IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEWART ABRAMSON, individually and on behalf of a class of all persons and entities similarly situated, Plaintiff vs. NORTH STAR INSURANCE ADVISORS LLC, TORCHLIGHT TECHNOLOGY GROUP LLC and RAPID RESPONSE MARKETING LLC Defendants.	Case No. 2:22-cv-827

PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND CLASS REPRESENTATIVE AWARD

I. INTRODUCTION

Plaintiff Stewart Abramson (collectively, "Plaintiff") and Defendants Rapid Response Marketing LLC, North Star Insurance Advisors LLC and Torchlight Technology Group, LLC ("Defendants") (the Plaintiff and Defendants collectively referred to herein as the "Parties") have reached a class action settlement of this matter, for which the Court granted preliminary approval on January 25, 2024. (Doc. 97.)

Plaintiff submit this memorandum to separately address their request for a class representative award to each Plaintiff, as well as an award of attorneys' fees, costs, and expenses. The Settlement Agreement includes the establishment of a $375,000 Settlement Fund to be distributed *pro rata* to Settlement Class Members who file a valid claim after payment of notice and Administration Costs (if approved), a Fees, Costs, and Expenses Award to Settlement Class

Counsel (if approved), and a Service Payment to the Plaintiff (if approved).[1] There is no reverter in the Settlement Fund.

For the reasons set forth below, Plaintiff respectfully submit that their requested class representative Service Payment of $10,000 each, an attorneys' fee award of one-third of the Settlement Fund, and an award of $14,500 in costs and expenses are well justified in light of the excellent result achieved for the Settlement Class under applicable Supreme Court and Third Circuit precedents.

II. NATURE AND BACKGROUND OF THE CASE

This case rests on alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, which prohibits, *inter alia*, initiating any telephone solicitation using an artificial or prerecorded voice. *See* 47 U.S.C. § 227(b). The TCPA provides a private cause of action to persons who receive such calls. *Id.* and 47 U.S.C. § 227(b)(3).

Plaintiff is a Pennsylvania resident whose telephone numbers have been called with recorded messages for years. On June 7, 2022, plaintiff Stewart Abramson filed a putative class action complaint in the United States District Court for the Western District of Pennsylvania against North Star Insurance Advisors LLC, Case No. 22-cv-827 (the "Action"). Later, the Action was amended to include Torchlight Technology Group LLC and Rapid Response Marketing LLC. The operative Complaint alleged that North Star, Torchlight, and Rapid Response violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 by, *inter alia*, placing unsolicited telemarketing calls to Plaintiff and members of the putative class using a prerecorded voice, or by the fact that such actions were done on their behalf.

[1] All capitalized terms not defined herein have the meanings set forth in the Parties' Settlement Agreement and Release ("Settlement Agreement"), filed at Doc. 93-1.

The parties mediated this case with Bruce Friedman at JAMS. While that mediation was unsuccessful, it eventually culminated in the Settlement Agreement that the Court preliminarily approved.

The Court certified the following Settlement Class:

> All persons within the United States: (1) who were users and subscribers of telephone number(s) to which (2) SBM Communications placed a telemarketing call (3) on behalf of Rapid Response, (4) from June 7, 2018 through May 3, 2023 (5) as part of the final expense insurance campaign (6) that Rapid Response produced in this case as part of the file "DSC. SBM Call Transfers to Torchlight".

(Agreement ¶ 1.27). The proposed Settlement encompasses approximately 558 individuals who received calls from SBM Communications. The proposed Settlement establishes a non-reversionary $375,000.00 Settlement Fund, which will exclusively be used to pay: (1) cash settlement awards to Settlement Class Members; (2) Settlement Administration Expenses; (3) attorney's fees of one-third of the total amount of the Settlement Fund ($125,000.00) in addition to out of pocket expenses, subject to Court approval; and (4) a court-approved Service Award to the Class Representative of up to $10,000. Each Settlement Class Member who submits a valid claim shall be entitled to receive an equal *pro rata* amount of the Settlement Fund after all settlement administrative expenses, Service Awards, and fee awards are paid out of the Settlement Fund. If all the attorneys' fees, expenses, Service Award and settlement administration expenses are approved as requested, Plaintiff's counsel estimate that the average Settlement Class Member payment would be approximately $1,000.[2]

[2] This assumes that approximately 10% of consumers given notice will submit a claim.

III. ARGUMENT

A. Settlement Class Counsel Are Entitled to a Fee Award from the Common Fund

Compensating counsel for the actual benefits conferred on the Settlement Class Members must be the fundamental consideration in awarding attorneys' fees, as a court is attempting to award counsel for the result achieved. The Supreme Court has long recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The common fund doctrine is 'based on the equitable notion that those who have benefited from litigation should share its costs,' and that unless the costs of litigation are spread to beneficiaries of the fund they will be unjustly enriched by the attorney's efforts." *Petruzzi's Inc. v. Darling-Delaware Co.*, 983 F. Supp. 595, 603 (M.D. Pa. 1996) (quoting *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 250 (1985)).

An attorney who creates a "common fund" or "substantial benefit" allocable with some exactitude to a definite group of persons acquires an equitable claim against that group for the costs incurred in creating the fund or benefit. *Sprague v. Ticonic Nat'l. Bank*, 307 U.S. 161 (1939); *Trustees v. Greenough*, 105 U.S. 527 (1882). Historically, the rationale entitling counsel to a percentage of the common fund derives from the equitable powers of the courts under the doctrines of quantum meruit, *Cent. R.R. & Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 124 (1885); unjust enrichment, *see, e.g., Greenough*, 105 U.S. at 532-33; and later, what has become known as the "substantial" or "common benefit" doctrine. *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392-94 (1970). All of these doctrines now fall under the larger umbrella of the "common fund" doctrine. Under the common fund doctrine, fee reimbursement is permitted in the following circumstances: (1) when litigation indirectly confers substantial monetary or non-

monetary benefits on members of an ascertainable class, and (2) when the court's jurisdiction over the subject matter of the suit, and over a named party who is a collective representative of the class, makes possible an award that will operate to spread the costs proportionately among class members. H. NEWBERG, ATTORNEY FEE AWARDS § 2.01 at 28-29 (1986).

Such cases as this one, therefore, are called "common benefit" or "common fund" cases, and "[i]t is well-settled that a lawyer who recovers a common fund for the benefit of a class of persons in commercial litigation is entitled to reasonable attorneys' fees and expenses payable from that fund." *Boeing*, 444 U.S. at 478-79; *Mills*, 396 U.S. at 391-92. And, as the Supreme Court has explained, in contrast to statutory fee shifting where fees are calculated "under the common fund doctrine … a reasonable fee is based on *a percentage of the fund bestowed upon the class*." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (emphasis added).

"The percentage-of-recovery method is generally favored in cases involving a common fund," such as here. *Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x. 191, 196-97 (3d Cir. 2014) (quoting *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 732 (3d Cir. 2001)). That method "allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (citation omitted). The percentage-of-the-fund method thus "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 122 (2d Cir. 2005) (citation omitted).

B. The Requested Fee of One-Third Is Fair and Reasonable

The Settlement Agreement establishes a non-reversionary common fund of $375,000.00, from which Settlement Class Members who are Authorized Claimants will receive payments and

Settlement Class Counsel will receive any fee, cost, and expense reimbursement. The Third Circuit has identified ten factors that courts should consider in reviewing a request for attorneys' fees in such a common-fund case. These include:

> (1) the size of the fund created and the number of beneficiaries, (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel, (3) the skill and efficiency of the attorneys involved, (4) the complexity and duration of the litigation, (5) the risk of nonpayment, (6) the amount of time devoted to the case by Plaintiff' counsel, (7) the awards in similar cases, (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

In re Diet Drugs Prod. Liab. Litig., 582 F.3d 524, 541 (3d Cir. 2009) (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998)). The *Gunter*/*Prudential* factors should not "be applied in a rigid, formulaic manner, but rather a court must weigh them in light of the facts and circumstances of each case." *Moore v. Comcast Corp.*, No. 08-cv-773, 2011 U.S. Dist. LEXIS 6929, at *12 (E.D. Pa. Jan. 24, 2011). As demonstrated below, the above factors strongly support the requested one-third fee as appropriate, fair, and reasonable.

1. The Size of the Fund Created and Number of Persons Benefitted

The proposed Settlement Class includes approximately 560 unique telephone numbers identified. Subject to final approval by the Court, Settlement Class Members who are Authorized Claimants will receive an equal share of the net Settlement Fund (after deducting any Administration Costs, Fees, Costs, and Expenses Award, and Service Payments approved by the Court). Based on Plaintiff's estimate, if the Court approves the Administration Costs, the attorneys' Fees, Costs, and Expenses Award requested, and the Service Payment to each

Plaintiff, the distribution to each current claimant would be approximately $1,000. *See* Exhibit 1, Declaration of Anthony Paronich ("Paronich Declaration") at ¶ 11. Such a distribution would greatly exceed many other approved TCPA settlements[3], heavily in favor of the fee requested. Thus, the size of the Settlement Fund obtained by Settlement Class Counsel and the number of persons who will be benefitted by the settlement weigh heavily in favor of the requested fee.

2. The Presence or Absence of Substantial Objections

The Notice disseminated to the Settlement Class disclosed that Plaintiff would seek an attorneys' fee award of one-third of the Settlement Fund ($125,000), plus incurred expenses of up to $20,000 and a Service Payment in the amount of $10,000 for the Plaintiff. No objections have been filed as of the date of this filing. Plaintiff will address this factor further in the motion for final approval.

3. The Skill and Efficiency of the Attorneys Involved

The quality of the representation is also relevant in determining fee awards. "The Third Circuit has explained that the goal of the percentage fee-award device is to ensure 'that competent counsel continue to undertake risky, complex, and novel litigation.'" *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 747 (E.D. Pa. 2013) (quoting *Gunter v. Ridgewood Energy Corp.*, 223 F.3d at 198). "In evaluating the skill and efficiency of the attorneys involved, courts have looked to 'the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of

[3] *See, e.g.*, *Rose v. Bank of Am. Corp.*, No. 11-cv-02390-EJD, 2014 U.S. Dist. LEXIS 121641, at *30 (N.D. Cal. Aug. 29, 2014) ($20 to $40)); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) ($30); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) ($34.60).

opposing counsel.'" *Alexander v. Wash. Mut., Inc.*, No. 07-cv-4426, 2012 U.S. Dist. LEXIS 171611, at *6 (E.D. Pa. Dec. 4, 2012) (quoting *In re Ikon Office Solutions, Inc. Secs. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000)).

Here, the quality of Settlement Class Counsel's representation of Plaintiff and the Settlement Class, as well as their skill and experience in the specialized field of consumer class action litigation and TCPA litigation, support the requested fee. (*See* Paronich Decl. ¶¶ 2-7.) As discussed above and below, Settlement Class Counsel obtained a substantial non-reversionary cash recovery for the Settlement Class, where the risks and uncertainties of continued litigation could result in no recovery for the Settlement Class whatsoever, even after years of costly litigation. Settlement Class Counsel have litigated TCPA class actions before this Court and others, reaching classwide settlements in dozens of cases and litigating one to a jury verdict. In that case, the defendant was found liable and damages were treble by the court to $61 million, or $3,000 per class member. *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 U.S. Dist. LEXIS 203725, at *9-10 (M.D.N.C. Dec. 3, 2018).

This factor supports approval of the requested fee.

4. The Complexity and Duration of the Litigation

Courts have long recognized that "particularly in class action suits, there is an overriding public interest in favor of settlement,' ... because ... 'class action suits have a well deserved reputation as being most complex.'" *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). "Settlement 'has special importance in class actions with their notable uncertainty, difficulties of proof, and length.'" *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016) (quoting *Turner v. Gen. Elec.*

Co., No. 05-cv-186-FTM-99DNF, 2006 U.S. Dist. LEXIS 65144, at *5 (M.D. Fla. Sept. 13, 2006) ("Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice[.]"). Here, this case nearly went to the end of the discovery period before a settlement was reached. Settlement Class Counsel was able to work expeditiously to develop the case and bring the matter to a resolution in an efficient and effective manner.

"'One purpose of the percentage method' of awarding fees — rather than the lodestar method, which arguably encourages lawyers to run up their billable hours — 'is to encourage early settlements by not penalizing efficient counsel ....'" *Gunter v. Ridgewood Energy Corp.*, 223 F.3d at 198 (quoting MANUAL FOR COMPLEX LITIG. (THIRD) § 24.121).

Moreover, the Third Circuit has instructed that "[w]hat matters is not the amount or type of discovery class counsel pursued, but whether they had developed enough information about the case to appreciate sufficiently the value of the claims." *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) ("[R]equiring parties to conduct formal discovery before reaching a proposed class settlement would take a valuable bargaining chip — the costs of formal discovery itself — off the table during negotiations. This could deter the early settlement of disputes.").

And "the participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties." *In re ViroPharma Inc. Secs. Litig.*, No. 12-cv-2714, 2016 U.S. Dist. LEXIS 8626, at *24 (E.D. Pa. Jan. 25, 2016) (citation omitted).

Here, the Parties reached the settlement through formal mediation sessions with a highly respected, independent mediator, Bruce Freidman of JAMS. Prior to agreeing to the Settlement

Agreement, Settlement Class Counsel was well-versed in both the applicable law and facts at issue. In addition to conducting initial legal and factual research, Settlement Class Counsel reviewed and analyzed documents and data, including multiple depositions and document productions. (Paronich Decl. ¶ 9.) Settlement Class Counsel then considered the relative strengths and weaknesses of the Parties' claims and contentions and the benefits the settlement offers to the Class. In view of the risks, uncertainties, and costs of continued litigation, Plaintiff and their counsel made the reasoned decision that the terms of the Settlement Agreement are fair, reasonable, and adequate and that the settlement is in the best interest of the Class.

As many courts have endorsed, "[i]nstead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery ... [such that] it may be preferable 'to take the bird in the hand instead of the prospective flock in the bush.'" *In re Currency Conversion Fee Antitrust Litig.*, No. 1409, M 21-95, 2006 U.S. Dist. LEXIS 81440, at *16 (S.D.N.Y. Nov. 8, 2006) (citation omitted). Absent the settlement, it is "entirely possible that the class would have recovered nothing at all, or a range of recovery not far from what this bird-in-the-hand supplies." *In re ATI Techs., Inc. Secs. Litig.*, No. 01-cv-2541, 2003 U.S. Dist. LEXIS 7062, at *7 (E.D. Pa. Apr. 28, 2003).[4]

This factor also weighs in favor of approving the requested fee.

[4] As the Court is aware from experience, the risk of no recovery here—and in complex cases of this type more generally—is real. In numerous hard-fought lawsuits, Plaintiff' attorneys (including the undersigned) have received little or no fee—despite *years* of excellent, professional work—due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or a decision of a judge, jury, or court of appeals. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming district court's ruling overturning jury verdict in favor of plaintiff class); *In re Oracle Corp. Secs. Litig.*, No. 01-cv-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd,* 627 F.3d 376 (9th Cir. 2010) (affirming summary judgment for defendants after eight years of litigation).

5. The Risk of Nonpayment

"Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees." *Saini v. BMW of N. Am., LLC*, No. 12-cv-6105 (CCC), 2015 U.S. Dist. LEXIS 66242, at *41 (D.N.J. May 21, 2015). As many courts have recognized, "[s]uccess is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable." *Martin v. Foster Wheeler Energy Corp.*, No. 06-cv-0878, 2008 U.S. Dist. LEXIS 25712, at *12 (E.D. Pa. Mar. 31, 2008). "[C]ourts have recognized that the risk of non-payment is heightened in a case of this nature where counsel accepts a case on a contingent basis." *Reinhart v. Lucent Techs., Inc.*, 327 F. Supp. 2d 426, 438 (D.N.J. 2004).

Here, Settlement Class Counsel "accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award." *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 281 (3d Cir. 2009) ("Class Counsel invested a substantial amount of time and effort to reach this point and obtain the favorable Settlement."). In prosecuting this case, counsel faced the "risks of establishing liability," as well as certifying and maintaining a certified class through judgment and any appeal. *In re Rite Aid*, 396 F.3d 294, 304 (3d Cir. 2005).

While the Defendants have agreed to settle, it was not without significant defenses. Defendants typically fight strenuously against class certification in TCPA cases and often with success. *Compare Tomeo v. CitiGroup, Inc.*, No. 13 C 4046, 2018 U.S. Dist. LEXIS 166117, at *3 (N.D. Ill. Sept. 27, 2018) (denying class certification in TCPA case after nearly five years of hard-fought discovery and litigation), *Jamison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action), *and Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, 527 (E.D. Wis. 2014) (same), *with Saf-T-Gard Int'l v. Vanguard*

Energy Servs., No. 12-3671, 2012 U.S. Dist. LEXIS 174222 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized) *and Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same). Even if the class were certified, Plaintiff would still have a substantial obstacle regarding Defendants' vicarious liability for the conduct of its vendors.

Again, this factor weighs in favor of approval.

6. The Amount of Time Devoted by Settlement Class Counsel

The efforts put forth by Settlement Class Counsel over more than a year and contentious litigation brought this matter to a resolution. Settlement Class Counsel reviewed and analyzed documents and data and conducted depositions before finalizing the Settlement Agreement.

Because Settlement Class Counsel seeks a fee based on the creation of a "common fund" as opposed to seeking statutorily award attorneys' fees, the Court need not undertake a lodestar calculation and analysis. *See, e.g., Moore v. GMAC Mortg.*, No. 07-4296, 2014 U.S. Dist. LEXIS 181432 (E.D. Pa. Sept. 18, 2014) (holding that a lodestar calculation is not mandatory and should not displace a district court's primary reliance on the percentage-of-recovery method); *Rossini v. PNC Fin. Servs. Grp. Inc.*, No. 2:18-cv-1370, 2020 U.S. Dist. LEXIS 113242, at *59-60 (W.D. Pa. June 26, 2020) (finding that a lodestar calculation was "not required, and not particularly useful" in FCRA case creating a common fund for class members).[5]

[5] Fee awards are of course entirely up to the discretion of this Court. Settlement Class Counsel appreciates this fact; the Court can award a lower fee if that is what it concludes is fair, and even engage in an extensive "lodestar" inquiry if it believes that is the analysis it prefers. Settlement Class Counsel will readily supplement this submission with any additional data or materials the Court may deem necessary.

Indeed, the Third Circuit has recognized that a more important consideration than the amount of time spent by counsel in achieving a settlement may be how that time is utilized and has recommended that counsel that brings about a quick and efficient resolution for a class should be entitled to a premium incentive above the typical percentages. *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. at 255. And while Settlement Class Counsel believes the speed at which this settlement was achieved would merit such a "premium incentive," it seeks only the standard percentage that has typically been awarded in common fund cases of this type.

This factor weighs in favor of the requested fee.

7. The Awards in Similar Cases

The Third Circuit recently affirmed attorneys' fees constituting one-third of a settlement fund in a TCPA case that had been contested by an objector, and where the fund included a reverter provision (not present here). *See Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 883–84 (3d Cir. 2016). Settlement Class Counsel's request for an award of attorneys' fees of 33 1/3% of the common fund here is also well within the range of fee awards in cases across the country. *See, e.g., In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 822 (3rd Cir. 1995) (in common fund cases "fee awards have ranged from nineteen percent to forty-five percent of the settlement fund" (citation omitted)); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. at 150 ("the award of one-third of the fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district"); *In re Gen. Instrument Secs. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (awarding fees of one-third in class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of one-third on TCPA class action); *Gaskill v. Gordon*,

160 F.3d 361, 362–63 (7th Cir. 1998) (affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (finding 40% to be "the customary fee in tort litigation"); *Retsky Family Ltd. P'ship v. Price Waterhouse, LLP*, No. 97-7694, 2001 U.S. Dist. LEXIS 20397, at *11 (N.D. Ill. Dec. 10, 2001) (customary contingent fee is "between 33 1/3% and 40%"); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1292-98 (11th Cir. 1999) (affirming award of 33 1/3% of a $40 million settlement fund); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding fees of 31 1/3% of $1.06 billion settlement fund); *In re: Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317-SEITZ/KLEIN, 2005 U.S. Dist. LEXIS 43082 (S.D. Fla. Apr. 19, 2005) (awarding fees of 33 1/3% of settlement fund of over $30 million); *In re: Managed Care Litig. v. Aetna*, No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% of settlement fund of $100 million); *Gutter v. E.I. Dupont De Nemours & Co.*, No. 95-2152-CIV-GOLD, 2003 U.S. Dist. LEXIS 27238 (S.D. Fla. May 30, 2003) (awarding fees of 32 1/3% of settlement fund of $77.5 million).

Thus, this factor weighs in favor of approval.

8. The Value of Benefits Attributable to the Efforts of Settlement Class Counsel Relative to the Efforts of Other Groups

Here, "[t]he entirety of the value achieved for the Class was attributable to Class counsel; no other groups, such as government agencies conducting investigations, were involved in this case." *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 421 (E.D. Pa. 2010) (approving 33.1% fee in consumer class action).

This factor supports the fee requested.

9. The Percentage Fee that Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement

"[T]he goal of the fee setting process is to 'determine what the lawyer would receive if he were selling his services in the market rather than being paid by Court Order.'" *In re Linerboard Antitrust Litig.*, No. 1261, 2004 U.S. Dist. LEXIS 10532, at *47 (E.D. Pa. June 2, 2004). "'[I]n private contingency fee cases, particularly in tort matters, Plaintiff' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.'" *Bradburn Parent Teacher Store*, 513 F. Supp. 2d at 340 (quoting *In re Ikon*, 194 F.R.D. at 194)). Thus, the one-third sought here is in line with such contingency fees.

This factor too favors the one-third fee requested.

10. Any Innovative Terms of Settlement

"The terms of this settlement are relatively standard. In the absence of any innovative terms, this factor neither weighs in favor nor against the proposed fee request." *Med. Mut. of Ohio v. Smithkline Beecham Corp.*, 291 F.R.D. 93, 105 (E.D. Pa. 2013).

Based on the above analysis, the requested attorneys' fee is fair and should be granted.

C. Settlement Class Counsel's Expenses are Reasonable and Should Be Reimbursed

"Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1224-25 (3d Cir. 1995). Indeed, "'[t]he common-fund doctrine ... allows a person who maintains a lawsuit that results in the creation, preservation, or increase of a fund in which others have a common interest, to be reimbursed from that fund for litigation expenses incurred.'" *In re Linerboard*, 2004 U.S. Dist. LEXIS 10532, at *12 n.6 (quoting *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. at 241).

Collectively, Settlement Class Counsel expended in excess of $14,500 on this case to date, the bulk of which were for expert and mediation expenses. (Paronich Decl. ¶ 16.) The remaining amounts are for filing fees and travel expenses necessary for the litigation. (*Id.*) The Notice informed Settlement Class Members that Settlement Class Counsel would apply for expenses incurred, but with a limit of $20,000, and Class Counsel are seeking less than that limit.

All of the expenses were necessary and appropriate for the prosecution of this Action, and all are of the type that are customarily incurred in litigation and routinely charged to clients billed by the hour. (*Id*.) From the beginning of the case, Settlement Class Counsel were aware that they might not obtain any recovery as discussed above and, at the very least, would not recover anything until the Action was successful in producing a recovery. Settlement Class Counsel also understood that, even if the case was ultimately successful, an award of expenses would not compensate counsel for the lost use of the funds advanced to prosecute this Action. As set forth in the accompanying declaration, the expenses incurred are reasonable in the circumstances and should be approved. *See Tavares v. S-L Distribution Co.*, No. 1:13-CV-1313, 2016 WL 1743268, at *15 (M.D. Pa. May 2, 2016).

D. The Requested Service Payments Should Be Approved

"Incentive awards are not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 334 n.65 (3d Cir. 2011) (citation omitted). "'The purpose of these payments is to compensate named Plaintiff for the services they provided and the risks they incurred during the course of class action litigation,' and to 'reward the public service of contributing to the enforcement of mandatory laws.'" *Id.* (quoting *Bredbenner v. Liberty Travel, Inc.*, No. 09-cv-905, 2011 U.S. Dist. LEXIS 38663, at *63-64 (D.N.J. Apr. 8, 2011)).

Here, Plaintiff took steps to protect the interests of the Settlement Class and spent time pursuing the claims underlying this matter. To start, Plaintiff' initial decision to pursue this case as a class action, and not simply seek individual damages, directly benefited the Settlement Class. What's more, as there are no other class representatives in this matter, without Mr. Abramson, the common fund established here might never have come to be. Accordingly, Settlement Class Counsel requests that the Court approve the requested Service Payment of $10,000 for the Plaintiff.

Settlement Class Counsel's request for a Service Payment to Plaintiff is in line with incentive awards that courts have approved in comparable TCPA matters, and is in fact on the lower end. *See, e.g.*, *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14-CV- 00130-PJK-RHS, 2015 U.S. Dist. LEXIS 137209, at *5 (D.N.M. Sept. 23, 2015) ($20,000 incentive award from a $1 million common fund); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 U.S. Dist. LEXIS 35421, at *17-20 (N.D. Ill. Mar. 23, 2015) (collecting cases and approving a $25,000 service award to TCPA class representative); *Ritchie v. Van Ru Credit Corp.*, No. CV-12-1714-PHX-SMM, 2014 WL 956131, at *5 (D. Ariz. Mar. 12, 2014) ($12,000 incentive award from a $2.3 million common fund); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (approving a $20,000 service award to a TCPA class representative).

The Service Payment requested is "fair and reasonable" and should be approved. *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08CV3610 CLW, 2015 U.S. Dist. LEXIS 64987, at *21-23 (D.N.J. May 18, 2015), *aff'd*, 639 F. App'x 880 (3d Cir. 2016); *accord Meijer, Inc. v. 3M*, No. 04-5871, 2006 U.S. Dist. LEXIS 56744, at *83 (Aug. 15, 2006).

IV. CONCLUSION

Based on the foregoing, Settlement Class Counsel respectfully request that the Court approve the requested attorneys' Fees, Costs, and Expenses Award and the proposed Service Payments to Plaintiff. Plaintiff' proposed final approval order submitted in conjunction with the Motion for Final Approval of Class Action Settlement incorporates Plaintiff's requested attorneys' Fees, Costs, and Expenses Award, and the proposed Service Payments.

The Plaintiff will submit a Proposed Order along with the eventual Motion for Final Approval, which is due at the close of the claim period.

Respectfully submitted,

/s/ Anthony I. Paronich

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Attorneys for Plaintiff and the Proposed Settlement Class

Dated: February 26, 2024

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

s/ Anthony I. Paronich