

1 Michael L. Greenwald (*admitted pro hac vice*)
2 Aaron D. Radbil (*admitted pro hac vice*)
3 Greenwald Davidson Radbil PLLC
4 5550 Glades Road, Suite 500
5 Boca Raton, Florida 33431
6 (561) 826-5477
7 mgreenwald@gdrlawfirm.com
8 aradbil@gdrlawfirm.com

9 Matthew R. Wilson (*admitted pro hac vice*)
10 Jared W. Connors. (*admitted pro hac vice*)
11 Meyer Wilson Co., LPA
12 305 W. Nationwide Blvd.
13 Columbus, Ohio 43215
14 (614) 224-6000
15 (614) 224-6066 (Fax)
16 mwilson@meyerwilson.com
17 mboyle@meyerwilson.com

18 *Attorneys for Plaintiffs and the Class*

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 CHRISTINE HEAD, on behalf of herself
22 and all others similarly situated,

23 Plaintiff,

24 v.

25 CITIBANK, N.A.,

26 Defendant.

27 Case No. 3:18-cv-08189-ROS

28 **PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION
COSTS, AND SERVICE AWARDS**

Hon. Roslyn O. Silver

INTRODUCTION

1
2 For over six years, Class Counsel has engaged in exhaustive and vigorously
3 contested litigation against Citibank on behalf of non-customers who received debt
4 collection calls regarding overdue credit cards that did not belong to them. Class Counsel
5 conducted extensive discovery and expert work, persuaded the Court to grant Plaintiffs’
6 motion for class certification, prevailed over Citibank’s Rule 23(f) petition to appeal this
7 Court’s class certification order, briefed numerous issues regarding class notice, argued
8 multiple issues before the Court, and litigated the case to the brink of summary judgment
9 and trial. Class Counsel did all this on a purely contingent basis, advancing \$59,463.13 in
10 out-of-pocket litigation expenses, and devoting more than 4,000 hours of their time so far.
11 And Class Counsel expended all those resources despite a significant risk of non-payment,
12 since Citibank had *twice before* defeated class certification in similar wrong number
13 TCPA cases. *See Tomeo v. CitiGroup, Inc.*, No. 13 C 4046, 2018 U.S. Dist. LEXIS
14 166117 (N.D. Ill. Sep. 27, 2018); *Revitch v. Citibank, N.A.*, No. C 17-06907 WHA, 2019
15 U.S. Dist. LEXIS 72026 (N.D. Cal. Apr. 28, 2019).

16 The result of that effort is the proposed class action settlement the Court
17 preliminarily approved on August 7, 2024. *See* ECF No. 215. Class Counsel believe that
18 this Settlement—which creates an all-cash, non-reversionary sum of \$29.5 million (the
19 “Settlement Fund”) that will grow with interest to over \$30 million by the time of
20 distribution—represents an outstanding result for the Settlement Class. In fact, to Class
21 Counsel’s knowledge, it is the largest TCPA settlement ever obtained in the District of
22 Arizona, and one of the largest anywhere.

23 Class Counsel seek a fee award of \$9,833,333 (one-third of the Settlement Fund,
24 not including any interest), reimbursement of \$59,463.13 in reasonable and actual
25 litigation expenses, and modest service awards of \$15,000 for Ms. Head and \$10,000 for
26 Mr. Newton. Class Counsel’s fee request is appropriate based on the factors detailed
27 below, particularly based on the results obtained for the Settlement Class Members in the
28 face of the risk. Plaintiffs and Class Counsel respectfully request that the Court grant their

1 motion.¹ Plaintiffs will submit an agreed proposed order for this Court’s consideration in
 2 connection with their motion for final approval of the parties’ class action settlement, in
 3 substantially the same form as Exhibit 3 to the parties’ Class Action Settlement
 4 Agreement. *See* ECF No. 214-1 at 62–68.

5 BACKGROUND

6 A. Litigation History

7 This case arises under the Telephone Consumer Protection Act (TCPA), 47 U.S.C.
 8 § 227. “The TCPA prohibits persons from (1) making ‘any call,’ (2) ‘using any automatic
 9 telephone dialing system or an artificial or prerecorded voice,’ (3) ‘to any telephone
 10 number assigned to a . . . cellular telephone service. . . .’” *Grant v. Capital Mgmt. Servs.,*
 11 *L.P.*, 449 F. App’x 598, 600 (9th Cir. 2011). Plaintiffs allege that Citibank placed calls, in
 12 connection with which it used a prerecorded voice, to Plaintiffs’ cellular telephone
 13 numbers, even though neither plaintiff was a Citibank customer or an authorized user of a
 14 Citibank account. Citibank made these calls while attempting to reach its own customers
 15 regarding past-due credit card bills. Citibank has strenuously denied any liability.

16 This case was originally filed on August 15, 2018. ECF No. 1. A mere month later,
 17 a court denied class certification in a similar wrong number TCPA case against Citibank.
 18 *Tomeo*, 2018 U.S. Dist. LEXIS 166117. Citibank prevailed on class certification in
 19 another wrong number case soon thereafter. *Revitch*, 2019 U.S. Dist. LEXIS 72026.
 20 Plaintiffs and Class Counsel here pressed forward anyway, retooling their proposed class
 21 and pursuing a different litigation strategy than counsel in *Revitch* and *Tomeo*. The Court
 22 also issued a brief stay (ECF No. 111) pending the Supreme Court’s decision in
 23 *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021). *Duguid* effectively eliminated the Class’s
 24 autodialer claim, but not its claim regarding prerecorded calls.

25 Despite those challenges—and the fact that they had taken this case on a purely
 26 contingent basis—Class Counsel conducted written discovery, expert discovery, and took

27
 28 ¹ To date, there have been no objections to the settlement. The objection deadline is
 December 20, 2024. ECF No. 217 at 1.

1 numerous depositions and defended Ms. Head’s deposition. *See* Declaration of Matthew
2 R. Wilson, ¶¶ 18–19, 25, 27–28, 30, 34–35, 37, 40–41, 46–47, 51, 59, 62–63, 106–09,
3 111–13. The parties engaged in an initial round of class certification briefing and expert
4 discovery before the Court issued a stay. ECF Nos. 84, 97–101. After the stay was lifted
5 (ECF No. 114), the parties engaged in a second round of expert disclosures and
6 depositions and once again briefed class certification and *Daubert* (ECF Nos. 120, 125–
7 128, 138, 141). The Court certified the class and denied Citibank’s motion to exclude
8 Plaintiffs’ expert witness. *Head v. Citibank, N.A.*, 340 F.R.D. 145 (D. Ariz. 2022). The
9 parties then briefed the propriety of interlocutory review under FED. R. CIV. P. 23(f),
10 which the Ninth Circuit ultimately denied. ECF No. 153.

11 Nothing was easy in this case for Class Counsel; Citibank’s energetic and able
12 counsel saw to that. After the parties submitted competing proposals for class notice (ECF
13 No. 156), the Court held an in-person status conference at which the parties argued their
14 notice proposals and discussed the propriety of additional discovery (ECF No. 160). The
15 parties would ultimately need to brief several issues regarding disputes over class notice
16 and post-certification discovery. *See, e.g.*, ECF Nos. 177, 190–93, 203–04, 206–07. The
17 notice administrator—under the supervision of Class Counsel—also worked tirelessly to
18 process the voluminous data necessary to identify potential class members and issue class
19 notice.

20 At the same time, Class Counsel represented Mr. Newton in a proposed class
21 action against Citibank in the Eastern District of Tennessee, Case No. 1:22-cv-89-KAC-
22 CHS. Mr. Newton brought identical claims to those at issue here, with his proposed class
23 period starting the day after the certified class period here ended. Class Counsel litigated
24 the *Newton* matter for two years, concurrently with the last two years of this litigation. *See*
25 *Wilson Decl.* ¶¶ 103–16.

26 On July 17, 2023, the parties mediated the case before Hunter Hughes in person in
27 San Diego. *Id.* ¶¶ 81–83. That mediation was unsuccessful. *Id.* After additional motion
28 practice and intensive data work aimed at identifying members of the certified class, the

1 parties then agreed to a second mediation on May 16, 2024 with Judge Steven M. Gold
2 (Ret.) in New York, which ultimately resulted in the proposed settlement. *Id.* ¶¶ 100–02.

3 **B. Summary of Settlement**

4 On August 7, 2024, the Court preliminarily approved the proposed settlement and
5 conditionally certified a Settlement Class defined as follows:

6 All persons and entities throughout the United States (1) to whom Citibank,
7 N.A. placed a call in connection with a past-due credit card account, (2)
8 directed to a number assigned to a cellular telephone service, but not
9 assigned to a current or former Citibank, N.A. customer or authorized user,
10 (3) via its Aspect dialer and with an artificial or prerecorded voice, (4) from
11 August 15, 2014 through July 31, 2024.

12 ECF No. 215 at 2.

13 Participating Settlement Class Members who received one or more prerecorded
14 voice calls from Citibank between August 15, 2014 and June 13, 2024, concerning a past-
15 due credit card account and who never were Citibank accountholders or authorized users
16 will receive a *pro-rata* share of the settlement fund, after attorneys' fees, costs, expenses,
17 and service awards are deducted. While the exact per-claimant recovery will not be known
18 until Settlement Class Members are provided with a complete opportunity to submit
19 claims, each participating Settlement Class Member is likely to receive between \$350 and
20 \$850. In exchange, Settlement Class Members will release their claims arising out of calls
21 Citibank placed to their cellular telephones during the class period.

22 In the unlikely event that *pro rata* payments would exceed \$2,500, participating
23 Settlement Class Members would be entitled to recover in excess of \$2,500 if they
24 provide documentary evidence demonstrating that they received more than five
25 prerecorded calls from Citibank regarding a past-due credit card account. In such
26 circumstances, participating Settlement Class Members who provide such documentary
27 evidence would receive additional compensation in the form of a *pro rata* portion of the
28 remaining funds after all participating Settlement Class Members receive \$2,500 each.

1 Subject to this Court's approval, an award of attorneys' fees and expenses, and
2 service awards for Ms. Head and Mr. Newton, also will be deducted from the common
3 fund. To that end, Class Counsel seeks one-third of the settlement fund in attorneys' fees,
4 plus the reimbursement of litigation costs and expenses in the amount of \$59,463.13. Ms.
5 Head seeks a service award of \$15,000 in recognition for her tremendous efforts in
6 prosecuting this case for nearly six years, including responding to written discovery
7 requests, sitting for deposition several hours' drive away from her home, requiring an
8 overnight stay in a hotel, and routinely conferring with counsel. Mr. Newton, who has
9 prosecuted his class action against Citibank for more than two years and who has
10 responded to written discovery, will seek a service award of \$10,000. Moreover, this
11 Court's approval of the requested service awards, attorneys' fees, or litigation costs and
12 expenses is not a condition of the settlement.

13 The Agreement also required a robust notice program in line with this Court's
14 previous approval of class notice, *see* Doc. 199, including direct mail notice to each
15 potential Settlement Class Member, publication notice, and the creation of a dedicated
16 settlement website and toll-free telephone number, through which Settlement Class
17 Members can submit claims and obtain more information about this case and settlement.
18 To date, thousands of Settlement Class Members have already submitted claims, while no
19 Settlement Class Members have objected or excluded themselves.

20 ARGUMENT

21 Plaintiffs seek attorneys' fees for Class Counsel in the amount of one-third of the
22 Settlement Fund, plus reimbursement of Class Counsel's litigation expenses, and service
23 awards for Ms. Head in the amount of \$15,000 and for Mr. Newton in the amount of
24 \$10,000. As discussed below, the circumstances warrant Class Counsel's fee request,
25 particularly given the outstanding relief they obtained for the Settlement Class in the face
26 of substantial risk. Similarly, Class Counsel's expenses were necessary to litigate this
27 action, and the service awards properly compensate the class representatives for their
28 diligent participation throughout this long-running case.

1 **I. Class Counsel’s requested fee is fair and reasonable.**

2 “In a certified class action, the court may award reasonable attorney’s fees and
3 nontaxable costs that are authorized by law or by the parties’ agreement.” FED. R. CIV. P.
4 23(h). “Under the common fund doctrine, ‘a litigant or a lawyer who recovers a common
5 fund for the benefit of persons other than himself or his client is entitled to a reasonable
6 attorney’s fee from the fund as a whole.’” *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th
7 Cir. 2012) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). “The guiding
8 principle is that attorneys’ fees ‘be reasonable under the circumstances.’” *Id.* (quoting
9 *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990)).

10 “When calculating an attorney’s fee award, a district court can employ one of two
11 methods—the lodestar or a percentage of the recovery.” *In re Apple Inc. Device*
12 *Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022). The percentage-of-recovery
13 method should be used when “the benefit to the class is easily quantified.” *In re Hyundai*
14 *& Kia Fuel Economy Litig.*, 926 F.3d 539, 571 (9th Cir. 2019). The percentage-of-
15 recovery method “often ensures that the interests of class counsel and the class are
16 properly aligned, given that it allows class counsel directly to benefit from increasing the
17 size of the class fund and from working efficiently.” *Bentley v. United of Omaha Life Ins.*
18 *Co.*, 2020 U.S. Dist. LEXIS 126603, *4 (C.D. Cal. Mar. 13, 2020). Thus, in cases like this
19 one, “[w]here a settlement involves a common fund, courts typically award
20 attorneys’ fees based on a percentage of the total settlement.” *Howard v. Web.com Grp.,*
21 *Inc.*, 2021 U.S. Dist. LEXIS 125685, *5 (D. Ariz. Mar. 16, 2021) (citing *Dunne*, 915 F.2d
22 at 545).

23 “In the percentage method, ‘the court simply awards the attorneys a percentage of
24 the fund sufficient to provide class counsel with a reasonable fee,’ using 25% as a
25 benchmark.” *Hyundai*, 926 F.3d at 570 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d
26 1011, 1029 (9th Cir. 1998)). But the benchmark is only “a starting point for analysis” that
27 may be adjusted upward or downward based on “the circumstances of the case.” *Vizcaino*
28 *v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). It is “not uncommon for courts

1 to award one-third of the gross settlement fund as attorneys’ fees where the circumstances
 2 warrant it.” *Sevilla v. Aaron’s Inc.*, 2020 U.S. Dist. LEXIS 86994, at *4 (C.D. Cal. May
 3 15, 2020); *see, e.g., Hyundai*, 926 F.3d at 571 (“We have affirmed fee awards totaling a
 4 far greater percentage of the class recovery than the [25%] fees here.”); *In re Pac. Enters.*
 5 *Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming attorney’s fee award of 33% of the
 6 recovery); *Morris v. Lifescan, Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (affirming
 7 attorney’s fee award of 33% of the recovery). In selecting an appropriate percentage,
 8 courts consider the following factors: “(1) the result obtained; (2) the risk involved in the
 9 litigation; (3) the contingent nature of the fee; (4) counsel's efforts, experience, and skill;
 10 and (5) awards in similar cases.” *Saliba v. KS Statebank Corp.*, 2021 U.S. Dist. LEXIS
 11 196634, *15 (D. Ariz. Oct. 13, 2021) (citing *Vizcaino*, 290 F.3d at 1048–50).

12 In this case, Class Counsel requests an award of one-third of the common fund, an
 13 amount equal to \$9,833,333. As discussed below and in the accompanying declarations
 14 from Class Counsel, each of these factors strongly supports Class Counsel’s request.²

16 ² Class Counsel addresses the fifth factor—awards in similar cases—throughout this
 17 section where relevant. Noteworthy is that fee awards of one-third of a common fund—or
 18 more—are common in TCPA class actions because of the unique risks and challenges
 19 they pose. *See, e.g., Boger v. Citrix Sys., Inc.*, No. 19-cv-01234-LKG, 2023 WL 3763974,
 20 at *13 (D. Md. June 1, 2023) (awarding fees of one-third of settlement fund); *Lucas v.*
 21 *Synchrony Bank*, No. 4:21-CV-70-PPS/JEM, 2023 WL 3143816, at *2 (N.D. Ind. Apr. 25,
 22 2023) (awarding 36% of net settlement fund); *Miles v. Medicredit, Inc.*, No. 20-1186,
 23 2023 WL 1794559, at *4 (E.D. Mo. Feb. 7, 2023) (awarding one-third of total settlement
 24 fund); *Wesley v. Snap Fin. LLC*, No. 20-148, 2023 WL 1812670, at *3 (D. Utah Feb. 7,
 25 2023) (same); *Hanley v. Tampa Bay Sports & Entm’t LLC*, No. 19-550, 2020 WL
 26 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding “a slight increase from the one-third
 27 benchmark”); *Sheean v. Convergent Outsourcing, Inc.*, No. 18-11532, 2019 WL 6039921,
 28 at *4 (E.D. Mich. Nov. 14, 2019) (awarding one-third of TCPA common fund); *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); *Simms v. ExactTarget, LLC*, No.
 14-737, 2018 WL 11416085, at *10 (S.D. Ind. Oct. 2, 2018) (awarding 35% of net
 settlement fund 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) (approving fees of 33.3% of net settlement 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

1 **A. Class Counsel obtained an outstanding result.**

2 The benefit Class Counsel secured for the Class—a \$29.5 million common fund,
 3 that will grow to over \$30 million prior to distribution—is outstanding. After deducting
 4 the requested attorneys’ fees, litigation costs and expenses, and service awards, Class
 5 Counsel estimate that participating Settlement Class Members will receive between \$350
 6 and \$850 each, an amount on the high end of TCPA settlements. *See James v. JPMorgan*
 7 *Chase Bank, N.A.*, 2016 U.S. Dist. LEXIS 167022, *5 (M.D. Fla. Nov. 22, 2016)
 8 (“Discounting the statutory award by the probability that Chase successfully defends
 9 some class members’ claims, a recovery of \$50 per person fairly resolves this action.”); *In*
 10 *re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015)
 11 (finding that \$34.60 per person falls “within the range of recoveries” in a TCPA class
 12 action). Per-claimant recoveries in other TCPA class actions often fall within a much
 13 lower range. *See, e.g., Rose v. Bank of Am. Corp.*, Nos. 11-2390, 12-4009, 2014 WL
 14 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (claimants received between \$20 and \$40
 15 each); *Steinfeld v. Discover Fin. Servs.*, No. 12-1118, 2014 WL 1309352, at *7 (N.D. Cal.
 16 Mar. 31, 2014) (approving a settlement that distributed less than \$50 per claimant, *see*
 17 ECF No. 101); *Arthur v. Sallie Mae, Inc.*, 10-CV198-JLR, 2012 WL 4075238 (W.D.
 18 Wash. Sept. 17, 2012) (\$20-\$40 per participating class member); *Adams v. Allianceone*
 19 *Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, ECF No. 113 (S.D. Cal. Apr.
 20 23, 2012) (approximately \$1.48 per class member).³ Therefore, the settlement here
 21 constitutes an objectively excellent result for the Settlement Class. *See Markos v. Wells*
 22 *Fargo Bank, N.A.*, No. 1:15-cv-01156-LMM, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30,

23 _____
 24 *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).

25 ³ *See also Gehrlich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 227-28 (N.D. Ill. 2016) (\$34
 26 million for more than 32 million class members); *Connor v. JPMorgan Chase Bank*, No.
 27 10 CV1284, Doc. 113 (S.D. Cal. May 30, 2014) (\$11.66 million for 2,684,518 class
 28 members); *In re Jiffy Lube Int’l, Inc.*, No. 11-02261, Doc. 97 (S.D. Cal.) (class members
 entitled to vouchers for services valued at \$17.29 or a cash payment of \$12.97); *Agne v.*
Papa John’s Int’l, et al., No. 2:10-cv-01139, Doc. 389 (W.D. Wash.) (\$50 recovery plus
 \$13 merchandise per claimant).

1 2017) (finding that the cash recovery of \$24 per claimant in a TCPA class action—far
2 less than the expected recovery here—is “an excellent result when compared to the issues
3 Plaintiffs would face if they had to litigate the matter”).

4 Courts in this circuit have repeatedly approved percentage fees at or near one-third
5 when counsel achieved similarly strong results. *See, e.g., Brown v. DirecTV*, No. 2:13-cv-
6 01170-DMG-E, Doc. 538 (C.D. Cal. March 3, 2023) (awarding fees of one-third of
7 common fund in “wrong number” TCPA class action where claimants were estimated to
8 receive between \$350 and \$700); *Dakota Med., Inc. v. RehabCare Grp., Inc.*, 2017 WL
9 4180497, *8 (E.D. Cal. Sept. 21, 2017) (approving 33% for TCPA settlement providing
10 \$7.00 per fax to each class member); *Hageman v. AT&T Mobility LLC*, 2015 WL 9855925,
11 *3 (D. Mont. Feb. 11, 2015) (awarding one-third fee in TCPA class action settlement);
12 *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (same).
13 Therefore, the settlement is an excellent result for the Class, which strongly supports the
14 requested fee. *See Spencer-Ruper v. Scientiae, LLC*, 2021 WL 4895740, at *1 (C.D. Cal.
15 Sept. 24, 2021) (noting that the benefit Class Counsel secured for the Class is “generally
16 considered to be the most important factor in determining the appropriate fee award in a
17 common fund case”).

18 **B. This case involved substantial risk.**

19 When calculating a percentage award, “[r]isk is a relevant circumstance.” *Vizcaino*,
20 290 F.3d at 1048. It is well-established that “[c]lass actions are inherently risky.” *Bentley*,
21 2020 U.S. Dist. LEXIS 126603, *6. And this class action was far riskier than normal.
22 Before Class Counsel filed their motion for class certification, Citibank had *twice* defeated
23 class certification in similar wrong number TCPA cases. *See Tomeo*, 2018 U.S. Dist.
24 LEXIS 166117; *Revitch*, 2019 U.S. Dist. LEXIS 72026. Other large financial institutions
25 have also defeated class certification in TCPA actions, including in *Davis v. Capital One*,
26 *N.A.*, 2023 WL 6964051 (E.D. Va. Oct. 20, 2023), further underscoring the risk of no
27 recovery here. Thus, Class Counsel faced significant obstacles from the beginning.

28 Moreover, Citibank’s victories in *Revitch* and *Tomeo* hardened its position,

1 ultimately resulting in Class Counsel having to spend six years—with no payment during
2 that time, nor any guarantee that payment would be forthcoming—to achieve the resulting
3 settlement. Citibank raised a host of defenses, both on the merits and to the maintenance
4 of class certification, including:

- 5 • Citibank expressed an intention to move for summary judgment on Plaintiffs’
6 claims, asserting, among other things, that it could reasonably rely on consent
7 provided by its customers to call the telephone numbers at issue;
- 8 • Citibank contended that it maintains robust safeguards to ensure compliance with
9 the TCPA, which would not support increased statutory damages;
- 10 • Citibank stated it would move to decertify the class after the issuance of class
11 notice, thus creating a risk that class certification would not be maintained
12 through trial;
- 13 • Citibank insisted that the number of *bona fide* class members was small and that
14 class-wide damages were lacking; and
- 15 • Even if Plaintiffs succeeded on the merits and prevailed on appeal, a reduction
16 in statutory damages was possible. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109,
17 1125 (9th Cir. 2022) (vacating “the district court’s denial of the defendant’s post-
18 trial motion challenging the constitutionality of the statutory damages award
19 [under the TCPA] to permit reassessment of that question guided by the
20 applicable factors”).

21 Thus, Citibank demonstrated at every turn its “willingness to mount a vigorous defense.”
22 *Spencer-Ruper*, 2021 WL 4895740, at *2. Indeed, it mounted one through highly
23 experienced defense counsel from a prestigious national firm. The fact that Class Counsel
24 obtained such an excellent result for the Class in the face of such risk supports an upward
25 departure from the benchmark. *See In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677,
26 *7 (D. Ariz. Apr. 20, 2012) (“An upward departure from the 25% benchmark figure is
27 warranted in this case because an exceptional result was achieved and it was extremely
28 risky for Class Counsel to pursue this case through seven years of litigation.”).

1 **C. Class Counsel took this case on a contingent basis and faced a**
2 **significant risk of non-payment.**

3 “The risk that further litigation might result in Plaintiffs not recovering at all,
4 particularly in a case involving complicated legal issues, is a significant factor in the
5 award of fees.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046–47 (N.D. Cal.
6 2008) (citing *Vizcaino*, 290 F.3d at 1048). Likewise, “the importance of ensuring adequate
7 representation for plaintiffs who could not otherwise afford competent attorneys justifies
8 providing those attorneys who do accept matters on a contingent-fee basis a larger fee
9 than if they were billing by the hour or on a flat fee.” *Id.* at 1047. If Citibank had prevailed
10 on class certification or the merits or on appeal, Class Counsel would have been in the
11 same position as the plaintiffs’ attorneys in *Revitch* and *Tomeo*—earning *nothing* for their
12 hard work and seeing their litigation costs go unreimbursed. *See* Wilson Decl. ¶¶ 121–27;
13 Greenwald Decl. ¶¶ 50–59; *Morales v. Conopco, Inc.*, 2016 U.S. Dist. LEXIS 144349,
14 *21 (E.D. Cal. Oct. 18, 2016) (“Since class counsel took this case on a contingency basis,
15 their risk of recovery was the same as the class members.”); *Birch v. Office Depot Inc.*,
16 2007 U.S. Dist. LEXIS 102747, *7 (S.D. Cal. Sep. 28, 2007) (“Class Counsel has
17 proceeded on a contingency basis despite the uncertainty of any fee award. Class Counsel
18 risked that it would not obtain any relief on behalf of Plaintiff or the Class, and so no
19 recovery of fees. In addition, Class Counsel was precluded from pursuing other potential
20 sources of revenue due to its prosecution of the claims in this action.”). That Class
21 Counsel took this case on contingency in the face of substantial risk supports an upward
22 departure from the benchmark. *See Koenig v. Lime Crime, Inc.*, 2018 U.S. Dist. LEXIS
23 245359, *20 (C.D. Cal. Apr. 2, 2018) (holding that “an upward departure from the 25
24 percent benchmark [is] reasonable in light of the results achieved, the risks of litigation,
25 the contingent nature of the fee, and the financial burden carried by Class Counsel” and
26 thus “approv[ing] an award of 38 percent of the common fund”).

1 **D. This case required significant effort, experience, and skill from Class**
2 **Counsel.**

3 The quality of Class Counsel’s representation further supports an award of one-
4 third of the Settlement Fund. “A fee award of one third of the settlement fund is justified
5 where class counsel has significant experience in the particular type of litigation at issue. .
6 . . Moreover, a one-third fee is appropriate where counsel litigated effectively, and their
7 experience was essential for obtaining the result.” *Marshall v. Northrop Grumman Corp.*,
8 2020 U.S. Dist. LEXIS 177056, *11 (C.D. Cal. Sept. 18, 2020) (internal citation omitted);
9 *see also Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, *27 (C.D. Cal. Nov.
10 18, 2014) (holding that the “skill and work of counsel merits an upward adjustment from
11 the [25%] benchmark”). In this case, Class Counsel are experienced TCPA litigators.
12 Declaration of Matthew R. Wilson, ¶¶ 3–9; Declaration of Michael L. Greenwald, ¶¶ 11–
13 41; *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13627, *38-39 (C.D. Cal. June 10,
14 2005) (“Class Counsel’s experience representing plaintiffs in class actions, particularly
15 [cases of this type], justifies an award of one-third of the Settlement Fund in attorneys’
16 fees.”). This experience was a significant asset to the Class, as Citibank’s victories on
17 class certification in *Revitch* and *Tomeo* meant that Class Counsel had to develop this case
18 with any eye towards distinguishing those unfavorable decisions and pursuing a novel
19 theory. This case also required complex data analysis, expert discovery, and two rounds of
20 class certification briefing, which further brought Class Counsel’s expertise to bear.

21 Moreover, Class Counsel spent more than 4,000 hours litigating this case and the
22 *Newton* matter, including extensive motion practice. *See* Wilson Decl. ¶ 130; Greenwald
23 Decl. ¶ 57; *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, *64 (awarding one-
24 third where class counsel expended significant effort, including “extensive motion
25 practice”). These substantial investments of time were particularly burdensome for Class
26 Counsel because they are relatively small firms with comparatively few attorneys.
27 Additionally, Class Counsel will continue to work with the Settlement Administrator,
28 review and respond to any questions from class members, move for final approval, handle

1 any appeals, and oversee the final administration of benefits to Settlement Class Members.
2 *See Pfeiffer v. RadNet, Inc.*, 2022 WL 2189533, at *3 (C.D. Cal. Feb. 15, 2022) (noting
3 that future work supports granting fee under this factor).

4 **II. Class Counsel’s request for reimbursement for litigation costs is fair and**
5 **reasonable.**

6 Class Counsel also request reimbursement from the common fund reasonable out-
7 of-pocket costs advanced for the Class. *See* FED. R. CIV. P. 23(h); *In re Media Vision*
8 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (“Reasonable costs and
9 expenses incurred by an attorney who creates or preserves a common fund are reimbursed
10 proportionately by those class members who benefit from the settlement.”). Class Counsel
11 have incurred out-of-pocket expenses of \$59,463.13. Wilson Decl. ¶¶ 135–36; Greenwald
12 Decl. ¶¶ 73–77. The bulk of these expenses comprise necessary fees for Class Counsel’s
13 mediation costs and other customary litigation expenses such as filing fees, service of
14 process fees, expert fees, and travel to and from mediations, depositions, and hearings.
15 Wilson Decl. ¶¶ 135–36; Greenwald Decl. ¶¶ 73–78. These expenses were reasonable and
16 necessary for the prosecution of this action and are the types of expenses that would
17 typically be billed to clients in non-contingency matters, and therefore they should be
18 approved.

19 **III. The requested service awards are reasonable and should be approved.**

20 Plaintiffs also request a \$15,000 Service Award for Ms. Head and a \$10,000
21 Service Award for Mr. Newton. *See* S.A. §§ 16.3–4. “Class representative service awards
22 are well-established as legitimate in the Ninth Circuit.” *Ramirez v. Rite Aid Corp.*, 2022
23 U.S. Dist. LEXIS 109069, *21 (C.D. Cal. May 3, 2022); *see also In re Apple*, 50 F.4th at
24 785 (reaffirming “that ‘reasonable incentive awards’ to class representatives ‘are
25 permitted’”). Because Ms. Head and Mr. Newton took the time to investigate their claims,
26 hire Class Counsel, and participate in discovery (including a deposition of Ms. Head), the
27 rest of the Class was able to obtain the benefits of a tremendous settlement without
28 expending any effort. *See* Greenwald Decl., ¶¶ 60–72. The requested service awards are

1 an appropriate recognition of their indispensable roles in this case. *See, e.g., In re NCAA*
2 *Athletic. Grant-In-Aid Cap Antitrust Litig.*, 2017 U.S. Dist. LEXIS 201108, *26 (N.D.
3 Cal. Dec. 6, 2017) (“Awards of \$20,000 each are consistent with service awards in other
4 cases.”); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 49477, *47 n.8
5 (N.D. Cal. Apr. 22, 2010) (collecting Ninth Circuit cases with awards of \$20,000 or
6 more).

7 **CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this
9 motion in its entirety, and award (1) attorneys’ fees to Class Counsel in the amount of
10 one-third of the settlement fund; (2) reimbursement of litigation expenses of \$59,463.13;
11 and (3) Service Awards of \$15,000 for Ms. Head and \$10,000 for Mr. Newton.

12
13 Dated: November 6, 2024

Respectfully submitted,

14
15 By: /s/ Matthew R. Wilson

16 Michael L. Greenwald (*admitted pro hac vice*)
17 Aaron D. Radbil (*admitted pro hac vice*)
18 Greenwald Davidson Radbil PLLC
19 5550 Glades Road, Suite 500
20 Boca Raton, Florida 33431
(561) 826-5477
mgreenwald@gdrllawfirm.com
aradbil@gdrllawfirm.com

21 Matthew R. Wilson (*admitted pro hac vice*)
22 Jared W. Connors. (*admitted pro hac vice*)
23 Meyer Wilson Co., LPA
24 305 W. Nationwide Blvd.
25 Columbus, Ohio 43215
(614) 224-6000
(614) 224-6066 (Fax)
mwilson@meyerwilson.com
jconnors@meyerwilson.com

26 *Class Counsel*

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, I caused the foregoing to be filed through the Court’s CM/ECF system, which will electronically serve all parties’ counsel of record.

/s/ Matthew R. Wilson

Matthew R. Wilson