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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL PEMBERTON and  
SANDRA COLLINS PEMBERTON,  
*individually and on behalf of others  
similarly situated,*

Plaintiffs,

v.

NATIONSTAR MORTGAGE, LLC, *a  
Federal Savings Bank,*

Defendant.

Case No. 14-cv-01024-BAS (MSB)

**ORDER GRANTING MOTION  
FOR ATTORNEYS’ FEES AND  
NAMED REPRESENTATIVE  
AWARD**

**[ECF No. 133]**

On December 16, 2019, Plaintiffs filed a Motion for Attorneys’ Fees and Named Representative Award in connection with the class action settlement reached in this case. (ECF No. 133.) Plaintiffs request \$700,000 in attorneys’ fees, with a waiver of all costs, and \$10,000 for each named Plaintiff. (*Id.*) Defendant does not oppose the request. However, two class members have objected to the amount being requested for the two named Plaintiffs. (ECF Nos. 137, 139.)

The Court held a hearing on the issue on January 13, 2020. At the hearing, no objectors appeared.

After reviewing the time sheets and considering the arguments of counsel both oral and written, the Court concludes that the request is reasonable and **GRANTS** Plaintiffs’ Motion for Attorneys’ Fees and Incentive Award. (ECF No. 133.)

1 **I. BACKGROUND**

2 Over five years ago, Plaintiffs’ counsel filed this lawsuit on behalf of a class of  
3 Plaintiffs who had obtained an adjustable rate mortgage (“ARM”) loans that permitted  
4 them to defer payment of accrued interest. (See ECF No. 76, Second Amended  
5 Complaint (“SAC”).) Plaintiffs argued that the unpaid accrued interest that was added  
6 back to the principal balance (“negative amortization”) should have been included as  
7 interest in the Mortgage Interest Statement (“Form 1098”) that Nationstar provided to  
8 each class member. (See *id.*)

9 The background and extensive pretrial history of this case has been detailed in  
10 the Court’s Order Granting Plaintiffs’ Motion to Certify Class and for Preliminary  
11 Approval of Settlement. (ECF No. 131.) Suffice it to say, class counsel has spent five  
12 long years litigating this case. The litigation included multiple motions to dismiss,  
13 briefing on motions to stay, extensive discovery and related disputes, attempts to get  
14 the IRS to respond to the Court’s request for a directive, and mediation with both  
15 Judge Ronald Sabraw (Ret.) as well as Magistrate Judge Michael Berg.

16 Eventually, counsel achieved their primary goal—to get Nationstar to change  
17 the way it reported interest on its Forms 1098. Plaintiffs’ counsel now requests  
18 \$700,000 in attorneys’ fees which is well below the lodestar proffered by counsel.  
19 The attorneys’ fee amount will be paid by Nationstar outside of any settlement pool.  
20 Additionally, counsel indicates it will waive any request for reimbursement of costs.

21 **II. LEGAL STANDARD**

22 Courts have an independent obligation to ensure that the attorneys’ and class  
23 representative fee awards, like the settlement itself, are reasonable. *In re Bluetooth*  
24 *Headsets Products Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). Although courts  
25 have the discretion to employ a “percentage of recovery method,” *id.* at 942, injunctive  
26 relief should generally be excluded from the value of the common fund when  
27 calculating attorneys’ fees because, most often, the value of the injunctive relief is not  
28 measurable. *Staton v. Boeing Co.*, 327 F.3d 938, 945–46 (9th Cir. 2003).

1           “The 25% benchmark rate, although a starting point for analysis, may be  
2 inappropriate in some cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th  
3 Cir. 2002). Thus, court are encouraged to cross-check this method by employing the  
4 “lodestar method” as well. *In re Bluetooth*, 654 F.3d at 949.

5           In the “lodestar method,” the Court multiplies the number of hours the  
6 prevailing party reasonably expended by a reasonable hourly rate for the work. *Id.* at  
7 941. The hourly rate may be adjusted for the experience of the attorney. *Id.* “Time  
8 spent obtaining an attorneys’ fee in common fund cases is not compensable because  
9 it does not benefit the Plaintiff class.” *In re Washington Public Power Supply System*  
10 *Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). The resulting amount is  
11 “presumptively reasonable.” *In re Bluetooth*, 654 F.3d at 949. However, “the district  
12 court . . . should exclude from the initial fee calculation hours that were not  
13 ‘reasonable expended.’” *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001)  
14 (quoting *Hensley v. Eckerhart.*, 401 U.S. 424, 433–34 (1983)). The Court may then  
15 adjust this presumptively reasonable amount upward or downward by an appropriate  
16 positive or negative multiplier reflecting a whole host of reasonableness factors  
17 including the quality of the representation, the complexity and novelty of the issues,  
18 the risk of nonpayment, and, foremost in considerations, the benefit achieved for the  
19 class. *In re Bluetooth*, 654 F.3d at 942.

20           “[I]ncentive awards that are intended to compensate class representatives for  
21 work undertaken on behalf of a class are fairly typical in class actions cases” and “do  
22 not, by themselves, create an impermissible conflict between class members and their  
23 representative[.]” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th  
24 Cir. 2015). Nonetheless, the Court has an obligation to ensure that the amount  
25 requested is fair. *In re Bluetooth*, 654 F.3d at 941. “The propriety of incentive  
26 payments is arguably at its height when the award represents a fraction of the class  
27 representative’s likely damages . . . But we should be more dubious of incentive  
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1 payments when they make the class representative whole, or (as here) even more than  
2 whole.” *In re Dry Pampers Litig.*, 724 F.3d 713, 722 (6th Cir. 2013.)

### 3 **III. ANALYSIS**

#### 4 **A. Attorneys’ Fees**

5 Class counsel seeks attorneys’ fees under a lodestar calculation. The Court  
6 finds this is appropriate in light of the fact that the main relief sought and achieved  
7 was injunctive relief. Class counsel detail 1442.6 hours spent on this case by counsel  
8 Michael Brown and David Vendler. (Decl. of Michael R. Brown (“Brown Decl.”) ¶  
9 27, ECF No. 132-3; Decl. of David J. Vendler (“Vendler Decl.”) ¶ 41, ECF No. 132-  
10 5.) The Court finds the number of hours expended on this case, given the lengthy  
11 history, is reasonable.

12 Counsel requests that each attorneys’ fee be calculated based on an hourly rate  
13 of \$950, which results in a lodestar of \$1,370,470. Both counsel are clearly very  
14 experienced in class action litigation, and they detail instances when courts have  
15 awarded them hourly rates of \$950. Ultimately, this Court need not reach the  
16 conclusion that a \$950/hour rate is reasonable because even at a reduced rate of  
17 \$750/hour (which the Court finds reasonable), the attorneys’ fees request of \$700,000  
18 is well below the lodestar.<sup>1</sup>

19 The amount requested is more than reasonable. Furthermore, counsel avers that  
20 the amount of attorneys’ fees was not negotiated until the rest of class settlement was  
21 agreed upon. (Brown Decl. ¶ 27.) Therefore, the Court finds an award of \$700,000  
22 is appropriate.

#### 23 **B. Named Representative Award**

24 Plaintiffs move for an award of \$10,000 for each of the two named  
25 representatives. Plaintiffs’ counsel details the involvement of the named  
26 representatives over the past five years. These named representatives, both over 70  
27 years old, participated in the decision-making process and remained active as class  
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<sup>1</sup> At a rate of \$750/hour, the lodestar would be \$1,081,950.

1 representatives even when it appeared they would never receive amended Forms 1098.  
2 They worked with counsel to prepare discovery responses and also to prepare for their  
3 depositions.

4 In light of the amount of time this case has been pending together with the  
5 amount of work detailed by counsel, the Court finds the requested amount of \$10,000  
6 is appropriate. The Court is mindful of the fact that named plaintiffs seeking relief  
7 for interest paid before 2016 will only receive \$50.00. As pointed out by the objectors,  
8 there is a great disparity between the named representative award and the amount other  
9 similarly situated plaintiffs with grievances before 2016 are receiving.

10 However, the original point of the lawsuit was to get Nationstar to change its  
11 reporting practices, which it has done. The named Plaintiffs continued to actively  
12 participate in the case, even after it became apparent that there could well be no  
13 monetary compensation for them, just to make sure other similarly situated individuals  
14 received a different Form 1098. In light of the goals of the litigation and the change  
15 in practices, the Court finds the incentive award requested to be reasonable.

16 **IV. CONCLUSION**

17 For the reasons stated above, the Court **GRANTS** Plaintiffs' Motion for  
18 Attorneys' Fees and Named Representative Award (ECF No. 133). The Court awards  
19 Plaintiff \$700,000 in attorneys' fees and \$10,000 each to the two class representatives  
20 as an incentive award.

21 **IT IS SO ORDERED.**

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23 **DATED: January 15, 2020**


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**Hon. Cynthia Bashant**  
**United States District Judge**