KAZEROUNI LAW GROUP, APC
Abbas Kazerounian, Esq.
ak@kazlg.com
Matthew M. Loker, Esq.
ml@kazlg.com
245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

LEMBERG LAW LLC
Trinette G. Kent, Esq.
tkent@lemberglaw.com
10645 North Tatum Blvd., Ste. 200-192
Phoenix, AZ 85028
Telephone: (855) 301-2100
Facsimile: (203) 653-3424

HYDE & SWIGART
Joshua B. Swigart, Esq.
josh@westcoastlitigation.com
David McGlothlin, Esq.
david@westcoastlitigation.com
2633 E. Indian Road, Suite 460
Phoenix, AZ 85016
Telephone: (602) 265-3332
Facsimile: (602) 230-4482

LEMBERG LAW LLC
Sergei Lemberg, Esq.
slemberg@lemberglaw.com
Stephen Taylor, Esq.
staylor@lemberglaw.com
1100 Summer Street
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424

Attorneys for Plaintiff,
Michael Reid

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MICHAEL REID, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

I.C. SYSTEM, INC.,

Defendant.

Case No.: 12-CV-2661-ROS

PLAINTIFF MICHAEL REID'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REID'S MOTION FOR ATTORNEYS' FEES AND COSTS

DATE: March 27, 2018
TIME: 1:00 p.m.
COURTROOM: 604

HON. ROSLYN O. SILVER

///

TABLE OF CONTENTS

Page

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

TABLE OF AUTHORITIES

CASES **PAGE(S)**

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REID'S MOTION FOR ATTORNEYS' FEES AND COSTS

I. INTRODUCTION

This Court preliminarily approved a $3,350,000.00 common fund settlement between Plaintiff MICHAEL REID ("Reid") and Defendant I.C. SYSTEM, INC. ("ICS") on March 24, 2017. [ECF. No. 218; and, 2017 U.S. Dist. LEXIS 43770]. Reid contends that this Settlement represents an excellent result for the Class members. As such, Reid respectfully submits this Memorandum of Points and Authorities in support of Reid's request for an award of attorneys' fees in the amount of $725,000.00 and $59,627.00 in costs. This request is more than $40,000.00 less than the $825,000.00 maximum previously approved by this Court.

As explained below, Reid's counsel seek their fees under the percentage-of-the-fund method. Under this method, attorneys who create a common fund for a class may be awarded a percentage of fees from the fund. *Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. LEXIS 89220, at *13 (D. Ariz., June 9, 2017) quoting *Boeing Co. v. Van Cemert*, 444 U.S. 472, 478 (1980). In the Ninth Circuit, the typical range of acceptable attorneys' fees range from twenty percent to thirty percent, with twenty-five percent the "benchmark." *See generally Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1049 (9th Cir. 2002). Here, Class Counsel seek 23%[1] of the Fund inclusive of all attorneys' fees and litigation expenses. This 23% award sought by Reid's counsel is warranted in light of the strong outcome which was achieved as a direct result of the time, effort, and skill of Reid's counsel and represents a unilateral reduction by Class Counsel when compared with the amount in the Parties' Settlement Agreement. Reid respectfully submits that the requested

[1] The exact percentage is 23.43%; however, Class Counsel refers to this percentage as 23% in the interest of brevity.

fee is fair, reasonable, consistent with Ninth Circuit law, and appropriate given the attorneys' fees regularly awarded in similar cases.

II. FACTUAL AND PROCEDURAL HISTORY

This Court is well aware of the contentious litigation history that ultimately lead to the current settlement. To summarize, Reid filed Reid's Class Action Complaint in the District of Arizona alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA"). [ECF No. 1]. Thereafter, on May 9, 2014, Reid filed Reid's First Amended Class Action Complaint still alleging violations of the TCPA. [ECF No. 49]. Subsequently, on August 29, 2016, Reid filed Reid's Third Motion for Preliminary Approval of Class Action Settlement. [ECF No. 215-1]. On March 24, 2017, this Court granted said motion. [ECF. No. 218; and, 2017 U.S. Dist. LEXIS 43770]. Reid now brings this Motion for Attorneys' Fees and Costs in compliance with this Court's Order approving the Parties' proposed schedule. [*See* ECF No. 230 at 6:15-26].

III. LEGAL STANDARD

In a common fund case, the district court has the discretion to apply either a lodestar multiplier method or a percentage-of-the-fund method in calculating a class fee award. *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) quoting *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *see also Maxin v. Rhg & Co.*, 2017 U.S. Dist. LEXIS 27374 at *19 (S.D. Cal. Feb. 27, 2017). The Ninth Circuit has set a benchmark of 25% of the fund as a starting point, this benchmark may "be adjusted upward or downward to account for any unusual circumstances involved in the case." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). Furthermore, "[i]n megafund cases, fees more commonly will be under the 25% benchmark in this Circuit . . .. In contrast, in cases under $10 million, the awards more frequently will exceed the

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

25% benchmark, and indeed go above 30%." *Aichele v. City of L.A.*, 2015 U.S. Dist. LEXIS 120225, at *16-17 (C.D. Cal. Sep. 9, 2015).

The goal is reasonableness, and the use of a mechanical or formulaic application of the percentage-of-the-fund method is not appropriate where it would yield an unreasonable result. *Stanger v. China Electric Motor, Inc.*, 812 F.3d 734, 739 (9th Cir. 2016) quoting *Fischel,* 307 F.3d at 1007; *see also In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 109 F.3d 602, 607 (9th Cir. 1997). As set forth in detail below, an award of 23% is more than reasonable in light of the circumstances of the case described herein.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

IV. ARGUMENT

In granting Preliminary Approval, this Court permitted Class Counsel to seek up to $725,000.00 in attorneys' fees; and, $59,627.00 in costs. [ECF No. 230, 2:15-17]. Reid asserts that (A) the requested fee is presumptively reasonable because it resulted from arm's-length negotiations; (B) the percentage-of-the-fund method should apply in light of this case resulting in a common fund settlement; (C) the settlement represents an outstanding result for the class and the requested fee award is fair, reasonable, and justified; and, (D) the lodestar-plus-multiplier cross-check supports the requested fee.

(A) THE REQUESTED FEE IS PRESUMPTIVELY REASONABLE BECAUSE IT RESULTED FROM ARM'S-LENGTH NEGOTIATIONS.

As the United States Supreme Court has explained, "[a] request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). While the Court must perform its own evaluation to verify that the requested fees are reasonable and not the product of collusion, it should give weight to the judgment of the parties and their counsel where, as here, the fees were agreed to at arm's length negotiations after the parties agreed on the key deal terms. *See, e.g. In re Apple*

Computer, Inc. Derivative Litig., 2008 U.S. Dist. LEXIS 108195, at *12 (N.D. Cal. Nov. 5, 2008).

Here, Class Counsel negotiated with ICS to reach an agreed-upon fee amount to which ICS would not object. As referenced in the Settlement Agreement, the Parties reached this agreement after three all-day mediation sessions, and several intervening and follow up communications and conferences between the parties.[2] [ECF No. 215-3 at ¶ 1.03]. Further, the fee amount, like the settlement itself, was reached following the recommendations of the mediator Michael Young, and a Settlement Conference before magistrate Judge Deborah M. Fine. [*Id.*]. This fact serves as "independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also Arnold v. Ariz. Dep't of Pub. Safety*, 2006 U.S. Dist. LEXIS 53315 at *31-32 (D. Ariz., July 31, 2006). Under these circumstances, the Court should give weight to the judgment of the parties and their counsel regarding reasonable fees.

(B) THE PERCENTAGE-OF-THE-FUND METHOD SHOULD APPLY IN LIGHT OF THIS CASE RESULTING IN A COMMON FUND SETTLEMENT.

"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." *See Aichele v. City of L.A.*, 2015 U.S. Dist. LEXIS 120225, at *15 (C.D. Cal. Sep. 9, 2015); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("lodestar method is merely a cross-check on the reasonableness of the percentage figure, and it is

[2]Agreements not to oppose an attorneys' fee request up to a certain amount are proper. *See In re M.L. Stern Overtime Litig.*, 2009 U.S. Dist. LEXIS 31650, at *14 (S.D. Cal. 2009).

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary . . ."). In common fund cases like Reid's, the application of the percentage-of-the-recovery method is not only preferred but easier and less time-consuming than the lodestar calculation. *In re Apollo Group Inc. Securities Litigation*, 2012 U.S. Dist. LEXIS 55622, at *20 (D. Ariz., Apr. 20, 2012); *see also In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942. As such, it follows that the lodestar approach is not the most efficient way to award fees in cases like Reid's because the lodestar approach "encourages significant elements of inefficiency." *Aichele,* 2015 U.S. Dist. LEXIS 120225, at *15; *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266-67 (D.C. Cir. 1993); *see also Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. 89920 at *13 (D. Ariz., June 9, 2017) ("[t]he use of the percentage-of-fund method to calculate reasonable attorneys' fees is well-established in the Ninth Circuit").

Furthermore, the percentage-of-the-fund method comports with the legal marketplace, where counsel's success is frequently measured in terms of the result counsel has achieved. *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir. 1993) (in common fund cases "the monetary amount of the victory is often the true measure of [counsel's] success"); *Lopez v. Youngblood*, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011) (repeatedly referred to the "excellent result" achieved in a "complex and risky case" when awarding Class Counsel 28.5% of the Settlement Fund). By assessing the amount of the fee in terms of the amount of the benefit conferred on the class, the percentage method "more accurately reflects the economics of litigation practice" which "given the uncertainties and hazards of litigation, must necessarily be result-oriented." *Swedish Hosp. Corp.*, 1 F.3d at 1269. Moreover, "[i]t is well recognized that attorneys' fees should be aligned with those of the class" and those interests are most aligned when the percentage fee method is used because said method gives class counsel an interest in maximizing the recovery

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

because a greater recovery directly benefits counsel as well as the class. *Aichele*, 2015 U.S. LEXIS 120225, at *17. The benefits to the percentage approach in common fund cases include: consistency with contingency fee calculations; aligning lawyers' interests with achieving the highest award for class members; and reducing the burden on the courts that a complex lodestar calculation requires. *Tait v. BSH Home Appliances Corp.*, 2015 U.S. Dist. LEXIS 98546, at *34 (C.D. Cal. July 27, 2015); *see also Vizcaino*, 290 F.3d at 1050 fn. 5; *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942.

The Ninth Circuit "has long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis to compensate them for the risk that they might be paid nothing at all for their work." *Rose v. Bank of Am. Corp.*, 2014 US. Dist. LEXIS 121641, at *35 (N.D. Cal. Aug. 29, 2014) citing *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299. "[I]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of the class client given the investment of substantial time, effort, and money. . .." *In re Washington*, 19 F.3d at 1300 (internal quotations and citations omitted). For these very reasons, the percentage-of-the-fund method is applied more frequently than the lodestar-plus-multiplier method in common fund cases in the Ninth Circuit. *See, e.g., Vizcaino*, 290 F.3d at 1050 ("[T]he primary basis of the fee award remains the percentage method"); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) ("[U]se of the percentage method in common fund cases appears to be dominant"); *Lopez v. Youngblood*, 2011 U.S. Dist. LEXIS 99289, at *31 (E.D. Cal. Sept. 1, 2011) ("[W]hile the Court has discretion to use either a percentage of the fund or a lodestar approach in compensating class counsel . . . the percentage of the fund is the typical method of calculating class fund fees");

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

and, *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1374-78 (N.D. Cal. 1998) (discussing advantages of percentage of recovery method in common fund cases).

Thus, Class Counsel request that the Court use the standard percentage-of-the-fund approach to determining the award of attorneys' fees in this action.

(C) THE SETTLEMENT REPRESENTS AN OUTSTANDING RESULT FOR THE CLASS RENDERING THE REQUESTED FEE AWARD FAIR, REASONABLE, AND JUSTIFIED IN LIGHT OF THE SIX FACTORS DISCUSSED BELOW.

The compromised settlement reached between the Parties states that ICS agrees to create a common fund of three-million three hundred and fifty thousand dollars ($3,350,00.00 (the "Gross Settlement Fund")). [Preliminary Approval Motion, Exhibit 1, Settlement Agreement ("Settlement Agr." or "Settlement"), ¶ 5.01]. The Gross Settlement Fund is to be used to pay the following: (i) notice and settlement administration costs; (ii) the Attorneys' Fees award; (iii) litigation costs and expenses incurred by counsel; (iv) the incentive award to Reid; and (v) cash payments to be paid to Settlement Class Members. [ECF No. 218 at 2:25-27; 3:1-2].

Within sixty (60) business days after the Effective Date (the "Funding Date"), ICS shall provide funds to the Claims Administrator in an amount equal to the difference between what has been paid to that date and the full amount of the Settlement Payment. [ECF No. 215-3 at ¶ 8.04]. The Effective Date means the date when the Judgment has become final, the "Funding Date" and the "Effective Date" shall be used interchangeably herein. [*Id*. at ¶ 2.19].

Furthermore, no later than thirty days after the Funding Date, the Claims Administrator shall pay the Settlement Awards to Qualified Class Members. [*Id*. at ¶ 8.05(e)]. A class member is a considered a Qualified Class Member if the class member makes a claim pursuant to the Settlement Agreement and is subsequently approved. [*Id*. at ¶ 10.01-10.03]. Settlement checks shall be sent to Qualified Class

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

Members by the Claims Administrator via U.S. mail no later than ninety (90) days after the Effective Date. [*Id*. at ¶ 11.02].

Qualified Class Members are those individuals who have an Approved Claim and who are identified as consumers whose phone number is on the Notice Database or Class List as a person whose cell phone was called by ICS by an alleged Automatic Telephone Dialing System or autodialer and/or a prerecorded or artificial voice message during the Class Period. [*Id*. at ¶5.02]. Said Qualified Class Members will receive a pro rata share of the settlement fund. [*Id*.]. Qualified Class Members who have an approved claim and are identified as belonging in the 66,619 Coded Calls affirming that they revoked permission for ICS to call them, yet still received at least one more additional call will receive additional compensation in the form of a double pro rata share. [*Id*.]. Furthermore, Class Members who are not identified on the Coded Calls list but received a subsequent telephonic communication after informing ICS that ICS had called the wrong number are also eligible for a double pro rata distribution. [ECF. No. 218 at 4:3-9]. With a three percent (3%) response rate, which is typical in a case such as this, the result of the distribution discussed above is that Class Members eligible for single pro rata distribution will receive approximately $76.09 and Class Members eligible for double pro rata distribution will receive approximately $152.18. [ECF No. 218 at 10:7-12].

As previously stated above, in common fund cases, the Ninth Circuit's benchmark for attorneys' fees is 25%, which serves as a starting point for the analysis. *Facciola v. Greenberg Traurig LLP*, 2012 U.S. Dist. LEXIS 142954, at *6 (D. Ariz., Oct. 3, 2012). The benchmark percentage must be adjusted when the facts of the case demand so. *Id*.; *see also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The exact percentage that is appropriate in any given case will depend on the facts of the case; however, in most common fund cases, the award does in fact exceed the benchmark. *Pointer v. Bank*

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

of Am., N.A., 2016 U.S. Dist. LEXIS 176930 at *42 (E.D. Cal. 2015); *see also Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010); *Williams v. Centerplate, Inc.*, 2013 U.S. Dist. LEXIS 121307, at *19-21 (S.D. Cal. Aug. 26, 2013).

Here, Reid's counsel seeks attorneys' fees and costs amounting to 23% of the Settlement Fund. This amount is actually below the benchmark and within the usual range rendering it all the more reasonable.[3] Furthermore, there are several factors courts may consider in assessing a request for attorneys' fees using the percentage-of-recovery method. *See Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 954-55 (9th Cir. 2015) citing to *Vizcaino*, 290 F.3d at 1047-50. The factors that the Court must weigh are as follows: (1) the results obtained for the class; (2) the risk undertaken by counsel; (3) the complexity of the legal and factual issues; (4) the length of the professional relationship with the client; (5) the market rate for the particular field of law; and (6) awards in similar cases (and the burden on counsel in foregoing other work). *Munoz v. Guimarra Vineyards Corps.,* 2017 U.S. Dist. LEXIS 95910, at *38 quoting *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, at *809 (E.D. Cal. Nov. 14, 2007). *See also Vizcaino*, 290 F.3d at 1048-1050; *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Each of the above referenced factors are discussed in turn below.

[3] "Courts in this Circuit routinely recognize that as the size of the common fund decreases, the percentage to which plaintiff's counsel is entitled increases, and common funds under $10 million often result in awards between 30-50 percent." *Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. LEXIS 89920, at *18 (D. Ariz. June 9, 2017). "Federal courts have consistently approved of attorney fee awards over the 25% benchmark." *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *59 n.12 (C.D. Cal. 2005). *See also Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, at *15 (S.D. Cal. 2009) ("[t]he requested fee falls at the bottom end of the Ninth Circuit's benchmark of 25% to 40% of a common fund . . .").

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

(1) The results obtained for the class are excellent and favor the amount sought by Reid's counsel.

As already discussed at length above, the results obtained for Class Members in this case were exceptional. Ordinarily, the level of success achieved for the class is considered to be the most important factor in determining the appropriate fee award in a common fund case. *See Hensley v. Eckerhart,* 461 U.S. 424, 435 (1983); *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial Center, *Manual for Complex Litigation*, § 27.71, p. 336 (4th Ed. 2004) (the "fundamental focus is on the result actually achieved for class members") (citing Fed. R. Civ. P. 23(h) committee note). Standing alone, this factor supports Reid's fee request. As stated above, the settlement required Defendant to pay a maximum of $3,350,000.00 into a Settlement Fund. [ECF No. 215-3; ¶ 5.01]. Thereafter, Class Members will receive a pro rata distribution.

For the reasons set forth above and briefly referenced herein, the requested 23% award is reasonable.

(2) The risk undertaken by counsel is significant because counsel took the case on a contingent basis.

The Ninth Circuit has long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis to compensate them for the risk that they might be paid nothing at all for their work. *See Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. LEXIS 89920, at *19 (D. Ariz., June 9, 2017) (awarding a 33% of the fund award and citing it as fair and commonplace . . . for contingent fee work); *Sanchez v. Frito-Lay, Inc.*, 2015 U.S. Dist. LEXIS 102771, at *36 (E.D. Cal. Aug. 5, 2015) ("[C]ourts tend to find above-market-value fee awards more appropriate in this context given the need to encourage counsel to take on contingency-fee cases . . ."). *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299 ("Contingent fees that may far exceed the market value of the

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for Plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose"); *Vizcaino*, 290 F.3d at 1051 (courts reward successful class counsel in contingency cases "for taking risk of nonpayment by paying them a premium over their normal hourly rates").

Reid prosecuted this matter on a purely contingent basis while agreeing to advance all necessary expenses and knowing that Reid's Counsel would only receive a fee if there was a recovery. In pursuit of this litigation, Reid's Counsel both committed the resources of their respective firms to litigating this matter through all motion and discovery issues, and through trial, if necessary, not knowing whether this case would settle early on or span the course of years as it did. In any event, the firms have spent considerable time and money by, among other things, (1) investigating the action; (2) conducting legal research relating to the alleged claims; (3) conducting discovery; (4) negotiating the settlement over a period of years; (5) preparing the preliminary approval brief and supporting documents, (6) assisting in the administration of the Settlement; and (7) responding to class members' inquiries.

Reid's Counsel expended these resources despite the risk that Class Counsel would never be compensated at all. From the outset, Reid's Counsel incurred risk by taking on this case. This risk potentially included receiving zero compensation for potential years of work and further out-of-pocket expenses had this case proceeded to trial. *See generally Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, at *32 (S.D. Cal. Sep. 28, 2017). Also, a commitment to this case necessarily requires foregoing other opportunities. Common sense dictates that time spent on this matter was time not spent on another equally as important and complex matter.

As such, for the reasons set forth above, the settlement achieved by Class Counsel provides exceptional monetary relief and this factor weighs heavily in

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

Reid's favor. Therefore, Reid respectfully requests the Court grant Reid's fee request in full.

(3) The complexity of the legal and factual issues in this case weigh in favor of awarding Reid's counsel the amount sought.

The "prosecution and management of a complex [] class action requires unique legal skills and abilities" that are to be considered when evaluating fees. *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007); *see also Jonsson v. USCB, Inc.*, 2015 U.S. Dist. LEXIS 69934 (C.D. Cal., May 28, 2015), at *26 ("[C]lass counsel are experienced in consumer class actions and the claims asserted in this action . . . [t]his factors weighs in favor of granting the requested fee); *Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. LEXIS 89920 at *15-16 (D. Ariz., June 9, 2017) ("the novelty, [] difficulty of the questions presented, the skill, experience, reputation, and ability of Plaintiffs' attorneys . . . strongly support the proposed fee").

Reid's counsel are experienced class action litigators who have successfully prosecuted complex consumer cases, and who have become particularly skilled and experienced in litigating class actions. [*See* Declarations of Counsel filed with this Court at ECF No. 145]. In addition, after years of litigation and negotiation, Reid's Counsel obtained a result that includes a tiered cash award for Class Members based on the harm suffered by a particular Class Member. Thus, Class Counsel's skill and expertise, reflected in the significant settlement, generated a cash award that is ideal for all Class Members and therefore supports the fee request.

///

///

///

///

///

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

(4) The length of the professional relationship favors awarding the amount sought by Reid's Counsel in the Settlement Agreement.

Litigation in connection with this case commenced in December of 2012. [ECF No. 1]. As has already been discussed at length above in § (B), using the percentage of the fund method is the most appropriate method in light of the case resulting in a common fund settlement. The excellent results also support such a finding. This professional relationship has spanned the course of years as the litigation in this matter commenced in late 2012 and is only now concluding in early 2018. This factor favors Reid's counsel because to hold otherwise would serve to punish Reid's counsel for remaining steadfast and committed to litigating this matter on behalf of all Class Members. *See generally Swedish Hosp. Corp.*, 1 F.3d at 1266-67. As such, after such litigating this matter over the course of five years and obtaining a favorable resolution of the matter, the award requested by Reid's counsel is more than warranted.

(5) The prevailing market rate for this particular field of law favors the requested award.

"A reasonable hourly rate is that prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Pearson v. U.S. Bank N.A.*, 2017 U.S. Dist. LEXIS 129159, at *22 citing to *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). "Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979. "Affidavits of the plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly prevailing fees in the community, are satisfactory evidence of the prevailing market rate." *Stirling v. Genpact Servs., LLC*, 2012 U.S. Dist. LEXIS 196197, at *4 (C.D. Cal.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

May 2, 2012) citing to *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1999).

Here, Reid's counsel's requested rates ranging from $550 per hour down to $300 per hour are reasonable in the District of Arizona for the respective attorneys that litigated this matter. Class Counsel have been approved for more throughout the Country; however, Class Counsel have reduced these rates based upon the rates commonly charged in the District of Arizona. Thus, Reid requests these rates be approved by this Court.

i. *The rates sought by Reid's counsel comply with the 2015 United States Consumer Law Attorney Fee Survey Report*

In 2015, a survey was conducted of consumer advocates across the country to determine the rates charged by attorneys practicing in the area of consumer protection.[4] The attached survey supports the billing rates requested herein as the average billing rate data in the survey, grouped by both region and years in practice, is consistent with the Declarations of counsel that regularly practice in Arizona District Courts. Moreover, this survey, as well as previous versions of the survey, has been accepted by various Courts across the country in determining reasonable billing rates. *See Uhl v. Colvin*, 2016 U.S. Dist. LEXIS 78779 (E.D. Cal. June 16, 2016); *Nguyen v. HOVG, LLC*, 2015 U.S. Dist. LEXIS 124019, at *5 (S.D. Cal. Sept. 15, 2015); *Davis v. Hollins Law*, 25 F. Supp. 3d 1292, 1299 (E.D. Cal. 2014); *Blackhawk Pine Retail v. V.*, 2016 Pa. Dist. & Cnty. Dec. LEXIS 17408 (Pa. C.P. June 22, 2016); *Twerdok v. Secretary of Health and Human Services*, 2016 U.S. Claims LEXIS 1853, 2016 WL 7048036, U.S. Court of Federal Claims, Office of Special Masters, Aug. 4, 2016 (Survey Report held helpful in determining Erie, PA, hourly rate for attorney fee award under National Vaccine Injury

[4] Excerpts of this survey are attached hereto as Exhibit 2. The entirety of the 407-page survey is available upon request.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

Compensation Program, the Vaccine Act, and comparing Erie and Hershey, PA, hourly rates); *Dibish v. Ameriprise Fin. Servs.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 432, *17-18 (Pa. C.P. 2015); *Lindenbaum v. NCO Fin. Sys.*, 2011 U.S. Dist. LEXIS 78069 (E.D. Pa. July 18, 2011)

Here, page 38 of this Survey shows that consumer attorneys in Arizona bill between $363 and $700 per hour. [*See* Exhibit 2]. This is substantially more than rates currently requested by Class Counsel herein. Based upon Counsel's extensive experience, counsels' rates are well within the reasonable and acceptable range. Thus, Reid's counsel should be awarded the requested attorneys' fees and costs in full.

(6) Awards in similar cases support the percentage award sought by Reid's counsel.

As has been previously mentioned, 25% of the common fund is a benchmark award for attorneys' fees in the Ninth Circuit. *Munoz v. Giumarra Vineyards Corps.*, 2017 U.S. Dist. LEXIS 95910, at *44 (E.D. Cal. June 20, 2017). The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33.3% of the total settlement value. *Id.* citing *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431 (E.D. Cal. 2013). As examples, the Eastern District upheld a requested fee of 32.1% of the Settlement amount in *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80778, at *56 (E.D. Cal. June 11, 2012). In another contingent fee case, the Court upheld a percentage award of thirty percent. *In re M.D.C. Holdings Sec. Litig.*, 1990 U.S. Dist. LEXIS 15488, at *31 (S.D. Cal. Aug. 30 ,1990). Lastly, in another class settlement case in the Ninth Circuit, the Court upheld a request for 30% of the total settlement fund where an award in the lodestar amount would have penalized class counsel for their efforts. *Johnson v. Gen. Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at *18-20 (C.D. Cal. June 17, 2013). Thus, in light of the facts of this case, Reid's demand of 23% is reasonable and should be approved.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

(D) THE CROSS-CHECK OF CLASS COUNSEL'S PERCENTAGE-OF-RECOVERY AGAINST A LODESTAR CALCULATION SUPPORTS CLASS COUNSEL'S DEMAND.

Additionally, a court may also cross-check its percentage-of-recovery figure against a lodestar multiplier calculation. *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d at 954-55 citing to *Vizcaino*, 290 F.3d at 1047-50. "When the lodestar is used as a cross-check for a fee award, the Court is not required to perform an 'exhaustive cataloguing and review of counsel's hours.'" *Munoz*, 2017 U.S. Dist. LEXIS 95910, at *46. As discussed in detail above said cross-check supports Class Counsel's demand since Class Counsel has expended a significant amount of time to date to achieve the current settlement.

The "lodestar" method is utilized in the Ninth Circuit as well as the District of Arizona to determine reasonable attorneys' fees. *Armes v. Hot Pizzas, LLC*, 2017 U.S. Dist. LEXIS 89920 at 14-15 (D. Ariz., June 9 2017); *see also Pearson v. U.S. Bank Nat'l Ass'n*, 2017 U.S. Dist. LEXIS 129159, at *20 (C.D. Cal. Aug. 14, 2017) citing to *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The "lodestar" method is comprised of "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Yepremyan v. GC Servs. LP*, 2013 U.S. Dist. LEXIS 13516, at *2 (C.D. Cal. Jan. 18, 2013) citing to *Grove v. Wells Fargo Financial Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010); and, *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993); *see also Facciola v. Greenberg Traurig LLP*, 2012 U.S. Dist. LEXIS 142954 at *8 (D. Ariz., Oct. 3, 2012).

A summary of Class Counsel's hours and hourly rates is provided below while a detailed Time Sheet is attached as Exhibit 1 and filed concurrently herewith.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

COUNSEL:	RATE:	HOURS:	TOTAL:
ABBAS KAZEROUNIAN	$550.00	65	$35,750.00
JOSHUA B. SWIGART	$550.00	112.7	$61.985.00
SERGEI LEMBERG	$550.00	119.75	$65,862.00
MATTHEW M. LOKER	$450.00	168.8	$75,960.00
DAVID J. MCGLOTHLIN	$450.00	164.9	$74,205.00
STEPHEN TAYLOR	$450.00	175	$78,750.00
TRINETTE KENT	$400.00	4.2	$1,680.00
JENNIFER DEFRANCISCO	$300.00	16.3	$4,890.00
ALEX HORNAT	$300.00	24.1	$7,230.00
LEMBERG PARALEGALS	$125.00	30.5	$6,612.50
H&S PARALEGALS	$125.00	1.1	$137.50
TOTAL:			$413,062.50

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1. The number of hours expended on this litigation support the award sought in the Settlement Agreement.

"The fee applicant must submit evidence of hours worked." *Hensley*, 461 U.S. at 433. "All hours that are not reasonably expended, or that are excessive or redundant, should be excluded." *Id*. Here, Reid seeks an award of attorneys' fees based upon the lodestar formula. All Reid's attorneys assigned to this matter have considerable experience litigating a variety of consumer rights issue, including product cases similar to the case at hand. This experience drastically reduced the hours necessary to obtain the current judgment while avoiding duplication of efforts and unnecessary billing.

Given the result, the amount of time expended by Reid's counsel is reasonable for this type of litigation, and the lodestar formula supports the reduced award sought of 23% under the percentage-of-the fund method.

2. A multiplier is warranted.

The 23% fee requested by Class Counsel reflects a multiplier of 1.66.[5] Of note, Courts regularly approve fee awards resulting in multipliers which are much higher than the requested multiplier in this matter. *See, e.g., Franklin v. Wells Fargo Bank, N.A.*, 2016 U.S. Dist. LEXIS 13696 (S.D. Cal. 2016) (approving multiplier of 3.6); *Vizcaino*, 290 F.3d at 1051 (affirming 28% fee award where multiplier equaled 3.65; and, citing cases approving multipliers in common fund cases going as high as 19.6); *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) (approving 25% fee award yielding a multiplier of 5.2 and stating that "there is ample authority for such awards resulting in multipliers in this range or higher"); *In re UnitedHealth Group, Inc.*, 643 F. Supp. 2d 1094, 1106 (D. Minn. 2009) (finding a lodestar multiplier of 6.5 reasonable); and, *Malta v. Freddie Mac & Wells Fargo Home Mortgage*, 10-cv-1290 (S.D. Cal. 2013) (awarding fees in TCPA litigation with a lodestar cross-check multiplier of 5.16).

Here, the exceptional monetary relief obtained for the Class; the risks involved with continued litigation; the contingent nature of the fee; the arm's-length nature of difficult and protected negotiations; and the experience of Class Counsel in litigating consumer class actions, justify a significant multiplier. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.3d 67 at 70; *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291 ("[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases" in accord with the "established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment

[5] The precise multiplier of 1.65695 is referred to as 1.66.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

by paying them a premium over their normal hourly rates for winning contingency cases"). A lodestar-plus-multiplier cross-check therefore further supports the reasonableness of the requested 23% fee in this matter.

3. The hourly rates sought by Reid's counsel are reasonable.

As discussed above in § IV(C)(5), Class Counsel's requested rates are reasonable and less than what many attorneys in this District charge. Thus, the cross-check of Reid's counsel's percentage-of-recovery figure against a lodestar calculation supports the award of 23% sought herein.

(E) REID'S COUNSEL ARE ENTITLED TO AN AWARD OF COSTS

Reid requests an award of costs and litigation expenses in an amount of $59,627.47.[6] Pursuant to the Settlement Agreement, ICS will not object to a request for an additional award for costs incurred in litigating this cause of action as long as such costs do not exceed $100,000.00. [ECF No. 215-3 at ¶ 6.01]. Reid's reduced request leaves additional funds available for the pro rata distribution to the class members.

Recoverable costs include, but are not limited to long-distance telephone and fax expenses, as well as copying and postage. *Sousa v. Miguel*, 32 F.3d 1370, 1374 (9th Cir. 1994). Other recoverable costs include travel, photocopies, lodging, postage, telephone calls, and computerized research. *Libertad v. Sanchez*, 134 F. Supp. 2d 218, 236 (D.P.R. 2001). Costs may be recovered as provided for by statutes as well as 28 U.S.C. 1920. *See Lathen v. Department of Children & Youth Servs.*, 172 F.3d 786, 794 (11th Cir. 1999). Throughout the course of this litigation, Class Counsel has documented costs expended in connection with the prosecution to date. As such, Reid requests the reduced amount of $59,627,47 be awarded to

[6] These costs are detailed in Exhibit 3 attached to Loker Decl.; and, Exhibit B attached to Lemberg Decl.

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626

Class Counsel for the costs and expenses incurred during the course of litigation. Reid may supply additional briefing on the Court's request.

V. CONCLUSION

For the reasons discussed above, Reid respectfully requests that the Court grant Reid's Motion for an Award from the Settlement Fund of Attorneys' Fees and Costs in the total amount of $784,627.47, which includes all litigation costs and attorneys' fees. These attorneys' fees and costs were necessary to obtain the current relief

DATED: January 10, 2018

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF

KAZEROUNI LAW GROUP, APC
245 FISHER AVENUE, UNIT D1
COSTA MESA, CA 92626