UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

David Jackson, individually and on behalf of all others similarly situated, Plaintiff, vs. Discover Financial Services Inc., Defendant.	:	Case No.: 1:21-cv-04529 Honorable Nancy L. Maldonado

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, LITIGATION EXPENSES, AND A SERVICE AWARD

Introduction

Because of David Jackson's and his counsel's efforts in this class action under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, Discover Bank ("Defendant" or "Discover")[1] will create a non-reversionary, all-cash $1 million common fund to compensate members of the settlement class ("Settlement Class Members"). After nearly two years of litigation, and despite numerous risks and potential obstacles along the way, participating Settlement Class Members will receive expected payments of more than $100 each.

In line with the class notice, Court-appointed Class Counsel seek an award of attorneys' fees in the amount of $294,002.66, which is equal to 29.4% of the gross common fund, or one-third of the net common fund after deducting the costs of class notice and administration, the requested service award, and Class Counsel's costs and litigation expenses.[2] As well, Class Counsel respectfully requests reimbursement of their costs and litigation expenses totaling $8,687.02.[3] Additionally, Mr. Jackson seeks a service award in the amount of $10,000.

These requests are reasonable, justified, and in line with awards approved in similar TCPA class actions in this district and elsewhere nationwide. Moreover, following notice to Settlement Class Members, to date, no Settlement Class Member has objected to any part of the settlement or to any of the requests for attorneys' fees, costs, expenses, or a service award. The deadline for

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[1] While Mr. Jackson initially named Discover Financial Services, Inc. as defendant, Discover Bank answered Mr. Jackson's Second Amended Complaint to clarify that Discover Financial Services, Inc. had been erroneously sued. ECF No. 21 at 1.

[2] Costs of class notice and settlement administration are expected to be $99,305.00. Subtracting notice-related costs, $8,687.02 in counsel's costs and litigation expenses, and the requested service award of $10,000, leaves a net common fund of $882,007.98.

[3] Of note, Mr. Jackson and Class Counsel seek less in attorneys' fees and litigation costs and expenses than what is proposed in the class notices. *See* ECF No. 42-5 at 35 (noting that Mr. Jackson and Class Counsel would seek up to 36% of the net common fund in attorneys' fees and up to $15,000 in litigation costs and expenses).

objections is June 7, 2023.

Argument

I. A fee award of one-third of the net settlement fund—and less than 30% of the total settlement fund—is reasonable and justified.

The Supreme Court "has recognized consistently 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 as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).[4] To that end, the Seventh Circuit "favors the percentage-of-the-fund fee in common fund cases because it provides the best hope of estimating what a willing seller and a willing buyer seeking the largest recovery in the shortest time would have agreed to *ex ante*." *In re FedEx Ground Package Sys., Inc. Emp't Practices Litig.*, 251 F. Supp. 3d 1225, 1236 (N.D. Ind. 2017).

For Class Counsel, Mr. Jackson seeks an award of attorneys' fees of $294,002.66, which is equal to 29.4% of the gross common fund or one-third of the net settlement fund. This request is supported by applicable case law both within, and outside of, the Seventh Circuit, and with respect to class actions generally, as well as those under the TCPA specifically.

A. District courts in this circuit agree upon the percentage-of-the-fund method to calculate attorneys' fees awards in common fund cases like this one.

According to the Seventh Circuit, "when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). "Because the market-price estimation is inherently conjectural, district courts have discretion to use either the percentage method, which awards fees as a percentage of the common fund, or the 'lodestar' method, which awards fees based on the

[4] Internal citations and quotations are omitted, and emphasis is added, unless otherwise noted.

attorneys' hours and billing rates . . . ." *In re TikTok, Inc., Consumer Privacy Litig.*, --- F. Supp. 3d ----, 2022 WL 2982782, at *25 (N.D. Ill. 2022) (Lee, J.).

But in a TCPA class action like here, Judge Holderman reasoned that the percentage-of-the-fund method is "more likely to yield an accurate approximation of the market rate," and that, "had an arm's length negotiation been feasible, the court believes that the class would have negotiated a fee arrangement based on a percentage of the recovery, consistent with the normal practice in consumer class actions." *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015). Underlying the court's rationale: "An *ex ante* agreement based on lodestar requires a client to monitor counsel, and the class-member 'clients' here had little incentive to do so." *Id.*

Indeed, those class members in *Capital One* numbered in the millions, each with minimal prospective relief, so "[t]he class would not have negotiated a compensation scheme that required a level of monitoring the class members were not interested in or capable of providing." *Id.*; *see also Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.) (noting that a large class of "lightly-injured plaintiffs" would be unlikely "to monitor counsel and ensure that counsel are working efficiently on an hourly basis," as required by the lodestar model). "Instead, the class would have chosen the compensation scheme that required the least monitoring to align the incentives of the class and its counsel—the percentage method." *Capital One*, 80 F. Supp. 3d at 795.

As Judge Alonso echoed in more recent TCPA class litigation:

> It is hard to imagine the class agreeing each to kick in an equal share of, say, $300 per hour multiplied by the number of hours it would take the attorneys to achieve a victory or settlement or, worse yet, a loss in this case, given that each stood to gain only a little. Much easier to imagine *ex ante* is the members' agreeing to a contingency fee to incentivize the attorneys to maximize the award to the class members.

Abante Rooter & Plumbing, Inc. v. Oh Ins. Agency, No. 15-9025, 2019 WL 10248700, at *4 (N.D. Ill. Dec. 10, 2019) ("agree[ing] that a reasonable class of plaintiffs making an *ex ante* bargain would

have agreed to pay the attorneys one third of the recovery").

Likewise in this matter. And approximating the market rate through the percentage method can be informed by several factors, including: (1) the actual agreements between the parties as well as fee agreements reached by sophisticated entities in the market for legal services; (2) the risk of non-payment at the outset of the case; (3) the caliber of Class Counsel's performance; (4) the amount of work necessary to resolve the litigation; (5) the stakes of the case; and (6) information from other cases, including fee awards in comparable cases. *See In re Broiler Chicken Antitrust Litig.*, No. 16-8637, 2022 WL 6124787, at *2 (N.D. Ill. Oct. 7, 2022) (Durkin, J.); *Charvat v. Valente*, No. 12-5746, 2019 WL 5576932, at *11 (N.D. Ill. Oct. 28, 2019) (Wood, J.). Here, each factor well supports the fee requested.

B. An award of attorneys' fees of one-third of the net common fund is in line with awards in class actions in this circuit, including those under the TCPA.

Looking first to comparable cases, Judge Kennelly in *Kolinek* found that the "market rate" for legal services in a TCPA class action was 36% of the net settlement fund "based on the degree of effort the attorneys would need to put in, the likelihood of success, and the risks associated with undertaking class representation . . . ." 311 F.R.D. at 502-03. It therefore follows that the requested fee here of one-third of the net common fund is consistent with awards in TCPA class litigation in this circuit. *See, e.g.*, *Abante Rooter & Plumbing*, 2019 WL 10248700, at *4 (awarding fees of one-third of $10,500,000 common fund); *Charvat*, 2019 WL 5576932, at *12 (awarding $3.15 million, or 33.99% of net settlement fund); *Simms v. ExactTarget, LLC*, No. 14-737, 2018 WL 11416085, at *10 (S.D. Ind. Oct. 2, 2018) (awarding 35% of net settlement fund for $2,073,750 in fees), *report and recommendation adopted,* No. 14-737, 2018 WL 11416084 (S.D. Ind. Oct. 19, 2018); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 202 (N.D. Ill. 2018) (Chang, J.) (approving fees of 33.3% of $6,691,679 net settlement fund); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12-4069, 2017 WL

1369741, at *9 (N.D. Ill. Apr. 10, 2017) (Kennelly, J.) (approving sliding scale fees that included 36% of the first $10 million), *aff'd sub nom. Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792 (7th Cir. 2018); *Capital One*, 80 F. Supp. 3d at 807 (same); *Kolinek*, 311 F.R.D. at 503 (approving fees of $2,824,200, or 36% of net common fund); *Martin v. Dun & Bradstreet, Inc.*, No. 12-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (Martin, M.J.) (approving award of $1,633,333.33, or 36.3% of settlement's quantifiable value).

Moreover, a one-third fee recovery also finds extensive support throughout this circuit for similarly complex class litigation, including antitrust and other consumer protection matters. *See, e.g.*, *In re Broiler Chicken*, 2022 WL 6124787, at *4 (awarding fees of one-third of net settlement fund, or $55,008,866.67, in antitrust class action, as "[t]he fact that fee awards in antitrust cases in this circuit are almost always one-third is a strong indication that this should be considered the 'market rate'"); *In re TikTok*, 2022 WL 2982782, at *27-29 (noting that "a flat percentage fee award of one-third of the net common fund is typical in [] data privacy settlements" and "similarly complex fields, such as antitrust litigation and consumer protection litigation," and awarding one-third of the net common fund for $29,279,203.44 in fees); *Allegretti v. Walgreen Co.*, No. 19-5392, 2022 WL 484216, at *2 (N.D. Ill. Jan. 4, 2022) (Norgle, J.) (approving $4.583 million in fees, or one-third of common fund, in ERISA class action).

C. An award of less than 30 percent of the total settlement fund also is consistent with awards of attorneys' fees in similar TCPA class actions nationwide.

Comparable TCPA cases outside the Seventh Circuit similarly support Mr. Jackson's and Class Counsel's request. District courts assessing attorneys' fees in connection with TCPA class recoveries routinely approve awards upwards of one-third of the total common fund. *See, e.g.*, *Miles v. Medicredit, Inc.*, No. 20-1186, 2023 WL 1794559, at *4 (E.D. Mo. Feb. 7, 2023) (awarding one-third of total settlement fund); *Wesley v. Snap Fin. LLC*, No. 20-148, 2023 WL 1812670, at *3 (D.

Utah Feb. 7, 2023) (same); *Hanley v. Tampa Bay Sports & Entm't LLC*, No. 19-550, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding "a slight increase from the one-third benchmark"); *Sheean v. Convergent Outsourcing, Inc.*, No. 18-11532, 2019 WL 6039921, at *4 (E.D. Mich. Nov. 14, 2019) (awarding one-third of TCPA and FDCPA common funds); *Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 18-20048, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (awarding one-third of common fund); *Todd S. Elwert, Inc., DC v. All. Healthcare Servs., Inc.*, No. 15-2673, 2018 WL 4539287, at *4 (N.D. Ohio Sept. 21, 2018) (same); *Martinez v. Medicredit, Inc.*, No. 16-1138, 2018 WL 2223681, at *5 (E.D. Mo. May 15, 2018) (same); *Prater v. Medicredit, Inc.*, No. 14-159, 2015 WL 8331602, at *4 (E.D. Mo. Dec. 7, 2015) (same); *Hageman v. AT&T Mobility LLC*, No. 13-50, ECF No. 68 (D. Mont. Feb. 11, 2015) (awarding 33% of common fund); *Vendervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (same).

D. Mr. Jackson and his counsel entered into a contingent attorneys' fee agreement, so the risk of non-payment to counsel was substantial.

Turning next to the fee agreement between the parties and risk of non-payment at the outset of the case, it is important to recognize that Mr. Jackson entered into a contingent attorneys' fee agreement with his counsel. *See* Declaration of Michael L. Greenwald in Support of Plaintiff's Motion for an Award of Attorneys' Fees, Costs, Litigation Expenses, and a Service Award ("Greenwald Decl.") at ¶ 75. The agreement permitted Class Counsel to apply to this Court for an award of attorneys' fees in the event that a common fund was established for the benefit of the class. Conversely, without any recovery, counsel would be paid nothing for their efforts, nor reimbursed for their expenditures, no matter their investment of costs and time in this matter.

That the attorneys' fee arrangement in this case was contingent "weighs in favor of the requested attorneys' fees award, because '[s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered.'" *In re Thornburg*

Mortg., Inc. Sec. Litig., 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012); *see also In re Broiler Chicken*, 2022 WL 6124787, at *3 ("A substantial award is warranted here as a proper incentive for high quality counsel to take on complex cases, requiring a massive investment of time and money, with such a high risk of non-payment.").

Indeed, even in ordinary cases "uncertain is the outcome," and the corresponding risk taken by counsel in connection with contingent fee arrangements—no assurance of payment—warrants a higher percentage of the fund. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2008 WL 11234103, at *3 (N.D. Ga. Mar. 4, 2008); *see also In re TikTok*, 2022 WL 2982782, at *27 ("Larger contingency fees are generally needed to persuade lawyers to take riskier cases because there is a lower chance that they will receive anything at the end.").

And in the context of class actions, the inherent risk is multiplied:

> In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants an appropriate fee. The risks are inherent in financing and prosecuting complex litigation of this type, but Class Counsel undertook representation with the knowledge that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. Only the most experienced plaintiffs' litigation firms would risk the time and expense involved in bringing this Action in light of the possibility of a recovery at an uncertain date, or of no recovery at all.

Simpson v. Citizens Bank, No. 12-10267, 2014 WL 12738263, at *7 (E.D. Mich. Jan. 31, 2014).

Correspondingly, the actual fee agreement between the parties, coupled with the risk that Class Counsel could have litigated this case for years without receiving any payment for their efforts under that agreement, strongly supports a one-third fee award.

E. As in any TCPA class action, this case brought significant risks, including that the ultimate class-related question underlying this matter is difficult.

In the *Capital One* litigation, Judge Holderman performed an in-depth analysis of the risks associated with TCPA litigation to determine proper awards of attorneys' fees in TCPA class cases:

> Class Counsel in this case faced a variety of serious obstacles to success in bringing the lawsuit, and faced the real prospect of recovering nothing. First, it was quite possible that the discovery may have revealed that many class members acquiesced to receiving calls on their cell phones when they agreed to their cardholder agreements with Capital One. Some customers provided Capital One with their cell phone numbers as their primary contact numbers, arguably waiving any right not to receive debt-collection calls on their cell phone from Capital One. Second, at the outset of the litigation there was a serious question whether the Plaintiffs' claims could meet Rule 23's manageability requirement given that Capital One would have to review its records to determine which class members provided consent through cardholder agreements, which class members actually provided their cell phone numbers to Capital One, and whether each class member actually owned their cell phone number at the time Capital One called it using an autodialer. Third, as Capital One has noted throughout this litigation, there are presently petitions before the FCC urging the FCC to (1) revise the TCPA's definition of "automatic telephone dialing system" to exclude dialers like those used by Capital One, and (2) provide a safe harbor for all calls that Capital One inadvertently made to wrong numbers. Consequently, the longer this litigation were to continue, the longer Plaintiffs would be exposed to the possibility that the FCC would take action that might extinguish Plaintiffs' claims.

80 F. Supp. 3d at 805.

Many of these risks, such as potential FCC action and evolving court interpretations of the TCPA, remain true today. To be sure, Mr. Jackson faced a number of significant hurdles in this case, some of which were difficult and novel. For example, Discover strongly disputed that a class could be certified for litigation purposes. Worth mentioning, several district courts have refused to certify TCPA matters. *See, e.g.*, *Revitch v. Citibank, N.A.*, No. 17-6907, 2019 WL 1903247, at *2 (C.D. Cal. Apr. 28, 2019) (denying class certification and noting that "an evasive customer may reply with 'wrong number' when he answers a call regarding his delinquent account"); *Davis v. AT&T Corp.*, No. 15-2342, 2017 WL 1155350, at *5 (S.D. Cal. Mar. 28, 2017) ("[d]efendant has come forward with evidence that a call with a 'wrong number' notation proves nothing because many customers tell callers they have reached the wrong number, though the customer's number was dialed, as a 'procrastination tool' to avoid speaking on the phone"); *Tomeo v. CitiGroup, Inc.*, No. 13-4046, 2018 WL 4627386, at *10 (N.D. Ill. Sept. 27, 2018)

(following *Davis*); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 271-72 (M.D. Fla. 2019) ("[I]n the debt collection industry 'wrong number' oftentimes does not mean non-consent because many customers tell agents they have reached the wrong number, though the correct number was called, as a way to avoid further debt collection.").

In addition, there was no guarantee that Mr. Jackson would prevail on the merits. To that end, Discover asserted *twenty-three* separate defenses, including jurisdictional challenges and assertions that it had consent to make the telephone calls at issue. *See* ECF No. 21 at 14-18. Even presuming Mr. Jackson would overcome these defenses to succeed on the merits at summary judgment or trial, it is likely that Discover would appeal. At bottom, the result here was far from certain. *E.g.*, *In re TikTok*, 2022 WL 2982782, at *27 (finding support for one-third fee award in (1) the "unsettled and complex" nature of the law of the case, (2) numerous "plausible defenses" available to the defendants, and (3) legitimate doubts about whether the plaintiffs had suffered actual injury); *Abante Rooter & Plumbing*, 2019 WL 10248700, at *4 ("Given the potential difficulty in establishing that an auto-dialer was used in this case, the Court agrees that a reasonable class would have agreed *ex ante* to a contingency fee of a third of the recovery.").

After analyzing the serious risks inherent with TCPA litigation, Judge Holderman determined that an appropriate risk-adjusted fee for TCPA class settlements is an award of 36 percent of the common fund, up to the first $10 million in recovery. *Capital One*, 80 F. Supp. 3d at 807. But here, despite the presence of many of the same risks, Mr. Jackson and his counsel seek comparatively less—only one-third of the net settlement fund, or 29.4% of the gross common fund.

F. Class Counsel undertook substantial work in a relatively short amount of time to drive this case toward resolution.

The caliber of Class Counsel's performance in completing the work necessary to achieve a settlement here further underscores the reasonableness of the requested fees. As outlined in Mr.

Greenwald's declaration, Class Counsel devoted more than a year and half to litigating this case without any payment, committing significant time and resources along the way, including: (a) conducting an investigation into the underlying facts regarding Mr. Jackson's claims and class members' claims; (b) preparing a class action complaint, amended class action complaint, and second amended class action complaint; (c) researching the law pertinent to class members' claims and Discover's defenses; (d) negotiating a protective order; (e) preparing and serving two sets of written discovery requests to Discover; (f) reviewing Discover's responses and objections to written discovery and related documents produced by Discover; (g) researching and evaluating Discover's motion to dismiss and to strike class allegations; (h) preparing for the corporate representative deposition of Discover pursuant to Rule 30(b)(6); (i) working with Mr. Jackson to respond to two sets of written discovery requests from Discover; (j) engaging in extensive meet-and-confer efforts regarding Discover's discovery responses and document production; (k) preparing for and attending mediation, including preparing a detailed mediation statement; (l) negotiating the parties' class action settlement agreement, along with the proposed class notices and claim form; (m) negotiating with class administration companies to secure the best notice plan practicable; (n) researching and preparing Mr. Jackson's motion for preliminary approval of the class action settlement, and counsel's declarations in support; (o) closely monitoring evolving TCPA case law and its potential impacts on this case; (p) closely monitoring decisions from the FCC and their potential impacts on this case; (q) conferring with the class administrator to oversee the notice, claims, and administration process; (r) repeatedly conferring with Mr. Jackson throughout this case; and (s) conferring with class members to answer questions about the claims process. Greenwald Decl. at ¶¶ 38-65, 72.

Without counsel's diligent efforts over a nearly two-year period, there would be no recovery for the Settlement Class. The requested fee award is reasonable and should be approved.

G. Class Counsel are highly experienced consumer protection class litigators who leveraged that experience to obtain efficient, excellent results.

The attorneys leading this case at Greenwald Davidson Radbil PLLC, IJH Law, Hiraldo P.A., and Eisenband Law, P.A. bring decades of collective experience litigating class actions filed under federal consumer protection statutes, including under the TCPA. *See* ECF Nos. 42-1, 42-2, 42-3, 42-4 (Class Counsel's respective declarations in support of preliminary class settlement approval). As just one example, Greenwald Davidson Radbil PLLC has been appointed class counsel in dozens of class actions nationwide, having helped to recover more than $120 million for aggrieved class members over the past eight years. *See* Greenwald Decl. at ¶¶ 9-20. Likewise, IJH Law, Hiraldo, P.A., and Eisenband Law, P.A. have been so appointed by many courts across the country. *See* ECF No. 41-2 at ¶¶ 13-15; ECF No. 42-3 at ¶¶ 17-18; ECF No. 42-4 at ¶ 12.

Through their extensive experience, Class Counsel have earned themselves stellar reputations in this practice area. Further, counsel's knowledge of, and experience with, TCPA class actions helped to bring about the common fund in an efficient manner. Where "Class Counsel's knowledge and experience . . . significantly contributed to a fair and reasonable settlement, this factor supports a request for a large amount of attorneys' fees." *Lane v. Page*, 862 F. Supp. 2d 1182, 1254 (D.N.M. 2012).

In the face of significant legal hurdles, Class Counsel and Mr. Jackson obtained an excellent result for Settlement Class Members. To be sure, this settlement is, on a per-potential class member basis, on par with similar and recently approved TCPA class action settlements. More particularly, the raw, per-class member value of the settlement is similar to, if not higher than, many analogous TCPA class action settlements. *See* ECF No. 42 at 11-12 (collecting cases).

As well, when viewed through the lens of claimants' anticipated individual recoveries here, the settlement at bar is expected to align with similar and recently approved TCPA class action

settlements. Indeed, Class Counsel estimate—based on the likely number of *bona fide* Settlement Class Members[5]—that after deducting the requested attorneys' fees, costs, litigation expenses, and service award, participating Settlement Class Members will receive more than $100 each.

This compares favorably with other TCPA settlements approved in this district. *See, e.g.*, *Charvat*, 2019 WL 5576932, at *16 (average of $22.17 per claim); *Leung*, 326 F.R.D. at 196 ($100.81 per claim); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) (Feinerman, J.) ($52.50); *Wright v. Nationstar Mortg. LLC*, No. 14-10457, 2016 WL 4505169, at *8 (N.D. Ill. Aug. 29, 2016) (Chang, J.) (approximately $45); *Capital One*, 80 F. Supp. 3d at 789 (finding that $34.60 per person falls "within the range of recoveries" in a TCPA class action).

Also significant, the court in *Markos v. Wells Fargo Bank, N.A.* characterized a $24 per-claimant recovery in a TCPA class action—much less than the expected recovery here—as "an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter." No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017).

Moreover, the settlement provides Settlement Class Members with real monetary relief, despite the purely statutory damages at issue—damages that courts have deemed too small to incentivize individual actions. *See, e.g.*, *St. Louis Heart Cntr., Inc. v. Vein Cntrs. for Excellence, Inc.*, No. 12-174, 2013 WL 6498245, at *11 (E.D. Mo. Dec. 11, 2013) (explaining that because the statutory damages available to each individual class member are small, it is unlikely that the class members have interest in individually controlling the prosecution of separate actions). Therefore, because of the settlement, Settlement Class Members will receive money they otherwise likely would have never pursued on their own. In sum, the settlement constitutes an objectively favorable

[5] Since this case involves calls to alleged wrong numbers, the true number of Settlement Class Members who received calls from Discover despite not having an account in collections is unknown to the parties at this time. For this reason, Settlement Class Members must submit a short, straightforward claim form to participate in any recovery.

result for Settlement Class Members, given the real risks involved, and amply supports an award of attorneys' fees in the amount of one-third of the net common fund.

II. This Court should approve the reimbursement of costs and litigation expenses in the amount of $8,687.02.

"It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014).

Here, Class Counsel incurred costs and litigation expenses in the total amount of $8,687.02 in connection with this matter, which includes mediation costs, filing and admission fees, and costs for service of process. *See* Greenwald Decl. at ¶¶ 85-90.

These categories of expenses for which Class Counsel seek reimbursement are of the type routinely charged to paying clients in the marketplace and, therefore, are properly reimbursed under Rule 23. *See, e.g.*, *Leung*, 326 F.R.D. at 199, 203 (approving reimbursement of $52,458.90 in expenses in TCPA class action for costs including copying, legal research, and telephone charges); *Beesley,* 2014 WL 375432, at *3 (awarding $1,563,046.39 in costs and expenses); *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and *nontaxable* costs that are authorized by law or by the parties' agreement.").

This Court accordingly should approve reimbursement of Class Counsel's litigation costs and expenses. To date, no Settlement Class Members have objected to such reimbursement.

III. Mr. Jackson's request for a service award in the amount of $10,000 is fair, reasonable, and supported by law.

"Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *In re Broiler Chicken*, 2022 WL 6124787, at *4 (awarding multiple $15,000 service awards); *accord Cook v.*

Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 service award); *Fellows v. Am. Campus Cmtys. Servs., Inc.*, No. 16-1611, 2018 WL 3056046, at *7 (E.D. Mo. June 20, 2018) ("Courts routinely grant service awards in connection with class action settlements to promote the public policy underlying class action litigation by encouraging individuals to vindicate rights on behalf of a others similarly situated.").

"In determining the need for an award, the court can consider the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Leung*, 326 F.R.D. at 205 (approving $10,000 service award). Here, Mr. Jackson took pride in protecting the interests of Settlement Class Members, and he spent considerable time pursuing their claims. From the outset, Mr. Jackson was dedicated to pursuing this matter as a class action rather than an individual case. The end result—nearly two years later—is the recovery of $1 million for Settlement Class Members.

Mr. Jackson remained actively involved throughout this case and frequently communicated with his counsel for updates and strategic decisions. Greenwald Decl. at ¶ 78. He also actively participated in the discovery process, including responding to two separate sets of written discovery requests and searching for and producing relevant documents. *Id.* at ¶ 79. He was prepared to sit for deposition and participated in the parties' full-day mediation. *Id.* at ¶¶ 80-81. Moreover, like other class representatives, he was subjected to public scrutiny throughout the process.

"True, this is not a monumental effort, but it is more inconvenience than the average consumer would want to put up with in the absence of an incentive to do so. [Mr. Jackson's] participation benefitted the class by allowing this case to be brought, which resulted in substantial settlement payouts to the class." *Leung*, 326 F.R.D. at 205. To be sure, "[t]he requested $10,000 award is also in line with the awards generally handed out in TCPA cases." *Id.*; *see also Ossola v.*

Am. Express, No. 13-4836, ECF No. 379 at ¶ 11 (N.D. Ill. Dec. 2, 2016) (Lee, J.) ($10,000 service award in TCPA class case); *Martin v. JTH Tax, Inc.*, No. 13-6923, 2015 WL 13883998, at *3 (N.D. Ill. Sept. 16, 2015) (Shah, J.) (same).

Given all of the foregoing, the requested service award of $10,000 is reasonable and should be approved. Indeed, this award falls short of several others approved in comparable matters within this circuit. *See, e.g.*, *Allegretti*, 2022 WL 484216, at *2 ($15,000 service awards in ERISA action where the plaintiffs "responded to document requests and interrogatories, reviewed and approved pleadings, and participated in settlement discussions"); *Charvat*, 2019 WL 5576932, at *10 ($25,000 TCPA service award for "endur[ing] several years of discovery, scrutiny, and inconvenience in pursuit of this case"); *Allen v. JPMorgan Chase Bank, N.A.*, No. 13-8285, ECF No. 93 at ¶ 18 (N.D. Ill. Oct. 21, 2015) (Pallmeyer, J.) ($25,000 TCPA service award); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (awards of $10,000 to $25,000 where "the Named Plaintiffs initiated the action, took on a substantial risk, and remained in contact with Class Counsel"); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (St. Eve, J.) ($25,000 TCPA award); *Martin*, 2014 WL 9913504, at *3 ($20,000 TCPA award); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925, ECF No. 243 at ¶ 20 (N.D. Ill. Feb. 27, 2013) (Bucklo, J.) ($30,000 TCPA awards).

Conclusion

Mr. Jackson and his counsel respectfully request that this Court grant their applications for (1) an award of attorneys' fees of $294,002.66; (2) an award of costs and litigation expenses in the amount of $8,687.02; and (3) a service award of $10,000 for Mr. Jackson for his dedicated efforts to the Settlement Class. To date, there are no objections from Settlement Class Members to any of the foregoing.

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/*s/ Michael L. Greenwald*

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