Abbas Kazerounian #48522
ak@kazlg.com
Kazerouni Law Group, APC
245 Fischer Ave., Suite D1
Costa Mesa, CA 92626
P: (800) 400-6808
F: (800) 520-5523

Boyd McFadden Mayo # 43752
mack@bmayolaw.com
Mayo Law Group
922 S Cowley Street, Suite 6
Spokane, WA 99202
Telephone: (509) 381-5091
Facsimile: (509) 241-0834

Ryan L. McBride #50751
ryan@kazlg.com
Kazerouni Law Group, APC
2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (800) 400-6808
Facsimile: (800) 520-5523
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

Nathan Hofstader and Richard Cerenzia, individually and on behalf of others similarly situated,

Plaintiffs,

v.

Emergency Physician Services, P.S. Providence Holy Family Hospital, Sacred Heart Medical Center, and Providence Health and Services,

Defendants.

Case No.: 2:18-cv-00062-SMJ

PLAINTIFF'S UNOPPOSED MOTION FOR:

(1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT

(2) AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARDS;

With Oral Argument

DATE: February 9, 2021
TIME: 1:30 p.m.
CRTRM: 755
JUDGE: Hon. Salvador J. Mendoza

I. INTRODUCTION

Class Representatives Nathan Hofstader and Richard Cerenzia ("Plaintiffs") respectfully submit this unopposed motion for: (1) final approval of the class action settlement; and (2) an award of attorneys' fees, litigation costs, and service awards.

The proposed Settlement with defendant Providence Health and Services ("Defendant") provides meaningful injunctive relief for thousands of Settlement Class members and does not release any rights to individual monetary damages. See Dkt. 50-5 "SA", ¶ 40. The hospitals affiliated with Providence include Providence Centralia Hospital, Providence Holy Family Hospital, Providence Mount Carmel Hospital, Providence Regional Medical Center Everett, Providence Sacred Heart Medical Center & Children's Hospital, Providence St. Joseph's Hospital, Providence St. Mary Medical Center, Providence St. Peter Hospital Providence Holy Family Hospital, Sacred Heart Medical Center, and Kadlec Medical Center.

This Settlement was only obtained after the parties engaged in both informal and formal discovery, extensive arm's length negotiations, and two settlement conferences before Honorable John T. Rodgers regarding allegations that Defendant failed to properly notify class members of the availability of charity care. Declaration of Abbas Kazerounian ("Kazerounian Decl."), ¶ 13. Under the Settlement, Defendant will change its practices regarding the intake process for emergency patients in their Washington hospitals.

In short, the Settlement is both procedurally and substantively fair and should, therefore, be finally approved. In its August 24, 2020 Order Granting Plaintiffs' Unopposed Motion For Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"), the Court found that the proposed Settlement fell within the range of a reasonable settlement and certified the class

as defined in the proposed settlement agreement. Dkt. No. 51.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant owns multiple hospitals in the State of Washington. The Washington Consumer Protection Act ("WCPA") protects consumers against "unfair or deceptive acts or practices in the conduct of any trade or commerce." *See* RCW 19.86.020. The Charity Care Act requires Defendants to grant free or discounted care to qualifying uninsured or underinsured hospital patients for "appropriate hospital-based medical services" "if the responsible party is cooperative with the hospital's reasonable efforts to reach a final determination of sponsorship status" and the patient's income is below 200% of the federal poverty level. WAC 246-453-010(4), (7); WAC 246-453-020(1)(c). Under current guidelines, 200% of the federal poverty level for a family of four in Washington is an income of $55,060 per year.[1] The Charity Care Act requires Defendants to make an "initial determination of sponsorship status … at the time of admission or as soon as possible following the initiation of services to the patient," to determine whether the patient qualifies for free or discounted care. WAC 246-453-020(1)(b). An initial determination "means . . . an indication from the responsible party, pending verification, that he or she may meet the criteria for designation as an indigent person qualifying for charity care." WAC 246-453-010(19). If the responsible party "is cooperative with the hospital's efforts to reach an initial determination of sponsorship status," Defendants may not seek any collections from the patient. WAC 246-453-020(1).

Representing uninsured and underinsured patients, Plaintiffs brought their claims in this case on behalf of themselves and similarly situated patients who 1)

[1] Washington State Low-Income Weatherization Program 2019 Income Eligibility Guidelines. http://www.commerce.wa.gov/wp-content/uploads/2019/03/DRAFT-2019-WA-Eligibility-Guidelines-unprotectedversion.pdf

received emergency care medical treatment; 2) were uninsured or underinsured by insurance or any third-party source of payment at the time of treatment; and 3) were subject to collections by Defendants' or Defendants' agents.

On or about November 21, 2015, Hofstader received emergency services from Holy Family Hospital. Hofstader alleges he was offered and granted charity care, but only after he was sued by a third party debt collector for amounts not paid to Providence. Mr. Hofstader alleges he was forced to hire an attorney to defend the debt collection lawsuit by the third party debt collector, which was dismissed just before trial. At various times from 2011 to 2018, Cerenzia received emergency services from Sacred Heart. Cerenzia alleges he was not offered charity care. Both Plaintiffs allege they were not adequately informed of the availability of charity care at the time of service.

Under the Washington Consumer Protection Act, successful plaintiffs are entitled to recover actual damages, attorneys' fees, costs, and potentially, treble damages for unfair conduct. RCW 19.86.090. In their suit, Plaintiffs sought such damages for themselves and for the members of the class they seek to represent. Defendants vigorously deny all claims asserted in the Action and deny all allegations of wrongdoing and liability.

This Settlement is the result of good faith, arm's-length settlement negotiations over many months, including two settlement conferences before Honorable John T. Rodgers. *See* SA, ¶ 4; *see also* Kazerounian Decl., ¶ 13. Plaintiffs and Defendant submitted detailed mediation submissions to Judge Rodgers setting forth their respective views as to the strengths of their cases before the mediation sessions. *Id*. The Parties' respective positions were the fruits of informal and formal discovery, including written document requests and informal discovery. Kazerounian Decl., ¶¶ 6, 13. Every aspect of the Settlement Agreement, were negotiated culminating in an outstanding settlement. *Id*. at ¶ 13. *See DeHoyos v. Allstate Corp. et al., 240 F.R.D. 269, 287 (W.D. Tex. 2007) (Biery, J.);*

see also Fed. R. Civ. P. 23(e)(2); see also In re Wireless Facilities, Inc. Sec. Litig. II, 253 F.R.D. 607, 610 (S.D. Cal. 2008) ("Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair."); *National Rural Telecommunications Cooperative v. DIRECTV, Inc.,* 221 F.R.D. 523, 527 (C.D. Cal. 2004) (same).

III. SETTLEMENT TERMS

The terms of the Settlement Agreement ("Settlement" or "SA") are summarized below.

A. The Settlement Class

The Agreement defines the "Class" or "Settlement Class Members" as follows:

> All individuals (or their guardians or representatives) who from February 20, 2014, until the date the Motion for Preliminary Approval is filed with the Court, who received emergency care medical treatment from a PHS-WA hospital, or a PHS hospital in Washington State.

SA, ¶ 23.

B. Injunctive Relief

There are at least hundreds to thousands of members of the Settlement Class given that Defendant identified approximately 250,000 potential class members during the class period. *See* Dkt. No. 50.

Under the Settlement Agreement and when the Settlement is given final approval, Defendants have agreed to make the following policy changes to the intake process for emergency patients in their Washington hospitals:

> A. The Registrar in the emergency department will, at the time of registration or as soon as possible following the initiation of services to the patient, determine whether the patient is insured or uninsured. If the patient is uninsured (or if the patient is

unable to confirm whether he/she has coverage), after the patient's medical screening exam, the Registrar (or a Financial Counselor) will screen the patient for eligibility for Medicaid or financial assistance as described below.[2] Defendants may refer the patient to a Financial Counselor in any practicable manner, such as by providing the patient with a phone number or other contact information. In all instances, Defendants' obligations under the Emergency Medical Treatment & Labor Act ("EMTALA") remain in full force and effect, and EMTALA supersedes and trumps any conflicting provision in this Agreement.

B. The Registrar will ask the uninsured patient if he/she would like to be screened for Washington Medicaid or Financial Assistance eligibility.

   a. If the patient declines to be screened for Financial Assistance, the patient will be asked to pay any applicable deposit. If the patient indicates it is a hardship to pay, the patient may be referred to a Financial Counselor. Defendants may refer the patient to a Financial Counselor in any practicable manner, such as by providing the patient with a phone number or other contact information.

   b. If the patient agrees to be screened for Washington Medicaid or Financial Assistance eligibility, the Registrar

[2] For the sake of clarity, the Registrar or other of Defendants' personnel may perform the duties of a Financial Counselor (and vice versa), and Defendants shall be deemed to be in compliance with this agreement so long as the duties described in this paragraph 26 are performed.

will either perform the screening/eligibility process or refer the patient to the Financial Counseling team to begin the screening/eligibility process. In all instances, however, Defendants will comply first with EMTALA. A note will be left in the patient's account indicating the patient is being screened for Washington Medicaid and/or Financial Assistance, and the patient cannot be asked to pay any deposit, co-pay, deductible, or other fee pending a determination regarding eligibility. The patient will not be asked to pay any deposit, co-pay, deductible, or other fee pending a determination regarding eligibility.

C. If the uninsured patient wants to be screened for Financial Assistance, that will be noted in the patient's account, and the patient will be informed that a Financial Counselor will follow up with him/her to assist the patient in completing the financial assistance/charity care application process. The patient will also be given contact information for the Financial Counseling team.

D. The self-pay screening workflow and scripting are documented, so Registrar employees understand the steps to follow

SA, ¶ 26.

Members and even non-members of the Settlement Class will benefit from changes to Defendant's practices as it concerns providing notice of the availability of charity care to patients. Notably, the settlement does not release any claims the class members may have for monetary relief. SA, ¶ 40.

IV. THE NOTICE IS FAIR AND SUFFICIENT

Generally, class members are entitled to receive the "best notice practicable" under the circumstances. *Burns v. Elrod*, 757 F.2d 151 (7th Cir. 1985). However, "[w]hen a class is certified under Rule 23(b)(2) and only provides for injunctive relief, no notice is required." *Kline v. Dymatize Enters, LLC*, 2016 U.S. Dist LEXIS 142774 (S.D. Cal. 2016); *Grant v. Capital Mgmt. Servs., L.P.,* 2013 U.S. Dist. LEXIS 174190, at *15 (S.D. Cal. Dec. 11, 2013) (citing to *Kim v. Space Pencil, Inc.,* C 11-03796 LB, 2012 U.S. Dist. LEXIS 169922, 2012 WL 5948951, at *4 (N.D. Cal. Nov. 28, 2012). Notice of class settlement under Rule 23(e) is only required if the settlement binds the class. Fed. R. Civ. P. 23(e)(1); *see also Manual for Complex Litigation, Fourth* § 21.312; *see generally, Lyon v. United States Immigration & Customs Enforcement*, 300 F.R.D. 628, 635 (N.D. Cal. 2014) ("[I]n a Rule 23(b)(2) class action, notice may be given but is not required, and there is no requirement that a class member be given an opportunity to exclude himself or herself from the lawsuit.").

Under this Settlement, the rights of the Settlement Class Members to any individual monetary or injunctive relief claims will not be released. SA, ¶ 40. Thus, the Settlement Class Members receive the benefit of injunctive relief, but they are not releasing any individual damages claims or claims for monetary relief against Defendant. *Id*. Specifically, the Settlement Agreement provides releases will be provided by Plaintiffs and the Settlement Class Members for "all *class claims (monetary and non-monetary), and all non-monetary individual claims* against the Released Parties" that could have been alleged in the action. SA, ¶ 40. The parties have negotiated a reasonable settlement and a program to provide notice of the settlement to the class members that is fully compliant with Fed. R. Civ. P. 23(c)(2)(B). The settlement class members has been notified through an online targeted marketing campaign. Declaration of Stephanie Molina ("Molina Decl."), ¶ 4. All notices direct class members to an easy to find and easy to

remember settlement website. *Id. at* ¶ 3. The website will have a long-form notice and important court documents, list important dates, and have online capability of opting out of the settlement. ¶ 3.

Additionally, Defendant has agreed to provide notice to the attorneys general under the Class Action Fairness Act ("CAFA"). SA, ¶ 29. The costs of compliance with the provisions of injunctive relief and the CAFA notice, pursuant to 28 U.S.C. § 1715(b), is being covered separately by Defendant. *Id*.

V. THE SETTLEMENT SATISFIES THE CRITERIA FOR FINAL APPROVAL

A court should not second-guess the negotiated resolution. "'[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Service Com*., 688 F.2d 615, 625 (9th Cir. 1982)); *accord Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 965 (9th Cir. 2009). The issue is not whether the settlement could have been better in some fashion, but whether it is fair: "Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027.

The Court already preliminarily found that the requirements of Federal Rules of Civil Procedure 23(b)(2) have been satisfied. *See generally*, Dkt. No. 51.

A. The Settlement Satisfies the Requirements of Fed. R. Civ. P. 23

The Rule 23(a) and (b) factors were previously analyzed and applied by Plaintiffs in their Motion for Preliminary Approval (*see* Dkt. No. 50). As the Court ruled in its Preliminary Approval Order, this case satisfies the Fed. R. Civ. P. 23

requirements. *See* Dkt. No. 51, at 3-4:13-16.

Since preliminary approval, Plaintiffs have continued to serve as adequate Class Representatives by reviewing the Settlement Agreement and submitting declarations in support of the motion for preliminary approval and the present motion; and Plaintiffs support final approval of the proposed Settlement. *See* Declaration of Nathan Hofstader ("Hofstader Decl."), ¶ 5; Declaration of Richard Cerenzia ("Cerenzia Decl."), ¶ 5. Plaintiffs' counsel have also adequately represented the Settlement Class Members by answering questions from class members, monitoring any opt-out requests by class members, and timely filing the present fee petition and motion for final approval of settlement. Kazerounian Decl. ¶¶ 68-70.

B. The Injunctive Relief Settlement Should be Finally Approved

"Unlike the settlement of most private civil actions, class actions may be settled only with the approval of the district court." *Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 623 (9th Cir. 1982). "The court may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(C). The Court has broad discretion to grant such approval and should do so where the proposed settlement is "fair, adequate, reasonable, and not a product of collusion." *Hanlon*, 150 F.3d at 1026.

"To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: 'the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.'" *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). "The relative

degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625. The Court must balance against the continuing risks of litigation and the immediacy and certainty of a substantial recovery. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 741 (S.D. N.Y. 1985).

The Ninth Circuit has long supported settlements reached by capable opponents in arms' length negotiations. In *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009), the Ninth Circuit expressed the opinion that courts should defer to the "private consensual decision of the [settling] parties." *Id.* at 965, citing *Hanlon*, 150 F.3d at 1027 (9th Cir. 1998). The district court must exercise "sound discretion" in approving a settlement. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd 661 F.2d 939 (9th Cir. 1981). However, "where, as here, a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation conducted by capable counsel, it is presumptively fair." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987); *In re Ferrero Litig.*, 2012 U.S. Dist. LEXIS 15174, *6 (S.D. Cal. Jan. 23, 2012) ("Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair.") (citing *Nat'l Rural Telcoms. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

Application of the relevant factors, here, confirms that the proposed Settlement should be finally approved. This Settlement was reached with the assistance of experienced Judge John T. Rodgers (SA, ¶ 4), which shows a lack of collusion between the Parties. *See Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 948 (9th Cir. Cal. 2011). Based on the facts of this case, Class Counsel and the named Plaintiffs agree that this settlement

is fair and reasonable; and among other things, the Settlement will avoid costly and time-consuming litigation and the need for trial. Kazerounian Decl., ¶¶ 10; McBride Decl., ¶¶ 10; Mayo Decl., ¶ 10; Hofstader Decl., ¶ 6; Cerenzia Decl., ¶ 6.

1. The Strength of the Lawsuit and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

Defendant has denied and continues to deny any and all allegations of wrongdoing and liability. SA, ¶ 2; Answer to Complaint. While both sides strongly believe in the merits of their respective cases, there are risks to both sides in continuing the Action. *Id*. Plaintiffs' counsel understand there are uncertainties associated with complex class action litigation and that no one can predict the outcome of the case, as some courts in the Ninth Circuit have dismissed claims brought by plaintiffs pursuant to consumer protection laws. *See Ebner v. Fresh, Inc*., 838 F.3d 958 (9th Cir. 2016); *see also Williams v. Gerber Products Co.,* 552 F.3d 934 (9th Cir. 2008). Defendant contends that it has meritorious defenses to this action regarding liability and class merits.

In considering the Settlement, Plaintiffs and their counsel carefully balanced the risks of continuing to engage in protracted and contentious litigation against the benefits to the Settlement Class, including the stipulated change in policies, and believe that the injunctive relief settlement is in the best interests of the Settlement Class Members. Kazerounian Decl., ¶¶ 11-12; McBride Decl., ¶¶ 11-12; Mayo Decl., ¶¶ 11-12; Hofstader Decl., ¶ 7; Cerenzia Decl., ¶ 7.

Due to the costs and risks to both sides, this injunctive relief Settlement presents a fair and reasonable alternative to continuing to pursue the action as a class action for the alleged violations of the Washington Consumer Protection Act and labeling laws. This Settlement would "avoid[] the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the [p]laintiff class." *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008).

The Settlement provides for a reasonably prompt change in Defendant's policies as it concerns providing notice to patients of the availability of charity care, and better protects the interests of consumers nationwide without the delay of contested litigation that could take years to resolve, especially if there were appeals to any significant decisions.

2. The Relief Offered in Settlement

The primary purpose of consumer statutes, such as the Washington Consumer Protection Act, is to protect consumers against unfair and deceptive business practices. RCW 19.86.020. Here, the Class will obtain a fair and substantial benefit, as the injunction requires Defendant to implement significant policy changes (as discussed in Section III.B. above) creating greater transparency for patients of Defendant. See *Id.*

Although the Settlement Class Members will not obtain monetary relief under this Settlement, Defendant will not be releasing individual monetary relief claims of any kind. SA, ¶ 40. Class Members also will not need to take any action in order to benefit from the injunctive relief negotiated on their behalf.

3. The Extent of Discovery Completed

The parties spent a significant amount of time exchanging discovery in this case. Specifically, the parties participated in formal written discovery as well as informal discovery before and after the two settlement conferences. Kazerounian Decl., ¶¶ 6, 13; McBride Decl., ¶ 6; Mayo Decl., ¶ 6. Therefore, there was sufficient discovery exchanged to make a meaningful decision regarding negotiating a settlement.

4. The Experience and Views of Class Counsel

The Parties are represented by counsel experienced in complex litigation. Class Counsel have extensive experience in class actions, as well as particular expertise in class actions relating to consumer protection. Kazerounian Decl., ¶¶ 19-

60; McBride Decl., ¶¶ 14-37, 39; Mayo Decl. ¶¶ 14-19, 25-31. Class Counsel believe that under the circumstances the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members. *See* Kazerounian Decl., ¶ 10; McBride Decl., ¶ 10; Mayo Decl. ¶¶ 10.

5. The Reaction to the Settlement

The Class Members received abundant notice of the settlement through an online targeted marketing campaign, which made 5 million impressions upon potential class members targeted at Washington State residents. Molina Decl. ¶ 4. The results have been most successful as five (5) Class Members opted out of the settlement and there have been no objections thus far. *Id.* at ¶¶ 5-6. The names of the Class Members that have opted out of the settlement are attached as "Exhibit A" to Stephanie Molina's Declaration filed contemporaneously with this motion. *Id.* at ¶ 5. Plaintiffs request these Class Members be excluded from the settlement.

Additionally, the notice pursuant to 28 U.S.C. § 1715(b) was provided by Defendant to the Attorneys General on July 14, 2016. Dkt. Nos. 52-53. Class Counsel have not been contacted by any of the Attorneys General concerning this proposed Settlement (Kazerounian Decl., ¶ 14; McBride Decl., ¶ 13; Mayo Decl., ¶ 13), which further supports the fairness and adequacy of the Settlement.

Therefore, the relevant factors favor final approval of the Settlement as they demonstrate that the settlement is fair, reasonable, and adequate.

VI. THE REQUESTED COMBINED FEES AND COSTS OF $95,000 SHOULD BE APPROVED AS FAIR AND REASONABLE

A. Courts Accord Great Weight To Fees Negotiated By The Parties

Federal Rules of Civil Procedure provide that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties agreement." Fed. R. Civ. P. 23(h). Defendant has agreed to pay any court-approved award of attorneys' fees *and* litigation costs

of up to $95,000 to be distributed as part of the Settlement Payment. SA, ¶ 44. Courts encourage negotiated fee and expense agreements, which are entitled to substantial deference in the absence of indicia of collusion. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.").

The requested attorneys' fees and reimbursement of out-of-pocket expenses were negotiated with the assistance of an experienced mediator, but only *after* the Parties reached an agreement on the substantive terms of the Settlement. Kazerounian Decl., ¶ 13. The negotiations were conducted at arm's length by experienced counsel during mediation before Hon. John T. Rodgers. SA, ¶ 4. These facts demonstrate a lack of collusion. *See Hanlon*, 150 F.3d at 1029 (where settlement terms, including attorneys' fees, are reached through formal mediation, the Court may rely upon the mediation proceedings "as independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class"); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("the assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive"); *Dennis v. Kellogg Co.*, 2010 WL 4285011, at *4 (S.D. Cal. Oct. 14, 2010) (the parties engaged in a "full-day mediation session," which helped to establish that the proposed settlement was non-collusive); *See also* 2 McLaughlin on Class Actions, § 6:7 (8th ed.) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.").

B. Legal Standards for Award of Fees and Costs

In this circuit, there are two primary methods used to calculate reasonable attorneys' fees: (1) the lodestar method; and (2) the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015). Class Counsel seek an award of attorneys' fees and litigation costs of up to

$95,000 by way of the lodestar method. SA, ¶ 44. Courts employ the lodestar method of calculating attorneys' fees in injunctive relief class actions by multiplying the hours worked by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029-30. Two law firms represent Plaintiffs in this action: Kazerouni Law Group, APC and The Mayo Law Group, PLLC.

The following table represents a breakdown of each of these two law firms' hourly rates and a summary of the hours incurred when including a reasonable number of estimated additional hours through final approval, including a total combined lodestar:

	HRS. INCURRED	RATE/HR.	TOTAL
KAZEROUNI LAW GROUP, APC	-	-	-
A) ABBAS KAZEROUNIAN - PARTNER	84.2	$710	$59,782
B) RYAN L. MCBRIDE - ASSOCIATE	152.1	$350	$53,235
MAYO LAW GROUP, PLLC	-	-	-
A) BOYD M. MAYO - OWNER	43.5	$350	$15,225
TOTAL COMBINED LODESTAR	**279.8**	-	**$128,242**

1. The Requested Fee is Reasonable, Fair, and Justified Under the Lodestar Method

Under this two-step method, "[t]he lodestar calculation begins with the multiplication of the number of hours reasonably expended by a reasonable hourly rate." *Hanlon*, 150 F.3d at 1029 (citing *Blum, v. Stenson*, 465 U.S. 886, 897 (1984)). The lodestar figure may then be augmented or multiplied to reflect additional factors to be considered in determining a reasonable attorney fee award. *Id*. (citing *Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67, 70 (9th Cir. 1975). These factors include "the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id*.

Significantly, the lodestar multiplier here is less than 1 (approximately 0.7).[3] In light of the meaningful relief obtained, the efficiency with which the case was litigated, the risk, difficulty, and the public service rendered by this action, as well as the work still to be done in effectuating the settlement's administration, the requested fee is eminently reasonable under the lodestar method.

A multiplier between 1 and 2 in complex cases is not uncommon. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir. 2002) (In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded . . . when the lodestar method is applied."); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. Sept. 14, 2010) ("Where appropriate, multipliers may range from 1.2 to 4 or even higher."); *Van Vranken v. Atl. Richfield Co*., 901 F. Supp. 294, 298-99 (N.D. Cal. Aug. 16, 1995) (noting that "[m]ultipliers in the 3-4 range are common"). Thus, Class Counsel's request for a multiplier of approximately 0.7 is much lower than the multipliers applied by courts in many other class actions.

Plaintiffs' counsels' lodestar is therefore reasonable. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work that could have resulted in having multiple law firms work on this case. Kazerounian Decl., ¶ 68; McBride Decl., ¶ 41; Mayo Decl., ¶ 34.

i. *The hourly rates are reasonable*

Plaintiffs' counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The background and experience of Plaintiffs' counsel are set forth in their attached declarations and

[3] Technically, Class Counsel's current lodestar for attorney's fees is $128,242.00 and Class Counsel's current costs are $6,775.55 for a total of $135,017.55 fees and costs, which is far more than the $95,000 requested here.

firm resumes. Plaintiffs' counsel have excellent reputations as nationwide class action practitioners, in particular consumer class actions. Kazerounian Decl., ¶¶ 51-58; McBride Decl., ¶¶ 14-17; Mayo Decl., ¶¶ 14-19, 25-31.

Mr. Kazerounian was recently approved on September 12, 2019 in the case of *Medina, et al v. Enhanced Recovery Company*, Case No. 2:15-cv-14342 in the United States District Court, Southern District of Florida at an hourly rate of $705 in a Final Approval Order. On or about June 18, 2019 in the case of *Maur v Transform*, Case No. CV 18-831, in Superior Court of California, County of Yolo, Mr. Kazerounian was approved at an hourly rate of $705 in a Final Approval Order. On May 9, 2019, in the case of *Ronquillo v. Transunion Rental Screening Solutions, Inc.*, Case No. 17-civ-129-JMI in the United States District Court, Southern District of California, Mr. Kazerounian was approved at $705 per hour in a Final Approval order.

Plaintiffs refer the Court to Mr. Kazerounian's declaration in support of this motion for a more comprehensive list of previous awards. Kazerounian Decl. ¶¶ 51-60. Based on Mr. Kazerounian's experience and previous awards in other cases described herein, Plaintiffs are requesting Mr. Kazerounian's hourly rate in this case be approved at $710 per hour.

On July 7, 2020, Judge Clark Waddoups of the U.S. District of Utah approved Mr. McBride's request for $350 per hour for attorney's fees in a consumer class action, *Morrison v. Express Recovery Services, Inc. d/b/a Clear Management Solutions*, case number 1:17-cv-00051-CW-DAO (ECF # 82). On February 18, 2020, Judge Thomas S. Zilly, of the Western District of Washington, approved Mr. McBride's request for $350 per hour for attorney's fees in a consumer protection case, *Sylvester v. Merchants Credit Corporation*, case number 2:17-cv-00168-TSZ. On October 28, 2019, Judge Bastian of the Eastern District of Washington approved Mr. McBride's request for $350 per hour for attorney's fees in *McGilvra v. Abbott & Rose Associates, LLC*, case number 2:19-

cv-00106. Additionally, Mr. McBride is routinely retained to defend consumers on debt defense cases and is compensated by his clients at a rate of up to $350 per hour. Furthermore, during the litigation of this matter, Mr. McBride regularly consulted with the senior partners of the firm, and had the benefit of their experience in bringing this matter to a successful conclusion, without having Plaintiffs incur attorneys fees at the higher rate charged by the partners. McBride Decl. ¶ 37.

Plaintiffs refer the Court to Mr. McBride's declaration in support of this motion for a more comprehensive list of previous awards. McBride Decl. ¶¶ 32-37. Based on Mr. McBride's experience and previous awards in other cases described herein, Plaintiffs are requesting Mr. McBride's hourly rate in this case be approved at $350 per hour.

Mr. Mayo has been approved between $200-$400 per hour in the following list of non-exhaustive cases: *Carlsen v. Global Client Solutions, LLC, et al*., U.S. District Court, Eastern District of Washington, Cause No. CV-09-246-LRS; *Carlsen v. Freedom Debt Relief*, U.S. District Court, Eastern District of Washington, Cause No. CV-09-055-LRS; *Wheeler v. NoteWorld, LLC, et al.*, U.S. District Court, Eastern District of Washington, Cause No. CV-10-202-LRS; *Johnson v. James Wojcik, et al.,* Spokane County Superior Court, Cause No. 09-2-03638-6. Mayo Decl. ¶ 26. A more exhaustive list of cases where Mr. Mayo was approved can be found in Mr. Mayo's declaration attached. *Id. at* ¶¶ 26, 27, 31.

The 2014 National Law Journal data shows that at least one national defense firm with offices in Seattle, Washington charged between $330-$1,000 for partners and $215-$610 for associates. *2014 National Law Journal Billing Survey.* Additionally, case law supports the reasonableness of Plaintiffs' counsels' hourly rates. *See 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."); *G.F. v. Contra Costa Cnty.*, 2015 U.S. Dist. LEXIS 159597 (N.D. Cal. Nov. 25, 2015) (approving hourly attorney rates from $175 to $975 per hour in class action); *Klee v. Nissan N. Am., Inc.*, 2015 U.S. Dist. LEXIS 88270 (C.D. Cal. Jul. 7, 2015) (supporting hourly rates for senior attorneys between $370-$695 in consumer class action); *Aarons v. BMW of N. Am., LLC*, 2014 U.S. Dist. LEXIS 118442 (C.D. Cal. Apr. 29, 2014) (supporting hourly rates for partners up to $775 in consumer class action); *Browne v. Am. Honda Motor Co.*, 2010 WL 9499073, at *7 (C.D. Cal. Oct. 5, 2010) (authorizing hourly rates between $445-$675 for attorneys with experience ranging from seven to fifteen years of experience in consumer class action); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 643-44 (S.D. Cal. Jan. 20, 2011), *aff'd in part*, 473 F. Appx. 716 (9th Cir. 2012) (approving hourly rates in the San Diego area of $675-795 for partners, up to $410 for associates, and up to $345 for paralegals); *see also POM Wonderful, LLC v. Purely Juice, Inc.*, 2008 WL 4351842 at *4 (C.D. Cal. Sept. 22, 2008) (finding partner rates of $750 to $475 and associate rates of $425 to $275 reasonable); *Browne v. American Honda Motor Co.,* 2010 U.S. Dist. LEXIS 144823, at *26 (C.D. Cal. Oct. 5, 2010) finding that associate's hourly rate of $380 falls within the range of billing rates for lawyers two years out of school; *Aarons v. BMW of N. Am., LLC,* 2014 U.S. Dist. LEXIS 118442 at *45 (C.D. Cal. Apr. 29, 2014) (approving hourly rates for associates up to $550 in consumer class action).

As mentioned above, Plaintiffs' counsel have submitted sworn declarations attesting to their hourly rates and total hours devoted to the case, their experience, and their efforts in prosecuting this case, which justifies the hourly rates requested. *See Sablan v. Dep't. of Finance of Com. of Northern Mariana Islands*, 856 F.2d 1317 (9th Cir. 1988) (attorney-fee award need not be preceded by an evidentiary hearing when the record and supporting affidavits are sufficiently

detailed to provide an adequate basis for calculating the award and the material facts necessary to calculate the award are not genuinely in dispute).

ii. *The hours expended were reasonable*

As of approximately February 20, 2018, Class Counsel spent a combined 279.8 hours in this litigation against Defendant. Kazerounian Decl., ¶ 71; McBride Decl., ¶ 44; Mayo Decl., ¶ 37. The number of hours spent by Plaintiffs' counsel is reasonable. The Settlement was only obtained after the parties engaged in extensive arm's length negotiations including informal and formal discovery, and two settlement conferences. Plaintiffs' counsel spent a significant amount of time negotiating the Settlement in principle and then finalizing the actual terms of the Settlement with Defendant. Kazerounian Decl., ¶ 69; McBride Decl., ¶ 42; Mayo Decl., ¶ 35.

Plaintiffs' counsel note that their work has not yet been completed, as they must still (1) prepare for and attend the final approval hearing set for February 9, 2021 [Dkt. No. 51]; (2) disburse service awards and awards for Plaintiffs' counsel's fees and expenses; and (3) reasonably monitor the implementation of the implemented polices by Defendant following final approval. Kazerounian Decl., ¶ 70 (12 anticipated hours); McBride Decl., ¶ 43 (8 anticipated hours). As Class Counsel's lodestar increases, the multiplier will decrease, all of which further supports the reasonableness of the requested fee award. Also, there are no objections from any Attorney General. Kazerounian Decl., ¶ 14.

Thus, the requested multiplier of less than 1 (0.7) is certainly justified in light of the contingent nature of this action, the work performed to date, and the significant amount of additional work Plaintiffs' counsel will need to undertake.

2. <u>Plaintiffs' Litigation Expenses are Compensable</u>

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F.

Supp. 1362, 1366 (N.D. Cal. Jan. 23, 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970).

The expenses that Plaintiffs' counsel reasonably incurred to prosecute this action further support the *combined* amount of $95,000 for fees and litigation expenses. "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970). The Ninth Circuit has stated that such costs may include those reasonable out-of-pocket expenses that "would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Class Counsel have submitted declarations attesting that $6,775.55 in total expenses were incurred in prosecuting this action. *See* Kazerounian Decl., ¶ 74 ($6,774.87 by Kazerouni Law Group, APC); Mayo Decl., ¶ 7 ($.68 by Mayo Law Group, PLLC). These expenses include a filing fee, service fee, travel expenses, attending the preliminary approval hearing, written discovery, photocopies, and postage.

These expenses were reasonably and necessarily incurred, and are of the sort that would typically be billed to paying clients in the marketplace. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in class action litigation).

VII. A SERVICE AWARD IN THE AMOUNT OF $2,500 FOR EACH NAMED PLAINTIFF IS REASONABLE AND APPROPRIATE

Courts have long recognized that a class representative should be compensated for their service to the class. *In re Mego Fin. Corp. Sec. Lit.*, 2123 F.3d 454, 463 (9th Cir. 2000); *West v. Circle K Stores, Inc.*, 2006 U.S. Dist.

LEXIS 76558, at *26 (E.D. Cal. Oct. 20, 2006). As the Ninth Circuit has recognized, "named Plaintiffs, as opposed to designated class members who are not named Plaintiffs, are eligible for reasonable incentive payments." *Staton*, 327 F.3d at 977; *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards "are fairly typical in class action cases"). Such awards are intended to compensate class representatives for work done on behalf of the class [and] make up for financial or reputational risk undertaken in bringing the action." *Id*. Small incentive awards, such as those requested here, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. A court should order an incentive award when it finds that it is not the product of collusion and does not come at the expense of the remaining members of the class. *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, at *17-18 (S.D. Cal. Oct. 6, 2008).

Such compensation provides the economic motivation to induce potential plaintiffs to lend their names and support to class actions generally. *West v. Circle K Stores, Inc.,* 2006 U.S. Dist. LEXIS 76558 at *26 (E.D. Cal. Oct. 19, 2006). The same incentive fees further ensure that meritorious actions are prosecuted to completion. *Linney v. Cellular Alaska Part.*, 1997 U.S. Dist. LEXIS 24300, at *23 (N.D. Cal. Jul. 18, 1997).

In addition to injunctive relief, this Settlement provides an Incentive Award in the amount of $2,500 to be paid to each of the two named Plaintiffs (Nathan Hofstader and Richard Cerenzia), for their efforts in bringing and litigating this Action, subject to Court approval, which shall be paid at the same time as the attorneys' fees and costs become payable to Class Counsel. SA, ¶ 47. Class Counsel respectfully request a service award in the amount of $2,500 to be paid to each Plaintiff Hofstader and Plaintiff Cerenzia in recognition of their contributions toward the successful settlement of this lawsuit. The efforts of the Class Representatives in prosecuting this action against Defendant are outlined in the

Class Representatives' respective declarations filed herewith, but included both representatives attending both settlement conferences, and Plaintiff Hofstader sitting for his deposition. Hofstader Decl, ¶ 8; Cerenzia Decl., ¶ 8.

The requested service awards are in line with, if not significantly lower, than amounts awarded in other consumer cases. See *Grant v. Capital Mgmt. Servs., L.P.,* 2014 U.S. Dist. LEXIS 29836, at *21 (S.D.Cal. Mar. 5, 2014) (approving $5,000 incentive award in TCPA case where the relief to the class members was an injunction); *Ordick v. UnionBancCal Corp.*, 2012 U.S. Dist. LEXIS 171413, at *11 (N.D. Cal. Dec. 3, 2012) (awarding $5,000 to named plaintiff where "the settlement was reached at the early stages of litigation"); *Schaffer v. Litton Loan Servicing, LP,* 2012 U.S. Dist. LEXIS 189830 *58 (C.D. Cal. Nov. 13, 2012) ("The parties' Settlement provides for payment of $5,000.00 to each of the households that served as class representatives in satisfaction of their individual claims and as an incentive award; this is equivalent to $2,500.00 for each individual named plaintiff. This amount is well within, and indeed, at the lower end of, the range of incentive payments that have been awarded by courts in this circuit."); *Opson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, at *27-28 (N.D. Cal. Apr. 3, 2009) (awarding $5,000 incentive payment and finding that "in general, courts have found that $5,000 incentive payments are reasonable").

Ninth Circuit authority fully supports the service awards requested herein. *See Radcliffe v. Experian Info. Solutions, Inc*., 2013 U.S. App. LEXIS 9126 (9th Cir. Mar. 4, 2013). Furthermore, the requested service awards are unopposed by Defendant. SA, ¶ 47.

Therefore, the requested award of attorneys' fees, costs and service payments are fair and reasonable, and should be finally approved.

VIII. CONCLUSION

In sum, the Parties have reached this Settlement following fair and reasonable negotiations, with the assistance of the Hon. John T. Rodgers. The

Settlement is fair and reasonable to the Settlement Class Members who will benefit from changes to the intake policies of Defendant. For the foregoing reasons, Plaintiffs respectfully request the Court:

- Grant final approval of the proposed Settlement;
- Grant the request for Attorneys' Fees, Costs and Service Awards (consisting of a combined award of attorneys' fees and litigation costs of $95,000, and a $2,500 service award to each of the two Class Representatives);
- Enter the proposed Final Judgment and Order of Dismissal with Prejudice submitted herewith; and,
- Retain continuing jurisdiction over the implementation, interpretation, administration and consummation of the Settlement.

Date: November 9, 2020

Respectfully submitted,

/s/ Abbas Kazerounian

Abbas Kazerounian (SBN: 249203)
ak@kazlg.com
Ryan L. McBride (SNB 50751)
ryan@kazlg.com
Kazerouni Law Group, APC
245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626
Tel: (800) 400-6808
Fax: (800) 520-5523
Attorney for Plaintiffs

Boyd M. Mayo (SBN: 43752)
bmayo@pyklawyers.com
Mayo Law Group, PLLC
522 W Riverside Ave., #700
Spokane, WA 99201
Telephone: (509) 505-1052
Facsimile: (509) 321-5935

Attorneys for Plaintiffs

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kazerouni Law Group, APC, 245 Fischer Avenue, Unit D1, Costa Mesa, California 92626. On November 9, 2020, I served the within document(s):

PLAINTIFFS' MOTION FOR FINAL APPROVAL, ATTORNEYS FEES, COSTS, AND INCENTIVE AWARDS, AND SUPPORTING DECLARATIONS AND EXHIBITS

☒ MAIL – by enclosing the document(s) in a sealed envelope or package addressed to the persons or entities below and placing the envelope for collection and mailing, following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ E-MAIL – by sending the document(s) listed above to the email addresses listed below.

Brad Fisher
Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct. Executed on November 9, 2020, at Costa Mesa, CA.

s/ Lili Masri
Lili Masri