

1 **GAIL KILLEFER, Esq. (California Bar No. 157248)**

417 Montgomery Street, Suite 300

2 San Francisco, CA 94104

Telephone: (415) 362-8640

3 Facsimile: (415) 383-8545

Email: [gkillefer@aol.com](mailto:gkillefer@aol.com)

4 Terry Smiljanich (Florida Bar No. 145359)

5 Jill H. Bowman (Florida Bar No. 057304)

(appearance pro hac vice)

6 **JAMES HOYER NEWCOMER  
& SMILJANICH, P.A.**

7 4830 West Kennedy Blvd., Suite 550

Tampa, FL 33609

8 Telephone: (813) 286-4100

Facsimile: (813) 286-4174

9 Douglas Bowdoin (Florida Bar No. 316360)

10 (appearance pro hac vice)

11 **DOUGLAS BOWDOIN, P.A.**

255 South Orange Avenue, Suite 800

Orlando, FL 32801

12 Telephone: (407) 422-0025

Facsimile: (407) 843-2448

13 Attorneys for Plaintiffs

14  
15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 JOHN S. WHITE,  
on behalf of himself and those  
18 similarly situated,

19 Plaintiff,

20 v.

21 E-LOAN, INC., and  
DOES 1 through 10, inclusive,

22 Defendants.  
23

) CASE NO. C O5-02080SI

) **NOTICE OF MOTION AND**  
) **MOTION FOR AWARD OF**  
) **ATTORNEYS' FEES AND**  
) **INCORPORATED**  
) **MEMORANDUM OF POINTS**  
) **AND AUTHORITIES**  
) **Hearing March 2, 2007 at 9:00 a.m.**

24  
25 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

26 PLEASE TAKE NOTICE that on March 2, 2007 at 9:00 a.m. or as soon

1 thereafter as the matter may be heard before the Honorable Susan Illston, United  
2 States District Judge for the Northern District of California, Class Plaintiffs in  
3 the above-entitled matter will and hereby do move the Court pursuant to the  
4 Federal Rules of Civil Procedure for an Order Awarding Attorneys Fees and  
5 Costs. In support of said Motion, the following Memorandum of Points and  
6 Authorities are submitted:

7 Class Plaintiffs, through their undersigned counsel, ask this Court to award  
8 attorneys' fees and costs of \$750,000, as agreed upon by the parties in the  
9 Settlement Agreement, which was preliminarily approved by this Court on  
10 December 5, 2006. Pursuant to paragraph C. 2.25 of the Settlement Agreement,  
11 Class Plaintiffs are permitted to request these fees and costs prior to the Final  
12 Approval hearing. Defendant does not oppose this request. In addition, the  
13 requested fees and costs represent the total request of all counsel in the above styled  
14 case. Prior to the Final Approval hearing, set for March 2, 2007, at 9:00 a.m.,  
15 Class Plaintiffs will supplement this motion with a supplemental memorandum of  
16 law in support, with further documents and evidence in support of this motion.

17 The Ninth Circuit has stated that in common fund cases, "the district court  
18 has discretion to apply either the lodestar method or the percentage-of-the-fund  
19 method in calculating the fee award." *Pincay Investments Co. v. Covad*  
20 *Communications Group*, 90 Fed.Appx. 510, 511 (9th Cir. 2004) (citing *Fischel v.*  
21 *Equitable Life Assurance Soc'y*, 307 F.3d 997, 1006 (9th Cir. 2002)). When  
22 determining the reasonableness of attorneys' fees, the court "may compare the two  
23 methods." *Fischel* at 1007. "Under the lodestar method, the court multiplies a  
24 reasonable number of hours by a reasonable hourly rate." *Id.* at 1006. Further,  
25 "there is a 'strong presumption' that the lodestar figure represents a reasonable fee."  
26 *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1384 (9th Cir. 1990).

1 Under the percentage-of-the-fund method, “the court simply awards the attorneys  
2 a percentage of the fund sufficient to provide class counsel with a reasonable fee.”  
3 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). The Ninth Circuit  
4 “has established 25% of the common fund as a benchmark award for attorney  
5 fees.” *Id.* The total amounts of fees and costs requested by Class Plaintiffs in this  
6 case are comparable to those resulting from the use of a standard multiplier under  
7 the lodestar method. In their forthcoming memorandum of law supplementing this  
8 motion, Class Plaintiffs will establish that the total amounts of fees and costs  
9 requested herein are reasonable in consideration of the actual hours spent on the  
10 case, and the overall value of the settlement benefits to the Class.

11  
12 Respectfully submitted,

13  
14 **JAMES, HOYER, NEWCOMER &  
15 SMILJANICH, P.A.**

16 By: *s/Terry A. Smiljanich*  
17 **Terry A Smiljanich**  
18 (Appearance Pro Hac Vice)

19 **GAIL KILLEFER, ESQ.**

20 **DOUGLAS BOWDOIN, P.A.**  
21 Douglas Bowdoin

22 **DARBY, PEELE, BOWDOIN & PAYNE**  
23 W. Roderick Bowdoin  
24 P. O. Drawer 1707  
25 Lake City, FL 32056  
26 Telephone: 386/752-4120  
27 Facsimile: 386/755-4569

28 **LAW OFFICES OF J. CRAIG BOURNE**  
J. Craig Bourne  
1520 East Livingston Street  
Orlando, FL 32803

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Telephone: 407/894-6750  
Facsimile: 407/894-4735

**HOGAN & FAHLGREN, P.A.**  
Steven M. Fahlgren  
4751 S. Conway Rd.  
Orlando, FL 32812  
Telephone: 407/852-1711  
Facsimile: 407/852-9088  
Email: [sfahlgren@hoganandfahlgren.com](mailto:sfahlgren@hoganandfahlgren.com)

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I, Dobrila Stephens, declare as follows:

3 I, am a resident of the State of Florida, over the age of eighteen years, and  
4 not a party to the within action. My business address is James, Hoyer,  
5 Newcomer & Smiljanich, P.A., 4830 W. Kennedy Blvd., Suite 550, Tampa,  
6 Florida 33609.

7 On January 24, 2007 at Tampa, Florida, I served the following  
8 document(s) listed below as follows:

9 **NOTICE OF MOTION AND MOTION**  
10 **FOR AWARD OF ATTORNEYS' FEES AND INCORPORATED**  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

- 12  BY ELECTRONIC MAIL: I transmitted by electronic mail a true  
13 and correct copy of the above referenced documents to the persons  
14 shown below.
- 15  BY OVERNIGHT MAIL: I sent a true and correct copy of the  
16 document(s) for delivery to the persons shown on the attached list.
- 17  BY U.S. MAIL: I placed a true and correct copy of the document(s)  
18 in a sealed envelope with first class postage fully prepaid in the  
19 United States Mail at Tampa, Hillsborough County, Florida,  
20 addressed as shown on the attached list.
- 21 **XX** BY ELECTRONIC FILING with the Court CM/ECF system: I  
22 transmitted by electronic filing a true and correct copy of the above  
23 referenced documents to the persons shown on the listed below.

24 Lee H. Rubin  
25 Rena Chng  
26 Mayer, Brown, Rowe & Maw LLP  
27 Two Palo Alto Square, Suite 300  
28 Palo Alto, CA 94306

Victoria R. Collado  
Melissa J. Pastrana  
Mayer, Brown, Rowe &  
Maw LLP  
71 South Wacker Drive  
Chicago, IL 60606

Executed on January 24, 2007 at Tampa, Florida.

s/Dobrila Stephens  
Dobrila Stephens