Andrus currently serves, or has served as lead counsel, co-lead counsel, liaison counsel or as a member of the Plaintiffs' Steering Committee in multiple state and nationwide class actions and multidistrict litigations.

Ms. Andrus serves as President Elect of the American Association for Justice. She is a frequent author and lecturer on a variety of topics regarding equal pay, class actions and complex litigation. In 2013, she was recognized as the Woman Consumer Advocate of the Year by the Consumer Attorneys of California and in 2015 was named as one of 75 Outstanding Women Lawyers nationwide by the National Law Journal.

Ms. Andrus earned her Bachelor of Arts degree from the Boston University, *cum laude*, and graduated from Duke University School of Law with honors. Between college and law school, Ms. Andrus worked for two Members of Congress in Washington, D.C., first for U.S.

Representative Rick Boucher from Virginia, then for U.S Representative James Hayes, from Louisiana.

Prior to co-founding Andrus Anderson, Ms. Andrus was a partner at the law firm of Lief, Cabraser, Heimann & Bernstein, LLP, where she litigated multiple class actions and complex matters in state and federal courts across the country in the areas of mass tort, product liability, loan discrimination, consumer fraud and employment.

Ex. E

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 AGUILAR AUTO REPAIR, INC. and
21 CENTRAL COAST TOBACCO CO., LLC,
22 individually and on behalf of all others
23 similarly situated,

24 **Plaintiffs,**

25 v.

26 WELLS FARGO BANK, N.A., PRIORITY
27 TECHNOLOGY HOLDINGS, INC.,
28 PRIORITY PAYMENT SYSTEMS, LLC and
THE CREDIT WHOLESALE COMPANY,
INC.,

Defendants.

Case No. 3:23-cv-06265-AMO

**DECLARATION OF FRANCISCO
AGUILAR IN SUPPORT OF PETITION
FOR ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS**

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I, Francisco Aguilar, declare as follows:

1. I am the owner and operator of Aguilar Auto Repair, Inc. I have personal knowledge of the facts set forth in this declaration and, if called to testify, could and would testify competently thereto.

2. I have spent significant time participating in this litigation. Throughout the case, I have frequently conferred with my attorneys, answering factual questions, and discussing strategy. I have reviewed pleadings and other documents filed in the case, as well.

3. Participating in the mediation conference was particularly demanding because I operate my auto repair shop myself. As a result, I was forced to close my auto shop to travel from my home near Los Angeles to the San Francisco area to attend the mediation conference. Closing my shop reduces the amount of work I can do in a year, which reduces my income and risks losing new customers while I am unavailable.

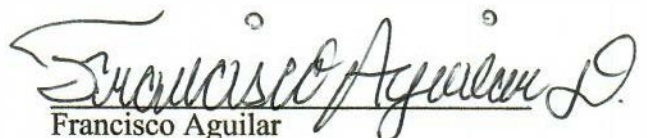
4. The mediation conference, and the travel involved, took two full days of travel, including the all-day mediation conference itself. I was an active participant in the mediation conference, both in discussion with Magistrate Judge Ryu, as well as my attorneys. My involvement with the settlement process has continued through my review of draft settlement agreements, class notices, and similar documents.

5. As a result of these activities, I have expended dozens of hours actively participating in this litigation and lost the ability to serve my customers while my business was temporarily closed due to my participation.

6. The incentive award being requested on my behalf is not conditioned on my support for the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 18, 2025


Francisco Aguilar

Ex. F

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AGUILAR AUTO REPAIR, INC. and
CENTRAL COAST TOBACCO CO., LLC,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., PRIORITY
TECHNOLOGY HOLDINGS, INC.,
PRIORITY PAYMENT SYSTEMS, LLC and
THE CREDIT WHOLESALE COMPANY,
INC.,

Defendants.

Case No. 3:23-cv-06265-AMO

**DECLARATION OF WYATT MILLER IN
SUPPORT OF PETITION FOR
ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS**

□

DECLARATION OF F. WYATT MILLER

CASE NO. 3:23-cv-06265-AMO

I, F. Wyatt Miller, declare as follows:

1. I am the owner and operator of Central Coast Tobacco Co., LLC. I have personal knowledge of the facts set forth in this declaration and, if called to testify, could and would testify competently thereto.

2. I have spent several dozen hours participating in this litigation, between speaking with my lawyers, reviewing documents, answering questions, and reviewing our litigation strategy.

3. The most demanding aspect of my participation was leaving my business to attend the mediation conference. With travel and the all-day mediation conference, I had to leave my business for three days at a crucial time of year for us.

4. Central Coast Tobacco operates a tobacco and wine shop in Monterey named Hellam's Tobacco and Wine Shop. We are California's oldest purveyor of cigars and other tobacco products. As owner-operator, I work a regular schedule in the shop attending to customers and making sales.

5. Unfortunately, the mediation was scheduled during an annual three-day car show called Pebble Beach Concours d'Elegance, which features historic, rare, and exotic cars. The show draws large crowds to our community and generates millions of dollars in revenue for local businesses. It is the biggest event of our year and essential to the commercial success of our shop.

6. My absence for two days of the event hurt our shop's sales. We have an excellent staff, but as operator I have the most knowledge about our products and drive the most revenue. For example, after the mediation, I returned for the last day of the show and led our team's week with five individual sales of boxes of cigars over \$1,000 each. Additionally, I was required to replace myself with an employee who would otherwise not have been required, another expense. The additional expense and loss of sales cost us thousands of dollars.

7. I was pleased to participate actively in the mediation conference and join the discussions with Magistrate Judge Ryu and my attorneys. I believe I helped create a strong positive result for the class. I have continued to interact with my attorneys to manage the final details of the settlement.

8. The incentive award being requested on my behalf is not conditioned on my support for the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 13, 2024



F. Wyatt Miller