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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 ) Case No. 11-md-2286-MMA (MDD)  
18 ) Member cases: 10-cv-02261  
19 ) 10-cv-02600  
20 ) 10-cv-02368  
21 ) 10-cv-02370

22 **IN RE: MIDLAND CREDIT**  
23 **MANAGEMENT, INC.,**  
24 **TELEPHONE CONSUMER**  
25 **PROTECTION ACT LITIGATION**

26 **CLASS ACTION**  
27 **PLAINTIFFS' MEMORANDUM**  
28 **OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF UNOPPOSED**  
**MOTION FOR ATTORNEYS'**  
**FEES AND APPROVAL OF**  
**COSTS, AND FOR INCENTIVE**  
**PAYMENTS**

29 Date: August 26, 2016  
30 Time: 9:00 a.m.  
31 Courtroom: 3A  
32 Judge Michael M. Anello

33 ///

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1 **I. INTRODUCTION**

2 Pursuant to the Settlement Agreement and Release (“Agreement”)<sup>1</sup> and the  
3 Order granting preliminary approval to the Settlement (ECF No. 291), Class  
4 Counsel, as counsel for Plaintiffs Christopher Robinson (“Robinson”) and Dave  
5 Scardina (“Scardina”), and Liaison Counsel, counsel for Eduardo Tovar (“Tovar”),  
6 (“Plaintiffs” or “Class Representatives”) move for an award of attorneys’ fees and  
7 reimbursement of litigation expenses in the amount of \$2.4 million. That amount,  
8 subject to Court approval, is to be paid by Defendants separate from and in addition  
9 to the Settlement Fund, and was negotiated and agreed upon in mediation with  
10 Judge Herbert Hoffman, (Ret.) of Judicate West.<sup>2</sup> This motion is unopposed by  
11 Defendants Midland Funding, LLC (“Midland Funding”), Midland Credit  
12 Management, Inc. (“MCM”), and Encore Capital Group, Inc. (“Encore”)  
13 (collectively “Defendants”). The Parties negotiated and agreed upon attorneys’ fees  
14 and costs only after negotiating and reaching an agreement on the other terms of the  
15 Settlement. Also pursuant to the Agreement, Plaintiffs’ counsel move for approval  
16 of incentive payments of \$2,500 each to be paid to the three Class Representatives,  
17 Robinson, Tovar, and Scardina for their services to the Settlement Class. The  
18 Agreement provides that Plaintiffs’ incentive payments will be paid from the Cash  
19 Component of the Settlement Fund.

20 \_\_\_\_\_  
21 <sup>1</sup> Agreement previously filed as Exhibit 1 to the Declaration of Douglas J. Campion  
22 In Support of Preliminary Approval, ECF No. 281-3.

23 <sup>2</sup> The firms submitting hours and costs with this motion are only those listed as  
24 counsel in the three cases of co-lead and liaison counsel. Co-Lead counsel Douglas  
25 J. Campion, APC, is co-counsel with Hyde & Swigart and the Kazerouni Law  
26 Group, APC in the Robinson case, S.D. Cal.10-cv-2261 MMA MDD; co-lead  
27 counsel Edelman, Combs, Lattuner & Goodwin, LLC, is co-counsel with the  
28 Warner Law Firm, PLLC on the Scardina case, N.D. Ill. 11-cv-3149; and liaison  
counsel Law Office of David Schafer, is counsel in the Tovar case, S.D.Cal. 10-cv-  
2600 MMA MDD

1 **II. STATEMENT OF FACTS**

2 **A. Factual and Procedural Background.**

3 Defendants or their subsidiaries were at all relevant times, and in particular between  
4 November 2, 2006 through August 31, 2014, inclusive (the “Class Period”),  
5 involved or engaged in the business of purchasing debts owed, or allegedly owed by  
6 consumers, and attempting to collect them. In this suit, Plaintiffs allege that, in their  
7 efforts to collect debts from consumers, Defendants violated the Telephone  
8 Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”). Plaintiffs allege they  
9 did so by calling cellular telephones without “prior express consent,” using an  
10 “automatic telephone dialing system” and/or using an “artificial or prerecorded  
11 voice,” and that Plaintiffs are entitled to statutory damages. Defendants have denied  
12 and continue to deny that they violated the TCPA.

13 **B. Proceedings to Date.**

14 On November 2, 2010 and December 17, 2010 respectively, Plaintiffs  
15 Robinson and Tovar filed actions against Defendants in this Court. On May 11,  
16 2011, Plaintiff Scardina filed an action against Defendants in the United States  
17 District Court for the Northern District of Illinois. The complaints in all three  
18 actions alleged that Defendants violated the TCPA.

19 On October 11, 2011, Plaintiffs’ actions were transferred to this Court by the  
20 Multi-District Litigation (“MDL”) Panel for coordinated or consolidated pretrial  
21 proceedings. (ECF No. 1.) On March 13, 2012, the Court appointed Interim Co-  
22 Lead Counsel and Liaison Counsel. (ECF No. 21.) On July 11, 2013, Plaintiffs filed  
23 a Consolidated Complaint (ECF No. 23) which Defendants answered on August 17,  
24 2012. (ECF No. 27.) On December 3, 2012, Defendants filed a Motion to Stay on  
25 Primary Jurisdiction Grounds (ECF No. 40) which, after briefing and oral argument,  
26 the Court denied on January 7, 2013. (ECF No. 45.) Subsequent to that ruling, the  
27 Parties began protracted settlement discussions with the assistance of mediator  
28 Judge Hoffman of Judicate West, resulting in a settlement approximately thirty

1 months later.

2 On December 9, 2015, the Court entered “Order Granting Plaintiffs’ Motion  
3 for Preliminary Approval of Class Action Settlement” (ECF No. 291). The Order,  
4 inter alia, (i) preliminarily certified (for settlement purposes only) a class (“the  
5 Settlement Class” or “Settlement Class Members”); (ii) preliminarily approved the  
6 Agreement, (iii) appointed Plaintiffs Robinson, Tovar, and Scardina as the  
7 Representatives of the Settlement Class; (iv) appointed Douglas J. Champion of the  
8 Law Offices of Douglas J. Champion, APC and James O. Lattuner of Edelman,  
9 Combs, Lattuner & Goodwin, LLC as Class Counsel and appointed the Law Office  
10 of David Schafer, PLLC as liaison counsel; and (v) set the date and time of the Final  
11 Approval Hearing for August 26, 2016, at 9:00 a.m.

12 At the time of the Final Approval Hearing, Class Counsel will seek Court  
13 approval of \$2.4 million in attorneys’ fees and costs by this motion. Settlement  
14 Class Members were given notice that Class Counsel would be seeking this award,  
15 subject to Court approval.<sup>3</sup> To date there has been no objection filed challenging the  
16 amount sought by Class Counsel for fees and costs.

17 By this application, and as detailed in the supporting declarations filed  
18 herewith, Plaintiffs’ counsel seek an award of attorneys’ fees and costs based upon  
19 about 2,240 hours of time incurred, for a lodestar to date of \$1,322,760.00 as  
20 detailed in a table below in Section IV.b.2).<sup>4</sup>

### 21 **III. THE SETTLEMENT**

#### 22 **A. Summary of Settlement.**

23 For the sake of brevity, Plaintiffs refer the Court to the detailed explanation of

24 \_\_\_\_\_  
25 <sup>3</sup> Class Counsel is also posting this motion on the Settlement Website at the time of  
filing.

26 <sup>4</sup> See Declarations of attorneys Douglas J. Champion, James O. Lattuner, David P.  
27 Schafer, Curtis C. Warner, Joshua B. Swigart and Abbas Kazerounian In Support of  
Motion for Award of Attorneys’ Fees, Costs and Incentive Awards for Plaintiffs  
28 filed herewith (“Fee Decl.”)

1 the settlement, the settlement class and the claims process contained in Plaintiff's  
2 Memorandum of Points & Authorities in Support of Preliminary Approval, ECF No.  
3 281-1 at 4-13.

4 To summarize, the class consists of those persons called on their cellphones  
5 by Defendants (excluding certain named subsidiaries) with an automatic telephone  
6 dialing system or prerecorded voice message without prior consent from November  
7 2, 2006 through August 31, 2014, inclusive. The settlement consists of a number of  
8 parts: 1) a Settlement Fund of \$15,000,000, of which \$13,000,000 is to be applied  
9 pro rata as credits to claimants' accounts that are still open with Defendants, and a  
10 \$2,000,000 cash fund to pay the claimants on a pro rata basis that do not have an  
11 open account with Defendants. (It was estimated in settlement discussions that  
12 approximately 10% of the Class Members had no open account so the cash  
13 component is smaller than the credit component.) 2) Defendants will pay all costs  
14 of notice and claims administration in addition to the Settlement Fund, which at the  
15 time of Preliminary Approval was estimated to be between \$3,098,608 and  
16 \$3,352,407. 3) Defendants agreed to pay \$2,400,000 in attorneys' fees and costs  
17 incurred by Plaintiffs' counsel in litigating this matter.

18 Thus, this settlement has a value to the Class of \$20,752,407, assuming the  
19 higher cost of claims administration.

20 **B. Class Representatives' Incentive Awards.**

21 The Settlement contemplates payment of \$2,500 each to the three Class  
22 Representatives, subject to Court approval. Agreement, §§ 6.02-6.03. Defendants  
23 have agreed not to oppose a request for payment of such amounts. Id.

24 **C. Attorneys' Fees And Litigation Expenses.**

25 Subject to the Court's approval, the Settlement contemplates, and Defendants  
26 agree not to oppose, an award of attorneys' fees and litigation costs of up to  
27 \$2,400,000 to be paid separate and apart from the Settlement Fund. Agreement,  
28 §§5.05; 6.01.

1           **D.     *Cy Pres* Distribution.**

2           Any checks distributed from the Cash Component of the Settlement Fund  
3 which remain uncashed 180 days after they are issued shall be distributed to one or  
4 more *cy pres* recipients chosen by Settlement Class Counsel, agreed to by  
5 Defendants, and approved by the Court. Agreement, §§ 8.08, 11.04.

6 **IV.   THE ATTORNEYS’ FEES SOUGHT ARE REASONABLE AND**  
7 **SHOULD BE AWARDED BY THE COURT.**

8           **A.     The Attorneys’ Fees Are Justified if The Method Used is Based on**  
9           **a Percentage of the Value of the Settlement.**

10          Plaintiffs seek Court approval of their request for an award of fees and costs  
11 of \$2.4 million. This is not a fee shifting case as the TCPA does not provide for fee  
12 shifting, and, because the total amount paid by Defendants is not paid into one  
13 “common fund”, Class Counsel are not seeking fees strictly on that basis.<sup>5</sup>  
14 Nonetheless, even though Counsel are not seeking fees on the basis of a “common  
15 fund”, the reasonableness of Counsel’s fee request can be evaluated as though this  
16 case were a “common fund” case.

17          Where, as here, a settlement produces a common benefit for the entire class,  
18 courts have discretion to employ either the lodestar method or the percentage-of-  
19 recovery method. *In Re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942  
20 (9th Cir. 2011) (citing *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir.  
21 2010)). Although the district courts in the Ninth Circuit have the discretion to use  
22 either one, the percentage-of-recovery method is preferable to the lodestar method  
23 because it encourages efficient resolution of the litigation by providing an incentive  
24 for early, yet reasonable settlement, it aligns the interests of class counsel directly  
25 with those of the class, and it reduces the demands on judicial resources. *In re*

26 <sup>5</sup> The hours of both Co-Lead and Liaison Counsel are examined in the fee analysis  
27 and award. *See In Re Vioxx Products Liability Litigation*, 760 F. Supp. 2d 640, 654-  
28 657 (E.D. La. 2010); *In Re Diet Drugs*, 582 F.23d 524 (3d Cir. 2009).

1 *Brooktree Sec. Litig.*, 915 F. Supp. 193, 196 (S.D. Cal. 1996); *see also In re Immune*  
2 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175 (S.D. Cal. 2007) (noting the  
3 percentage of recovery method is commonly employed in this District). Regardless  
4 of which method is used, the fee award should take into account the particular  
5 factors in the specific case and must be “reasonable under the circumstances.” *State*  
6 *of Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990) (recognizing a “ground swell  
7 of support for mandating a percentage-of-the- fund approach in common fund  
8 cases...”). Accordingly, the percentage-of-recovery method is appropriate to  
9 determine whether a particular fee is proper.

10 Under a percentage of a common fund analysis, whether the agreed-upon fee  
11 here (11.5% of the common financial benefit to the class) is reasonable under the  
12 terms of the Settlement here is determined with reference to the following factors:  
13 (1) the results achieved; (2) the risk of litigation ; (3) the skill required and the  
14 quality of work; (4) the contingent nature of the fee and the financial burden carried  
15 by the plaintiffs; and (5) awards made in similar cases. *See Vizcaino v. Microsoft*  
16 *Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). Applying these factors as discussed  
17 below, it is evident that the requested fee is reasonable.

18 **1. The Court Can View the Totality of the Settlement’s Value as a**  
19 **Common Fund and Award a Percentage of That Value.**

20 First, the Court may value the total amount of the benefit to the Class as if it  
21 were a common fund for purposes of awarding a fee. Here the result consists of  
22 cash, credits to accounts, payment of the costs of notice and claims administration  
23 and attorneys’ fees and litigation costs. The Ninth Circuit has routinely recognized  
24 the existence of a common fund consisting of relief beyond strictly cash, particularly  
25 where the parties agree on the value being provided. *See Wing v. Asarco, Inc.*, 114  
26 F.3d 986, 990 (9th Cir. 1997) (calculating a common benefit to the class of \$67.5  
27 million in case involving contamination of residential soil, consisting of a \$500,000  
28 fund for medical monitoring, \$1.5 million to compensate for depreciation in

1 property values, \$5 million in immediate cash payments, and a potential \$60.5  
2 million in payments dependent on defendant's recovery from its insurance carriers);  
3 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.1998) (applying the  
4 percentage method to a common benefit comprised of \$115 million representing the  
5 amount the manufacturer charged against its earnings for the replacement and  
6 installation of defective door latches on minivans). Ultimately, the common fund  
7 doctrine applies and the percentage method can be utilized whenever: (1) the class  
8 of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced;  
9 and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul,*  
10 *Johnson, Alston & Hunt v. Grauldy*, 886 F.2d 268, 271 (9th Cir. 1989).

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

13 Applying the factors of *Vizcaino, supra*, it is evident that the requested fee as  
14 a percentage of the value of the recovery for the Class is reasonable.

15 **a.) Class Counsel Achieved Exceptional Results for the Class.**

16 Plaintiffs' counsel have negotiated an excellent settlement for the Class here.  
17 Ninth Circuit courts have long recognized that the result obtained by Class counsel  
18 is a principal factor in considering an enhanced lodestar multiplier. *See, e.g., Kerr v.*  
19 *Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied sub nom.*  
20 *Perkins v. Screen Extras Guild, Inc.*, 425 U.S. 951 (1976). Here, the Settlement  
21 provides \$15 million for the Settlement Class Members, divided between a \$13  
22 million credit component and a \$2 million cash component. In addition to the \$15  
23 million cash and credit benefit, Defendants are also paying \$3.1 to \$3.3 million to  
24 the Claims Administrator for notice and claims administration, a substantial benefit  
25 to the Class. Finally, separate and apart from the \$15 million in cash and credits, and  
26 the more than \$3 million being paid for notice and claims administration, the  
27 Agreement provides for payment of an additional \$2.4 million in attorneys' fees and  
28 costs. This excellent result for the Settlement Class in a highly contested case in

1 which there was a high degree of uncertainty as to whether the Plaintiffs would have  
2 prevailed, supports the reasonableness of the fee request. The skill and experience of  
3 Plaintiffs' counsel caused that result.

4       Indeed, as of March 21, 2016, out of the 6,266,704 Notice Postcards mailed to  
5 class members, and publication notice in four national magazines and internet  
6 banner ads, only 91 out of some 41 million class members have sought to exclude  
7 themselves from the Settlement Class and only four people have objected to date,  
8 but none to the fees requested. So far, about 293,188 Settlement Class Members  
9 have submitted claims, which is approximately 4.6% of the 6,266,704 persons  
10 receiving direct mail notice postcards. For any consumer class action, that is at the  
11 high end of the percentages of claims expected to be made, and the claims deadline  
12 is still three weeks away. The high claims rate represents a ringing endorsement of  
13 the settlement and further justifies Class Counsel's request for fees.

14                   **b.) The Contingent Nature of This Case and the Risk Taken.**

15       This is not a fee shifting case as the TCPA does not provide for fee shifting.  
16 As such, this is not the type of case that would typically be pursued by counsel  
17 unless he or she had a reasonable expectation that a fee enhancement would be  
18 approved. No Plaintiff would likely pay any attorney's hourly rate if the potential  
19 recovery would be limited to the damages allowed by the TCPA, namely \$500 for  
20 each incident if negligent or \$1,500 if intentional. Thus, no attorney would likely  
21 take on such a case nor a client likely to be able to find any attorney to represent him  
22 or her in such a case. *Campion Fee Decl.*, ¶ 15.

23       The public interest is served by rewarding attorneys who agree to  
24 representation on a contingent basis with an enhanced fee to compensate them for  
25 the risk they might be paid nothing at all for their work. In *Fadhl v. City and County*  
26 *of San Francisco*, 859 F.2d 649 (9th Cir. 1986), a multiplier of 2 was awarded in a  
27 Title VII case as the amount expected by attorneys in the local San Francisco  
28 market. The court found that a multiplier was necessary when the case would not



1 have been filed by counsel without an expectation of a multiplier in the local  
2 market. *Accord, Clark v. City of Los Angeles*, 803 F.2d 987, 991-992 (9th Cir.  
3 1986); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 945-946 (9th Cir. 2007);  
4 *Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002);  
5 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.1994).  
6 Here Class Counsel agreed to prosecute this case on a contingency with no  
7 guarantee of ever being paid, and they faced substantial risk that they would not  
8 obtain a favorable result. In agreeing to represent the Class on a contingent basis,  
9 Class Counsel risked their own resources with no guarantee of recovery, and in fact  
10 litigated this case for close to six years, without any payment in the interim and  
11 advancing all the litigation costs year after year. The risk that Class Counsel could  
12 recover nothing in this case, on its own, justifies the small percentage of the  
13 recovery sought as a fee award, 11.5% of the settlement value.

14 **c.) The Novelty and Difficulty of Questions Involved.**

15 The next *Vizcaino* factor dictates that the lodestar amount should be enhanced  
16 to account for the novelty and complexity of the questions involved. While Class  
17 Counsel were confident in their ability to succeed at class certification and at trial,  
18 success was by no means guaranteed, especially considering Defendants' substantial  
19 opposition and the complexity of the issues involved. The claims in this case  
20 involved numerous issues of law that were complex, including consent, and class  
21 certification issues had the potential to present substantial problems. Furthermore, in  
22 these TCPA cases, plaintiffs always face the risk of not obtaining class certification  
23 based on the consent defense or not being able to prove that an automatic telephone  
24 dialing system was used. Such a risk of a substantial investment of time and  
25 resources in taking on such a case cannot be ignored. Nonetheless, Class Counsel  
26 agreed to represent the Class and, through their skill and substantial effort,  
27 successfully overcame formidable defenses to obtain excellent relief for the Class.

28 ///

1                                   **d.) The Experience, Reputation and Ability of Counsel.**

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

7                                   **(1) Law Offices of Douglas J. Campion, APC.**

8           Douglas J. Campion, one of Plaintiffs’ attorneys and co-lead Class Counsel,  
9 seeks fees at hourly rates of between \$550 and \$750 over the almost six-year period  
10 in which this case has been and will still be litigated. Campion Fee Decl., ¶ 15. As  
11 set forth in his declaration, Mr. Campion’s extensive experience in class action  
12 litigation, including derivative and other consumer representative actions, over 38  
13 years of practice, justifies the hourly rate requested. *Id.* at ¶¶ 2-6. Those hourly rates  
14 are below the rates charged in the community of attorneys doing this type of work  
15 with his level of experience and has been awarded fees at that hourly rate by this  
16 Court. *Id.* at ¶¶ 21-22; Declaration of Frank Johnson In Support of Motion For  
17 Attorneys’ Fees and Costs (“Johnson Decl.”) filed herewith.

18                                   **(2) Edelman, Combs, Lattuner & Goodwin, LLC.**

19           James O. Lattuner, and the law firm of Edelman, Combs, Lattuner &  
20 Goodwin, LLC, one of Plaintiffs’ attorneys and co-lead Class Counsel, seek fees at  
21 hourly rates of between \$325 and \$750. Lattuner Fee Decl., ¶ 10. As set forth in  
22 Mr. Lattuner’s declaration, his extensive experience (54 years in legal practice),  
23 and the extensive experience of Edelman, Combs, Lattuner & Goodwin, LLC (25  
24 years in legal practice) in class action and consumer-related litigation, justifies the  
25 hourly rate requested. *Id.* at ¶¶ 4-9. Mr. Lattuner’s rates and those of Edelman,  
26 Combs, Lattuner & Goodwin, LLC as a whole are below the rates charged in the  
27 community of attorneys doing this type of work with comparable levels of  
28 experience and courts have awarded fees at the rates requested here.

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**(3) Law Office of David Schafer, PLLC.**

The Law Office of David Schafer, PLLC, which has been appointed Liaison Counsel in this case, seeks fees at hourly rates of \$400 per hour for associates and \$500 per hour for Mr. Schafer. Schafer Fee Decl., ¶¶ 2,4, 9. David Schafer, the principal of the Law Office of David Schafer, PLLC, has been practicing law for nineteen years, eleven of which he has been representing consumers in TCPA and other consumer related actions. As set forth in his declaration, Mr. Schafer’s extensive experience justifies the hourly rate requested. *Id.*, ¶¶ 5-7.

**(4) Kazerouni Law Group, APC.**

Kazerouni Law Group, APC is exclusively a consumer rights law firm. In this case, senior partner Abbas Kazerounian billed at \$595 per hour. He has litigated over 1,000 cases in the last five years and has been lead counsel on over 50 filed class actions with numerous published decisions (specifically in the area of TCPA). See Kazerounian Fee Decl., ¶¶ 6-24. As detailed in that declaration, Mr. Kazerounian has been counsel on class actions in CA, TX and WA and as explained therein, his experience supports his requested hourly rate.

**(5) Hyde & Swigart.**

Hyde & Swigart litigate consumer cases almost exclusively, having litigated over 900 cases over the past eight years. See Swigart Fee Decl. ¶¶ 4-13. In this case, senior partner Joshua B. Swigart billed at \$595 per hour. *Id.* at ¶ 3. As detailed in that declaration, the hourly rate sought by Joshua Swigart is supported by his experience.

**(6) Warner Law Firm, LLC.**

The Warner Law Firm, LLC seeks fees at hourly rates of \$320-\$500 per hour. Warner Fee Decl., ¶¶ 12-13. Curtis Warner, the principal of the Warner Law Firm, LLC has been representing consumers for thirteen years and has been involved in a number of TCPA class actions. *Id.*, ¶¶ 6-11. As set forth in his declaration, Mr. Warner’s experience in representing consumers in individual and class actions

1 justifies the hourly rate requested.

2 Class Counsel’s skills in developing the factual and legal record and settling  
3 the case were essential to achieving this result. Moreover, Class Counsel’s history of  
4 aggressive, successful prosecution of consumer class actions made credible their  
5 commitment to pursue this litigation until a fair result for the Class was obtained.  
6 Through their skill, reputation, and ability, Class Counsel were able to obtain a  
7 Judgment providing outstanding relief for the Class.

8 **e.) The Risk Of Non-Payment And the Delay In Payment.**

9 A percentage of the recovery is warranted here due to the risk that Class  
10 Counsel took in prosecuting this case on a contingency basis and the significant  
11 delay in receiving payment. Here, the first two cases were filed on November 2,  
12 2010 (Robinson) and December 17, 2010 (Tovar) respectively and the third case  
13 was filed on May 11, 2011 (Scardina). Assuming the Court gives final approval to  
14 the settlement at the Final Approval Hearing on August 26, 2016, it will be almost  
15 six years after the first case was filed before Plaintiffs’ counsel receive  
16 compensation for their efforts on behalf of the Settlement Class. This is an  
17 extraordinary length of time in which payment is not received.

18 **f.) Awards Made in Similar Cases**

19 As for another *Vizcaino* factor, awards higher than 25% are regularly  
20 approved by courts in this District for similarly complex litigation. In fact, counsel  
21 are regularly awarded more than the 25% Ninth Circuit benchmark. *See, e.g., In Re*  
22 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming 33 1/3%  
23 fee); *Vizcaino*, 290 F.3d at 1048-50 (affirming 28% fee); *Morris v. Lifescan, Inc.*, 54  
24 Fed. Appx. 663, 664 (9th Cir. 2003) (affirming 33% fee); *In re Pub. Serv. Co. of*  
25 *New Mex.*, No. 91-0536M, 1992 WL 278452, \*7 (S.D. Cal. July 28, 1992)  
26 (awarding 33% and finding awards “traditionally ranged between 30% and 40% of  
27 the total recovery”); *In re M.D.C. Holdings Sec. Litig.*, CV89-0090 E (M), 1990 WL  
28 454747, \* 10 (S.D. Cal. Aug. 30, 1990) (awarding a 30% fee, finding it to be

1 “within the 30–40% range common to . . . contingent litigation.”). Furthermore, the  
2 customary fees in these Telephone Consumer Protection Act cases are far higher  
3 than the fee sought here, as the 25% benchmark of a common fund case far exceeds  
4 the 11.5% of the total benefit to the Class sought here.

5 Furthermore, the award of attorneys’ fees in TCPA class actions is  
6 consistently between 20-33% of the total fund available to the class, or its value.  
7 *See Gutierrez, et al. v. Barclays Group, et al.* (S.D. Cal.2010) - 19.12% / 4.55  
8 multiplier; *Kramer v. Autobytel* (N.D. Cal. 2011) - 25% / 2.69 multiplier; *Connor v.*  
9 *JPMorgan Chase* (S.D. Cal. 2012) - 25% / 4.39 multiplier; *Lozano v. Twentieth*  
10 *Century Fox* (N.D. Ill.2011) - 23.43% / 2.9 multiplier; *Arthur et al. v. Sallie Mae,*  
11 *Inc.*, (W.D. Wash. 2010) - 20% / 2.58 multiplier; *Rojas v. Career Educ. Corp.* (N.D.  
12 Ill. 2012) - 17.5% / 2.25 multiplier.

13 Counsel’s fee request, therefore, for 11.5% of the total value of the benefits to  
14 the Class is far less than what is typically awarded in either “common fund” or  
15 TCPA cases and, for that reason, should be approved.

16 **3. In Addition, Many More Hours Will Be Incurred Before The Final**  
17 **Approval Hearing and Beyond, Further Justifying the Fee Request.**

18 As of March 23, 2016, five months prior to the Final Approval Hearing,  
19 Plaintiffs’ counsel have incurred \$1,322,760.00 in attorneys’ fees based on their  
20 regular hourly rates. Class Counsel anticipate spending at a minimum dozens of  
21 additional hours of attorney time in the five months prior to the Final Approval  
22 Hearing and subsequent to that Hearing following up on Claims Administration.

23 Thus, if the requested \$2.4 million fee is viewed as a percentage of the total  
24 settlement value of the “common fund”, \$20,752,407, the \$2,400,000 sought for  
25 fees and costs is only 11.5% of that amount. That percentage is far below the Ninth  
26 Circuit’s 25% percentage benchmark fee award in common fund cases. *In Re*  
27 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (citing  
28 *Six Mexican Workers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Thus, as a percentage

1 of a common fund, the requested 11.5% fee clearly falls within the range of  
2 reasonableness. Furthermore, as of March 23, 2016, the \$1,322,760.00 lodestar is as  
3 of five months prior to the Final Approval Hearing. Class Counsel anticipate  
4 spending dozens of additional hours of attorney time in the five months prior to the  
5 Final Approval Hearing and subsequent to that Hearing following up on Claims  
6 Administration.

7 For this reason and those set forth above, the Court should approve payment  
8 of \$2.4 million to Class Counsel as a reasonable percentage of the value of the  
9 settlement to the Class.

10 **B. If the Lodestar Analysis is Used, the Attorneys' Fees Sought Result**  
11 **in a Multiplier of 1.81, Justified by the *Kerr* and *Vizcaino* Factors.**

12 If the Court decides to use a lodestar method to award fees, the amount  
13 requested is still reasonable and should be awarded, and the multiplier sought is  
14 justified under Ninth Circuit law. *Vizcaino, supra*, 290 F.3d at 1048-49; *Hanlon v.*  
15 *Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998). Counsel seek the application  
16 of a 1.81 multiplier which, applied to their lodestar to date of \$1,322,760.00, yields  
17 the \$2.4 million fees and costs sought.

18 The U.S. Supreme Court has explained that to calculate attorney's fees'  
19 awards, the initial examination is to look at the number of hours expended  
20 multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433  
21 (1983). *See also Hanlon v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998)  
22 (The first step in calculating attorneys' fees by the lodestar method is to multiply the  
23 number of hours counsel reasonably expended on the litigation by a reasonable  
24 hourly rate.) In setting the lodestar rate this Court is required to consider the  
25 relevant factors discussed below and set forth in *Kerr, supra*, 526 F.2d at 70.<sup>6</sup> As

26 <sup>6</sup> The court in *Kerr* identified twelve relevant factors to take into consideration: (1)  
27 the time and labor required; (2) the novelty and difficulty of the questions involved;  
28 (3) the skill requisite to perform the legal service properly; (4) the preclusion of

(continued...)

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

5 **1. Counsel's Hourly Rates Are Reasonable and Are Consistent with**  
6 **Market Rates**

7 In determining a reasonable hourly rate, courts look to the prevailing market  
8 rates in the relevant community with close attention paid to the fees charged by  
9 lawyers of reasonably comparable skill, experience, and reputation. *Davis v. City*  
10 *and County of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992), *citing Blum v.*  
11 *Stenson*, 465 U.S. 886, 895 (1984). The firms' experience is set forth in the section  
12 above explaining their skill and experience. Plaintiffs submit that the hourly rates  
13 charged by the firms that litigated this case on behalf of Plaintiffs and the Class are  
14 reasonable and within the range of hourly rates charged for the same services within  
15 the community. In addition to the National Law Journal chart regarding attorneys'  
16 hourly rates discussed below, Plaintiffs have submitted a declaration of a local  
17 attorney who litigates in southern California and elsewhere and who is familiar with  
18 hourly rates charged in similar class and representative actions. (See Declaration of  
19 Frank Johnson In Support of Motion For Attorneys' Fees and Costs ("Johnson  
20 Decl.") filed herewith.) Plaintiffs submit that the hourly rates charged here ranging

21 \_\_\_\_\_  
22 (...continued)  
23 other employment by the attorney due to acceptance of the case; (5) the customary  
24 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the  
25 client or the circumstances; (8) the amount involved and the results obtained; (9) the  
26 experience, reputation, and the ability of the attorneys; (10) the 'undesirability' of  
27 the case; (11) the nature and length of the professional relationship with the client;  
28 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 nature of the fee.")

1 from \$325 to \$750 are entirely fair and reasonable, given counsel’s experience,  
2 qualifications and expertise. Those rates are well within the range of hourly rates  
3 charged for the same services within the southern California community.

4 The hourly rates sought by the firms involved in this case are justified  
5 because they are lower than fees awarded to other Plaintiffs’ counsel with similar  
6 experience, and rates charged by other firms are indeed higher than the rates charged  
7 here. For example, attached as Exhibit 1 to the Campion Fee Decl. is the National  
8 Law Journal “ALM Legal Intelligence” chart of 2012 Hourly Billing Rates listing  
9 rates charged by firms across the country. That chart shows many firms have hourly  
10 rates charged by senior partners in excess of the \$750 charged here by both Mr.  
11 Latturner and Mr. Campion. In fact, 24 of the 57 firms listed have senior partner  
12 hourly billing rates at or above \$750, with the highest rates at or above \$1,200 per  
13 hour. *Id.*; Campion Fee Decl. ¶ 22. Similarly, many firms charge comparable rates  
14 or more for associate attorneys as charged by the Plaintiffs’ firms, with presumably  
15 less experience. It also must be remembered that those firms’ hourly fees are not  
16 contingent upon winning the case or settling on favorable terms.

17 Class counsel set their rates for attorneys and staff members based on a  
18 variety of factors, including among others, the experience, skill and sophistication  
19 required for the types of legal services typically performed; the rates customarily  
20 charged in the markets where legal services are typically performed; and the  
21 experience, reputation and ability of the attorneys and staff members.

22 **2. The Number of Hours Submitted by Counsel Is Reasonable.**

23 The second component of the lodestar figure is the number of hours counsel  
24 reasonably expended. The hours expended were reasonable. Knowing it was  
25 possible they would never be paid for their work, counsel had no incentive to act in  
26 a manner that was anything but economical. *See Moreno v. City of Sacramento*, 534  
27 F.3d 1106, 1112 (9th Cir. 2008) (“[L]awyers are not likely to spend unnecessary  
28 time on contingency cases in the hope of inflating their fees. The payoff is too



1 uncertain, as to both the result and the amount of the fee.”). That said, counsel here  
 2 have taken their charge seriously and endeavored to represent the interests of the  
 3 class members to the greatest extent possible. Plaintiffs are entitled to be  
 4 compensated for all time that would, in the exercise of “billing judgment,” be billed  
 5 to a fee-paying client. *Hensley v. Eckerhart*, *supra*, 461 U.S. 424, 434, 437;  
 6 *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 483 U.S. 711  
 7 (1987). Each of the attorney declarations submitted summarize their firm’s work,  
 8 and they are also prepared to submit detailed time records upon the Court’s request.  
 9 The attached table summarizes the number of hours spent in this litigation, and the  
 10 hourly rates charged, as set forth in the attorney declarations submitted.

Law Firm	Hours	Rate	Total
Law Offices of Douglas J. Campion, APC	892.50	\$550 - \$750/hour	\$624,005.00
Edelman, Combs, Lattuner & Goodwin, LLC	633.38	\$325-\$700/hour	\$400,978.50
--Attorney Hours	144.8	\$125/hour	\$18,100.00
--Paralegal Hours			
Law Office of David P. Schafer, PLLC	258.8	\$400-\$500/hour	\$108,120.00
Kazerouni Law Group, APC	137.7	\$595/hour	\$80,741.50
Hyde & Swigart	117.8	\$595/hour	\$70,091.00
Warner Law Firm, LLC	57.1	\$320-\$500/hour	\$20,724.00
Totals	2,240.08		\$1,322,760.00

25 Plaintiffs’ counsel have expended about 2,240 hours in this litigation. With a  
 26 lodestar of \$1,322,760.00, the requested fee of \$2,400,000 results in a multiplier of  
 27 1.81.

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1           The general areas investigated, researched and litigated in this action to date  
2 detailed in the attorney declarations are summarized as follows. Before Scardina’s  
3 case was transferred to this Court, Scardina and his counsel engaged in extensive  
4 discovery while the case was pending in Illinois. Proceedings in this Court included  
5 litigating the Robinson and Tovar cases prior to the MDL consolidation, including  
6 motion practice. After the MDL transfer, as shown in the lengthy docket report, the  
7 work involved organizing the Plaintiffs’ counsel leadership structure by applying to  
8 the Court for appointment of Interim Co-Lead Counsel and Liaison Counsel (ECF  
9 No. 21), drafting and filing a Consolidated Complaint (ECF No. 23), briefing  
10 Defendants’ Motion to Stay on Primary Jurisdiction Grounds (ECF No. 40) which,  
11 after briefing and oral argument, the Court denied on January 7, 2013. (ECF No.  
12 45.) Subsequent to that ruling, the Parties began protracted settlement discussions,  
13 including eleven sessions Judge Herbert B. Hoffman (Ret.) of Judicate West,  
14 resulting in a settlement, approximately thirty months later. Additional time was  
15 spent memorializing a highly complex settlement, retaining a settlement  
16 administrator, and, after Notice went out, responding to dozens of e-mails and  
17 telephone calls from Class Members. Thus, the hours claimed by Plaintiffs’ counsel  
18 are “reasonable” as they stand. *See Perkins v. Mobile Housing Board*, 847 F.2d 735,  
19 738 (11th Cir. 1988) (attorney hours sworn to are “evidence of considerable weight  
20 on the issue of the time required in the usual case” and should not be reduced unless  
21 “the time claimed is obviously and convincingly excessive under the  
22 circumstances”).

23           Additionally, Counsel exercised billing judgment. Attorneys normally do not  
24 bill all hours expended in litigation to a client, and a fee petition should reflect the  
25 exercise of “billing judgment” with respect to a claim of the number of hours  
26 worked. To show billing judgment, ““counsel for the prevailing party should make a  
27 good-faith effort to exclude from a fee request hours that are excessive, redundant,  
28 or otherwise unnecessary’ . . . [and the] district court has a corresponding obligation

1 to exclude hours not ‘reasonably expended’ from the calculation.” *Jackson v. Austin*,  
2 267 F.Supp. 2d 1059, 1066 (D. Kan. 2003) (citations omitted).

3 In addition to the hours expended to date, and not included in the lodestar  
4 herein, Class Counsel anticipate incurring dozens of additional hours, in the  
5 approximate five months between the filing of this motion and the Final Approval  
6 Hearing, including working to determine the membership in each cash component or  
7 credit group, claims administration, preparing the Final Approval briefs and  
8 responding to objectors. Counsel will file a supplemental summary of time incurred  
9 prior to the Final Approval hearing, which will most certainly cause the multiplier  
10 for the fees incurred to date to decrease. *Campion Fee Decl.* ¶ 16.

11 Thus, the amount of hours expended was reasonable.

12 **3.) A Multiplier Is Appropriate In This Case.**

13 The settlement here deserves an enhancement to the lodestar under *Kerr*.  
14 *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006); *In re Wash. Pub.*  
15 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *Hanlon*,  
16 *supra*, 150 F.3d at 1029. *See also* Manual for Complex Litigation (“MCL”) 4th §  
17 14.122, at 261 (stating that upward adjustments to attorneys’ fees may be  
18 appropriate based on the results obtained, the quality of representation, the  
19 complexity and novelty of the issues presented, the risk of nonpayment, and any  
20 delay in payment.) The *Kerr* factors clearly support the award of fees and a  
21 multiplier, as set forth below.

22 **(a) The Kerr Factors Are Satisfied.**

23 Many of the *Kerr* factors are similar to those discussed under the *Vizcaino*  
24 analysis above and for sake of brevity, will not be repeated here but only  
25 summarized. The attorneys here were skilled and experienced, and obtained an  
26 excellent result – a \$20+ million benefit for the Class -- despite the fact that class  
27 certification with the consent issues may have been difficult. In addition, the  
28 customary fees awarded in these cases are far higher than the fee sought here, as the

1 25% benchmark of a common fund case far exceeds the 11.5% of the total benefit to  
2 the Class sought here. The award of attorneys' fees in TCPA class actions are  
3 consistently between 20-33% of the total fund available to the class, or its value.  
4 See "Awards Made in Similar Cases" above at IV. 2. f), including the multipliers  
5 awarded in those cases. Furthermore, a multiplier is warranted here due to the  
6 significant risk Class Counsel took in prosecuting a case of this magnitude on a  
7 contingency basis, the significant delay in being compensated for their efforts, and  
8 the substantial opportunity costs in devoting so many hours over so many years to  
9 this case. Plaintiffs' Counsel pursued this challenging case on a contingent basis,  
10 running a significant risk that they would not be compensated for significant time  
11 and money expended on the case. Given the case's challenges, including the  
12 vigorous opposition raised by Defendants' counsel to Plaintiffs' claims, Plaintiffs'  
13 Counsel won't receive compensation for their efforts until six years have elapsed  
14 since the filing of the first case – an extraordinary length of time. Finally, working  
15 on this case precluded at least the firms acting as co-lead counsel, and maybe others,  
16 from accepting other employment due to the time requirements of this case, as  
17 reflected in their more than 2,200 hours incurred to date. All these factors justify  
18 application of a modest 1.81 multiplier. Therefore, the *Kerr* factors dictate that a  
19 multiplier be granted.

20 **(b) The Multiplier is within the Range of Reasonableness.**

21 The multiplier of approximately 1.81 sought here is certainly well within the  
22 range of reasonableness. Courts have awarded multipliers ranging from 0.6 to 19.6.  
23 *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (citing cases); *Steiner v.*  
24 *Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (approving 6.85  
25 multiplier); *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md.  
26 2000) (40% award of \$71.2 million fund; cross-check multiplier of 19.6); *In re Rite*  
27 *Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (25% of \$126,000,000  
28 fund; multiplier of 6.96); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138 (S.D.

1 N.Y Aug. 24, 1992) (25% of \$72.5 million; multiplier of 6).

2 Applying the criteria and case law cited above, a 1.81 multiplier is warranted  
3 under these circumstances and an award of \$2.4 million in attorneys' fees and costs  
4 is clearly justified here. *See Vizcaino v. Microsoft Corp.*, 290 F.3d at 1048 (affirming  
5 enhanced fee where counsel "pursued this case in the absence of supporting  
6 precedents" and "against [Defendants's] vigorous opposition throughout the  
7 litigation").

8 **V. THE PAYMENT OF COSTS IS FAIR AND REASONABLE**

9 Plaintiffs also seek Court approval of their reimbursement of the litigation  
10 costs they incurred during the litigation, not from the Settlement Fund but from the  
11 \$2.4 million fees and costs award they seek. Plaintiffs' counsel have incurred  
12 \$37,760.30 in costs to date. Case authority permits Plaintiffs' counsel to be  
13 reimbursed for costs necessarily incurred in the litigation of the case. *See In re*  
14 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (S.D. Cal. 2007)  
15 (finding that costs such as filing fees, photocopy costs, travel expenses, postage,  
16 telephone and fax costs, computerized legal research fees, and mediation expenses  
17 are relevant and necessary expenses in a class action litigation). Furthermore, even  
18 though Plaintiffs' counsel is not making such a request here, case law permits  
19 requiring class members to proportionately pay the costs associated with litigation  
20 of a class action. *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366  
21 (N.D. Cal. 1996) (*citing Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392, 90  
22 S. Ct. 616, 24 L. Ed. 2d 593 (1970)). Instead, here Plaintiffs' Counsel are seeking  
23 reimbursement of their costs from the \$2.4 million requested, and not asking the  
24 Class to pay any of those costs from the Settlement Fund. Assuming the Court  
25 grants the \$2.4 million request, from the gross payment the costs will be allocated to  
26 each firm based on the amount of costs each firm incurred and then the remainder  
27 will be divided as fees.

28 ///

1 Those costs were reasonably incurred in this litigation. As stated in the  
2 attorneys' fee declarations filed herewith, the total costs incurred by Plaintiffs'  
3 counsel in the three cases were \$37,760.30. A substantial portion of the costs were  
4 for the dozen or so mediation sessions with Judge Hoffman. In addition, the parties  
5 incurred substantial other litigation costs, including travel expenses to attend the  
6 mediations, filing fees, deposition costs, case-specific on-line legal research fees,  
7 copying, mailing, and messenger expenses, and Information Technology expert  
8 consultant fees. *See Id.* Class counsel advanced these costs without assurance that  
9 they would ever be repaid. *Campion Fee Decl.* ¶ 19. These costs were necessary to  
10 secure the resolution of this litigation.

11 The costs by the firm incurring them are as follows:

12	Law Offices of Douglas J. Campion, APC:	\$ 6,914.19
13	Edelman, Combs, Lattuner & Goodwin, LLC:	\$17,078.97
14	Hyde & Swigart:	\$ 5,313.61
15	The Kazerouni Law Group, APC:	\$ 6,550.38
16	Law Office of David Schafer:	\$ 1,528.15
17	Warner Law Firm, LLC:	<u>\$ 375.00</u>
18	Total:	\$37,760.30

19 If the Court desires to see the detailed summaries of the costs incurred, they  
20 will be provided. In light of the expenses Class Counsel has had to incur to bring  
21 this case to its current settlement posture, Class Counsel request that the Court  
22 confirm that Plaintiffs' counsel may seek reimbursement for their costs incurred  
23 from the \$2.4 million fees and cost fund in the amount of \$37,760.30.<sup>7</sup>

24 \_\_\_\_\_  
25 <sup>7</sup> Class Counsel is also seeking Court approval and an order requiring the payment of the  
26 approximately \$3.1-\$3.3 million charged by the Claims Administrator, KCC, for its notice and  
27 claims administration services. Class Counsel expects KCC will submit a final  
28 invoice prior to the Final Approval Hearing. As set forth in the Agreement, the Class  
will not pay any of this amount; Defendants have agreed to pay KCC's total fees  
and costs incurred separate from any other amounts being paid to the Settlement  
Class Members or to Class Counsel. *Campion Fee Decl.* ¶ 20.

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

3 Through March 14, 2016, only three objections to the settlement have been  
4 received and not one has objected to the fees, despite direct mail notice to 6,266,704  
5 Settlement Class members. *Campion Fee Decl.*, ¶ 4. Again, this motion is being  
6 filed approximately thirty days before the deadline for filing objections and  
7 additional objections may be filed, but little opposition to the fee request, incentive  
8 payment or to the settlement itself is expected.

9 **VII. THE COURT SHOULD APPROVE A \$2,500 INCENTIVE AWARD**

10 Class Representatives Robinson, Tovar, and Scardina request an incentive  
11 award of \$2,500 each, to be paid from the \$2 million Cash Component of the  
12 Settlement, for their services to the Settlement Class. The Parties have agreed to  
13 payment of such amounts from the Cash Component of the Settlement Fund, subject  
14 to Court approval. *Agreement*, §§5.05; 6.01. Unlike unnamed class members, who  
15 are passive beneficiaries of the representative's efforts on their behalf, named Class  
16 Representatives actively assisted in bringing these cases, provided detailed  
17 information to counsel, worked with their attorneys in litigating the cases, assisted in  
18 providing documents, reviewed the proposed settlement with counsel and reviewed  
19 and signed the Settlement Agreement. See *Declarations of Scardina, Robinson and*  
20 *Tovar* filed herewith. By agreeing to be class representatives, they also agreed to be  
21 the subject of discovery, including making themselves available as witnesses at  
22 deposition and trial, and to subject themselves to other obligations of named parties.  
23 Small enhancement payments, which serve as premiums in addition to any claims-  
24 based recovery from the settlement, promote the public policy of encouraging  
25 individuals to undertake the responsibility of representative lawsuits.

26 Courts have discretion to approve incentive payments to Class  
27 Representatives and such payments are often provided to class representatives for  
28 their role in bringing the class action and assisting its successful resolution. *Pelletz*

1 *v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329 (W.D. Wash. 2009) (“The trial  
2 court has discretion to award incentives to the Class Representatives.”); *Grays*  
3 *Harbor Adventist Christian School v. Carrier Corp.*, No. 05-0537 RBL, 2008 WL  
4 1901988, at \*6 (W.D. Wash. April 24, 2008) (same).

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

7 Whether to reward Mr. Van Vranken for his efforts is within the  
8 Court’s discretion. *See, e.g., In re Domestic Air Transp.*, 148  
9 F.R.D. at 357-58 (awarding \$142,500 to Class Representatives  
10 out of \$50 million fund); *In re Dun & Bradstreet*, 130 F.R.D. at  
11 373-74 (awarding \$215,000 to several Class Representatives out  
12 of an \$18 million fund). The criteria courts may consider in  
13 determining whether to make an incentive award include: 1) the  
14 risk to the Class Representatives in commencing suit, both  
15 financial and otherwise; 2) the notoriety and personal difficulties  
16 encountered by the Class Representatives; 3) the amount of time  
17 and effort spent by the class representative; 4) the duration of  
18 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).

19 *Id.* at 299. In *Van Vranken*, after evaluating the five factors, the court awarded the  
20 class representative \$50,000 as an incentive payment for participating in many  
21 telephone conferences, meeting with his attorneys over several years, sitting for two  
22 depositions, and testifying at trial.

23 Here, the parties agreed upon the payment of a \$2,500 incentive award to  
24 each Plaintiff, subject to Court approval. These awards are quite modest under the  
25 circumstances, and well in line with awards approved by federal courts. *See Pelletz*  
26 *v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (collecting decisions  
27 approving awards ranging from \$5,000 to \$40,000, and approving \$7,500 incentive  
28 awards where named Plaintiffs assisted Class counsel by responding to discovery



1 and reviewing settlement terms); *Grays Harbor Adventist Christian School v.*  
2 *Carrier Corp*, No. 05-0537 RBL, 2008 WL 1901988, at \*6 (W.D. Wash. April 24,  
3 2008) (approving \$3,500 incentive awards); *Fitzgerald v. City of Los Angeles*, 2003  
4 WL 25471424 (C.D. Cal. 2003) (same); *Accord, In re Heritage Bond Litigation*,  
5 2005 WL 1594403 (C.D. Cal. 2005).

6 Here, Robinson, Tovar, and Scardina came forward to serve as the proposed  
7 Class Representatives, kept abreast of the litigation, and approved the proposed  
8 settlement terms after reviewing them and consulting with Class Counsel. In light of  
9 their effort and risk undertaken to obtain a meaningful result for the Class, Class  
10 Counsel request that the Court approve the modest payment of \$2,500 each to  
11 Robinson, Tovar, and Scardina, to be paid from the Cash Component of the  
12 Settlement.

13 **X. CONCLUSION**

14 For the reasons set forth herein, Plaintiffs seek court approval of an award of  
15 \$2.4 million in attorneys' fees and costs to be paid to Plaintiffs' counsel by  
16 Defendants. Plaintiffs also seek a \$2,500 incentive payment to be awarded to each  
17 of the three named Class Representatives, totaling \$7,500, to be paid from the Cash  
18 Component of the Settlement Fund, and approval of all costs, including an order  
19 approving and ordering the payment of the costs of notice and claims administration  
20 by Defendants.

21  
22 Dated: March 23, 2016

Respectfully submitted,  
**LAW OFFICES OF DOUGLAS J. CAMPION, APC**

23 By: *s/ Douglas J. Campion*

24 Co-Lead Counsel for Plaintiffs

25 Dated: March 23, 2016

**EDELMAN COMBS LATTURNER & GOODWIN, LLC**

26  
27 By: *s/ James O. Latturner*

28 Co-Lead Counsel for Plaintiff

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Dated: March 23, 2016

**LAW OFFICE OF DAVID P. SCHAFFER, PLLC**

*By: s/ David Schaffer*

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Liaison Counsel for Plaintiffs