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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNN SLOVIN, an individual, on her own behalf and on behalf of all others similarly situated,

Plaintiff,

v.

SUNRUN, INC., a California corporation, CLEAN ENERGY EXPERTS, LLC, a California limited liability company doing business as SOLAR AMERICA, and DOES 1-5, inclusive,

Defendants.

No. 4:15-cv-05340-YGR

Honorable Yvonne Gonzalez Rogers

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS AND CLASS REPRESENTATIVES' SERVICE AWARDS

Date: July 9, 2019
Time: 2:00 p.m.
Location: Courtroom 1
Ronald V. Dellums Fed. Bldg.
1301 Clay Street
Oakland, California 94612

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Plaintiffs Lynn Slovin, Samuel Katz, Jeffery Price, and Justin Birkhofer ("Plaintiffs") hereby move the Court pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiff for an order awarding attorneys' fees (in the amount of $1,900,000), costs of $470,610.87, and service awards of $40,000.00 for each of the representative plaintiffs from the common fund established under settlement agreement ("Agreement"; Dkt. No. 189-3) with Defendants Sunrun, Inc. and Clean Energy Experts, LLC (collectively "Defendants").

I. INTRODUCTION

The Parties heavily litigated the claims of Plaintiffs and the Class. Over the course of the three and one half years of this case, Class Counsel defeated a motion to strike the class allegations, won a motion to declare a Rule 68 offer ineffective, took eight depositions, served over forty subpoenas, conducted dozens of meet and confers, briefed seven discovery disputes, attended three discovery hearings before the Magistrate Judge, won a motion to compel compliance with a subpoena for Defendants' call records in the Central District of California, analyzed about 27 gigabytes of data, reviewed hundreds of thousands of pages produced by Defendants, retained two of the top experts in TCPA litigation and worked with them on reports that exceeded a combined 115 pages, briefed a class certification motion, mediated before two mediators and the Magistrate Judge, and reached a settlement in principle in January 2018. Litigation was time consuming (over 6,770 hours of attorney time were incurred), costly (over $470,000 in costs were incurred), and vigorously fought.

Ultimately, an agreement to resolve the case was reached and preliminary approval was granted on January 29, 2019. Dkt. No. 196. The Settlement Agreement provides for a $5.5 million common fund to be distributed (after a claims process) and wide-reaching injunctive relief specifically aimed at eliminating the alleged unlawful conduct which gave rise to this case. As compensation for their substantial efforts, Class Counsel now seek an attorney's fees and costs award as well as service awards for the named plaintiffs. As explained below, given Class Counsel and Plaintiffs' tremendous commitment to serving the needs of the Class and the

substantial result achieved on the Class' behalf, the requested awards are reasonable and warranted.

II. RELEVANT BACKGROUND

A. Plaintiffs' and their Counsel Vigorously Litigated the Claims of the Class

On November 20, 2015, Plaintiff Lynn Slovin filed a class action complaint against Defendants. Dkt. No. 1. Ms. Slovin alleged Defendants violated the TCPA by placing unsolicited solar telemarketing calls to her and members of the putative classes on telephone numbers assigned to wireless subscribers using an automatic telephone dialing system ("ATDS") or prerecorded voice messages. *Id.* On December 2, 2015, Ms. Slovin filed her First Amended Complaint to add claims for Defendants' alleged "Do Not Call" violations. Dkt. No. 7. Through public record requests for robocall and do not call complaints to the Federal Trade Commission and Federal Communications Commission, Ms. Slovin discovered that thousands of other similarly affected consumers claimed that they were affected by the telemarketing practices of Defendants and their vendors. Parisi Decl., ¶5. On March 25, 2016, she filed a Second Amended Complaint adding Jeffery Price and Samuel Katz as named plaintiffs. Dkt. No. 35.

From the outset, Plaintiffs were challenged with the task of discovering the telemarketing vendors that made calls that Plaintiffs believed to be "on behalf of" Defendants. Parisi Decl., ¶6. On April 15, 2016, Defendants filed a motion to strike the class allegations, and argued that the third parties that made the alleged calls to Plaintiffs were imposters who had no relation to Defendants. Dkt. No. 36 at 3. On April 28, 2016, the Court granted the motion and ordered Plaintiffs to file a Third Amended Complaint ("TAC") that identified the telemarketing vendors that Plaintiffs believed made calls to Plaintiffs on behalf of Defendants. Dkt. No. 40. Plaintiffs spent the next several months propounding discovery requests on Defendants, ultimately serving over 40 third-party subpoenas on telecommunications entities and conducting an independent investigation to comply with the Court's order. Parisi Decl., ¶7; Parasmo Decl., ¶24, 25. Defendants remained emphatic in their assertion that they had no connection to the calls at issue and on that basis, were less than forthcoming in discovery. Parisi Decl., ¶¶6, 9. Thus, based largely on their independent investigation and extensive work with Plaintiffs' consultant, on July

12, 2016, Plaintiffs filed their TAC. Dkt. No. 46. The TAC identified the telemarketing vendors, alleged that Defendants made and participated on live transfer calls initiated by the vendors as well as facts supporting the allegation that Defendants controlled the manner and method by the vendors conducted the solar telemarketing campaigns, and added Justin Birkhofer as an additional plaintiff. *Id; see also*, Parisi Decl., ¶7; Parasmo Decl., ¶27. On August 19, 2016, Defendants filed a second motion to strike the class allegations. Dkt. No. 51. Defendants, throughout the litigation, disputed all of Plaintiffs' claims, and disputed that the claims were appropriate for class treatment.

After three of the named plaintiffs' depositions were conducted, on March 7, 2017, the Parties participated in a mediation with former Chief Magistrate Judge Edward A. Infante. Parisi Decl., ¶12. The case did not settle and in fact, the mediation revealed that the case would be difficult — if at all possible—to resolve without an extraordinary amount of additional work. *Id*. Shortly thereafter, Defendants made a Rule 68 offer of judgment of $100,000 to each of the four named Plaintiffs. *Id*. at ¶14. Plaintiffs risked personal liability for Defendants' costs by rejecting the offer. *See* Dkt. No. 89 and Fed. R. Civ. P. 68(d). Nevertheless, Plaintiffs held firm to their obligations as potential class representatives while forgoing personal enrichment. Parisi Decl., ¶12. On April 11, 2017, Plaintiffs filed a motion to declare the offer ineffective, which was granted by the Court after finding that "the offer was not made in good faith". Dkt. No. 89.

The litigation of this case required Class Counsel to spend a remarkable amount of time and effort on both formal and informal discovery. Plaintiffs deposed each of Defendants' five 30(b)(6) witnesses on a total of 18 topics related to class certification and merits, including but not limited to the topics related to Defendants' telephone dialing systems, lead databases, relationships with telemarketing vendors, policies for TCPA compliance, and evidence of prior express consent. Parasmo Decl., ¶43. Plaintiffs served six sets of requests for production of documents for a total of 294 requests, two sets of requests for admission for a total of 108 requests, and 31 interrogatories, on Defendants, collectively. *Id.* at ¶25, 34, 41. Plaintiffs also responded to a tremendous amount of discovery propounded by Defendants. Plaintiffs

collectively responded to hundreds of document requests and 81 interrogatories. *Id.* at ¶28, 36. Additionally, all four named Plaintiffs sat for their depositions. *Id.* at ¶38, 43.

The Parties litigated over several, hard-fought discovery disputes, and appeared before Magistrate Corley on several occasions to resolve those disputes. *Id.* at ¶37, 45, 50. Overall, Plaintiffs' extensive discovery battles resulted in Defendants producing over 27 gigabytes of data over the course of the litigation. Parisi Decl., ¶17.

In addition, Plaintiffs sought court intervention to enforce a third-party subpoena. *See* Order re Plaintiffs' Motion to Compel Production, *Slovin v. CallFire, Inc.*, No. 17-mc-00091 (C.D. Cal.), Dkt. No. 14. In response, CallFire produced voluminous call records. Parasmo Decl., ¶48. On October 3, 2017, Plaintiffs' experts Randall Snyder and Anya Verkhovskaya produced reports establishing the numerosity and ascertainability of the Class. Parisi Decl., ¶17. Defendants produced two responding expert reports and all expert depositions were completed. *Id.* On December 8, 2017, Plaintiffs filed a motion for class certification. Dkt. No. 159. The motion was stayed during the subsequent mediation and settlement conferences and ultimately taken off calendar when a settlement in principle was reached.

On January 9, 2018, the Parties participated in another private mediation – this time with Bruce Friedman, a JAMS mediator with extensive TCPA mediation experience. Parisi Decl., ¶19. Again, the mediation was not successful. On January 31, 2018, the Parties participated in a settlement conference with Magistrate Judge Corley, which culminated in Judge Corley making a mediator's recommendation. *Id.* The Parties then participated in a telephonic conference with Magistrate Judge Corley on April 5, 2018, during which the Parties accepted the mediator's proposal and an agreement was reached on the scope of the settlement. *Id.* The Parties then spent the subsequent months carefully negotiating the fine details of the Settlement, analyzing data to define the contours of the Class, developing a notice and claims procedure, and importantly, negotiating the last pillar of the settlement – the injunctive relief provisions.

B. Plaintiffs and their Counsel Secured an Excellent Settlement on Behalf of the Class

The settlement ultimately achieved on behalf of the Class is an excellent result designed to compensate Class members for their injuries and, through the injunctive relief, reform the complained-of practices to prevent them from recurring.

The Parties have agreed to a non-reversionary $5.5 million Settlement Fund. Agreement, §4.1. Each Class member who submits a valid claim form will be entitled to receive, on a pro rata and equal basis, an amount of the portion of the Settlement Fund that remains after payment of all Settlement Administration Costs, any service awards to the Representative Plaintiffs, and any award of Attorneys' Fees and Costs. Agreement, §4.2.1. The Agreement treats each Class member fairly and equally with no member receiving a larger share for each phone number than another.

The Agreement also secures robust injunctive relief—relief that is extraordinary and unusual in the TCPA class action context and that will provide substantial benefits to the Class. Indeed, the injunctive relief does not simply require Defendants to stop the alleged illegal telemarketing calls to Settlement Class members, but requires Defendants and its Telemarketing Vendors (as defined by the Agreement) to institute, adopt, and maintain, for a term of four years, enumerated protocols, practices, and contractual provisions (as described more fully below in section, III.B.1.b., *infra*) that exceed the mandate of the TCPA and its implementing regulations. *See* Agreement, §12, *et. seq*.

C. The Court Certified the Class, Appointed Class Counsel, and Granted Preliminary Approval

On January 29, 2019, the Court granted preliminary approval of the Settlement. Dkt. No. 196. In that Order, the Court certified the following class:

> [A]ll persons in the United States, from November 20, 2011 to August 31, 2018, who received from or on behalf of Sunrun and/or CEE, or from a third party generating leads for Sunrun and/or CEE: (1) one or more calls on their cellphones, or (2) at least two telemarketing calls during any 12-month period where their phone numbers appeared on a National or State Do Not Call Registry or Sunrun's and/or CEE's Internal Do Not Call List more than 30 days before the calls.

Id. at 3:8-11. The Court also designated Plaintiffs Lynn Slovin, Samuel Katz, Jeffery Price, and

Justin Birkhofer as class representatives, appointed their counsel as Class Counsel, granted approval of the proposed Notices, ordered that Notice be sent to Class Members by the Claims Administrator, after careful consideration, concluded that preliminary approval was warranted, and ordered the Final Approval hearing to be held on July 9, 2019. Dkt. No. 196.

III. THE REQUESTED AWARD OF FEES IS FAIR AND REASONABLE

Class Counsel's efforts have resulted in the creation of a $5.5 million common fund for the benefit of the Class identified and defined in the Agreement as well as substantial injunctive relief. The common fund doctrine is an equitable exception to the American rule that litigants must bear their own attorneys' fees. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Under the doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Id.* The doctrine avoids unjust enrichment: "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994).

A. The Fee Request is Reasonable Whether Evaluated Under the Percentage-of-the-Fund Method or Lodestar Calculation

"Under Ninth Circuit law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *WPPSS*, 19 F.3d at 1295-96.) Courts regularly apply the "common fund" doctrine in determining attorneys' fees in class action suits, in which the court awards class counsel a certain percentage of the benefits made available to the class. *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Indeed, the Ninth Circuit has often used the percentage-of-the-fund method, recognizing the "ground swell of support for mandating a percentage-of the-fund approach in common fund cases[.]" *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); see also *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).

Ultimately, in evaluating a request for attorneys' fees, whether one employs a lodestar approach or the percentage-of-the-fund method, "[r]easonableness is the goal." *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002); *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 504 (2016) ("the goal under either the percentage or lodestar approach [is] the award of a reasonable fee to compensate counsel for their efforts."). Moreover, as "[r]easonableness is the goal, [] mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997). Under either a lodestar or a percentage award analysis, the record here supports the fee award sought by Class Counsel.

B. Given the History of the Case and the Result Achieved, a Fee Award That Exceeds the Benchmark of Twenty-Five Percent of the Common Fund is Reasonable.

The Ninth Circuit "has established 25% as the benchmark for attorney fees" in class action suits where a common fund is established. *Staton*, 327 F.3d at 968 (citing *Hanlon*, 159 F.3d at 1029). Nonetheless, the "Ninth Circuit has made clear that courts may adjust a percentage fee award upward or downward to take into account any equities created by the attorney time and effort devoted to the case". *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450 (N.D. Cal. 1994). Accordingly, "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). In fact, Ninth Circuit district courts have routinely awarded percentage fee awards in the 30%–33% range of the total common fund achieved. *See, e.g., Vedachalam v. Tata Consultancy Servs., Ltd.*, No. 06-cv0963, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (awarding fee award equal to 30% of the common fund); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663 (9th Cir. 2003) (affirming attorneys' fee of 33% of the recovery); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821, 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in multiple other cases); *Dakota Med., Inc. v. RehabCare Group, Inc.*, No. 14-cv-02081, 2017 WL 4180497, at *10 (E.D. Cal. Sept. 21, 2017) (approving attorney fee award of 33.33% of the settlement fund).

Class Counsel seek a fee award of 34.5 percent of the common fund, or $1,900,000, reflecting the monetary as well as significant injunctive relief obtained. *Vizcaino,* 290 F.3d at 1049 (non-monetary benefits conferred by the litigation are a "relevant circumstance" that the court should consider in determining the attorney fee award). This reflects a $525,000 premium over the 25 percent benchmark amount of $1,375,000. Conversely, however, Class Counsel's lodestar of $3,363,690.00 substantially exceeds—by more than 40%—the fee award sought here. Courts consider several factors in determining whether a fee award is reasonable, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the quality of work; and (5) the contingent nature of the fee and the financial burden. *Vizcaino,* 290 F.3d at 1048–50; *In re Capacitors Antitrust Litigation,* No. 14-cv-03264, 2018 WL 4790575, at *3 (N.D. Cal. Sept. 21, 2018); *Bravo v. Gale Triangle, Inc.*, No. 16-cv-03347, 2017 WL 708766, at *5 (C.D. Cal. Feb. 16, 2017). These factors, as well as the robust injunctive relief, support the award sought.

1. The Results Achieved Support the Fee Requested

a. The Monetary Benefits Achieved

Again, the Agreement provides for a $5.5 million common fund. "[T]he factor given the greatest emphasis is the size of the fund created, because 'a common fund is itself the measure of success and represents the benchmark from which a reasonable fee will be awarded.'" Federal Judicial Center, Manual for Complex Litigation, §14.121 (4th ed. 2004) (quoting 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 14:6, at 547, 550 (4th ed. 2002)); *see also Omnivision,* 559 F. Supp. 2d at 1046 ("overall result and benefit to the class from the litigation is the most critical factor in granting a fee award"). Five and a half million dollars is a substantial recovery in this case—as it would be in most cases.

Class Counsel recovered this common fund for the benefit of consumers, many of whom would not have known that their rights were violated absent notice of the Agreement. Based on the information available, Class Counsel projects that each class member will receive a significant cash payment, that may be over $100, and perhaps as much as $250, depending on the claims rate. Dkt. No. 189-2, Parisi Decl., ¶13. This compares favorably to the cash payments achieved in TCPA cases. *See, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp.

3d 781, 787 (N.D. Ill. 2015) (providing $34.60 to each claiming class member); *Hashw v. Dept. Stores Nat'l Bank, 182 F. Supp. 3d 935*, 947 (D. Minn. 2016) (approving settlement providing claiming class members in TCPA case a $33.20 payment); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (providing a roughly $30 payment for each claiming class member); *Kazemi v. Payless Shoesource, Inc.*, No. 3:09-cv-05142, ECF. No. 94 (N.D. Cal. Apr. 2, 2012) (granting approval of a settlement that provided a $25 voucher to each claiming class member); *In re Jiffy Lube Int'l, Inc. Text Spam Litig.*, No. 3:11-md-02261, ECF No. 97 (S.D. Cal. Feb. 20, 2013) (granting approval of a settlement that provided a $20 voucher or $15 cash to each claiming class member); *Arthur v. Sallie Mae, Inc.*, No. 2:10-cv-00198, Dkt. 266 (W.D. Wash. Sept. 17, 2012) (granting approval of a settlement that provided $20-40 cash payment to each claiming class member).

b. The Robust Injunctive Relief Achieved

In addition to monetary recovery, the Agreement provides for substantial injunctive relief in the form of specific measures to be undertaken by Defendants, as well as their Telemarketing Vendors, to prevent the Class and other consumers from receiving illegal telemarketing calls in the future. This powerful injunctive relief was particularly negotiated as a fundamental part of the resolution of the case. Under the Settlement, Sunrun and CEE agree to an injunction imposing certain requirements that will remain in effect for a period of four years. Agreement, §12. As a result of the Settlement, Defendants are now required to take a number of affirmative actions to ensure that Telemarketing Vendors comply with the TCPA and to institute measures that go *beyond* the mandate of the TCPA and the implementing regulations (regardless of any legal uncertainty as to the applicability of vicarious liability principles). Agreement, §12.

The injunctive relief was carefully tailored to address the concerns and experiences of Plaintiffs and the Class. For example, Plaintiffs alleged that Defendants' Telemarketing Vendors falsely represented that they were working with various governmental agencies during their calls to consumers and/or used fictitious business names during the calls that were not readily traceable to a particular company. Dkt. No. 46, 10:27-28. Under the Agreement, Defendants have agreed that any new contracts with Telemarketing Vendors will require the vendors (a) to

identify themselves by name on telemarketing calls with consumers; (b) refrain from conduct which misleads consumers as to their identities, including by claiming that they are calling from a business entity that does not exist; and (c) to comply with requirements governing the registration of fictitious names. Agreement, §12.9

Plaintiffs also experienced that many of the Telemarketing Vendors were off-shore entities and nearly impossible to serve process upon, leaving consumers without an avenue of recourse. Parisi Decl., ¶7. Under the Agreement, Defendants will no longer contract with Telemarketing Vendors who do not accept service of process in the United States. Agreement, §12.4. The Agreement also mandates that Defendants conduct, on a quarterly basis, random audits of Telemarketing Vendors, and that the audits include the review of calls and recordings. *Id*., §12.8. Defendants have also agreed to retain an independent third-party to assist with such audits to confirm that Telemarketing Vendors have: (a) obtained "prior express written consent" and scrubbed phone numbers calls against the National Do Not Call Registry and against cell phone databases. *Id.* To further incentivize TCPA compliance, Defendants agree that any new contracts with Telemarketing Vendors will include new provisions that allow Defendants to withhold compensation to Telemarketing Vendors found to be violating the TCPA and to require Telemarketing Vendors who are the source of ten or more complaints to retain a reputable third party to audit the Telemarketing Vendors' practices. *Id*., §12.6.

The injunctive relief also extends to Defendants' own internal operations. Sunrun has agreed to "oversee all CEE telemarketing activities to ensure compliance with the TCPA." *Id*., §12.1. Although suppression technology is not required by the TCPA, Defendants have agreed to "implement and maintain procedures that prevent their respective dialing equipment from making unsolicited telemarketing calls to consumers whose telephone numbers appear on their Internal Do Not Call Lists." *Id.* at §12.3. The Settlement also requires Defendants to "maintain and merge their Internal Do Not Call Lists." *Id.* at §12.2. Together, these measures will ensure that Class Members do not receive calls after being placed on Defendants' internal do not call list (unlike the experience of some of the named plaintiffs during the pendency of the lawsuit). *See*

e.g., Katz Decl., ¶¶3, 17.

Prior to becoming involved in this action, the Class Representatives sought relief from the intrusive telemarketing calls by complaining, orally and in writing, to Defendants, but the calls continued unabated. Slovin Decl., ¶¶3-4; Katz Decl, ¶4, Price Decl, ¶4. To empower Settlement Class Members, the injunctive relief requires Defendants to investigate and properly document investigations made when a consumer complains, by any means, about the receipt of unsolicited telemarketing calls. Agreement, §12.7. These terms will provide a substantial benefit to the Class – as litigation may no longer be necessary. *C.f. Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (injunctive relief requiring defendant to submit to a grievance and arbitration procedure to address compensation disputes, benefited class substantially because it obviated need for class litigation).

Although difficult to quantify, Plaintiffs' success in stopping the alleged abusive telemarketing calls and reforming the manner and method in which Defendants and the Telemarketing Vendors conduct, monitor, investigate, and document telemarketing campaigns and related consumer complaints, is not illusory. On the contrary, it provides a real and substantial benefit to the Class, and is a direct result of the misconduct experienced by consumers. See Parisi Decl., ¶20; Slovin Decl., ¶¶11, 12; Price Decl. ¶11; Katz Decl., ¶¶17, 18; Birkhofer Decl., ¶11. The Agreement's injunctive relief is therefore a "relevant circumstance" that the Court should consider in determining the percentage of the common fund that is paid as an attorney fee to Class Counsel. *Staton*, 327 F.3d at 974 (while injunctive relief is often difficult to quantify, nevertheless it is a "relevant circumstance" that the court should consider in determining what percentage of the common fund should be awarded as attorneys' fees). As this Court has observed, "in most common fund cases, the award exceeds [the 25%] benchmark, with a 30% award the norm absent extraordinary circumstances that suggest reasons to lower or increase the percentage." *Burnthorne-Martinez v. Sephora USA, Inc*., No. 4:16-CV-02843-YGR, 2018 WL 5310833, at *2 (N.D. Cal. May 16, 2018) (internal quotations and citations omitted). Here, the injunctive relief achieved is an extraordinary circumstance that warrants an increase in

the percentage. The injunctive relief achieved is exceptional in the context of other TCPA class action settlements. Class Counsel has been unable to locate any TCPA class settlements where injunctive relief of this nature, quality, and import was obtained. Parisi Decl, ¶20.[1] Further, the injunctive relief advances one of the primary purposes behind the TCPA—to prevent the invasion of privacy stemming from unwanted, autodialed telemarketing calls. Given that 30% is standard in consumer cases, and that courts in the Ninth Circuit routinely award attorneys' fees up to 33% of the fund in TCPA class actions that do not provide meaningful, or any, injunctive relief, a modest adjustment to 34.5% is warranted here. *Sephora*, 2018 WL 5310833, at *2 ("The Court takes into account the results obtained and has discretion to adjust the benchmark when special circumstances indicate a higher or lower percentage would be appropriate.") (internal quotations omitted) (*quoting In re Pacific Enters. Sec. Litig*., 47 F.3d 373, 379 (9th Cir. 1995). Such an award may encourage attorneys in future TCPA class settlements to negotiate settlements that ensure defendants and their vendors achieve TCPA compliance and prevent future TCPA litigation.

2. The Risks of Litigation Support the Fee Award Requested

Risk is the other side of the coin from the success of Class Counsel's efforts. *Cf. Vizcaino*, 290 F.3d at 1048 (affirming fee award where case was "risky for class counsel for the reasons just stated" in preceding analysis of results achieved by counsel). *See also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving fee award of one third of common fund based on argument about "complexity of the issues and the risks"); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) ("despite the most vigorous and competent of efforts, success is never guaranteed"). It is impossible to assess the results Class Counsel achieved without assessing the severity of the risks they faced.

Here, Defendants' vigorous defense of the litigation presented a serious risk to any recovery. Defendants' significant challenges to every aspect of the claims required Class

[1] Plaintiffs have located few cases where meaningful, injunctive relief was obtained in a TCPA class action. *C.f. Synder v. Ocwen Loan Servicing, LLC*, No. 14-08461 (N.D.Ill), Dkt. 252 at 8-9 (injunctive relief in class settlement context); *U.S. v. Dish Network, LLC*, No. 09-03070 (C.D.Ill.) Dkt. 798 (court ordered permanent injunction in action filed by the Federal Trade Commission and state attorneys general).

Counsel to retain highly qualified, and also expensive, experts and consultants to sift through significant data and identify class members. "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. Nonetheless, Class Counsel fought back and carefully shepherded the Class' claims through motions to strike, and discovery disputes which could have prevented the discovery of class members, and a well-supported motion for class certification. If Class Counsel had failed to fend off the challenges by Defendants, Class Counsel might not have recovered anything for the time they expended litigating. *Cf. Willner v. Manpower Inc*., No. 11-02846, 2015 WL 3863625, *6 (N.D. Cal. June 22, 2015) (risk supported award where "case [was] fiercely litigated [with] substantial motion practice, including briefing multiple motions to dismiss or strike"); *Lofton v. Verizon Wireless* (VAW) LLC, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) ("[T]he risks of class litigation against an able defendant well able to defend itself vigorously" support an increase in the percentage of the fund awarded).

Moreover, class litigation of Plaintiffs' claims required a complex and costly analysis of Defendants' and their vendors' call records and data to identify calls to class members and to eliminate other calls, including calls that did not connect or which reached persons who fell outside the class. This complexity was inherently a threat to Class Counsel's recovery, and that threat was compounded by the long delay—over three years—in simply obtaining sufficient data to identify class members from Defendants' as well as their vendors' records. These inherent risks of complexity and delay support Class Counsel's requested fee. *Cf. Vizcaino*, 290 F.3d at 1051 (affirming fee award which addressed "substantial risk class counsel faced, compounded by the litigation's duration and complexity"); *Willner*, 2015 WL 3863625, at *6 ("attorneys' fee award should take into account the risk of representing this class action Plaintiff on a contingency basis over a period of four years").

3. The Skill Required by Class Counsel and the Quality of Their Work Support the Fee Award Requested

"The 'prosecution and management of a complex national class action requires unique legal skills and abilities.'" *Omnivision*, 559 F. Supp. 2d at 1047 (quoting *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987)). Class Counsel are experienced class action attorneys who have litigated many class cases, including TCPA class actions, successfully litigated class certification, and obtained significant leadership positions in multidistrict litigation proceedings. Parisi Decl., ¶¶2, 3; Parasmo Decl., ¶¶2-14.

More to the point, the risks overcome and results achieved in the Agreement reflect Class Counsel's exercise of their skills and the quality of their work in this case. As outlined above, Class Counsel faced serious risks in litigating this case. Class Counsel exhaustively researched and responded to the legal arguments mounted by Defendants—such as Article III standing, vicarious liability, individualized issues of consent, and whether Defendants' dialers qualified as automatic dialing systems. Further, the "the quality of opposing counsel is also relevant to the quality and skill that class counsel provided." *Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016). Notwithstanding the fact that Defendants' "counsel understood the legal uncertainties in this case, and were in a position to mount a vigorous defense," Class Counsel have recovered a $5.5 million settlement: a "sizeable recovery is some testament to Plaintiffs' counsel's skill." *Knight v. Red Door Salons, Inc.*, No. 08-01520, 2009 WL 248367, *6 (N.D. Cal. Feb. 2, 2009); *see also Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-1365, 2010 WL 1687829, *2 (N.D. Cal. Apr. 22, 2010) ("Class Counsel displayed great skill in overcoming the numerous formidable challenges raised by State Farm," justifying increased fee award).

Simply put, "prosecuting this case required an extraordinary commitment of time, resources, and energy from Class Counsel, and the relief achieved simply would not have been possible but for the commitment and skill of Class Counsel." *Garner*, 2010 WL 1687829, at *2. Class Counsel litigated relentlessly for class discovery, expended significant resources, both in

time and money, obtaining call data to identify class members. *See* Parisi Decl., ¶¶16-18; 19-20; 34. It is doubtful Class Counsel could have achieved the settlement they did without presenting Defendants' with a real risk that continued litigation would only compound their potential liability. *Cf. id*. ¶82 *with Lusby v. GameStop Inc.*, No. 12-03783, 2015 WL 1501095, at *4 (N.D. Cal. Mar. 31, 2015) ("Class Counsel developed an extensive factual record to obtain the evidence needed to convince Defendant of the risks of continued litigation"). This supports Class Counsel's fee request and demonstrates the quality of work they have performed for the Class.

4. Class Counsel's Contingency Fee and Financial Burden Support the Fee Requested

Collectively, Class Counsel have expended more than 6,770 hours, over three and a half years, incurred $3.3 million in fees, paid over $470,000 in costs litigating this case, on a contingency basis, without any guarantee that any of the time or expense could be recovered. Parisi Decl., ¶¶23, 34; Parasmo Decl. ¶¶61, 66; Preston Decl., ¶¶2, 13; and Himmelfarb Decl., ¶6. These "[financial] burdens are relevant circumstances" to the Court's fee award. *Vizcaino*, 290 F.3d at 1050. "[W]hen counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award." *Bellinghausen*, 306 F.R.D. at 261.[2] Of course, these risks were exacerbated by Defendants' vigorous defense.

"Because payment is contingent upon receiving a favorable result for the class, an attorney should be compensated both for services rendered and for the risk of loss or nonpayment assumed by accepting and prosecuting the case." *In re Quantum Health Res., Inc.*, 962 F. Supp. 1254, 1257 (C.D. Cal. 1997). An increased fee award here serves the important

[2] *See also Lusby*, 2015 WL 1501095, at *4 (financial burden factor met where "Class Counsel undertook this matter on a contingent basis, with no guarantee of recovery of fees or reimbursement of costs [and] prosecuted this case for over two years," incurring 1,132 hours); *Willner*, 2015 WL 3863625, at *6 ("attorneys' fee award should take into account the risk of representing this class action . . . on a contingency basis over a period of four years"); *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 457 (E.D. Cal. 2013) (financial burden factor supports an increased fee where "Class Counsel . . . advance[d] all necessary expenses . . . knowing that they would only receive a fee if there were a recovery" and "prosecuted the case on a contingency basis, which in itself presented considerable risk").

function that contingency fees play in our legal system: "assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *In re WPPSS*, 19 F.3d at 1299; *see also Omnivision*, 559 F. Supp. 2d at 1047 ("importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys").[3] Absent the possibility of a significant upside, "very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *In re WPPSS*, 19 F.3d at 1300 (citation, punctuation). Of course, here, Class Counsel do not seek to improve on their lodestar, but rather seek only a portion of it.

5. Awards Made in Similar Cases Support the Fee Sought

Class Counsel seek an award of 34.5 percent, just over one-third of the class members' recovery, which is a relatively common fee award. "Courts in this district have consistently approved attorneys' fees which amount to approximately one-third of the relief procured for the class." *Linney v. Cellular Alaska P'ship*, No. 96-3008, 1997 WL 450064, *7 (N.D. Cal. July 18, 1997) (citations omitted; approving fee award of one-third of common fund). *See also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming fee award of one third of common fund); *Lusby*, 2015 WL 1501095, at *9 (awarding fee of one-third of common fund); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (same); "typical range of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent" of common fund); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (approving fee award of "approximately 33.3% of the total recovery obtained"); *In re Heritage Bond Litig.*, No. 02-1475, 2005 WL 1594403, *18 (C.D. Cal. June 10, 2005) (same). *See also In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. 3:07-CV-5944 JST, 2016 WL 721680, at *43 (N.D. Cal. Jan. 28, 2016) ("many cases . . . award fees in the 25–33% range" (citations omitted).

[3] *See also Garner*, 2010 WL 1687829, at *2 ("[c]ourts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work"; citing *Vizcaino*, 290 F.3d at 1050; *In re WPPSS*, 19 F.3d at 1299; *In re Omnivision*, 559 F.Supp.2d at 1047).

Of course, the test here is "similar cases" and TCPA cases represent a small portion of the Ninth Circuit's published case law on class action settlements. Even still, TCPA cases in the Ninth Circuit have resulted in fee awards very similar to what Class Counsel seek here. *Cf. Vandervort v. Balboa Capital Corp*., 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) ("a 33% award of fees and costs is warranted" in TCPA class action); *Dakota Med., Inc. v. RehabCare Grp*., Inc., No. 114CV02081DAD, 2017 WL 4180497, at *9 (E.D. Cal. Sept. 21, 2017) (approving "an award of one-third of the $25 million settlement fund, or $8,333,333" in a TCPA class action)

C. A Lodestar Cross-Check Supports Fee Sought by Class Counsel as the Fees Sought Amount to a *Negative* Multiplier

"As a final check on the reasonableness of the requested fees, courts often compare the fee counsel seeks as a percentage with what their hourly bills would amount to under the lodestar analysis." *Omnivision*, 559 F. Supp. 2d at 1048. "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award. . . [T]he lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted." *Vizcaino*, 290 F.3d at 1050.

Collectively, Class Counsel have incurred over $3.3 million in fees. Parisi Decl., ¶23; Parasmo Decl. ¶61; Preston Decl., ¶2; and Himmelfarb Decl., ¶6. Class Counsel's rates are reasonably in line with the prevailing rates of similar counsel in the Bay area — and perhaps on the low end. *See True Health Chiropractic Inc v. McKesson Corp.*, No. 13-02219, 2015 WL 3453459, *2 (N.D. Cal. May 29, 2015) ("[i]n the Bay Area, reasonable hourly rates for partners range from $560 to $800, for associates from $285 to $510"; citation omitted); *Minichino v. First Cal. Realty*, No. 11-5185, 2012 WL 6554401, *7 (N.D. Cal. Dec. 14, 2012) (rates of $555 per hour for attorney with fourteen years of practice and $450-480 per hour for attorney with nine years of experience were consistent with San Francisco market); *Rose v. Bank of Am. Corp.*, No. 11-02390, 2014 WL 4273358, *7-8 (N.D. Cal. Aug. 29, 2014) (finding billing rates of associates ranging from $325 to $525 per hour and partners rates from $350 to $775 per hour to be reasonable in TCPA class action); *Etter v. Allstate Ins. Co.*, No. C 17-00184 WHA, 2018 WL 5791883, at *4 (N.D. Cal. Nov. 4, 2018) (court found that attorney fee rates ranging from $600

to $950 per hour to be reasonable in a TCPA class action.). Class Counsel's hourly rates, ranging from $450 to $550 for attorneys, are reasonable in light of the market for legal services of this type and quality.

As to the amount of time worked, over 6,770 hours, Class Counsel have provided detailed declarations describing the work they performed. Parisi Decl., ¶¶5-22; Parasmo Decl. ¶¶18-58; Preston Decl., ¶¶7-12; and Himmelfarb Decl., ¶7.

A lodestar cross-check here only further underlines the reasonableness of counsel's fee request. A cross-check here shows that Class Counsel seek only 56 percent of their lodestar of $3,363,690. "[A]n award exceeding 25 percent is reasonable where the total fee award is lower than the lodestar calculation." *Cabiness v. Educ. Fin. Sols., LLC*, No. 16-CV-01109-JST, 2019 WL 1369929, at *7 (N.D. Cal. Mar. 26, 2019) (citing *Vizcaino*, 290 F.3d at 1051, n.6. and *In re Bluetooth*, 654 F.3d at 944.

IV. CLASS COUNSEL SHOULD BE REIMBURSED FOR THEIR NECESSARY AND REASONABLE LITIGATION COSTS

Class Counsel also request reimbursement from the fund in the amount of $470,610.87 for litigation costs reasonably and necessarily incurred including fees for experts and consultants which were crucial to the litigation. Parisi Decl., ¶¶34-37; Parasmo Decl., ¶¶67, 68; Preston Decl., ¶13. Like attorneys' fees, these expenses should be paid from the common fund because all Class members should share the costs of the litigation from which they benefitted. *Vincent v. Brand.*, 557 F.2d 759, 769 (9th Cir. 1977) ("The common fund doctrine provides that a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees."); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970) ("To allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense.")

Class Counsel have pursued this litigation knowing that their expenses could only be reimbursed (without interest) if the Class won at trial or obtained a settlement. These expenses were necessary for the prosecution of this litigation and were made for the benefit of the Class.

Parisi Decl., ¶¶34, 35; Parasmo Decl., ¶67; Preston Decl., ¶13. Class Counsel had no incentive to incur—and did not incur—unnecessary expenses. The categories of expenses for which counsel seek reimbursement are the type of expenses routinely charged to paying clients and, therefore, should be reimbursed out of the common fund. Parisi Decl., ¶36 (court reporters, deposition transcripts, expert and consultant fees, filing and messengers, computer related research, postage, printing, subpoenas, telephone and travel); Parasmo Decl., ¶68 (travel, FedEx delivery services, Pacer, and Court Call); Preston Decl., ¶13 (travel, postage and service of process). These are the normal costs of litigation that are traditionally billed to paying clients. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (attorneys should recover reasonable out of pocket costs of the type ordinarily billed to paying clients); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding travel, postage, telephone, messenger, online research, experts, consultants, investigators and mediation fees as reasonable and necessary and should be reimbursed, and when expert witness fees are "crucial or indispensable" to the litigation, they may be reimbursed); *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, No. C 09-05418 RS, 2012 WL 10277179, at *9 (N.D. Cal. Jan. 6, 2012) (courts grant reimbursement requests where class counsel incurred out-of-pocket costs including filing fees, copying, mailing, faxing, serving documents, conducting computer research, conducting depositions and obtaining transcripts, travel to hearings, depositions and mediation sessions, and expert fees); *In re Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *15 (N.D. Cal. Jan. 30, 2015) (same).

Among the most significant expenses incurred by Class Counsel were for experts and consultants, a total of $372,462.94. Parisi Decl., ¶36. These expenses were crucial and indispensable to the successful litigation of the action, and paid by Class Counsel for this reason. *Id.*, ¶34. The experts prepared a combined four reports, totaling over 115 pages, and assisted Class Counsel in identifying the Class. *Id.*, ¶¶17, 34. Had this action not settled, these expert reports would have been integral to succeeding on the motion for class certification, overcoming any likely motion for summary judgment, and proving the Class' claims at trial. *Id.*, ¶34.

V. PLAINTIFFS' EFFORTS FOR THE CLASS SUPPORT THEIR REQUESTED SERVICE AWARD

"Incentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (cited, followed by *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 943 (9th Cir. 2015)). Class representatives are eligible for reasonable service awards. *Staton*, 327 F.3d at 977. Generally, to make such a determination, courts may look to a variety of factors such as the class representative's actions to protect the interests of the class, the degree to which the class has benefitted from those actions, the time and effort the class representative expended in pursuing the litigation, and any risk the class representative assumed. *Id.* Each of these factors are found here in abundance.

Plaintiffs have gone above and beyond in their commitment to prosecuting this action—they each took time away from work and family to put the interests of the Class above their own monetary gain. *See* Birkhofer Decl. ¶7; Slovin Decl. ¶9; Katz Decl. ¶¶2,10; Price Decl. ¶8. Specifically, Plaintiffs spent significant time tracking down the unwanted calls by meticulous notetaking, providing screenshots of phones, phone bills, call recordings, bringing their claims to Class Counsel, and assisting Class Counsel in identifying the claims. *See* Birkhofer Decl. ¶¶5, 6; Slovin Decl. ¶¶6, 8; Katz Decl. ¶¶5-7; Price Decl. ¶¶6, 9. Further, all Plaintiffs responded to voluminous written discovery requests, traveled to and sat for lengthy depositions, devoted many hours to conferring with Class Counsel on strategic decisions for both themselves and the Class, as well as reviewing pleadings and other documents, and keeping informed of developments in the litigation. *Id.; see Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) ("amount of time and effort spent by the class representative" factor in determining incentive fee).

More significantly, Plaintiffs should be compensated for demonstrating their steadfast commitment and service to the Class by rejecting Defendants' Rule 68 offer to settle their claims

individually for $100,000.00 each, and risking personal liability for Defendants' substantial costs. Had Plaintiffs accepted this cumulative $400,000 offer, the Agreement would never have been achieved, the Class would have received no compensation for their injuries, and Defendants and their Telemarketing Vendors would have likely not reformed their telemarketing practices. Indeed, courts have recognized the benefit to the class when plaintiffs "receiv[e] and reject[]" "substantial offers of judgment" in other TCPA actions and have considered that choice relevant in approving service awards. *See In re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*, No. 1:13-md-02493-JPB-JES (N.D.W.V. June 12, 2018), Dkt. 1214 at ¶21 (Order re: Motion for Approval of Attorneys' Fees and Expenses and For Service Award) (awarding incentive awards ranging from $3,500 to $35,000 to named plaintiffs who rejected Rule 68 offers of varying amounts); *Fairway Med. Ctr. LLC v. McGowan Enterprises, Inc.*, No. CV 16-3782, (E.D. La. March 27, 2018) (Dkt. 61 at 6) ("Most importantly, defendant offered Fairway $75,000.00 to settle this case at the outset of this matter. Fairway, however, declined this amount so that it could proceed with the class action and benefit the class. As such, Fairway played a significant role in achieving a substantial settlement that benefited a large class of people and entities. The Court finds that the requested service award of $75,000.00 is reasonable and thus approves it.").

As this Court noted in granting Plaintiffs' Motion to Declare Ineffective Defendants' Offer of Judgment, "the [$400,000] Offer was made for an amount that individual plaintiffs could never realistically hope to obtain, much less exceed at trial." Dkt. No. 108 at 4, 10-12. This also militates strongly in favor of awarding the requested services award. *See Matheson v. T-Bone Restaurant, LLC*, No. 09-4214, 2011 WL 6268216 *9 (S.D.N.Y. Dec. 13, 2011) (approving $45,000 service award where the class plaintiff "rejected individual settlement offers of far greater sums than he stood to recover on his own claims in order to obtain a recovery for other [class members]."). Experienced Class Counsel had never seen, or heard of, such a significant offer where Defendants themselves asserted the Plaintiffs could not make such a recovery in litigation. Parisi Decl., ¶14. And yet Plaintiffs rejected the offer and placed the

interests of putative class members ahead of their own. It would be hard to present more definitive proof of Plaintiffs' fidelity to the Class that they represent.[4]

Certainly, Plaintiffs' efforts are precisely what was contemplated in the enactment of Rule 23 and they should be rewarded here with the requested service awards.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion and award Class Counsel attorneys' fees of $1.9 million plus reimbursement costs of $470,610.87. Plaintiffs also seek service awards of $40,000 for each of the four class representatives.

Dated: April 5, 2019 By: /s/David C. Parisi

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[4] Even without the rejection of a Rule 68 offer, courts have found that incentive awards of over $40,000 can be reasonable and fair. *See e.g., McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 480 (D.N.J. 2008) ("The Court will award Plaintiff incentive awards of $60,000 to each Representative Plaintiff."); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F.Supp.2d 322, 342 (E.D.Pa.2007) ("Accordingly, we approve the requested incentive award [of $75,000]."); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D.Cal.1995) ("After evaluating the time Van Vranken committed to this case, the Court finds that an incentive award of $50,000 is just and reasonable under the circumstances."); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373–74 (S.D. Ohio 1990) (two incentive awards of $55,000 and three incentive awards of $35,000); *In re Revco Sec. Litig.*, 1992 WL 118800, *7 (N.D. Ohio May 6, 1992) ($200,000 incentive award to named plaintiff); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250–51 (S.D. Ohio 1991) ($50,000 incentive awards to each of the six named plaintiffs).

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