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13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERICO GALAVIS and ZAK  
17 KIRIAKOS, Individually and On Behalf  
18 of All Others Similarly Situated,

19 Plaintiffs,

20 vs.

21 BANK OF AMERICA, N.A. and VISA,  
22 INC.,

23 Defendants.

Case No.: 2:18-cv-09490-SVW-PJWx

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS'  
FEES, EXPENSES AND CLASS  
REPRESENTATIVE SERVICE  
AWARDS**

Hon. Stephen V. Wilson

Hearing

Date: April 6, 2020

Time: 1:30 p.m.

Place: 350 West 1<sup>st</sup> Street, Los Angeles, CA  
90012, Courtroom 10A

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**TABLE OF AUTHORITIES**

**CASES**

*Black v. T-Mobile USA, Inc.*,  
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1 Plaintiffs Federico Galavis and Zak Kiriakos (“Plaintiffs”) respectfully move  
2 the Court for an award of attorneys’ fees, expenses, and class representative service  
3 awards, as set forth in the class action Settlement Agreement (Dkt. 53-1) between  
4 Plaintiffs and Defendants Bank of America, N.A. (“BANA”) and Visa, Inc. (“Visa”).

5 **I. INTRODUCTION**

6 This case concerns certain Cash Advance charges incurred by BANA credit  
7 cardholders who used their cards to buy cryptocurrencies (also called “virtual  
8 currencies” or “cryptos”) between 2016 and 2018. The Parties dispute, *inter alia*,  
9 whether cryptocurrencies were properly deemed “Cash Equivalents” subject to “Cash  
10 Advance” charges within the meaning of BANA’s cardholder agreements. The parties  
11 also dispute whether Visa tortiously interfered with BANA’s cardholder agreements  
12 by recoding cryptocurrency transactions on the Visa credit card network.

13 After the Court’s rulings on Defendants’ motions to dismiss, Defendants filed  
14 their respective Answers to the Complaint. The Parties began conducting fact  
15 discovery in earnest, in addition to informal exchanges of relevant information and  
16 evidence. On May 6, 2019, the Parties conducted a full-day, in-person mediation  
17 session before former Magistrate Judge Jay C. Gandhi of JAMS. The Parties’  
18 litigation and mediation efforts culminated in the Cash Settlement Amount of  
19 \$415,000, to be automatically divided and paid to Class members in equal proportions  
20 to the Cash Advance fees that each Class member incurred, which total approximately  
21 \$811,000. In other words, the Settlement provides that each Class member will  
22 receive cash payments totaling approximately 50% of their allegedly wrongful Cash  
23 Advance fees. This compromise reflects the parties’ ultimate uncertainties regarding  
24 final merits judgments, while providing Class members automatic monetary relief.

25 Separate and apart from the Cash Settlement Amount, Class Counsel requests  
26 Court approval of their aggregate attorneys’ fees and expenses totaling \$285,000.<sup>1</sup>

27 <sup>1</sup> Also separately from, and in addition to, the Cash Settlement Amount, Defendants  
28 have agreed to pay for Settlement Administration costs of approximately \$70,000. *See*  
Settlement Agreement (Dkt. 53-1), ¶¶2.4(a), 3.1 – 3.2.

1 Plaintiffs' aggregate fee and expense award is within the range of reasonableness in  
2 this case. Class Counsel has spent several hundred attorney hours, and thousands of  
3 dollars, investigating, prosecuting and ultimately resolving this unprecedented case on  
4 favorable terms for the Class. Class Counsel's total litigation expenses of \$6,727.69  
5 reflect their efficient prosecution of this action. Class Counsel's requested attorneys'  
6 fees of \$278,272.31 (\$285,000 minus expenses) are also reasonable after two years  
7 that included investigating, litigating, and ultimately settling this case on a Class-wide  
8 basis. Class Counsel's fee request reflects a lodestar multiplier of just 1.31, which is  
9 reasonable in light of the significant risks incurred and the positive results achieved.

10 In addition, Class Counsel's separately negotiated fee and expense request is  
11 non-reversionary. Any amount not approved by the Court will inure to the further  
12 benefit of the Class, reflecting the non-collusive nature of Class Counsel's fee and  
13 expense request. *See* Settlement Agreement (Dkt. 53-1), ¶¶ 3.1 - 3.2.

14 Finally, Plaintiffs request that the Court approve their Incentive Awards totaling  
15 \$10,000 (\$5,000 each), to be paid out of the Cash Settlement Amount. *Id.* Both  
16 Plaintiffs have spent many hours assisting Class Counsel with the prosecution and  
17 resolution of this case. They have assisted with numerous investigation efforts,  
18 thoroughly reviewed and discussed all Court filings with Class Counsel (often  
19 providing helpful guidance), and participated in making strategic decisions at all  
20 stages of litigation and settlement. Plaintiffs' Incentive Awards are thus well  
21 deserved, and within the range of amounts routinely awarded by federal courts.

## 22 **II. OVERVIEW OF LITIGATION AND SETTLEMENT**

### 23 **A. Investigation And Pleading Stages**

24 In April 2018, Plaintiff Kiriakos conducted independent research, and contacted  
25 Class Counsel about certain Cash Advance charges he had incurred upon purchasing  
26 cryptocurrencies with his Bank of America credit card. *See* Declaration of David J.  
27 Harris, Jr. in Support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Class  
28 Representative Service Awards ("Harris Decl."), ¶¶2-3. Mr. Galavis did the same in

1 June 2018. *Id.* Plaintiffs’ independent inquiries led to months of research and  
2 investigation into the potential illegality of these credit card charges, as well as the  
3 precise factual causes of the charges. *Id.*, ¶4.

4 Class Counsel’s investigation included, *inter alia*: (1) the analysis of Plaintiffs’  
5 account terms and a complete review of their personal account histories with BANA;  
6 (2) investigation into non-party Coinbase, Inc. and other cryptocurrency merchants,  
7 including Coinbase’s public (and non-public) representations regarding the causes of  
8 these Cash Advance charges; (3) a thorough review and analysis of Visa’s public  
9 representations about how credit card transactions are processed on its network, and  
10 the roles of various network participants in that process; and (4) thorough searches for,  
11 and analyses of, myriad news articles about the crypto industry, as well as the specific  
12 events in question. *Id.*

13 Class Counsel’s extensive legal research and factual investigation resulted in the  
14 filing of Plaintiffs’ Class Action Complaint (Dkt. 1) against BANA and Visa on  
15 November 8, 2018. *Id.*, ¶5. Plaintiffs asserted multiple theories against Defendants  
16 under the federal Truth-in-Lending Act (“TILA”), and under state contract and tort  
17 law. *Id.* After a stipulated extension of time to respond, BANA and Visa filed  
18 separate motions to dismiss the Complaint on February 4, 2019, asserting numerous  
19 arguments under Fed. R. Civ. P. 12(b)(6). *Id.*, ¶6. Plaintiffs filed two briefs in  
20 opposition to Defendants’ motions to dismiss on February 25, 2019 (Dkt. 32; Dkt. 33),  
21 and Defendants filed their reply briefs on March 11, 2019 (Dkt. 35; Dkt. 36).

22 On March 25, 2019, the Court held a hearing on Defendants’ motions to  
23 dismiss. Harris Decl., ¶¶8-9. During and shortly after that hearing, the Court  
24 indicated its desire to address the merits of Plaintiffs’ claims at summary judgment,  
25 before proceeding to a later class certification stage (if necessary). *Id.* The Court  
26 ordered that discovery be completed by June 19, 2019, with cross-motions for  
27 summary judgment to be filed by July 8, 2019. *Id.*

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1           **B. The Parties' Early Discovery Efforts And Informal Exchanges of**  
2           **Relevant Information**

3           Shortly after the Court's hearing on Defendants' motions to dismiss, the Parties  
4 began fact discovery in earnest. *Id.*, ¶¶10-15. Plaintiffs served Fed. R. Civ. P.  
5 30(b)(6) deposition notices on BANA and Visa, plus three individual deposition  
6 notices of key employees. *Id.* Plaintiffs also propounded five interrogatories and  
7 seventeen requests for admissions on Visa, ten interrogatories and twenty-one requests  
8 for admissions on BANA, and eight detailed requests for productions of documents  
9 and ESI. *Id.* Additionally, Plaintiffs served non-party Coinbase, Inc. with a Fed. R.  
10 Civ. P. 30(b)(6) deposition subpoena, which detailed six requests for certain  
11 documents and ESI to be produced in advance of that deposition. *Id.*

12           Defendants likewise propounded extensive written discovery and deposition  
13 notices on Plaintiffs, including a deposition notice that BANA served on each  
14 Plaintiff, thirty-four requests for production of documents that BANA served on both  
15 Plaintiffs, and fourteen interrogatories that BANA served on each Plaintiff. *Id.* All  
16 Parties engaged in substantial discovery negotiations concerning the proper scope of  
17 fact discovery and the specific searching, culling and production methodologies that  
18 would be employed for various categories of ESI. *Id.*

19           In parallel with these discovery efforts, and in light of the risks of continuing  
20 litigation, the Parties evaluated their ADR options, eventually agreeing to a full-day  
21 mediation session on May 6, 2019, about two months before the Court's summary  
22 judgment deadline. *Id.* Prior to mediation, the Parties exchanged mediation briefs  
23 detailing their respective case theories and damages analyses. *Id.* Each side  
24 additionally submitted confidential mediation briefs directly to Judge Gandhi. The  
25 Parties also submitted numerous exhibits in support of their briefs, providing a  
26 thorough preview of the evidence to be proffered at summary judgment and trial, if  
27 needed. *Id.* The Parties' briefs also fleshed out key issues regarding class  
28 certification. *Id.*



### C. The Parties' Negotiations And Settlement

1 During a full-day mediation session, the Parties conducted arms-length debates  
2 regarding their respective positions in this case. *Id.*, ¶16. Judge Gandhi aided the  
3 Parties in understanding the strengths and weaknesses of their positions, as well as the  
4 risks to both sides of insisting on further litigation. *Id.* The Parties were thus able to  
5 assess their cases from a neutral, third-party perspective, and through that lens, agreed  
6 upon material Settlement terms in lieu of further litigation. *Id.* Over the ensuing  
7 weeks and months, the Parties carefully negotiated all remaining Settlement terms, and  
8 executed their finalized Settlement Agreement on September 26, 2019. *Id.*, ¶¶17-18.

9 Plaintiffs' filed their Motion for Preliminary Approval (Dkt. 52) on October 22,  
10 2019, and the Court entered its Preliminary Approval Order (Dkt. 62) on December  
11 17, 2019. *Id.*, ¶¶19-20. The Court found, *inter alia*, that "the Settlement is the result  
12 of arms-length negotiations between the parties and a mediation conducted after Class  
13 Counsel had adequately investigated Plaintiffs' claims and become familiar with their  
14 strengths and weaknesses." *See* Dkt. 62, ¶4. The Court further found that "the  
15 Settlement appears to be fair, reasonable and adequate to the Class," and "within the  
16 range of reasonableness of a settlement that could ultimately be given final approval  
17 by this Court." *Id.* ¶¶1, 3.

### 18 **III. THE COURT SHOULD APPROVE CLASS COUNSEL'S REASONABLE** 19 **REQUEST FOR ATTORNEYS' FEES**

20 Fed. R. Civ. P. 23(h) provides in relevant part that, "[i]n certified class action,  
21 the court may award reasonable attorney's fees and nontaxable costs that are  
22 authorized by law or by the parties' agreement." Within the Ninth Circuit, "there are  
23 two primary methods" for evaluating the reasonableness of attorneys' fees in class  
24 settlements. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir.  
25 2015). Courts have broad discretion to use either the percentage-of-recovery method  
26 or the lodestar method to evaluate the reasonableness of fee requests. *In re Bluetooth*  
27 *Headset Prods. Liability Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). Such judicial  
28

1 discretion must, however, “be exercised so as to achieve a reasonable result.” *Id.* at  
2 942-43 (collecting cases).

3 Here, Class’s Counsel’s requested fee award of **\$278,272.31** (\$285,000 minus  
4 \$6,727.69 in out-of-pocket expenses) reflects a “reasonable result” in light of the time  
5 spent, the risks assumed, and the results achieved in this action. Class Counsel’s  
6 lodestar calculation of **\$212,049.00** is likewise within the range of reasonableness, and  
7 yields a reasonable multiplier of **1.31** for this unprecedented contingency case.

8 **A. Class Counsel’s Attorneys’ Fees Reflect “A Reasonable Result”**  
9 **Under The Lodestar Method.**

10 Under the lodestar method, courts multiply a reasonable number of hours  
11 worked by the attorney’s reasonable hourly billing rate. *Class Plaintiffs v. City of*  
12 *Seattle*, 19 F.3d 1291, 1294 n. 2 (9th Cir. 1994). Courts then typically enhance  
13 lodestar calculations with some positive “multiplier” in order to arrive at reasonable  
14 fee amounts for contingency cases. *Id.* Indeed, “[i]t is an established practice in the  
15 private legal market to reward attorneys for taking the risk of non-payment by paying  
16 them a premium over their normal hourly rates.” *Fischel v. Equitable Life Assur.*  
17 *Society of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002). In addition to contingency risks,  
18 the novelty or complexity of a case may further support the propriety of a lodestar  
19 multiplier in class action settlements. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,  
20 1051 (9th Cir. 2002).

21 **1. Class Counsel’s Hourly Rates Are Within The Range Of**  
22 **Reasonableness**

23 In evaluating the reasonableness of attorneys’ hourly rates, the court should seek  
24 evidence “that the requested rates are in line with those prevailing in the community  
25 for similar services by lawyers of reasonably comparable skill, experience, and  
26 reputation.” *Blum v. Stenson*, 465 U.S. 886, n.11 (1984). The “relevant community”  
27 is typically “the community in which the district court sits.” *Schwarz v. Sec. of Health*  
28 *& Human Services*, 73 F.3d 895, 906-07 (9th Cir. 1995). However, “[t]he type of  
services rendered by lawyers, as well as their experience, skill and reputation, varies

1 extensively—even within a law firm.” *Blum*, 465 U.S. at n.11. “In this traditional  
2 sense, there is no such thing as a prevailing market rate for the service of lawyers in a  
3 particular community.” *Id.* Hence, “determining an appropriate ‘market rate’ for the  
4 services of a lawyer is inherently difficult.” *Id.*

5 To fulfill this difficult task, courts often look to empirical survey data to discern  
6 the reasonableness of attorneys’ fees. *See, e.g., Cleo D. Mathis & Vico Prods. Mfg.*  
7 *Co. v. Spears*, 857 F.2d 749, 755-56 (9th Cir. 1988); *In re Toys R Us-Delaware, Inc.*  
8 *Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 461 (C.D.  
9 Cal. 2014) (holding that courts may properly “use survey data to evaluate the  
10 reasonableness of attorneys’ rates”); *Grice v. Pepsi Beverages Co.*, 363 F.Supp.3d  
11 401, 407 (S.D.N.Y. 2019) (reasoning that “empirical studies” necessarily “minimiz[e]  
12 any potential sampling biases” and “paint a far more comprehensive picture” than  
13 comparing individual lawyers or cases).

14 Plaintiffs here proffer the empirical results of two comprehensive surveys: the  
15 *United States Consumer Law Attorney Fee Survey Report, 2015-2016*, published by  
16 Ronald L. Burge, Esq., and the *2017 Real Rate Report® Snapshot* published by  
17 Wolters Kluwer (“Wolters Kluwer Report”). *See* Harris Decl., ¶¶35-40, Ex. A, Ex. B.  
18 The data points from these surveys are between three and five years old; hence, they  
19 are more likely to understate than to overstate prevailing market rates today (all else  
20 equal). Nevertheless, such surveys provide comprehensive gauges for evaluating the  
21 reasonableness of attorneys’ rates.

22 **First**, the *United States Consumer Law Attorney Fee Survey Report, 2015-2016*  
23 found that the median billing rate for “Attorneys Handling Class Action Cases” in  
24 California was \$513. *Id.*, ¶36. As detailed below, Class Counsel’s average hourly rate  
25 (or “blended rate”) is slightly **below** this median rate (from four to five years ago).

26 **Second**, the 2017 Wolters Kluwer Report analyzed data from over 4,600 U.S.  
27 law firms, including over 41,000 law firm partners, 48,000 associates, 25 million line  
28

1 items of billing, and 23 million hours billed. *Id.*, ¶¶37-39. The following data points  
2 emerged.

- 3 i. Broken down by city and title, the Wolters Kluwer Report found that the  
4 median hourly rates for attorneys in Los Angeles were \$640 for partners,  
5 and \$478.74 for associates. *Id.*<sup>2</sup>
- 6 ii. Broken down by city and years of experience, Los Angeles attorneys with  
7 7 or more years of experience had a median rate of \$450, and attorneys  
8 with 21 or more years of experience had a median rate of \$656.02. *Id.*<sup>3</sup>

9 Here, Class Counsel’s hourly rates are \$750 for Jeffrey Krinsk (a managing  
10 partner with 43 years of experience), and \$495 for David Harris (an associate attorney  
11 with more than 7 years of experience). *Id.*, ¶¶34-35.

12 Mr. Harris’s hourly rate of \$495 is reasonable, in part because it is very close to  
13 the Wolters Kluwer Report’s median hourly rate of \$478.74 for Los Angeles associate  
14 attorneys (in 2017). *Id.*, ¶¶35-39. Mr. Harris’s rate is also *below* the *United States*  
15 *Consumer Law Attorney Fee Survey Report’s* median rate of \$513 for “Attorneys  
16 Handling Class Action Cases” in California (in 2015-2016). *Id.* Moreover, according  
17 to the Wolters Kluwer Report, Mr. Harris’s rate is well within the “Quartiles” (within  
18 the “middle half”) of Los Angeles attorneys’ hourly rates, when broken down by years  
19 of experience. *Id.* In addition, Mr. Harris’s rate is only slightly above (and in  
20 inflation-adjusted terms, actually below) a rate which this District found to be

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22 <sup>2</sup> The “First Quartile” (the *bottom 25%* of rates in Los Angeles) topped out at \$425 for  
23 partners and \$325 for associates. Harris Decl., ¶¶37-38. The “Third Quartile” (or  
24 *bottom 75%* of rates) topped out at \$869.75 for partners and \$638.97 for associates.  
*Id.*

25 <sup>3</sup> For attorneys with 7 or more years of experience, the First and Third Quartile rates  
26 were \$275 and \$664.91, respectively; hence, any hourly rate between these two  
27 amounts fell within the “middle half” of surveyed rates. Harris Decl., ¶¶37-38. For  
28 attorneys with 21 or more years of experience, the First and Third Quartile rates were  
\$463.25 and \$926, respectively; again, any hourly rate between these two amounts fell  
within the “middle half” of surveyed rates. *Id.*

1 “typical” for a comparable attorney *one decade ago*. See *Browne v. American Honda*  
2 *Motor Co., Inc.*, No. CV 09-06750 MMM (DTBx), 2010 WL 9499073, at \*7 (C.D.  
3 Cal. Oct. 5, 2010) (finding an hourly rate of \$445 to be reasonable for a class action  
4 attorney with seven years of experience). Taken together, these data points show that  
5 Mr. Harris’s hourly rate of \$495 is within the range of reasonableness for comparable  
6 attorneys in this District, in the year 2020.

7 Similarly, Mr. Krinsk’s hourly rate of \$750 is within the range of  
8 reasonableness for a managing partner with 43 years of experience. Although this  
9 rate is above the *median* rates for partners and for attorneys in Los Angeles having 21  
10 or more years of experience, \$750 is well within the “Quartiles” (the middle half) of  
11 all surveyed rates in both categories. See n.2 & n.3, *supra*. Mr. Krinsk’s premium  
12 over the median rates is reasonable here in light of his 43 years of experience (versus  
13 21 years), and his role as a named partner (versus all “partners” generally). See also  
14 *Dudley v. TrueCoverage LLC*, No. CV 18-3760 PA (AGRx), 2019 WL 3099661, at \*6  
15 (C.D. Cal. Mar. 22, 2019) (approving as “reasonable” an hourly rate of \$750, for an  
16 unnamed partner who performed 197 hours of work in a collective action).

17 Indeed, Class Counsel’s rates should be deemed particularly reasonable because  
18 their firm avoided allocating work to partners (the most expensive attorneys)  
19 unnecessarily, even during the settlement process. *But see Hayes v. MagnaChip*  
20 *Semiconductor Corp.*, No. 14-CV-01160-JST, 2016 WL 6902856, at \*8 (N.D. Cal.  
21 Nov. 21, 2016) (finding over-reliance upon the work of partners, and thus reducing a  
22 firm’s “blended rate” to \$600 per hour to reflect a reasonable rate.). Here, because  
23 Class Counsel relied largely on an associate to litigate and settle this case on a Class-  
24 wide basis, Class Counsel has billed a “blended rate” of just **\$510.47** (total lodestar  
25 divided by total hours), which is also well within the range of reasonableness in this  
26 District. Harris Decl., ¶40; see also *Strategic Partners, Inc. v. Vestagen Protective*  
27 *Tech., Inc.*, No. 2:16-cv-5900-RGK-PLA, 2018 WL 6038275, at \*3-4 (C.D. Cal. Jan

28

17, 2018) (finding that a “blended rate” of \$520 was reasonable in false advertising case “[b]ased on the Court’s knowledge of the rates charged in Los Angeles”).

Staff Member	Position	Years of Experience	Time	Rate	Total
Jeffrey R. Krinsk	Partner	43	25.2	\$750.00	\$18,900.00
David J. Harris, Jr.	Associate	8	390.2	\$495.00	\$193,149.00
<b><u>BLENDDED TOTALS</u></b>			<b><u>415.4</u></b>	<b><u>\$510.47</u></b>	<b><u>\$212,049.00</u></b>

For all of the above reasons, the Court should find that Class Counsel’s hourly rates fall within the range of reasonableness in this District, in the year 2020.

**2. Class Counsel’s Time Expenditures Are Within The Range Of Reasonableness**

“Beyond establishing a reasonable hourly rate, a party seeking attorneys’ fees bears the burden to “document[ ] the appropriate hours expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *accord Roberts v. Marshalls of CA, LLC*, No. 13-CV-4731-MEJ, 2018 WL 510286, at \*15 (N.D. Cal. Jan. 23, 2018). Class Counsel, however, “is not required to record in great detail how each minute of his time was expended,” but should “identify the general subject matter of his [or her] time expenditures.” *Id.* at 437, n. 12. *See also In re HPL Techs., Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 920 (N.D. Cal. 2005) (“The Sidener declaration breaks out the hours expended by lead counsel into five categories . . . . This is an especially helpful compromise between reporting hours in the aggregate (which is easy to review, but lacks informative detail) and generating a complete line-by-line billing report (which offers great detail, but tends to obscure the forest for the trees).”).<sup>4</sup>

Here, through two years of pre-lawsuit investigation, all subsequent litigation, and all Settlement efforts (including but not limited to mediation, Class Certification and Preliminary Approval), Class Counsel has expended a total of **415.4 hours** on this

<sup>4</sup> Class Counsel is prepared to submit their line-item time entries from the past two years if the Court so requires. Harris Decl., ¶32.

1 action, after reductions made in the exercise of billing judgment. The allocation of  
 2 attorney hours is summarized by the following chart. Harris Decl., ¶¶29-31.

Task	Hours
<u>Pre-lawsuit Investigation</u>	11.8
<u>Client &amp; Class Member Correspondence:</u>	11.5
<u>Pleadings:</u> drafts, revisions and filing of the Class Action Complaint; review and analysis of Defendants’ respective Answers.	32.4
<u>Opposing Defendants’ respective Motions to Dismiss:</u> reviewing and analyzing Defendants’ motion to dismiss arguments and authorities cited; researching, drafting, editing, and filing two separate opposition briefs; preparing and filing notice of recent authority; preparation for and attendance at oral argument on motions to dismiss; review and analysis of oral argument transcript.	135.3
<u>Miscellaneous Research:</u> pre-lawsuit legal research pertaining to actual and potential claim elements and potential class certification issues; post-lawsuit research regarding implications of summary judgment occurring before class certification ( <i>e.g.</i> , “one-way intervention” rule); potential for new theories to be asserted in an amended complaint.	23.0
<u>Fact Discovery:</u> preparing, serving, and reviewing numerous party and non-party discovery requests & responses; meet-and-confer phone calls with counsel for both Defendants; preparing and reviewing all written meet-and-confer correspondence among the parties.	24.6
<u>Mediation:</u> researching potential mediators and reaching agreement to mediate; drafts, revisions and submissions of exchanged mediation briefs and confidential mediation briefs; analysis of Defendants’ mediation briefs and all supporting exhibits (hundreds of pages); preparation for and attendance at mediation in Los Angeles; preparation and execution of term sheet.	103.5
<u>Settlement Agreement:</u> drafts, revisions, and written and oral negotiations of all Settlement Agreement terms and Class Notice documents.	22.5
<u>Litigation Strategy and Analysis:</u> Meetings between Plaintiffs’ attorneys’ to discuss litigation & mediation strategies	1.4
<u>Preliminary Approval:</u> legal research, drafts, revisions and filings of Preliminary Approval Brief, plus all Declarations and Exhibits from counsel and the parties.	49.4
<b>TOTAL</b>	<b>415.4</b>

1 The above time totals have been reduced in the exercise of Class Counsel’s  
2 billing judgment, which included: (1) generally declining to bill for more than one  
3 attorney who participated in various in-house meetings and meet-and-confer  
4 conferences; (2) declining to bill administrative tasks performed by paralegals and  
5 secretaries, such as reviewing and tabling briefs, ordering transcripts and booking  
6 attorney travel; and (3) generally reducing or eliminating certain time entries  
7 originally billed for a variety of tasks, large and small. Harris Decl, ¶¶29-31.

8 Furthermore, Class Counsel roughly estimates spending an *additional* total of  
9 up to 50 attorney hours on the final approval process, which will include: (1) the  
10 preparation and filing of all final approval papers; (2) responding to arguments raised  
11 by absent Class members in objection to final approval (if any); and (3) preparation,  
12 travel and appearance at the Court’s final approval hearing in Los Angeles on April 6,  
13 2020. Such additional, estimated hours are not included in Class Counsel’s lodestar  
14 calculation of \$212,049.00. Also not included in Class Counsel’s lodestar calculation  
15 are the time spent and expenses incurred preparing and filing the instant motion.

16 **3. A Lodestar Multiplier Of 1.31 Is Reasonable In Light Of The**  
17 **Risks Assumed And The Results Achieved.**

18 While Class Counsel’s reasonable lodestar calculation yields a total of  
19 \$212,049.00, lodestar calculations alone do not mark the end of courts’ reasonableness  
20 inquiries. Indeed, “[i]t is an established practice in the private legal market to reward  
21 attorneys for taking the risk of non-payment by paying them a *premium* over their  
22 normal hourly rates for winning contingency cases.” *Fischel*, 307 F.3d at 1008  
23 (emphasis added). “This provides the ‘necessary incentive’ for attorneys to bring  
24 actions to protect individual rights and to enforce public policies.” *Id.*

25 “One of the most common fee enhancers ... is for contingency risk. ‘A lawyer  
26 who both bears the risk of not being paid and provides legal services is *not* receiving  
27 the fair market value of his work if he is paid only for the second of these functions. If  
28 he is paid no more, competent counsel will be reluctant to accept fee award cases.’”



1 See *Browne v. Am. Honda Motor Co.*, No. CV 09-06750, 2010 WL 9499073, at \*11  
2 (C.D. Cal. Oct. 5, 2010) citing *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553,  
3 579-80 (2004), as modified (Jan. 12, 2005) (emphasis added). To determine whether  
4 Class Counsel’s requested lodestar multiplier of **1.31** is reasonable, the Court may  
5 consider, *inter alia*: (1) the results obtained, (2) the novelty or difficulty of the  
6 questions involved, (3) the skill required to perform the legal services, and (4) whether  
7 the fees were fixed or contingent. *Fischel*, 307 F.3d at 1006–07. Applying these  
8 factors here easily justifies Class Counsel’s requested multiplier of 1.31.

9 **First**, Class Counsel has obtained a very positive result for Plaintiffs and the  
10 Class. The Parties estimate that the Cash Advance fees charged to Class Members  
11 for their crypto purchases totaled approximately \$811,000. See Williams Decl., ¶¶2-7.  
12 The Cash Settlement Amount of \$415,000 constitutes roughly 50% of the Cash  
13 Advance fees actually imposed, an extremely positive result far above the norm for  
14 class actions. See, e.g., *In re Toys R Us*, 295 F.R.D. at 454 (finding a \$5 or \$30  
15 benefit, representing 5% to 30% of the recovery that might have been obtained post-  
16 trial was fair and adequate in a consumer class action); see also *City of Omaha Police*  
17 *& Fire Ret. Sys. v. LHC Grp.*, No. 6:12–1609, 2015 WL 965696, at \*7-8 (W.D. La.  
18 Mar. 3, 2015) (finding that a “7.4%–10.3% [recovery] of estimated provable damages”  
19 amounts to “a high degree of success” because “[t]he typical recovery in most class  
20 actions generally is three-to-six cents on the dollar”). This Settlement also provides  
21 **automatic** cash benefits (not claims-made benefits) to Class members, thus avoiding  
22 the real-world risks that Plaintiffs and the Class could lose their cases on the merits  
23 (and recover nothing) if they proceed with dispositive motions, trial, and/or appeals.  
24 See *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015)  
25 (“Immediate receipt of money through settlement, even if lower than what could  
26 potentially be achieved through ultimate success on the merits, has value to a class,  
27 especially when compared to risky and costly continued litigation.”). For all of these  
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1 reasons, the results obtained in this case justify a reasonable multiplier to enhance  
2 Class Counsel’s lodestar calculation.

3       **Second**, the claims asserted in this action were novel, or as defense counsel  
4 once put it, “ambitious.” See Motion to Dismiss (Dkt. 21) at 1 (“The law does not  
5 stretch that far.”). This was not a case that merely required the application of settled  
6 law to familiar facts. On the contrary, this case turned on the characteristics of  
7 cryptocurrencies, which were (and still are) emerging phenomena in the worlds of  
8 finance and economics. Moreover, at the time of suit, no court had decided whether  
9 TILA’s subsequent notice requirements were triggered when the coding of certain  
10 types of credit card transactions changed over time, resulting in different types of fees  
11 being assessed on the transactions, where there was no alteration of the four corners of  
12 a written agreement. The claims that Plaintiffs have asserted against Defendant Visa  
13 are equally novel, as no Court or jury had ever decided whether Visa (or, *e.g.*,  
14 MasterCard) had tortiously interfered with credit card contracts under similar  
15 circumstances. The novelty of such key factual and legal questions in this case, and  
16 Class Counsel’s successful navigation of these novel issues, further supports awarding  
17 a lodestar multiplier.

18       **Third**, the novel questions of law and fact presented by this case only further  
19 heightened the contingency risks assumed by Class Counsel. Here, Class Counsel  
20 undertook this action entirely on a contingency-fee basis, assuming significant risks  
21 that the action would yield no recovery and leave them uncompensated. Harris Decl.,  
22 ¶28. From the outset of its investigation until today, Class Counsel has understood  
23 that they were embarking on an unprecedented, complex and potentially expensive  
24 litigation with no guarantee of ever being compensated. *Id.* Class Counsel has still  
25 not been compensated for any attorney time or expenses invested in this case over the  
26 past two years. *Id.*

27       In undertaking the responsibility of representing Plaintiffs and the Class, Class  
28 Counsel was obliged to ensure that sufficient resources were dedicated to the

1 prosecution of this case, and that funds were available to continuously compensate  
2 staff and cover the considerable costs that a case like this requires. *Id.* With an  
3 average lag time of several years for class actions to conclude, the financial burden on  
4 contingent-fee counsel is *far* greater than on a firm which is continuously paid for its  
5 services. *Id.*

6 At bottom, the favorable results achieved, the novel issues navigated, and the  
7 numerous risks of non-payment assumed by Class Counsel, more than justify their  
8 proffered lodestar multiplier of 1.31. *See, e.g., Vizcaino*, 290 F.3d at 1051 (upholding  
9 a lodestar multiplier of 3.65); *In re Mercury Interactive Corp. Sec. Litig.*, No. 5:05-  
10 CV-03395-JF, 2011 WL 826797, at \*2 (N.D. Cal. Mar. 3, 2011) (lodestar multiplier of  
11 3.08 "is within the acceptable range"); *City of Roseville Employees' Ret. Sys. v. Micron*  
12 *Tech., Inc.*, No. 06-CV-85-WFD, 2011 WL 1882515, at \*7 (D. Idaho Apr. 28, 2011),  
13 *aff'd sub nom.*, 484 F. App'x 138 (9th Cir. 2012) (finding that a lodestar multiplier of  
14 2.72 "is relatively standard").<sup>5</sup>

15 **IV. THE COURT SHOULD AWARD CLASS COUNSEL'S REASONABLE**  
16 **EXPENSES**

17 Consistent with Fed. R. Civ. P. 23(h), the Ninth Circuit allows the recovery of  
18 reasonable litigation expenses as part of class action settlements. *E.g., Staton v.*  
19 *Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003); *see also Newberg on Class Actions*,  
20 §14:2 at 511-513 (4th ed.). "Attorneys may recover their reasonable expenses that  
21 would typically be billed to paying clients in non-contingency matters." *In re*  
22 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (citing *Harris v.*  
23 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)).

24  
25 \_\_\_\_\_  
26 <sup>5</sup> As can be seen from these cases, even if the Court were to aggressively reduce Class  
27 Counsel's lodestar calculation to (for example) \$150,000, and ignore all future time  
28 expenditures, Class Counsel's requested attorneys' fees of \$278,272.31 would *still* be  
within the range of reasonableness because they would reflect a multiplier of less than  
2.0 for this unprecedented contingency case.

1 Here, Class Counsel requests reimbursement for litigation expenses totaling  
2 **\$6,727.69**. See Harris Decl., ¶41. Class Counsel’s litigation expenditures include:  
3 Filing Fees - \$400; Process Server Fees - \$279; Mediation Fees - \$5,400; Travel/Meals  
4 - \$447.90; Transcript Fees/Delivery Fees for Court Courtesy Copies - \$200.79. *Id.* In  
5 sum, Class Counsel’s expenditures of \$6,727.69 to date amount to less than 2% of the  
6 Cash Settlement Amount, which is an exceedingly reasonable result. *In re AT & T*  
7 *Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill.  
8 2011) (recognizing “a 2004 empirical study, which found that ‘[c]osts and expenses  
9 for the sample as a whole were, on average 4 percent of the relief for the class’”) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*  
10 *Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27, 70 (2004)).

12 The Court should thus grant Class Counsel’s request to recoup all \$6,727.69 in  
13 litigation expenses, which in any event, will not reduce the Cash Settlement Amount.

14 **V. THE COURT SHOULD APPROVE PLAINTIFFS’ REQUESTED**  
15 **INCENTIVE AWARDS**

16 Class representative “[i]ncentive awards are fairly typical in class action cases.”  
17 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). “Plaintiffs in  
18 class and collective actions play a crucial role in bringing justice to those who would  
19 otherwise be hidden from judicial scrutiny.” *Castillo v. Noodles & Co.*, No. 16-CV-  
20 03036, 2016 WL 7451626, at \*2 (N.D. Ill. Dec. 23, 2016). “Because a named plaintiff  
21 is an essential ingredient of any class action, an incentive award is appropriate if it is  
22 necessary to induce an individual to participate in the suit.” *Cook v. Niedert*, 142 F.3d  
23 1004, 1016 (7th Cir. 1998); *Linney v. Cellular Alaska Partnership*, Nos. C–96–3008,  
24 1997 WL 450064, at \*7 (N.D. Cal. July 18, 1997) (“Incentive fees for class  
25 representatives serve much the same function as attorneys’ fees do in the class action  
26 context: they provide the economic incentive necessary to ensure that meritorious  
27 actions are prosecuted.”).

1 Here, Class Counsel asks that the Court award each named Plaintiff a \$5,000  
2 Incentive Award (\$10,000 total) for their efforts in successfully representing over  
3 20,000 Class members. See Harris Decl., ¶¶42-47. Both Plaintiffs made meaningful  
4 and necessary contributions to the success of this action. *Id.* Each Plaintiff  
5 independently identified the Cash Advance charges at issue in this case, after a careful  
6 review of their relevant transaction histories, and each one independently identified the  
7 potential impropriety of such charges. *Id.* In response, Mr. Galavis and Mr. Kiriakos  
8 each conducted their own research to identify and contact a law firm with experience  
9 litigating class action claims, specifically in the context of consumer credit. *Id.*

10 Plaintiffs both substantively participated in the pre-lawsuit investigation,  
11 reviewing and producing to Class Counsel numerous documents relating to their own  
12 financial records, their own account terms, communications, and histories with  
13 BANA, as well as several publicly available documents and sources which aided Class  
14 Counsel in the prosecution of the case. *Id.* Plaintiffs provided substantive input into  
15 the Complaint, and proposed material revisions which Class Counsel implemented  
16 prior to filing. *Id.* And since that time, Plaintiffs have remained actively and  
17 consistently involved in every significant facet of this lawsuit: regularly supervising  
18 and directing Class Counsel's litigation and Settlement decisions, reviewing all key  
19 Court filings in this case, and making themselves available for myriad written and oral  
20 consultations throughout the mediation and settlement processes. *Id.* Both Mr.  
21 Galavis and Mr. Kiriakos have spent many fruitful hours identifying and developing  
22 this case, and substantively assisting Class Counsel in the prosecution of this case. *Id.*

23 Without Plaintiffs, the Class would in all likelihood have obtained no financial  
24 recovery. No related cases have been filed to date, and no other Class members have  
25 contacted Class Counsel about pursuing their claims in this case. *Id.* Yet because of  
26 Plaintiffs' substantial efforts over the last two years, all 20,000 Class members will  
27 now receive free money, without expending any effort. Under the Settlement, they  
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1 will receive automatic, cash compensation in substantial proportion to the Cash  
2 Advance fees they incurred from their crypto purchases.

3 For all of these reasons, Plaintiffs' requested Incentive Awards of \$5,000 each  
4 are reasonable and appropriate to compensate Plaintiffs for their substantial efforts and  
5 successes in this case. *See Chu v. Wells Fargo Invs., LLC*, Nos. C 05-4526 MHP,  
6 2011 WL 672645, at \*5 (N.D. Cal. Feb. 16, 2011) (approving \$10,000 incentive  
7 award); *Black v. T-Mobile USA, Inc.*, No. 17-CV-04151-HSG, 2019 WL 3323087, at  
8 \*7 (N.D. Cal. July 24, 2019) (approving \$10,000 incentive award).

9 **VI. CONCLUSION**

10 For the foregoing reasons, Class Counsel respectfully requests that the Court  
11 grant Plaintiffs' motion for an award of \$285,000 in total attorneys' fees and expenses,  
12 to be paid separately from the Cash Settlement Amount, and further award each  
13 Plaintiff a Service Award of \$5,000 (\$10,000 in total) for their time and effort spent  
14 successfully prosecuting this action on the Class's behalf.

15  
16 Dated: January 31, 2020

Respectfully submitted,

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

FEDERICO GALAVIS and ZAK  
KIRIAKOS, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A. and VISA,  
INC.,

Defendants.

Case No.: 2:18-cv-09490-SVW-PJWx

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, EXPENSES, AND  
CLASS REPRESENTATIVE SERVICE  
AWARDS**

1 Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative  
2 Service Awards came before this Court for hearing on April 6, 2020. The Court,  
3 having fully reviewed Plaintiffs' Motion, the supporting Memorandum of Law and  
4 Declarations and Exhibits filed in support thereof, and for good cause appearing,  
5 **HEREBY MAKES THE FOLLOWING ORDERS:**

6 1. The Court **GRANTS** Plaintiffs' Motion for Attorneys' Fees, Expenses,  
7 and Class Representative Service Awards. The Court concludes that Plaintiffs'  
8 aggregate fee and expense award of \$285,000, to be paid by Defendants separately  
9 from, and in addition to, the Class Settlement Amount, falls within the range of  
10 reasonableness in light of the positive results achieved in this case, the time and  
11 money expended, and the substantial risks assumed by Class Counsel on a  
12 contingency basis.

13 2. Specifically, the Court finds that Class Counsel's out-of-pocket expenses  
14 totaling \$6,727.69 constitute a reasonable expense total for the investigation,  
15 prosecution, mediation, and settlement of this action.

16 3. The Court further finds that Class Counsel's total attorneys' fee request of  
17 \$278,272.31 (\$285,000 minus expenses) is within the range of reasonableness for this  
18 case. Specifically, the Court finds that Class Counsel's lodestar calculation of  
19 \$212,049.00 is within the range of reasonableness, and that the resultant lodestar  
20 multiplier of 1.31 is appropriate to compensate Class Counsel for the positive results  
21 achieved through this case, and the numerous litigation and financial risks assumed by  
22 Class Counsel. *See, e.g., Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d  
23 997, 1008 (9th Cir. 2002) ("It is an established practice in the private legal market to  
24 reward attorneys for taking the risk of non-payment by paying them a premium over  
25 their normal hourly rates."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th  
26 Cir. 2002) (upholding a lodestar multiplier of 3.65); *In re Mercury Interactive Corp.*  
27 *Sec. Litig.*, No. 5:05-CV-03395-JF, 2011 WL 826797, at \*2 (N.D. Cal. Mar. 3, 2011)  
28 (lodestar multiplier of 3.08 "is within the acceptable range"); *City of Roseville*



1 *Employees' Ret. Sys. v. Micron Tech., Inc.*, No. 06-CV-85-WFD, 2011 WL 1882515,  
2 at \*7 (D. Idaho Apr. 28, 2011), *aff'd sub nom.*, 484 F. App'x 138 (9th Cir. 2012)  
3 (finding that a lodestar multiplier of 2.72 "is relatively standard").

4 4. The Court finds Class Counsel's lodestar calculation of \$212,049.00 to be  
5 within the range of reasonableness for several reasons. First, the Court finds that Class  
6 Counsel's 415.4 total hours of attorney time constitute a reasonable number of hours  
7 expended investigating, litigating, and ultimately settling this class action, which  
8 presented certain novel questions of law and fact pertaining to cryptocurrencies. The  
9 Court also finds Class Counsel's hourly rates to be within the broad range of  
10 reasonableness, whether evaluated on an individual basis, or on a weighted average  
11 ("blended rate") basis for this case.

12 5. Class Counsel's weighted average, or "blended" hourly rate of \$510.47  
13 falls within the range of reasonableness for this District. *See Strategic Partners, Inc.*  
14 *v. Vestagen Protective Tech., Inc.*, No. 2:16-cv-5900-RGK-PLA, 2018 WL 6038275,  
15 at \*3-4 (C.D. Cal. Jan 17, 2018) (finding that a "blended rate" of \$520 was reasonable  
16 in false advertising case "[b]ased on the Court's knowledge of the rates charged in Los  
17 Angeles"). *But see Hayes v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-  
18 JST, 2016 WL 6902856, at \*8 (N.D. Cal. Nov. 21, 2016) (finding over-reliance upon  
19 the work of more expensive partners, and thus reducing a firm's "blended rate" to  
20 \$600 per hour to reflect a reasonable rate.).

21 6. Additionally, according to two empirical surveys proffered by Class  
22 Counsel, Class Counsel's individual hourly rates of \$495 and \$750, respectively, fall  
23 within the current range of reasonableness for comparable attorneys in this District.  
24 *See also Browne v. American Honda Motor Co., Inc.*, No. CV 09-06750 MMM  
25 (DTBx), 2010 WL 9499073, at \*7 (C.D. Cal. Oct. 5, 2010) (finding an hourly rate of  
26 \$445 to be reasonable for a class action attorney with seven years of experience);  
27 *Dudley v. TrueCoverage LLC*, No. CV 18-3760 PA (AGRx), 2019 WL 3099661, at \*6

28

1 (C.D. Cal. Mar. 22, 2019) (approving as “reasonable” an hourly rate of \$750, for an  
2 unnamed partner who performed 197 hours of work in a collective action).

3 7. Lastly, the Court finds that Plaintiffs’ requested Service awards of \$5,000  
4 each are within the typical range of reasonableness for class actions such as this, in  
5 which Plaintiffs have earned substantial cash relief for over 20,000 Class members.

6 8. The Court finds and concludes that Plaintiffs’ request for attorneys’ fees,  
7 expenses, and incentive awards are the result of arms-length negotiations between the  
8 parties, and a mediation conducted after Plaintiffs and Class Counsel had adequately  
9 investigated Plaintiffs’ claims and become familiar with their strengths and  
10 weaknesses. The assistance of an experienced mediator in the Settlement process  
11 further suggests that the requested awards, which are non-reversionary under the  
12 Settlement Agreement (Dkt. 53-1), are not the result of collusion.

13 9. Therefore, in accordance with the Settlement Agreement, and pursuant to  
14 Fed. R. Civ. P. 23(h), the Court hereby **GRANTS** Plaintiffs’ motion for an award of  
15 \$285,000 in total attorneys’ fees and expenses, to be paid by Defendants separately  
16 from, and in addition to, the Cash Settlement Amount, and further awards each named  
17 Plaintiff a Service Award of \$5,000 for their efforts in successfully prosecuting this  
18 action on the Class’s behalf.

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**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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Hon. Stephen V. Wilson  
United States District Judge