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Settlement Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUL STEMPLE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

QC HOLDINGS, INC.,

Defendant.

Case No.: 12-CV-01997-BAS-WVG

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE PAYMENT

Date: November 7, 2016
Time: 10:30 a.m.
Place: Courtroom 4B
Judge: Hon. Cynthia Bashant

[Filed concurrently with Declaration of Abbas Kazerounian, Declaration of Joshua B. Swigart, Declaration of Todd M. Friedman, Declaration of Jason A. Ibey, and Declaration of Paul Stemple]

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I. INTRODUCTION

Plaintiff Paul Stemple ("Plaintiff") moves the Court for an award of attorneys' fees, costs and incentive payment as part of this preliminarily approved class action settlement (*see* Dkt. No. 108) between Plaintiff and defendant QC Holdings, Inc. ("Defendant" or "QC Holdings").[1]

The Settlement Agreement provides for a substantial financial benefit of $1,500,000.00 ("Settlement Fund") to the approximately 31,230 Settlement Class Members.[2] Settlement Agreement ("Agreement" or "Agr.") §§ 2.2 and 4.1, field at Dkt. No. 102-3.

After the notice and claims administration costs, attorneys' fees and litigation costs, and any incentive award (the "Settlement Costs") are deducted from the Settlement Fund, the amounts remaining will be available to pay all approved claims. *Id*. at §§ 5, 6, 7, 8.1. Each Class Member who timely submits an approved claim will receive a *pro rata* award from the Settlement Fund. *Id.* at § 5. The Agreement provides that Defendant will pay the following: (1) all settlement administration costs (*id.* at § 8.1); (2) attorney's fees in an amount not to exceed 30% of the settlement fund, which is $450,000.00 (SA § 6); (3) litigation costs up to $50,000.00 (*id.*); and (4) a service award in an amount not to exceed $5,000.00 for the Class Representative, Mr. Stemple (*id.* at § 7). Such will be paid from the $1,500,000.00 Settlement Fund.

Through this motion, Plaintiff respectfully requests payment of reasonable notice and claims administration costs (approximately $850,000 as of August 1, 2016), attorneys' fees of $450,000.00, litigation costs of $50,000, and an incentive award of $5,000 to Mr. Stemple, from the Settlement Fund.

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[1] Collectively referred to as the "Parties."

[2] Defined terms are intended to have their meaning in the Settlement Agreement.

II. ARGUMENT

Class Counsel respectfully assert that 1) the requested fee award of $450,000 is fair, reasonable, and justified; 2) the payment of $50,000 in costs is fair and reasonable; 3) the named Plaintiff's incentive award of $5,000 is fair and reasonable; and 4) the notice and claims administration costs incurred by Kurtzman Carson Consultants ("KCC") are reasonable and should be paid from the Settlement Fund.

A. The Requested Fee Award Is Fair, Reasonable And Justified

Federal Rules of Civil Procedure provide that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties agreement." Fed. R. Civ. P. 23(h) (emphasis added). As explained by the Ninth Circuit, "[a]ttorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

In common fund cases such as this one, courts within the Ninth Circuit have discretion to use one of two methods to determine whether the fee request is reasonable: (1) percentage-of-the-fund; or, (2) lodestar plus a risk multiplier. *Staton*, 327 F.3d at 967-68; *see also In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010). "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

Class Counsel maintain the request for attorneys' fees is reasonable based solely upon the arm's length formal negotiations that serve as independent confirmation of the fairness of the settlement, including attorneys' fees. *See Hanlon*, 150 F.3d at 1029. However, the requested fees are also fully supported under the percentage-of-the-fund and lodestar approach, which Class Counsel offer as an additional and optional means of cross-checking the requested fees.

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1. The requested fees resulted from arm's length negotiations

While attorneys' fee provisions included in class action settlements are subject to the determination of whether the provision is fundamentally fair, adequate and reasonable, the Ninth Circuit has opined that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027; citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); (emphasis added); *see also, Lundell v. Dell, Inc.*, CIVA C05-3970 JWRS, 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006).

In *Hanlon*, the Ninth Circuit went on to state that where settlement terms, including attorneys' fees, are reached through formal mediation, the Court may rely upon the mediation proceedings "as independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class." *Hanlon*, 150 F.3d at 1029. *See also Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *5 (D.N.J. Sept. 14, 2009) ("the participation of an independent mediator in settlement negotiation virtually insures that the negotiations were conducted at arm's length and without collusion between the parties"); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("the assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive"); *Dennis v. Kellogg Co.*, 2010 WL 4285011, at *4 (S.D. Cal. Oct. 14, 2010) (the parties engaged in a "full-day mediation session," which helped to establish that the proposed settlement was noncollusive). *See also* 2 McLaughlin on Class Actions, § 6:7 (8th ed.) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence

of collusion”).

Here, and as previously stated in Plaintiff’s Motion For Preliminary Approval of Class Action Settlement and Certification of Settlement Class (Dkt. 102, the “Preliminary Approval Motion”), which this Court granted on April 25, 2016 (Dkt. No. 108), the Agreement resulted from extensive arm’s length negotiations, Dkt. No. 102-1, 13:22-23.

Specifically, the Parties attended a telephonic Early Neutral Evaluation Conference presided over by Magistrate Judge William V. Gallo on December 20, 2012. Dkt. No. 12. The Parties attended one full-day mediation session with the Honorable Judge Leo S. Wagner (Ret.), and one half-day mediation session with the Honorable Judge Leo S. Papas (Ret.). As a result of the two mediation sessions, and with the experienced guidance of Judge Papas, progress was made toward informally determining the parameters of the Settlement Class, the number of calls made to cellular telephone numbers nationwide during the proposed Class period, and, consequently, the range of potential damages under the TCPA. Section D to Recitals to Agr.; *see also* Declaration of Abbas Kazerounian (“Kazerounian Decl.”), ¶ 13, filed herewith. After several months of negotiating in good faith, including with the assistance of the Judge Papas (Ret.), the parties were eventually able to agree on the terms of a nationwide settlement (Kazerounian Decl., ¶ 5; Section D to Recitals to Agr.), which was preceded by an order granting class certification status for a California only class, *see* Dkt. No. 75, 15:4-9.

Throughout this action, Plaintiff conducted a considerable amount of written discovery, including confirmatory discovery following the second mediation. Kazerounian Decl., ¶ 6. Much of the discovery was obtained following a motion to compel discovery brought by Plaintiff, which resulted in production of approximately 60,000 PDF documents by QC Holdings. *See* Dkt. No. 39-13, ¶ 3.

In discovery, Defendant provided Plaintiff with information concerning Plaintiff’s claims, including data regarding the number of putative class members

1 called nationwide, and such information was analyzed by a third party expert (Mr.
2 Hansen) engaged by Plaintiff. *See* Dkt. Nos. 102-10; Kazerounian Decl., ¶ 6.
3 A confirmatory declaration was provided by Defendant and reviewed by
4 Class Counsel. Dkt. No. 102-4; Kazerounian Decl., ¶ 6. Post-class certification
5 discovery was also conducted. Dkt. No. 102-1, 3:10-11. Additional expert analysis
6 was performed by Jeffrey A. Hansen. Dkt. No. 102-10. With counsel for both sides
7 also participating, there were several conference calls regarding methodology,
8 databases used, technical details of database searches and other questions related to
9 the parameters of the Settlement Class, and how the number of cell phones called
10 on a nationwide basis was determined. *See* Kazerounian Decl., at ¶ 13.
11 Under these circumstances, the Court may give deference to the mediation
12 proceedings and the judgment of the Parties regarding the reasonableness of fees.
13 The arm's length negotiations, especially those before Judge Wagner and Papas
14 (Ret.), serve as "independent confirmation" of the reasonableness of the
15 settlement's terms including the attorneys' fees, costs, and incentive award sought
16 by this Motion. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.
17 1998). Additionally, the requested fee is wholly supported by the percentage-of-
18 the-fund and lodestar methods, which the Court may employ as a means of
19 assessing the reasonableness of the requested fee.
20 **2. <u>The requested fees are reasonable, fair, and justified under</u>**
21 **<u>the percentage-of-the-fund method</u>**
22 Courts consider a number of factors to determine the appropriate percentage
23 of the fund to awarding as attorneys' fees in a common fund case including: (a) the
24 results achieved; (b) the risk of litigation; (c) the skill required and the quality of
25 work; (d) the contingent nature of the fee; and, (e) awards made in similar cases.
26 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047, 1048-1050 (9th Cir. 2002).
27 The "benchmark" percentage for attorney's fees in the Ninth Circuit is 25% of
28 the common fund with costs and expenses awarded in addition to this amount.

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Vizcaino, 290 F.3d at 1047. "However, in most common fund cases, the award exceeds that [25%] benchmark." *In re Omnivision Techs*., 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007) (citing *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1998)). *See also Barbosa v. Cargill Meat Solutions Corp*., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("[t]he typical range of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement value"). "[A]bsent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate should be set at 30%." *Omnivision*, 559 F. Supp. 2d at 1048, citing *In re Activision Sec. Litig.,* 723 F.Supp. at 1378. Also, in "cases under $10 Million, the awards more frequently will exceed the 25% benchmark." *Morales v. Stevco, Inc*., 2013 U.S. Dist. LEXIS 41799, *11 (E.D. Cal. Mar. 22, 2013) (citing *Lopez*, 2011 U.S. Dist. LEXIS 99289 at *36. Courts have awarded 25% or more in attorneys' fees in numerous TCPA class action settlements. *See* Exhibit A (Settlements in TCPA class actions filed with the Court in *Wilkins v. HSBC Bank*, No. 14-cv-190 (N.D. Ill.) (Dkt. No. 109-1)).[3]

Attorneys' fees are often paid from the fund, thereby reducing class members' recovery, as is this case here. Class Counsel's request for attorneys' fees in the amount of $450,000 equates to 30% of the $ 1,500,000 Settlement Fund (Agr. §§ 4.1 and 6), which is reasonable considering the Ninth Circuit's benchmark and more recent precedent. This fee request is unopposed by Defendant. Also, the Settlement Class Members were adequately apprised that Class Counsel would be seeking fees of $450,000. *See* Exhibits A-C, Dkt. No. 102-3. There are no known objections to the Settlement or fees request. Kazerounian Decl., ¶ 11.

In addition, the fee request is fully supported by the factors enunciated in *Vizcaino* including: (a) the results achieved; (b) the risk of litigation; (c) the skill required and the quality of work; (d) the contingent nature of the fee; and, (e) awards made in similar cases.

[3] Exhibits are to the Declaration of Abbas Kazerounian unless otherwise stated.

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i. *Class Counsel have obtained excellent results for the Class in comparison to awards made in similar cases*

The results obtained for the class are generally considered to be the *most important factor* in determining the appropriate fee award in a common fund case. *See Hensley v. Eckerhart,* 461 U.S. 424, 435 (1983); *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial Center, *Manual for Complex Litigation*, § 27.71, p. 336 (4th Ed. 2004) (the "fundamental focus is on the result actually achieved for class members") (citing Fed. R. Civ. P. 23(h) committee note). Standing alone, this factor supports Class Counsel's fee request.

This action has been litigated since August 13, 2012 (Dkt. No. 1). Plaintiff obtained contest class certification status on September 5, 2014 (Dkt. No. 75). The Settlement secured by Plaintiff and Class Counsel provides a superior recovery for Settlement Class Members as compared to similar TCPA cases, despite the uncertainty of recovery in TCPA class actions. The Agreement provides for $1,500,000 in recovery for the Settlement Class. SA § 4.1. After deducting attorneys' fees and costs, a service award to Plaintiff, and costs of notice and claims administration, every Class Member who makes a timely and valid claim will be entitled to a *pro rata* distribution of the Settlement Fund. SA § 5.

The current estimated recovery for the Class Members is $627.42,[4] based on 1,291 claims submitted thus far. *See* Kazerounian Decl., ¶ 11. This amount exceeds the $500 statutory damages amount for a negligent violation of the TCPA. In the Preliminary Approval Motion, Class Counsel estimated a 3% claims rate, which would have provided for approximately $868 per claim. Dkt. No. 102-1, 15:4-7. Interestingly, the claims rate is currently approximately 6.16% (based on

[4] $1,500,000 (Settlement Fund) - $185,000 (current notice/administration costs) - $450,000 (attorneys' fees) - $50,000 (litigation costs) - $5,000 (incentive award) = $810,000. $810,000 / 1,291 = Approximately $627.42.

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20,952 direct mail notices sent), which is higher than the typical claims rate in similar TCPA cases in the Ninth Circuit. *See* Exhibit A, pp. 43-67.

Even with the higher than average claims rate (which suggests general approval of the Settlement by the Class Members), the Class Members' anticipated recovery here is substantially greater than the results obtained in other TCPA class action settlements. For instance, in *Jiffy Lube*, each class member received a single voucher (rather than cash) for an oil change valued at $20.00. *In re Jiffy Lube International, Inc. Text Spam Litigation*, Case No. 11-MD-02261-JM-JMA, Dkt. No. 90-1, p. 7-8 (S.D. Cal. Dec. 30, 2012) [Exhibit B]; *see also Adams v. AllianceOne Receivables Management, Inc., et al.*, No. 08-cv-00248, Dkt. No. 137 (S.D. Cal. 2008) (actual recovery of approximately $40.00, or a pro rata share of the settlement fund) [Exhibit C]; *Wojcik v. Buffalo Bills Inc.,* No. 8:12-cv-02414-SDM-TBM, Dkt. No. 79 (M.D. Florida Aug. 25, 2014) (where the court finally approved a settlement in a TCPA action with a gift card value of $57.50 to $75.00 for each class member) [Exhibit D]; *Knutson v. Schwan's Home Service, Inc. et al.*, 3:12-cv-00964-GPC-DHB (S.D.Cal. April 1, 2015) (awarding $20 in cash and $80 voucher) [Exhibit E]; *Couser v. Comenity Bank,* 125 F. Supp. 3d 1034, 1040 (S.D. Cal. 2015) ("…class members with approved claims to receive approximately $13.75, based on a claims rate of 7.7%); *Fox v. Asset Acceptance, LLC*, 2:14-cv-00734-GW-FFM (C.D.Cal. July 1, 2016) (finally approving settlement with an estimated cash award of $28.00 to some and an estimated award of debt relief of $62.00 to others) [Exhibit F]. While the total number of claimants will be identified after the claims filing deadline of August 23, 2016, the recovery is substantially greater than those of other TCPA settlements.

ii. *The risks of litigation support the requested fees*

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *Omnivision*, 559 F. Supp. 2d at 1046-47; *see also Vizcaino*, 290 F.3d

at 1048 (risk of dismissal or loss on class certification is relevant to evaluation of a requested fee).

As this Court has observed, "[t]he law interpreting the TCPA and its consent requirement has been in flux, making it difficult for Class Members to prove lack of consent under the TCPA." *Knutson v. Schwan's Home Service, Inc.,* Case No. 12-CV-00964-GPC-DHB, Dkt. No. 139, p. 4 (S.D. Cal. Jul. 14, 2012) (citing *Baird v. Sabre Inc*., 2014 WL 320250 (C.D. Cal. Jan 28, 2014)).[5] The difficulty posed by the consent requirement, the gravamen of a TCPA claim, is reflected in TCPA settlements yielding recoveries that equate to a small fraction of the full $500 statutory recovery. For example, this Court has approved TCPA settlements, which could yield as little as approximately $3 per class member. *See Malta v. Fed. Home Loan Mortgage Corp.*, 2013 WL 444619 (S.D. Cal. Feb. 5, 2013); *see also Barani v. Wells Fargo Bank, N.A*., 2014 WL 1389329 (S.D. Cal. Apr. 9, 2014) (approving a TCPA settlement where claimants would receive approximately $7 if all class members made a claim). The uncertainty of recovery under the TCPA is further reflected by the fact this Court has approved a settlement, and awarded $475,000 in attorneys fees, in a TCPA action where class members received *no* monetary relief, only an injunction. *See Grant v. Capital Mgmt. Servs., L.P.* 2014 U.S. Dist. LEXIS 29836 (S.D.Cal. Mar. 5, 2014). Other courts have observed that "the law interpreting the TCPA . . . has been under flux . . . ." *Barani v. Wells Fargo Bank, N.A*., 2014 WL 1389329, at *5 (S.D. Cal. Apr. 9, 2014); *accord Wilkins v. HSBC Bank Nev., N.A.* 2015 U.S. Dist. LEXIS 23869 (N.D.Ill. Feb. 27, 2015).

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[5] Plaintiff contends that "prior express consent" is an affirmative defense for which QC Holdings bears the burden of proof. *See Grant*, 449 Fed. Appx. at 600 ("'express consent' is not an element of a TCPA plaintiff's prima facie case, but rather is an affirmative defense for which the defendant bears the burden of proof."). The FCC ruled as early as 2007 that "the creditor should be responsible for demonstrating that the consumer provided prior express consent." *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 23 F.C.C.R. 559, 565 (Dec. 28, 2007).

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Courts have also refused to certify TCPA class actions in this District, which is an additional risk that is avoided by settlement. *See Connelly v. Hilton Grand Vacations Co., LLC*, 294 F.R.D. 574, 579 (S.D. Cal. 2013) Class certification denied); *Smith v. Microsoft Corp.*, 2014 U.S. Dist. LEXIS 12799, *28 (S.D. Cal. Jan. 28, 2014) (same); *Sherman v. Yahoo! Inc.,* 2015 U.S. Dist. LEXIS 127809 (S.D.Cal. Sep. 23, 2015) (same). One court has even opined that "the average TCPA case carries a 43% chance of success," *Amadeck v. Capital One Fin. Corp. (In re Capital OneTel. Consumer Prot. Act Litig.)*, 2015 U.S. Dist. LEXIS 17120, *59 (N.D. Ill. Feb. 12, 2015).[6]

Finally, Defendant has vigorously contested the claims asserted by Plaintiff in this Action. Section E to Recitals to Agr; Agr. § 19; Answer (Dkt. No. 7). Defendant challenged the appropriateness of class certification before this Court and through a petition for permission to appeal to the Ninth Circuit Court of Appeals, which motions and petition were denied. *See* Dkt. Nos. 54, 75, 78, 89. QC Holdings opposed a motion to compel discovery, although the motion was ultimately granted. *See* Dkt. No. 21.

While both sides strongly believe in the merits of their respective cases, there are certainly risks to both sides in continuing the action through trial. *See* Sections D, E and F of Recitals to Agr. *See also Shames v. Hertz Corp*., 2012 U.S. Dist. LEXIS 158577, *18 (S.D. Cal. Nov. 5, 2012) ("this case presented Plaintiffs myriad challenges, uncertain prospects at trial, and the possibility that recovery for the class would not come immediately, if ever."). Defendant must also realize that the potential amount of damages could be substantially higher should the action continue through trial, where claims under the TCPA are worth $500 for a negligent violation, 47 U.S.C. § 227(b)(3), which could be trebled for knowing or

[6] On the other hand, courts in this District have also granted class certification status in TCPA cases. *See e.g.*, *Knutson v. Schwan's Home Serv.,* 2013 U.S. Dist. LEXIS 127032 (S.D.Cal. Sep. 5, 2013); *Abdeljalil v. GE Capital Corp.,* 306 F.R.D. 303 (S.D.Cal. 2015).

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willful violation, *id*.

Thus, the risks of continued litigation not only depicts the high degree of results obtained for the Class, but also further support the reasonableness of the requested fees.

iii. *The skill required and quality of work performed support the requested fees*

The "prosecution and management of a complex [] class action requires unique legal skills and abilities" that are to be considered when evaluating fees. *Omnivision*, 559 F. Supp. 2d at 1047. Class Counsel are experienced class action litigators who have been appointed "class counsel" in numerous TCPA and related consumer class actions. Class Counsel have successfully prosecuted numerous TCPA and other complex consumer class actions, and have secured noteworthy recoveries for those classes. *See* Declaration of Joshua B. Swigart ("Swigart Decl."), ¶¶ 14-16; Kazerounian Decl. ¶¶ 24-27; Declaration of Todd M. Friedman ("Friedman Decl."), ¶¶ 9-10; *see also* Declaration of Jason A. Ibey ("Ibey Decl."), ¶¶ 13-14. Class Counsel's proven track record demonstrates not only the quality of work performed, but also the skill required to successfully prosecute large complex class actions.

In the present case, Class Counsel performed significant factual investigation prior to bringing the action, conducted extensive written discovery, including post-certification discovery, and responded to Defendant's motion for reconsideration of the class certification order (Dkts. 78 and 80). *See* Kazerounain Decl., ¶¶ 6-7. Class Counsel participated in protracted negotiations including an Early Neutral Evaluation (Dkt. No. 12) and Case Management Conference (Dkt. No. 14) a full-day mediation session as well as a half-day mediation session, followed by weeks of vigorous negotiations, including with the assistance of the Judge Papas (Ret.), which ultimately secured a settlement for the benefit of the Class Kazerounian Decl., ¶ 5. After obtaining class certification status for a California only class (Dkt. No. 75),

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Class Counsel were able to negotiate a nationwide settlement, thereby benefiting additional consumers.

TCPA class action litigation is often complex. Issues such as whether an ATDS (47 U.S.C. § 227(a)(1)) was used to place the calls and whether the defendants had prior express consent to place the calls requires a significant amount of familiarity with TCPA case law and agency rulings,[7] as well as understanding expert analysis concerning the capacities required for dialing equipment to be an ATDS. The meaning of "express consent" has also evolved over time in different contexts, such as for debt collection, marketing, and informational calls.[8] Apart from keeping themselves apprised of pertinent case law and agency rulings, Mr. Kazerounian and Mr. Swigart have lectured on the TCPA on several occasions. *See* Kazerounian Decl., ¶ 28-31, 33, 37, and 39; Swigart Decl., ¶ 17.

Thus, Class Counsels' skill and expertise (*see* Section III.A.3.b., below), reflected in the prompt and significant Settlement, supports the requested fees.

iv. *Class Counsels' undertaking of this Action on a contingency-fee basis supports the requested fees*

The Ninth Circuit has long recognized that the public interest is served by rewarding attorneys who undertake representation on a contingent basis by compensating them for the risk that they might never be paid for their work. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299 ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for Plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose"); *Vizcaino*, 290 F.3d at 1051 (courts reward

[7] Most notably the FCC's comprehensive 81-page July 10, 2015 declaratory ruling. *In re Rules & Regulations Implementing the TCP Act of 1991 et al.*, 30 FCC Rcd 7961, 2015 FCC LEXIS 1586, 62 Comm. Reg. (P & F) 1539 (F.C.C. 2015).

[8] *See* Exhibit 1 to Ibey Decl. (article written by Mr. Ibey entitled, *Those annoying robo calls and the changing standard of prior express consent*).

successful class counsel in contingency cases "for taking risk of nonpayment by paying them a premium over their normal hourly rates").

Class Counsel prosecuted this matter on a purely contingent basis while agreeing to advance all necessary expenses knowing that Class Counsel would only receive a fee if there were a recovery. *See* Kazerounian Decl., ¶ 5; Swigart Decl., ¶ 8; Friedman Decl., ¶ 13. In pursuit of this litigation, Class Counsel have spent considerable outlays of time and money by, among other things, (1) investigating the actions; (2) conducting extensive discovery; (3) negotiating the Settlement over a period of months, including 2 days (1 full day and 1 half day) of private mediation before two different respected mediators; (4) Class counsel will also be required to oversee administration of the Settlement; and, (5) have responded to Class Member inquiries. Class Counsel expended these resources despite the risk that Class Counsel may never be compensated especially in light of the fluctuating interpretations of the TCPA and the difficulty in securing class certification. *See Baird v. Sabre Inc*., 2014 WL 320250 (C.D. Cal Jan 28, 2014).

QC Holdings has acknowledged a telephone dialer with predictive dialing capabilities was used to call thousands of persons during the class period, and it is thus Plaintiff's position that the equipment used was an ATDS (*see Sherman v. Yahoo! Inc*., 2014 U.S. Dist. LEXIS 13286, *16 (S.D. Cal. Feb. 3, 2014) ("A predictive dialer is considered an ATDS under the TCPA."). However, there is currently a petition by the ACA before the District of Columbia concerning the meaning of an ATDS as defined in the FCC's July 2015 declaratory ruling (*ACA Int'l, et al. v. FCC*, No. 15-1211 (D.C. Cir. Nov. 25, 2015)), which presents risks to Plaintiff and the Class Members of receiving nothing if the meaning of an ATDS if significantly redefined, for an ATDS is an essential element of their TCPA claims. *See* 47 U.S.C. § 227(b)(1)(A). The same petition argues that that the "one-call" safe harbor provision for calling a reassigned number creates perverse incentive for called parties to conceal that they are not the intended recipients in order to

multiply the caller's liability, which may limit the scope and application of the TCPA. QC Holdings argued in opposing class certification (in its motion for reconsideration) that there are individual issues of whether some of the calls were reassigned numbers. *See* Dkt. No. 78-1, 9:22-10:5.

Additionally, many TCPA defendant have recently argued that the United States Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) compels a finding that plaintiff's do not have Article III standing to pursue TCPA claims under 47 U.S.C. § 227(b)(1)(A), absent a showing of more than just receipt of unwanted calls. Several courts have recently denied such motions (*see e.g*., *Rogers v. Capital One Bank (USA), N.A.,* 2016 U.S. Dist. LEXIS 73605 (N.D. Ga. June 3, 2016)), but risks remain.

Class Counsel here have incurred over $50,000 in costs and spent 509 hours litigating this action as of approximately August 1, 2016. Kazerounian Decl., ¶ 9; Swigart Decl., ¶ 9; Friedman Decl., ¶ 15. Thus, Class Counsels' "substantial outlay, when there is a risk that none of it will be recovered, further supports the award of the requested fees" in this matter. *Omnivision*, 559 F. Supp. 2d at 1047.

As articulated above, the percentage-of-the-fund method is the preferred and most widely used method for determining attorneys' fees in a common fund case. The requested fees are fully supported by the factors enunciated by *Vizcaino* and is commensurate with the excellent results obtained for the Class and is comparable or in excess of awards in other TCPA cases, namely *In Re Jiffy Lube*.

While the requested fees are fully supported by the percentage-of-the-fund method, it should again be noted that the application of the percentage-of-the-fund method is optional and may be applied at the Court's discretion. In addition, the Court may also apply the lodestar method as another optional means of cross-checking the requested fees.

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3. The requested fee is reasonable, fair, and justified under the lodestar method

A court applying the percentage-of-the-fund method may use the lodestar method as a "cross-check on the reasonableness of a percentage figure." *Vizcaino*, 290 F.3d at 1050. However, a cross-check is *optional*. *See Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *48 (N.D. Cal. Jan. 26, 2007) (finding that "where the early settlement resulted in a significant benefit to the class," there is no need "to conduct a lodestar cross-check"). If the Court chooses to perform such a cross-check in this matter, it will confirm that an approximately 30% fee award of $1,500,000 is reasonable.

The first step in the lodestar-multiplier approach is to multiply the number of hours counsel reasonably expended by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. Once this raw lodestar figure is determined, the Court may then adjust that figure based upon its consideration of many of the same "enhancement" factors considered in the percentage-of-the-fund analysis, such as: (1) the results obtained; (2) whether fee is fixed or contingent; (3) the complexity of the issues involved; (4) the preclusion of the other employment due to acceptance of the case; and, (5) the experience, reputation, and ability of the attorneys. *See Kerr v, Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).[9]

i. *Class Counsels' lodestar is reasonable*

The accompanying declarations of Class Counsel and an associate attorney set forth the hours of work and billing rates used to calculate their lodestar. Plaintiff's attorneys' hours are summarized as follows:

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[9] The risk inherent in contingency representation is a critical factor. The Ninth Circuit stresses that "[i]t is an abuse of discretion to fail to apply a risk multiplier when...there is evidence that the case was risky." *Fischel v. Equit. Life Assurance Soc'y*, 307 F.3d 997, 1008 (9th Cir. 2002); *see also Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16 (N.D. Cal. 2007).

	HRS. INCURRED	RATE/HR.	TOTAL
KAZEROUNI LAW GROUP, APC	-	-	-
A) ABBAS KAZEROUNIAN - PARTNER	109	$605	$65,945
B) JASON A. IBEY - ASSOCIATE	156.30	$370	$57,831
HYDE & SWIGART	-	-	-
A) JOSHUA B. SWIGART - PARTNER	123.5	$605	$74,717.50
LAW OFFICES OF TODD M. FRIEDMAN	-	-	-
A) TODD M. FRIEDMAN - PARTNER	120.2	$595	$71,519
TOTAL COMBINED LODESTAR	509	-	$270,012.50

As described in the accompanying declarations, Plaintiff's attorneys have devoted a total of 509 hours to this litigation thus far, and have a total lodestar $270,012.50 as of approximately August 1, 2016, which represents a reasonable multiplier of approximately 1.6665. *See* Kazerounian Decl., ¶ 9; Swigart Decl., ¶ 8; Declaration of Todd M. Friedman ("Friedman Decl."), ¶ 14; Ibey Decl. ¶ 5.[10] These amounts do not include additional time that Class Counsel will likely spend going forward in seeking final approval of, and implementing the Settlement, including assisting Class Members with claims and overseeing claims administration, and responding to potential objections. Class Counsel estimate incurring an additional 63 hours through final approval. Kazerounian Decl., ¶ 8 (20 additional hours estimated); Swigart Decl., ¶ 8 (18 additional hours estimated); Declaration of Todd M. Friedman ("Friedman Decl."), ¶ 14 (10-20 additional hours estimated); Ibey Decl. ¶ 5 (15 additional hours estimated). If the additional estimated 63 hours are

[10] Class Counsel file this fee petition thirty (30) days prior to the deadline for Class Members to object to the settlement, which is September 2, 2016. As the deadline to file briefing regarding a request for attorneys' fees and costs is August 15, 2016 (Dkt. No. 108, ¶ 7), which is approximately two months prior to the fairness hearing, Class Counsel may need to file supplemental briefing.

1 considered, that would bring Class Counsels' lodestar to $304,412.50, with a
2 multiplier of approximately 1.4782.

3 A multiplier of approximately 4 is not uncommon. *See In re Linerboard*,
4 2004 U.S. Dist. LEXIS 10532, at *50 (E.D.Pa. June 2, 2004) (noting that "during
5 2001-2003, the average multiplier approved in common fund class actions was
6 4.35") (citation omitted). Several courts have approved a multiplier exceeding 2 in
7 TCPA class actions in the Ninth Circuit. *See* Exhibit A, pp. 43, 45, 52, 54, 56, 57,
8 58, 60, 61, 62, 63, 64, and 67.

9 The Claims Period will last for a few more weeks (deadline to file a claim is
10 August 23, 2016), and Class Counsels' commitment of time and labor to this case
11 will continue beyond that date. These responsibilities will require a substantial
12 number of hours of work by Class Counsel over the coming months, as the fairness
13 hearing is scheduled for November 7, 2016. *See* Swigart Decl., ¶ 8; Kazerounian
14 Decl., ¶ 8; Friedman Decl., ¶ 14; Ibey Decl., ¶ 5.

15 Class Counsel's lodestar is therefore reasonable. Class Counsel prosecuted
16 the claims at issue efficiently and effectively, making every effort to prevent the
17 duplication of work that might have resulted from having multiple firms working on
18 this case. In this regard, tasks were reasonably divided among firms to ensure
19 avoiding the replication of work. Further, tasks were delegated appropriately among
20 partners, associate attorneys, paralegals, and other staff according to their
21 complexity such that the attorneys with higher billing rates billed time only where
22 necessary. In addition, Class Counsels' contemporaneous time records were
23 carefully reviewed. *See* Kazerounian Decl., ¶ 7; Swigart Decl., ¶ 8; Friedman Decl.,
24 ¶ 14; Ibey Decl., ¶ 5.

25 **ii. *Class Counsels' hourly rates are reasonable***

26 Similarly, Class Counsels' hourly rates are reasonable. In assessing the
27 reasonableness of an attorney's hourly rate, courts consider whether the claimed rate
28 is "in line with those prevailing in the community for similar services by lawyers of

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reasonably comparable skill, experience and reputation." *Blum v. Stevenson*, 465 U.S. 886, 895, n.11 (1994). *See also Davis v. City and County of San Francisco*, 976 F.3d 1536, 1546 (9th Cir. 1992); and, *Serrano v. Unruh*, 32 Cal. 3d 621, 643 (1982). Class Counsel here are experienced, highly regarded members of the bar with extensive expertise in the area of class actions and complex litigation involving consumer claims like those at issue here. *See* Kazerounian Decl., ¶¶ 19, and 23-42; Swigart Decl., ¶¶ 10-19; Friedman Decl., ¶¶ 7-11; *see also* Ibey Decl. ¶¶ 6-15.

Both Mr. Kazerounian and Mr. Swigart are specialists in the area of the TCPA and have lectured on the TCPA. *See* Kazerounian Decl. ¶¶ 24-31, 35, 37, 39, and 41; Swigart Decl. ¶¶ 14, 16-17, and 19. Mr. Kazerounian is an adjunct professor at California Western School of Law teaching a consumer law course featuring the TCPA, and has successfully argued an appeal before the Ninth Circuit Court of Appeals. Kazerounian Decl., ¶¶ 26-31. Both Mr. Kazerounian and Mr. Swigart have previously been approved for an hourly rate of $595. Kazerounian Decl., ¶ 21; Swigart Decl., ¶ 13. Mr. Friedman is also vary experienced in litigating TCPA cases, including class actions. Friedman Decl., ¶¶ 8-9.

According to a survey from the National Law Journal in 2012 (December 7, 2012), the average hourly rate for a partner at a surveyed law firm in Irvine, California, was $525, with a high of $760 and a low of $425; and the average hourly rate for a partner at a surveyed law firm in Riverside, California was $435, with a high of $625 and a low of $310. *See* Exhibit G to Declaration of Abbas Kazerounian, filed concurrently. Thus, the billing rate for the partners (i.e., Mr. Kazerounian, Mr. Swigart and Mr. Friedman) is well within the normal range of fees charged by firms in Southern California for partner work.[11]

[11] *See Hartless v. Clorox Co.*, 273 F.R.D. 630, 643-44 (S.D. Cal. 2011), *aff'd in part*, 473 F. Appx. 716 (9th Cir. 2012) (approving hourly rates in the San Diego area of $675-795 for partners, up to $410 for associates, and up to $345 for paralegals); *see also POM Wonderful, LLC v. Purely Juice, Inc.*, 2008 WL 4351842 at *4 (C.D. Cal) (finding partner rates of $750 to $475 and associate

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Additionally, associate Jason A. Ibey of Kazerouni Law Group, APC, who has contributed much to this litigation, has significant experience in litigating consumer class actions, especially TCPA class actions, which justifies his hourly rate of $370. *See* Declaration of Jason A. Ibey, ¶¶ 8-15. According to the same 2012 National Law Journal Billing Survey referenced above, the average hourly rate for an associate at a surveyed law firm in Irvine, California, was $330, with a high of $420 and a low of $295; and the average hourly rate for an associate at a surveyed law firm in Riverside, California was $250, with a high of $390 and a low of $225. *See* Exhibit G. Thus, the billing rate for Jason A. Ibey is well within the normal range of fees charged by firms in Southern California for an associate attorney. Mr. Ibey has been previously approved for an hourly rate of $365. Ibey Decl., ¶ 17. In further support of the hourly rate for associate Jason A. Ibey, *see Browne*, 2010 WL 9499073 at *7 finding that associate's hourly rate of $380 falls within the range of billing rates for lawyers two years out of school); *Aarons*, 2014 U.S. Dist. LEXIS 118442 at *45 (approving hourly rates for associates up to $550 in consumer class action).

The hourly rates are further substantiated by the 2013 NLJ Billing Survey, for the average hourly rate for a partner at a surveyed law firm in Irvine, California, was $555, with a high of $785 and a low of $440; and, the average hourly rate for a partner at a surveyed law firm in Costa Mesa, California was $490, with a high of $675 and a low of $345. *See* Exhibit H. The average hourly rate for a partner at a surveyed law firm in Los Angeles, California was $615, with a high of $680 and a low of approximately $525. Based on the same survey, the average hourly rate for an associate at a surveyed law firm in Costa Mesa, California was $320, with a high of $500 and a low of $230; and the average hourly rate for an associate at a surveyed law firm in Los Angeles, California was

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rates of $425 to $275 reasonable).

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$365, with a high of $375 and a low of $350.[12]

According to the Court in *Shames v. Hertz Corp.*, 2012 U.S. Dist. LEXIS 158577, *60 (S.D. Cal. Nov. 5, 2012) ("[t]he National Law Journal data reveals that rates at six national defense firms with San Diego offices averaged between $550 and $747 per hour for partners and $346 and $508 per hour for associates."); *Rutti v. Lojack Corp.*, 2012 U.S. Dist. LEXIS 107677, 19 Wage & Hour Cas. 2d (BNA) 938, 2012 WL 3151077 (C.D. Cal. July 31, 2012) (approving hourly rates of $650 and $750 in FLRA class action).

Hence, Class Counsels' combined lodestar of $270,012.50 is reasonable and supports the requested fees.

B. The Requested Costs Are Fair And Reasonable

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970). The significant litigation expenses Class Counsel incurred in this case were necessary to secure the resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in class action litigation). Based upon the discussion herein, Class Counsel believe that the costs incurred in this matter are fair and reasonable.

Throughout the course of this litigation, Class Counsel had to incur costs totaling $53,367.38 ($19,927.13 by Hyde & Swigart; $18,013.41 by Kazerouni Law Group, APC, and $15,426.84 by Law Offices of Todd M. Friedman, P.C.), which

[12] Further, according to the Court in *Shames v. Hertz Corp.*, 2012 U.S. Dist. LEXIS 158577, *60 (S.D. Cal. Nov. 5, 2012) ("[t]he National Law Journal data reveals that rates at six national defense firms with San Diego offices averaged between $550 and $747 per hour for partners and $346 and $508 per hour for associates."

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1 represents a loss to Class Counsel of $3,367.38, as the Settlement Agreement
2 provides for recovery of up to $50,000 (SA § 6). *See* Kazerounian Decl. ¶ 9;
3 Swigart Decl., ¶ 9; Friedman Decl., ¶ 15. These costs were necessary to secure the
4 resolution of this litigation and Class Counsel put forward said costs without
5 assurance that Class Counsel would ever be repaid. Much of the costs (over
6 $28,000) were incurred in hiring Plaintiff's technology consultants to perform
7 important analysis on the class member data, which Class Counsel believe was
8 crucial to obtaining class certification status and was important in determining the
9 size of the nationwide class.

10 Here, the Class Notice informed Class Members that Class Counsel would
11 seek an award of costs up to $50,000 and the Settlement Agreement authorizes a
12 petition of costs for up to $50,000. SA § 6. In light of the expenses Class Counsel
13 were required to incur to bring this case to its current settlement posture, the request
14 for costs of $50,000 is reasonable, especially when considering Class Counsel are
15 taking a loss of $3,367.38. Class Counsel will likely incur additional costs as this
16 case moves to the final approval stage, which final approval hearing is set for
17 November 7, 2016.

18

19 **C. The Requested Incentive Award To Mr. Stemple Is Fair And Reasonable**

20 As the Ninth Circuit has recognized, "named Plaintiffs, as opposed to
21 designated class members who are not named Plaintiffs, are eligible for reasonable
22 incentive payments." *Staton*, 327 F.3d at 977; *Rodriguez v. West Publishing Corp.*,
23 563 F.3d 948, 958 (9th Cir. 2009) (service awards "are fairly typical in class action
24 cases"). Such awards are intended to compensate class representatives for work
25 done on behalf of the class [and] make up for financial or reputational risk
26 undertaken in bringing the action." *Id*. Small incentive awards, such as those
27 requested here, promote the public policy of encouraging individuals to undertake
28 the responsibility of representative lawsuits. The requested incentive award of

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$5,000 for the Plaintiff is well justified.[13] This amount awarded as a service award is well in line with similar awards approved by other federal courts, and supported by the recent Ninth Circuit authority in *Radcliffe v. Experian Info. Solutions, Inc.*, 2013 U.S. App. LEXIS 9126 (9th Cir. Mar. 4, 2013).

"Aside from the incentive award, none of the class representatives stands to recover more than other class members." *Schaffer v. Litton Loan Servicing, LP* (C.D.Cal. Nov. 13, 2012, No. CV 05-07673 MMM (JCx)) 2012 U.S. Dist. LEXIS 189830, at *63-64.) citing to *Razilov*, 2006 U.S. Dist. LEXIS 82723, 2006 WL 3312024 at *4 (approving payment of an incentive award where the only benefit a class representative would receive from the settlement was the same statutory damages award other class members would receive) and *Van Vranken*, 901 F.Supp at 299 (where class representative's claim made up "only a tiny fraction of the common fund" a substantial incentive award was appropriate).

In addition to lending his name to this matter, and thus subjecting himself to public attention,[14] Plaintiff has actively engaged in this action.[15] Among other

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[13] Courts have long recognized that a class representative should be compensated for their service to the class. *In re Mego Fin. Corp. Sec. Lit.*, 2123 F.3d 454, 463 (9th Cir. 2000); *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *26 (E.D. Cal. 2006). Such compensation provides the economic motivation to induce potential plaintiffs to lend their names and support to class actions generally. *West*, 2006 U.S. Dist. LEXIS 76558, at *26. The same incentive award further ensure that meritorious actions are prosecuted to completion. *Linney v. Cellular Alaska Part.*, 1997 U.S. Dist. LEXIS 24300, at *23 (N.D. Cal. 1997). A court should order an incentive award when it finds that it is not the product of collusion and does not come at the expense of the remaining members of the class. *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, at *17-18 (S.D. Cal. 2008).

[14] Plaintiff faced potential public scrutiny when seeking to certify the Class, as QC Holdings argued against the appointment of Mr. Stemple on the basis of his prior criminal conviction. *See* Dkt. No. 54, 22:27-23:4.

[15] "[A]ctivities such as 'responding to discovery, preparing for, traveling to and attending their depositions and maintaining contact with [p]laintiffs' **[]** counsel to monitor the litigation' support[] a finding that class representatives were 'actively

things, Plaintiff (1) provided information to Class Counsel for the complaints and other pleadings; (2) reviewed pleadings and other documents; (3) communicated on a regular basis with counsel and kept himself informed of progress in the litigation and settlement negotiations; (3) assisted with written discovery responses; (4) appeared for his deposition in Los Angeles, California; (5) made himself available telephonically for two mediations in the event he was needed; and (6) reviewed and approved the proposed settlement. *See* Declaration of Paul Stemple, ¶¶ 3-6, filed concurrently; Kazerounian Decl., ¶ 12; *see also* Dkt. No. 102-9.

Plaintiff's dedication to this action was notable, particularly given the relatively modest personal financial stakes in this case for the alleged calls from QC Holdings (Compl., ¶ 16). *See Opson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, at *27-28 (N.D. Cal. Apr. 3, 2009) (awarding $5,000 incentive payment and finding that "in general, courts have found that $5,000 incentive payments are reasonable"); *Ordick v. UnionBancCal Corp.*, 2012 U.S. Dist. LEXIS 171413, at *11 (N.D. Cal. Dec. 3, 2012) (awarding $5,000 to named plaintiff where "the settlement was reached at the early stages of litigation"); *Grant v. Capital Mgmt. Servs., L.P.,* 2014 U.S. Dist. LEXIS 29836, at *21 (S.D.Cal. Mar. 5, 2014) (approving $5,000 incentive award in TCPA case); *Edwards v. Ford Motor Co.,* 2016 U.S. Dist. LEXIS 59651, at *33-34) (S.D.Cal. Jan. 22, 2016) ("Plaintiff acted as class representative for several years despite the fact that her own financial stake in the case was small. She provided discovery, submitted to a full-day deposition, and attended the Early Neutral Evaluation conference. A review of similar cases indicates that a $5,000 incentive award is reasonable here."); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving an incentive award of $5,000 in a settlement of $1.725 million involving a class of 5,400 members);

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involved in every aspect of . . . litigation'." *Schaffer v. Litton Loan Servicing, LP,* 2012 U.S. Dist. LEXIS 189830, at *62-63 (C.D.Cal. Nov. 13, 2012) (citation omitted).

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Schaffer, 2012 U.S. Dist. LEXIS at *58 ("The parties' Settlement provides for payment of $5,000.00 to each of the households that served as class representatives in satisfaction of their individual claims and as an incentive award; this is equivalent to $2,500.00 for each individual named plaintiff. This amount is well within, and indeed, at the lower end of, the range of incentive payments that have been awarded by courts in this circuit.").

Thus, Class Counsel respectfully request the Court award a reasonable incentive payment of $5,000 to Mr. Stemple for his efforts as Class Representative.

D. The Notice and Claims Administration Costs Are Reasonable

At the time of moving for preliminary approval, the notice and claims administration costs were estimated at $181,695. Dkt. No. 102-1, 8:10-13. Currently, the notice and claims administration costs are approximately $185,000. Kazerounian Decl., ¶ 10. The increase is due to having mailed more postcard notices than originally expected. *See id*. Notice costs are approximately $135,208. These costs, which are expected to increase through final approval, were reasonably incurred and should be paid from the Settlement Fund.

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Plaintiff's motion for an award of attorneys' fees in the total amount of $450,000 (30% of the Settlement Fund), litigation costs of $50,000, an incentive or service award in the amount of $5,000 to Mr. Stemple, and costs of notice and claims administration (approximately $185,000 as of August 1, 2016).

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

Date: August 3, 2016

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