EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CUSTOM HAIR DESIGNS BY SANDY, LLC, and SKIP'S PRECISION WELDING, LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. CENTRAL PAYMENT CO., LLC, Defendant.	CASE NO. 8:17-cv-00310-JFB-CPZ

DECLARATION OF DANIEL E. GUSTAFSON

Pursuant to 28 U.S.C. § 1746, I, Daniel E. Gustafson, make the following declaration:

1. My name is Dan Gustafson. I am a founding member of Gustafson Gluek, PLLC, a litigation boutique with offices in Minneapolis and San Diego.

2. I am licensed to practice law in the State of Minnesota and have been an active member in good standing with the State Bar of Minnesota for more than thirty years. I am admitted to practice before the United States Supreme Court; the First, Second, Third, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuit Court of Appeals; and the U.S. District Court for the District of Minnesota.

3. I graduated with honors from the University of North Dakota in 1986 and the University of Minnesota Law School in 1989. After law school, I served as a law clerk to the Honorable Diana E. Murphy, United States District Judge for the District of Minnesota, from 1989-91. For the past thirty years, my law practice has been devoted exclusively to trial and appellate litigation, with an emphasis on class action and complex litigation.

4. I am a long-time member of the Federal Bar Association. In 2002-03, I was President of the Federal Bar Association, Minnesota Chapter, and Vice-Chair of the 2003 Eighth Circuit Judicial Conference. In 2019, I was awarded a "Lifetime Achievement" Award for my work with the Minneapolis Chapter of the FBA and for my role in starting the *Pro Se Project* – a program that helps connect attorneys in the Minnesota bar with *pro se* litigants in Minnesota Federal Court. In 2021, I was awarded the "Richard S. Arnold Award for Distinguished Service" by the Eighth Circuit Bar Association.

5. In addition to my private practice, during my career I have also served as an appointed public defender in Minnesota federal court, helped start the Minnesota *Pro Se Project* mentioned above, and I have spent thousands of hours representing individuals on a pro bono basis, including a class of committed sex offenders in the *Karsjens* litigation.

6. In addition to my legal practice, I have testified before Congress and the Commission on Antitrust Modernization, and I authored or co-authored and presented numerous seminars and continuing legal education pieces on topics related to class action litigation, antitrust, consumer protection, and legal advocacy. I co-authored chapters in several legal books and, for more than a dozen years, taught as an adjunct professor at the University of Minnesota Law School.

7. I have been selected as an Attorney of the Year by Minnesota Lawyer magazine three times—first in 2010 for my work on the *In re Medtronic Sprint Fidelis Leads Product Liability Litigation* (D. Minn.), then in 2013 for my work on *Karsjens v. Jesson* (D. Minn.), and finally in 2017 as part of the *In re Syngenta Corn Litigation* trial team in Minnesota. I have also been designated a "Super Lawyer" in the fields of business litigation and class actions for the last seventeen years, and in the Top 100 Lawyers for the last nine years.

8. I have significant experience prosecuting class actions in the Eighth Circuit and nationwide, surveying the market value of legal services locally and nationwide, and evaluating attorneys' fees awards for class actions in the Eighth Circuit and across the country. In the *In re Syngenta Litigation,* I was Co-Lead counsel for the Minnesota action that involved more than 50,000 cases, was appointed to the Settlement Negotiating Committee and later was one of three attorneys appointed by District Judge John W. Lungstrum as Settlement Class

Counsel. As a result, I was involved in the fee application process. Similarly, I was appointed by the court to be Settlement Counsel in *Dryer v. National Football League* in the District of Minnesota, in which I (along with others) represented a class of retired football players for alleged misuses of their likeness and images by the NFL. I was also Lead Counsel in the *In re Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation* in the District of Minnesota. This case settled for over $200 million on behalf of thousands of injured claimants who participated in a seven-year claims period that I oversaw. I was also Co-Lead Counsel in *Precision Associates v. Panalpina World Transp (Holding) LTD*, in the Eastern District of New York, in which I represented a class of direct purchasers of freight forwarding services in an antitrust case against over sixty defendants. Recently, my firm has also been appointed as Co-Lead counsel to represent a class of beef purchasers and pork purchasers, in two separate litigations alleging antitrust violations, in *In re DPP Beef Antitrust Litigation* (D. Minn.) and in *In re Pork Antitrust Litigation* (D. Minn.). I have personally sought fees in numerous other class actions in the Eighth Circuit and nationwide and have frequently negotiated fee agreements for legal services with sophisticated businesses and consumers.

9. I have been appointed as a Special Master to oversee discovery disputes in two separate cases recently in Minnesota State Court, in Hennepin

County; *R.L. Mlazgar Associates, Inc. v. v. JTH Lighting Alliance, Inc. et al.* and *Twiggs Salon Spa, Inc. v. Wayzata Bay Superior Retail, LLC.*

10. I have served as an expert on fee issues twice before. Once to support Plaintiff's counsels' fee petition in an MDL case involving Federal Express drivers and once to support Plaintiff's counsel's fee petition in a civil rights matter in Minnesota federal court. Both of these expert engagements were more than four years ago.

11. Through my more than thirty-years of practice, I have gained a deep understanding of the legal standard applied when class counsel seeks an attorneys' fee award from a court under the common fund doctrine and Rule 23(h). I have significant knowledge about both the lodestar and percentage methods. I also have unique insight from my years of experience about how to evaluate the reasonableness of a particular fee percentage sought by counsel under the percentage of the benefit method, based on the facts and circumstances of a particular case.

12. I understand that Class Counsel in this case is seeking a fee award of one-third (33.33%) of the $84 million settlement amount, and reimbursement of the approximately $1.2 million in expenses they incurred while prosecuting this litigation. Class Counsel asked me to provide my expert opinion as to whether the

fee award of one-third that they seek is fair and reasonable, and warranted under Eighth Circuit law given the facts and circumstances of this litigation.

13. To undertake this evaluation, I have done the following:

- reviewed the docket entries, court orders, and key pleadings and motions, including the Complaint; the First Amended Complaint; briefing on class certification, dispositive motions, and preliminary and final approval of the settlement; as well as the executed Settlement Agreement;

- reviewed the evidentiary submissions related to the settlement, including the declaration of mediator Hunter Hughes and the joint declaration of Tyler Hudson and Matthew Klase, and evaluated other settlements reached in other class actions alleging payment processor overbilling;

- discussed the litigation with Class Counsel, and evaluated the claims, the scope of work performed, the litigation risks, trial preparation, mediation/settlement negotiations, and the terms of the settlement; and

- reviewed key decisions from the Eighth Circuit and the U.S. Supreme Court related to the award of attorneys' fees and expenses in class action cases, comparing those rulings to the facts and circumstances of this case.

14. Based on my evaluation and experience, I recommend that the Court apply the percentage of the benefit method when determining a reasonable fee. That is the overwhelming – although not unanimous – trend in federal courts nationwide, and it aligns the interests of class members and class counsel. *See, e.g.,* Manual for Complex Litigation, Fourth, § 14.121 ("[T]he vast majority of courts ... use the percentage-fee method in common-fund cases."). In addition to being the

overwhelming trend in federal court, it is also good federal policy related to class cases because it assures that there are no free riders (i.e. class members that pay no portion of the fees or expenses) and incentivizes counsel to discharge their fiduciary duty to protect the interests of the class.

15. In this case, the percentage of the benefit method is particularly appropriate because Class Counsel's efforts greatly enhanced the value of the case for all class members, leading to a significantly larger settlement. Courts should reward counsel that put forth extraordinary efforts, apply specialized knowledge, and take risks that lead to big rewards for their clients. Finally, nearly all commercial contracts between plaintiffs and contingent law firms employ a percentage fee method or recovery-based fee for the attorneys, which reflects both the preference for and the pricing of contingent fee contracts in the free market. In my experience, this percentage ranges between thirty-three (33) and forty (40) percent of the recovery plus reimbursement of out-of-pocket expenses incurred in the prosecution of the matter.

16. In applying the percentage of the benefit method, the Supreme Court has concluded that it is proper for courts to look to the total amount made available to the class, even if all class members have not filed claims. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 480 (1980) (stating that the "right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a

benefit in the fund created by the efforts of the class representatives and their counsel."). Following *Boeing*, the Eighth Circuit agreed that even if most class members do not exercise their right to share in the fund, their opportunity to do so was a benefit to them. *E.g., Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017); *See also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997).

17. In this case, it is clear under controlling law that Class Counsel provided an $84 million benefit for class members. The settlement provides cash for automatic payments (i.e. no claim required) to current customers and provides an easy claims process to pay past customers if they file a simple claim form. No receipts or records are required to be provided by class members. Although unclaimed funds (funds not claimed by past customers) will essentially revert to Defendant, the claims process, the robust notice and the ease of claims administration (allowing electronic payments to class members), demonstrate that this is not a situation where the Parties have set up roadblocks in the claims process to assure money is returned to the Defendant. Just the opposite in my opinion. In any event, at least $58.8 million will be paid from the fund to existing customers and those past customers who make a claim regardless of the number of claims that are filed. There is nothing in my review of the materials that suggests that such a

claims process for past customers is a subterfuge for payment of a lesser amount. No records are required to support the claim and the claim can be filed online or via U.S. mail (with postage being prepaid). The claim form is simple and can be completed in just a few minutes. I also understand Class Counsel intends to send emails to past customers reminding them to file their claims before the deadline. All of this is important because it demonstrates that the agreement truly is intended to benefit both current and past customers and not simply a way for Defendant to puff up the value of the settlement knowing all along that the claim process is too cumbersome to fulfill.

18. Based on my evaluation, one-third (33.33%) of the $84 million cash settlement benefit made available to the class under the settlement agreement is a fair and reasonable fee award in this case and it is consistent with Supreme Court and Eighth Circuit authority. In my opinion, the work performed by Class Counsel in this case and the result achieved for the class in the face of substantial risks warrants a fee award at the very top end of the range of percentage awards.

19. Several key factors stand out to me. Class Counsel:

- devoted nearly five years and more than 13,000 hours of legal time and risked more than $1.2 million out of their own pockets on experts and other litigation expenses prosecuting the case without any assurance of payment. They also faced significant opposition from Defendant and its counsel that required hard fought litigation on behalf of Plaintiffs, including an interlocutory appeal on the class certification issue. Class Counsel prosecuted the case for almost five (5) years and were forced to prepare the case all the way to the eve of

trial without any guarantee of a recovery or the benefit of a parallel government enforcement action against the Defendant;

- undertook an extensive and time-consuming examination of the Defendant's internal records and e-mails to put together a First Amended Complaint that expanded the case from a simple breach of contract to add RICO and fraudulent concealment claims, which greatly increased the possible recoveries for Plaintiffs. Class Counsel then proved the viability of those claims against vigorous legal challenges by very experienced and skilled defense counsel—thereby increasing the value of the case by tens of millions of dollars, to the benefit of the class;

- refused to settle the case for a much lower amount at earlier mediations and instead defended this Court's class certification decision before the Eighth Circuit and the United States Supreme Court and then prepared the case for trial; and

- achieved a very favorable settlement for all class members shortly before trial that is believed to be the largest monetary recovery from a credit card processor.

20. In the Eighth Circuit, district courts typically apply the twelve-factor test, first set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974), to ensure that a percentage-based fee is "reasonable." Although not all twelve factors are necessarily applicable in each case, these factors include:

1. The time and labor required;
2. The novelty and difficulty of the questions involved;
3. The skill requisite to perform the legal services properly;
4. Preclusion of other employment by the attorney due to acceptance of the case;
5. The customary fee;
6. Fixed or contingent fee;
7. Time limitations imposed by the client or the circumstances;

8. Amount involved and results obtained;
9. The experience, reputation, and ability of the attorneys;
10. The undesirability of the case;
11. The nature and length of the professional relationship with the client; and
12. Awards in similar cases.

21. Based on my evaluation, application of the *Johnson* factors strongly supports the request for fees in the amount of one-third of the settlement amount. Nearly each of these factors weigh in favor of a substantial award and support granting Class Counsel's requested fee.

22. Time and labor required: This case demanded substantial time and labor from Class Counsel. Class Counsel devoted more than 13,000 hours over nearly five years to get the case certified as a class and prepare the case for trial on claims for RICO violations, fraudulent concealment, and breach of contract. By showing CPAY that they were ready, willing, and able to proceed with a jury trial, Class Counsel obtained a substantial settlement for the class.

23. Several aspects of Class Counsel's work are notable. First, Class Counsel filed the case first as only a breach-of-contract action, but then they aggressively pursued CPAY's internal documents, e-mails, and fee data. After obtaining thousands of pages of documents and millions of data records, Class Counsel spent considerable time matching fee increases in the data with CPAY's internal e-mails, which revealed the bases for those increases and the potential liability that might attach to CPAY's conduct. Class Counsel then filed a First

Amended Complaint that added claims for fraudulent concealment and RICO violations, based on their analysis of evidence of a decade-long fraudulent scheme to overbill class members. In my experience, successfully adding fraud-based or other similar claims, including a RICO claim, that carry the potential for treble damages and attorneys' fees, dramatically increases a defendant's exposure and significantly elevates the value of cases. Without the certainty of succeeding, Class Counsel took a large risk doing the work necessary to add these claims and the time and effort required was considerable.

24. Second, Class Counsel withstood CPAY's vigorous defense of the case by highly skilled and experienced counsel from a national law firm with substantial resources. CPAY filed a motion to dismiss the RICO and fraudulent concealment claims, and then filed a motion for summary judgment on the two named Plaintiffs' claims, which Class Counsel successfully defended. CPAY also filed a substantial opposition to Plaintiffs' motion for class certification, and after this Court certified the class, CPAY filed a Rule 23(f) petition in the Eighth Circuit that was granted. Class Counsel spent considerable time and labor to defend this Court's class certification decision in the Eighth Circuit, prevailing in all respects. CPAY then petitioned the Supreme Court for review. When the Supreme Court asked Plaintiffs to respond to CPAY's certiorari petition, they spent additional time and effort to write an extensive response. Class Counsel also vigorously defended

CPAY's three weighty post-certification dispositive motions (for arbitration, summary judgment, and to decertify) as well as a motion to exclude testimony from Plaintiffs' liability expert. Ultimately, Plaintiffs prevailed on each of these motions. Without Class Counsel's efforts, Plaintiffs could not have prevailed repeatedly on these legal issues and positioned the case for this substantial settlement.

25. Third, Class Counsel spent substantial time preparing this case for trial. They engaged experienced experts, and then invested considerable time with them to allow the experts to draft thorough expert reports with detailed analysis of both the liability evidence and a damages model. Class Counsel also worked with jury consultants on trial themes and demonstrative exhibits that would easily explain the case to jurors despite the voluminous discovery record and the very complex nature of the credit card processing business that underly this case. It is clear from my review of much of the record, Class Counsel's work product, and based on my conversations with Class Counsel, that they spent considerable time and labor to be ready to present their case to a jury. Class Counsel are experienced, sophisticated counsel who know what trial preparation is necessary to put forward a competent presentation to a jury. Defense counsel – after litigating against Class Counsel for all these years – also knew that Class Counsel would be prepared for trial. This dynamic and the vast time and effort to adequately prepare the case no

doubt drove CPAY to agree to the eleventh-hour settlement, a much higher amount than what was otherwise possible. Indeed, mediator Hunter Hughes has stated that Class Counsel insisted on a very substantial cash settlement, and CPAY was unwilling to consider resolving the case for anything approaching that value at either earlier mediation or at any time until the weeks prior to trial (and after all of its pre-trial motions were denied). This factor strongly favors Class Counsel's fee request.

26. Novelty and difficulty of the questions involved: The legal claims and defenses at issue are complex. As the Court knows, RICO is a complex federal statute that requires detailed knowledge of the case law that has developed since the statute was passed in 1970. Defendants often obtain dismissal of RICO claims early in litigation by convincing courts that the claims are not properly pleaded or factually supported. In their briefing, Class Counsel demonstrated a deep knowledge of RICO, including several key Supreme Court decisions, and set out a convincing case for why the statute should apply on these facts. Few attorneys have the specialized knowledge and experience with RICO to do this successfully. RICO and fraudulent concealment claims are also typically difficult to prove at trial. In my opinion, few attorneys could have uncovered and assessed the necessary evidence to challenge CPAY's practices as an overbilling fraud scheme, in violation of RICO.

27. This case was only economically rational to pursue as a class action because of the small damages per class member. Thus, the chance that class certification may be denied created additional and significant risk for Class Counsel. Pursuing hundreds or even thousands of dollars for individual plaintiffs is not a viable strategy given the substantial resources required to prosecute the case. Class Counsel had to succeed on class certification to position the case to settle at any price that would have benefitted the class. To say that CPAY raised substantial hurdles at the class certification stage would be an understatement. CPAY vigorously argued to this Court, the Eighth Circuit, and the Supreme Court that (a) the fraud claim involved individual questions of reliance, (b) the variations in contract language created individualized issues; and (c) CPAY's affirmative defenses created individualized issues. Class Counsel tackled novel and difficult legal questions in defeating these arguments and then defending the class certification decision. For example, addressing a novel question in this Circuit about how to interpret language in a prior Supreme Court case, *Bridge v. Phoenix Bond & Indemnity Co.*, 128 S. Ct. 2131 (2008), the Eighth Circuit held that reliance is not an element of a RICO claim. *See Custom Hair Designs by Sandy v. Cent. Payment Co., LLC*, 984 F.3d 595, 602 (8th Cir. 2020), *cert. denied sub nom.*, 142 S. Ct. 426 (2021).

28. Skill required by counsel: The complexity of the issues in this case required experienced and highly skilled counsel who had the specialized knowledge and expertise to address the above-described factual and legal issues, and to manage a class of more than 185,000 members. Winning on each of the key legal issues at three levels of the federal court system required substantial skill. And, preparing this case for trial in a manner that left CPAY believing it had a legitimate risk of losing many millions required the type of ingenuity and determination for which Class Counsel should be rewarded. Simply put, the skill of Class Counsel was a substantial cause of the $84 million class settlement. This factor strongly favors Class Counsel's fee request.

29. Preclusion of other employment: Wagstaff & Cartmell is a boutique litigation firm primarily focused on class and mass action litigation. Webb, Klase & Lemond is a smaller firm, with only three partners. Based on my experience, it is difficult for smaller firms to tangle for years on nationwide class litigation against a huge, well-funded corporation represented by a prominent national defense firm such as King & Spalding. As a practical matter, a small litigation group like the ones that prosecuted this case simply could not be involved in other litigation that they normally would accept. This was a big sacrifice by Class Counsel with no guarantee of a successful outcome and that risk warrants a sizable reward. This factor strongly favors Class Counsel's fee request.

30. The customary fee: As is evident from Class Counsel's retainer agreement in this case, and based on my experience, a contingent fee of between thirty-three (33) and forty (40) percent is customary for litigation cases. Many such cases also include additional compensation if the case goes to trial or is appealed (although here the appeal was interlocutory and not after trial). The courts in the Eighth Circuit regularly award one third of the recovery in class action cases and other contingent litigation matters. Contingent fees in individual cases are often 40 percent of the recovery. In this case, the two named Plaintiffs agreed to contingent-fee arrangements that allowed for fees of 33.33% to 40% depending on the timing of resolution. This factor directly supports a fee of at least one-third of the settlement amount.

31. Whether the fee is fixed or contingent: Class Counsel undertook this litigation on a pure contingent basis and have received nothing for their services on behalf of the class members. Indeed, Class Counsel devoted more than 13,000 hours to this action and have incurred more than $1.2 million in expenses, which are paid out of pocket with no guarantee that they would be reimbursed. This counsels strongly in favor of a higher fee award.

32. Time limitations imposed by the client or the circumstances: This factor is not particularly relevant because this case did not require expedited scheduling.

33. Amount involved and results obtained: This case began as a breach-of-contract action. The initial pleading focused on several discrete fees, and a contract action, even if certified, often involves strong contract-based defenses given the company typically drafts the contract for its benefit. As discussed above, Class Counsel's efforts radically changed the scope of the claims and, as a result, the value of the case. By uncovering evidence of a fraudulent scheme and applying specialized knowledge, Class Counsel were able to add claims for RICO violations and fraudulent concealment to the First Amended Complaint. The class was then able to allege nine figure damages—with a threat of trebling. These new claims dramatically increased CPAY's exposure at trial and undoubtedly contributed to a very favorable settlement for the class, a settlement which appears to be the largest ever achieved in a payment processor overbilling class action. This is obviously an outstanding result for the class.

34. The experience, reputation, and ability of the attorneys: I am personally familiar with the experience and abilities of lead counsel, Ty Hudson, and his firm, having worked with him and his team on prior matters. He and several of his partners who handled this case have unique training and significant experience with complex litigation. Mr. Hudson clerked for the Honorable John W. Lungstrum, one the most respected district court judges in the Midwest and the country, while his partners Eric Barton and Adam Davis were both Tenth Circuit

law clerks. Ty was trained at Jones Day, an internationally prominent law firm, and he served as Senior Counsel in the Enforcement Division of the U.S. Securities and Exchange Commission in Washington D.C. In the last decade, Wagstaff & Cartmell has been appointed to leadership positions and played key roles in substantial class action and complex litigation matters including being lead trial counsel for the State of Kansas in a complex arbitration against the largest U.S. tobacco companies before a panel of three former federal judges. The Wagstaff firm has a reputation for being skilled strategists with a deep understanding of legal claims who can understand and frame evidence effectively to support viable legal theories in cases involving complex business practices. This is an important skill in complex class actions. The Wagstaff & Cartmell lawyers involved in this case have been recognized by their peers as leading lawyers in Kansas and Missouri. I also know that Wagstaff & Cartmell attorneys have obtained substantial results in class and mass action litigation. I do not personally know the partners at Webb, Klase & Lemond, but I have reviewed their qualifications and understand that they are experienced class action lawyers who have obtained recoveries in class action cases, including payment processor class actions similar to this one. They clearly are formidable counsel on behalf of the class.

35. CPAY was represented by national defense firm King & Spalding and boutique litigation firm Councill, Gunneman & Chally, assisted by local counsel,

Baird Holm. These lawyers all have excellent reputations for defending complex class action cases. My review of the defense counsel's work in this litigation indicates that such reputations are well-deserved. The CPAY team defended their client with vigor and their experience and ability amplified the challenge of obtaining a favorable result. Class Counsel should be rewarded for achieving the settlement for the class in the face of tough, determined adversaries.

36. The undesirability of the case: This Court has explained that a case is undesirable if it involves significant risk and the expenditure of substantial resources to prosecute the case. *Morales v. Farmland Foods, Inc.*, No. 08-cv-504, 2013 WL 1704722, *9 (D. Neb. April 18, 2013) (Bataillon, J.) ("the court agrees with the plaintiffs that this type of case is 'undesirable' to some extent because counsel must incur substantial fees and expenses with no guarantee of recovery"). Given such criteria, this case qualifies as undesirable. The litigation of this case required that Class Counsel risk big expenditures on a contingent basis to decipher the complex and opaque credit card processing billing, with a substantial risk of no recovery in the face of the vigorous defense of the claims and the class certification challenges. This was not a situation where there was a parallel government investigation or a multitude of similar cases filed in this Court that would spread the risk. Class Counsel amplified the risk – and the reward – by pursuing this case to the brink of trial, withstanding numerous challenges.

37. The nature and length of the professional relationship with the client: Since this is a class action, this factor does not carry any weight.

38. Awards in similar cases: I evaluated this factor from two perspectives: (1) awards in class actions within the Eighth Circuit; and (2) awards in class actions against other payment processors. As Class Counsel's brief points out and the Eighth Circuit has noted, courts have often awarded class counsel fees of one-third or more if the record demonstrates extraordinary effort or skill and substantial results for the class. *See Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions."). Comparing the circumstances in those cases to the circumstances here, I believe that Class Counsel exerted a similar level of effort, applied specialized knowledge, and took the kind of risk and achieved the type of recovery that warrants a very substantial award.

39. I also understand from Mr. Hughes' declaration and my own research that there have been other class actions against payment processors that have settled. The settlement agreements in those cases set forth a similar settlement structure to the one here. In those cases, class counsel sought, and the courts awarded, attorneys' fees equal to one-third of the gross cash settlement amount. *E.g.*, *Champs Sports Bar & Grill Co. v. Mercury Payment Sys., LLC*, 275 F. Supp. 3d 1350, 1356 (N.D. Ga. 2017); *Teh Shou Kao v. CardConnect Corp.*, No. 16-cv-

5707, 2021 WL 698173, *9 (E.D. Pa. Feb. 23, 2021); *Al's Pals Pet Care v. Woodforest Nat'l Bank*, No. 4:17-CV-3852, 2019 WL 387409, *2-4 (S.D. Tex. Jan. 30, 2019). The results achieved in this case compare favorably to those cases, which occurred in my opinion because Class Counsel took the case through an interlocutory appeal and prepared the case for trial.

40. The billing actions alleged to have been undertaken by CPAY in this case are serious and substantially damaged the class members. It is important to our system of justice that firms that successfully pursue such cases on a contingent basis are fairly rewarded - both to encourage the remediation of such conduct and to deter future misconduct. Without a sizeable financial incentive to fill this role, lawyers will be discouraged from acting as a private attorney general and taking on similar cases. Here, Class Counsel took on this important role and obtained a very substantial recovery under challenging conditions. They should be rewarded accordingly.

I declare under penalty of perjury that the foregoing is true and correct, this 5th day of May, 2022.

Daniel E. Gustafson