LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON (SBN 175650)
ron@consumersadvocates.com
ALEXIS WOOD (SBN 270200)
alexis@consumersadvocates.com
KAS GALLUCCI (SBN 288709)
kas@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

LAW OFFICES OF DOUGLAS J. CAMPION, APC
DOUGLAS J. CAMPION (SBN 75381)
17150 Via Del Campo, Suite 100
San Diego, California 92127
doug@djcampion.com
Telephone: (619) 299-2091
Facsimile: (619) 858-0034

Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LINDA SANDERS on behalf of herself, and all others similarly situated, Plaintiff, v. RBS CITIZENS, N.A. Defendant.	CASE NO. 13-cv-3136 BAS (RBB) CLASS ACTION **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR ATTORNEYS' FEES, COSTS AND INCENTIVE PAYMENT** Date: January 23, 2017 Time: 10:30 a.m. Ctrm: 4B Judge: Hon. Cynthia A. Bashant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

I. INTRODUCTION

Pursuant to the Settlement Agreement and Release ("Agreement")[1] and the Order granting preliminary approval of the Settlement (ECF No. 107), Class Counsel for Plaintiff Linda Sanders ("Sanders" or "Plaintiff") move for an award of attorneys' fees in the amount of $1,137,816.88. That amount is 25% of the $4,561,267.50 Settlement Fund, in line with the benchmark of Ninth Circuit authority. That amount is less than the percentage fee often awarded in percentage of the fund cases, with many fees awarded in excess of 30%. Counsel also seek costs incurred in this litigation in the amount of $17,693.46. The notices sent to the Class members, as well as the publication notices, indicated Class Counsel would be seeking those amounts, with the costs sought explained as "not to exceed $25,000". The Parties [2] negotiated and agreed upon attorneys' fees and costs only after negotiating and reaching an agreement on the other terms of the Settlement. Defendant agreed not to object to that amount, of course subject to Court approval. Also pursuant to the Agreement, Class Counsel moves for approval of an incentive payment of $5,000 to be paid to Linda Sanders as the Class Representative for her services to the Settlement Class.

II. STATEMENT OF FACTS

A. Factual Background

In its banking business, Defendant was at times, and in particular between December 20, 2009 through July 31, 2015, inclusive (the "Class Period"), involved or engaged in the business of collecting on debts owed, or allegedly owed by consumers. Plaintiff alleges that conduct resulted in violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.* The Settlement provides that Defendant will pay the sum of $4,561,267.50 to settle this Litigation, which will be

[1] The Agreement was previously filed as Exhibit 1 to the Declaration of Douglas J. Campion In Support of Preliminary Approval ("Campion P.A. Decl.") (ECF No. 281-3). Unless otherwise specified, defined terms used in this memorandum are intended to have the meaning ascribed to those terms in the Agreement.

[2] Plaintiff and Defendant are referred to collectively as "the Parties."

divided pro-rata among all Class Members filing approved claims, after the costs of notice and claims administration, attorneys' fees and litigation costs and an incentive payment ("Settlement Costs") are deducted from the Settlement Fund.

The Settlement Class as defined below consists of 1,013,615 Class Members, whose cellphone numbers were called by Defendant during the Class Period and are set forth on the Class List from which Class membership can be ascertained. [3]

B. Proceedings to Date

On December 20, 2013, Plaintiff filed this action against Defendant. Discovery ensued, including third party discovery of 21 third-party vendors, along with discovery motion practice. In the midst of third-party discovery and the anticipation of receipt of additional discovery from Citizens, the Parties agreed to explore settlement and participate in private mediation. As a result, the Parties requested that all pending discovery, third-party discovery, pretrial deadlines, and many pending motions and *ex parte* applications be stayed, so that the Parties could focus on information necessary for mediation (*i.e.*, the total number of calls made to putative class members cellular phones). (ECF No. 87). *See* Declaration of Ronald A. Marron In Support of Request for Attorneys' Fees, Costs and Incentive Payment ("Marron Fee Decl.") filed herewith.

The settlement was negotiated over many months, and an agreement was reached in a day-long mediation with the Hon. Edward A. Infante, Ret. After that mediation, the Parties continued to further negotiate the details of the Settlement, and conducted confirmatory discovery to confirm the adequacy of the procedures used to locate the cellphone numbers called during the Class Period, as well as the accuracy of the list of cellphone telephone numbers provided that make up the Class List. The Court gave

[3] There is a small group of less than 5% of the Class members for whom Citizens did not have a name or address, only a cell phone number called. Consequently, those persons were unable to receive direct mail notice, but are also included in the Class and can file a claim if they simply provide their cell phone number that may have been called. If that number is on the list of numbers called, even without a name or address connected to the called number, they can file a claim.

Preliminary Approval to the Settlement on July 1, 2016. (ECF No. 107).

III. SUMMARY OF THE SETTLEMENT

A. The Definition of the Settlement Class

For sake of brevity, Plaintiff refers the Court to the detailed explanation of the settlement, the settlement class and the claims process contained in Plaintiff's Memorandum of Points & Authorities in Support of Preliminary Approval, ECF No. 104-1.

To summarize, the Settlement Class consists of 1,013,615 Class Members, whose cellphone numbers are all set forth on the Class List from which Class membership can be ascertained. The term "Settlement Class" is defined in the Agreement, § 2.28, as follows:

> All persons in the United States who received a call on their cellular telephones from Citizens, or any third parties calling on a Citizens account, made with an alleged automatic telephone dialing system ("ATDS") and/or an artificial or pre-recorded voice from December 20, 2009 through July 31, 2015, whose telephone numbers are identified in the Class List.
>
> Excluded from the Settlement Class are Citizens, its parent companies, affiliates or subsidiaries, or any entities in which such companies have a controlling interest; and any employees thereof; the judge or magistrate judge to whom the Action is assigned and any member of those judges' staffs and immediate families, and any persons who timely and validly request exclusion from the Settlement Class. There are approximately 1,013,615 persons in the Settlement Class.

Of that total, the Claims Administrator Kurtzman Carlson Consultants ("KCC"), found addresses for 971,000 of the 1,013,615 persons in the Class, or 95.7% of the total. Some persons had more than one address, therefore more than 971,000 postcards were mailed. *See* Declaration of Daniel Burke Re Settlement Notice Plan and Notice

Documents ("Burke Decl."), ¶ 18, (ECF No. 104-6) filed in support of Preliminary Approval. There was also publication of notice in two national magazines, with the notice reach of over 93%. *Id*. at ¶ 28.

B. Settlement Fund

Under the Settlement, Defendant agrees to pay an amount of $4,551,267.50 to settle this lawsuit.[4] Agreement, §§ 2.31; 5.01. Each Settlement Class Member eligible to receive a share of the Settlement Fund by submitting a claim will receive a *pro rata* share; the amount of each Settlement Class Member's recovery will depend on the number of valid claims that are submitted.[5] In addition to payments to Settlement Class Members, and subject to Court approval, an incentive payment of $5,000 is sought for Plaintiff. Plaintiff also seeks to have the Court permit the costs of notice and claims administration, estimated to be between $553,027 and $628,461 (1% to 5% claims rates, respectively), to be paid from the Settlement Fund. (The claims rate in most TCPA and consumer cases fall within that range.) Class Counsel are seeking attorneys' fees of 25% of the common fund, or $1,137,816.88. In addition, Class Counsel seek litigation costs incurred of $17,693.46. Thus, all of these Settlement Costs total no more than $1,788,971.84.

---

[4] The Agreement provided that if any additional cellphones are found to have been called during the Class Period, Defendant would contribute an additional $4.50 for each such number. Agreement, § 2.31.

[5] Because the November 7, 2016 Claims deadline has not passed, the total number of claims is unknown but Counsel will file a supplemental brief after that date advising the Court of the total number of claims, number of opt-outs and objections. However, the most recent Weekly Summary dated October 7, 2016 shows a very good response rate for claims, with 41,176 claims submitted. With on month left in the Claims Period, that number is 3.37% of the approximately 1,100,000 persons receiving postcard notice (5% in consumer cases is an excellent response rate.) At a 5% claims rate, with the requested fees, costs and incentive payments, each claimant will receive an amount well within the reasonable range of payouts in these cases, approximately $50.00.

IV. ARGUMENT

A. THE ATTORNEYS' FEES SOUGHT ARE REASONABLE AND SHOULD BE AWARDED BY THE COURT.

1. The Preferred Method Used for Awarding Fees is Based on a Percentage of the Value of the Settlement, Sought Here.

Plaintiff submits the Court should approve Class Counsel's request for an award of fees and costs of $1,137,816.88, 25% of the $4,551,267.50 common fund. This is not a fee shifting case as the TCPA does not provide for fee shifting. Because the total amount paid by Defendant is paid into one "common fund," Class Counsel are seeking fees on that basis. Whether the 25% agreed-upon fee here is reasonable under the terms of the Settlement is determined with reference to the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

a. The Percentage of Common Fund is Preferred by Courts.

Here, the Settlement consists of a common fund of $4,551,267.50 for the benefit of the Class. Where a settlement produces a common benefit for the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. *In re Bluetooth Headset Products Liability Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010)). Under the percentage-of-recovery method, district courts "typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *Id.* (*citing Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). Although the district courts in the Ninth Circuit have the discretion to use either one, the percentage-of-recovery method is preferable to the lodestar method because it encourages efficient resolution of the litigation by providing an incentive for early, yet

reasonable settlement, it aligns the interests of class counsel directly with those of the class, and it reduces the demands on judicial resources. *In re Brooktree Sec. Litig.*, 915 F. Supp. 193, 196 (S.D. Cal. 1996); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175 (S.D. Cal. 2007) (noting the percentage of recovery method is commonly employed in this District). Regardless of which method is used, the fee award should take into account the particular factors in the specific case and must be "reasonable under the circumstances." *State of Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990) (recognizing a "ground swell of support for mandating a percentage-of-the- fund approach in common fund cases…"). Accordingly, the percentage-of-recovery method is appropriate to determine fees and should be applied here.

b. Applying the *Vizcaino* Factors, Counsel Are Entitled to a Percentage of the Value of the Total Settlement.

Whether the agreed-upon fee of 25% of the common financial benefit afforded the Class is reasonable under the terms of the Settlement here is determined with reference to the above stated factors outlined in *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). Applying these *Vizcaino* factors, it is evident that the requested fee as a percentage of the value of the recovery for the Class is reasonable.

1.) Class Counsel Achieved Exceptional Results for the Class

Plaintiff's counsel have negotiated an excellent settlement for the Class. Ninth Circuit courts have long recognized that the result obtained by Class counsel is a principal factor in considering an enhanced lodestar multiplier. *See, e.g., Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied sub nom. Perkins v. Screen Extras Guild, Inc.*, 425 U.S. 951 (1976). Here, the Settlement provides $4,551,267.50 for the benefit of the Class consisting of just over 1 million persons. This excellent result for the Settlement Class in a highly contested case in which there was a high degree of uncertainty as to whether the Plaintiff would have prevailed,

supports an upward enhancement.

Indeed, as of October 7, 2016, with only about four weeks left to file claims, opt out or object, out of the approximately 1,100,000 Notice Postcards mailed to class members, and publication notice in two national magazines, only 22 class members have sought to exclude themselves from the Settlement Class and no one has objected to date. To date, 41,176 Settlement Class Members have submitted claims, which is approximately 3.37% of the approximately 1,100,000 persons actually receiving direct mail Notice Postcards. For a consumer class action, that is at the high end of the expected percentages of claims to be made, and the claims deadline is still weeks away. The high claims rate – with no objections - represents a ringing endorsement of the settlement and further justifies Class Counsel's request for fees.

2.) The Contingent Nature of This Case

This is not a fee shifting case as the TCPA does not provide for fee shifting. As such, this is not the type of case that would be pursued by counsel unless he or she had a reasonable expectation that a fee enhancement would be approved. No Plaintiff would likely pay any attorney's hourly rate if the potential recovery is limited to the damages allowed by the TCPA, namely $500 for each incident if negligent or $1,500 if intentional. Thus, no attorney would likely take on such a case nor would the client likely be able to find any attorney to represent him or her in such a case. Declaration of Douglas J. Campion in Support of Fees, Costs and Incentive Payment ("Campion Fee Decl."), ¶ 13.

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 they might be paid nothing at all for their work. In *Fadhl v. City and County of San Francisco*, 859 F.2d 649 (9th Cir. 1986), a multiplier of 2 was awarded in a Title VII case as the amount expected by attorneys in the local San Francisco market. The court found that a multiplier was necessary when the case would not have been filed by counsel without

an expectation of a multiplier in the local market. *Accord, Clark v. City of Los Angeles*, 803 F.2d 987, 991-992 (9th Cir. 1986); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 945-946 (9th Cir. 2007); *Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.1994). Because Class Counsel agreed to prosecute this case on a contingency with no guarantee of ever being paid, they faced substantial risk throughout this proceeding. In agreeing to represent the Class on a contingent basis, Class Counsel risked their own resources with no guarantee of recovery. Campion Fee Decl., ¶¶ 26-27, Marron Fee Decl., ¶ 29. The risk that Class Counsel could recover nothing in this case, on its own, justifies the percentage of the recovery sought, 25%.

3.) The Novelty and Difficulty of Questions Involved

The lodestar amount should be enhanced to account for the novelty and complexity of the questions involved. While Class Counsel were confident in their ability to succeed at class certification and at trial, success was by no means guaranteed, especially considering Defendant's substantial opposition and the complexity of the issues involved. The claims in this case involved numerous issues of law that were complex, including consent, and class certification issues had the potential to present substantial problems. Nonetheless, Class Counsel agreed to represent the Class and, through their skill and substantial effort, successfully overcame formidable defenses to obtain excellent relief for the Class.

4.) The Experience, Reputation and Ability of Counsel

The reputation, experience, and ability of Class Counsel were essential to the success of this litigation. As noted in the accompanying attorney declarations, Class Counsel have extensive experience in consumer class action and other complex litigation. Throughout this case, counsel have prosecuted the claims of consumers efficiently and effectively.

(a) Law Offices of Douglas J. Campion, APC.

Douglas J. Campion, one of Plaintiff's attorneys and co-lead Class Counsel,

seeks fees at hourly rates of between $700 and $750 over the more than 3 year time period in which this case was litigated. Campion Fee Decl., ¶ 14. As set forth in his declaration, Mr. Campion's extensive experience in class action litigation, including derivative and other consumer representative actions, over 39 years of practice, justifies the hourly rate requested. *Id.* at ¶¶ 4-10. Those hourly rates are below the rates charged in the community of attorneys doing this type of work with his level of experience and has been awarded fees at that hourly rate by this Court. *Id*. at ¶¶ 20-21. *See also* the Declaration of Frank Johnson In Support of Motion For Attorneys' Fees and Costs ("Johnson Decl.") filed recently in the *In Re: Midland Credit Management, Inc. Consumer Protection Act Litigation*, Case No. 11-md-2286 – MMA – MDD (S.D. Cal.) and filed herewith as Ex. 2 to the Campion Fee Decl. That declaration attests to the reasonableness of Mr. Campion's rate in the local legal community, based on Mr. Johnson's knowledge of local class counsel's hourly rates and experience working with Mr. Campion.

(b) Law Offices of Ronald A. Marron

Mr. Marron's rates and those of attorneys in his office as a whole are equal to or below the rates charged in the community of attorneys doing this type of work with comparable levels of experience and have been awarded fees at those rates by courts. *See* Marron Fee Decl., ¶¶ 12-26 & Exs. 4-8 (discussing comparable hourly rates in the legal community and prior fee awards); *see also* Marron Fee Decl., ¶¶ 40-58 (discussing counsel's experience). Mr. Marron, Ms. Wood and Ms. Gallucci, co-lead Class Counsel, seek hourly rates of $745, $475 and $450, respectfully. Ms. Resendes, a Senior Associate, seeks an hourly rate of $475. Additionally, Class Counsel request a reasonable hourly rate be awarded to the firm's law clerks ($245) and senior paralegal ($215) assisting on this case.

Class Counsel's skills in developing the factual and legal record and settling the case were essential to achieving this result. Moreover, Class Counsel's history of aggressive, successful prosecution of consumer class actions made credible their

commitment to pursue this litigation until it provided a fair result for the Class. Through their skill, reputation, and ability, Class Counsel were able to obtain a Settlement providing outstanding relief for the Class.

5.) The Risk Of Non-Payment And the Delay In Payment

A percentage of the recovery is warranted here due to the risk that Class Counsel took in prosecuting this case on a contingency basis and the significant delay in receiving payment. Here, the case was filed on December 20, 2013. Assuming the Court gives final approval to the settlement at the Final Approval Hearing on January 23, 2017, it will be more than three years after the case was filed before Plaintiff's counsel receive compensation for their efforts on behalf of the Settlement Class. This is an extraordinary length of time in which payment is not received. *See also* Marron Fee Decl., ¶ 29.

6.) Awards Made in Similar Cases

Awards equal to or more than 25% are regularly approved by courts in this Circuit for similarly complex litigation. *See, e.g., In Re Pac. Enters Sec. Litig..*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming 33 1/3% fee); *Vizcaino*, 290 F.3d at 1048-50 (affirming 28% fee); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663 (9th Cir. 2003) (affirming 33% fee); *In re Pub. Serv. Co. of New Mex.*, No. 91-0536M, 1992 WL 278452, at *7 (S.D. Cal. July 28, 1992) (awarding 33% and finding awards "traditionally ranged between 30% and 40% of the total recovery"); *In re M.D.C. Holdings Sec. Litig.*, CV89-0090 E (M), 1990 WL 454747, at *10 (S.D. Cal. Aug. 30, 1990) (awarding a 30% fee, finding it to be "within the 30–40% range common to . . . contingent litigation.").

Furthermore, the customary fees in these Telephone Consumer Protection Act cases are consistently between 20-33% of the total fund available to the class, or its value. *See Adams v AllianceOne*, Inc., No. 3:08-cv-0248- JAH-WVG (S.D. Cal. 2012) (ECF No. 137) (30% of common fund); *Malta v. The Federal Home Loan Mortgage Corporation, et al.*, No. 10-cv-1290- BEN-NLS (S.D. Cal. 2013) (ECF No. 92)

(22.5%); *Franklin v. Wells Fargo Bank, N.A.*, No. 14-cv-2349-MMA-BGS (S.D. Cal. 2016) (ECF No. 47) (25%); *Kramer v. Autobytel*, No. 10-cv-02722 (N.D. Cal. 2011) – (25%); *Connor v. JPMorgan Chase* (S.D. Cal. 2012) (25%); *Lozano v. Twentieth Century Fox*, No. 09-cv-6344 (N.D. Ill. 2011) (23.43%); *Soto v. The Gallup Org.*, No. 13-cv-61747, Dkt. No. 95 (S.D. Fla. Nov. 24, 2015) (awarding 33 1/3%, inclusive of costs); *Benzion v. Vivint, Inc.*, No. 12-61826, Dkt. No. 201 (S.D. Fla. Feb. 23, 2015) (awarding 28%, plus costs); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 13-cv-21016, Dkt. No. 95 (S.D. Fla. June 24, 2015) (awarding 33 1/3%, plus costs). *See also, e.g., Ikuseghan v. Multicare Health Sys.*, No. C14-5539, 2016 WL 43631989, at *2 (W.D. Wash. Aug. 16, 2016) (awarding 30%, plus costs); *In re Capital One Tel. Consumer Protection Act Litig.*, 80 F. Supp. 3d 781, 803-807 (N.D. Ill. 2015) (awarding a modified fee structure including 36% of the first $10 million, and 25% of the next $10 million); *Vendervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33%); *Martin v. Dun & Bradstreet, Inc. et al*, No. 1:12-cv-00215, Dkt. No. 63 (N.D. Ill. Jan. 16, 2014) (awarding more than 33 1/3%); *Locklear Elec., Inc. v. Norma L. Lay*, No. 3:09-cv-00531, Dkt. No. 67 (S.D. Ill. Sept. 8, 2010) (awarding 33 1/3%, plus costs).

c. In Addition, Many More Hours Will Be Incurred Before The Final Approval Hearing and Beyond, Further Justifying the 25% Award.

As of October 14, 2016, three months prior to the Final Approval Hearing, Plaintiff's counsel have incurred $570,660.50 in attorneys' fees based on their regular hourly rates. Class Counsel anticipate spending at a minimum dozens of additional hours of attorney time in the three months prior to the Final Approval Hearing working on the final approval brief and supporting documents, working with the Claims Administrator to determine the amount to be paid to each claimant, responding to objectors, if any, preparing for the final approval hearing and overseeing the claims administration. Counsel will file a supplemental summary of time incurred prior to the

Final Approval hearing, which will most certainly cause the multiplier to decrease. Campion Fee Decl. ¶ 15; *see also* Marron Fee Decl. ¶ 28.

For this reason and those set forth above, the Court should approve payment of $1,137,816.88, 25% of the $4,551,267.50 common fund, to Class Counsel.

2. If the Lodestar Analysis is Used, the Attorneys' Fees Sought Result in a Multiplier of 1.99, Justified by the *Kerr* and *Vizcaino* Factors.

If the Court decides to use a lodestar method to award fees, or to cross-check a percentage of fees awarded, the amount requested is still reasonable and should be awarded, and the multiplier sought is justified under Ninth Circuit law. *Vizcaino*, *supra*, 290 F.3d at 1048-49; *Hanlon v. Chrysler Grp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Because of the lodestar of $570,660.50 incurred, with the $1,137,816.88 in fees and costs sought, Plaintiff's counsel seek only a minimal multiplier here of 1.99.

The U.S. Supreme Court explained that to calculate attorney's fees' awards, the initial examination is to look at the number of hours expended multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). *See also Hanlon*, 150 F.3d at 1029 (The first step in calculating attorneys' fees by the lodestar method is to multiply the number of hours counsel reasonably expended on the litigation by a reasonable hourly rate.). Under federal law, in setting the lodestar rate this Court is required to consider the relevant factors discussed below and set forth in *Kerr*, *supra*, 526 F.2d at 70. [6] As explained below, here the *Kerr* factors support the

[6] The court in *Kerr* identified twelve relevant factors to take into consideration: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and the ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Kerr*, 526 F.2d at 70. But *see also Davis v. City & County of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992) ("the Supreme Court recently deemed irrelevant to the fee calculation a final *Johnson-Kerr* factor, the fixed or contingent

rate and lodestar multiplier requested. The Court need not discuss specifically each factor so long as the record shows that the court considered the factors implicated by the case at hand. *Newhouse v. Robert's Ilima Tours, Inc.*, 708 F.2d 436, 441 (9th Cir. 1983).

a.) Counsel's Hourly Rates Are Reasonable and Are Consistent with Market Rates

The U.S. Supreme Court has stated: "The statute and legislative history establish that `reasonable fees' under section 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether Plaintiff is represented by private or non-profit counsel." *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (footnote omitted). In determining a reasonable hourly rate, courts look to the prevailing market rates in the relevant community with close attention paid to the fees charged by lawyers of reasonably comparable skill, experience, and reputation. *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992), *citing Blum*, 465 U.S. at 895. The firms' experience is set forth above in the section about their skill and experience. Plaintiff submits that the hourly rates charged by the firms that litigated this case on behalf of Plaintiff and the Class are reasonable and within the range of hourly rates charged for the same services within the community. In addition to the National Law Journal chart regarding attorneys' hourly rates discussed below, Plaintiff has submitted a declaration of a local attorney who litigates in southern California and elsewhere and who is familiar with hourly rates charged in similar class and representative actions. *See* Campion Fee Decl., Exhibit 1, Johnson Declaration; *see also* Marron Fee Decl., Exhibit 4. Plaintiff submits that the hourly rates charged here by counsel in both firms ranging from $450 to $750 are entirely fair and reasonable, given counsel's experience, qualifications and expertise. Those rates are well within the

---

nature of the fee.").

range of hourly rates charged for the same services within the southern California community.

The hourly rates sought by the firms involved in this case are justified as other Plaintiff's counsel with similar experience are awarded fees at a higher rate and rates charged by other firms are indeed higher than the rates charged here. For example, attached as Exhibit 1 to the Campion Fee Decl. is the National Law Journal "ALM Legal Intelligence" chart of 2012 Hourly Billing Rates for firms across the country. *See also* Marron Fee Decl., Ex. 5. That chart shows many firms have hourly rates charged by senior partners in excess of the $750 charged here by Mr. Campion. In fact, 24 of the 57 firms listed have senior partner hourly billing rates at or above $750, with the highest rates at or above $1,200 per hour. *Id.;* Campion Fee Decl. ¶ 21. Similarly, many firms charge comparable rates or more for associate attorneys as charged by the Plaintiff's firms, with presumably less experience. It also must be remembered that those firms' hourly fees are not contingent upon carrying the risk of not being collected if Plaintiff does not prevail, as are the present Plaintiff's firms.

Class Counsel also attaches as Exhibit 6 to the Marron Fee Declaration the 2014 Report on the State of the Legal Market put out by The Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Peer Monitor (Peer Monitor Report). This report shows that "from the third quarter of 2010 through November 2013 . . . firms increased their standard rates by 11 percent[,] from an average of $429 per hour to $476 per hour." This average rate, *see id.*, supports Class Counsel's hourly rates, discussed *infra*.

Class Counsel also seeks compensation for its support staff, such as paralegals and law clerks, which is permitted in this legal community. "The key . . . is the billing custom in the relevant market. Thus, fees for work performed by non-attorneys such as paralegals may be billed separately, at market rates, if this is the prevailing practice in a given community . . . . Indeed, even purely clerical or secretarial work is compensable if it is customary to bill such work separately . . ." *Trs. of Const. Indus. & Laborers*

Health & Welfare Trust v. Redland Ins. Co., 460 F.3d 1253, 1257 (9th Cir. 2006). In California, it is customary and reasonable to bill for all non-attorney support staff, even word processors. *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-32 (2001); *PLCM Group Inc. v. Drexler*, 22 Cal. 4th 1084 (2000). In *Salton Bay Marina Inc. v. Imperial Irrigation Dist*., 172 Cal. App. 3d 914 (1985), the Court of Appeals stated that "necessary support services for attorneys, e.g., secretarial and paralegal services, are includable within an award of attorney fees." Indeed, even unpaid law clerk interns can be billed. *Sundance v. Mun. Ct*., 192 Cal. App. 3d 268 (1987) ("[I]t is now clear that the fact that services were volunteered is not a ground for diminishing an award of attorneys' fees . . . . [T]he amount of the award is to be made on the basis of the reasonable market value of the services rendered, and not on the salary paid.") (citing *Serrano v. Unruh*, 32 Cal. 3d 621 (1982)). Thus, Class Counsel's staff hours are also compensable. *See id*. Class Counsel staffed this case so as to prevent duplicative work. The number of timekeepers reflects how long this case was litigated, and also reflects staff turnover rather than duplication.

Class Counsel's declarations regarding prevailing fees in the community and "rate determinations in other cases, particularly those settling a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp*., 896 F.2d 403, 407 (9th Cir. 1990); *see also* Marron Fee Decl., ¶¶ 7-27 & Exs. 4-8; Campion Fee Decl., Exs. 1-2.

Last year, in three class cases, Mr. Marron's firm's hourly rates of $745 for Mr. Marron, $475 for Ms. Resendes and Ms. Wood, $450 for Ms. Gallucci, and $440 for all other associate attorneys were approved by state and federal court judges. The first case was *Perry v. Truong Giang Corp.*, Los Angeles Superior Court Case No. BC58568, in which the Hon. Kenneth Freeman noted on August 5, 2015 that the same hourly rates requested here were "reasonable," and that Class Counsel used skill in achieving the result achieved. *See* Marron Fee Decl., ¶ 14 & Ex. 7. Similarly, on August 7, 2015, in *In re Leaf123* (adversary proceeding of *Augustine v. Natrol*), Case

No. 14-114466, the Hon. Brendan L. Shannon, U.S. Bankruptcy Judge for the District of Delaware, approved an injunctive relief-only settlement involving dietary supplements. *See id.* ¶ 12 & Ex. 8. The court found the settlement in that case "fair, reasonable and adequate," which settlement included an award of $799,000 in fees and a $1,000 incentive award for the named plaintiff. And on November 16, 2015, the Honorable Maxine M. Chesney, Senior District Court Judge for the Northern District of California, approved the same hourly rates requested in this case in *Johnson v. Triple Leaf, Inc.*, No. 3:14-cv-01570-MMC. The court found the fee requested was "reasonable when judged by the standards in this circuit," and also that the Marron Firm's rates were "reasonable in light of the complexity of this litigation, the work performed, Class Counsel's reputation, experience, competence, and the prevailing billing rates for comparably complex work by comparably-qualified counsel in the relevant market." Marron Fee Decl., ¶ 13; *see also* Marron Fee Decl., ¶¶ 14-26

Knowing it was possible they would never be paid for their work, counsel had no incentive to act in a manner that was anything but economical. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("[L]awyers are not likely to spend unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). That said, counsel here took their charge seriously and endeavored to represent the interests of the class members to the greatest extent possible. The lodestar calculations of Class counsel are based on reasonable hourly rates. Class counsel set their rates for attorneys and staff members based on a variety of factors, including among others: the experience, skill and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation and ability of the attorneys and staff members.

b.) The Number of Hours Submitted by Counsel Is Reasonable

The second component of the lodestar figure is the number of hours counsel reasonably expended. Plaintiff is entitled to be compensated for all time that would, in

the exercise of "billing judgment," be billed to a fee-paying client. *Hensley v. Eckerhart*, supra, 461 U.S. 424, 434, 437; *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987). Each of the attorney declarations submitted summarize their firm's work, and they are also prepared to submit detailed time records upon the Court's request. The attached table summarizes the number of hours spent in this litigation, and the hourly rates charged, as set forth in the attorney declarations submitted.

Law Firm	Hours	Rate	Total
Law Offices of Douglas J. Campion, APC	251.3	$700 - $750/hour	$188,430.00
Law Office of Ronald A. Marron[7] --Attorney Hours --Law Clerk Hours --Paralegal Hours	 734.3 60.8 6.0	 $450-$745/hour $245/hour $215/hour	 $366,044.50 $14,896.00 $1,290.00
Totals	1,052.4		$570,660.50

Plaintiff's counsel have expended almost 1,052 hours in this litigation. With a lodestar of $570,660.50, the requested fee of $1,137,816.88 results in a multiplier of 1.99.

As detailed in the Marron Fee Decl., the general areas investigated, researched and litigated in this action to date are summarized as follows. Motions to compel discovery from Citizens were filed, in which Plaintiff requested Defendant to produce information about their outbound dial list of calls made by Citizens or made by third party vendors on behalf of Citizens, and to produce all prior express consent documents and information regarding the dialers used to make the phone calls. (Dkt. No. 48). The

[7] *See also* Marron Fee Decl., ¶ 28 for a breakdown of each timekeeper's hours.

Court granted Plaintiff's motion in part, and further discovery information was provided by Defendant, including third party information, permitting Plaintiff to seek discovery directly from 21 third party outside dialing vendors. Plaintiff issued subpoenas to each vendor with requests that included the production of an outbound dial list of all calls made on behalf of Citizens during the relevant time period, any prior express consent documents and information regarding the vendors' dialers.

In the midst of third party discovery and the anticipation of receipt of additional discovery from Citizens, the Parties agreed to explore settlement and participate in private mediation. Thus, the Parties requested that all pending discovery, third party discovery, pretrial deadlines, and pending motions and *ex parte* applications be stayed, so that the Parties could focus on information necessary for mediation (*i.e.*, the total number of calls made to putative class members cellular phones). (Dkt. No. 87).[8]The Court granted the Parties' Joint Motion to Stay Pending Mediation in April, 2015.

Thus, the hours claimed by Plaintiff's counsel are "reasonable" as they stand. *See Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988) (attorney hours sworn to are "evidence of considerable weight on the issue of the time required in the usual case" and should not be reduced unless "the time claimed is obviously and

[8] The following motions were fully briefed at the time and before this Court or before the Magistrate Judge at the time mediation occurred. Defendant's November 24, 2014 Motion for Leave to File Answer, to Assert Counterclaims and to Join a Counterclaim Defendant (Dkt. No. 38); Defendant's January 29, 2015 Motion for Stay Pending Resolution of a Petition Before the FCC (Dkt. No. 47); Defendant's February 20, 2015 Objection to Magistrate Judge's Order Entered on February 3, 2015 (Dkt. No. 50); Plaintiff's March 20, 2015 *Ex Parte* Application for Leave to File Supplemental Authority in Support of Plaintiff's Opposition to Defendant's Objection to Magistrate Judge's February 2, 2015 Order (Dkt. No. 66),; and Plaintiff's April 10, 2015 *Ex Parte* Motion to Amend/Correct the Class Definition (Dkt. No. 70); Defendant's April 15, 2015 Motion to Compel Further Responses from Plaintiff (Dkt. No. 75); Third Party Global Credit & Collection Corp. Motion to Quash Subpoena (Dkt. No. 81) and Plaintiff's Response in Opposition to Motion to Quash and Cross-Motion to Enforce Subpoena (Dkt. No. 82).

convincingly excessive under the circumstances").

Additionally, Counsel exercised billing judgment. Attorneys normally do not bill all hours expended in litigation to a client, and a fee petition should reflect the exercise of "billing judgment" with respect to a claim of the number of hours worked. To show billing judgment, "'counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary' . . . [and the] district court has a corresponding obligation to exclude hours not 'reasonably expended' from the calculation. *Jackson v. Austin*, 267 F. Supp. 2d 1059, 1066 (D. Kan. 2003) (citations omitted). Thus, the amount of hours expended was reasonable.

3.) A Multiplier Is Appropriate In This Case

The settlement here deserves an enhancement to the lodestar under *Kerr*. *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *Hanlon*, *supra*, 150 F.3d at 1029. *See also* Manual for Complex Litigation ("MCL") 4th § 14.122, at 261 (stating that upward adjustments to attorneys' fees may be appropriate based on the results obtained, the quality of representation, the complexity and novelty of the issues presented, the risk of nonpayment, and any delay in payment.) The *Kerr* factors clearly support the award of fees and a multiplier, as set forth below.

a. The *Kerr* Factors Are Satisfied.

Many of the *Kerr* factors are similar to those discussed under the *Vizcaino* analysis above and for sake of brevity, will not be repeated here but only summarized. The attorneys here were skilled and experienced, and obtained an excellent result, despite the fact that class certification with the consent issues may have been difficult. In addition, the requested fee is in line with and perhaps lower than customary fees awarded in these cases, but the amount requested is 25%, the Ninth Circuit benchmark in a common fund case. The award of attorneys' fees in TCPA class actions are consistently between 20-33% of the total fund available to the class, or its value. See

"Awards Made in Similar Cases" above, including the multipliers awarded in those cases. The amount involved was excellent, with a settlement $4,551,267.50, affecting over one million class members. Furthermore, a multiplier is warranted here due to the risk that Class Counsel took in prosecuting this case on a contingency basis and the significant delay in receiving payment. Campion Fee Decl. ¶¶ 13; 25-27. The time requirement was incredible, as it will be longer than three years from filing to final approval, and longer to final resolution of claims. As a result, working on this case precluded co-lead counsel from accepting other employment due to the time requirements of this case, as reflected in their hours incurred to date between the two firms. *Id*. Assuming the Court gives final approval to the settlement at the Final Approval Hearing on January 23, 2017, it will be more than three years after the case was filed before Plaintiff's counsel receive compensation for their efforts on behalf of the Settlement Class. This is an unusually long time to wait for any payment and also is another factor that justifies application of a modest 1.99 multiplier. Therefore, the *Kerr* factors dictate that a multiplier be granted.

b. The Multiplier is within the Range of Reasonableness.

The multiplier of approximately 1.99 sought here is certainly well within the range of reasonableness. Courts have awarded multipliers ranging from 0.6 to 19.6. *See Vizcaino*, 290 F.3d at 1051 n.6 (citing cases); *Steiner v. Am. Broad. Co*., 248 Fed. Appx. 780, 783 (9th Cir. 2007) (approving 6.85 multiplier); *In re Merry-Go-Round Enterprises, Inc*., 244 B.R. 327 (Bankr. D. Md. 2000) (multiplier of 19.6); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706 (E.D. Pa. 2001) (multiplier of 4.5- 8.5); *In re Rite Aid Corp. Sec. Litig*., 362 F. Supp. 2d 587 (E.D. Pa. 2005) (multiplier of 6.96); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138 (S.D.N.Y Aug. 24, 1992) (multiplier of 6); *Gutierrez v. Barclays Group* (S.D. Cal. 2010) (multiplier of 4.55); *Kramer v. Autobytel* (N.D. Cal. 2011) (multiplier of 2.69); *Connor v. JPMorgan Chase* (S.D. Cal. 2012) (multiplier of 4.39); *Lozano v. Twentieth Century Fox* (N.D. Ill.2011) (multiplier of 2.9); *Arthur et al. v. Sallie Mae, Inc.*, (W.D. Wash. 2010) (multiplier of 2.58); *Rojas*

v. Career Educ. Corp. (N.D. Ill. 2012) (multiplier of 2.25).

Applying the criteria and case law cited above, a 1.99 multiplier is warranted under these circumstances and an award of $1,137,816.87 in attorneys' fees is clearly justified here. *See Vizcaino v. Microsoft Corp.*, 290 F.3d at1048 (affirming enhanced fee where counsel "pursued this case in the absence of supporting precedents" and "against [Defendants'] vigorous opposition throughout the litigation").

V. THE PAYMENT OF COSTS IS FAIR AND REASONABLE

Plaintiff also seeks approval of reimbursement of the litigation costs incurred during litigation, in the total amount of $17,693.46. *See* Marron Fee Decl., ¶¶ 7-8, Exhibit 2. These litigation costs are reimbursable to Counsel from the Settlement Fund. (This is of course in addition to the amounts incurred by KCC for the costs of notice and claims administration.[9]) Case authority permits Plaintiff's counsel to be reimbursed for costs necessarily incurred in the litigation of the case. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (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 a class action litigation). Case law permits the Class members to proportionately pay costs in litigation of class actions. *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)). Class counsel worked hard to bring this case to a successful resolution in the face of a staunch defense, and the fees and costs payment provided for in the settlement is fair and reasonable.

Those costs were reasonably incurred in this litigation. As stated in the attorneys' fee declarations herewith, these costs included the mediation with Hon.

[9] Class Counsel is also seeking Court approval of the approximately $553,027 to $628,461 (1% to 5% claims rates, respectively), to be charged by the Claims Administrator, KCC, for its notice and claims administration services and deducted from the Settlement Fund. Class Counsel will provide a final invoice from KCC prior to the Final Approval Hearing.

Edward Infante, Ret., of JAMS, costs to serve subpoenas on the many third party vendors, and related litigation costs as detailed in the Marron Fee Decl. In addition, Plaintiff incurred an additional litigation cost for her Information Technology expert consultant fees. *See Id*. Class counsel advanced these costs without assurance that they would ever be repaid. Campion Fee Decl. ¶18. These costs were necessary to secure the resolution of this litigation.

The costs by the firm incurring them are as follows:

Law Offices of Douglas J. Campion, APC:	$ 3,749.91
Law Offices of Ronald A. Marron:	$13,943.55
Total:	$17,693.46 [10]

If the Court desires to see the detailed summaries of the costs incurred, they will be provided. Marron Fee Decl., ¶ 7. In light of the expenses Class Counsel has had to incur to bring this case to its current settlement posture, Class Counsel's request for reimbursement of these costs is reasonable.

VI. THE CLASS RESPONSE TO DATE SUPPORTS APPROVAL OF THE REQUESTED FEE

Because the November 7, 2016 Claims deadline has not passed, the total number of claims is unknown. Counsel will file a short supplemental brief prior to the Final Approval hearing setting forth the final numbers of claims, opt outs and objections. The most recent Weekly Summary dated October 7, 2016 shows a very good response rate for claims, with 41,176 claims submitted. That number is 3.37% of the approximately 1,100,000 persons receiving postcard notice (5% in consumer cases is an excellent response rate.)

Through October 7, 2016, no objections to the settlement have been received and not one has objected to the fees, despite direct mail notice to over 1,100,000 Settlement Class members. Campion Fee Decl., ¶ 3. Because this motion is being filed approximately three weeks before the deadline for filing objections, additional

[10] These costs are broken down by category in Ex. 2 to the Marron Fee Decl.

objections may be filed, but little opposition to the fee request, incentive payment or to the settlement itself is expected. Thus, the response to date shows an overwhelming support for the settlement and confirms the fee award sought is supported by the Class.

VII. THE COURT SHOULD APPROVE A $5,000 INCENTIVE AWARD

Class Representative Linda Sanders requests an incentive award of $5,000 to be paid from the Settlement Fund for her services to the Settlement Class. The Parties have agreed to payment of such amounts from the Settlement Fund, subject to Court approval. Agreement, §§6.01-6.02. Unlike unnamed class members, who are passive beneficiaries of the representative's efforts on their behalf, Mrs. Sanders as a Class Representative actively assisted in bringing this case, provided detailed information to counsel, worked with her attorneys in litigation the cases, appeared in person at the Early Neutral Evaluation Conference, assisted in providing documents, reviewed the proposed settlement with counsel and reviewed and signed the Settlement Agreement. *See* Declaration of Linda Sanders in Support of Incentive Award filed herewith outlining her efforts. By agreeing to be a class representative, she also agreed to be the subject of discovery, including making herself available as a witness at deposition and trial, and subjecting herself to other obligations of named parties. Small enhancement payments, which serve as premiums in addition to any claims-based recovery from the settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.

Courts have discretion to approve incentive payments to Class Representatives and such payments are often provided to class representatives for their role in bringing the class action and assisting its successful resolution. *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329 (W.D. Wash. 2009) ("The trial court has discretion to award incentives to the Class Representatives."); *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-0537 RBL, 2008 WL 1901988, at *6 (W.D. Wash. April 24, 2008) (same).

As the court stated in *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995):

> Whether to reward Mr. Van Vranken for his efforts is within the Court's discretion. *See, e.g., In re Domestic Air Transp.*, 148 F.R.D. at 357-58 (awarding $142,500 to Class Representatives out of $50 million fund); *In re Dun & Bradstreet*, 130 F.R.D. at 373-74 (awarding $215,000 to several Class Representatives out of an $18 million fund). The criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the Class Representatives in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the Class Representatives; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the Class Representatives as a result of the litigation. See Richard Greenfield, 'Rewarding the Class Representatives: An Idea Whose Time Has Come,' 9 *Class Action Reports* 4 (1986); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991).

In *Van Vraken*, after evaluating the five factors, the court awarded the class representative $50,000 as an incentive payment for participating in many telephone conferences, meeting with his attorneys over several years, sitting for two depositions, and testifying at trial.

Here, the parties agreed upon the payment of a $5,000 incentive award to Plaintiff, subject to Court approval. This award is quite modest under the circumstances, and well in line with awards approved by federal courts. *See Pelletz*, 592 F. Supp. at 1329-30 & n.9 (collecting decisions approving awards ranging from $5,000 to $40,000, and approving $7,500 incentive awards where named Plaintiffs assisted Class counsel by responding to discovery and reviewing settlement terms); *Grays Harbor Adventist Christian School*, 2008 WL 1901988, at *6 (approving $3,500 incentive awards); *Fitzgerald v. City of Los Angeles*, No. CV 03 01876, 2003 WL 25471424 (C.D. Cal. Dec. 8, 2003) (same); *Accord, In re Heritage Bond Litig.*, 2005 WL 1594403 (C.D. Cal. June 10, 2005). [11]

[11] The National Association of Consumer Attorneys published an article a few years ago, part of which was devoted to the status of incentive payments to Class

Here Plaintiff Linda Sanders came forward to serve as the proposed Class Representative, kept abreast of the litigation, appeared in Court at the ENE, and reviewed and approved the proposed settlement terms after consulting with Class Counsel. In light of her effort and risk undertaken to obtain a meaningful result for the Class, Class Counsel request that the Court approve the modest payment of $5,000 to Plaintiff Linda Sanders to be paid from the Settlement Fund.

VIII. CONCLUSION

For the reasons set forth herein, Plaintiff, through her Counsel, seeks Court approval of $1,137,816.88 in attorneys' fees to be paid to Plaintiff's Counsel, reimbursement of costs advanced in the amount of $17,963.46, an incentive payment for Plaintiff Linda Sanders in the sum of $5,000, all to be paid from the Settlement Fund by the Claims Administrator. They also seek payment of the Claims Administrator's costs of notice and claims administration from the Settlement Fund, in an amount to be provided by the time of the Final Approval hearing. Lastly, they seek an incentive payment for Plaintiff Linda Sanders in the sum of $5,000, also to be paid from the Settlement Fund.

Respectfully submitted,

Dated: October 14, 2016 */s/ Douglas J. Campion*

By: Douglas J. Campion

Representatives. *See*, 1590 PLI/Corp 285 Practicing Law Institute NACA CLASS ACTION GUIDELINES-- REVISED March-May, 2007. The article states: "Most recent decisions, however, have approved the incentive award payments to named Plaintiffs in recognition of their efforts in achieving the results obtained. Many cases note the obvious public policy reasons for encouraging individuals with small personal stakes to serve as class Plaintiffs in meritorious cases. *Cook v. Niedert*, 142 F. 3d 1004, 1016 (7th Cir. 1998); *In re Cendant Corp*., 232 F. Supp.2d 327, 344 (D. N.J. 2002); *Van Vraken*, 901 F. Supp. at 300 (listing factors). These cases are based on the fundamental premise that named Plaintiffs undertake obligations, provide input and take risks not shared equally by absent class members, thus justifying different treatment."

LAW OFFICES OF DOUGLAS J. CAMPION, APC
DOUGLAS J. CAMPION (SBN 75381)
17150 Via Del Campo, Suite 100,
San Diego, California 92127
doug@djcampion.com
Telephone: (619) 299-2091
Facsimile: (619) 858-0034

/s/ Ronald A. Marron
By: Ronald A. Marron
LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
ALEXIS WOOD
KAS GALLUCCI
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

Attorneys for Plaintiff and the Settlement Class