

Honorable Thomas S. Zilly

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SARAH CONNOLLY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

UMPQUA BANK,

Defendant.

NO. 2:15-CV-00517-TSZ

**PLAINTIFF'S UNOPPOSED  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND INCENTIVE AWARD**

**Note on Motion Calendar:  
February 15, 2019**

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

**TABLE OF CONTENTS**

1

2 **Page No.**

3 I. INTRODUCTION ..... 1

4 II. BACKGROUND ..... 1

5 A. Summary Of The Claims And Class Counsel’s Efforts..... 1

6 B. The Settlement ..... 4

7 C. Class Counsel’s Experience And Efforts to Secure Benefits for the Class ..... 5

8 III. AUTHORITY AND ARGUMENT ..... 6

9 A. The Requested Attorneys’ Fees And Costs Are Reasonable ..... 6

10 1. Percentage of the Fund Analysis Supports Counsel’s Fee Request..... 7

11 a) Class Counsel Achieved An Excellent Settlement For The Class ..... 8

12 b) Class Counsel Assumed A Significant Risk Of No Recovery..... 9

13 c) Class Counsel’s Skill And Quality Of Work Delivered A Recovery For  
The Class..... 10

14 d) Awards In Similar Cases Show That The Requested Fee Is Reasonable ..... 11

15 2. Lodestar Analysis Confirms That The Requested Fee Is Reasonable ..... 12

16 a) Class Counsel’s Hourly Rates Are Reasonable ..... 13

17 b) Class Counsel Expended A Reasonable Number Of Hours Litigating The  
Case..... 14

18 c) Class Counsel’s Requested Fee Reflects a “Negative” Multiplier ..... 15

19 3. Class Counsel’s Litigation Costs Were Necessarily And Reasonably Incurred... 15

20 4. The Named Plaintiff’s Incentive Award Of \$2,500 Should Be Approved ..... 16

21 IV. CONCLUSION..... 17

22

23

24

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Aceves v. Autozone Inc.*,  
 No. 5:14-cv-2032, ECF No. 58 (C.D. Cal. Nov. 18, 2016) .....5

*In re Aftermarket Auto. Lighting Prods. Antitrust Litig.*,  
 No. 09 MDL 2007, 2014 WL 12591624 (C.D. Cal. Jan. 10, 2014) .....9

*In re Bluetooth Headset Prods. Liab. Litig.*,  
 654 F.3d 935 (9th Cir. 2011) .....7, 12, 13

*Blum v. Stenson*,  
 465 U.S. 886 (1984).....13

*Brown v. Lowe’s*,  
 5:13-cv-00079 (W.D.N.C. Nov. 1, 2016) .....5

*In re Capital One Tel. Consumer Prot. Act Litig.*,  
 80 F. Supp. 3d 781 (N.D. Ill. 2015) .....12

*Chakejian v. Equifax Info. Servs.*,  
 LLC, 275 F.R.D. 201 (E.D. Pa. 2011) .....4

*In re Coordinated Pretrial*,  
 109 F.3d at 607 .....7

*Corson v. Toyota Motor Sales U.S.A., Inc.*,  
 No. CV 12-8499-JGB, 2016 WL 1375838 (C.D. Cal. Apr. 4, 2016) .....16

*Craft v. Cnty. of San Bernardino*,  
 624 F. Supp. 2d 1113 (C.D. Cal. 2008) .....15

*Dennings v. Clearwire Corp.*,  
 2013 WL 1858797 (W.D. Wash. May 3, 2013).....16

*Destefano v. Zynga, Inc.*,  
 No. 12-cv-04007-JSC, 2016 WL 537946 (N.D. Cal. Feb. 11, 2016) .....10

*Feist v. Petco Animal Supplies, Inc.*,  
 C.A. No. 3:16-cv-01369-H-MSB, 2018 WL 6040801 (S.D. Cal. Nov. 16,  
 2018) .....9

1 *Ford v. CEC Entertainment Inc.*,  
 No. 14cv677 JLS (JLB), 2015 WL 11439033 (S.D. Cal. Dec. 14, 2015) .....7

2

3 *Glass v. UBS Fin. Servs., Inc.*,  
 331 F. App’x 452 (9th Cir. 2009) .....7, 12

4 *Gustafson v. Valley Ins. Co.*,  
 No. CV 01-1575-BR, 2004 WL 2260605 (D. Or. Oct. 6, 2004) .....11

5

6 *Hopkins v. Stryker Sales Corp.*,  
 No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....16

7 *Ikuseghan v. Multicare Health Sys.*,  
 No. C 14-5539 BHS, 2016 WL 4363198 (W.D. Wash. Aug. 16, 2016) .....12

8

9 *James v. JPMorgan Chase Bank, N.A.*,  
 No. 8:15-cv-2424-T-23 JSS, 2017 WL 2472499 (M.D. Fla. June 5, 2017) .....12

10 *Jenson. v. First Tr. Corp.*,  
 No. CV 05-3124 ABC, 2008 WL 11338161 (C.D. Cal. June 9, 2008) .....10

11 *Knight v. Red Door Salons, Inc.*,  
 No. 08-01520, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009) .....11

12

13 *Krakauer v. Dish Network, L.L.C.*,  
 No. 1:14-cv-00333, 2018 WL 6305785 (M.D.N.C., 2018) .....12

14 *Landrum v. Acadian Ambulance Serv., Inc.*,  
 No. 14-cv-1467, ECF No. 37 (S.D. Tex. Nov. 5, 2015) .....5

15

16 *Lees v. Anthem Ins. Cos., Inc.*,  
 No. 4:13-cv-1411 SNLJ, 2015 WL 3645208 (E.D. Mo. June 10, 2015).....12

17 *Lofton v. Verizon Wireless (VAW) LLC*,  
 No. C 13-05665 YGR, 2016 WL 7985253 (N.D. Cal. May 27, 2016).....11

18

19 *Lushe v. Verengo, Inc.*,  
 No. CV13-07632-AB (C.D. Cal. May 2, 2016).....14

20 *Manuel v. Wells Fargo Bank*,  
 N.A., No. 3:14-cv-238 (E.D. Va. Dec. 17, 2015) .....9

21 *Mark v. Valley Ins. Co.*,  
 No. CV 01-1575-BR, 2005 WL 1334374 (D. Or. May 31, 2005).....11

22

23 *Meilleur v. AT&T Corp.*  
 C11-01025 MJP (W.D. Wash. Mar. 2013) .....14

24

1 *Melito v. Am. Eagle Outfitters, Inc.*,  
 No. 14-cv-2440 (VEC), 2017 WL 3995619 (S.D.N.Y. Sept. 11, 2017).....12

2

3 *Moore v. Aerotek, Inc.*,  
 No. 2:15-cv-2701, 2017 WL 2838148 (S.D. Ohio June 30, 2017).....4

4 *Moreno v. City of Sacramento*,  
 534 F.3d 1106 (9th Cir. 2008) .....13

5

6 *Nesbitt v. Postmates, Inc.*,  
 No. CGC-15-547146 (Cal. Sup. Ct. San Francisco County Nov. 8, 2017) .....4

7 *In re Omnivision Techs., Inc.*,  
 559 F. Supp. 2d 1036 (N.D. Cal. 2008) .....7, 9

8 *In re Online DVD-Rental Antitrust Litig.*,  
 779 F.3d 934 (9th Cir. 2015) .....9, 16, 17

9

10 *Patel v. Trans Union, LLC*,  
 No. 14-cv-00522-LB, 2018 WL 1258194 (N.D. Cal. Mar. 11, 2018).....11

11 *Patrick v. Interstate Mgmt. Co., LLC*,  
 No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. Apr. 29, 2016) .....5

12

13 *Pelletz v. Weyerhaeuser Co.*,  
 592 F. Supp. 2d 1322 (W.D. Wash. 2009).....17

14 *Perkins v LinkedIn Corp.*,  
 No. 13-cv-04303-LHK, 2016 WL 613255 (N.D. Cal. Feb. 16, 2016) .....9

15

16 *Pokorny v. Quixtar, Inc.*,  
 No. C 07–0201 SC, 2013 WL 3790896 (N.D. Cal. July 18, 2013) .....8

17 *Razilov v. Nationwide Mut. Ins. Co.*,  
 No. 01-CV-1466-BR, 2006 WL 3312024 (D. Or. Nov. 13, 2006).....11

18 *Rinky Dink, Inc. v. Electronic Merchant Systems, Inc.*,  
 No. C13-1347-JCC (W.D. Wash. Apr. 19, 2016).....14

19

20 *Rinky Dink, Inc. v. World Business Lenders, LLC*,  
 No. 2:14-cv-0268-JCC (W.D. Wash. May 31, 2016) .....14

21 *Santos v. Jaco Oil Co.*,  
 No. 1:14-CV-0738 -JLT, 2015 WL 5732829 (E.D. Cal. Sept. 29, 2015).....11

22

23 *Spokeo, Inc. v. Robbins*,  
 136 S. Ct. 1540 (2016).....2

24

1 *Staton v. Boeing Co.*,  
 327 F.3d (9th Cir. 2013) .....17

2

3 *Steiner v. Am. Broad. Co.*,  
 248 Fed. Appx. 780 (9th Cir. 2007).....15

4 *Trevino v. Gates*  
 99 F.3d 911 (9th Cir. 1996) .....13

5

6 *Van Vranken v. Atl. Richfield Co.*,  
 901 F. Supp. 294 (N.D. Cal. 1995) .....15

7 *Villalpando v. Exel Direct, Inc.*,  
 2016 WL 7740854 (N.D. Cal. Dec. 12, 2016).....14

8 *Vincent v. Hughes Air W.*,  
 557 F.2d 759 (9th Cir. 1977) .....16

9

10 *Vizcaino v. Microsoft Corp.*,  
 290 F.3d 1043 (9th Cir. 2002) .....7, 8, 10, 12

11 *Walker v. McClane/Midwest, Inc.*,  
 No. 2:14-cv-04315 (W.D. Mo. Oct. 23, 2015) .....5

12

13 *In re Yahoo Mail Litig.*,  
 No. 13-CV-4980-LHK, 2016 WL 4474612 (N.D. Cal. Aug. 25, 2016).....17

14 *Zwicker v. Gen. Motors Corp.*,  
 No. C07-0291 JCC (W.D. Wash. 2008) .....14

15

16 **Statutes**

17 15 U.S.C. §§ 1681a-1681x..... *passim*

18 15 U.S.C.§ 1681n(a)(1).....3

19 15 U.S.C.§ 1681o(a)(1).....3

20 28 U.S.C. § 1292(b) .....2

21 **Rules**

22 Fed. R. Civ. P. 23(h) .....16

23

24

1 **I. INTRODUCTION**

2 Plaintiff and Class Counsel litigated this FCRA class action over more than three years,  
3 engaged in mediation and extensive negotiations with Defendant Umpqua Bank, and ultimately  
4 achieved a favorable settlement on behalf of the Settlement Class. The Settlement, if approved,  
5 will provide cash awards to Settlement Class Members, immediately, without the need for a  
6 claim form. To compensate them for their efforts, Class Counsel request a fee award of \$97,500,  
7 30% of the \$325,000 Settlement Fund, plus reimbursement for litigation costs of \$6,000. Class  
8 Counsel's request accounts for the results they obtained for the Class given the risks they faced  
9 in prosecuting this action and the quality of their work. A lodestar crosscheck confirms the  
10 reasonableness of their request, as the amount requested is substantially less than Class  
11 Counsel's lodestar.

12 Class Counsel also request that the Court approve an incentive award to the Plaintiff,  
13 Sarah Connolly, in the amount of \$2,500 for her efforts on behalf of the Class. Ms. Connolly has  
14 participated in this action since its inception. She assisted in Class Counsel's investigation,  
15 responded to written discovery requests, and was ready and willing to testify at trial. A \$2,500  
16 incentive award for her efforts is reasonable and appropriate.

17 **II. BACKGROUND**

18 **A. Summary Of The Claims And Class Counsel's Efforts**

19 Plaintiff filed this putative class action on April 4, 2015, alleging that Umpqua's  
20 background check practices violated the FCRA, 15 U.S.C. §§ 1681a-1681x. Dkt. No. 1. Class  
21 Counsel's work on the case began before the action commenced. The action presented a number  
22 of potential litigation challenges.

23 From the outset, the case was actively litigated. On July 9, 2015, Umpqua moved to  
24 dismiss the complaint for failure to state a claim. Dkt. No. 20. That motion was denied in part

1 and allowed in part on October 23, 2015. Dkt. No. 38. The Court dismissed one count relating to  
2 the failure to provide adverse action notices. On December 31, 2015, Umpqua filed a motion to  
3 stay the litigation pending the outcome of the Supreme Court's ruling in *Spokeo, Inc. v. Robbins*,  
4 136 S. Ct. 1540 (2016), which was to address what constitutes an injury and standing when a  
5 plaintiff asserts a violation of a statutory right but no "concrete" injury. Dkt. No. 42. Ms.  
6 Connolly opposed the stay request on the grounds that she alleged concrete injuries. Dkt. No. 44.  
7 The Court granted the stay on January 26, 2016. Dkt. No. 46.

8         On June 21, 2016, after the Supreme Court decided *Spokeo* and the stay was lifted,  
9 Umpqua filed a new motion to dismiss for lack of subject matter jurisdiction, based on the  
10 *Spokeo* ruling, and arguing that Ms. Connolly had not adequately alleged an injury for purposes  
11 of standing under the test established in *Spokeo*. Dkt. No. 49. That motion was denied on  
12 November 9, 2016, after oral argument. Dkt. No. 63. Shortly thereafter Umpqua filed a motion  
13 for certification pursuant to 28 U.S.C. § 1292(b) and to stay the case. Dkt. No. 65. That motion  
14 was denied as well. Dkt. No. 68. On January 25, 2017, Plaintiff filed a motion to amend the  
15 complaint to clarify and further support her allegations of injury and willfulness. Dkt. No. 70.  
16 That motion was granted over Defendant's objection. Dkt. No. 76.

17         Later, and well into the litigation, Umpqua disclosed that some class members signed  
18 agreements which it claimed required them to arbitrate their FCRA claims. *See* Declaration of  
19 Elizabeth Ryan ("Ryan Decl.") ¶ 10. While Plaintiff believes there are grounds to challenge the  
20 arbitration agreements, their existence created additional uncertainty, including to class  
21 certification, and would require further motions practice and delay if Plaintiff was to continue  
22 litigating the case.

23         In March and April of 2017, Umpqua produced a number of additional documents in  
24



1 response to Plaintiff's discovery requests. *See* Ryan Decl. ¶ 11 The documents related to the  
2 varying disclosure forms used to obtain credit and background checks on job applicants and  
3 employees, and the size of the potential class. *See id.*

4 In July 2017, the parties agreed to participate in an in person mediation in Seattle with  
5 Teresa A. Wakeen, J.D. Prior to mediating, Plaintiff requested and Umpqua agreed to share  
6 additional information regarding the size of the potential settlement class, as well as information  
7 about its background check practices and policies throughout the class period. *Id.* ¶ 13. Plaintiff's  
8 counsel entered mediation with a comprehensive understanding of the class claims and  
9 Umpqua's defenses. Although no agreement was reached during the mediation, the parties  
10 continued to engage in substantive discussions in the months that followed. *Id.* ¶ 14. Ultimately,  
11 the parties were able to reach an agreement in December 2017 that was preliminarily approved  
12 by the Court on August 28, 2018. Dkt. No. 99.

13 Litigating the claims in this case would not be risk-free. Plaintiff is confident in the  
14 strength of her case but also aware of the risks related to getting a class certified in a case like  
15 this, and maintaining certification, where the defendant alleges that varying policies existed, and  
16 where arbitration has been raised. Moreover, even if Plaintiff prevailed on certification, she  
17 would still have had to prove that Umpqua's violation of the FCRA was willful, which would  
18 require the parties to potentially undergo additional discovery and briefing or a jury trial. A  
19 FCRA plaintiff can recover only when the defendant has acted negligently or willfully, and when  
20 the defendant's violation was at most negligent, recovery is limited to actual damages. 15  
21 U.S.C. §§ 1681n(a)(1), 1681o(a)(1). Because Plaintiff did not allege any actual damages, she  
22 would have been required to prove that Umpqua's conduct was willful to recover statutory  
23 damages for herself and any purported class. *See Chakejian v. Equifax Info. Servs., LLC*, 275  
24

1 F.R.D. 201, 212 (E.D. Pa. 2011) (proving willfulness in FCRA case was “a high hurdle to clear”  
2 and weighed in favor of settlement approval).

3 **B. The Settlement**

4 The Settlement Agreement requires Umpqua to pay \$325,000 to establish a common  
5 Settlement Fund. The Settlement Fund will be used to make payments to Settlement Class  
6 Members and to pay, subject to Court approval, a class representative incentive award in the  
7 requested amount of \$2,500, attorneys’ fees in the requested amount of \$97,500, the out-of-  
8 pocket litigation costs that Plaintiff’s counsel incurred of \$6,000, and notice and settlement  
9 administration costs, which are estimated at \$24,000. The Settlement Fund is non-reversionary,  
10 ensuring that the monetary benefits will go to the Settlement Class; none of the Settlement Fund  
11 will be returned to Umpqua. If the Court approves counsel’s requested fees, costs, and incentive  
12 award and notice costs, approximately \$194,980 will remain in the Settlement Fund. The  
13 Settlement calls for this amount to be divided equally among all Settlement Class Members who  
14 do not opt out. Plaintiff estimates that each Settlement Class Member will receive approximately  
15 \$44. Ryan Decl. ¶ 18.

16 This recovery compares very favorably with other settlements that have been approved in  
17 similar FCRA disclosure violation class actions. *See Nesbitt v. Postmates, Inc.*, No. CGC-15-  
18 547146 (Cal. Sup. Ct. San Francisco County Nov. 8, 2017) (disclosure class members received  
19 approximately \$21.80 and adverse action class members received approximately \$65.40); *Moore*  
20 *v. Aerotek, Inc.*, No. 2:15-cv-2701, 2017 WL 2838148, at \*4 (S.D. Ohio June 30, 2017) (per-  
21 capita gross recovery of \$25 in case involving a stand-alone disclosure claim and a claim that  
22 employer did not provide a copy of consumer report); *Aceves v. Autozone Inc.*, No. 5:14-cv-  
23 2032, ECF No. 58 (C.D. Cal. Nov. 18, 2016) (final approval of FCRA settlement with gross  
24 recovery of \$20 per disclosure class member); *Brown v. Lowe’s*, 5:13-cv-00079, ECF No. 173

1 (W.D.N.C. Nov. 1, 2016) (granting final approval of a pre-adverse action claim in which the  
2 gross recovery was \$60 per class member); *Patrick v. Interstate Mgmt. Co., LLC*, No. 8:15-cv-  
3 1252, ECF No. 42 (M.D. Fla. Apr. 29, 2016) (final approval of FCRA disclosure claim where  
4 class members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467,  
5 ECF No. 37 (S.D. Tex. Nov. 5, 2015) (final approval of FCRA disclosure settlement of \$10 per  
6 person); *Walker v. McClane/Midwest, Inc.*, No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. Oct. 23,  
7 2015) (final approval of FCRA settlement in which disclosure class members recovered \$24).

### 8 **C. Class Counsel's Experience And Efforts to Secure Benefits for the Class**

9 The specific qualifications of Class Counsel are set forth in the accompanying  
10 Declarations of Elizabeth Ryan and Nicholas Ortiz and are incorporated herein. As a result of  
11 their experience in this area, Class Counsel was able to efficiently and effectively litigate this  
12 action and had the credibility necessary to negotiate a fair and reasonable settlement on behalf of  
13 the Class.

14 Class Counsel has worked without compensation or reimbursement for their time and  
15 out-of-pocket expenses necessary to position this case for settlement. Ryan Decl. ¶ 21. Before  
16 taking on this case, Plaintiff and Class Counsel negotiated a customary contingency fee of up to  
17 one-third, with the understanding that this amount was an appropriate incentive for Class  
18 Counsel to take on the financial risks involved in the representation. *Id.* ¶ 22. Class Counsel also  
19 agreed to advance all costs of this litigation. *Id.* ¶ 23. Plaintiff and Class Counsel agreed that  
20 Class Counsel would receive reimbursement for their costs from the value of a successful  
21 settlement or judgment. *Id.* ¶ 24. In the event that Class Counsel did not successfully resolve this  
22 matter, they would have been paid nothing and would have been required to absorb all costs that  
23 were advanced as well as the value of their time.

24 Although the parties settled this case before trial, Class Counsel has invested a substantial

1 amount of time and resources investigating, litigating, and negotiating a resolution of this action.  
2 *Id.* ¶ 37. Tasks performed by Class Counsel thus far include: (1) investigating the claims; (2)  
3 communicating with Plaintiff; (3) researching and drafting the complaint; (4) researching and  
4 drafting responses to Defendant’s motions to dismiss, motion to stay, and motion for  
5 interlocutory review; (5) amending the complaint; (6) exchanging and reviewing discovery; (7)  
6 researching and drafting their mediation brief; (8) preparing for and participating in mediation;  
7 (9) engaging in extended settlement negotiations with Defendant; (10) drafting the Settlement  
8 Agreement and class notices; (11) drafting the preliminary approval brief; and (12) overseeing  
9 administration of the Settlement. Ryan Decl. ¶ 38.

10 Class Counsel’s fee summaries demonstrate the amount of time spent on this litigation.  
11 See Ryan Decl. ¶ 29; Declaration of Nicholas F. Ortiz (“Ortiz Decl.”) ¶ 5. To date, Class  
12 Counsel’s combined lodestar is \$181,907, more than the fee requested. Ryan Decl. ¶ 25. Class  
13 Counsel also anticipate contributing additional time and effort to this case, including drafting  
14 final approval papers, and continuing to oversee settlement administration. *Id.* ¶ 35.

### 15 **III. AUTHORITY AND ARGUMENT**

#### 16 **A. The Requested Attorneys’ Fees And Costs Are Reasonable**

17 Class Counsel requests that the Court approve a payment of \$97,500 in fees, and \$6,000  
18 for their actual, out-of-pocket expenses. Class Counsel fully disclosed to the Class their intent to  
19 request fees and costs, and the amount and manner in which such fees and costs would be paid,  
20 in the Court-approved notice.

21 Where, as here, counsel to a class action seek fees from the common fund, courts can use  
22 either the percentage-of recovery or lodestar method to determine a reasonable fee. *Vizcaino v.*  
23 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Bluetooth Headset Prods. Liab.*  
24 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“Though courts have discretion to choose which

1 calculation method they use, their discretion must be exercised to achieve a reasonable result.”);  
2 *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (observing  
3 that “use of the percentage method in common fund cases appears to be dominant”). While the  
4 percentage of fund method is more appropriate when a common fund has been created for the  
5 benefit of class members, *Glass v. UBS Fin. Servs., Inc.*, 331 F. App’x 452, 457 (9th Cir. 2009),  
6 Class Counsel’s request is reasonable under either method.

### 7 **1. Percentage of the Fund Analysis Supports Counsel’s Fee Request**

8 The percentage-of-the-fund method is the appropriate method for determining a  
9 reasonable fee in this case. The benefit to the Class is easily quantified. Class Counsel’s efforts  
10 resulted in a \$325,000 Settlement Fund, all of which will be distributed to Settlement Class  
11 Members after settlement administration expenses, court-approved fees and costs, and court-  
12 approved incentive award, are deducted.

13 The Ninth Circuit has instructed that, in common fund cases, a 25% attorneys’ fee award  
14 is a “benchmark figure” with common fund fees typically ranging from 20% to 30% of the fund.  
15 *In re Coordinated Pretrial*, 109 F.3d at 607 (citation omitted); *Vizcaino*, 290 F.3d at 1047-48.  
16 And several courts have observed, ‘most’ settlements involving a common fund [...] exceed the  
17 twenty-five percent benchmark.” *Ford v. CEC Entertainment Inc.*, No. 14cv677 JLS (JLB), 2015  
18 WL 11439033, at \*5 (S.D. Cal. Dec. 14, 2015) (citation omitted). Indeed, while “[t]he Ninth  
19 Circuit uses a 25% baseline in common fund class actions ... in most common fund cases, the  
20 award exceeds that benchmark, with a 30% award the norm absent extraordinary circumstances  
21 that suggest reasons to lower or increase the percentage.” *Pokorny v. Quixtar, Inc.*, No. C 07–  
22 0201 SC, 2013 WL 3790896, at \*1 (N.D. Cal. July 18, 2013), citing *In re Omnivision Techs.*  
23 *Inc.*, 559 F. Supp. 2d 1036, 1047–48 (N.D. Cal. 2007) (internal quotations omitted).

1 In determining an appropriate attorney fee award, a court should consider “all of the  
2 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. Relevant circumstances include: (1) the  
3 results achieved for the class, (2) the risk counsel assumed, (3) the skill required and the quality  
4 of the work, (4) the contingent nature of the fee, (5) whether the fee is above or below the market  
5 rate, and (6) awards in similar cases. *Id.* at 1048-50.

6 Consideration of “the circumstances of [this] case,” *Vizcaino*, 290 F.3d at 1048, confirm  
7 that an award of 30% is appropriate.

8 **a) Class Counsel Achieved An Excellent Settlement For The Class**

9 Cognizant of the challenges of this litigation that could have prevented Settlement Class  
10 Members from recovering anything, Class Counsel set their sights on a resolution that would  
11 ensure Settlement Class Members received some financial compensation for their injuries. As  
12 described above, they cleared multiple early procedural hurdles in defeating Umpqua’s motions  
13 to dismiss. They then focused on marshalling key evidence by serving discovery on Umpqua.  
14 They addressed Umpqua’s efforts to potentially derail the class action by raising the issue of  
15 arbitration.

16 By obtaining the documents most necessary to prove their claims, Class Counsel were in  
17 a good position to discuss settlement at the mediation with Ms. Wakeen in July 2017. Ryan Decl.  
18 ¶ 14. Although it took several additional months of negotiations to reach a Settlement, the parties  
19 agreed to a \$325,000 Settlement Fund that will pay Settlement Class Members approximately  
20 \$44 each. This is a highly favorable outcome for the class in any FCRA case. *See In re*  
21 *Omnivision*, 559 F. Supp. 2d at 1046 (“The overall result and benefit to the class from the  
22 litigation is the most critical factor in granting a fee award.”). The Settlement in this case is in  
23 line with (and in fact superior to many) other FCRA settlements in this circuit and around the  
24 country. *See, e.g.*, cases cited at II.B. *supra*, and *Feist v. Petco Animal Supplies, Inc.*, C.A. No.

1 3:16-cv-01369-H-MSB, 2018 WL 6040801 (S.D. Cal. Nov. 16, 2018) (approving FCRA  
 2 “disclosure” class with \$20 per class member recovery); *Manuel v. Wells Fargo Bank, N.A.*, No.  
 3 3:14-cv-238, ECF No. 118 (E.D. Va. Dec. 17, 2015) (class member recovery of \$35).

4 The efficiency with which Class Counsel obtained this Settlement is itself a benefit to the  
 5 Class. Courts recognize that classes benefit from resolution when “further litigation would have  
 6 delayed any potential recovery for the Class and have been costly and risky.”<sup>1</sup> *Perkins v LinkedIn*  
 7 *Corp.*, No. 13-cv-04303-LHK, 2016 WL 613255, at \*2 (N.D. Cal. Feb. 16, 2016). Among other  
 8 things, absent settlement, Plaintiff would have had to prevail at class certification, likely defend  
 9 against a motion for summary judgment, and then prevail at trial, and on appeal. *See also In re*  
 10 *Aftermarket Auto. Lighting Prods. Antitrust Litig.*, No. 09 MDL 2007, 2014 WL 12591624, at \*4  
 11 (C.D. Cal. Jan. 10, 2014) (recognizing the benefit of counsel’s “effective and efficient”  
 12 prosecution of the case).

13 **b) Class Counsel Assumed A Significant Risk Of No Recovery**

14 Class Counsel handled this case on a wholly contingency basis and undertook the risk of  
 15 no recovery. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015);  
 16 *Vizcaino*, 290 F.3d at 1048; *see also Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC, 2008 WL  
 17 11338161, at \*12 (C.D. Cal. June 9, 2008) (“Uncertainty that *any* recovery ultimately would be  
 18 obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly  
 19 the risk of non-payment or reimbursement of expenses, is important to determining a proper fee  
 20 award.” (internal citation omitted)). “This is especially true where, as here, class counsel has  
 21 significant experience in the particular type of litigation at issue; indeed, in such contexts, courts  
 22 have awarded an even higher 33 percent fee award.” *Id.* (citing *In re Heritage Bond Litig.*, No.

23 \_\_\_\_\_  
 24 <sup>1</sup> Although this action has been pending for approximately three years, it is in the relatively early stages of litigation because of the lengthy stay and multiple motions to dismiss.

1 02-ML-1475 DT, 2005 WL 1594403, at \*19 (C.D. Cal. June 10, 2005)). Class Counsel have  
 2 significant experience litigating consumer protection claims, including FCRA claims. Ryan Decl.  
 3 ¶ 31. And this litigation involved risk and uncertainty for the reasons discussed at 2-3 *supra*.

4 **c) Class Counsel’s Skill And Quality Of Work Delivered A**  
 5 **Recovery For The Class**

6 Despite the challenges involved, Class Counsel were able to litigate this case efficiently  
 7 because of their experience in litigating class action cases. Class Counsel have litigated dozens  
 8 of cases—achieving a successful resolution in many, but also losing some. Ryan Decl. ¶ 40. This  
 9 depth of experience with consumer claims and class action litigation allowed Class Counsel to  
 10 pursue the case and negotiate a settlement that capitalized on the claims’ strengths while taking  
 11 into account the risks of continued litigation. *See, e.g.*, Ryan Decl. ¶ 41.

12 “The quality of opposing counsel is also relevant to the quality and skill that class  
 13 counsel provided,” *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at \*17  
 14 (N.D. Cal. Feb. 11, 2016). Umpqua’s counsel indicated early in the litigation that it planned to  
 15 aggressively challenge Plaintiff’s claims, as demonstrated by the memoranda Umpqua filed in  
 16 support of its motions to dismiss. *See e.g.*, Dkt. No. 49. Class Counsel’s ability to negotiate a  
 17 favorable settlement despite the quality of work done by Umpqua’s counsel supports their fee  
 18 request. *See, e.g., Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL  
 19 7985253, at \*1 (N.D. Cal. May 27, 2016) (the “risks of class litigation against an able defendant  
 20 well able to defend itself vigorously” support an upward adjustment in the fee award); *Knight v.*  
 21 *Red Door Salons, Inc.*, No. 08-01520, 2009 WL 248367, at \*6 (N.D. Cal. Feb. 2, 2009) (where  
 22 defense counsel “understood the legal uncertainties in this case[] and were in a position to mount  
 23 a vigorous defense,” the favorable settlement was a “testament to Plaintiffs’ counsel’s skill”).  
 24



1                                   **d) Awards In Similar Cases Show That The Requested Fee Is**  
2                                   **Reasonable**

3                   An award of 30% of the common fund is consistent with fee awards in other FCRA class  
4 settlements in this circuit. *See, e.g., Santos v. Jaco Oil Co.*, No. 1:14-CV-0738 -JLT, 2015 WL  
5 5732829, at \*16 (E.D. Cal. Sept. 29, 2015) (in FCRA class action, awarding a fee of 33.3% of  
6 the \$300,000 settlement fund); *Patel v. Trans Union, LLC*, No. 14-cv-00522-LB, 2018 WL  
7 1258194, at \*8 (N.D. Cal. Mar. 11, 2018) (in FCRA class action, awarding a fee of 33.3% of the  
8 \$8 million settlement fund); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR, 2006 WL  
9 3312024, at \*1 (D. Or. Nov. 13, 2006) (awarding a fee of 30% of a \$19,242,000 settlement  
10 fund); *Mark v. Valley Ins. Co.*, No. CV 01-1575-BR, 2005 WL 1334374, at \*1 (D. Or. May 31,  
11 2005) (awarding a fee of 30% of a \$464,000.00 settlement fund); *Gustafson v. Valley Ins. Co.*,  
12 No. CV 01-1575-BR, 2004 WL 2260605, at \*2 (D. Or. Oct. 6, 2004) (awarding a fee of 30% of a  
13 \$282,003.62 settlement fund).

14                   Moreover, courts in this circuit and around the country frequently award fees equal to  
15 30% or more of the settlement fund in consumer cases. Less than two years ago, the District  
16 Court for the Western District of Washington awarded a fee of 30% of a \$2.5 million settlement  
17 fund in a TCPA consumer class action. *Ikuseghan v. Multicare Health Sys.*, No. C 14-5539 BHS,  
18 2016 WL 4363198, at \*2 (W.D. Wash. Aug. 16, 2016). Other courts have made similar fee  
19 awards in consumer class actions. On December 3, 2018, Judge Eagles of the Middle District of  
20 North Carolina awarded Bailey & Glasser a fee of 33.33% in a TCPA class action that resulted in  
21 a \$61 million judgment, a fee that represented a 4.39 lodestar multiplier, and approved Bailey &  
22 Glasser's hourly rates. *Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-00333, 2018 WL 6305785  
23 (M.D.N.C., 2018). *See also, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp.  
24 3d 781, 804 (N.D. Ill. 2015) (determining that the typical attorneys' fee award in a consumer

1 case is 30% of the first \$10 million recovered for the class); *Melito v. Am. Eagle Outfitters, Inc.*,  
2 No. 14-cv-2440 (VEC), 2017 WL 3995619, at \*17 (S.D.N.Y. Sept. 11, 2017) (awarding a fee of  
3 30% of a \$14,500,000 settlement fund); *James v. JPMorgan Chase Bank, N.A.*, No. 8:15-cv-  
4 2424-T-23 JSS, 2017 WL 2472499, at \*2 (M.D. Fla. June 5, 2017) (awarding a fee of 30% of a  
5 \$3.75 settlement fund); *Lees v. Anthem Ins. Cos., Inc.*, No. 4:13-cv-1411 SNLJ, 2015 WL  
6 3645208, at \*4 (E.D. Mo. June 10, 2015) (awarding a fee of 34% of a \$4.75 million fund).

7 This is also not a case in which a megafund settlement would provide Class Counsel with  
8 a windfall. *See In re Bluetooth*, 654 F.3d at 942. Consideration of all the relevant factors  
9 confirms the reasonableness of a fee award of 30% of the settlement fund.

## 10 2. Lodestar Analysis Confirms That The Requested Fee Is Reasonable

11 In the Ninth Circuit, courts may use a rough calculation of the lodestar as a crosscheck to  
12 assess the reasonableness of an award based on the percentage method. *Vizcaino*, 290 F.3d at  
13 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar  
14 may provide a useful perspective on the reasonableness of a given percentage award.”); *see also*  
15 *Glass*, 331 F. App’x at 456-57 (affirming a fee award of 25% of a settlement fund with an  
16 “informal” lodestar crosscheck and despite “the relatively low time-commitment by plaintiff’s  
17 counsel” because “the district court did not abuse its discretion in giving weight to other factors,  
18 such as the results achieved for the class and the favorable timing of the settlement”). Courts use  
19 a two-step process in applying the lodestar method. First, the court calculates the “lodestar  
20 figure” by multiplying the number of hours reasonably expended by a reasonable rate. *Moreno v.*  
21 *City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Once the lodestar is determined, the  
22 amount may be adjusted to account for several factors, such as the benefit obtained for the class,  
23 the risk of nonpayment, the complexity and novelty of the issues presented, and awards in  
24

1 similar cases. *See In re Bluetooth*, 654 F.3d at 942. Foremost among the considerations is the  
2 benefit obtained for the class.” *Id.*

3 Here, Class Counsel’s total lodestar is \$181,907, and their total hours are 420. Their  
4 lodestar is significantly more than the requested fees, further supporting its reasonableness.

5 **a) Class Counsel’s Hourly Rates Are Reasonable**

6 In determining a reasonable rate, the court considers the “experience, skill and reputation  
7 of the attorney requesting fees.” *Trevino v. Gates* 99 F.3d 911, 924 (9th Cir. 1996). The court  
8 also considers “the prevailing market rates in the relevant community.” *Blum v. Stenson*, 465  
9 U.S. 886, 895 (1984). Class Counsel are experienced, highly regarded members of the bar with  
10 extensive expertise in the area of class actions and complex litigation involving consumer claims  
11 like those at issue here. Class Counsel set their rates for attorneys and staff members based on a  
12 variety of factors, including, among others: the experience, skill and sophistication required for  
13 the types of legal services typically performed; the rates customarily charged in the markets  
14 where legal services are typically performed; and the experience, reputation and ability of the  
15 attorneys and staff members. Ryan Decl. ¶ 32.

16 The rates charged for attorneys and staff members working on this matter range from  
17 \$200 to \$650, with the majority of the work performed by Ms. Ryan at an hourly rate of \$650;  
18 and Mr. Ortiz at an hourly rate of \$450. *See* Ryan Decl. ¶ 28; Ortiz Decl. ¶ 4. These are the  
19 rates Class Counsel charge in similar matters, and these rates have been approved by state and  
20 federal courts in other contingent matters. *See* Ryan Decl. ¶¶ 33-34; Ortiz Decl. ¶¶ 4, 6.

21 Class Counsel’s rates are also consistent with those approved by courts in awarding fees  
22 in other class action cases. *See Rinky Dink, Inc. v. World Business Lenders, LLC*, No. 2:14-cv-  
23 0268-JCC, Order Granting Final Approval of Class Settlement, ECF No. 92 at 7–8 (W.D. Wash.  
24 May 31, 2016) (approving partners’ rates of \$500–\$650 per hour); *Lushe v. Verengo, Inc.*, No.

1 CV13-07632-AB, Final Judgment and Order of Dismissal, ECF No. 137 at 5–6 (C.D. Cal. May  
 2 2, 2016) (approving hourly rates of \$400–\$650 for senior associates and partners); *Rinky Dink,*  
 3 *Inc. v. Electronic Merchant Systems, Inc.*, No. C13-1347-JCC, ECF Nos. 145 and 151 (W.D.  
 4 Wash. Apr. 19, 2016) (approving hourly rates up to of \$450–\$650 for senior associates and  
 5 partners); *Zwicker v. Gen. Motors Corp.*, No. C07-0291 JCC (W.D. Wash. 2008) (approving  
 6 partners’ hourly rates up to \$650).

7 **b) Class Counsel Expended A Reasonable Number Of Hours**  
 8 **Litigating The Case**

9 The number of hours that Class Counsel devoted to investigation, discovery, motion  
 10 practice, and achieving a favorable settlement is reasonable. “Generally, hours are reasonable if  
 11 they were ‘reasonably expended in pursuit of the ultimate result achieved in the same manner  
 12 that an attorney traditionally is compensated by a fee-paying client.’” *Villalpando v. Exel Direct,*  
 13 *Inc.*, 2016 WL 7740854, at \*2 (N.D. Cal. Dec. 12, 2016) (quoting *Hensley v. Eckerhart*, 461 U.S.  
 14 424, 431 (1983)). Class Counsel have provided the Court with a summary of their hours worked  
 15 on this case from their billing records. Ryan Decl. ¶ 29; Ortiz Decl. ¶ 5.

16 Class Counsel billed a total of 420 hours in three years of litigating and settling this case.  
 17 Ryan Decl. ¶ 35. Class Counsel worked collaboratively, but also took care to avoid duplication  
 18 of effort by dividing tasks according to each professional’s skill, experience, and availability,  
 19 both within and amongst the firms. *Id.* ¶ 39.

20 Class Counsel’s experience in litigating class action cases allowed them to quickly hone  
 21 in on the critical factual and legal issues and focus their informal and formal discovery efforts on  
 22 those issues. The key issues included Umpqua’s liability for its form disclosures Plaintiff alleged  
 23 violated the FCRA. Following targeted discovery, and with Umpqua’s motion for summary  
 24 judgment and Plaintiff’s motion for class certification on the horizon, the parties began

1 settlement discussions. Class Counsel put in the time necessary to develop the central facts of  
 2 their case and assess the legal issues that would shape the outcome but did so with the goal of  
 3 achieving an early resolution that ensured class members a recovery. Class Counsel's time  
 4 records reflect the reasonableness of their efforts.

5 **c) Class Counsel's Requested Fee Reflects a "Negative"**  
 6 **Multiplier**

7 The requested fee represents a negative multiplier of approximately .53 from Counsel's  
 8 lodestar. Courts in the Ninth Circuit have endorsed and approved attorneys' fee awards with  
 9 positive multipliers in excess of 3.5. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,  
 10 299 (N.D. Cal. 1995) (approving multiplier of 3.6); *Steiner v. Am. Broad. Co.*, 248 Fed. Appx.  
 11 780, 783 (9th Cir. 2007) (upholding 25% fee award yielding multiplier of 6.85, finding that it  
 12 "falls well within the range of multipliers that courts have allowed"); *Craft v. Cnty. of San*  
 13 *Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (approving 25% fee award yielding a  
 14 multiplier of 5.2 and stating that "there is ample authority for such awards resulting in multipliers  
 15 in this range or higher").

16 Thus, Class Counsel's fee request reflecting a "negative" multiplier is reasonable. *See*  
 17 *also Dennings v. Clearwire Corp*, 2013 WL 1858797, at \*6 (W.D. Wash. May 3, 2013) (finding  
 18 reasonable a fee request with a negative multiplier of between .92 and .98).

19 **3. Class Counsel's Litigation Costs Were Necessarily And Reasonably**  
 20 **Incurred**

21 Rule 23(h) authorizes courts to award costs authorized by law or the parties' agreement.  
 22 Attorneys who create a common fund are entitled to reimbursement of their out-of-pocket  
 23 expenses so long as they are reasonable, necessary and directly related to the work performed on  
 24 behalf of the class. *Vincent v. Hughes Air W.*, 557 F.2d 759, 769 (9th Cir. 1977); *see also Corson*  
*v. Toyota Motor Sales U.S.A., Inc.*, No. CV 12-8499-JGB, 2016 WL 1375838, at \*9 (C.D. Cal.

1 Apr. 4, 2016) (“Expenses such as reimbursement for travel, meals, lodging, photocopying, long-  
2 distance telephone calls, computer legal research, postage, courier service, mediation, exhibits,  
3 documents scanning, and visual equipment are typically recoverable”); *Hopkins v. Stryker Sales*  
4 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at \*6 (N.D. Cal. Feb. 6, 2013) (awarding  
5 costs for document review, depositions, and experts). Class Counsel have provided the Court  
6 with a summary that breakdown their litigation costs by category. These costs, the bulk of which  
7 were incurred for mediation, total more than \$6,000. Ryan Decl. ¶ 36.

#### 8 **4. The Named Plaintiff’s Incentive Award Of \$2,500 Should Be** 9 **Approved**

10 Plaintiff also requests an incentive payment of \$2,500 in recognition of Plaintiff’s efforts  
11 on behalf of the Class, which included assisting counsel with the investigation, discovery,  
12 litigation and settlement. The Ninth Circuit has explained that service awards that are “intended  
13 to compensate class representatives for work undertaken on behalf of a class ‘are fairly typical in  
14 class action cases.’” *In re Online DVD*, 779 F.3d at 943 (quoting *Rodriguez v. W. Publishing*,  
15 563 F.3d 948, 958-59 (9th Cir. 2009)). The factors courts consider include the class  
16 representative’s actions to protect the interests of the class, the degree to which the class has  
17 benefitted from those actions, the time and effort the class representative expended in pursuing  
18 the litigation, and any risk the class representative assumed. *Staton v. Boeing Co.*, 327 F.3d at  
19 977 (9th Cir. 2013).

20 The requested \$2,500 incentive award is reasonable, particularly since it is half of the  
21 Ninth Circuit’s benchmark for service awards. *See In re Yahoo Mail Litig.*, No. 13-CV-4980-  
22 LHK, 2016 WL 4474612, at \*11 (N.D. Cal. Aug. 25, 2016) (“The Ninth Circuit has established  
23 \$5,000.00 as a reasonable benchmark [for service awards.]”); *Pelletz v. Weyerhaeuser Co.*, 592  
24 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009) (approving \$7,500 incentive awards where

1 the plaintiffs assisted class counsel, responded to discovery, and reviewed settlement terms, and  
2 collecting decisions approving service awards ranging from \$5,000 to \$40,000); *see also In re*  
3 *Online DVD*, 779 F.3d at 942 (rejecting argument that a \$5,000 incentive award created a  
4 conflict of interest between the plaintiff and class members who received payments of \$12 from  
5 the settlement fund).

6 **IV. CONCLUSION**

7 Class Counsel request that the Court approve a fee award of \$97,500, plus \$6,000 for  
8 reimbursement of litigation costs. Plaintiff requests an incentive award of \$2,500 in recognition  
9 of her representation of the Class in this case.

10 RESPECTFULLY SUBMITTED AND DATED this 6<sup>th</sup> day of December 2018.

11 By: /s/ Elizabeth Ryan

12 Elizabeth Ryan (admitted *pro hac vice*)  
13 BAILEY & GLASSER LLP  
14 99 High Street, Suite 304  
15 Boston, Massachusetts 02110  
16 T: (617) 439-6730  
17 F: (617) 951-3954  
18 Email: eryl@baileyglasser.com

19 Beth E. Terrell, WSBA #26759  
20 TERRELL MARSHALL LAW GROUP PLLC  
21 936 North 34th Street, Suite 300  
22 Seattle, WA 98103  
23 T: (206) 816-6603  
24 F: (206) 319-5450  
Email: bterrell@terrellmarshall.com

Nicholas F. Ortiz  
LAW OFFICE OF NICHOLAS F. ORTIZ, P.C  
99 High Street, Suite 304  
Boston, Massachusetts 02110  
T: (617) 338-9400  
F: (617) 507--3456  
Email: nfo@mass-legal.com

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

Michael L. Murphy, WSBA #37481  
BAILEY & GLASSER LLP  
1054 31st Street, NW, Suite 230  
Washington, DC 20007  
T: (202) 463-2101  
F: (202) 463-2103  
Email: mmurphy@baileyglasser.com

*Attorneys for Plaintiff*



**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ Elizabeth Ryan  
Elizabeth Ryan  
Bailey & Glasser LLP  
99 High Street, Suite 304  
Boston, MA 02110  
Email: eryl@baileyglasser.com  
T: (617) 439-6730  
F: (617) 951-3954

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

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

Honorable Thomas S. Zilly

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SARAH CONNOLLY, individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
UMPQUA BANK,  
  
Defendant.

NO. 2:15-CV-00517-TSZ  
  
**DECLARATION OF ELIZABETH  
RYAN IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND INCENTIVE AWARD**

**Note on Motion Calendar:  
February 15, 2019**

1  
2 I, Elizabeth Ryan, declare as follows:

3 1. I am one of the counsel for the Plaintiff in this case. I submit this declaration in  
4 support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Incentive Award.

5 2. The facts contained in this declaration are within my personal knowledge, and I  
6 could testify to those facts if called to do so under oath.

7 3. My firm is counsel of record in this case and has been appointed as Class  
8 Counsel for the purposes of settlement. Previous submissions describing my background and  
9 legal experience were provided to the Court in my Declaration in Support of Plaintiff's  
10 Unopposed Motion for Preliminary Approval of Revised Class Action Settlement and for  
11 Certification of Settlement Class, Dkt. No. 95-2.

12 **Synopsis Of The Litigation**

13 4. Plaintiff filed this lawsuit on April 4, 2015, alleging that Umpqua violated the  
14 FCRA, 15 U.S.C. §§ 1681a-1681x.

15 5. On July 9, 2015, Umpqua moved to dismiss the complaint for failure to state a  
16 claim. That motion was denied in part and allowed in part on October 23, 2015. The Court  
17 dismissed one count relating to the failure to provide adverse action notices.

18 6. On December 31, 2015, Umpqua filed a motion to stay the litigation pending the  
19 outcome of the Supreme Court's ruling in *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540 (2016),  
20 which was to address what constitutes an injury and standing when a plaintiff asserts a  
21 violation of a statutory right but no "concrete" injury. The Court granted the stay on January  
22 26, 2016.

23 7. On June 21, 2016, after the Supreme Court decided *Spokeo* and the stay was  
24 lifted, Umpqua filed a new motion to dismiss for lack of subject matter jurisdiction, based on  
25 the *Spokeo* ruling, and arguing that Ms. Connolly had not adequately alleged an injury for  
26 purposes of standing under the law established in *Spokeo*. That motion was denied on

27 DECLARATION OF ELIZABETH RYAN  
NO. 2:15-CV-00517-TSZ - 1

1 November 9, 2016.

2 8. Umpqua then filed a motion for certification pursuant to 28 U.S.C. § 1292(b)  
3 and to stay the case which was also denied.

4 9. On January 25, 2017, Plaintiff filed a motion to amend the complaint to clarify  
5 and further support her allegations of injury and willfulness. That motion was granted.

6 10. Later, and well into the litigation, Umpqua disclosed that some class members  
7 signed agreements which it claimed required them to arbitrate their FCRA claims.

8 11. In March and April of 2017, Umpqua produced a number of documents in  
9 response to Plaintiff's discovery requests. The documents related to the varying disclosure  
10 forms used to obtain credit and background checks on job applicants and employees, and the  
11 size of the potential class.

12 12. In July 2017, the parties agreed to participate in an in person mediation in  
13 Seattle with Teresa A. Wakeen, J.D.

14 13. Prior to mediating, Plaintiff requested and Umpqua agreed to share additional  
15 information regarding the size of the potential settlement class, as well as information about its  
16 background check practices and policies throughout the class period.

17 14. By obtaining the documents most necessary to prove their claims, Plaintiff's  
18 counsel entered mediation with a comprehensive understanding of the class claims and  
19 Umpqua's defenses. Although no agreement was reached during the mediation, the parties  
20 continued to engage in substantive discussions in the months that followed.

21 **Opinion Of Counsel As To Fairness**

22 15. Class Counsel believe that the Settlement Agreement between the Parties is fair  
23 and reasonable and in the best interests of the Settlement Class. Class Counsel conducted  
24 sufficient investigation and the litigation was sufficiently advanced to allow counsel to evaluate  
25 the merits of the case, and the value of potential recovery. The result is a fair and reasonable  
26 settlement that will provide substantial benefits to Settlement Class Members. The Class

27 DECLARATION OF ELIZABETH RYAN  
NO. 2:15-CV-00517-TSZ - 2

1 Representative was kept abreast of the proceedings throughout the litigation, reviewed the final  
2 Settlement Agreement, and also agrees that it is fair and reasonable.

3 16. The Settlement Agreement provides economic benefits directly to the Settlement  
4 Class, benefits that may not be available in the event of continued litigation.

5 17. The Settlement Agreement requires Umpqua to pay \$325,000 to establish a  
6 common Settlement Fund. The Settlement Fund will be used to make payments to Settlement  
7 Class Members and to pay, subject to Court approval, a class representative incentive award in  
8 the requested amount of \$2,500, attorneys' fees in the requested amount of \$97,500, the out-of-  
9 pocket litigation costs that Plaintiff's counsel incurred of \$6,000, and notice and settlement  
10 administration costs, which are estimated at \$24,000.

11 18. If the Court approves counsel's requested fees, costs, and incentive award and  
12 notice costs, approximately \$194,980 will remain in the Settlement Fund. The Settlement calls  
13 for this amount to be divided equally among all Settlement Class Members who do not opt out.  
14 Plaintiff estimates that each Settlement Class Member will receive approximately \$44.

15 19. No Settlement Class Member has objected to the Settlement. As of December 2,  
16 2018, only five Settlement Class Members have opted out.

17 20. Class Counsel's reasons for this belief will be further detailed in the  
18 Memorandum in Support filed with the Motion for Final Approval.

19 **Attorneys' Fees and Costs**

20 21. The Settlement also provides for the payment of attorneys' fees, costs and  
21 expenses to Class Counsel following application for and Court approval of such an award. The  
22 compensation for the services Class Counsel rendered to the class is wholly contingent. Class  
23 Counsel has worked without compensation or reimbursement for their time and out-of-pocket  
24 expenses necessary to position this case for settlement. Any fees and reimbursement of  
25 expenses will be limited to the amount awarded by the Court. In light of the complexity and  
26 scope of this action, Class Counsel had to forego other cases once they had agreed to represent

1 the Class Representatives and Class in this action.

2 22. Before taking on this case, Plaintiff and Class Counsel negotiated a customary  
3 up to one-third contingency fee, with the understanding that this amount was an appropriate  
4 incentive for Class Counsel to take on the financial risks involved in the representation.

5 23. Class Counsel also agreed to advance all costs of this litigation.

6 24. Plaintiff and Class Counsel agreed that Class Counsel would receive  
7 reimbursement for its costs from the value of a successful settlement or judgment.

8 25. The total requested fee of \$97,500 constitutes 30% of the value of the Settlement  
9 to the Class, and is less than Counsel's combined lodestar in this case. The total combined  
10 lodestar for all counsel is \$181,907.

11 26. The below summary of time and expenses was taken from computer-based  
12 timekeeping programs, in which Class Counsel maintained their fees and expense records. The  
13 hourly rates are based on the typical hourly rates for lawyers of similar experience in the  
14 communities in which Class Counsel practice.

15 27. Class Counsel's fee summaries demonstrate the amount of time spent on this  
16 litigation and how Class Counsel's lodestar was calculated.

17 28. The rates charged for attorneys and staff members working on this matter range  
18 from \$200.00 to \$650.00, with the majority of the work performed by Ms. Ryan at an hourly  
19 rate of \$650.00; and Mr. Ortiz at an hourly rate of \$450.

20 29. These are the rates Class Counsel charge in similar matters, and these rates have  
21 been approved by state and federal courts in other contingent matters.

22  
23  
24  
25  
26  
27  
DECLARATION OF ELIZABETH RYAN  
NO. 2:15-CV-00517-TSZ - 4

**Bailey & Glasser LLP**

<b>Name</b>	<b>Position</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total Time</b>
Elizabeth Ryan	Partner	182.06	\$650	\$118,339
John Roddy	Partner	4.5	\$650	\$2,925
Benjamin Lajoie	Attorney	9.5	\$300	\$2,850
Sandra Kinney	Attorney	14	\$350	\$4,900
Melissa Kestner-Clay	Paralegal	.9	\$250	\$225
Mary McClay	Paralegal	90.6	\$230	\$20,838

30. My firm sets billing rates for its attorneys and other legal workers on an annual basis in a manner designed to assure that those rates are commensurate with the rates charged by attorneys with similar levels of education, skill and experience in the markets in which they practice. The firm's rates established in this manner have been consistently approved by federal and state courts considering petitions for fee awards in which Bailey & Glasser has served as class counsel.

31. Class Counsel have significant experience litigating claims under consumer protection statutes, including FCRA claims.

32. Class Counsel set their rates for attorneys and staff members based on a variety of factors, including, among others: the experience, skill and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation and ability of the attorneys and staff members.

33. Going back to 2004, my firm's billing rates (then Roddy Klein & Ryan) formed the bases for the courts' approval of the firm's award of fees in two nationwide class action settlements, *In re Household Lending Litigation*, 02-1240-CW (N. D. Cal. April 30, 2004), and *Curry v. Fairbanks Capital Corporation*, 03-10875-DPW (D. Mass. May 12, 2004) (hourly rates of \$475), and were described as reasonable and in fact modest in both cases by the supporting affidavit of Alba Conte, current author of *Newberg on Class Actions* (4th ed. 2002) and *Attorney Fee Awards* (2d ed. 1993).

DECLARATION OF ELIZABETH RYAN  
NO. 2:15-CV-00517-TSZ - 5

1           34. My firm's rates have increased by an average of 4% per year since 2004. Our  
2 rates have been submitted in multiple class action fee applications since then, including *Spence*  
3 *v. Cavalry Portfolio Services, LLC*, 1:14-cv-12655-PBS (D. Mass. 2016); *Powers v. Santander*  
4 *Consumer USA, Inc.*, 4:12-cv-11932-TSH (D. Mass. 2014) (court approved \$500,000,  
5 reflecting hourly rate of \$650 per hour in 2014, and a lodestar multiplier of 1.25); *Glover v.*  
6 *Bank of America, N.A.*, 4:13-cv-40042-TSH (D. Mass. 2015) (court approved percentage of the  
7 fund fee of one third, hourly rate was \$625 to \$700 in 2015); *Wieland v. Bring Care Home,*  
8 *Inc.*, Case No. ESCV2013-01380 (Mass. Super. Feb. 17, 2015) (approving attorneys' fees  
9 requests where hourly rate \$625-\$650 in 2015); *Hall v. Capital One Auto Fin., Inc.*, 1:08-cv-  
10 01181-DCN (N.D. Ohio 2010) (hourly rate of \$625 in 2010).

11           35. Class Counsel billed a total of 420 hours in litigating and settling this case. Class  
12 Counsel also anticipate contributing additional time and effort to this case, including drafting  
13 final approval papers, and continuing to oversee settlement administration.

14           36. Class Counsel litigation costs total more than \$6,000 and include the following:  
15 \$2,445 in mediation fees; \$2,785 in travel expenses; \$638 in court fees, electronic records and  
16 transcript fees.

17           37. Although the parties settled this case in the pre-trial stage, Class Counsel has  
18 invested a substantial amount of time and resources investigating and litigating this action.

19           38. Tasks performed by Class Counsel thus far include: (1) investigating the claims;  
20 (2) communicating with Plaintiff; (3) researching, drafting, and amending the complaint; (4)  
21 researching and drafting responses to Defendant's motions to dismiss, motion to stay, and  
22 motion for interlocutory review; (5) exchanging and reviewing discovery; (6) researching and  
23 drafting their mediation brief; (7) preparing for and participating in the mediation; (8) engaging  
24 in extended settlement negotiations with Defendant; (9) drafting the Settlement Agreement and  
25 class notices; (10) researching and drafting the preliminary approval brief; and (11) overseeing  
26 administration of the Settlement.

27 DECLARATION OF ELIZABETH RYAN  
NO. 2:15-CV-00517-TSZ - 6





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

Honorable Thomas S. Zilly

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SARAH CONNOLLY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

UMPQUA BANK,

Defendant.

NO. 2:15-CV-00517-TSZ

**DECLARATION OF NICHOLAS F.  
ORTIZ IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND INCENTIVE AWARD**

**Note on Motion Calendar:  
February 15, 2019**

1  
2  
3 The undersigned, Nicholas F. Ortiz, on oath depose and states the following:

- 4 1. I was admitted to the bar of the Supreme Judicial Court of Massachusetts in December  
5 2002 and have been admitted to practice before the United States District Court, District  
6 of Massachusetts since early in 2003.
- 7 2. I graduated from Boston University School of Law with a J.D. degree in 2001 and from  
8 Vanderbilt University with a B.A. degree in 1996.
- 9 3. I have practiced primarily employment law, consumer law, and bankruptcy since early  
10 in 2003.
- 11 4. My current hourly rate is \$450. This is the hourly rate that clients pay for my services  
12 when a fee agreement calls for an hourly rate. Throughout the course of this case, I  
13 recorded my time at rates ranging between \$225 and \$450 per hour. My lodestar is  
14 based on these lower hourly rates.
- 15 5. Various attorneys performed work on this case, as exhibited in the following table:

Name	Billable Hours	Total Billable Amount	Billable Expenses
Charlotte Drew	20.7	\$4,657.50	\$150.49
Raven Moeslinger	23.2	\$5,720.00	\$0.00
David T Musen	5.2	\$1,300.00	\$0.00
Sarah R. O'Brien	23.1	\$5,197.50	\$0.00
Nicholas F. Ortiz	21.9	\$9,855.00	\$1,333.32
Stephanie C. Ozahowski	25.5	\$5,100.00	\$0.00
<b>Total</b>		<b>\$31,830.00</b>	<b>\$1,483.81</b>

- 16  
17  
18  
19  
20 6. I have been appointed as class counsel in several cases, including *Wieland v. Bring*  
21 *Care Home, Inc.*, No. ESCV2013-01380, 2015 WL 5751843 (Mass. Sup. Ct. 2015);  
22 *DeVito v. Longwood Security Services*, C.A. No. 13-1724 (Mass. Sup. Ct. 2015);  
23 *Escorbor v. Helping Hands Company, Inc., et al.*, C.A. No. 15-02053D (Mass. Sup. Ct.  
24 2017); *Coroa v. First Citizens' Federal Credit Union*, C.A. No. 1673CV00558 (Mass.  
25 Sup. Ct. 2017); *Garcia, et al. v. Right At Home, Inc., et al.*, C.A. No. 15-00808-BLS2  
26 (Mass. Sup. Ct. 2017); *Chambers v. RDI Logistics, Inc., et al.*, C.A. No. 13-00912-A  
(Mass. Sup. Ct. 2017); *Fitzgerald v. The Chateau Restaurant of Burlington, Inc., et al.*,  
C.A. No. 1481CV01990 (Mass. Sup. Ct. 2016); *Cole v. Trinity EMS, Inc.*, C.A. No.  
1781CV02005 (Mass. Sup. Ct. 2017); *Mickevich v. Fine Finish, Inc., et al.*, C.A. No.  
1681CV01682 (Mass. Sup. Ct. 2017); *Santos v. River Works Credit Union*, C.A. No.

27 DECLARATION OF NICHOLAS F. ORTIZ  
NO. 2:15-CV-00517-TSZ - 1

1 1684CV00155 (Mass. Sup. Ct. 2017); *Vigna v. Minuteman Volkswagen, Inc.*, C.A. No.  
2 MICV2013-05520-H (Mass. Sup. Ct. 2016); *Settlow v. Savin Mass Wings #1, LLC*, No.  
3 1781CV00429 (Mass. Sup. Ct. 2018), *Hickman et al. v. Riverside Park Enterprises,*  
4 *Inc., et al.*, No. 16-0572-BLS2 (Mass. Sup. Ct. 2018).

- 5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27
7. I have served as a mentor for the low-bono public interest organization, JusticeBridge, affiliated with the University of Massachusetts Law School since 2015.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 6th DAY OF DECEMBER 2018.

/s/ Nicholas F. Ortiz  
Nicholas F. Ortiz

DECLARATION OF NICHOLAS F. ORTIZ  
NO. 2:15-CV-00517-TSZ - 2

LAW OFFICE OF NICHOLAS F. ORTIZ, P.C.  
99 High Street, Suite 304  
Boston, MA 02110  
TEL. 617.338.9400 • FAX 617.507.3456  
www.mass-legal.com