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**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)  
  
**ORDER GRANTING MOTION  
FOR ATTORNEYS’ FEES,  
COSTS, AND INCENTIVE  
AWARD**  
  
**[ECF No. 109]**

Plaintiff Paul Stemple commenced this class action against Defendant QC Holdings, Inc. seeking relief for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. (ECF No. 1.) Presently before the Court is Plaintiff’s unopposed motion for attorneys’ fees, costs, and incentive award. (ECF No. 109.) The Court held a fairness hearing for the parties’ class action settlement on November 7, 2016. (ECF No. 112.) For the following reasons, the Court **GRANTS** Plaintiff’s motion.

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1 **I. BACKGROUND**

2 Plaintiff filed this TCPA class action against Defendant on August 13, 2012.  
3 (ECF No. 1.) Plaintiff alleges that Defendant violated the TCPA by contacting  
4 Plaintiff and putative class members on their cellular telephones without prior  
5 express consent while using an automatic telephone dialing system. (First Am.  
6 Compl. ¶¶ 12, 16, 18–20, 22, ECF No. 107.) Plaintiff seeks \$500 per negligent  
7 violation of the TCPA and \$1,500 per knowing or willful violation of the TCPA. (*Id.*  
8 ¶¶ 31–38.)

9 On September 23, 2013, the parties attended an all-day mediation presided  
10 over by the Honorable Leo S. Wagner (Ret.). (Settlement Agreement and Release  
11 (“Settlement Agreement”) Recital D, ECF No. 102-3.) The case did not settle.  
12 Plaintiff then moved for class certification on February 14, 2014 (ECF No. 39), and  
13 the Court granted Plaintiff’s request for certification of a California-only class (ECF  
14 No. 75). After Defendant unsuccessfully moved for reconsideration of the Court’s  
15 Order, it sought leave to appeal. (ECF Nos. 78, 89–90.) However, the Ninth Circuit  
16 denied Defendant’s request. (ECF No. 92.)

17 Thereafter, the parties again sought to settle this matter by attending a part-day  
18 mediation with the Honorable Leo S. Papas (Ret.). (Settlement Agreement Recital  
19 D.) After this mediation and months of additional negotiations, the parties reached a  
20 proposed class action settlement (“Settlement”). (Kazerounian Decl. ¶ 5, ECF No.  
21 109-2.) Under the Settlement, Defendant denies that it has violated the TCPA, but it  
22 agrees to establish a settlement fund in the amount of \$1,500,000 to pay for awards  
23 to settlement class members, settlement administration expenses, and any reasonable  
24 attorneys’ fees and costs approved and awarded by the Court. (Settlement Agreement  
25 Recital E, § 4.1.) After deducting class expenses, a pro rata share of the settlement  
26 fund will be distributed by check to each class member who has submitted a claim to  
27 the third-party claims administrator. (*Id.* § 4.2.)

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1 Since the Court granted preliminary approval of the Settlement, the claims  
2 administrator has received 645 valid claims and has incurred approximately \$216,000  
3 in claims administration expenses. (Wall Suppl. Decl. ¶ 9, ECF No. 111-2.)<sup>1</sup> Plaintiff  
4 now seeks \$450,000 in attorneys' fees, \$50,000 for costs, and \$5,000 for an incentive  
5 award. (ECF No. 109.) Thus, if the Court grants Plaintiff's motion and these expenses  
6 are deducted from the \$1,500,000 common fund, \$779,000 will remain for awards to  
7 class members. With 645 claims, the recovery per claim will be approximately  
8 \$1,208.

## 9 10 **II. LEGAL STANDARD**

11 Courts have an independent obligation to ensure that the amounts requested  
12 for attorneys' fees and any class representative service award, like the settlement, are  
13 reasonable. *In re Bluetooth Headsets Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.  
14 2011). Where a settlement produces a common fund for the benefit of the entire class,  
15 courts have the discretion to employ a "percentage of recovery method." *Id.* at 942.  
16 Typically, courts calculate 25% of the fund as a "benchmark" for a reasonable fee  
17 award. *Id.* Injunctive relief should generally be excluded from the value of the  
18 common fund when calculating attorneys' fees because most often the value of the  
19 injunctive relief is not measurable. *Staton v. Boeing Co.*, 327 F.3d 938, 945–46 (9th  
20 Cir. 2003).

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

25 In the "lodestar method," the court multiplies the number of hours the  
26 prevailing party reasonably expended by a reasonable hourly rate for the work. *In re*  
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28 <sup>1</sup> At the fairness hearing for the parties' Settlement, Plaintiff's counsel informed the Court that the number of valid claims has increased from 640 to 645 since the filing of this motion.

1 *Bluetooth*, 654 F.3d at 941. The hourly rate may be adjusted for the experience of the  
2 attorney. *Id.* The resulting amount is “presumptively reasonable.” *Id.* at 949.  
3 However, “the district court . . . should exclude from the initial fee calculation hours  
4 that were not ‘reasonable expended.’” *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th  
5 Cir. 2001) (quoting *Hensley v. Eckerhart.*, 401 U.S. 424, 433–34 (1983)). The court  
6 may then adjust this presumptively reasonable amount upward or downward by an  
7 appropriate positive or negative multiplier reflecting a whole host of reasonableness  
8 factors including the quality of the representation, the complexity and novelty of the  
9 issues, the risk of nonpayment, and, foremost in considerations, the benefit achieved  
10 for the class. *In re Bluetooth*, 654 F.3d at 942. The court may find a fee request is  
11 excessive but that there is no further evidence class counsel betrayed class interests  
12 for its own benefit, and thus uphold the settlement agreement, while lowering the fee  
13 award. *Id.*

14 “[I]ncentive awards that are intended to compensate class representatives for  
15 work undertaken on behalf of a class are fairly typical in class actions cases” and “do  
16 not, by themselves, create an impermissible conflict between class members and their  
17 representative[.]” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th  
18 Cir. 2015). Nonetheless, the court has an obligation to ensure that the amount  
19 requested is fair. *In re Bluetooth*, 654 F.3d at 941.

### 21 **III. ANALYSIS**

#### 22 **A. Attorneys’ Fees**

23 Initially, Plaintiff seeks approval for an award of \$450,000 in attorneys’ fees.  
24 Plaintiff argues that “the request for attorneys’ fees is reasonable based solely upon  
25 the arm’s length formal negotiations that serve as independent confirmation of the  
26 fairness of the settlement, including attorneys’ fees.” (Mot. 2:23–26.) In other words,  
27 in Plaintiff’s view, the Court does not need to employ the percentage of recovery  
28 method or the lodestar method to approve the fee request. The Court disagrees. This

1 Court has “an independent obligation to ensure that the award . . . is reasonable, even  
2 if the parties have already agreed to an amount.” *In re Bluetooth*, 654 F.3d at 941.  
3 Thus, although the involvement of a neutral mediator suggests that the Settlement  
4 was not the result of collusion, this circumstance alone does not demonstrate the  
5 award is reasonable. *See Hanlon*, 150 F.3d at 1029 (noting the district court “relied  
6 on the mediator as independent confirmation that the fee was not the result of  
7 collusion,” but stating “[m]ore importantly, [the district court] appears to have  
8 reviewed the award using a lodestar methodology by requiring class counsel to  
9 submit detailed evidence of their work on behalf of the class”). Accordingly, the  
10 Court will not rely solely on the evidence of arms-length negotiations between the  
11 parties to find the fee request is reasonable. The Court will instead analyze the fee  
12 request under the percentage of recovery method and cross-check this method with  
13 the lodestar method.

14 Under the percentage of recovery method, the court has discretion “to award  
15 attorneys a percentage of the common fund.” *In re Bluetooth*, 654 F.3d at 942. In  
16 determining this percentage, courts consider a number of factors including (1) the  
17 results achieved, (2) the risk of litigation, (3) the skill required and the quality of  
18 work, (4) the contingent nature of the fee, and (5) awards made in similar cases. *See*  
19 *Vizcaino*, 290 F.3d at 1048–50. Here, Plaintiff is seeking \$450,000 in fees—30% of  
20 the \$1,500,000 common fund. This percentage is higher than the 25% benchmark for  
21 a reasonable fee award, but it is within “20–30%,” which is “the usual range.” *See id.*  
22 at 1047.

23 Further, upon considering the factors that influence the percentage of recovery  
24 method, the Court finds awarding 30% of the fund is reasonable in this case. *See*  
25 *Viscaino*, 290 F.3d at 1048–50. The most important factor is the “overall result and  
26 benefit to the class from the litigation.” *In re Omnivision Techs., Inc.*, 559 F. Supp.  
27 2d 1036, 1046 (N.D. Cal. 2008). Here, the projected recovery is \$1,208 per claim.  
28 Taking into account the claims rates in the respective cases, this amount is

1 significantly higher than other TCPA actions. *See, e.g., Couser v. Comenity Bank,*  
2 125 F. Supp. 3d 1034, 1044 (S.D. Cal. 2015) (approving settlement with a claims rate  
3 of 7.7% that awarded class members \$13.75 per claim); *Knutson v. Schwan's Home*  
4 *Serv., Inc.*, No. 3:12-cv-00964-GPC, 2014 WL 3519064, at \*4–5 (S.D. Cal. July 14,  
5 2014) (approving settlement where 166 claimants could recover a \$20 settlement  
6 check plus a \$80 merchandise voucher). Thus, because class counsel attained a  
7 superior benefit for the class in this case, departing upwards from the 25% benchmark  
8 to 30% is appropriate. Accordingly, the requested fee award is reasonable under the  
9 percentage of recovery method.

10 The Ninth Circuit encourages district courts to cross-check their conclusions  
11 under the percentage of recovery method with the lodestar method, or vice versa. *In*  
12 *re Bluetooth*, 654 F.3d at 944–45. Under the lodestar method, as outlined above, “the  
13 district court must calculate the lodestar figure based on the number of hours  
14 reasonably expended on the litigation, adjusting the figure to account for the degree  
15 of success class counsel attained, along with other factors.” *Id.* at 944. Here, having  
16 reviewed class counsel’s declarations (ECF Nos. 109-2, 109-11 to 13), the Court  
17 calculates the lodestar figure to be approximately \$304,412.50. This figure assumes  
18 class counsel incurred the reasonable number of hours they forecasted they would  
19 expend between the filing of this motion and the final approval hearing. To reach  
20 \$450,000.00, the Court would need to apply a multiplier of 1.478 to the \$304,412.50  
21 lodestar. As discussed above, “the degree of success class counsel attained” in this  
22 case is superior to other TCPA cases. *See In re Bluetooth*, 654 F.3d at 944. Therefore,  
23 the Court finds applying a multiplier of 1.478 is appropriate, and the lodestar method  
24 also demonstrates that the requested fee award is reasonable—confirming the Court’s  
25 conclusion under the percentage of recovery method.

26 Accordingly, because the percentage of recovery method demonstrates that the  
27 requested fee award is reasonable, and the lodestar method confirms this conclusion,  
28 the Court grants Plaintiff’s request for \$450,000 in attorneys’ fees.

1           **B.     Costs**

2           Plaintiff also seeks reimbursement of litigation costs on class counsel’s behalf.  
3           “Class Counsel are entitled to reimbursement of the out-of-pocket costs that they  
4           reasonably incurred investigating and prosecuting [the] case.” *Couser*, 125 F. Supp.  
5           3d at 1049 (citing *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D.  
6           Cal. 1996)). Here, class counsel have incurred \$53,367.38 in costs. (Kazerounian  
7           Decl. ¶ 9, ECF No. 109-2; Swigart Decl. ¶ 9, ECF No. 109-11; Friedman Decl. ¶ 15,  
8           ECF No. 109-13.) They incurred over half of this amount to retain technology  
9           consultants to analyze class member data. Plaintiff seeks to recover \$50,000 of the  
10          \$53,367.38 class counsel expended because the Settlement Agreement provides  
11          Defendant will not contest a request for costs up to \$50,000. (Settlement Agreement  
12          § 6.) The Court finds that class counsel reasonably incurred the out-of-pocket costs  
13          in connection with this litigation and that the costs were advanced by counsel for the  
14          benefit of the class members. Accordingly, the Court grants Plaintiff’s request for  
15          \$50,000 in costs.

16  
17           **C.     Incentive Award**

18          Last, Plaintiff requests approval of a \$5,000 incentive award. He submits that  
19          he faced some degree of public scrutiny in serving as the class representative because  
20          Defendant argued his prior criminal conviction precluded him from being a class  
21          representative. (*See* ECF No. 54 at 22:27–23:4.) Further, Plaintiff states he  
22          contributed to the action by (1) providing information to class counsel for the  
23          complaints and other pleadings, (2) reviewing pleadings and other documents, (3)  
24          communicating on a regular basis with counsel and keeping himself informed of  
25          progress in the litigation and settlement negotiations, (4) assisting with written  
26          discovery responses, (5) appearing for his deposition in Los Angeles, California, and  
27          (6) reviewing and approving the proposed settlement. (Stemple Decl. ¶¶ 4–8, ECF  
28          No. 109-16; *see also* Kazerounian Decl. ¶ 12.) In light of the foregoing, the Court


1 finds the requested amount is reasonable and awards Plaintiff \$5,000 as an incentive  
2 award.

3  
4 **III. CONCLUSION**

5 For the reasons stated above, the Court grants Plaintiff's motion for attorneys'  
6 fees, costs, and incentive award. (ECF No. 109). The Court awards Plaintiff \$450,000  
7 in attorneys' fees, \$50,000 in costs, and \$5,000 as an incentive award.

8 **IT IS SO ORDERED.**

9  
10 **DATED: November 7, 2016**

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