IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: DEALER MANAGEMENT SYSTEMS ANTITTRUST LITIGATION	MDL No. 2817 Case No. 18-cv-00864
This Document Relates to: THE DEALERSHIP CLASS ACTION	Hon. Rebecca R. Pallmeyer

DEALERSHIP CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

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I. INTRODUCTION

Dealership Counsel[1] respectfully submit this memorandum in support of their motion, pursuant to Fed. R. Civ. P. 23(h)(1) and 54(d)(2), for (i) an award of $42.735 million in attorneys' fees; (ii) expenses approved in the amount of $7,192,133.86;[2] and (iii) service awards of $10,000 for each of the 23 class representatives.

After more than seven years of hard-fought litigation, and virtually on the eve of trial, Dealership Counsel obtained a $100 million cash settlement with Defendant CDK Global, LLC ("CDK"). That settlement, when added to the previously-approved $29.5 million settlement with Defendant The Reynolds and Reynolds Company ("Reynolds") in 2019 (*see* ECF No. 427-2 at 10, 15; ECF No. 502), has resulted in a $129.5 million recovery for a nationwide class of automobile dealers.[3] Dealership Counsel have litigated this case on a contingency basis and, to date, have been paid nothing for their efforts. Dealership Counsel have also incurred more than $7.192 million in total expenses, which includes the previously awarded $3 million amount authorized for litigation expenses under the Reynolds settlement. *See* ECF No. 501.

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[1] "Dealership Counsel" refers to Lead Counsel Peggy J. Wedgworth and Milberg Coleman Bryson Phillips Grossman, PLLC and Plaintiffs' Steering Committee members Leonard A. Bellavia and Bellavia Blatt, PC; Daniel Hedlund and Michelle Looby and Gustafson Gluek PLLC; James Barz and Frank Richter and Robbins Geller Rudman & Dowd LLP; and Liaison Counsel Robert A. Clifford and Clifford Law Offices. *See* ECF No. 123; *see also* ECF No. 1531 ¶¶ 9-10.

[2] *See* accompanying Declaration of Peggy J. Wedgworth in Support of Dealership Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards ("Wedgworth Fee Decl."), Appendices C & D. In connection with the Reynolds settlement, the Court approved Dealership Counsel's withdrawal of up to $3 million from that settlement fund for litigation expenses. *See* ECF No. 501 at 2-3. By this motion, Dealership Counsel seek reimbursement of $4,192,133.86 in expenses. This amount, when added to the previously awarded $3 million amount, totals $7,192,133.86; which is less than the $7.5 million maximum expense amount referenced in the CDK Settlement Class notice.

[3] CDK also agreed to fund up to $250,000 in notice and claims administration costs. *See* ECF No. 1528-2 ¶ A.1(y). Reynolds agreed to fund up to $250,000 for notice costs related to the Reynolds settlement. *See* ECF No. 427-2 ¶ E.13.

In accordance with the Court's August 23, 2024 order (ECF No. 1531), notice of the requests for attorneys' fees, expense reimbursement, and class representative service awards has been distributed.[4]

II. PRINCIPLES OF FEE AWARDS

"The United States Supreme Court long ago recognized that 'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.'" *McDaniel v. Qwest Commc'ns Corp.*, 2011 WL 13257336, at *3 (N.D. Ill. Aug. 29, 2011) (Pallmeyer, J.) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). "The common-fund doctrine is based on the notion that all 'those who have benefited from litigation should share its costs.'" *McDaniel*, 2011 WL 13257336, at *3 (quoting *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)); *see also In re Synthroid Mktg. Litig.*, 325 F.3d 974, 977 (7th Cir. 2003) ("*Synthroid II*"). Having secured settlements totaling $129.5 million, Dealership Counsel now seek a fee award of 33% of the funds.[5]

In the Seventh Circuit, class action fee awards are based on a "market" rate for legal services, *i.e.*, the rate agreed to (or that hypothetically would have been agreed to) by the parties. *See In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797, 801 (7th Cir. 2023) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d

[4] The Notice Plan reached approximately 98.4% of the identified potential settlement class members via email and/or mail. Notice reach was further enhanced by publication notice, digital media, an informational release, as well as additional efforts undertaken by Dealership Lead Class Counsel. *See* the accompanying Declaration of Cameon R. Azari, Esq. Regarding Implementation and Adequacy of Settlement Notice Plan and Notices ("Azari Decl."), ¶¶ 8, 10-32; *see also* Declaration of Peggy J. Wedgworth in Support of Dealership Class Plaintiffs' Motion for Final Approval of Settlement with Defendant CDK Global, LLC ("Wedgworth Final Approval Decl."), ¶ 10, filed contemporaneously herewith.

[5] *See* Azari Decl. Att. 4 (long form class notice) at 1; *see also id.* at 9: "Dealership Class Counsel will seek (1) an award of attorneys' fees not to exceed 33.3% of the Settlement Funds plus (2) payment of unreimbursed litigation expenses (including expert fees and deposition costs) ('Litigation Expenses') not to exceed $7.5 million; and (3) service awards of up to $10,000 for each of the twenty-three (23) Class Representatives in this case ('Fee and Expense Application')." In accordance with the Court's scheduling order, the deadline for Reynolds and CDK Settlement Class members to object to this motion is December 12, 2024 and Dealership Counsel will respond to any objections by February 18, 2025. *See* ECF No. 1531 at 10.

712, 718 (7th Cir. 2001) ("*Synthroid I*")); *Allen v. JP Morgan Chase Bank, N.A.*, 2015 WL 14074780, at *3 (N.D. Ill. Nov. 3, 2015) (Pallmeyer, J.). Fee awards should reflect market rates even in large, "megafund" settlements. *See Synthroid I*, 264 F.3d at 718; *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 942 (N.D. Ill. 2022).

Two different methodologies are used to determine fee awards. One method is the "percentage-of-the-recovery" method, under which fees are based on a percentage of the recovery obtained. That method "directly aligns the interests of the class and its counsel in achieving the maximum recovery possible in the most efficient manner." *Hash v. First Fin. Bancorp*, 2021 WL 12269064, at *2 (S.D. Ind. Nov. 22, 2021). It also "makes sense because 'it is essentially unheard of for sophisticated lawyers to take on a case of this magnitude and type on any basis other than a contingency fee, expressed as a percentage of the relief obtained.'" *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (citation omitted). The second method – the "lodestar-multiplier" method – calculates fees based on counsel's hours expended and hourly rates, as enhanced by a risk multiplier. *See McDaniel*, 2011 WL 13257336, at *3.

While the choice of method is in the court's discretion (*see Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991)), "the percentage method is employed by the vast majority of courts in the Seventh Circuit (like other Circuits)." *Chambers v. Together Credit Union*, 2021 WL 1948452, at *1 (S.D. Ill. May 21, 2021) (quoting *Hale*, 2018 WL 6606079, at *2); *see also Allen*, 2015 WL 14074780, at *3.

III. THE COURT SHOULD AWARD DEALERSHIP COUNSEL A 33% FEE

The Court should award Dealership Counsel 33% of the total $129.5 million settlement funds, for a fee of $42.735 million. As shown below, that percentage is the market rate for legal services in this case, and the requested fee is reasonable.

A. Prevailing Rates Support the Request

The requested 33% award is fully supported by fee awards routinely granted by the courts. Judge Kennelly's recent decision in *Corzo v. Brown University* is instructive. There, the court awarded attorneys' fees of 33.33% of a $284 million antitrust settlement, plus expenses, explaining:

> The requested attorneys' fees are at a reasonable market rate for Settlement Class Counsel's services had they been negotiated *ex ante*. The sought fee of one-third of the Settlement Fund is within the ordinary range of contingency fee arrangements actually negotiated *ex ante* between parties and awarded, in complex antitrust actions.

2024 WL 3506498, at *7 (N.D. Ill. July 20, 2024). *See also Linnear v. Illinicare Health Plan, Inc.*, 2019 WL 13072750, at *3 (N.D. Ill. Dec. 17, 2019) (Pallmeyer, J.) (awarding fees of "thirty-five of the Gross Settlement Fund": the request "is consistent with the market in the Northern District of Illinois"); *CS Wang & Associate v. Wells Fargo Bank, N.A.*, Case No. 1:16-cv-11223, ECF No. 654 at 7 (N.D. Ill. Dec. 2, 2021) (Pallmeyer, C.J.) (Exh. 1) ("[A] typical contingency agreement in this circuit might range from 33% to 40% of the recovery.") (citation omitted);[6] *McDaniel*, 2011 WL 13257336, at *4 (Pallmeyer, J.) ("the real-world market range for contingent fee cases is 33% to 40%) (citing cases); *Roberson v. Maestro Consulting Services, LLC*, 2024 WL 4785359 (S.D. Ill. Nov. 14, 2024) (awarding fees of "40% of the Gross Settlement Amount" plus expenses); *In re Pork Antitrust Litig.*, 2022 WL 4238416, at *9 (D. Minn. Sept. 14, 2022) (awarding 33%, plus expenses); *White v. Kroger Ltd. P'ship I*, 2024 WL 3343021, at *3 (S.D. Ill. July 9, 2024) (awarding 35% of settlement fund plus costs); *Macovski v. Groupon, Inc.*, 2022 WL 17256417, at *1 (N.D. Ill. Oct. 28, 2022) (33 1/3%); *Pierrelouis v. Gogo Inc.*, 2022 WL 7950362,

[6] In *CS Wang*, the Court awarded requested attorney fees of "one-third of the Settlement Fund after deducting incentive awards and settlement administration costs." Case No. 1:16-cv-11223, ECF No. 654 at 7. Under the CDK settlement, CDK is paying, in addition to $100 million, up to $250,000 in notice and administration costs. *See* ECF No. 1528-2 ¶¶ A.1(y), 1(ff), F. In the Reynolds settlement, Reynolds paid $29.5 million and agreed to pay up to $250,000 in notice costs. *See* ECF No. 427-2 ¶¶ A.1(cc) E.13. Dealership Counsel do not request any fees based on those notice and administration amounts. Moreover, the requested $42.735 million fee represents just under 33.06% of the combined CDK and Reynolds settlement funds ($129.5 million, not counting Defendants' additional payments for notice and administration), net of the $10,000 service awards requested for each of the 23 class representatives.

at *1 (N.D. Ill. Oct. 13, 2022) (33 1/3%); *Chambers*, 2021 WL 1948452, at *2 ("a one-third fee is common throughout district courts in the Seventh Circuit") (citing authorities); *Wolfe v. TCC Wireless, LLC*, 2018 WL 11215318, at *3-4 (N.D. Ill. Mar. 12, 2018) (awarding "one-third of the Gross Settlement Fund" plus expenses); *Briggs v. PNC Fin'l Servs. Group, Inc.*, 2016 WL 7018566, at *4 (N.D. Ill. Nov. 29, 2016) (St. Eve., J.) ("Courts routinely hold that one-third of a common fund is an appropriate attorneys' fee award in class action settlement …."); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 842 (N.D. Ill. 2015) (awarding one-third of $46 million fund, plus expenses).[7]

B. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Although not required, a court may use the lodestar method to "cross-check" the fee calculated by the percentage-of-the-recovery method. *Corzo*, 2024 WL 3506498, at *7. Such a cross-check, however, "has fallen into disfavor in this Circuit." *Allen*, 2015 WL 14074780, at *3 (citation omitted); *see Synthroid II*, 325 F.3d at 979-80.

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[7] *See also Hale*, 2018 WL 6606079, at *10, 16 (awarding 33.33% of $250 million fund, plus expenses: "Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation."); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015) (awarding one-third fee, which is "within the range of fees ordinarily awarded"); *Standard Iron Works v. ArcelorMittal*, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) (awarding 33% of $163.9 million settlement, noting "fee awards in similar complex litigation, including many recent antitrust class actions in which 33% fees were awarded for similar work"); *In re Potash Antitrust Litig.*, 2013 WL 12470850, at *1 (N.D. Ill. June 12, 2013) (awarding one-third of $90 million); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *1, 3, 8 (E.D. Tenn. May 17, 2013) (awarding 33 1/3% of $158.6 million; 33 1/3% "is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *George v. Kraft Foods Glob., Inc.*, 2012 WL 13089487, at *2 (N.D. Ill. June 26, 2012) ("'[T]he normal rate of compensation in the market [is] 33.33% of the common fund recovered' because the class action market commands contingency fee agreements and the class counsel accepts a substantial risk of nonpayment.") (citation omitted); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.") (citations omitted); *In re Lithotripsy Antitrust Litig.*, 2000 WL 765086, at *2 (N.D. Ill. June 12, 2000) ("33.3% of the fund plus expenses is well within the generally accepted range of attorneys fees in class-action antitrust lawsuits.").

In *In re Broiler Chicken*, the Circuit stated that the district court should award fees "in accord with a hypothetical *ex ante* bargain." 80 F.4th at 800. (On remand, the fee was set at $51.66 million -- 30% of the recovery after expenses and service awards. *See In re Broiler Chicken Antitrust Litig.*, 2024 WL 3292794, at *6 (N.D. Ill. July 3, 2024), *appeal filed*, No. 24-2387 (7th Cir. Aug. 9, 2024)).

Here, Dealership Counsel expended over 69,000 hours, for a total lodestar of $41,581,821.25 on the case. *See* Wedgworth Fee Decl., ¶ 13, Appendices. A & B.[8] The requested fee ($42.735 million) represents a multiplier of just under 1.03 of their historical lodestar. *Id.* ¶ 13. The multiplier is modest, further confirming the reasonableness of the requested fee. *See Corzo*, 2024 WL 3506498, at *7 (awarding $94.67 million fee; 1.35 multiplier of historical lodestar "confirms the propriety of the sought fee."); *Standard Iron Works v. ArcelorMittal*, 2014 WL 7781572, at *2-3 (N.D. Ill. Oct. 22, 2014) (approving $54 million fee award, representing one-third of the settlement fund and 1.97 multiplier); *see generally In re TikTok*, 617 F. Supp.3d at 943 ("In practice, most multipliers fall between one and four.") (citing *Harmon v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991)).

C. The Substantial Litigation Risks Support the Requested Fee

Dealership Counsel's requested fee also is "reasonable in light of the significant risks of nonpayment that they faced." *Linnear*, 2019 WL 13072750, at *3. Counsel "took this case on a contingent basis, meaning that there was a strong risk that they would not be paid." *Id.* "As the Seventh Circuit has noted, Plaintiff's Counsel 'could have lost everything' they invested." *Id.* (quoting *Matter of Cont'l Ill. Sec. Litig.*, 96 2 F.2d 566, 570 (7th Cir. 1992) (Posner, J.)). "Risk cannot be overlooked for it is considerable even in a relatively simple class case." *McDaniel*, 2011 WL 13257336, at *3.

Although all cases present risk, the risks faced by counsel are significantly heightened in antitrust cases. *See Wilk v. Am. Med. Ass'n*, 895 F.2d 352, 355 (7th Cir. 1990) ("We have observed before that 'antitrust cases are notoriously extended.'") (citation omitted); *Bohack Corp. v. Borden, Inc.*, 599 F.2d 1160, 1169 n.9 (2d Cir. 1979) ("antitrust cases are notoriously lengthy and tortuously complex."); *In re Packaged Ice Antitrust Litig.*, 322 F.R.D. 276, 292 (E.D. Mich. 2017).

[8] Besides the usual work required in multi-year, antitrust litigation (*i.e.*, preparation of multiple pleadings, and briefing of Rule 12(b)(6), discovery, summary judgment, *Daubert*, and class certification motions), Dealership Counsel's work included taking/defending and participating in more than 115 depositions. Wedgworth Fee Decl. ¶18.

"As in any antitrust case, this one presents substantial risks of non-recovery, even after preliminary victories were achieved." *In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp. 2d 389, 400 (D.N.J. 2006). This Court's earlier rulings, including its order largely denying CDK's summary judgment motion (*see* ECF No. 1381), did not eliminate the risks – including those facing Dealership Counsel in the trial scheduled against CDK back in September. *See, e.g.*, *In re Brand Name Prescription Drugs Antitrust Litig.*, 186 F.3d 781 (7th Cir. 1999) (affirming in part district court's grant of judgment for defendants at trial, following earlier order denying summary judgment); *In re NFL "Sunday Ticket" Antitrust Litig.*, 2024 WL 3628118, at *3 (C.D. Cal. Aug. 1, 2024) (granting defendants' motion for judgment as a matter of law following jury's verdict for class plaintiffs). These risks support the requested fee. *See Burnett v. Nat'l Ass'n of Realtors*, 2024 WL 2842222, at *16 (W.D. Mo. May 9, 2024), *appeal filed*, No. 24-2143 (8th Cir. June 4, 2024) ("Because antitrust claims are especially complex, expensive, and difficult to prosecute, courts have recognized that antitrust settlements should result in attorneys' fees equal to one-third of the fund.") (citations omitted).

Some of the specific risks confronting Dealership Counsel are described below.

1. The Alleged Conspiracy

A key risk was whether Dealership Counsel could prove the alleged antitrust conspiracy. *See In re Packaged Ice Antitrust Litig.*, 322 F.R.D. at 292 ("an antitrust litigation of this scope has great complexity and undeniable inherent risks, such as … whether the conspiracy as alleged in the Complaint can be established"); *Apex Oil Co. v. DiMauro*, 713 F. Supp. 587, 599 (S.D.N.Y. 1989) ("The frequent difficulty of proving a conspiracy needs no extended comment."). Although Defendants vehemently denied that they conspired – and CDK submitted voluminous evidence to dispute Dealers' allegations – Dealership Counsel prevailed at summary judgment, and the Court found sufficient evidence from which a jury could find a conspiracy. *See* ECF No. 1381 at 50-60.

Nonetheless, whether a jury would find Dealers' evidence persuasive remained uncertain. The uncertainty reflected, among other things, the possibility that the jury would find that Defendants' conduct was undertaken unilaterally to promote data security, not to restrain competition. *See* ECF No. 378 at 18 (CDK's argument that its "decision to restrict access to its DMS" is "the same kind of access restriction imposed by firms throughout the economy as a sound security measure."). As the Court stated in its summary judgment ruling, "[t]here is no dispute that data security is important to the automotive industry, including dealers and data integrators." ECF No. 1381 at 21. The importance of data security in this case, moreover, cannot be overstated, given the critical role played by DMSs in the Dealers' business. *See id.* at 2 (summary judgment ruling, explaining that DMSs are "complex enterprise computer systems employed by car dealerships to collect, manage, and deploy data they generate.").

Defendants' data security defense presented substantial risk, as data breaches have become "increasingly common in our digitized world." *McMorris v. Carlos Lopez & Assocs., LLC*, 995 F.3d 295, 297 (2d Cir. 2021); *see Cmty. Bank of Trenton v. Schnuck Markets, Inc.*, 887 F.3d 803, 817 (7th Cir. 2018) ("Data breaches are a foreseeable (and foreseen) risk of participating in the card networks …."); *Haney v. Charter Foods N., LLC*, 2024 WL 4054361, at *9 (E.D. Tenn. Aug. 28, 2024) ("Given the high level of foreseeability and known risks of data breaches, Defendants had a duty to take reasonable care to protect Plaintiffs from the data breach."). Indeed, in June 2024 – just a few months before the scheduled trial – CDK reported that it was targeted in a major data cyberattack, leading to the shutdown of its DMS.[9] Whether and how the cyberattack would be addressed at trial, and its potential

[9] *See* M. Cerullo, *CDK Global calls cyberattack that crippled its software platform a "ransom event"*, Moneywatch (June 25, 2024), *available at* https://www.cbsnews.com/news/cdk-attack-cyber-ransom-event.

impact on a jury's assessment of the data security defense, underscore the risk faced by Dealership Counsel.[10]

2. Pass-on Damages

Dealership Counsel also faced the risk that a jury would award no damages. "'[T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998)).

The risk of proving the existence and amount of *any* antitrust damages is well recognized. *See In re NFL "Sunday Ticket" Antitrust Litig.*, 2024 WL 3628118, at *3 (granting defendants' motion for judgment as a matter of law following jury verdict, where plaintiffs' economists employed "flawed methodologies" and "there was no other support for the class-wide injury and damages elements of Plaintiffs' § 1 and § 2 claims"); *In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp. 2d 389, 401 (D.N.J. 2006) ("a battle of experts addressing the measurement of ... overcharges … can become an esoteric exercise with unpredictable results"). But the risk was enhanced here because the Court ruled that Dealers' damages are limited to *indirect* damages – *i.e.*, alleged overcharges to vendors that were passed onto Dealers. *See* ECF No. 1381 at 67. Proving such damages is difficult. *See Illinois Brick Co. v. Illinois*, 431 U.S. 720, 751 (1977)(citing "the difficulty of proving and quantifying a pass-on"); *In re Packaged Ice Antitrust Litig.*, 322 F.R.D. at 292 ("[I]n an indirect purchaser case, 'the problem of proof [ ] is intrinsically more complex, because the damage model must account for the action of innocent intermediaries who allegedly passed on the overcharge.'") (citation omitted).

[10] Notably, the release in the CDK settlement agreement does not restrict Dealers' right to assert claims against CDK relating to the cyberattack. *See* ECF No. 1528-2 ¶¶ A.1(l), N.33. That fact further supports approval of the requested fee. *See Linnear*, 2019 WL 13072750, at *4 (N.D. Ill. Dec. 17, 2019) (Pallmeyer, J.) ("The absence of a general release exemplifies the results achieved for the Settlement Class.").

Furthermore, CDK urged that, under various state laws – including the Illinois Antitrust Act, 740 ILCS 10/1, *et seq.* ("IAA"), under which Dealers sought certification of a nationwide class – Dealers' damages may be offset to avoid duplicate recoveries, *see* ECF No. 1457 at App'x G, p. 4, thus creating the risk that recoveries by *others* (including the certified vendor class and the previously-settling Cox Automotive vendors, *see* ECF No. 723) would reduce any recovery by the Dealers. CDK also argued that, in various states (including Illinois), Dealers' damages must be reduced to the extent that they passed on the alleged overcharges to their customers. *See* ECF No. 1457 at 34 ("In some states, an indirect purchaser (*i.e.*, dealers) forfeits damages by passing its overcharge downstream (*i.e.*, to automobile purchasers)."); *id.* at App'x. E, p. 4 (arguing that Illinois and various other states allow pass-on defense).

3. Class Certification

Although Dealership Counsel secured *nationwide* settlements for the Class, whether they would obtain *any* class certification absent settlement presented additional risk that persisted throughout the litigation. That risk also supports the requested fee. *See Linnear*, 2019 WL 13072750, at *3 (Pallmeyer, J.) (awarding fees: "Plaintiff's Counsel also faced significant legal hurdles in establishing certification ….").

For example, in its motion to dismiss, Reynolds argued that pursuant to its DMS agreement, Reynolds' dealers' claims must be arbitrated – and then on an individual (*i.e.*, non-class) basis. *See* ECF No. 256 at 6-19. In its motion to dismiss, CDK argued that, because of the Reynolds agreement with dealers, their claims against CDK must be arbitrated as well; additionally, the CDK dealers' claims should be stayed. *See* ECF No. 265 at 8-10. Dealership Counsel opposed the motions, *see* ECF No. 357, and the Court, in its January 2019 decision (issued after the Reynolds settlement was reached), rejected CDK's arguments (and otherwise largely denied its motion to dismiss). *See* ECF No. 507-1. Thereafter, in opposing Dealers' class certification motion, CDK urged that "many dealers" signed

class action waivers (*see* ECF No. 1457 at 23); thus, "individualized questions regarding putative class members would predominate …." *Id.* at 24. Each of Defendants' arguments presented substantial risks. *See Kaufman v. Am. Express Travel Related Servs. Co.*, 877 F.3d 276, 286 (7th Cir. 2017) (district court did not abuse discretion "in concluding that the pending appeal concerning the arbitration provision is a significant potential bar to the class's success"); *In re TikTok*, 617 F. Supp. 3d at 935 ("significant litigation risks" included arbitration clauses and class action waivers); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 480 (S.D.N.Y. 2013) (awarding 33.3% fee, citing, *inter alia*, risk of class action waivers).

Moreover, because the Court ruled that Dealers' damages were limited to "indirect" damages that are not recoverable under federal law (*see* ECF No. 1381 at 67), any damages could be recovered only under the laws of those states that permit indirect purchaser claims. Dealership Counsel developed the novel argument that, based on the factual record in this case, certification of a *nationwide* indirect purchaser class of dealers was warranted under the IAA. *See* ECF No. 1425 at 12-15; ECF No. 1478 at 17-19. CDK vigorously opposed the argument (*see* ECF No. 1457 at 34), and whether Dealership Counsel's argument would prevail was far from certain.[11]

CDK also filed a *Daubert* motion to exclude the classwide damages model proffered by Dealers' economist, Dr. Michael Williams. ECF No. 1458; *see* ECF No. 1459-1. The motion was *sub judice* when the CDK settlement was reached.[12] If granted, the motion could have resulted in the denial of class certification, leaving Dealers with no recovery from CDK. *See In re Lithium Ion Batteries Antitrust*

[11] CDK also argued that the IAA (and other state statutes) bar class certification. Although Dealership Counsel successfully opposed the argument at summary judgment, *see* ECF No. 1381 at 90-92 (applying *Shady Grove Orthopedic Assoc. v. Allstate Ins. Co.*, 559 U.S. 393 (2010)), the issue remains disputed. *See Biddle v. Walt Disney Co.*, 2024 WL 3171860, at *16 (N.D. Cal. June 25, 2024) (applying *Shady Grove*, and ruling that IAA's class action bar trumps Rule 23).

[12] Dr. Williams was also challenged in an earlier *Daubert* motion by CDK. *See* ECF No. 1321 at 1, 29-48.

Litig., 2018 WL 1156797, at *5 (N.D. Cal. Mar. 5, 2018) (expert's flawed pass-on model precluded class certification).

Finally, CDK argued that, in July 2019 – *i.e.*, *after* the litigation began – it "started offering fee waivers to its Dealers." ECF No. 1520, July 2, 2024 Hearing Tr. at 24; *see also* ECF No. 1457 at 7-8. This development underscored the *increasing* risk that confronted Dealership Counsel during the case.

4. Defendants' Highly Qualified Counsel

The requested fee is also supported by the fact that, for seven years, Dealership Counsel stood toe-to-toe against Defendants represented by nationally acclaimed law firms.[13] *See In re TikTok*, 617 F. Supp. 3d at 942 ("[T]he quality of representation Defendants had for their defense supports the fee request as well …. That Class Counsel were able to secure a favorable settlement in the face of this opposition weighs in favor of a one-third fee."); *In re E. Palestine Train Derailment*, 2024 WL 4370003, at *12 (N.D. Ohio Sept. 27, 2024).

* * *

As shown above, Dealership Counsel's tenacity and perseverance, and the remarkable results they achieved in the face of substantial litigation risks, confirm the reasonableness of the requested fee.[14]

IV. THE COURT SHOULD REIMBURSE DEALERSHIP COUNSEL'S EXPENSES

In addition to awarding attorneys' fees, the Court should reimburse Dealership Counsel $4,192,133.86 for their expenses. As described above, that amount, plus the amount previously awarded in connection with the Reynolds Settlement, totals $7,192,133.86.

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[13] Kirkland & Ellis and Mayer Brown represented CDK, and Gibbs & Bruns and Sheppard Mullin represented Reynolds.

[14] The fee award should include 33% of the interest earned on the settlement funds. *See Corzo*, 2024 WL 3506498, at *7; *Macovski*, 2022 WL 17256417, at *1; *Pierrelouis*, 2022 WL 7950362, at *1.

"In addition to fees, '[i]t is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses.'" *Chambers*, 2021 WL 1948452, at *2 (citation omitted); *see also McDaniel*, 2011 WL 13257336, at *4 (Pallmeyer, J.) (expense reimbursement "in most cases are the subject of an additional award.") (citation omitted), *Corzo*, 2024 WL 3506498, at *7 (N.D. Ill. July 20, 2024) (granting one-third fee, plus expenses of over $3.5 million, "including costs for computerized legal research, creation and maintenance of an electronic database, substantial expert and consultant costs, travel and lodging expenses, copying, court reporters, transcripts, filing fees, and mediation expenses. These expenses are typical considering the complexity of the action and the length of the litigation."); *CS Wang*, Case No. 1:16-cv-11223, ECF No. 654 at 8 (Pallmeyer, C.J.) (Exh. 1); *City of Greenville v. Syngenta Corp Protection, Inc.*, 904 F. Supp. 2d 902, 910-11 (S.D. Ill. 2012) (awarding $8.57 million for, *inter alia*, expert and consulting fees, depositions, travel, and photocopying).

"[M]odern antitrust litigation is expensive," *Ass'n of Am. Physicians & Surgeons, Inc. v. Am. Bd. of Med. Specialties*, 15 F.4th 831, 835 (7th Cir. 2021), and the expenses here were reasonable and necessarily incurred. Wedgworth Fee Decl. ¶¶ 12, 15, 25, 26. Most of the total expenses (approximately 74%) were for experts in economics, cybersecurity, and the automotive industry. *Id.* ¶ 26. *See Glaberson v. Comcast Corp.*, 2015 WL 5582251, at *16 (E.D. Pa. Sept. 22, 2015) (awarding $8.57 million in expenses, "[t]he largest component" of which was $6.7 million for economic expert fees). Moreover, Dealership Counsel incurred over $4 million in expenses "at the risk of not recovering them if the lawsuit was unsuccessful and therefore had incentive to ensure money was spent wisely and not frivolously." *Chambers*, 2021 WL 1948452, at *2.

V. THE COURT SHOULD GRANT CLASS REPRESENTATIVE AWARDS

Finally, the Court should grant $10,000 service awards to each of the 23 class representatives. *See* ECF No. 1528 at 15-16 (identifying the representatives). "The Seventh Circuit has endorsed

incentive awards as a means of inducing an individual to participate in expanded litigation." *McDaniel*, 2011 WL 13257336, at *5 (citing cases). In this Circuit, "class representative service awards of $10,000 to $25,000 or more are not uncommon." *Chambers*, 2021 WL 1948452, at *3 (citing cases). *See, e.g.*, *Roberson*, 2024 WL 4785359 (awarding $10,000 service awards); *Corzo*, 2024 WL 3506498, at *8 (awarding $20,000 to each of eight class representatives); *Allen*, 2015 WL 14074780, at *3 ($25,000 award); *In re Potash Antitrust Litig.*, 2013 WL 12470850, at *2 (awarding $15,000 to each of six representatives).

The class representatives substantially contributed to the litigation's successful outcome. In addition to consulting with Dealership Counsel, each of them produced documents and answered interrogatories. Wedgworth Fee Decl. ¶¶ 28, 30. Sixteen of them also prepared for and sat for depositions. *Id.* The services of multiple representatives were important, as the Complaint asserts claims under the laws of twenty-six states, and CDK argued that representatives for *each* state are necessary. *See* ECF No. 1457 at 36.

The class representatives also undertook substantial risks. Most of them opposed their *current* DMS provider, *see* Wedgworth Fee Decl. ¶ 29, thus risking retaliation by a supplier on whom they relied for critical business operations. *See In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (granting service awards: "These class representatives launched this litigation despite the risk of retaliation inherent in suing a supplier."); *Scott v. Dart*, 99 F.4th 1076, 1083 (7th Cir. 2024) ("[I]n certain contexts, such as employment discrimination actions, incentive awards may also recognize the added risks of retaliation or stigmatization that named plaintiffs assume in participating in a lawsuit against their current or former employers."), *petition for cert. filed sub nom. Dart v. Scott*, No. 24-464 (U.S. Oct. 24, 2024); *McDaniel*, 2011 WL 13257336, at *5 (Pallmeyer, J.) (granting service awards, noting "substantial risks" to class representatives).

Moreover, CDK filed counterclaims against various Dealers, including claims for breach of contract, and violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and the Digital Millennium Copyright Act, 17 U.S.C. § 1201 ("DMCA"). *See* ECF No. 523 at 240-82. Although Dealership Counsel obtained dismissal of the counterclaims (*see* ECF No. 749 at 24 (motion to dismiss ruling), ECF No. 1832 (summary judgment ruling)), the DMCA damages sought by CDK – including *over $24.4 million* against a group of eight dealers (*see* ECF No. 1382 at 17) – highlight the enormous risks undertaken by the class representatives. These risks further support the requested awards. *See Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (awarding $15,000 to plaintiffs who "bore the risks of counterclaim or collateral attack").

VI. CONCLUSION

For the foregoing reasons, the Court should grant Dealership Counsel's motion for attorneys' fees, reimbursement of expenses, and class representative service awards.

Dated: November 27, 2024

Respectfully submitted,

/s/ Peggy J. Wedgworth

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CERTIFICATE OF SERVICE

I, Peggy J. Wedgworth, an attorney, hereby certify that on November 27, 2024, I caused a true and correct copy of the **DEALERSHIP CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS** to be filed and served electronically via the Court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Peggy J. Wedgworth
Peggy J. Wedgworth

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

CS WANG & ASSOCIATE, *et al.*,	)	
	)	
Plaintiffs,	)	**Case No. 1:16-cv-11223**
	)	
v.	)	**Chief Judge Rebecca R. Pallmeyer**
	)	
WELLS FARGO BANK, N.A., *et al.*,	)	
	)	
Defendants.	)	
	)	

ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT

Plaintiffs CS Wang & Associate and Jay Schmidt Insurance Agency, Inc. (collectively, "Plaintiffs") and Defendants Wells Fargo Bank, N.A. and First Data Merchant Services, LLC (collectively, the "Wells Fargo Defendants"), having appeared before the Court for a hearing on final approval of the class action settlement in the above-captioned matter with respect to the claims asserted against the Wells Fargo Defendants, the Court having reviewed the Motion for Final Approval of Class Action Settlement (the "Final Approval Motion") and Plaintiffs' Petition for Award of Attorneys' Fees, Costs, and Incentive Awards, as well as the parties' presentation at the hearing on final approval and otherwise being fully informed in the premises:

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Motion for Final Approval of Class Action Settlement (Dkt. 648) is **GRANTED**. The settlement of this matter as it pertains to claims asserted against the Wells Fargo Defendants is granted final approval.

2. The Final Approval Motion attaches and incorporates the Settlement Agreement that, together with the exhibits thereto, sets forth the terms and conditions for a settlement of

claims, on a class-wide basis, against the Wells Fargo Defendants. Capitalized terms and phrases that are not defined in this Order shall have the same meanings ascribed to them in the Settlement Agreement.

3. On August 16, 2021, this Court preliminarily approved the Settlement Agreement, and certified, for settlement purposes, the Settlement Class consisting of:

> All business that received a telephone call from a call center operated by International Payment Services, LLC or one of its affiliates between March 7, 2011 through May 7, 2014, while the call recipient was physically present in California, and who did not sign a contract for merchant processing services with First Data Merchant Services, LLC.[1]

(Dkt. No. 604)

4. This Court has jurisdiction over Plaintiffs, the Wells Fargo Defendants, and all members of the Settlement Class. The Court has jurisdiction over the claims and the subject matter of this Lawsuit pursuant to 28 U.S.C. § 1332(d).

5. The Court finds that Plaintiffs and the Wells Fargo Defendants and their counsel are familiar with the claims being settled and the defenses asserted and have had the opportunity to conduct, and have conducted, extensive investigation and discovery relating to the claims alleged in the Lawsuit, including propounding and responding to written discovery, inspection and review of documents, and conducting and defending depositions.

6. The Court finds that Plaintiffs and the Wells Fargo Defendants and their counsel have investigated the facts and have analyzed the relevant legal issues with regard to the claims

[1] Excluded from the Settlement Class are (i) the Judge and the Magistrate Judge presiding over this Lawsuit and members of their immediate families, and (ii) the Wells Fargo Defendants and their employees, subsidiaries, parent companies, successors, and predecessors. Also excluded from the Settlement Class are those businesses that would otherwise be members of the Settlement Class but who validly and timely requested exclusion in accordance with the Settlement Agreement and the requirements set by the Court.

and defenses asserted in the Lawsuit. The Court further finds that Plaintiffs and the Wells Fargo Defendants have each looked at 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 party.

7. The Court finds that the settlement was the product of extensive arm's length negotiations conducted in good faith, including a mediation on February 26, 2021, before the Honorable Layn R. Phillips (ret.). The Court finds no evidence of collusion amongst the Plaintiffs and the Wells Fargo Defendants in reaching the settlement. The settlement is supported by the Plaintiffs and Settlement Class Counsel. The Plaintiffs and Settlement Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement.

8. The notice sent to the Settlement Class via direct first class mail at each Settlement Class Member's last known address, publication of the Settlement Website, and internet Publication Notice as set forth in the Settlement Agreement adequately informed Settlement Class Members of the nature of the action, the terms of the Settlement Agreement, their right to request exclusion from the settlement, and their opportunity to file written objections and to appear and be heard at the final approval hearing regarding approval of the Settlement Agreement. The Court finds that the method and form of notice to the class was the best notice practicable under the circumstances and satisfied the requirements of Rule 23(c)(2)(B) and Rule 23(e)(1) and due process.

9. The Court finds that the appropriate government officials were properly and timely notified of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005

("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of this notice and finds that it complied with all applicable requirements of CAFA. As required by CAFA, more than ninety (90) days have elapsed between the date notice was provided pursuant to CAFA and the final approval hearing.

10. The Court hereby approves the proposed Settlement Agreement and finds that the settlement is fair, reasonable, and adequate. "To evaluate the fairness of a settlement, a court must consider 'the strength of plaintiffs' case compared to the amount of defendants' settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement.'" *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.,* 789 F.Supp.2d 935, 958 (N.D. Ill. 2011) (quoting *Synfuel Techs., Inc. v. DHL Express (USA), Inc.,* 463 F.3d 646, 653 (7th Cir. 2006)). Each of these five factors favors approval of the settlement reached here and supports the Court's finding that the settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members:

a. The strength of Plaintiffs' case compared to the terms of the proposed settlement: The Wells Fargo Defendants vigorously disputed the merits of Plaintiffs' claims on a number of grounds. Among other things, the Wells Fargo Defendants have maintained that they had no principal-agent relationship with International Payment Services, LLC ("IPS") and, even if there were such a relationship, that IPS acted outside the scope of its authority when it recorded appointment-setting phone calls. Whether these complex issues would have been decided at summary judgment or at trial, they were far from certain for either side. The Wells Fargo Defendants

have also raised a number of other defenses to the claims asserted against them, the resolution of which also remain uncertain. The amount of the settlement, on the other hand, provides a substantial recovery and is larger than any prior settlement of a class action lawsuit brought under the California Invasion of Privacy Act ("CIPA"). For these reasons, the consideration provided under the Settlement Agreement constitutes fair value given in exchange for the Released Claims. The first factor, therefore, clearly weighs in favor of final approval of the settlement.

b. The likely complexity, length, and expense of continued litigation: Trying this class action lawsuit to conclusion would have been a complex, lengthy, and expensive endeavor. Moreover, appeals almost certainly would have followed any judgment. The second factor, therefore, clearly favors final approval of the settlement.

c. The amount of opposition to settlement among effected parties: There was no opposition to the settlement amongst Settlement Class Members. Of the approximately 193,000 potential class members, none objected to the settlement. Nearly 24,000 class members, on the other hand, submitted a claim to participate in the settlement. The class members' reaction to the settlement, and the lack of opposition thereto, favors final approval.

d. The settlement is supported by the opinion of competent counsel: In connection with the fourth factor the Court has reviewed the declaration of Myron M. Cherry, a lawyer with over 50 years of experience in complex and class action litigation. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586-87 (N.D. Ill. 2011) (concluding that class counsel's opinion that settlement was fair supported

approval of the proposed settlement where counsel had extensive experience in class actions and complex litigation); *Vought v. Bank of Am., N.A.*, 901 F. Supp. 2d 1071, 1096 (C.D. Ill. 2012) (considering declarations of class counsel expressing their opinions that the proposed settlement was fair, reasonable and adequate). The Court finds that Mr. Cherry's declaration supports the Court's conclusion that the proposed settlement is fair, reasonable, and adequate, and provides substantial and meaningful relief to the Settlement Class.

e. The stage of the proceedings and the amount of discovery completed at the time of settlement: The stage of the proceedings and amount of discovery completed at the time of the settlement clearly weigh in favor of final approval. The case settled only after the parties engaged in substantial discovery and litigated and obtained rulings from the Court on several substantive and potentially dispositive issues in the case. The docket alone has over 600 entries thus far. The Court ruled on the Wells Fargo Defendants' motion to dismiss and motion for judgment on the pleadings. The parties also fully and extensively briefed Plaintiffs' motion for class certification. Due to the extensive investigation and discovery that occurred, as well as receiving a number of substantive rulings from the Court, the parties were in position to fully assess the strengths and weaknesses of the claims and defenses in negotiating this settlement. Accordingly, this factor favors approval of the settlement as well.

11. Plaintiffs and Settlement Class Counsel have acknowledged and agreed that, based upon the claims asserted and discovery conducted in this matter, the Wells Fargo Defendants could not have any liability for any call at issue in the Lawsuit placed after May 7,

2014. The Court finds that the Lawsuit does not assert any claims against the Wells Fargo Defendants for any call placed on or after May 8, 2014.

12. The Court directs Plaintiffs and the Wells Fargo Defendants to perform their duties set forth in the Settlement Agreement, including, but not limited to, causing the Settlement Administrator to issue settlement checks to Settlement Class Members who submitted valid and timely claims. The Settlement Class Members and the Wells Fargo Defendants are bound by the terms and conditions of the Settlement Agreement and this Order.

13. Plaintiffs' Petition for Award of Attorneys' Fees, Costs, and Incentive Awards and their motion to supplement that Petition (Dkt. 622 and Dkt. 649) are **GRANTED** as follows. The Court finds the requested attorneys' fees are fair and reasonable considering the value of the settlement, the benefits conferred on the class, the risks undertaken by class counsel, class counsel's knowledge and experience, and the normal rate of compensation class counsel likely would have received had they handled a similar suit on a contingent fee basis for a paying client. In common fund cases, "courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). "[A] typical contingency agreement in this circuit might range from 33% to 40% of recovery." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201–02 (N.D. Ill. 2018) (citing cases). Here, class counsel seeks an award of attorneys' fees in an amount of one-third of the Settlement Fund after deducting incentive awards and settlement administration costs. This request is consistent with the market rate for awarding attorneys' fees in class cases in this Circuit. *Id.*; *see also Young v. Cty. of Cook*, No. 06 C 552, 2017 WL 4164238, at *6 (N.D. Ill. Sept. 20, 2017) ("[A] 33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs' firms

taking on large, complex cases….") (awarding attorneys' fees in the amount of one-third of the $32.5 million fund); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) ("The Court finds that a 33% fee comports with the prevailing market rate for legal services of similar quality in similar cases.") (awarding attorneys' fees in the amount of 33% of $163.9 million settlement fund); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 97-cv-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered."); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018) (awarding attorneys' fees in the amount of one-third of the $250 million common fund); *Will v. Gen. Dynamics Corp.*, 06-cv-698, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010) ("Where the market for legal services in a class action is only for contingency fee agreements … 'the normal rate of compensation in the market' is '33.33% of the common fund recovered.'"). The Court, therefore, approves attorneys' fees to class counsel in the amount of $9,195,636, which shall be paid from the Settlement Fund pursuant to the terms of the Settlement Agreement.

14. Class counsel also seeks reimbursement of costs in the amount of $83,191.45, the most significant amount of which was for the electronic hosting of the Wells Fargo Defendants' document production, deposition transcripts, legal research costs, and copying costs. All these costs were necessary to properly prosecute this action, manage and review the voluminous document production, and to respond to numerous dispositive motions. The Court finds that the costs incurred by class counsel were reasonable and necessary. The Court, therefore, approves costs to class counsel in the amount of $83,191.45, which shall be paid from the Settlement Fund pursuant to the terms of the Settlement Agreement.

15. The Court finds that the requested incentive awards of $5,000 each to Plaintiffs CS Wang & Associate and Jay Schmidt Insurance Agency, Inc. are fair and reasonable and are approved, which amounts shall be paid from the Settlement Fund pursuant to the terms of the Settlement Agreement.

16. The Court finds that the businesses identified in Exhibit 1 attached hereto validly and timely requested exclusion from the Settlement Class in accordance with the Settlement Agreement and the requirements set by the Court and, therefore, are not part of the Settlement Class and are not bound by the Settlement Agreement or this Order.

17. The Court hereby dismisses all claims against the Wells Fargo Defendants released in the Settlement Agreement with prejudice and without awarding costs to any of the Plaintiffs, the Wells Fargo Defendants, or the Settlement Class Members (each a "Settling Party," and collectively, the "Settling Parties") as against any other Settling Party, except as provided above and in the Settlement Agreement. Other than as provided in the Settlement Agreement and this Order, the Settling Parties shall bear their own costs and attorneys' fees.

18. The Court orders that, upon entry of this Order, all Plaintiffs and Settlement Class Members shall have released and discharged the Released Parties from the Released Claims, as provided in Paragraph 21 of the Settlement Agreement.

19. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating in any capacity (as class members or otherwise) in any lawsuit or other action in any jurisdiction asserting claims based on the Released Claims, or seeking an award of fees or costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Lawsuit as it relates to the Released Claims and/or as a result of or in addition to those provided by the

Settlement Agreement as it relates to the Released Claims.

20. The terms of the Settlement Agreement and this Order shall have maximum res judicata, collateral estoppel and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest or expenses that were or could have been asserted in the Lawsuit as it relates to the Released Claims or that are covered by the releases contained in the Settlement Agreement.

21. For the avoidance of doubt, this Order does not bar or enjoin claims, nor does it operate as res judicata, collateral estoppel, or as having any other preclusive effect on claims, based on telephone calls other than Eligible Calls, by any Settlement Class Members against Fifth Third Bank, N.A., Vantiv, Inc., National Processing Company, Fidelity National Information Services, Inc., Worldpay, Inc., Ironwood Financial, LLC, John Lewis, Dewitt Lovelace, International Payment Services, LLC, Brian Bentley, Adam Bentley, or Andrew Bentley.

22. The Plaintiffs and the Wells Fargo Defendants may, without further approval from the Court, agree to and adopt such amendments or modifications of the Settlement Agreement and its implementing documents (including all exhibits) that (i) shall be consistent in all material respects with this Final Judgment, and (ii) do not limit the rights of Settlement Class Members.

23. The Court grants final approval of the settlement in all respects. The claims in this action asserted against the Wells Fargo Defendants are dismissed on the merits and with prejudice.

24. This Order is a final and appealable judgment as to the Wells Fargo Defendants and the claims asserted against them, and the Court expressly determines pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay of a final and appealable judgment with respect to all claims asserted against these defendants.

25. All persons or entities who have not made their objections to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

26. Without affecting the finality of this Final Judgment for purposes of appeal, the Court retains jurisdiction as to all matter related to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Judgment, and for any other necessary purpose including the distribution of any remaining funds as a *cy pres* award as provided in the Settlement Agreement.

27. This Order, the Settlement Agreement, the settlement that it reflects, and all acts, statements, documents, or proceedings relating to the settlement are not, and shall not be construed as or used as an admission by or against the Wells Fargo Defendants of any fault, wrongdoing, or liability on the part of the Wells Fargo Defendants, or of the validity or certifiability for litigation of any claim or the existence of any amount of damages.

28. In the event that the Settlement Agreement does not become effective in accordance with its terms, or the Final Settlement Date does not occur, then this Order shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated.

29. The Clerk is directed to enter final judgment consistent with this Order.

Dated: December 2, 2021

Hon. Rebecca R. Pallmeyer
United States District Court Judge

Exhibit 1

(Businesses that validly and timely opted out of the Settlement Class)

1) AAA Mobile Blind and Window Washing
2) Advantage Products, Inc.
3) American Postal Workers Union
4) Art on the Rock
5) Blair Aquatics Swim School
6) Campus Auto Care
7) Close Construction
8) Contractor Coatings, Inc.
9) Cruise One
10) Daryl Fogg Tax & Accounting, Inc.
11) DATAdvantage Group, Inc.
12) Evalueserve, Inc.
13) Evelyn's Nursery
14) Gantry
15) Gill Reprographics, Inc.
16) Ginny Powell
17) G.I. Trucking Company
18) Hearing & Speech Services
19) Mike Perry Photography
20) Petro-Lock, Inc.
21) Poetry & Prose
22) Poway-Bernardo Mortuary
23) Rae Neumen Private Gallery
24) Rodger L. Smith Construction Company
25) SAS Shoes
26) Teamsters Local No. 87
27) Walnut Creek Ctr