UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re Collecto, Inc. Telephone Consumer Protection Act (TCPA) Litigation	Master No. 1:14-md-2513-RGS Individual Case No. 1:14-cv-10478-RGS This Document Relates To: All Member Actions

PLAINTIFFS' MEMORANDUM SUPPORTING MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS, AND NAMED PLAINTIFFS' INCENTIVE FEES

Plaintiffs John Lofton, Robert Pegg, Ralph Davenport and Richard Davenport (collectively, "Plaintiffs") hereby submit their memorandum in support of their motion for an award of attorneys' fees and costs, and named plaintiffs' incentive.

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I. INTRODUCTION

This case arises out of calls by Collecto to Pegg, Lofton, the Davenports and other cellular telephone users in the course of attempting to collect debts owed to others. Plaintiffs allege that Collecto made these calls using "automatic telephone dialing systems," as defined under 47 U.S.C. § 227 ("TCPA"). Plaintiffs further allege that instead of calling debtors who owed money to creditors for whom Collecto sought to collect, Collecto called the wrong numbers and dialed the cellular telephones of Plaintiffs and putative class members, all of whom are individuals who did not have an agreement with a creditor for whom Collecto sought to collect.

On March 7, 2014, this Court appointed David Parisi and J. Andrew Meyer as co-lead counsel. Co-lead counsel, as well as counsel for Pegg (Sergei Lemberg), Lofton (Ethan Preston), and the Davenports (Rex Anderson and Ian Lyngklip), litigated this matter for close to four years, defeated a motion to stay, defeated a motion for summary judgment, litigated five motions to compel, mediated the action with two mediators, and reached a settlement in principal in December 2016. Litigation was time consuming (over 2,888.9 hours of attorney time were incurred) and costly (over $388,500 in costs were incurred).

On August 10, the Court granted preliminary approval of the parties' settlement agreement. (ECF No. 109.) The Settlement Agreement provides for a $3.2 million common fund to be distributed to approximately 206,000 class members who submit claims forms, in exchange for a release of any claims against Collecto related to calls made between July 23, 2009 and June 30, 2014.

Class Counsel now seek a combined attorneys' fee and cost award of $1.3 million, which represents approximately 33 1/3% of the common fund plus costs incurred. In total, counsel for all plaintiffs have incurred $388,511.49 in costs, and $1,496,545 in fees, so the requested fee and

cost award is well below the combined lodestar and costs incurred. The four representative plaintiffs also request an incentive award of $5,000 each.

II. PROCEDURAL AND FACTUAL HISTORY

This case has been long-fought and extensively litigated since July 2013. A summary of important milestones in the litigation follows below.

This litigation began with three separate class actions. On July 16, 2013, John Lofton filed a class action against Collecto, Inc. alleging violations of the TCPA. On July 23, 2013, Ralph and Richard Davenport filed a similar TCPA class action against Collecto. Then on August 13, 2013, Robert Pegg filed a similar TCPA class action against Collecto. Plaintiff Lofton filed a motion to transfer and consolidate with the Judicial Panel on Multidistrict Litigation which was granted by the JPML. The actions were then assigned to the Hon. Richard G. Stearns in February 2014. With an Order entered February 20, 2014, Judge Stearns coordinated these actions for pretrial purposes under the caption *In re: Collecto, Inc., Telephone Consumer Protection Act (TCPA) Litigation*.

After coordination, the initial phase of the litigation was focused on discovery related to class certification as well Collecto's initial motion to stay this case in anticipation of the FCC's then-pending order on the definition of an "automatic telephone dialing system" under 47 U.S.C. § 227(a)(1). Counsel for plaintiffs opposed the motion to stay, which was denied by the Court on November 3, 2014. Because Plaintiff Lofton and his counsel had been in litigation with Verizon, one of Collecto's clients, since 2012, plaintiffs' counsel were familiar with Collecto and its dialers. Parisi Decl., ¶6. During this initial phase, Plaintiffs deposed Peter Cappola, Collecto's Director of Telephony Services and Steven Madden, Collecto's Manager of Application Development. In addition, plaintiffs served 56 requests for admission, twelve interrogatories and 56 document requests on Collecto. *Id*.

By December 2014, it appeared probable that class related discovery could become voluminous, and the parties believed that production could involve production and analysis of many terabytes of data regarding over 65 million telephone calls. (See ECF No. 31.) Collecto also contended that it had no liability because its dialing systems were not automatic telephone dialing systems as defined by the TCPA. The parties agreed to defer class certification and certification related discovery in favor of a motion for summary judgment by Collecto, which the parties believed would promote and facilitate the overall resolution of the case. Plaintiffs and defendant exchanged exert reports and the experts were deposed. On August 31, 2015, Collecto filed its motion for summary judgment focused on the status of its dialers as "Automated Telephone Dialing Systems," as that term is used in the TCPA. On the September 21, the parties attended a mediation before Mr. Antonio Piazza. Parisi Decl., ¶8. The mediation was not successful and in October Plaintiffs filed their opposition to the motion for summary judgment. *Id*. Though the summary judgment motion was complex and raised novel arguments, it was ultimately denied, after a hearing, on February 10, 2016.

After the denial of Collecto's motion for summary judgment, plaintiffs focused their efforts on class certification. Plaintiffs served six sets of requests for admission directed to Collecto with a total of 104 individual requests, three sets of interrogatories directed to Collecto with a total of 21 interrogatories, and ten sets of requests for production of documents with a total 180 individual requests. *Id.*, ¶9. All of this discovery generated huge quantities of information about Collecto, its dialers, and its defenses in this action. Plaintiffs also filed five motions to compel further responses to discovery, which resulted in yet even more information being provided by Collecto. *Id*. Plaintiffs ultimately retained two data analysis firms to analyze the volumes of call data produced.

While class certification discovery was pending, the parties attended two days of

mediation in Boston with Mr. Rodney Max, another mediator with a very good reputation for resolving TCPA class actions. *Id*. The mediation ended without a resolution even in principal, but an agreement among the participants to likely attend a third session of mediation. *Id*. Thereafter, the Parties continued their discussions and were ultimately able to come to an agreement in principal to resolve this action. With the agreement in principal, on December 8, 2016, the Parties notified this Court of the settlement.

Even after the Parties reached an agreement in principal, Plaintiffs' counsel's work was not complete. In order to support a settlement on a class-wide basis, counsel for Plaintiffs had to work extensively with their experts to develop an appropriate and supportable methodology for identifying potential class members and for providing notice to them. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). This process was time consuming and required frequent communication between counsel for Plaintiffs and their experts given the volume and complexity of the electronic information produced by Collecto. Ultimately, counsel for Plaintiffs, with the assistance of their experts, were able to develop a methodology for parsing Collecto's books and records and combining that information with information contained in third-party databases so as to identify potential class members. Based upon this methodology, counsel for Plaintiffs were then able to negotiate the form and manner of notice with Collecto, ultimately resulting in the Parties agreeing to direct mail notice as the best practicable notice under Federal Rule of Civil Procedure 23. Also during this time, the Parties negotiated the other details of the settlement, including the content of notice and claims procedures.

Ultimately, the Parties presented their proposed settlement to the Court in a motion for preliminary approval filed on July 12, 2017. (See ECF Nos. 105-107). The Court granted such approval on August 10, 2017, set a final approval hearing for January 17, 2018, and required

counsel for Plaintiffs to file any request for a fee and costs award by October 31, 2017. (See ECF No. 109).

III. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE

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 attorneys' fees. Premised on the equitable powers of the court, the common fund doctrine allows a person who maintains a suit that results in the creation, preservation or increase of a fund in which others have a common interest to be reimbursed from that fund for the litigation expenses incurred. *Central Railroad & Banking v. Pettus*, 113 U.S. 116 (1885); *See also Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980) (fee was based on the entire universe of benefits made available by the settlement and was not to be diminished by those not claiming).

Under the common fund doctrine, attorneys for the representative plaintiffs in litigation resulting in a recovery for a class may petition the Court to be compensated for their efforts. "[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing*, 444 U.S. at 478. Here, the efforts of plaintiffs' counsel have resulted in a class of more than two hundred thousand individuals and entities sharing in a settlement fund of $3,200,000. Accordingly, the common fund doctrine applies.

The U.S. Supreme Court never formally adopted or authorized the use of the *Lindy* lodestar approach in the common fund context. To the contrary, in *Blum v. Stenson*, 465 U.S. 886, 900 n. 16 (1984), the Court "clearly recognized the propriety of using the percentage of recovery method in a common fund case. Numerous courts have found this simple percentage method appropriate." The method by which our system encourages private attorneys to risk engaging in nationwide class litigation is to make their economic reward contingent on their

success in achieving a recovery for the class they undertake to represent. The parallels between individual contingent fee cases and class actions are economically identical and invoke the same public policy considerations. As Judge Posner has explained:

> The object in awarding a reasonable attorney's fee . . . is to simulate the market . . . . The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client.

In re Continental Ill. Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992).

In the First Circuit, courts have discretion to calculate attorneys' fees in common fund cases such as this on either a percentage of the fund ("POF") or lodestar basis. *See In re Thirteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995). Ultimately, the POF approach is "the prevailing praxis." *Id.* Indeed, as this Court has noted, "[c]ourts have long recognized that a lawyer who recovers a 'common fund' for the class she represents is entitled to be paid a reasonable attorneys' fee and her expenses prior to the distribution of the balance to the class." *In re Lupron Mktg. & Sales Pracs. Litig.*, No. 01-cv-10861, 2005 WL 2006833, at *2 (D. Mass. Aug. 17, 2005); *see also Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 116 (1st Cir. 2013) (acknowledging that percentage-of-the-fund approach applies where "attorneys seek compensation from a discernable pot of money won by the plaintiffs").[1]

[1] Because Class Counsel seek attorneys' fees from the settlement fund, not from Collecto, this Court's inherent equitable powers over the fund under the common fund doctrine are invoked, not the law of any particular state. *See Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 164 (1939) (holding that authority to award fees from a common fund stems from "the historic equity jurisdiction of federal courts"); *cf. In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 16-17 (1st Cir. 2012) (applying state law principles where agreement provided that attorneys' fees would be paid by defendant on top of class-wide benefits, noting that "[t]he common fund method should apply only where attorneys seek compensation from a discernable pot of money won by the plaintiffs."); *Brenner v. J.C. Penney Co.*, No. 13-cv-11212, 2013 WL 6865667, at *2 n.6 (D. Mass. Dec. 26, 2013) (applying state law where agreement stated that attorneys' fees were "to be paid by [defendant]," noting that "[a]s Volkswagen makes clear, a settlement is not a 'common fund,' at least for attorneys' fee award purposes, when class counsel will receive fees separate from the settlement proceeds."); *see also Trombley v. Bank of Am. Corp.*, No. 08-CV-456-JD, 2013 WL 5153503, at *8–9 (D.R.I. Sept. 12, 2013) (approving fees amounting to 30% of $1,200,000 fund under federal percentage analysis).

A. The Requested Attorneys' Fee Award is Reasonable Under the Percentage of Common Fund Method

While the First Circuit has not established specific factors to be used in evaluating the reasonableness of a fee request, district courts within the First Circuit have applied factors developed by other courts. For example, in *In re TJX Cos. Retail Sec. Breach Litig.* 584 F. Supp. 2d 395 (D. Mass 2008), the court looked to the following factors in assessing the reasonableness of attorneys' fees: (1) the reaction of class members to the settlement and proposed attorneys' fees; (2) the skill and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risk that the litigation will be unsuccessful; (5) the amount of time devoted to the case by counsel; and (6) the extent of the benefit obtained. *See also In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 79 (D. Mass. 2005); *In re Lupron Mktg. and Sales Practices Litig.*, No. 01-10861, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005) (adding factor "the size of the fund and the number of persons benefited," "awards in similar cases" and "public policy considerations.") Counsel respectfully submit that the requested combined fee and costs in this case –$1.3 million, which if awarded, would represent an amount less than Counsel's total lodestar and costs of $1,885,056[2] – is fair and reasonable, particularly in light of the extensive efforts and risks faced over the course of nearly four years of litigation on multiple fronts, and it is well within the range of fees awarded by courts in this and other circuits. Indeed, such an amount would represent a fee award of approximately 33 1/3% of the common fund, plus reimbursement for costs incurred, a result that would be completely in line with other fee and costs awards in similar cases as described below.

In any event, regardless of the method the Court chooses to apply, Class Counsel's requested attorneys' fees and costs are more than reasonable and should be approved. An analysis of the *In re TJX Cos. Retail Sec. Breach Litig* factors illustrates that counsel for

[2] Parisi Decl., ¶¶10, 12, and 24; Meyer Decl, ¶¶10 and 13; Preston Decl., ¶¶3, 9, 10; Lemberg Decl, ¶¶12, 24.

Plaintiffs' request is justified and appropriate:

1. Reaction of Class Members

This brief is being filed on October 31 and the deadline for class members to object or opt out of the class is November 27. To date no class members have objected to the settlement, but it is premature to analyze this factor.

2. The Skill and Efficiency of the Attorneys Involved

The skill, experience, and efficiency of counsel also weigh in favor of approving the requested attorneys' fees here. Class Counsel are well respected and recognized leaders of the plaintiffs' class action bar, particularly with respect to their experience with TCPA class actions. *See* Parisi Decl., ¶¶2-3 and Meyer Decl., ¶4.

Class Counsel used this skill and experience to efficiently achieve a favorable result for the Class by diligently investigating their clients' complaints, successfully opposing summary judgment, retaining experts on auto-dialers and data analysis, serving twenty nine sets of discovery, litigating five motions to compel, and mediating with two prominent mediators, against highly respected defense counsel who vigorously defended their clients' positions. This factor thus weighs in favor of approving the requested fees here. *See In re Lupron*, 2005 WL 2006833, at *4 (awarding requested fees where class counsel were "honorable litigators devoted to the interests of their clients who vigorously contested the case from its inception" and were "among the most experienced lawyers the national bar has to offer in the prosecution and defense of significant class actions") (internal quotations omitted).

3. Complexity and Duration of the Litigation

The next factor—the complexity and duration of litigation—also weighs in favor of approving the requested fees. Given the complexity and duration of this TCPA class action outlined above (which involves not only complex substantive issues of law as to the merits, but also the issue related to the ongoing insurance dispute between Collecto and its insurers, as well

as complex data analysis), as well as its duration, the fee requested is fair and reasonable.

Class litigation required a complex analysis of Collecto's call logs to identify calls to class members and to weed out other calls, including calls that did not connect, were not recorded, etc. This complexity was inherently a threat to counsel's recovery, and that threat was compounded by the long delay – over three years—in simply obtaining the correct records (i.e., CDRs) from Collecto. These inherent risks of complexity and delay support counsel's requested fee. *Cf. Vizcaino*, 290 F.3d at 1051 (affirming fee award which addressed "substantial risk class counsel faced, compounded by the litigation's duration and complexity"); *Willner v. Manpower, Inc.*, 2015 WL 3863625, at *6 (N. Dist. Cal. 2015) ("attorneys' fee award should take into account the risk of representing this class action Plaintiff on a contingency basis over a period of four years").

Finally, even if one concluded that the foregoing risks were typical, counsel faced extraordinary risks in this case—the risk that Collecto would have successfully concealed its dialers' call logs. Counsel did not have evidence to conclusively prove Collecto maintained call logs and evidence indicated that it had intentionally concealed the logs until evidence was discovered in another case. Parisi Decl., ¶6. Collecto's persistent misconduct discovery (and especially its concealment of the call logs) created profoundly unfair risks: counsel should be compensated for overcoming those risks.

Accordingly, the complexity and duration of litigation factor weighs in favor of approving the requested attorneys' fees as well. *See, e.g., In re Lupron*, 2005 WL 2006833, at *4 (approving requested fees where case involved "thorny issues of fact" and "ha[d] been vigorously contested from its inception"); *cf. Mann & Co., PC v. C-Tech Indus., Inc.*, No. 08-cv-11312, 2010 WL 457572, at *1 (D. Mass. Feb. 5, 2010) (reducing requested attorneys' fee where case "did not raise complex … issues" and "was not fiercely litigated").

4. The Risks that the Litigation will be Successful

The next factor to consider in evaluating a requested fee award—the risks of litigation—focuses on the risk that counsel would not get paid at all due to the contingent nature of the representation. As this Court has noted, "[m]any cases recognize that the risk assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award." *In re Lupron*, 2005 WL 2006833, at *4 (internal quotations omitted). Here, the risk that counsel would receive no fee at all was substantial because of the possibility that this case, in which substantial data analysis was necessary to identify class members, would not ultimately be successful. In addition to the significant time incurred by counsel, they also incurred over $380,000 in costs (primarily to experts), which could not be recovered if the litigation were not successful. Parisi Decl., ¶¶12, and 24; Meyer Decl, ¶13; Preston Decl., ¶10; Lemberg Decl, ¶24.

Further, while counsel believe that they are correct on the merits and indeed defeated a motion for summary judgment, success at trial is far from guaranteed. Defendant vigorously disputed Plaintiffs' factual allegations regarding ascertainability of the class as well as the merits of the TCPA claims, among other things. Each of these disputed factual questions would also require complex expert testimony at trial, and certainly required such testimony during litigation. For better or worse, such "battles of the experts" often turn on intangibles such as the experts' demeanor and tone, *see, e.g., Wells v. Ortho Pharmaceutical Corp.*, 788 F.2d 741, 745 & n.8 (11th Cir. 1986), rendering Plaintiffs' ultimate likelihood of success at trial far from certain. In addition, Defendant was involved in litigation with its insurers which denied obligations to provide coverage, further increasing the risk to counsel of non-payment. (Defendant itself had previously asserted that the damages sought exceeded its assets and resources. (ECF 52.))

In short, counsel bore a substantial risk that they might never be compensated at all for

their efforts on behalf of the Class in this litigation. Bearing this risk weighs strongly in favor of approving the requested fees.

5. The Amount of Time Devoted to the Case by Counsel

The next factor to consider is the amount of time counsel have devoted to the case. The tension between time expended and efficiency should be kept in mind when considering this factor. As one oft-cited commentator has noted:

> "[H]ours of time expended" is a nebulous, highly variable standard, of limited significance. One thousand plodding hours may be far less productive than one imaginative, brilliant hour. A surgeon who skillfully performs an appendectomy in seven minutes is entitled to no smaller fee than one who takes an hour; many a patient would think he is entitled to more…. [W]hen hours become a criterion, economy of time may cease to be a virtue. Inexperience, inefficiency, even incompetence will be rewarded. Expeditious termination of litigation will be discouraged—to the great cost of all concerned, including the state.

George B. Hornstein, *Legal Therapeutics: The "Salvage" Factor in Counsel Fee Awards*, 69 Harv. L. Rev. 658, 660-61 (1956). Here, counsel spent over 2,800 hours, over nearly four years, investigating, litigating, and eventually settling this litigation. While this is a significant amount of time, because of counsel's specialized experience in both consumer class actions as well as TCPA class actions, they were able to obtain a beneficial resolution of this complex matter. These long hours coupled with their expertise weigh in favor of approval of the requested fee award.

6. The Extent of the Benefit Obtained

The Agreement provides Class Members significant monetary compensation; many of these Class Members are unaware of their claims, would be unable to litigate those claims even if they were aware of them, and would not obtain any monetary relief from Collecto without the Agreement. Based on the information available, Class Counsel estimates (at a claim rate of five percent) that, after all expenses are paid from the common fund, each class member would receive approximately $40 per call placed to them. Most Class Members received between two

and four calls. The estimated per call amount compares favorably to the benefits achieved in similar cases. ECF No. 105-3, Parisi Decl., ¶16.

7. Awards in Similar Cases

Another factor courts often examine in determining the appropriateness of a fee request is awards in similar cases. This factor likewise supports the requested fee amount here.

As this Court has noted, "[c]ourts in the First Circuit have recognized that fee awards in common fund cases typically range from 20 to 30 percent." *In re Lupron*, 2005 WL 2006833, at *5.[3] In the present case, counsel for Plaintiffs are requested a combined fee and costs award of $1.3 million, which when separated into its constituent parts, represents approximately 33 1/3 % of the common fund as a fee award and approximately $388,000 as costs reimbursement, the bulk of which represents amounts paid to experts. As such, requested fee and cost award here falls within the range of awards in similar cases.

Indeed, the requested percentage falls squarely within the amount approved by this Court in similar Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") suits. *See Milford & Ford Associates, Inc., et. al. v. Cell-Tek, LLC, et. al.*, 1:09-cv-11261-DPW (approving fee of 33 1/3%) (Dist. Mass. August 17, 2011); *Collins v. ACS, Inc., et al.*, 1:10-cv-11912-RGS (approving fee of $625,000 (1/3 of common fund) plus costs of $27,297, where lodestar was $529,815) (Dist. Mass. Sept. 6, 2012).

Moreover, such an award is justified because of the superlative results achieved for the Class, as well as the extensive litigation performed by counsel. As explained above, the case was difficult to litigate, and yet every class member who has submits a claim against the fund will receive compensation. The settlement fund is non-reversionary, and any leftover funds will be

[3] This range may actually understate the amount of attorneys' fees that are typically awarded in class action cases. *See* Alba Conte & Herbert Newberg, Newberg on Class Actions § 14:6 (4th ed.) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

paid out to a *cy pres* recipient (subject to Court approval) whose work benefits the entire settlement class. The most salient instruction Class Counsel can find is from the Seventh Circuit: "a party's uncooperativeness with pretrial proceedings will increase the amount of time that the opposing attorney must devote to the case, an increase that will then be reflected in the petition for attorneys' fees." *Johnson v. Kakvand*, 192 F.3d 656, 662 (7th Cir. 1999); *Cf. Farmers Co-op Co. v. Senske & Son Transfer Co.*, 572 F.3d 492, 500-01 (8th Cir. 2009) ("failed efforts to withhold certain discovery information [was] principal force[] driving the high litigation costs"); *Vargas v. Hudson Cty. Bd. of Elections*, 949 F.2d 665, 676 (3d Cir. 1991) (in dicta, where defendant "is clearly culpable, but the plaintiff's risk of losing is based on difficulty in uncovering concealed or almost inaccessible evidence, enhancement would be justified").

In light of the exceptional results obtained here, where each claimant will receive, based on Class Counsel's estimation, approximately $40 per call, this factor supports approving the requested amount of attorneys' fees and costs, as well. See ECF No. 107-2, Parisi Decl., ¶16 (the estimated per all amount – with many class members receiving more than one – compares favorably to the benefits achieved in similar cases, where class members receive between a total of between $50 and $250.)

B. The Requested Attorneys' Fee Award is Also Reasonable Under the Lodestar Approach

Counsels' requested attorneys' fees are equally reasonable under the lodestar method – whether used as validation of the appropriateness of the amount requested under the percentage of common fund approach or as the primary method of calculation. *In re Lupron*, 2005 WL 2006833, at *6. To determine the base lodestar amount, courts multiply the number of hours that counsel reasonably expended on the litigation by an hourly rate that takes into consideration the experience of the lawyers and their geographic location. *See In re Thirteen Appeals*, 56 F.3d at 305. Under the typical lodestar approach, the resulting base lodestar may then be enhanced by

application of a reasonable risk-multiplier to account for the contingent nature of the action and/or other factors. *See, e.g., In re TJX Cos. Retail Sales Sec. Breach Litig.*, 584 F. Supp. 2d 395, 398 (D. Mass. 2008).

As reflected by the chart below, Counsel's base lodestar to date is $1,496,545. Parisi Decl. ¶¶10 and 12; Meyer Decl., ¶10; Preston Decl., ¶¶ 3 and 9; and Lemberg Decl., ¶12. Class Counsel and their co-counsel in this matter have also incurred $388,511.49 in reimbursable expenses. Parisi Decl., ¶¶12, and 24; Meyer Decl, ¶13; Preston Decl., ¶10; Lemberg Decl, ¶24. (The Court should also be aware that, as set for in Lemberg Declaration, Lemberg Law and Morgan and Morgan, in their joint representation of Mr. Pegg, have a fee sharing agreement which divides fees without regard to lodestar.)

The attorney rates used to calculate counsel's base lodestar are comparable to those charged by attorneys with equivalent experience, skill, and reputation for similar services in the Boston legal market, as well as other comparable markets throughout the country, and they have previously been approved by courts in this District, this Circuit, and nationwide. Parisi Decl., ¶¶13-19; Meyer Decl., ¶11; Preston Decl., ¶3; and Lemberg Decl., ¶¶21-22. As such, there should be no question that counsel's base lodestar is both fair and reasonable. *Rottner v. AVG Tech.*, 1:12-cv-10920-RGS (approving rates of between $335 and $685 per hour) (April 3, 2014).

The lodestar calculation, however, does not end with this base amount. Instead, the base lodestar is often enhanced with a reasonable risk-multiplier. Courts in the First Circuit have typically found multipliers in the range of 1.97 to 2.697, which is consistent with the multipliers applied in similar class actions throughout the country. *See, e.g., In re TJX Cos.*, 584 F. Supp. 2d at 408 (finding multiplier of 1.97 reasonable); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 82 (D. Mass. 2005) (finding multiplier of 2.02 appropriate); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 271 (D.N.H. 2007) (finding multiplier of 2.697 appropriate); Conte &

Newberg, *Newberg on Class Actions* § 14:6 ("Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied.").

In this case, however, counsel for Plaintiffs are not even requesting their full lodestar incurred, and instead, should the Court approve the request, would be receiving a negative multiplier of approximately 0.67. Such a negative multiplier clearly inures to the benefit of the class and demonstrates that the amount requested here should be approved.

As such, Counsel's requested fee award is undeniably reasonable in this regard as well.

IV. THE FOUR CLASS REPRESENATIAVES SHOULD RECEIVE THE REQUESTED INCENTIVE AWARDS

The negotiated incentive awards of $5,000 to the four named class representatives should be approved as well. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide during the course of class action litigation. *In re Lupron*, 2005 WL 2006833, at *7. Further, in granting incentive awards, "courts consider not only the efforts of the plaintiffs in pursuing the claims, but also the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves." *Bussie v. Allamerica Fin. Corp.*, No. 97-cv-40204, 1999 WL 342042, at *3-4 (D. Mass. May 19, 1999) (approving $5,000 incentive awards to named plaintiffs); *see also In re Lupron*, 2005 WL 2006833, at *7 ("Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit.") (internal quotation omitted).

Here, without any expectation that they might recover such an award, or anything at all, Plaintiffs Pegg, Lofton, Ralph Davenport and Richard Davenport devoted their own time and effort to pursuing claims on behalf of the Class, and otherwise exhibited a willingness to participate in and undertake the responsibilities and risks attendant with bringing such an action. At all times, the class representatives willingly assisted counsel with the investigation of their

claims and provided them with valuable information regarding the calls they received from Collecto. The class representatives consulted with counsel, reviewed documents and filings, and approved the settlement agreement. Their involvement was ultimately instrumental in reaching a settlement with Collecto and obtaining the relief now available to the Settlement Class. As such, the agreed-upon incentive award of $5,000 each is reasonable to compensate him for his efforts and encourage others do to the same in future cases.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a combined attorneys' fee and cost award of $1.3 million and an incentive awards of $5,000 to each of the four class representatives.

Dated: October 31, 2017

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