THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

EUGENE MANNACIO, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

SOVEREIGN LENDING GROUP INCORPORATED,

Defendant.

Case No. 3:22-cv-05498-TMC

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE PAYMENT

NOTED FOR CONSIDERATION: FEBRUARY 27, 2024

I. INTRODUCTION

Eugene Mannacio moves the Court to approve his request for attorney fees, costs, and service award as "reasonable." The Court should grant his request because he achieved what he set out to accomplish with this lawsuit: cash payments for the class under the TCPA. That includes $115 to $230 per class member, assuming 5 or 10% claim benefits from the $500,000 settlement fund. And nothing from that fund will revert to Sovereign, meaning it will pay every cent from the fund. This result exceeds what the Court could find in other TCPA cases across the country, setting this case apart and justifying Mr. Mannacio's request. Indeed, the Court "preliminarily" acknowledged the request as "in line with other cases," and nothing has changed since that finding. *Mannacio v. Sovereign Lending Grp. Inc.*, No. 3:22-cv-05498-TMC, 2023 U.S. Dist. LEXIS

177275, at *10 (W.D. Wash. Oct. 2, 2023). As a result, the Court should award $166,666.67 for Mannacio's attorney fees, $19,228.94 for his expenses, and $10,000 for a service award.

As background, Mr. Mannacio sued Sovereign because he alleges it calls consumers without their consent to telemarket its loans. That was a problem for Sovereign because Mr. Mannacio and those consumers listed their numbers on the National "Do-Not-Call" Registry. By disregarding those designations, Mr. Mannacio alleged Sovereign faced penalties between $500 and $1,500 under the TCPA. Mr. Mannacio's case aimed to recover those penalties for a class with 19,648 members.

But Sovereign defended itself on grounds that threatened to doom Mr. Mannacio's case. To start, it said that Mr. Mannacio had no case because he had "consented" to its calls. While Mr. Mannacio denied the claim, the case would fail if proven. And even if he defeated that defense, Sovereign also raised it as a reason to deny certifying the class. Indeed, if it could show that *other* class members consented to its calls, that would require an "individualized" inquiry that could predominate over class issues. And last, Sovereign said that even if some calls violated the TCPA, it lacked any liability for them because *vendors* had called consumers on its behalf. If true, Mr. Mannacio would have recovered nothing from Sovereign and been left to pursue vendors that lacked the means to pay a settlement or damages.

Even so, Mr. Mannacio overcame these hurdles and leveraged a settlement that secures the relief he sought to achieve. As a result, the Court should award him his fees, costs, and a service award under the "percentage of the recovery" method for four reasons.

First, the "results achieved" under the circumstances justify his request. Comparing Mr. Mannacio's settlement to other TCPA settlements reveals that his stands apart. And at 33% of the

settlement fund, Mr. Mannacio's fee request is within the "reasonable" range set by the Ninth Circuit.

Second, putting that result in context shows that the "risk of litigation" warrants the fee Mr. Mannacio requests. Indeed, Sovereign asserted defenses that could have killed this class action at any stage, putting any recovery in jeopardy. But with counsel's skill, Mr. Mannacio circumvented those obstacles and delivered results *now*, rather than after years of risky litigation.

Third, the "contingent nature" of this case bolsters Mr. Mannacio's request for fees, costs, and an award. For the reasons above, Mr. Mannacio and his attorneys risked recovering nothing, supporting their right to receive a fee on a percentage basis.

And ***fourth***, although not needed under Ninth Circuit precedent, crosschecking Mr. Mannacio's percentage recovery under the lodestar method reveals a multiplier around 1.2. Under caselaw, courts presume that figure like that is "reasonable"—bolstering Mr. Mannacio's request.

II. BACKGROUND

A. Mr. Mannacio's claims & Sovereign's defenses

Sovereign is a California corporation that sells loans to "mortgage and refinancing clients." Doc. 1 ("Compl.") ¶ 14. To solicit customers, Sovereign relies on telemarketing. *Id.* ¶ 15. When telemarketing its loans, Sovereign knows it must comply with the TCPA, including its rules that prohibit calling consumers listed on the National Do-Not-Call Registry and those who demand Sovereign stop calling them. Even so, Mr. Mannacio alleges Sovereign never implemented or enforced its TCPA policies, allowing its agents to call consumers listed on the National Registry and ignoring their demands that the calls stop. *Id.* ¶¶ 23-31. Indeed, consumers complained about the calling misconduct online, claiming that Sovereign had "bombarded" them with calls. *Id.*

Because Sovereign would not listen to consumers' demands that the calls stop, Mr. Mannacio sued the company under the TCPA in California. *Id*. In so doing, he defined his class to include all consumers that Sovereign called despite their DNC designations. *Id*. ¶ 32. Their claims all fell under the same TCPA provision prohibiting calls to consumers listed on the DNC registry. *Id*. ¶¶ 41-45. Under that claim, Mr. Mannacio demanded "a minimum of $500 in damages, and up to $1,500 in damages, for each violation." *Id*. ¶ 44.

In response, Sovereign denied wrongdoing. Doc. 24. It also asserted "affirmative" defenses that threatened to end Mr. Mannacio's class action before it started. *Id*. First, it said consumers had invited the calls through "express written consent." *Id*. ¶ 50. And second, Sovereign disavowed any responsibility for the calls because it said, "entities other than Sovereign" had called the class, claiming it had "no responsibility or liability" even if the calls violated the TCPA. *Id*. ¶ 53. And last, it denied that Mr. Mannacio could ever certify the class even assuming he could prove liability for his claims. *Id*. ¶¶ 32-40. Altogether, these defenses erected hurdles that could topple Mr. Mannacio's case at any stage.

In July 2022, the parties agreed to transfer the case from California to this Court, where another case against Sovereign was pending. Doc. 45. Following that transfer, the parties exchanged discovery over the next year.

B. Discovery & Mediation

In discovery, Mr. Mannacio collected facts needed to support his claims and understand the landscape affecting them. Joint Dec. ¶ 2. That effort revealed how many class members there were: 19,648. *Id*. ¶ 4. It also confirmed Sovereign intended to defend itself on two grounds. *Id*. ¶ 2. First, Sovereign contended that class members had, in fact, given their numbers to its agents "in various ways," thus inviting the calls despite their DNC designations. *Id*. While Mr. Mannacio

denied the claim, if the "trier of fact disagreed with Plaintiff on this legal issue, the Settlement Class would receive nothing." *Id*. Compounding the risk, even if Mr. Mannacio prevailed on the defense for himself, he would still have to show that he could certify the class despite it. *Id*. Second, Sovereign denied that it was the entity that called consumers. If proven, Mr. Mannacio would need to prove his case under a "vicarious liability" theory. Altogether, Mr. Mannacio considered these defenses "fundamental" threats to his case.

While Mr. Mannacio believed he would prevail over these risks, he recognized the uncertainty in litigating them through trial. Thus, Mr. Mannacio was "confident in the strength of his case but also pragmatic about the risks inherent in litigation and various defenses available to the Defendant." *Id*. ¶ 10. For that reason, when the parties discussed mediating the case, Mr. Mannacio invited the chance to avoid that uncertainty. *Id*. ¶ 3.

In May 2023, the parties retained Judge S. James Ortero (Ret.) to facilitate a "day-long, arms-length mediation." *Id*. ¶ 3. Though that effort did not result in settling the case that day, Judge Ortero developed a framework for settlement that the parties refined over three months. *Id*. That effort paid off, as the parties finalized their agreement in August 2023. *Id*. Its terms gave Mr. Mannacio the right to request his fees, costs, and a service award. Doc. 62-1. That contemplated "one-third of the Settlement Fund" for fees, his costs, and a $10,000 award. *Id*. But the parties agreed the Court need not award those amounts to approve the settlement, and any amounts not awarded would go to the class. *Id*. ("The finality or effectiveness of the settlement will not be dependent on the Court awarding Settlement Class Counsel any particular amount on their Fees, Costs, and Expenses Award.")

C. Preliminary Approval

In August 2023, Mr. Mannacio moved the Court to "preliminarily" approve the settlement and certify the class. Doc. 61. In so doing, Mr. Mannacio laid out the reasons justifying settlement, the parties' plan to notify the class, and proposed a schedule to enact the settlement's terms. *Id*. While the Court considered the settlement, it directed the parties to "provide an additional declaration setting forth more detail regarding the costs of administration." *Id*. ¶ 67. The parties did so, and the Court then granted their motion. Doc. 69.

In so doing, the Court held that Mr. Mannacio's request for fees, costs, and a service award was "in line with other cases," noting that they were "subject to approval of the Court after counsel submits a fee petition." *Id*. While it reiterated its concern with the costs of administering the settlement, it did not express the same concern with counsel's fee request. *Id*. With this application, Mr. Mannacio moves the Court to grant that request.

III. LEGAL STANDARD

In the Ninth Circuit, a district court "has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Mr. Mannacio invokes the percentage method—one premised on the principle that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund[.]" *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980). This stems from the notion that class members benefit from the attorneys representing them without charge: "class members who benefit from the efforts of class counsel—are unjustly enriched at the successful litigant's expense." *Stanikzy v. Progressive Direct Ins. Co.,* No. 2:20-cv-118 BJR, 2022 U.S. Dist. LEXIS 98999, at *7 (W.D. Wash. June 2, 2022) (internal citation and quotation omitted). In other

words, courts employ the percentage method because the attorneys have represented the class without charging them and are thus entitled to benefit from the fund just as the class does.

Under Ninth Circuit caselaw, "use of the percentage method in common fund cases appears to be dominant." *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). While courts sometimes invoke the lodestar approach, it applies only when "there is no way to gauge the net value of the settlement or of any percentage thereof." *Hanlon v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998). That is not an issue here.

As a result, the Court should use the percentage method to calculate Mr. Mannacio's attorney fee. And in so doing, it need not use the lodestar method as a "cross check" on the recovery, though Mr. Mannacio calculates it to bolster his request below. *Espinosa v. Ahearn*, 926 F.3d 539, 571 (9th Cir. 2019) ("we do not require courts employing the lodestar method to perform a 'crosscheck' using the percentage method. This would make 'little logical sense[.]'").

IV. ARGUMENT

The Court should approve Mr. Mannacio's request for fees, costs, and a service award. As Mr. Mannacio explains above, he invokes the "percentage" method for calculating his fees, opting to use a lodestar figure to "crosscheck" that percentage below. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar.") In "common fund" cases like this, a fee award between 20-30% under the percentage method is the "usual." *Vizcaino*, 290 F.3d 1043, 1047. But courts elevate that base to 30% in TCPA cases. *Ikuseghan v. MultiCare Health Sys.*, No. C14-5539 BHS, 2016 U.S. Dist. LEXIS 109417, at *5 (W.D. Wash. Aug. 16, 2016) ("the base rate for attorneys' fees in a typical TCPA class action is

30% for the first $10 million recovered") (quoting *In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp. 3d 804 (N.D. Ill. 2015). And courts revise that number up or down when circumstances justify it. *Espinosa*, 926 F.3d 539, 570 ("The district court may then adjust the resulting figure upward or downward to account for various factors").

Under that principle, district courts consider five factors when adjusting the percentage fee. They include the (i) "results achieved;" (ii) the "risk of litigation;" (iii) the "skill required and the quality of work;" (iv) the "contingent nature of the fee;" and (v) "awards made in similar cases." *Ikuseghan*, 2016 U.S. Dist. LEXIS 109417, at *4. And when weighing the factors, the Court must find the award is "reasonable under the circumstances." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994).

The circumstances here justify awarding Mr. Mannacio 33% from the fund for his attorney fees, as he explains under the factors below.

A. The "results achieved" considering "similar cases"

To start, courts will "often award percentage fees of more than 25% in the TCPA settlement context." *Perez v. Rash Curtis & Assocs.*, No. 4:16-cv-03396-YGR, 2020 U.S. Dist. LEXIS 68161, at *50 (N.D. Cal. Apr. 17, 2020); See also *Dakota Med.*, 2017 U.S. Dist. LEXIS 154458, 2017 WL 4180497, at 10 (awarding 33% from fund for attorney fees); *Vandervort*, 8 F. Supp. 3d at 1210 (same); *Hageman*, 2015 U.S. Dist. LEXIS 25595, 2015 WL 9855925, at 4 (same); *West v. Cal. Serv. Bureau, Inc.*, Case No. 4:16-cv-03124-YGR, Dkt. No. 128 (N.D. Cal. Jan. 23, 2019) (same).

Indeed, courts "frequently" boost a party's fees above the benchmark in "smaller cases" like this: "In 'megafund' cases, fees will commonly be under the benchmark, while in smaller cases—particularly where the common fund is under $10 million—awards more frequently exceed the benchmark." *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1209 (C.D. Cal. 2014).

This makes it "common" to award 33% from a fund for attorney fees. *Romero v. Producers Dairy Foods, Inc.*, No. 1:05-cv-0484 DLB, 2007 WL 3492841, *4 (E.D. Cal. Nov. 14, 2007).

Considering the results achieved and circumstances here, the Court should approve Mr. Mannacio's fee request. Assuming a claims rate between 5-10%, class members will receive around $115 to $230. That result exceeds those found in TCPA cases in the Ninth Circuit. *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118, Dkt. No. 96 at 6 (N.D. Cal. Mar. 10, 2014) (claimants received $46.98); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, Dkt. No. 137 (S.D. Cal. Sept. 28, 2012) ($40); *Kramer v. Autobytel, Inc., et al.*, No. 10-cv-2722, Dkt. 148 (N.D. Cal. 2012) ($100); *Estrada v. iYogi, Inc.*, No. 2:13-01989 WBS CKD, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) ($40); *Malta v. Fed. Home Loan Mortg. Corp.*, 10-CV-1290-BEN (S.D. Cal.) ($84.82); *Kramer v. B2Mobile*, 10-CV2722-CW (N.D. Cal.) ($100), *Rose v. Bank of Am. Corp.*, 2014 WL 4273358, at 10 (N.D. Cal., 2014) ($20 to $40); *Desai v. ADT Sec. Servs., Inc.*, Case No. 1:11-cv-01925, Dkt. No. 229 (N.D. Ill. Feb. 14, 2013) ($50 and $100); *Rinky Dinky v. Elec. Merchant Sys.*, No. C13-1347-JCC, Dkt. No. 151 (W.D. Wash. Apr. 19, 2016) ($97 payments); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) ($34.60). In fact, although some TCPA cases dwarf the total relief secured here, they do not deliver the per class member relief achieved.

For these reasons, the Court should find the first ("results achieved") and fifth ("similar cases") factors favor Mr. Mannacio's fee request. Indeed, he delivered relief that outweighs what the Court will find in other TCPA cases despite this being a "smaller case."

B. The "risks of litigation" and counsel's skill

With his counsel's, Mr. Mannacio delivered relief to the class *now* rather than after years of risky litigation. This fact favors granting Mr. Mannacio's motion because "[c]ourts consistently

recognize that the risk of non-payment or reimbursement of expenses is a factor in determining the appropriateness of counsel's fee award." *In re Heritage Bond Litigation*, No. 02-ML-1475 DT (RCX), 2005 WL 1594389 (C.D. Cal. Jun. 10, 2005. Those included case-ending risks like Sovereign's "consent" defense. Indeed, Mr. Mannacio may not have survived that inquiry at trial, exposing the case to facts depending on his circumstance. And even if he survived, Sovereign may have persuaded the Court to deny certification or later decertify if circumstances warranted it. This is not to mention the risk presented by Sovereign's "other entity" defense. Under that theory, Sovereign may have avoided liability by shifting the blame to the contractors that called consumers. Altogether, these risks justified settling the case at the amount it did.

This would not have happened were it not for counsels' experience and skill. As noted in their declarations, Mr. Mannacio's attorneys have litigated and settled dozens of TCPA class actions, including at seven- and eight-figure amounts. *See* Docs. 62 and 63. They brought this experience to bear on this case and delivered success. As a result, the Court should find the "aggregate payment amount to Class Counsel is reasonable considering the significant effort by Class Counsel, the quality of the result achieved for the Class, the skill and persistence of Class Counsel in achieving the result, and the uncertainty of the result[.]" *Daley v. Greystar Mgmt. Servs. LP*, No. 2:18-cv-00381-SMJ, 2022 U.S. Dist. LEXIS 18278, at 10-11 (E.D. Wash. Feb. 1, 2022).

C. The "contingent nature of the fee"

The Ninth Circuit recognizes that plaintiff's counsel is entitled to a premium on their fees given the nature of their work: "in the common fund context, attorneys whose compensation depends on their winning the case, must make up in compensation in the cases they win for the lack of compensation in the cases they lose." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300-01 (9th Cir. 1994); see also *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC,

2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that any recovery ultimately would be obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly the risk of nonpayment or reimbursement of expenses, is important to determining a proper fee award." (internal citation omitted)).

That principle applies here. Class counsel litigated this case over others, "exposing themselves to the risk of total nonpayment." *Stanikzy v. Progressive Direct Ins. Co.*, No. 2:20-cv-118 BJR, 2022 U.S. Dist. LEXIS 98999, at *20-21 (W.D. Wash. June 2, 2022). This is not to mention that counsel assumed the risk that comes with contingency cases "despite the uncertainty of any fee award." *Birch v. Office Depot Inc.*, No. 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747, at *7 (S.D. Cal. Sep. 28, 2007). Thus, this factor favors approving plaintiff's fees.

D. Crosschecking the "percentage" recovery against the lodestar method confirms the fee is "reasonable"

Although not needed under Ninth Circuit caselaw, crosschecking Mr. Mannacio's percentage recovery under the lodestar method affirms that the recovery is "reasonable." *Ferrando v. Zynga Inc.*, No. 22-cv-214-RSL, 2022 U.S. Dist. LEXIS 229580, at *4 (W.D. Wash. Dec. 1, 2022) (in a percentage fee case, the "Court is not required to conduct a lodestar cross-check." (citing *Farrell v. Bank of Am. Corp.*, N.A., 827 F. App'x 628, 630 (9th Cir. 2020).

A lodestar analysis proceeds in two steps. First, the Court the court calculates the lodestar figure by multiplying the number of hours "reasonably" expended by a "reasonable" rate. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Second, the Court then adjusts that result considering four factors, including the benefit realized for the class, the "risk of nonpayment," the complexity and novelty underlying the case, and awards in "similar" cases. *See In re Bluetooth*, 654 F.3d at 942.

When calculating the lodestar, the Court may consider *all* the time that "contributes to the success of other claims," including that for plaintiff and claims that the Court dismissed. *Perrin v. Goodrich*, No. ED CV 08-00595 LLP (SSx), 2012 U.S. Dist. LEXIS 67933, at *9 (C.D. Cal. May 14, 2012). That principle relates to this case because Mr. Manncio's attorneys also represented the plaintiff in another case pending in this District, *DeVivo v. Sovereign Lending Group Incorporated*, Case No. 3:22-cv-05254. Plaintiff's counsel only dismissed that case once this matter was transferred from California to this District, and only did so for efficiency. Joint Dec. ¶ 16. Even so, Mr. Mannacio advanced his cause using the same efforts expended in *DeVivo*. As a result, the Court should consider that time as contributing to the "success of other claims," including Mr. Mannacio's.

The hours and rates Mr. Mannacio's attorneys charged to this case are "reasonable." Between co-counsel, Turke & Strauss LLP and Paronich Law billed 254.5 hours, splitting that time between partners, associates, and a paralegal. Joint Dec. ¶ 14. For partners, Attorney Paronich recorded 124.4 hours at $600/hour, Attorney Borrelli billed 5.4 hours at $500-700 per hour (as her billing rates changed), and Attorney Strauss 24.5 hours at $600-700 per hour (as his billing rates changed. *Id*. For associates, Attorney Phillips recorded 61.3 hours at rates between $330 and 475 (as his billing rates changed), Attorney Begolli recorded 23.4 at $425, and Attorney Resch recorded 2.6 hours at $475. *Id*. One paralegal, who helped investigate the case's facts and file documents, recorded 12.9 hours at $150 per hour. *Id*. In total, counsel's lodestar is $135,145.00. That results in a 1.2 multiplier against their fee request. *Id*. ¶ 15.

District courts look to rates prevailing in the market to decide whether they are "reasonable." Class counsel here requests that the Court approve rates around $600 for partners, $330-475 for associates, around $150 for paralegals. Courts in this District have approved rates

exceeding these. *See Rinky Dink v. World Business Lenders, LLC*, No. 2:14-cv-0268-JCC (W.D. Wash. May 31, 2016), ECF No. 92 at 7–8 (approving hourly rates for partners of $500-650, associates $250-400, and paralegals $250 in TCPA class action settlement); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (approving partner rates ranging from $405 to $800 and associate rates from $305 to $380). Considering the experience counsel has and the examples in this District, the Court should find counsels rates are "reasonable." *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007) (affidavits by plaintiffs' counsel and fee awards in other cases suffice to prove justify rates).

Next, the time counsel invested is "reasonable" considering the result they achieved at the stage they did. To advance this matter, counsel and their staff devoted 254.5 hours to investigating the facts, drafting complaints, responding to motions, preparing discovery, exchanging discovery, analyzing responses, mediating, and finalizing the settlement for the Court. Joint Dec. ¶ 17. This total excludes "administrative" time or time that duplicates other work. *Id*. This is not to mention the time counsel will spend to enact the settlement and finalize it. *Id*.

Multiplying the rates by the hours spent on the case yields a 1.2 multiplier. Multipliers "ranging from one to four are frequently awarded." *Vizcaino*, 290 F.3d at 1051 n.6. In *Vizcaino*, the Ninth Circuit analyzed lodestars across class actions and found that in 83% had lodestars between 1.0 and 4.0. *Id*. Under that finding, courts in the Ninth Circuit have endorsed attorneys' fee awards with multipliers exceeding 3.5. See *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving multiplier of 3.6); *Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (approving a 6.85 multiplier and finding that it fell "well within the range of multipliers that courts have allowed"); *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (approving a 5.2 multiplier and finding "there is ample authority for such

awards resulting in multipliers in this range or higher"). At 1.2, the multiplier here does not test these upper limits, and there is no reason not to approve it.

As a result, the lodestar crosscheck bolster's Mr. Mannacio's fee request. And for that reason, the Court should find the percentage award is "reasonable" under either analysis.

E. The Court should approve Mr. Mannacio's request for an award and costs

Mr. Mannacio earned the $10,000 service award he requests for two reasons. First, the Ninth Circuit recognizes that class representatives "are eligible for reasonable incentive payments." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Those payments incent representatives to serve and "are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action[.]" *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). As counsel asserts, Mr. Mannacio fulfilled that purpose. He "devoted significant time assisting counsel in this case over the past several years, including assisting with development of the case, participating in discovery and the mediation." Doc. 62 ¶ 6. This is not to mention how Mr. Mannacio helped this case through discovery, supplying the facts needed to rebut Sovereign's defenses and make their case at mediation. Joint Dec. ¶ 2. Indeed, these facts were "critical to the development of [the] case" and when mediating it.

Second, Mr. Mannacio's request undershoots what representatives receive in other TCPA cases. *See Markos v. Wells Fargo Bank*, N.A., No. 1:15-cv-01156-LMM, 2017 U.S. Dist. LEXIS 17546 (N.D. Ga. Jan. 30, 2017) ($20,000); *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14-CV-00130-PJK, 2015 U.S. Dist. LEXIS 137209, 2015 WL 5704016, at *2 (D.N.M. Sept. 23, 2015) ($20,000); *Prater v. Medicredit, Inc.*, 2015 U.S. Dist. LEXIS 167215, 2015 WL 8331602, at *3 ($20,000); *Hageman v. AT&T Mobility LLC*, 2015 U.S. Dist. LEXIS 25595, 2015 WL 9855925, at *4

($20,000); *Craftwood Lumber Co. v. Interline Brands, Inc.,* No. 11-CV-4462, 2015 U.S. Dist. LEXIS 35421, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) ($25,000). As a result, the Court should approve Mr. Mannacio's request here.

Last, the Court should also approve $19,228.94 for Mr. Mannacio's expenses. Dec. ¶ 8. At the Court's request, Mr. Mannacio will also explain why the Court should also approve the costs to administer the settlement at the "final fairness" hearing.

V. CONCLUSION

For the reasons above, the Court should approve Mr. Mannacio's request for fees ($166,666.67), costs ($19, 228.94), and a service award ($10,000).

RESPECTFULLY SUBMITTED AND DATED this 11th day of December, 2023.

TURKE & STRAUSS LLP

By: /s/ *Samuel J. Strauss*

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CERTIFICATE OF SERVICE

I, Samuel J. Strauss, hereby certify that on December 11, 2023, a true and correct copy of the foregoing **Plaintiff's Motion for Attorneys' Fees, Costs, and Service Payment** was served via CM/ECF filing on all parties and counsel of record.

DATED this 11th day of December, 2023.

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