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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LILLIAN FRANKLIN, individually and on behalf of all other similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 14-cv-2349-MMA (BGS)

CLASS ACTION

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

HON. MICHAEL M. ANELLO

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I. INTRODUCTION

Class Counsel respectfully submit this supplemental briefing and accompanying attorney declarations in accordance with the Court's Order Re: Supplemental Briefing on Issue of Attorneys' Fees (Dkt. No. 44).

In its Tentative Ruling (Dkt. No. 40), the Court stated that the proposed Settlement "is appropriate for final approval pursuant to Federal Rule of Civil Procedure 23(e)," "appears to be the product of serious, informed, arms-length negotiations," and "was entered into in good faith." Therefore, the sole remaining question is: What is the appropriate award of attorneys' fees and costs to Class counsel who obtained for the Class a $13,859,103.80 non-reversionary cash fund, against which 107,134 Class members made claims for *pro rata* recovery of at least $71.16 each? Class counsel respectfully submit that the appropriate attorneys' fee award would be 25 percent of the non-reversionary cash Settlement Fund that Class counsel obtained through their efforts, costs included. This amount is consistent with the Ninth Circuit's 25 percent benchmark (which is usually awarded plus costs), less than the attorneys' fees awarded in the majority of similar class action TCPA settlements in this Circuit, and is supported by a lodestar crosscheck of 3.6. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 & Appendix (9th Cir. 2002) (affirming 28% fee award where multiplier equaled 3.65; and citing cases approving multipliers in common fund cases averaging 3.32 and going as high as 19.6)

In the alternative, Class counsel respectfully submit that 20% of the Settlement Fund—a figure that amounts to $692,955.95 less than initially requested and noticed to the Class—would be an appropriate attorneys' fee award. This amount is much less than the Ninth Circuit's benchmark. And, if the Court decides to perform a lodestar cross-check, the resulting multiplier is approximately 2.8, a multiplier this Court found appropriate in a recent TCPA class action involving less relief than this case, *Couser v. Comenity Bank*, Case No. 3:12-cv-02484-MMA-

BGS (S.D. Cal.).

Notably, this alternative attorneys' fee request, if approved, would lead to a per-claimant payment of $77.64, after deducting costs and expenses—a figure 5.6 times greater than the result of the *Couser* settlement. Class counsel submit that a result at least 5.6 times better than *Couser* merits a higher percentage of attorneys' fees, and at least the same lodestar multiplier, for the counsel who obtained that result.

During the final approval hearing held on August 3, 2015, the Court expressed concern regarding the requested fees of 25% of the common fund in light of two factors: 1) "whether an award of attorneys' fees for work performed by attorneys other than class counsel is possible" and 2) "whether an award of attorneys' fees for work performed in other prior litigation is permissible"(*see* Transcript, 6:12-21). As set forth below, the additional information the Court requested fully supports Class counsel's request.

First, the Settlement obtained for the Class is the direct result of not just this case, but the entire litigation campaign Plaintiff's counsel waged against Wells Fargo for more than three years in five separate TCPA cases. That fact is undisputed: at the final approval hearing, Wells Fargo's counsel candidly admitted that "from Wells Fargo's perspective, this resolution is part and parcel of a series of lawsuits" and is therefore "a culmination of [that] series of lawsuits." Supp. Decl. of Douglas J. Campion, Exh. B, Hearing Transcript, ("Transcript") at 21:15-23. Significant, then, is that courts frequently award attorneys' fees based on all such work that benefits the class. *See, e.g.*, *Loretz v. Regal Stone, Ltd.*, 756 F. Supp. 2d 1203, 1214 (N.D. Cal. 2010) (holding that time from separate, previous cases against the same defendant may count toward class action lodestar where "the work performed advanced [the pending] class action.").

Second, the Court may take into account the work of Plaintiff's counsel in those other cases, as well as the work of Plaintiff's counsel in this case who are not

officially appointed by the Court as "class counsel." In complex and MDL litigation, many law firms perform work on behalf of the class before formal appointment of lead and class counsel. Even after such appointment, the lead firms delegate work as appropriate to other firms not formally appointed. And, once a case settles, it is routine to resolve and release the claims of earlier and even ongoing other cases as part of global resolution. This case is no different. Counsel in the *Masters*, *Martin*, *Heinrichs*, and *Shehan* cases performed efficient, non-duplicative work that was critical to the ultimate outcome of this case. Indeed, it was substantive victories in those earlier cases in obtaining key discovery and defeating Wells Fargo's motion to compel arbitration, motion to dismiss, and motions to stay (*see* Dkt. No. 20-1, at 3-6) that gave Plaintiff and the Class the leverage they needed to obtain this Settlement. Pursuant to the private ordering process recommended by the Manual for Complex Litigation, Fourth ("MCL 4th"), § 21.272, counsel in those cases decided upon proposed class counsel to seek approval of and administer the Settlement program.

Of note, Class counsel managed that process in an efficient manner, including delegating oral argument at the final approval hearing to non-designated Class counsel, as well as other important tasks. As in other class actions, the Court may properly award attorneys' fees based on *all* of the work that Plaintiff's counsel performed across the entire Wells Fargo TCPA litigation that produced the benefit for the Class.

For these reasons, Plaintiffs respectfully request that the Court grant their motion for attorneys' fees and costs in the amount of $3,464,775.95, or, in the alternative, $2,771,820.

Finally, the Court indicated a concern that comprehensive billing records had not been provided to the Court (*id.* at 6: 22-25; and 7:1-3) and the Court also noted its view that the claims rate was low (*id.* at 12:1-13:5). In response to the Court's comments and request, Plaintiff's counsel submit their detailed billing records and

claims information from other large TCPA class settlements in the Ninth Circuit.

II. FACTUAL BACKGROUND

A. Plaintiff's Counsel Prosecuted Successive Lawsuits on Behalf of the Class.

Plaintiff's counsel's work across five cases over three years constituted a single litigation effort that resulted in the Settlement. This strategy did not result in duplicative work or inefficiencies. Rather, each prior case ended for reasons unrelated to the merits of this action and each case sought remedies for alleged TCPA violations by Wells Fargo.

1. *Masters*

Plaintiff's counsel Greenwald Davidson Radbil PLLC ("Greenwald Davidson") filed *Masters v. Wells Fargo Bank*, N.A., Case No.: 1:12-cv-00376-SS (W.D. Tex.), on March 29, 2012. *Id.*, Dkt. No. 1; *see also* Decl. of James L. Davidson (Dkt. No. 20-10), ¶36-37. There, as here, the law firm of Severson & Werson served as defense counsel. Following significant discovery, Wells Fargo made an offer of judgment under Rule 68 of the Federal Rules of Civil Procedure for Plaintiff Masters' maximum possible individual recovery under the TCPA. *Masters*, Dkt. No. 42 at 2. Although Plaintiff Masters rejected that offer, the court ruled that Wells Fargo's offer mooted Plaintiff Masters' class claims. *Id.* at 11. The court therefore granted Wells Fargo's motion to dismiss Plaintiff Masters' individual and class claims, without prejudice to absent class members' claims. *Id.*[1]

2. *Martin*

On November 28, 2012, Plaintiff's counsel Lieff, Cabraser, Heimann & Bernstein, LLP ("Lieff Cabraser"), and Meyer Wilson Co. LPA ("Meyer Wilson")

[1] In an unrelated matter, the Fifth Circuit very recently rejected the district court's reasoning and ultimate conclusion. *See Hooks v. Landmark Indus., Inc.*, No. 14-20496, 2015 WL 4760253, at *3 (5th Cir. Aug. 12, 2015) ("We conclude that the reasoning of the Ninth and Eleventh Circuits is more persuasive and therefore hold that an unaccepted offer of judgment to a named plaintiff in a class action 'is a legal nullity, with no operative effect.'").

renewed the litigation against Wells Fargo in *Martin v. Wells Fargo Bank, N.A.*, Case No. 3:12-cv-06030-SI (N.D. Cal.). *See* Decl. of Daniel M. Hutchinson (Dkt. No. 20-7), ¶21-35 (describing *Martin* counsel's work on this matter); Decl. of Matthew R. Wilson, Dkt. No. 20-13, ¶8 (same). Severson & Werson again served as defense counsel. Wells Fargo moved to compel individual arbitration, a motion that, if successful, would likely have been the death knell of litigation over Wells Fargo's calls at issue here. *Cf. Cayanan v. Citi Holdings, Inc.*, 928 F. Supp. 2d 1182, 1208 (S.D. Cal. 2013) (compelling arbitration of TCPA claim). *Martin*'s counsel defeated that motion. *Martin v. Wells Fargo Bank, N.A.*, 2013 WL 6236762 (N.D. Cal. Dec. 2, 2013).

Wells Fargo produced call records confirming that it made automated calls to Plaintiff Martin's *home* phone. *See Martin*, Dkt. No. 92 at 1. During the same period that Wells Fargo placed calls to her home phone, Plaintiff Martin received automated calls to her *cell* phone from a caller *purporting* to be Wells Fargo. *Id.* Following the arbitration ruling, Plaintiff Martin's counsel received subpoenaed call records from AT&T. Hutchinson Decl., Dkt. No. 20-7, ¶34. *Martin* counsel determined that several calls came from the same area code from which Wells Fargo placed automated collections calls to her home number. *Id.* During further investigation and analysis of discovery produced by Wells Fargo, Plaintiff Martin concluded that these calls were *not* attributable to Wells Fargo, but rather to a scammer who, according to other consumers' online complaints, purported to be Wells Fargo. *Id.* Thus, while Plaintiff Martin had a good-faith basis for her claims against Wells Fargo since she received automated calls to her cell phone from an entity purporting to be Wells Fargo (in addition to receiving automated calls to her landline telephone from Wells Fargo itself), based on these newly produced documents, she voluntarily dismissed her claims against Wells Fargo without prejudice to absent class members' claims. *Id.*; *see also Martin*, Dkt. No. 94.

Plaintiff's counsel were also in contact with other Class Members who had

phone records showing that they received autodialed and/or prerecorded calls to their cell phones from Wells Fargo. Hutchinson Decl., Dkt. No. 20-7, ¶35. They informed Wells Fargo of their plan to substitute one of these class members for Plaintiff Martin, and asked whether Wells Fargo would stipulate to allowing an amended complaint substituting a new named plaintiff. *Id.* However, because Wells Fargo's view was that Plaintiff Martin lacked standing, Wells Fargo declined to so stipulate, necessitating the filing of another action. *Id.*

3. *Heinrichs*

On November 22, 2013, *Martin* counsel Lieff Cabraser and Meyer Wilson filed another case to pursue the same claims against Wells Fargo, *Heinrichs v. Wells Fargo Bank N.A.*, Case No.: 3:13-cv-05434 (N.D. Cal.). *See* Hutchinson Decl., Dkt. No. 20-7, ¶¶36-46. Severson & Werson were again defense counsel. The *Heinrichs* class definition was identical to the class definition in *Martin*. *Id.*, ¶37. Plaintiffs' counsel moved to relate *Heinrichs* to *Martin*, which Wells Fargo opposed. *Id.*, ¶38. The *Martin* court issued an Order denying Plaintiff's motion to relate *Heinrichs* to the *Martin* action. *Id.*, ¶39; *Martin*, Dkt. No. 79.

Wells Fargo filed a motion to dismiss Plaintiff Heinrich's complaint, which Plaintiff *Heinrichs* opposed, and, following a court hearing, the court denied. Hutchinson Decl., Dkt. No. 20-7, ¶¶42-42; *Heinrichs*, Dkt. Nos. 22, 27, 41.

Wells Fargo moved to stay the *Heinrichs* action under the primary jurisdiction doctrine pending the resolution of two petitions before the Federal Communications Commission ("FCC"). Hutchinson Decl., Dkt. No. 20-7, ¶43. Following a series of briefing, supplemental briefing, and supporting evidence regarding Wells Fargo's motion, and a lengthy hearing, the court granted the motion and ordered a six-month stay. *Id.*, ¶¶43-44; *Heinrichs*, Dkt. Nos. 33, 34, 35, 45, 48, 49, 50, 51, 54, 55, & 56. While his case was stayed, Plaintiff *Heinrichs* decided that he no longer wanted to be a class plaintiff. Hutchinson Decl., Dkt. No. 20-7, ¶46. He subsequently stipulated to the dismissal of the *Heinrichs* action

without prejudice to absent class members' claims. *Id.* Therefore, like Plaintiffs Masters and Martin, Heinrichs was precluded from pursuing claims against Wells Fargo for reasons completely unrelated to the merits of the underlying class TCPA claims. Thus, each case underscores the risk that plaintiffs' counsel in TCPA class actions can face the end of a lawsuit for any reason, or no reason whatsoever.

4. *Shehan*

The following month, on May 14, 2014, Plaintiff's counsel Greenwald Davidson filed *Shehan v. Wells Fargo Bank, N.A.*, Case No. 1:14-cv-00900-JHE (N.D. Ala.). Severson & Werson were yet again defense counsel. Plaintiff Shehan litigated the case actively through September 2014, including defeating Wells Fargo's motion to stay due to the primary jurisdiction doctrine—an issue that halted many similar TCPA class actions indefinitely over the course of the past few years. *See* Davidson Decl., Dkt. No. 20-10, ¶¶25-27.

5. *Franklin*

On October 3, 2014, Class counsel Law Offices of Douglas J. Campion, APC, Kazerouni Law Group, APC, and Hyde & Swigart filed *Franklin v. Wells Fargo Bank N.A.*, Case No.: 14-cv-2349 (S.D. Cal.). *See* Decl. of Douglas J. Campion (Dkt. No. 20-9) ¶¶18-28 (describing *Franklin* counsel's work on this matter). Severson & Werson are defense counsel. Based on their experience in the prior cases, the parties decided that additional discovery and motion practice was unnecessary, but exchanged substantial informal discovery relating to the number of Class members and related information, and then proceeded with mediation before the Honorable Irma E. Gonzalez (Ret.) of JAMS with a goal of global resolution of these claims. *See id.*, ¶¶19, 24.

Class Counsel in *Franklin* reached out to the other counsel from *Masters*, *Martin*, *Heinrichs*, and *Shehan* to benefit from their experience in those cases—and build upon the foundation created by counsel's hard-fought efforts in each case.[2]

[2] *Heinrichs*' counsel were in the process of locating a substitute plaintiff for

While every case provided either key evidence or important legal victories that strengthened the class TCPA claims, the value of those cases went beyond the specific benefits of each case.

As summarized by Plaintiff's counsel at the final approval hearing:

> [T]he most important thing about those previous cases was that they demonstrated to Wells Fargo that [Plaintiff's counsel] weren't going away[.] We weren't going to quit and they were going to have to continue to face these cases until they agreed upon a settlement that we felt was fair for all class members. That's really what culminated in a settlement that is before Your Honor today.

Transcript, at 10:6-13.

The law firms of Lieff Cabraser, Meyer Wilson, and Greenwald Davidson subsequently joined this case as counsel for Plaintiff Franklin, although they did not seek appointment as class counsel. Rather, consistent with the MCL 4th, counsel engaged in a private ordering process to decide upon proposed class counsel to seek approval of and administer the Settlement program. *See* MCL 4th, §21.272. This private ordering process is the preferred method for selecting lead counsel. *Id.* Thus, at every stage of these lawsuits, Plaintiffs' counsel assiduously avoided duplicative or overlapping work.

B. Plaintiffs' Counsel's Work Benefited the Class.

Each case contributed directly to the Class Settlement. *Masters* counsel obtained and analyzed extensive written discovery regarding Wells Fargo's methodology for making collection calls and using prerecorded voice messages. Davidson Decl., Dkt. No. 20-10, ¶36. The *Masters* discovery greatly assisted the understanding of Wells Fargo's calling systems and how Wells Fargo purports to

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Plaintiff Heinrichs when *Franklin* was filed. Supp. Hutchinson Decl., ¶6. *Heinrichs* counsel decided not to enlist a substitute plaintiff because it would have been inefficient to initiate parallel litigation while *Franklin* was on file. *Id.* Similarly, *Shehan* counsel decided to join *Franklin* and dismiss *Shehan*.

obtain prior express consent before dialing cellular telephones. *Id.*, ¶36. Obtaining this discovery was a key part of the litigation. *Masters* counsel devoted significant time to obtaining and analyzing this discovery. Supp. Davidson Decl., Exhs. B & C.

Martin counsel obtained a key victory in defeating Wells Fargo's motion to compel arbitration. *Martin* served discovery requests and deposition notices related to Wells Fargo's motion. Hutchinson Decl., Dkt. No. 20-7, ¶¶25-26. As a result of their successful motion to compel, *Martin* counsel conducted class-, merits-, and arbitration-related discovery, including obtaining and reviewing 2,577 pages of documents, taking the depositions of Wells Fargo representatives, and reviewing a series of written discovery responses. *Id.*, ¶¶27-30. *Martin* counsel successfully marshaled this evidence to oppose Wells Fargo's arbitration efforts. *Id.*, ¶31. As in *Masters*, *Martin* counsel's efforts were narrowly focused on work that benefited the Class. *Martin* counsel devoted a majority of their time to discovery, motion practice, and oral argument on these issues. Supp. Hutchinson Decl., ¶4; Supp. Wilson Decl., ¶4.

Heinrichs and *Shehan* counsel obtained equally important legal victories that benefited the Class here. *Heinrichs* counsel successfully opposed Wells Fargo's motion to dismiss, which argued that *Heinrichs* and class members did not meet the statutory definition of a "called party" under the TCPA. Hutchinson Decl., Dkt. No. 20-7, ¶¶41-42. *Heinrichs* and *Shehan* counsel successfully opposed Wells Fargo's motion to stay under the primary jurisdiction doctrine. *Id.*, ¶45; *Shehan v. Wells Fargo Bank, N.A.*, 56 F. Supp. 3d 1206 (N.D. Ala. 2014). *Heinrichs* and *Shehan* counsel devoted the majority of their time to these issues. Supp. Hutchinson Decl., ¶5; Supp. Wilson Decl., ¶4; Supp. Davidson Decl., Exh. A.

Finally, *Franklin* Class counsel devoted 100% of their time to negotiating, obtaining, and administering the Settlement. In addition, since they submitted the final approval papers, Class counsel have continued to devote many hours – and anticipate devoting many more – to answering questions from Class members and

ensuring that all claimants receive the amounts due to them under the Settlement.

Furthermore, Wells Fargo's counsel at Severson & Werson personally witnessed Plaintiffs' counsel's efforts over five successive lawsuits spanning several years. At the final approval hearing, Wells Fargo's counsel acknowledged that all Plaintiff's counsel's work in each of the prior cases contributed to the Settlement:

> But I will say at this point, Your Honor, certainly from Wells Fargo's perspective, this resolution is part and parcel of a series of lawsuits particularly with regard to the credit card portfolio. . . . And we viewed, the client viewed this lawsuit as a culmination of a series of lawsuits going since 2010 on the credit card portfolio. . . .

Transcript, at 21:15-23. Thus, Wells Fargo's counsel concede that all of the TCPA cases contributed to this Settlement. It therefore beyond question that the efforts in *Masters*, *Martin*, *Heinrichs*, *Shehan*, and *Franklin* on behalf of the same class members contributed meaningfully to the Settlement here. As more fully described herein, Plaintiff's counsel merely seek payment for work that benefited the class.

C. The Claims Rate Here is Within the Average Rate for a Large TCPA Case.

At the final approval hearing, the Court noted that it had "checked the box for low" with respect to the 2.6% claims rate in this case. Transcript, 12:1-13:5. One very understandable reason the Court had this view is that Professor William Rubenstein, the Sidley Austin Professor of Law at Harvard, has noted that the average claims rate in consumer class actions consisting of 300,000 persons or more is 4.8%, which is obviously higher than the claims rate here. *Id.* at 12:21-25.

However, relying upon Professor Rubenstein's statistics would be misleading in this particular case because the claims rate in this TCPA case is right in line with other claims rates in other TCPA cases. The reason is that TCPA cases are unusual. In most consumer class actions, class members may not know that they have a legal claim, but most know at least that they have suffered an out of pocket loss. Here, in

contrast, Class Members have not suffered injuries to person or property, nor any significant out-of-pocket losses or other economic harm. With TCPA cases, although many people doubtless recall receiving annoying phone calls, they have no idea whatsoever that such calls might constitute a compensable invasion of their privacy, particularly when the calls are from an entity with whom they have done business and when the calls are for debt collection.[3] Therefore, it is unsurprising that fewer persons would make claims when they receive a class notice that may seem too good to be true. Plaintiff's counsel here can attest that they have each received many inquiries from incredulous class members, in this and other TCPA cases, in which class members are suspicious about the genuineness of the case and of the relief offered to them. Supp. Swigart Decl., ¶5; Supp. Kazerounian Decl., ¶5.

And the data agree: compared to the eight largest all-cash TCPA class settlements within the Ninth Circuit in which there were more than one million class members, the claims rate in this case is favorable. Only in *Couser v. Comenity Bank*, No. 3:12-cv-02484 (S.D. Cal. May 27, 2015), in which the claims rate was 7.7%, and over which this Court presided, was the claims rate more than slightly higher than in this case. *See Rose v. Bank of America Corp.*, No. 5:11-CV-02390, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) (claims rate of 2.79%); *Steinfeld v. Discover Financial Servs.*, No. C 12-01118, 2014 WL 1309352 (N.D. Cal. Mar. 31, 2014) (claims rate of 1.2%); *Arthur v. Sallie Mae, Inc.*, No. 10-cv-00198, 2012 WL 4075238 (W.D. Wash. Sept. 17, 2012) (claims rate of 2.2%); *Malta v. Federal Home Loan Mortgage Corp.*, No. 10-CV-1290 (S.D. Cal.) (claims rate of 2.78%); *Kazemi v. Payless ShoeSource, Inc.*, No. C 09-5142 (N.D. Cal.) (claims rate of 1.2%); *Kwan v. Clearwire Corp.*, No. C09-1392 (W.D. Wash.) (claims rate of 0.65%); *Adams v. AllianceOne Receivables Management, Inc.*, No.

[3] In a case involving, say, a defective consumer product, when class members receive a class notice informing them that they are entitled to compensation, it is likely not a complete surprise to them. As a result, class members are more likely to regard the class notice as genuine, and to investigate whether they might wish to make a claim.

08-CV-248 (S.D. Cal.) (claims rate of 1.1%).

Moreover, because this is a non-reversionary, all-cash settlement, the claims rate does not affect the total amount Wells Fargo must pay. Therefore, the Class recovery and deterrent effect of this settlement remain the same regardless of the claims rate.

III. AN AWARD OF ATTORNEYS' FEES FOR WORK PERFORMED BY ATTORNEYS' OTHER THAN CLASS COUNSEL IS PERMISSIBLE

The Court asked counsel to address whether attorney's fees should be awarded for work performed by attorneys other than Class counsel. The Supreme Court has long held that, under the common benefit doctrine, courts have the authority to award attorneys' fees for all work that benefits plaintiffs, regardless of whether the attorneys performing the work are formally appointed as class counsel. *See, e.g.*, *Trustees v. Greenough*, 105 U .S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). California recognizes the same principles under the catalyst theory. *See, e.g., Trew v. Volvo Cars of N. Am., LLC*, No. Civ. S-05-1379, 2007 WL 2239210, at *4 (E.D. Cal. July 31, 2007) (holding that plaintiffs are entitled to attorneys' fees pursuant to Cal. Code Civ. P. § 1021.5 under a catalyst theory if "the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.").

In practice, awards of attorneys' fees for common benefit work is a common occurrence in class action cases. Rule 23 class actions require designation of class counsel. Not all of the present counsel can or should be designated as class counsel. In fact, most often in class action cases where many firms are involved, only a few firms are designated as class counsel. Supp. Kazerounian Decl., ¶9.

As the Manual for Complex Litigation notes, "[i]n some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be

encouraged." MCL 4th, § 10.22. In multidistrict litigation, courts frequently compensate attorneys for work that provides a common benefit of all class members in complex litigation under the equitable principles of the common fund/common benefit doctrine. *See, e.g., In re: Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 2006 WL 471782 (N.D. Cal. Feb. 27, 2006). Thus, "work performed by Non-Class Counsel prior to consolidation is compensable if the work conferred benefits on the multidistrict class." *In re Volkswagen & Audi Warranty Extension Litig.*, No. CIV.A. 07-MD-01790, 2015 WL 848312, at *24 (D. Mass. Feb. 10, 2015); *see also Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 87 (2d Cir. 2010) (holding that "non-lead counsel are entitled to reasonable compensation" when they "conduct significant factual investigations, perform legal research on novel or innovative theories, and make strategic legal decisions affecting the content of the complaints and the ultimate course of the litigation"); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 195 (3d Cir. 2005) ("If an attorney creates a substantial benefit for the class . . . then he or she will be entitled to compensation whether or not chosen as lead counsel.").

In MDL cases, the practice of accounting for common benefit work done by non-class counsel firms is so common that courts often use the term "class counsel" to mean all firms that perform work in a case. For example, Judge Selna recently described the accumulated $69,706,936 lodestar of "the 31 Plaintiffs' firms that worked on the litigation" as time that "class counsel have invested." *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 123298 (C.D. Cal. July 24, 2013). In that case, the court considered the time from all 31 firms in determining the contingent nature of the lawsuit and the performing a lodestar crosscheck that yielded a multiplier of 2.87 for the $200 million fee award. *Id.*[4]

[4] This same principle even extends to situations where, unlike here, counsel in prior cases have already been paid for their efforts. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. 7-md-1827-SI, Dkt. 7504 (N.D. Cal. Jan. 14, 2013)

This common practice also applies in TCPA cases. For example, *In re Capital One Tel. Consumer Prot. Act Litig.*, Master Docket No. 12 C 10064, MDL 2416, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015), various plaintiffs' counsel expended time in four separate lawsuits prior to MDL consolidation. After formal appointment of class counsel, class counsel delegated additional work to other plaintiffs' firms. While the court performed a pure percentage-of-the-fund analysis, it nonetheless required all plaintiffs' counsel to submit their lodestar for that case and "previous TCPA class cases." *Id.* at *18.

Importantly, this practice is not limited to MDL cases. In *Mills v. HSBC Bank Nevada, N.A.*, Case No. 12-cv-04010-JST (N.D. Cal.), plaintiff's counsel litigated class TCPA claims for two years. Other plaintiffs' counsel filed *Wilkins v. HSBC Bank Nevada, N.A. et al.*, Case No.: 14-cv-00190 (N.D. Ill.). *Mills* counsel engaged in a private ordering process and supported a settlement in the latter-filed *Wilkins* action. The *Wilkins* court requested and considered lodestar from all counsel in both the *Wilkins* action and prior *Mills* action and determined that the fee award in this case should be calculated as a percentage of the money recovered for the class. *Wilkins v. HSBC Bank Nev., N.A.*, Case No. 1:14-cv-00190, 2015 WL 890566, at *9-12 (N.D. Ill. Feb. 27, 2015).

Thus in *Wilkins*, like here, the plaintiff's counsel supported a settlement obtained in a latter-filed case pursuant to a private ordering process. In *Wilkins*, like here, class counsel moved for fees based on work performed in a prior case. In *Wilkins*, like here, firms who were not lead counsel performed work that benefited the class. The court considered all that time in awarding attorneys' fees of approximately 23.75% of the $39,975,000 common fund settlement. Here, Plaintiff

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(granting attorney's fees of 30% of $68,000,000 common fund,); *id.*, Dkt. 4436 (granting attorney's fees of 30% of separate $405,022,242 common fund in later settlement); *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1149 (9th Cir. 2000) (affirming that counsel should be awarded fees based on work on entire litigation, not time since the first settlement); *In re Southwestern Milk Antitr. Litig.*, 2013 U.S. Dist. LEXIS 70167, *26-27 (E.D. Tenn. 2013).

is represented by all counsel requesting fees. Each firm has spent many hours litigating this matter for the common benefit of all Class members, and all firms seeking payment have submitted their time for the Court's consideration. *See* Supp. Swigart Decl., ¶¶ 5-8; Supp. Kazerounian Decl., ¶¶ 5-8; Supp. Campion Decl., ¶¶4-6; Supp. Hutchinson Decl., ¶2 ; Supp. Wilson Decl., ¶2; Supp. Davidson Decl., ¶¶9, 13.

Plaintiffs' counsel have located multiple cases supporting attorneys' fees based on *all* work that benefits the class, regardless of whether class counsel performed the work or whether the work occurred in previous case. *See, e.g.*, *Loretz v. Regal Stone, Ltd.*, 756 F. Supp. 2d 1203, 1214 (N.D. Cal. 2010) (holding that time entries from separate, previous cases against the same defendant may count toward class action lodestar where "the work performed advanced [the pending] class action."). For example, in *Hvorcik v. Sheahan*, 1997 WL 695721 (N.D. Ill. Oct. 30, 1997), class counsel sought fees under a lodestar theory based on lodestar accumulated in a prior action involving a separate plaintiff and defendant. *Id.* at *1. The court found that "much of the legal work performed in the [previous] case required the plaintiffs' attorney to expend fewer hours in *Hvorcik*." *Id.* The court therefore awarded fees based on work performed in the prior action that "inured to the benefit of class members in this action." *Id.* at *2.

Plaintiff's counsel are not seeking payment for unnecessary or unrelated work. Rather, they merely seek an award that takes into work that demonstrably benefited the Class and that Wells Fargo's counsel candidly has admitted was one of the reasons it settled.

IV. CLASS COUNSEL REQUEST THAT THE COURT AWARD 25%, OR IN THE ALTERNATIVE, 20% OF THE COMMON FUND AS ATTORNEYS' FEES AND COSTS

The Ninth Circuit holds that, "[b]ecause 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." *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 942 (9th Cir. 2011).[5] The *Jones* Court noted that the "'lodestar method' is appropriate in class actions brought under fee-shifting statutes (such as federal civil rights, securities, antitrust, copyright, and patent acts…" *Id.* at 941. Thus, in this case, in which there is no fee-shifting statute at issue, the percentage-of-the-fund method is most appropriate.

"Many courts and commentators have recognized that the percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class, i.e., class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner." *Lopez v. Youngblood*, 2011 U.S. Dist. LEXIS 99289, *9 (E.D. Cal. Sept. 1, 2011). Attorneys' fees in the amount of 25% is common in this Circuit. *See Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("[t]he typical range of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement value"). Notably, this is not a case involving coupons or an illusory fund of some kind: the Settlement fund is 100% non-reversionary cash. *Cf.* MCL 4th § 21.61 (noting that a judge "should be wary" of a proposed settlement that "grant[s] class members illusory nonmonetary benefits, such as discount coupons for more of defendants' products, while granting substantial monetary attorney fee awards").

Class counsel previously requested the Court award the 25% benchmark here as attorneys' fees and costs. *See also In re M.L. Stern Overtime Litig.*, 2009 U.S. Dist. LEXIS 94671, *10 (S.D. Cal. Oct. 9, 2009) ("Class Counsel requests 25%, which would allow the fee to be shifted with exactitude, since the parties have already agreed upon the fund amount."). That amount is well-supported under the law and based upon the result obtained here. Significantly, courts have awarded 25% or more in attorneys' fees in numerous TCPA class action settlements. *See* Supp.

[5] *Bluetooth* itself did not involve a common fund at all.

Campion Decl., Exh. C (Settlements in TCPA Class Actions Submitted to the Court by Counsel in *Wilkins v. HSBC Bank*, No. 14 C 190 (N.D. Ill.) (Dkt. No. 109-1)).

Class counsel here were able to reach a class settlement with a common fund of $13,859,103.80. "[A]s the Ninth Circuit has observed, 'it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.'" *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, *49 (N.D. Cal. Jan. 26, 2007) (citing *Vizcaino*, 290 F.3d at 1048); *see also* MCL 4th, § 14.121 ("In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentives to prolong the litigation until sufficient hours have been expended."). Class counsel did not simply "run up their hours" here; they expeditiously achieved a favorable settlement for the Class, although it took three years' worth of litigation in separate cases to achieve the settlement here.

In *Vizcaino*, the Ninth Circuit stated:

> We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief. The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.

Vizcaino, 290 F.3d at 1050 (citations omitted).

Courts typically consider eight factors when determining whether to adjust the benchmark percentage, including "(1) the result obtained for the class; (2) the effort expended by counsel; (3) counsel's experience; (4) counsel's skill; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7) the

reaction of the class; and (8) comparison with counsel's loadstar." *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973–74 (N.D. Cal. 2001).

Class counsel respectfully submit that the Court should apply the percentage-of-the-fund method here (the primary method) in determining that 25%, or, alternatively, 20% is a reasonable attorneys' fee award. *See Vizcaino*, 290 F.3d at 1050 (decribing percentage of the fund as the "primary" method).

At a 25% award, each of the 107,482 Class Members with an approved claim would receive a check of at least $71.16. If a 20% fee is awarded, each Class Member would receive at least $77.64. This result far exceeds the TCPA settlement in *Couser*, which provided $13.75 to each class member.

Therefore, the results achieved for the Class Members supports an award of the 25% benchmark in this case as attorneys' fees; it certainly supports the reduced alternative fee request of 20% of the common fund.

V. SHOULD THE COURT DECIDE TO CALCULATE ATTORNEYS' FEES BASED UPON THEIR LODESTAR, A MULTIPLIER OF 2.8 SHOULD BE APPLIED

"Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The former method is routinely used when "the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized." *Id.* The figure is calculated "by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Id.*

The court may "adjust [the figure] upward or downward by an appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id.* at

941–42 (quotations omitted). "Foremost among these considerations, however, is the benefit obtained for the class." *Id.* at 942.

Here, of course, the relief obtained is not only *readily* monetized; it *is* monetized: $13,859,103.80. As such, it is appropriate to award fees as a percentage of the fund, as detailed above. However, if the Court decides to award fees based upon lodestar-multiplier, or to conduct a cross-check using lodestar-multiplier, the requested fees still pass muster.

A. A MULTIPLIER SHOULD BE AWARDED IN THIS RISKY LITIGATION

The Ninth Circuit Court stresses that "[i]t is an abuse of discretion to fail to apply a risk multiplier when . . . there is evidence that the case was risky." *Fischel v. Equit. Life Assurance Soc'y*, 307 F.3d 997, 1008 (9th Cir. 2002). "Courts apply such 'multipliers' to account for the risk that an attorney assumes in taking a case." *Fernandez v. Victoria Secret Stores, LLC*, 2008 U.S. Dist. LEXIS 123546, at *35 (C.D. Cal. July 21, 2008).

If the lodestar method is applied here in lieu of (or as a cross-check on) the percentage-of-the-fund method, a multiplier of 2.8 should be awarded in light of the risks in this case. "The resulting [lodestar] figure may be adjusted upward or downward to account for several factors including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). In addition to the risks faced in prior litigation, explained above, Class counsel faced the ongoing risks of losing at class certification, dispositive motions, trial, or appeal, as Plaintiff's counsel have lost other TCPA cases in the past without any recovery for themselves or their clients. *See* Transcript, 18:10-24.

B. MULTIPLIERS OF MUCH MORE THAN 2.8 ARE COMMON IN TCPA CASES AND CONSUMER CLASS ACTION LITIGATION

"Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Vizcaino*, 290 F.3d at 1051 n.6; *see also In re Linerboard*, 2004 WL 1221350, at *16 (E.D. Pa. 2004) (noting that "during 2001-2003, the average multiplier approved in common fund class actions was 4.35") (citation omitted).

Accordingly, multipliers up to, and exceeding, four are common in TCPA cases. *See Malta v. Wells Fargo Home Mortgage*, 10-cv-01290-BEN-NLS, Dkt. No. 92 (S.D. Cal. June 21, 2013) (approving a multiplier of approx. 5.1 in TCPA settlement); *Gutierrez v. Barclays Group*, 10-cv-1012-DMS-BGS, Dkt. No. 57 (S.D. Cal. Mar. 12, 2012) (multiplier of approx. 4.55 in TCPA settlement) [Supp. Campion Decl., Exh. D]; *Adams v. AllianceOne Receivables Mgmt., Inc.*, 08-cv-00248-JAH-WVG, Dkt. No. 137 (S.D. Cal. Sept. 28, 2012) (multiplier of approx. 3.81 in TCPA settlement) [*Id.*, Exh. E]; *Ellison v. Steve Madden, Ltd.*, 11-cv-05935-PSG-AGR (C.D. Cal. May 7, 2013) (multiplier of approx. 3.2 in TCPA settlement) [*Id.*, Exh. F].[6] The 2.8 multiplier requested in this case is therefore consistent with Ninth Circuit authority.

C. DRAWBACKS OF UTILIZING THE LODESTAR METHOD

"Whatever merits the lodestar method might have, [] it has also been subject to heavy criticism by commentators and in the courts." *In re Apple Iphone/Ipod Warranty Litig.*, 40 F. Supp. 3d 1176, 1180 (N.D. Cal. 2014). *See also* MCL 4th, § 14.121 (2004) ("in practice, the lodestar method is difficult to apply, time

[6] Multipliers of 5 or higher have been awarded in other settlements. *See Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. Cal. 2007) (upholding 25% fee award yielding multiplier of 6.85, finding that it "falls well within the range of multipliers that courts have allowed"); *Craft v. County of San Bernardino*, 624 F. Supp. 1113, 1125 (C.D. Cal. 2008) (awarding 25% of fund which amounted to 5.2 multiplier, in part because of the numerous drawbacks and disincentives associated with a pure lodestar approach).

consuming to administer, inconsistent in result, . . . capable of manipulation, . . . [and] creates inherent incentive to prolong the litigation"); Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237 (1985) (enumerating "nine deficiencies in the lodestar process," and concluding "that in common fund cases the best determinant of the reasonable value of services rendered to the class by counsel is a percentage of the fund.").

"Among the drawbacks to the lodestar method listed by Silber & Goodrich are that the lodestar method increases the amount of fee litigation; the lodestar method lacks objectivity; the lodestar method can result in churning, padding of hours, and inefficient use of resources; when the lodestar method is used, class counsel may be less willing to take an early settlement since settlement reduces the amount of time available for the attorneys to record hours; and the lodestar method inadequately responds to the problem of risk." *Lopez*, 2011 U.S. Dist. LEXIS 99289 at *11.[7]

In recent TCPA litigation, Professors David Rosenberg of Harvard Law School, and Brian T. Fitzpatrick of Vanderbilt University both submitted expert declarations examining, in detail, whether the percentage-of-the-fund or lodestar

[7] *See also Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 534 (1998) (the percentage of the fund approach avoids numerous drawbacks of the lodestar approach and is preferable because "the attorneys will receive the best fee when the attorneys obtain the best recovery for the class. Hence, under the percentage approach, the class members and the class counsel have the same interest-maximizing the recovery of the class"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) ("[A]pplying the lodestar or Kerr–Johnson regime to common fund cases does not achieve the stated purposes of proportionality, predictability and protection of the class. It encourages abuses such as unjustified work and protracting the litigation. It adds to the work load of already overworked district courts. In short, it does not encourage efficiency, but rather, it adds inefficiency to the process."); *In re Quantum Health Resources, Inc.*, 962 F. Supp. 1254, 1256-57 (C.D. Cal. 1997) ("Courts and commentators have been wary of the lodestar method since its introduction. … [T]he lodestar method needlessly increases judicial workload, creates disincentive for early settlement, and causes unpredictable results"); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268 (D.C.Cir.1993) ("using the lodestar approach in common fund cases encourages significant elements of inefficiency [as] attorneys are given incentive to spend as many hours as possible, billable to a firm's most expensive attorneys.").

method should be used in a TCPA common fund settlement. Supp. Campion Decl., Exhs. G & H. Professor Fitzpatrick is the author of An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical L. Stud. 811 (2010). This article is the most comprehensive examination of federal class action settlements and attorneys' fees ever published and has been widely-cited by a number of courts, scholars, and testifying experts. Professor Rosenberg was an early proponent of, and contributor to, modern legal scholarship focusing on a functional approach to the law, sometimes known as "Law and Economics." In sum, both professors opine that in a TCPA case such as this that involves a non-reversionary cash fund, the percentage method is far superior to the lodestar method, either alone or as a cross-check. In particular, the percentage method promotes social welfare by deterring violations of the law, incentivizes optimal investment in maximizing class recovery, and minimizes social costs for the class members, counsel, and the court.

In order to fairly distribute the costs of litigation under the common fund doctrine, and to properly compensate Class Counsel for their successful efforts on behalf of the class, the Court should find the request for attorneys' fees in the amount of 20% of the fund is reasonable. Without the requested multiplier here of 2.8, "[u]se of a lodestar calculation would punish Plaintiff's counsel for the early proposed settlement, and thus may impede settlement efforts in similar cases." *Lewis v. Starbucks Corp.*, 2008 U.S. Dist. LEXIS 83192, at *20 (E.D. Cal. Sept. 11, 2008).

D. HOURS INCURRED BY COUNSEL

Here, Class Counsel incurred 2,043.45 attorney hours with a lodestar of $980,261.50 through August 2015. In declarations previously filed in this action by Plaintiff's counsel, the attorney hours were divided into general categories to provide the Court with a sense of the amount of time dedicated to certain tasks such as case investigation, discovery, settlement administration, and motion practice. *See* Dkt. Nos. 20-2, 20-6, 20-7 20-9, 20-10, and 20-13. "[T]rial courts may take into

account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time…" *Fox v. Vice*, 131 S. Ct. 2205, 2208 (U.S. 2011).

With this supplemental brief, Plaintiff's counsel submit their detailed backup time records supporting their work on this matter. Below is an updated chart showing the number of attorney hours incurred and counsels' lodestar:

	Hours Incurred	**Total**
Masters		
Greenwald Davidson	220.45	$88,180.00
W&M	160.8	$55,507.50
Martin		
Lieff Cabraser	469.3	$227,097.50
Meyer Wilson	175.6	$66,325.00
Heinrichs		
Lieff Cabraser	162.80	$85,417.50
KLG	46	$25,760.00
H&S	33.2	$19,754.00
Meyer Wilson	34.1	$14,832.50
Shehan		
Greenwald Davidson	151.6	$60,640.00
Franklin		
DJC	110.2	$82,650.00
KLG	232.3	$124,488.00
H&S	180.3	$100,614.50
Meyer Wilson	66.8	$28,995.00
Total Combined Lodestar	2,043.45	$980,261.50

Plaintiff's counsel seek attorneys' fees based on a percentage of the common fund and not a lodestar analysis. Throughout each of the five cases, they nonetheless worked closely and in cooperation with one another to divide tasks, ensure efficient case management, and prevent duplication of efforts. Hutchinson Decl., Dkt. No. 20-7, ¶71; Wilson Decl., ¶27. By assigning specific tasks among firms, and assigning work to the appropriate level attorneys within each firm, they were able to avoid duplicating or replicating work. Hutchinson Decl., Dkt. No. 20-7, ¶68-71; Davidson Decl., ¶¶31-33, 40-41, 45-47; Wilson Decl., ¶¶23-24; Swigart

Decl., ¶ 10; Supp. Kazerounian Decl., ¶ 10. For the purposes of the lodestar cross-check, Plaintiff's counsel also carefully reviewed their firm's internal time records and deleted entries for duplicate work. Hutchinson Decl., Dkt. No. 20-7, ¶70; Wilson Decl., ¶27. Plaintiff's counsel deleted time spent simply reviewing work done by other attorneys and billable time spent on routine, case-related housekeeping matters. Hutchinson Decl., Dkt. No. 20-7, ¶70. In addition, Plaintiff's counsel deleted time billed by attorneys and staff who contributed only minimal time to prosecuting the actions. *Id.* For example, Lieff Cabraser alone deleted over 100 hours of time spent on this matter. Hutchinson Decl. Dkt. 20-7, ¶70. Thus, the time submitted is an accurate, non-duplicative, and conservative summary of the hours expended by Plaintiff's counsel on behalf of the Class.

E. COUNSELS' REQUESTED HOURLY RATES ARE REASONABLE

A series of federal courts in California and throughout the country have approved Plaintiff's counsel's standard billing rates as reasonable. Hutchinson Decl., Dkt. No. 20-7, at ¶¶64-66; Wilson Decl., Dkt. No. 20-13, ¶22; Davidson Decl., Dkt. No. 20-10, ¶35; Supp. Swigart Decl., ¶11; Supp. Kazerounian Decl., ¶11; Supp. Campion Decl., ¶8.[8] Lieff Cabraser's hourly rates were negotiated with

[8] *See, e.g., Steinfeld v. Discover Fin. Servs.*, No. 3:12-cv-01118-JSW, Dkt. No. 98 (N.D. Cal. Mar. 31, 2014) (holding that Lieff Cabraser and Meyer Wilson rates are reasonable); *Yarger v. ING Bank FSB*, Case No. 1:11-cv-00154-LPS (Oct. 7, 2014, D. Del.) (same); *Fulford v. Logitech, Inc.*, 2010 U.S. Dist. LEXIS 144437, at *10 (N.D. Cal. Mar. 5, 2010) (same); Fla. Feb. 23, 2015) (holding that Davidson Greenwald rates are reasonable); *Nwabueze v. AT&T Inc.*, U.S. Dist. LEXIS 11766, at *8 (N.D. Cal. Jan. 29, 2014) (holding that LCHB rates are reasonable); *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013); *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319, at *9 (N.D. Cal. Dec. 16, 2013) (same); *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. C-06-0963-CW (N.D. Cal. July 18, 2013) (same); *Wehlage, et al. v. Evergreen at Arvin, LLP*, No. 4:10-cv-058390-CW (N.D. Cal. Oct. 4, 2012); *In re AXA Rosenberg Investor Litig.*, No. 11-00536-JSW (N.D. Cal. April 2, 2012) (same); *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ) (N.D. Cal. Nov. 9, 2011) (same); *Gonzalez v. Dynamic Recovery Solutions, LLC*, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015) (holding that Greenwald Davidson rates are reasonable); *In re Jiffy Lube International, Inc. Text Spam Litigation*, 3:11-MD-2261-JM (JMA) (S.D. Cal. 2013), Dkt. No. 97 (approving Law Offices of Douglas J. Campion, APC, Kazerouni Law Group, APC, and Hyde & Swigart hourly rates as reasonable); *Sarabri v. Weltman,Wienberg &*

and are paid on an hourly basis by a sophisticated commercial entity, BlackRock (f/k/a Merrill Lynch Mutual Funds). Hutchinson Decl., Dkt. No. 20-7, at ¶65. Lieff Cabraser does not bill at different rates for different clients or different types of cases. *Id.*

Plaintiff's counsel's hourly rates also compare appropriately with San Diego rates. According to this Court in *Shames v. Hertz Corp.*, 2012 U.S. Dist. LEXIS 158577, *60 (S.D. Cal. Nov. 5, 2012), "[t]he National Law Journal data reveals that rates at six national defense firms with San Diego offices averaged between $550 and $747 per hour for partners and $346 and $508 per hour for associates." *See also Hartless v. Clorox Co.*, 273 F.R.D. 630, 643-44 (S.D. Cal. 2011), *aff'd in part*, 473 F. Appx. 716 (9th Cir. 2012) (approving San Diego hourly rates of $675-$795 for partners, up to $410 for associates, and up to $345 for paralegals).

VI. CONCLUSION

Class counsel respectfully submit that the requested fee in the amount of $3,464,775.95, or, in the alternative, $2,771,820 from the $13,859,103.80 non-reversionary, all-cash settlement fund is well-supported by the law and facts. The alternative request seeks 20% of the common fund, which, under the lodestar cross-check, results in a 2.8 multiplier. If the Court performs a lodestar analysis, it is appropriate to include all Plaintiff's counsel's work, as that work was critical, substantive work that, as Wells Fargo conceded, contributed to the successful result here.

Date: August 31, 2015

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

By: */s/ Douglas J. Campion*
Douglas J. Campion

Attorneys for Plaintiff Lillian Franklin and the Settlement Class

Reis, Co., LPA, Case No. 3:10-cv-1777 AJB (NLS) (S.D. Cal. 2013) Dkt. Nos. 39 & 42 (same).