UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

IN RE: MONITRONICS INTERNATIONAL, INC., TELEPHONE CONSUMER PROTECTION ACT LITIGATION	No. 1:13-md-02493-JPB-JES
THIS DOCUMENT RELATES TO: ALL CASES	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

TABLE OF CONTENTS

Page

Introduction ... 1

I. The Requested Attorneys' Fees And Costs Are Reasonable And Appropriate ... 2

A. The Percentage Of Fund Method Is The Appropriate Measure For Determining Fees ... 2

B. The Percentage Sought Is Fully Supported By The Work Performed, Risks Taken, And Results Obtained ... 4

C. The Results Obtained, And The Size Of The Fund Created, Weigh In Favor Of The Requested Fee Award ... 5

D. The Skill Of The Attorneys And The Difficulty Of The Case Support Approval ... 6

E. The Risk Of Nonpayment Was Substantial ... 7

F. The Amount Of Time Spent By Class Counsel Justifies The Requested Fee ... 9

G. The Requested Fee Is Consistent With Fees In Similar Cases ... 10

II. The Proposed Litigation Costs Award Is Reasonable And Appropriate ... 11

III. The Proposed Service Awards Are Justified And Appropriate ... 12

Conclusion ... 13

TABLE OF AUTHORITIES

Page(s)

Cases

In re Abrams & Abrams, P.A.,
605 F.3d 238 (4th Cir. 2010) 8, 9

Adams v. Advanced Mgmt., Inc.,
Civil Action No. 3:94–042, Dkt. No. 399 (N.D. W.Va. Feb. 3, 1999) 4

Adams v. AllianceOne Receivables Mgmt. Inc.,
No. 08-cv-00248, 2012 WL 12952683 (S.D. Cal. Sept. 28, 2012) 5

Am. Copper & Brass, Inc. v. Lake City Indus. Products, Inc.,
No. 1:09-cv-1162, 2016 WL 6272094 (W.D. Mich. Mar. 1, 2016) 11

Archbold v. Wells Fargo Bank,
No. 3:13-cv-24599, 2015 WL 4276295 (S.D. W. Va. July 14, 2015) 10

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 2

Branch Banking and Trust Co. v. Cabot Oil & Gas Corp.,
No. 01-C-3912, 2008 WL 5520081 (Cir. Ct., W. Va. Feb. 14, 2008) 10

Campbell-Ewald Co. v. Gomez,
136 S. Ct. 663 (2016) 8

In re Capital One TCPA Litig.,
80 F. Supp. 3d 781 (N.D. Ill. 2015) 5

Cather v. Seneca-Upshur Petroleum, Inc.,
No. 1:09–CV–0013 2012 WL 12977984 (N.D. W. Va. May 31, 2012) 4

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000) 12

In re Currency Conversion Fee Antitrust Litig.,
263 F.R.D. 110 (S.D.N.Y. 2009) 13

Dakota Medical, Inc. v. RehabCare Group, Inc.,
2017 WL 4180497 (E.D. Cal. 2017) 11

Deem v. Ames True Temper, Inc.,
2013 WL 2285972 (S.D. W.Va. 2013) 4

Dijkstra v. Carenbauer,
No. 5:11–CV–00152, 2016 WL 6804980 (N.D. W.Va. July 12, 2016) 3, 4, 10, 12

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993)..12

Domonoske v. Bank of America, N.A.,
790 F. Supp. 2d 466 (W.D. Va. 2011) 10

In re Dun & Bradstreet Credit Servs. Customer Litig.,
130 F.R.D. 366 (S.D. Ohio 1990)..12

Eriksen Const. Co., Inc. v. Morey,
923 F. Supp. 878 (S.D. W. Va. 1996)..4

F.S.&P. Coal Co. v. Inter-Mountain Coals, Inc.,
179 W. Va. 190, 366 S.E.2d 638 (1988)..4

Fulton Dental, LLC v. Bisco, Inc.,
No. 15-11038, 2016 WL 4593825 (N.D. Ill. Sept. 2, 2016) 8

Guarisma v. ADCAHB Med. Coverages, Inc.,
Case No. 1:13–cv–21016, Doc. 95 (S.D. Fla. June 24, 2015) 11

Hageman v. AT & T Mobility LLC,
No. CV 13-50-BLG-RWA, 2015 WL 9855925 (D. Mont. Feb. 11, 2015) 11, 13

Hayseeds, Inc. v. State Farm Fire & Cas.,
177 W. Va. 323, 352 S.E.2d 73 (1986)..4

Hoskins v. AB Resources, LLC,
No. 5:12–cv–78, 2014 WL 12756365 (N.D. W. Va. Nov. 17, 2014)...............................3

Ikuseghan v. Multicare Health Sys.,
No. C14-5539 BHS, 2016 WL 4363198 (W.D. Wash. Aug. 16, 2016) 13

Jones v. Dominion Res. Services, Inc.,
601 F. Supp. 2d 756 (S.D. W.Va. 2009)..3, 5, 10

Kolinek v. Walgreen Co.,
311 F.R.D. 483 (N.D. Ill. 2015)..11

Kramer v. Autobytel,
No. 10-cv-02722, 2012 U.S. Dist. LEXIS 185800 (N.D. Cal. Jan. 27, 2012)..................5

Mey v. Patriot Payment Group,
No. 5:15-CV-00027, Dkt. No. 125 (N.D. W. Va. July 14, 2017)....................................1

Muhammad v. Nat'l City Mortg., Inc.,
No. 2:07-0423, 2008 WL 5377783 (S.D. W.Va. Dec. 19, 2008) .... *passim*

Palmer v. Sprint Nextel Corp.,
No. 09-cv-01211, 2011 WL 13238842 (W.D. Wash. Oct. 21, 2011)..5

Romero v. Dep't Stores Nat'l Bank,
199 F. Supp. 3d 1256 (S.D. Cal. 2016)..8

In re Serzone Products Liability Litig.,
MDL No. 1477, 2007 WL 7701901 (S.D. W. Va. May 16, 2007)..10

Smith v. Res-Care, Inc.,
No. 3:13-5211, 2015 WL 6479658 (S.D. W.Va. Oct. 27, 2015).......................................9, 10

Spokeo, Inc. v. Robins,
136 S. Ct. 1540 (2016)...8

Steinfeld v. Discover Fin. Servs.,
No. C 12-01118, 2014 WL 1309352 (N.D. Cal. Mar. 10, 2014)..5

Triplett v. Nationstar Mortg., LLC,
No. 3:11-cv-238 (S.D. W. Va. 2012)..10

Vandervort v. Balboa Capital Corp.,
8 F. Supp. 3d 1200 (C.D. Cal. 2014) 11

Varcallo v. Mass. Mut. Life Ins. Co.,
226 F.R.D. 207 (D. N.J. 2005)..13

Rules

Fed. R. Civ. P. 23(h) 5

Fed. R. Civ. P. 68...12

INTRODUCTION

The Settlement Agreement in this Telephone Consumer Protection Act multi-district proceeding is the culmination of six years of hard-fought litigation, and was reached after months of contested negotiations. It will produce a $28 million non-reversionary settlement fund for the benefit of the proposed class and resolve the bulk of all actions consolidated in this MDL, and it will release only class members' claims against Defendant Monitronics, leaving consumers with the right to pursue claims against the dealers who placed the telemarketing calls. Having achieved this result, Plaintiffs Diana Mey, Phillip Charvat, Jason Bennett, Scott Dolemba, Janet and Michael Hodgin, and Class Counsel, now seek an award of attorneys' fees and expenses to Class Counsel of $9,333,333, litigation costs in the amount of $602,909.33, and service awards of $50,000 each to Plaintiffs Mey and Charvat, and $6,012 to Plaintiff Bennett, each of whom rejected offers of judgment of at least those amounts. Plaintiffs also seek $3,500 awards to Plaintiffs Dolemba and the Hodgins, who also rejected individual offers of judgment in favor of pursuing a remedy for the class.

The requested attorneys' fee is fair and reasonable and should be approved. The fee represents one-third of the settlement fund, an amount recognized as presumptively reasonable by courts in this jurisdiction, and by this Court in prior TCPA cases. *See, e.g., Mey v. Patriot Payment Group,* No. 5:15-CV-00027, Dkt. No. 125 (N.D. W. Va. July 14, 2017) (approving one-third fee in TCPA class action). It will compensate Class Counsel for their substantial investment of time – more than 12,000 hours – and expense over the six-year duration of this litigation on an entirely contingent basis, the high degree of risk they accepted, and the excellent results obtained.

Over the span of this complex case, Class Counsel briefed over thirty-five motions,

including four motions to dismiss and multiple motions for summary judgment. They defeated Monitronics' motion for summary judgment. They conducted extensive discovery that included taking twenty-three depositions and reviewing hundreds of thousands of pages of documents. In the course of their efforts to obtain calling data, as well as evidence to support their vicarious liability claims, they served forty-five third party subpoenas and engaged experts to analyze the data obtained. The parties participated in two full-day mediation sessions conducted by Bruce Friedman of JAMS, sessions that placed particular emphasis on difficult insurance coverage issues and litigations in other courts.

Without Class Counsel's efforts and investment of resources over the past six years, Monitronics' alleged misconduct would likely have gone unchecked, and consumers affected by that misconduct would have received nothing. For these reasons, the requested fees and expenses, and the requested service payments, are fair and reasonable.

I. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND APPROPRIATE

A. The Percentage Of Fund Method Is The Appropriate Measure For Determining Fees

The common fund doctrine is one of the earliest recognized exceptions to the "American Rule," which generally requires that litigants bear their own costs and attorney's fees. Premised on the equitable power of the court, the common fund doctrine allows a person who maintains a suit that results in the creation of a fund in which others have a common interest, to be reimbursed from that fund for the litigation expenses incurred. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

District courts within the Fourth Circuit have consistently endorsed the percentage of common fund method of awarding attorney's fees. As this Court recently noted, "Awarding attorneys' fees as a percentage of the benefit to the class is the preferable and prevailing method

of determining fee awards in class actions that establish common funds for the benefit of the class." *Dijkstra v. Carenbauer*, No. 5:11–CV–00152, 2016 WL 6804980, at *4 (N.D. W.Va. July 12, 2016) (approving settlement and percentage attorneys' fee application in consumer class action); *see also Muhammad v. Nat'l City Mortg., Inc.*, No. 2:07-0423, 2008 WL 5377783, at *6 (S.D. W.Va. Dec. 19, 2008) ("Where there is a common fund in a class settlement, application of a percentage method to calculate an attorney's fee award is now favored."); *Hoskins v. AB Resources, LLC*, No. 5:12–cv–78, 2014 WL 12756365, at *3 (N.D. W. Va. Nov. 17, 2014) ("The contingent or percentage method is now the preferred method to be used in determining attorneys' fees in a class action case.").

Indeed, all circuit courts that have considered the issue of compensation for class counsel have found that the trial court may use the percentage method. *See Muhammad*, 2008 WL 5377783, at *6 ("[a]lthough the Fourth Circuit has not determined the preferred method for calculating attorneys' fees where a common fund has been generated on behalf of a class, all circuits that have considered the issue have approved the use of the percentage method"), *citing Goldenberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), and cases collected.

Thus there is a consensus among the federal and state courts that attorney's fees in common fund cases should be based on a percentage of the recovery. *Dijkstra*, 2016 WL 6804980, at *5; *Muhammad*, *supra*, at *8. This consensus is based on the recognition that "the percentage method better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended." *Jones v. Dominion Res. Services, Inc.*, 601 F. Supp. 2d 756, 758-59 (S.D. W.Va. 2009), *citing* Third Circuit Task Force Report, *Selection of Class Counsel,* 208 F.R.D. 340, 355 (Jan. 15, 2002).

B. The Percentage Sought Is Fully Supported By The Work Performed, Risks Taken, And Results Obtained

State and federal courts in West Virginia recognize the presumptive reasonableness of an attorney's fee equal to one-third of a recovery. *Dijkstra*, 2016 WL 6804980, at *5 (approving fee request of one-third of settlement fund, noting that one-third is presumptively reasonable in West Virginia), *citing Eriksen Const. Co., Inc. v. Morey*, 923 F. Supp. 878, 881 (S.D. W. Va. 1996)). As explained in *Eriksen*: "[A] one-third contingency fee is presumptively reasonable in West Virginia. *See Hayseeds, Inc. v. State Farm Fire & Cas*., 177 W. Va. 323, 352 S.E.2d 73, 80 (1986)." *Eriksen*, 923 F. Supp. at 881; *see also Deem v. Ames True Temper, Inc.,* 2013 WL 2285972, at *5 (S.D. W.Va. 2013) (awarding one-third fee in insurance class action); *F.S.&P. Coal Co. v. Inter-Mountain Coals, Inc*., 179 W. Va. 190, 366 S.E.2d 638 (1988) (a one-third attorney's fee is the "going rate" in contingency fee cases); *Adams v. Advanced Mgmt., Inc.*, Civil Action No. 3:94–042, Dkt. No. 399 (N.D. W.Va. Feb. 3, 1999) (Stamp, J.) (awarding class counsel 35% of $1,270,000 settlement); *Cather v. Seneca-Upshur Petroleum, Inc*., No. 1:09–CV–0013 2012 WL 12977984, at *4 (N.D. W. Va. May 31, 2012) (*citing Nationwide v. O'Dell,* Circuit Court of Roane County, approving a 33 1/3% contingent fee in a $75,000,000 class action settlement). This authority supports the requested award.

Some courts also consider certain factors in analyzing the reasonableness of fees determined by the percentage of recovery method. *Dijkstra*, 2016 WL 6804980, at *5 *Muhammad*, 2008 WL 5377783, at *8. These factors can include:

> (1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

2008 WL 5377783, at *8 (*citing In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 733 (3rd Cir. 2001)). All of these considerations support an award of the requested fee.

C. The Results Obtained, And The Size Of The Fund Created, Weigh In Favor Of The Requested Fee Award

In the Fourth Circuit, the degree of success is an important consideration in calculating the reasonableness of the fee award. *Jones*, 601 F. Supp. 2d at 761 ("[t]he result achieved by the attorneys for the class is often cited as one of the most significant factors in determining the reasonableness of a fee award") (*citing McKnight v. Circuit City Stores, Inc.,* 14 Fed. Appx. 147, 149 (4th Cir. 2001)); *see also* Fed. R. Civ. P. 23(h) advisory committee notes to 2003 amendments (a "fundamental focus" in determining a common fund attorney's fee award "is the result actually achieved for class members").

Here, the $28 million fund is substantial. At the time of preliminary approval, it was estimated that each approved claimant would receive an award of approximately $15-25. Marshall Decl. ¶ 24. While the claims period is still open, it is expected that the final amount will be substantially higher, depending on the number of claims received before the claims deadline, but won't be finally determined until the claims period closes. Even $15-25 compares well with other TCPA class action settlements involving similarly-sized classes. *See, e.g., Kramer v. Autobytel*, No. 10-cv-02722, 2012 U.S. Dist. LEXIS 185800 (N.D. Cal. Jan. 27, 2012) (approving $12.2 million settlement to benefit 47 million class members); *Palmer v. Sprint Nextel Corp.*, No. 09-cv-01211, 2011 WL 13238842, at *4 (W.D. Wash. Oct. 21, 2011) (approving $5.5 million settlement to benefit 18.1 million class members); *Adams v. AllianceOne Receivables Mgmt. Inc.*, No. 08-cv-00248, 2012 WL 12952683, at *3 (S.D. Cal. Sept. 28, 2012) (approving $9 million settlement to benefit 6.7 million class members). The estimated individual award is in line with other TCPA settlements. *See, e.g., Steinfeld v. Discover Fin. Servs.*, No. C

12-01118, 2014 WL 1309352, at *6 (N.D. Cal. Mar. 10, 2014) (approving settlement with payments estimated to be between $20 and $40); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (claimants recovered approximately $30 each).

Multiple factors contribute to make this amount particularly reasonable here. First, the high litigation costs and fees required by this case likely would engulf any amounts Class Members could recoup if they proceeded on an individual basis. And there is a substantial risk that Class Members could receive nothing at all. For example, Monitronics did not maintain records of the calls that Plaintiffs allege were placed on its behalf. As a result, to proceed individually, each Class Member likely would have to send multiple subpoenas to numerous third parties just to identify the Authorized Dealer or sub-dealer that placed the calls. Each Class Member also would likely have to hire an expert to opine about whether the calling equipment used constitutes an "ATDS" under the TCPA. These expenses and fees either make individual litigation prohibitive or would make any recovery *de minimis*. And, as described further in Section E, this case posed several larger legal challenges, as well as the very real possibility that Monitronics would be unable to pay any judgment at all given its financial condition. Finally, this settlement is unique in the sense that class members will not release claims against the dealers who placed the challenged calls. Thus, individual Class Members are free to submit a claim and accept a payment under this settlement, but still retain their right to seek their remaining statutory damages against the dealers for the same call.

D. The Skill Of The Attorneys And The Difficulty Of The Case Support Approval

The expertise of the attorneys who led this matter, combined with the complexity of the case, likewise support the requested fee award. As their declarations demonstrate, Class Counsel are highly experienced in litigating TCPA class actions in general, and the specialized legal and factual issues they present. Marshall Decl. ¶¶ 4 - 6. The firms representing the Class invested

almost 12,500 hours investigating the claims, briefing the 35 motions filed over the course of the litigation, conducting discovery, negotiating this settlement, and handling class member settlement inquiries. *Id*. ¶¶ 9, 19. Plaintiffs were able to defeat Monitronics' motion for summary judgment, and obtained partial summary judgment against Defendant Alliance, with the Court ruling that Alliance's consent defense was without legal or factual basis. *Id*. ¶ 9.

Each firm fronted expenses, which total $602,909.33. *Id*. ¶ 19. And, each firm chose to forgo the opportunity to bring other cases in favor of bringing this one. *Id*. ¶ 16. This case also generated voluminous data in the form of call records, and Plaintiffs retained experts to analyze the data, identify Class Members, and determine the number of TCPA violations. *Id*. ¶ 10.

E. The Risk of Nonpayment Was Substantial

Plaintiffs believe that their claims have merit and that they could ultimately make a compelling case at trial. Nevertheless, at multiple stages in this litigation, Plaintiffs faced critical obstacles which created the very real prospect of total loss. Because Class Counsel's work on this case was entirely contingent, they bore an enormous risk of loss.

For example, the Court's decision to award summary judgment on vicarious liability to UTC and Honeywell raised a serious concern as to whether any recovery would be possible against Monitronics. Were the Court to adopt a narrow view of Monitronics' vicarious liability and grant Monitronics' summary judgment motion, the value of this case to Class Members would have dropped virtually to zero. Given the weak financial condition of the Defendant dealers who placed the telemarketing calls (highlighted by Alliance's recent bankruptcy), the only significant source of recovery for the class was Monitronics. Marshall Decl. ¶ 12. And, although Monitronics had purchased insurance, its carriers disputed that the policies provided any coverage for TCPA claims. *Id.* ¶ 14. Monitronics likely could not withstand a judgment in

the hundreds of millions of dollars. Given its liability exposure, bankruptcy was a distinct possibility for Monitronics.

In addition, this litigation would likely have been derailed if Monitronics succeeded in its strategy of offering judgment to class representatives in order to moot the representatives' claims, and thereby preclude class certification. *See id.* ¶ 25. In fact, many plaintiffs in the MDL accepted offers of judgment ranging from a few thousand to over $60,000. *See id.* The possibility of summary dismissal was also tangible pending the Supreme Court's decisions in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016) and *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)—and a decision against the plaintiff in either case could have ended this litigation. The Supreme Court issued its opinions in both cases in 2016, but the legal landscape regarding offers of judgment and injury remained uncertain. *See, e.g.*, *Fulton Dental, LLC v. Bisco, Inc.*, No. 15-11038, 2016 WL 4593825 (N.D. Ill. Sept. 2, 2016) (allowing deposit of funds and entering judgment for defendant); *Romero v. Dep't Stores Nat'l Bank*, 199 F. Supp. 3d 1256 (S.D. Cal. 2016) ("One singular call, viewed in isolation and without consideration of the purpose of the call, does not cause any injury that is traceable to the conduct for which the TCPA created a private right of action, namely the use of an ATDS to call a cell phone."). This Court could have decided either issue against the Plaintiffs, which would likely have resulted in nothing for the Class.

The Fourth Circuit has strongly emphasized the importance of weighing risk when evaluating a fee award in a contingency case. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245 (4th Cir. 2010). *Abrams* involved the appeal of a district court's decision to reduce the attorney's fees payable under an $18 million settlement from the one-third contained in the parties' contingency fee agreement, to three percent of the total. *Id.* at 242. In vacating and remanding

the decision, the Fourth Circuit focused on a "chief error" in the district court's analysis – its failure to "recognize the significance of the contingency fee." *Id.* at 245. "[C]ontingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation" and "provide attorneys due consideration for the risk they undertake." *Id.* at 245-46. The court stressed that without a percentage fee that compensates attorneys for risk, "many attorneys [would be] unwilling to accept the risk of nonpayment" if "the reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever." *Id.* at 246. Here, the considerable risk of non-payment, coupled with the substantial investment of time and the risk in advancing well over half a million dollars in expenses, all weigh strongly in favor of the requested fee.

F. The Amount Of Time Spent By Class Counsel Justifies The Requested Fee

It has taken 12,422 hours of attorney and paralegal time over the course of six years to resolve this litigation. Since the MDL was established in December 2013, the parties have briefed over 30 substantive motions, including motions to dismiss. Marshal Decl. ¶ 9. Plaintiffs propounded 15 sets of written discovery. Monitronics served requests for admission, requests for production, and interrogatories on all of the Plaintiffs included in the Second Consolidated Amended Complaint, receiving written answers and documents in response. Plaintiffs took 23 depositions, including 11 in *Mey I* and 12 after the MDL was established. Monitronics deposed Plaintiffs' experts, Ms. Mey (twice), and Mr. Charvat. Monitronics produced hundreds of thousands of pages of documents, including company policies and procedures and email correspondence. Class Counsel reviewed these documents, and used the documents to create a lengthy chronological factual summary. The parties briefed summary judgment. *See* Marshall

Decl. ¶ 9; *see also* Exhibits 2 - 5. And Class Counsel will continue to expend time until the Settlement is approved and fully administered.

Some courts use a "lodestar crosscheck" to confirm that a percentage based fee is reasonable in a given case. *Smith v. Res-Care, Inc*., No. 3:13-5211, 2015 WL 6479658, at *7 (S.D. W.Va. Oct. 27, 2015) (*citing Manual for Complex Litigation (4th)* § 14.121 at 191). Here, the requested fee is amply supported by the lodestar crosscheck. The total hourly fees for all class counsel to date is $6,177,571.00. Marshall Decl. ¶ 19. The $9,333,333 fee requested represents a lodestar multiplier of 1.5, which is not only well within, but is on the low end of the range of lodestar multipliers approved by courts within this jurisdiction and elsewhere. *See In re Serzone Products Liability Litig.,* MDL No. 1477, 2007 WL 7701901, at *5 (S.D. W. Va. May 16, 2007) (approving fee with lodestar multiplier of 1.6 as reasonable in light of the circumstances of the case); *Smith*, 2015 WL 6479658, at *7 (approving fee of one-third, with lodestar cross check of 1.15, citing accepted range of 2 to 4.5); *Jones*, 601 F. Supp. 2d at 766 ("[c]ourts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee"; approving fee with multiplier of 3.4) (citations omitted). *See also Domonoske v. Bank of America, N.A.,* 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) (approving multiplier of 1.8, which was "well within the normal range of lodestar multipliers); *Branch Banking and Trust Co. v. Cabot Oil & Gas Corp.,* No. 01-C-3912, 2008 WL 5520081 (Cir. Ct., W. Va. Feb. 14, 2008) (in $12 million settlement, approving class counsel's fee request of one-third of the common fund; finding lodestar multiplier of approximately 3.8 to be modest, in view of results achieved). Applying the lodestar crosscheck confirms that the requested fee is reasonable.

G. The Requested Fee Is Consistent With Fees In Similar Cases

Finally, the one-third fee requested by Class Counsel is consistent with fee awards in

similar common fund cases in this jurisdiction. *Dijkstra*, 2016 WL 6804980, at *6; *Muhammad,* 2008 WL 5377783, at *9; *see also Archbold v. Wells Fargo Bank,* No. 3:13-cv-24599, 2015 WL 4276295, at *1 (S.D. W. Va. July 14, 2015) (awarding class counsel one-third of the settlement in a consumer class action); *Triplett v. Nationstar Mortg., LLC,* No. 3:11-cv-238 (S.D. W. Va. 2012) (same); and cases cited at Section IB, *supra*.

The requested fee is also in line with fee awards in similar TCPA class actions. *See Kolinek v. Walgreen Co*., 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding attorney's fees of 36% of common fund in TCPA case); *Vandervort v. Balboa Capital Corp*., 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of 33% in TCPA case); *Dakota Medical, Inc. v. RehabCare Group, Inc*., 2017 WL 4180497, at *9 (E.D. Cal. 2017) (awarding one-third of $25 million TCPA settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.,* Case No. 1:13–cv–21016, Doc. 95 (S.D. Fla. June 24, 2015) (granting an award for fees and costs of one-third of the $4.5 million settlement fund); *Am. Copper & Brass, Inc. v. Lake City Indus. Products, Inc*., No. 1:09-cv-1162, 2016 WL 6272094, at *3 (W.D. Mich. Mar. 1, 2016); *Hageman v. AT & T Mobility LLC*, No. CV 13-50-BLG-RWA, 2015 WL 9855925, at *4 (D. Mont. Feb. 11, 2015) (awarding $15 million attorney's fees in TCPA class action, amounting to one-third of common fund).

In sum, consideration of all relevant factors overwhelmingly supports the requested award of one-third of the common fund established for the Class.

II. THE PROPOSED LITIGATION COSTS AWARD IS REASONABLE AND APPROPRIATE

The Settlement Agreement provides that Class Counsel may seek actual litigation costs incurred in the prosecution of this Action, to be paid from the Settlement Amount. Between all firms, the total costs were $602,909.33. Marshall Decl. ¶ 19. Those costs include over $171,500

for storage of the voluminous data produced in discovery, over $225,000 in expert expenses, as well as expenses for mediation services, deposition costs, legal research, and travel. *Id.* ¶ 22.

III. THE PROPOSED SERVICE AWARDS ARE JUSTIFIED AND APPROPRIATE

The Settlement Agreement provides that Plaintiffs may apply for a service award of $50,000 to Plaintiffs Mey and Charvat; $6,012 to Plaintiff Bennett; and $3,500 to Plaintiffs Dolemba, and the Hodgins. Dkt. No. 1108-2, Settlement Agreement, ¶ 8.4. These amounts, if approved, are to be paid from the Settlement Amount.

Service awards — also called "incentive" awards — recognize representative plaintiffs' service in support of the class, and their promotion of the public interest. *Dijkstra*, 2016 WL 6804980, at *6 (*citing Muhammad*, 2008 WL 5377783, at *9 -10). The Plaintiffs here assisted with the drafting of the Complaint, provided information regarding their interactions with Monitronics, responded to written discovery, and were ready and willing to testify at trial. Marshall Decl. ¶ 27. Ms. Mey and Mr. Charvat were deposed. Depositions of the Hodgins, Mr. Dolemba, and Mr. Bennett had been scheduled at the time the parties reached settlement. *Id.*

In addition, each of the Plaintiffs rejected substantial offers of judgment so that they could pursue claims on behalf of the proposed classes, and did so at the risk and exposure that accompanies rejecting a Rule 68 offer of judgment. *Id.* ¶ 26. Diana Mey received offers of $50,000 and $120,000; Philip Charvat received a $50,000 offer; Jason Bennett, $6,012; Scott Dolemba, $1,503; and Janet and Michael Hodgin $1,503. *Id.* The proposed service awards track and reflect the offers of judgment these Plaintiffs turned down so that they could pursue the case on behalf of the Class.

Courts around the country allow such awards to named plaintiffs or class representatives. *See, e.g.*, *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357-58 (N.D. Ga. 1993) (awarding $142,500 to class representatives out of $50 million fund); *In re Dun & Bradstreet*

Credit Servs. Customer Litig., 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (awarding $215,000 to several class representatives out of an $18 million fund). One district court has gone so far as to say that incentive awards are "routinely approve[d]." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000). The purpose of such awards is to encourage socially beneficial litigation by compensating named plaintiffs for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook. *Muhammad*, *supra*, at *9-10; *Varcallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 257 (D. N.J. 2005).

Class members would have received nothing had Plaintiffs not been willing to file and continue to pursue this Action over the six years it took to resolve, nor would they have received anything had Plaintiffs accepted the offers of judgment. The requested awards are also in line with awards from other courts in TCPA actions. *See, e.g., Ikuseghan v. Multicare Health Sys*., No. C14-5539 BHS, 2016 WL 4363198, at *3 (W.D. Wash. Aug. 16, 2016) (finding an incentive award of $15,000 to be reasonable); *Hageman*, 2015 WL 9855925, at *4 (approving $20,000 incentive award); s*ee also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 131 (S.D.N.Y. 2009) (recognizing that "incentive awards" for named plaintiffs as high as $35,000 and even $45,000 "are within the range of what other courts have found to be reasonable" (citation omitted)).

CONCLUSION

For all of the foregoing reasons, the requested attorneys' fees, costs and service awards are reasonable and should be approved.

Dated: January 18, 2018

Respectfully Submitted,

BAILEY & GLASSER LLP

By: /s/ Jonathan R. Marshall
Jonathan R. Marshall
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 (fax)
Email: jmarshall@baileyglasser.com

Liaison Counsel

John W. Barrett
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 (fax)
Email: jbarrett@baileyglasser.com

Co-Lead Counsel

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell
Beth E. Terrell
Mary B. Reiten
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
(206) 816-6603
(206) 319-5450 (fax)
Email: bterrell@terrellmarshall.com
Email: mreiten@terrellmarshall.com

Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Liaison Counsel for Defendants:

Jeffrey A. Holmstrand
GROVE HOLMSTRAND & DELK, PLLC
44-1/2 15th Street
Wheeling, West Virginia 26003
(304) 905-1961
(304) 905-8628 (fax)
Email: jholmstrand@grovedelklaw.com

Co-Lead Counsel for Defendant Monitronics, Inc.:

Jeffrey A. Holmstrand
GROVE HOLMSTRAND & DELK, PLLC
44-1/2 15th Street
Wheeling, West Virginia 26003
(304) 905-1961
(304) 905-8628 (fax)
Email: jholmstrand@grovedelklaw.com

Meryl C. Maneker
WILSON TURNER KOSMO LLP
550 West C Street, Suite 1050
San Diego, California 92101
(619) 236-9600
(619) 236-9669 (fax)
Email: mmaneker@wilsonturnerkosmo.com

I further certify that I caused the foregoing to be mailed by the U.S. Postal Service, from Charleston, West Virginia, postage prepaid, to the following:

Craig Cunningham
5543 Edmondson Pike, Suite 248
Nashville, Tennessee 37211

Bryan Anthony Reo
7143 Rippling Brook Lane
Mentor, Ohio 44060

Charles Rollman
1310 Lyric Pt
Colorado Springs, CO 80906

By: /s/ Jonathan R. Marshall

Jonathan R. Marshall
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 (fax)
Email: jmarshall@baileyglasser.com