

THE HONORABLE DAVID G. ESTUDILLO

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AARON WILLIAMS, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

PILLPACK LLC,

Defendant.

Case No. 3:19-cv-05282-DGE

**PLAINTIFF’S MOTION FOR ATTORNEYS’
FEES, COSTS AND SERVICE AWARD**

NOTED FOR CONSIDERATION:

April 18, 2025 9:00 a.m.

TABLE OF CONTENTS

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

	Page
I. INTRODUCTION	1
II. BACKGROUND	1
A. Class Counsel devoted substantial time and resources to this case	1
B. Class Counsel negotiated an outstanding settlement for the class.....	3
III. ARGUMENT	4
A. A fee award of one third of the Settlement Fund is reasonable and appropriate.....	4
B. An upward adjustment of the 25% benchmark is appropriate	4
1. Class Counsel achieved an excellent settlement for the class.....	5
2. The settlement is particularly favorable given the risks of continued litigation.....	6
3. Class Counsel demonstrated skill and experience with high- quality work	6
4. Class Counsel assumed significant risk of no recovery.....	7
5. Fee awards in similar cases support the request	8
6. A lodestar cross-check supports the request.....	9
a. Class Counsel’s hourly rates are reasonable	9
b. Class Counsel spent a reasonable number of hours litigating the case	11
C. Class Counsel’s litigation costs should be reimbursed.....	11
D. A \$20,000 service award is appropriate	11
IV. CONCLUSION.....	12

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

1

2

3

4 *Adams v. AllianceOne Receivables,*

5 No.3:08-cv-00248-JAH-WVG, Dkt.137 (S.D. Cal. Sept. 28, 2012) 5

6 *Allstate Indem. Co. v. Lindquist,*

7 2021 WL 4226155 (W.D. Wash. Sept. 16, 2021) 10

8 *Alvarez v. Farmers Ins. Exch.,*

9 2017 WL 2214585 (N.D. Cal. Jan. 18, 2017)..... 5, 8

10 *Amazon.com v. Wong,*

11 2022 WL 1092518 (W.D. Wash. Apr. 12, 2022) 10

12 *Brazile v. Comm'r of Soc. Sec.,*

13 2022 WL 503779 (W.D. Wash. Feb. 18, 2022) 10

14 *Boeing Co. v. Van Gemert,*

15 444 U.S. 472 (1980) 4

16 *Carlin v. DairyAmerica,*

17 380 F. Supp. 3d 998 (E.D. Cal. 2019)..... 5, 6

18 *Craft v. County of San Bernardino,*

19 624 F. Supp. 2d 1113 (C.D. Cal. 2008)..... 5

20 *Destefano v. Zynga,*

21 2016 WL 537946 (N.D. Cal. Feb. 11, 2016) 7

22 *DiMercurio v. Equilon Enterprises,*

23 2024 WL 2113857 (N.D. Cal. May 9, 2024)..... 8, 9

24 *Estrada v. iYogi,*

25 2015 WL 5895942 (E.D. Cal. Oct. 6, 2015) 5

26 *Farrell v. Bank of America,*

27 827 F. App'x 628 (9th Cir. 2020) 9

Garner v. State Farm Mut. Auto. Ins.,

2010 WL 1687832 (N.D. Cal. Apr. 22, 2010) 12

1 *Gonzalez v. City of Maywood,*
 729 F.3d 1196 (9th Cir. 2013) 9

2

3 *Grey Fox v. Plains All-Am. Pipeline,*
 2024 WL 4267431 (C.D. Cal. Sept. 17, 2024) 12

4

5 *Hallman v. Wells Fargo Bank,*
 2021 WL 9567171 (W.D. Wash. June 10, 2021)..... 9

6

7 *Ingram v. Oroudjian,*
 647 F.3d 925 (9th Cir. 2011) 10, 11

8 *In re Bluetooth Headset Prods. Liab. Litig.,*
 654 F.3d 935 (9th Cir. 2011)4, 5, 9

9

10 *In re Capital One Tel. Consumer Protection Act Litig.,*
 80 F. Supp. 3d 781 (N.D. Ill. 2015) 5

11

12 *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.,*
 109 F.3d 602 (9th Cir. 1997) 4

13

14 *In re High-Tech Emp. Antitrust Litig.,*
 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015) 11

15

16 *In re Nat’l Collegiate Athletic Ass’n,*
 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017) 12

17

18 *In re Online DVD-Rental Antitrust Litig.,*
 779 F.3d 934 (9th Cir. 2015) 7

19

20 *In re Omnivision Techs.,*
 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) 6

21

22 *Jenson v. First Tr. Corp.,*
 2008 WL 11338161 (C.D. Cal. June 9, 2008) 7

23

24 *Jones v. Royal Admin. Servs.,*
 887 F.3d 443 (9th Cir. 2018) 6

25

26 *Knudsen v. Hightower Holdings,*
 2024 WL 3430994 (W.D. Wash. July 16, 2024) 10

27

Koonwaiyou v. Blinken,
 2024 WL 1193111 (W.D. Wash. Mar. 20, 2024) 10

1 *Kramer v. Autobytel*,
 No.10-cv-2722, Dkt.148 (N.D. Cal. 2012)..... 5

2

3 *Kristensen v. Credit Payment Servs.*,
 879 F.3d 1010 (9th Cir. 2018) 6

4

5 *Lofton v. Verizon Wireless*,
 2016 WL 7985253 (N.D. Cal. May 27, 2016)..... 7

6

7 *Lowery v. Rhapsody Int'l*,
 75 F.4th 985 (9th Cir. 2023)..... 5

8

9 *Malta v. Fed. Home Loan Mortg.*,
 No.3:10-cv-01290, Dkt.91 (S.D. Cal. June 13, 2013)..... 5

10

11 *Mannacio v. Sovereign Lending Group*,
 No.3:22-cv-05498-TMC, Dkt.77 (W.D. Wash. Mar. 1, 2024)..... 8

12

13 *Nat'l Rural Telecommc'ns Coop. v. DirecTV*,
 221 F.R.D. 523 (C.D. Cal. 2004) 6

14

15 *Pelletz v. Weyerhaeuser*,
 592 F. Supp. 2d 1322 (W.D. Wash. 2009) 10

16

17 *Promedev v. Wilson*,
 2024 WL 3043415 (W.D. Wash. June 18, 2024)..... 10

18

19 *Rabin v. PricewaterhouseCoopers*,
 2021 WL 837626 (N.D. Cal. Feb. 4, 2021) 7

20

21 *Randall v. Integrated Commc'n Servs.*,
 No.3:20-cv-05438-DGE, Dkt.136 (W.D. Wash. Mar. 29, 2024) 8, 10

22

23 *Reed v. Balfour Beatty Rail*,
 2023 WL 4680922 (C.D. Cal. June 22, 2023) 8

24

25 *Rinky Dinky v. Elec. Merchant Sys.*,
 No.C13-1347-JCC, Dkt.151 (W.D. Wash. Apr. 19, 2016) 5

26

27 *Rivas v. BG Retail*,
 2020 WL 264401 (N.D. Cal. Jan 16, 2020)..... 10

Rodriguez v. W. Publishing,
 563 F.3d 948 (9th Cir. 2009) 11

PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES, COSTS AND SERVICE

AWARD- iv

Case No. 3:19-cv-05282-DGE

TERRELL MARSHALL LAW GROUP PLLC
 936 North 34th Street, Suite 300
 Seattle, Washington 98103-8869
 TEL. 206.816.6603 • FAX 206.319.5450
 www.terrellmarshall.com

1 *Schmitt v. Kaiser Found. Health Plan of Wash.*,
2024 WL 1676754 (W.D. Wash. Apr. 18, 2024) 8, 10

2

3 *Scott v. Blackstone Consulting*,
2024 WL 271439 (S.D. Cal. Jan. 24, 2024) 8

4

5 *Six Mexican Workers v. Ariz. Citrus Growers*,
904 F.2d 1301 (9th Cir. 1990) 4

6

7 *Soto v. O.C. Commc'ns*,
2019 WL 13151723 (N.D. Cal. Oct. 23, 2019) 8

8

9 *Stedman v. Progressive Ins.*,
2024 WL 248094 (W.D. Wash. Jan. 23, 2024)..... 10

10

11 *Steinfeld v. Discover Fin. Servs.*,
No.C-12-01118, Dkt.96 ¶16 (N.D. Cal. Mar. 10, 2014)..... 5

12

13 *Suarez v. Bank of America*,
2024 WL 150721 (N.D. Cal. Jan. 11, 2024)..... 8

14

15 *Vincent v. Hughes Air W.*,
557 F.2d 759 (9th Cir. 1977) 11

16

17 *Vizcaino v. Microsoft Corp.*,
290 F.3d 1043 (9th Cir. 2002) 4, 5, 6, 9

18

19 *Welch v. Metro. Life Ins.*,
480 F.3d 942 (9th Cir. 2007) 10

20

21 *Zamora v. Lyft*,
2018 WL 4657308 (N.D. Cal. Sept. 26, 2018)..... 8

FEDERAL STATUTES

22 47 U.S.C. § 227(b)(3) 5

23

24

25

26

27

1 I. INTRODUCTION

2 Plaintiff Aaron Williams and Class Counsel devoted five years to litigating this case
3 against a well-defended opponent, persisting in efforts to obtain discovery from PillPack and
4 numerous third parties, defeating two summary judgment motions, and developing a strategy
5 to restore certification of a class of consumers who were robocalled about PillPack’s services. If
6 the Court approves the settlement, PillPack will pay \$6,500,000 to create a non-reversionary
7 Settlement Fund that will be used to make payments to class members who file valid claim
8 forms. The payments are estimated to range from \$600 to \$1,200, and could be even more
9 depending on the number of claims filed. This is an excellent recovery. Class members would
10 obtain at most \$500 to \$1,500 per call if they prevailed at trial.

11 Williams and his counsel now move for an award of attorneys’ fees, reimbursement of
12 litigation costs, and a service award. Class Counsel request a fee equal to one third of the
13 Settlement Fund, or \$2,166,450, which is reasonable compensation for the substantial recovery
14 they secured for class members. The requested fee is within the typical range of attorneys’ fees
15 awarded in this circuit for settlements with funds under \$10 million. An upward adjustment
16 from the 25% benchmark is appropriate not only because of the exceptional result for the class,
17 but also because the requested award represents a negative multiplier of 0.72 on Class
18 Counsel’s lodestar of over \$2,991,553.

19 Class Counsel’s litigation costs of \$338,016 were necessarily incurred and should be
20 reimbursed. And a service award of \$20,000 is appropriate recognition of Williams’s dedication
21 to pursuing this litigation on behalf of the class for five years.

22 II. BACKGROUND

23 A. Class Counsel devoted substantial time and resources to this case.

24 Williams filed this case more than five years ago, alleging that PillPack violated the TCPA
25 by hiring third parties to place prerecorded voice message calls to cell phones promoting its
26 pharmacy refill services. Dkt.1. Key disputed issues are whether PillPack is vicariously liable for
27

1 the calls and whether class members provided prior express written consent by completing
2 forms on websites maintained by multiple lead generators.

3 Both parties took extensive discovery. Williams served four sets of discovery requests
4 and responded to three. Numerous disputes required the parties to meet and confer about the
5 scope of requests and sufficiency of responses. Murray ¶14. When PillPack insisted on a
6 forensic examination of four of Williams’s personal devices in the fall of 2021, the parties
7 negotiated a protocol. Dkt.203, 226. In fall 2023, Williams prevailed on a motion to compel
8 PillPack to produce customer contact information for over 7,000 telephone numbers of
9 potential class members. Dkt.326.

10 Williams promptly served subpoenas on third parties Prospects DM and Performance
11 Media, seeking calling records and other documents relating to the PillPack calling campaigns.
12 PillPack objected, requiring the parties to confer about the timing and scope of the requests.
13 Murray ¶15. Because PillPack sourced numbers from lead generators, the parties served
14 subpoenas on numerous additional third parties throughout the litigation. *Id.*

15 The parties and third parties produced over 20,000 pages of documents, in addition to
16 calling records. *Id.* ¶16. Williams’s two experts produced six reports and PillPack’s three experts
17 produced five. *Id.* ¶17. The parties took fifteen depositions, including of Williams, five PillPack
18 representatives, seven third parties, and two experts. *Id.* ¶16.

19 PillPack twice moved for summary judgment on its vicarious liability for the calls placed
20 by Performance Media’s subcontractors and the Court denied both motions. Dkt.126, 258.

21 Securing and maintaining class certification was not a simple matter, primarily because
22 more information about the sources of the telephone numbers used for the calling campaigns
23 emerged as discovery progressed. Williams first moved for class certification in July 2020.
24 Dkt.29. After requesting supplemental briefing, the Court certified a class of consumers who
25 were called as part of the campaign regardless of whether they were live transferred to
26 PillPack, and denied PillPack’s motion for reconsideration. Dkt.131, 140, 144.

1 Williams developed a plan for providing notice to the class and moved for Court
2 approval. After PillPack objected and some additional discovery into the source of the
3 telephone numbers of potential class members, Williams moved for Court approval of a revised
4 notice plan. Dkt.145, 171. After more discovery, Williams moved to modify the class definition,
5 narrowing it based on the source of telephone numbers. Dkt.178. PillPack opposed and asked
6 the Court to decertify. Dkt.187. After further briefing, the Court decertified the class. Dkt.199,
7 220. Adamant that the case was appropriate for class treatment, Williams and his counsel
8 continued to litigate on behalf of others who received robocalls promoting PillPack.

9 Williams filed a renewed motion for class certification in April 2022. Dkt.228. The Court
10 certified a narrower class of consumers who received the prerecorded calls and were
11 transferred to PillPack. Dkt.259. The parties litigated the adequacy of Williams's proposed
12 notice plan. Dkt.279. In compliance with the Court's order, Williams served subpoenas on 34
13 wireless carriers to identify subscribers associated with telephone numbers belonging to
14 potential class members, filing motions to enforce when necessary. Dkt.293.

15 In June 2024, the parties mediated with Robert Meyer of JAMS. Although they did not
16 reach a settlement, their continued discussions with the mediator's assistance resulted in an
17 agreement. Murray ¶18.

18 **B. Class Counsel negotiated an outstanding settlement for the class.**

19 PillPack will pay \$6.5 million to resolve class members' claims. The non-reversionary
20 Settlement Fund will pay Court-approved attorneys' fees and costs, a service award to Williams,
21 and settlement administration costs. If the requested amounts are approved, the \$3,870,682
22 balance will be paid to class members who submit valid claims.

23 There are 30,269 telephone numbers on the class list. The net fund is sufficient to pay
24 every class member an award of \$128. Class Counsel do not expect every class member to
25 make a claim. If 10% of the class submit claims, the estimated payment will be \$1,278
26 (\$3,870,682 ÷ 3,026 = \$1,278.76). If 20% do, the estimated payment will be \$639.

1 III. ARGUMENT

2 A. A fee award of one third of the Settlement Fund is reasonable and appropriate.

3 “[A] lawyer who recovers a common fund for the benefit of persons other than himself
4 or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v.*
5 *Van Gemert*, 444 U.S. 472, 478 (1980). The “common fund” doctrine “rests on the perception
6 that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly
7 enriched at the successful litigant’s expense.” *Id.* The court can “prevent this inequity by
8 assessing attorney’s fees against the entire fund, thus spreading fees proportionately among
9 those benefited by the suit.” *Id.*

10 Courts may award fees from a common fund using the percentage-of-the-fund or the
11 lodestar method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).
12 “Reasonableness is the goal, and mechanical or formulaic application of either method, where
13 it yields an unreasonable result, can be an abuse of discretion.” *In re Coordinated Pretrial*
14 *Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997).

15 The percentage-of-the-fund method is appropriate for determining a reasonable fee in
16 this case. Courts use this method when, as here, the benefit to the class is easily quantified. *In*
17 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

18 B. An upward adjustment of the 25% benchmark is appropriate.

19 The Ninth Circuit instructs that “[t]he 25% benchmark, although a starting point for
20 analysis, may be inappropriate in some cases.” *Vizcaino*, 290 F.3d at 1047. The “benchmark
21 percentage should be adjusted, or replaced by a lodestar calculation, when special
22 circumstances indicate that the percentage recovery would be either too small or too large in
23 light of the hours devoted to the case or other relevant factors.” *Six Mexican Workers v. Ariz.*
24 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The Ninth Circuit has identified relevant
25 factors for determining whether the requested fee is reasonable under the “circumstances of
26 the case”: (1) the results achieved; (2) the risk of continued litigation; (3) the skill required and
27 quality of work; (4) the contingent nature of the fee and financial burden carried by the

1 plaintiff; and (5) awards in similar cases. *Vizcaino*, 290 F.3d at 1048-50. Courts may also
2 consider a lodestar cross-check. *Id.* at 1050.

3 These factors support the requested fee. Moreover, courts recognize a settlement fund
4 under \$10 million will “often result in fees above 25%.” *Craft v. County of San Bernardino*, 624
5 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008); *see also Alvarez v. Farmers Ins. Exch.*, 2017 WL
6 2214585, at *3 (N.D. Cal. Jan. 18, 2017) (citing cases). This is not a “mega fund” case that would
7 result in a windfall for Class Counsel. *Bluetooth*, 654 F.3d at 942.

8 1. Class Counsel achieved an excellent settlement for the class.

9 “The touchstone for determining the reasonableness of attorneys’ fees in a class action
10 is the benefit to the class.” *Lowery v. Rhapsody Int’l*, 75 F.4th 985, 988 (9th Cir. 2023). After five
11 years of litigation, Class Counsel negotiated a settlement that will significantly benefit the class.
12 The vast majority of class members—nearly 90%—received only one violation call. *Murray* ¶17.
13 The estimated payments of \$600 to \$1,200 far exceed similar settlements approved by other
14 courts, including many in this circuit. *See Steinfeld v. Discover Fin. Servs.*, No.C-12-01118, Dkt.96
15 ¶16 (N.D. Cal. Mar. 10, 2014) (claimants received \$46.98); *Adams v. AllianceOne Receivables*,
16 No.3:08-cv-00248-JAH-WVG, Dkt.137 (S.D. Cal. Sept. 28, 2012) (\$40); *Kramer v. Autobytel*,
17 No.10-cv-2722, Dkt.148 (N.D. Cal. 2012) (\$100); *Estrada v. iYogi*, 2015 WL 5895942, at *7 (E.D.
18 Cal. Oct. 6, 2015) (\$40); *Malta v. Fed. Home Loan Mortg.*, No.3:10-cv-01290, Dkt.91 (S.D. Cal.
19 June 13, 2013) (\$84.82); *Rinky Dinky v. Elec. Merchant Sys.*, No.C13-1347-JCC, Dkt.151 (W.D.
20 Wash. Apr. 19, 2016) (\$97); *In re Capital One Tel. Consumer Protection Act Litig.*, 80 F. Supp. 3d
21 781, 787 (N.D. Ill. 2015) (\$34.60).

22 The estimated payments represent a substantial portion—possibly even more—than
23 class members’ maximum recovery of \$500 to \$1,500 per call if they prevailed at trial. 47 U.S.C.
24 § 227(b)(3); *see also Carlin v. DairyAmerica*, 380 F. Supp. 3d 998, 1022 (E.D. Cal. 2019)
25 (awarding fee of one-third of settlement fund due in part to “the highly favorable terms for
26 class members”—48% of estimated damages—and citing cases with recoveries of 32-35% of
27 damages and similar fees).

1 2. The settlement is particularly favorable given the risks of continued litigation.

2 “Risk is a relevant circumstance.” *Carlin*, 380 F. Supp. 3d at 1020 (citing *Vizcaino*, 290
3 F.3d at 1048). The \$6.5 million Settlement Fund reflects the risks Williams faces in overcoming
4 PillPack’s contention that it is not vicariously liable for prerecorded calls placed by third parties
5 and that the calls were placed with valid prior express consent. Proving vicarious liability can be
6 challenging in TCPA cases. *See Kristensen v. Credit Payment Servs.*, 879 F.3d 1010, 1014-15 (9th
7 Cir. 2018) (affirming summary judgment where plaintiff failed to provide sufficient evidence of
8 vicarious liability); *Jones v. Royal Admin. Servs.*, 887 F.3d 443, 453 (9th Cir. 2018) (same). And
9 PillPack intended to present evidence at trial of online opt-ins it contends established consent
10 for third parties to place calls on PillPack’s behalf. While Williams is confident in his case, the
11 settlement ensures claimants will receive significant payments despite the risks.

12 Williams acknowledges the risk of trial and appeals, which could delay any benefit to the
13 class for years. Courts recognize that it may be “proper to take the bird in hand instead of a
14 prospective flock in the bush.” *Nat’l Rural Telecomm’ns Coop. v. DirecTV*, 221 F.R.D. 523, 526
15 (C.D. Cal. 2004).

16 3. Class Counsel demonstrated skill and experience with high-quality work.

17 “The ‘prosecution and management of a complex national class action requires unique
18 legal skills and abilities.’” *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. Jan. 9,
19 2008) (citation omitted). Class Counsel litigated this case efficiently because of their experience
20 successfully prosecuting dozens of TCPA class actions. Murray ¶¶11-12. Class Counsel knew to
21 quickly secure calling records from third parties, and served early targeted discovery on PillPack
22 to focus on key disputed issues. *Id.* ¶14. After the Court decertified the original class, Class
23 Counsel developed and executed a strategy to successfully move to certify a narrower class of
24 consumers who were transferred directly to PillPack after receiving a prerecorded marketing
25 call. Dkt.259. Class Counsel defeated both of PillPack’s summary judgment motions on vicarious
26 liability. Dkt.126, 258. And Class Counsel negotiated an exceptional settlement by capitalizing
27 on the strengths of the case while taking into account the risks of continued litigation.

1 Class Counsel achieved this relief despite the vigorous opposition of proficient defense
2 counsel. *Destefano v. Zynga*, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) (“The quality of
3 opposing counsel is also relevant to the quality and skill that class counsel provided.”); *Lofton v.*
4 *Verizon Wireless*, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (the “risks of class litigation
5 against an able defendant well able to defend itself vigorously” support upward adjustment).

6 4. Class Counsel assumed significant risk of no recovery.

7 Class Counsel’s fee request reflects that they litigated this case on a contingency basis
8 and risked recovering no fees. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th
9 Cir. 2015); *Jenson v. First Tr. Corp.*, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008)
10 (“Uncertainty that *any* recovery ultimately would be obtained is a highly relevant consideration.
11 Indeed, the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of
12 expenses, is important to determining a proper fee award.”).

13 Class Counsel assumed significant burdens in pursuing this case on a contingent basis.
14 For example, Class Counsel advanced costs for expert reports in 2020 and shouldered that
15 expense ever since. Class Counsel accepted responsibility for more than \$140,000 in notice
16 costs that included paying wireless carriers for time responding to subpoenas for class member
17 information and paying the notice provider. Class Counsel also turned down other
18 opportunities to effectively manage this case. *Murray* ¶19; *Smith* ¶9; *Paronich* ¶8. “With
19 respect to the contingent nature of the litigation ... courts tend to find above-market-value fee
20 awards more appropriate in this context given the need to encourage counsel to take on
21 contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees.”
22 *Destefano*, 2016 WL 537946, at *18. “This is especially true where, as here, class counsel has
23 significant experience in the particular type of litigation at issue; indeed, in such contexts,
24 courts have awarded an even higher 33 percent fee award.” *Id.* (citation omitted); *see also*
25 *Rabin v. PricewaterhouseCoopers*, 2021 WL 837626, at *8 (N.D. Cal. Feb. 4, 2021) (noting that
26 “the attorney’s fee award should take into account the risk of representing Plaintiffs on a
27

1 contingency basis over a period of four years of litigation” and awarding fee of 35% of
2 settlement fund).

3 5. Fee awards in similar cases support the request.

4 Courts in this circuit have observed that “fee awards of approximately 33½% are typical
5 for settlements up to \$10 million.” *Zamora v. Lyft*, 2018 WL 4657308, at *3 (N.D. Cal. Sept. 26,
6 2018); *see also Alvarez*, 2017 WL 2214585, at *3 (citing cases). Courts also adjust the
7 benchmark upward where, as here, the settlement is a favorable result for the class and class
8 counsel made a significant investment of time and resources, resulting in a lodestar that is less
9 than the requested fee. *See Schmitt v. Kaiser Found. Health Plan of Wash.*, 2024 WL 1676754, at
10 *4-5 (W.D. Wash. Apr. 18, 2024) (awarding one third of settlement fund that “provides a
11 substantial monetary benefit for the Class” where “counsel undertook a significant risk in
12 bringing this class action lawsuit on a contingent basis” since it was complex and “heavily
13 litigated” for several years); *DiMercurio v. Equilon Enterprises*, 2024 WL 2113857, at *9 (N.D.
14 Cal. May 9, 2024) (awarding one-third of settlement fund under \$10 million where counsel
15 “achieved substantial results”); *Randall v. Integrated Commc’n Servs.*, No.3:20-cv-05438-DGE,
16 Dkt.136 (W.D. Wash. Mar. 29, 2024) (awarding one third of settlement fund); *Mannacio v.*
17 *Sovereign Lending Group*, No.3:22-cv-05498-TMC, Dkt.77 (W.D. Wash. Mar. 1, 2024) (awarding
18 one third of settlement fund in TCPA case); *Scott v. Blackstone Consulting*, 2024 WL 271439, at
19 *11 (S.D. Cal. Jan. 24, 2024) (awarding one third of settlement amount); *Suarez v. Bank of*
20 *America*, 2024 WL 150721, at *3 (N.D. Cal. Jan. 11, 2024) (awarding one third of settlement
21 fund because “[c]ounsel obtained excellent benefits for the class despite a vigorous and skillful
22 defense” and risks of litigation); *Reed v. Balfour Beatty Rail*, 2023 WL 4680922, at *7 (C.D. Cal.
23 June 22, 2023) (awarding 33% of settlement fund, citing “superior result,” counsel’s experience,
24 and contingent nature of fee); *Soto v. O.C. Commc’ns*, 2019 WL 13151723, at *3 (N.D. Cal. Oct.
25 23, 2019) (finding one-third of \$7.5 million settlement fund “justified under the common fund
26 doctrine, the range of awards ordered in this District and Circuit, the excellent results obtained,
27 the substantial risk borne by Class Counsel in litigating this matter, the high degree of skill and

1 quality of work performed, the financial burden imposed by the contingency basis of Class
2 Counsel’s representation ..., and the additional work required of Class Counsel to bring this
3 Settlement to conclusion”); *see also Hallman v. Wells Fargo Bank*, 2021 WL 9567171, at *2
4 (W.D. Wash. June 10, 2021) (“The fee award, which is one-third of the Gross Fund Value, is
5 reasonable under both the percentage-of-the-fund method and a lodestar cross-check,
6 particularly in light of the substantial time and resources Class Counsel devoted to this risky
7 multi-year litigation on a contingency basis, and in light of the extraordinary results obtained
8 through the Settlement.”).

9 6. A lodestar cross-check supports the request.

10 While not required, a lodestar crosscheck supports the requested fee. *See Farrell v.*
11 *Bank of America*, 827 F. App’x 628, 630 (9th Cir. 2020) (“This Court has consistently refused to
12 adopt a crosscheck requirement, and we do so once more.”); *Vizcaino*, 290 F.3d at 1050 & n.5
13 (when the “primary basis of the fee award remains the percentage method,” a lodestar analysis
14 “may” be useful but is “merely a cross check”). Courts first calculate the lodestar by multiplying
15 the number of hours reasonably expended by a reasonable rate, and then consider adjusting
16 the lodestar to account for several factors, such as the benefit obtained for the class, risk of
17 nonpayment, complexity and novelty of the issues presented, and awards in similar cases.
18 *Bluetooth*, 654 F.3d at 941-42.

19 Class Counsel’s combined lodestar of \$2,991,553—which, as discussed below, is based
20 on reasonable rates and a reasonable number of hours—represents a “negative” multiplier of
21 approximately 0.72. “A negative multiple strongly suggests the reasonableness of a negotiated
22 fee.” *DiMercurio*, 2024 WL 2113857, at *10.

23 a. *Class Counsel’s hourly rates are reasonable.*

24 In determining a reasonable hourly rate, courts look to the prevailing market rates in the
25 forum in which the district court sits. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th
26 Cir. 2013). Class Counsel calculated their lodestar at rates of \$700 to \$775 for attorneys with at
27 least 15 years of experience and \$600-\$650 for attorneys with at least 10 years of experience.

1 Murray ¶22; Paronich Decl. ¶3, Ex.1; Smith Decl. ¶2, Ex.1. These rates are “reasonable and
 2 comparable to the fees generally charged by attorneys with similar experience, ability, and
 3 reputation for work on similar matters in this judicial district.” *Rivas v. BG Retail*, 2020 WL
 4 264401 (N.D. Cal. Jan 16, 2020); *see also Knudsen v. Hightower Holdings*, 2024 WL 3430994, at
 5 *3 (W.D. Wash. July 16, 2024) (\$450 to \$850 reasonable for Seattle); *Promedev v. Wilson*, 2024
 6 WL 3043415, at *6 (W.D. Wash. June 18, 2024) (\$850 reasonable for Seattle partner);
 7 *Koonwaiyou v. Blinken*, 2024 WL 1193111, at *9 (W.D. Wash. Mar. 20, 2024) (approving rate of
 8 \$850 for experienced Seattle lawyer); *Schmitt*, 2024 WL 1676754, at *5 (approving rates from
 9 \$695 to \$750 as set forth in Dkt.176 ¶3); *Randall v. Integrated Commc’n Servs.*, No. 3:20-cv-
 10 05438-DGE, Dkt.135 (W.D. Wash. Mar. 29, 2024) (awarding one-third of settlement fund where
 11 lodestar cross-check based on rates from \$680 to \$1295 as set forth in Dkt.121-1); *Stedman v.*
 12 *Progressive Ins.*, 2024 WL 248094, at *1 (W.D. Wash. Jan. 23, 2024) (awarding one third of
 13 settlement fund after approving rates from \$120 to \$850 for staff and attorneys, as set forth in
 14 Dkt.131 at 14); *Amazon.com v. Wong*, 2022 WL 1092518, at *2 (W.D. Wash. Apr. 12, 2022)
 15 (approving rates “from \$535 to \$785 for attorneys and \$215 for paralegals”); *Brazile v. Comm’r*
 16 *of Soc. Sec.*, 2022 WL 503779, at *3 (W.D. Wash. Feb. 18, 2022) (noting “that fee awards with
 17 hourly rates exceeding \$1,000 have been approved by courts in this district on numerous
 18 occasions,” and citing cases); *Allstate Indem. Co. v. Lindquist*, 2021 WL 4226155, at *3 (W.D.
 19 Wash. Sept. 16, 2021) (approving \$300 for legal assistants); *Pelletz v. Weyerhaeuser*, 592 F.
 20 Supp. 2d 1322, 1326–27 (W.D. Wash. 2009) (finding \$475 to \$760 reasonable for Seattle
 21 attorneys). Two years ago, defense counsel in this case billed clients at rates of \$855 for senior
 22 partners, \$635 for partners, and \$535 for senior associates. Murray Decl. ¶25, Ex.2.

23 Class Counsel’s declarations describe the basis for their hourly rates, including their
 24 education, experience, and reputation in the legal community. Courts have found these rates to
 25 be reasonable in numerous class action cases. Murray ¶26; *see also Welch v. Metro. Life Ins.*,
 26 480 F.3d 942, 947 (9th Cir. 2007) (affidavits from plaintiffs’ counsel and fee awards in other
 27 cases sufficient evidence of prevailing market rates); *Ingram v. Oroudjian*, 647 F.3d 925, 928

1 (9th Cir. 2011) (courts may rely on their familiarity with the legal market in determining
 2 reasonable hourly rates). The requested award of \$2,166,450 divided by the over 5,145 hours
 3 worked results in an effective hourly rate of \$421 for all work done. This is far below the rates
 4 ordinarily charged by Class Counsel and other attorneys of comparable skill in the community.

5 *b. Class Counsel spent a reasonable number of hours litigating the case.*

6 This case spanned over five years and required substantial effort, particularly given the
 7 tenacious defense by PillPack's counsel. Obtaining calling records and other critical discovery
 8 from PillPack and numerous third parties and multiple rounds of briefing on class certification
 9 and PillPack's vicarious liability under the TCPA were particularly intensive aspects of this case.
 10 In all, Class Counsel dedicated over 5,145 hours to the case. This total excludes time Class
 11 Counsel removed as administrative or arguably inefficient or duplicative. Class Counsel will
 12 spend additional hours seeing the case through to final resolution, including moving for final
 13 approval, attending the hearing, and ensuring the claims process is properly carried out.

14 **C. Class Counsel's litigation costs should be reimbursed.**

15 Attorneys who create a common fund are entitled to reimbursement of their out-of-
 16 pocket expenses so long as they are reasonable, necessary and directly related to the work
 17 performed for the class. *Vincent v. Hughes Air W.*, 557 F.2d 759, 769 (9th Cir. 1977); *In re High-*
 18 *Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) (awarding costs for
 19 expert witness fees, mediation fees, document management and review, court reporting and
 20 videographer, electronic research, copying, mailing, and serving documents, and travel); *see*
 21 *also* Fed. R. Civ. P. 23(h). Class Counsel's declarations provide their litigation costs by category,
 22 including over \$69,791 for expert work essential to proving PillPack's liability and identifying
 23 class members, class notice costs of \$142,110.12, and nearly \$45,000 for depositions, totaling
 24 \$341,954.10. Murray ¶128; Smith ¶112; Paronich ¶10.

25 **D. A \$20,000 service award is appropriate.**

26 Service awards "are fairly typical in class action cases." *Rodriguez v. W. Publishing*, 563
 27 F.3d 948, 958-59 (9th Cir. 2009). They recognize class representatives' efforts and financial or

1 reputational risk they undertake, and their willingness to act as private attorneys general. *Id.*;
 2 *see also Grey Fox v. Plains All-Am. Pipeline*, 2024 WL 4267431, at *6 (C.D. Cal. Sept. 17, 2024)
 3 (“Courts have discretion to approve service awards based on the amount of time and effort
 4 spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the
 5 litigation.” (citation omitted)).

6 Williams contributed significantly to the success of this litigation by serving as the sole
 7 representative of the class. He devoted over 49 hours to the case, providing information to
 8 counsel, responding to discovery, sitting for deposition, and addressing PillPack’s tenacious
 9 challenges to his claims and ability to represent the class. Williams Decl. A \$20,000 service
 10 award is appropriate. *See Grey Fox*, 2024 WL 4267431, at *6-7 (approving \$20,000 service
 11 awards to representatives who sat for depositions, responded to discovery, and supplied
 12 information to counsel); *In re Nat’l Collegiate Athletic Ass’n*, 2017 WL 6040065, at *11 (N.D. Cal.
 13 Dec. 6, 2017) (approving \$20,000 service awards and collecting cases approving similar awards);
 14 *Garner v. State Farm Mut. Auto. Ins.*, 2010 WL 1687832, at *17 n. 8 (N.D. Cal. Apr. 22, 2010)
 15 (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of
 16 \$20,000 or more where, as here, the class representative has demonstrated a strong
 17 commitment to the class.”).

18 IV. CONCLUSION

19 Williams and Class Counsel respectfully request the Court grant their motion.

20 RESPECTFULLY SUBMITTED AND DATED this 21st day of November, 2024.

21 TERRELL MARSHALL LAW GROUP PLLC

22 *I certify that this memorandum contains 4,200 words, in*
 23 *compliance with the Local Civil Rules.*

24 By: /s/ Jennifer Rust Murray, WSBA #36983

25 Beth E. Terrell, WSBA #26759

26 Email: bterrell@terrellmarshall.com

Jennifer Rust Murray, WSBA #36983

27 Email: jmurray@terrellmarshall.com

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

Amanda M. Steiner, WSBA #29147
Email: asteiner@terrellmarshall.com
Blythe H. Chandler, WSBA #43387
Email: bchandler@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603

Walter M. Smith, WSBA #46695
Email: walter@smithdietrich.com
Steve E. Dietrich, WSBA #21897
Email: steved@smithdietrich.com
SMITH & DIETRICH LAW OFFICES PLLC
1226 State Avenue N.E., Suite 205
Olympia, Washington 98506
Telephone: (360) 915-6952

Anthony I. Paronich, *Admitted Pro Hac Vice*
Email: anthony@paronichlaw.com
PARONICH LAW, P.C.
350 Lincoln Street, Suite 2400
Hingham, Massachusetts 02043
Telephone: (617) 485-0018
Facsimile: (508) 318-8100

Class Counsel