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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN – UNLIMITED**

**FREDERICK C. ANDERSON,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**PHOENIX FINANCIAL
SERVICES, LLC; AND,
PENDRICK CAPITAL PARTNERS
II, LLC,**

Defendants.

Case No.: BCV-16-101385

**PLAINTIFF FREDERICK C.
ANDERSON’S MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFF’S
MOTION FOR ATTORNEYS’
FEES AND COSTS**

DATE: July 23, 2018

TIME: 8:30 A.M.

DEPT: 2

HON. STEPHEN D. SCHUETT

RESERVATION ID #: 29456

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1 **I. INTRODUCTION**

2 Plaintiff FREDERICK C. ANDERSON (“Anderson”) seeks \$115,000.00 in
3 attorneys’ fees and costs as well as a \$1,000.00 incentive award for Anderson as a
4 result of the final approval of the proposed class action settlement with Defendants
5 PHOENIX FINANCIAL SERVICES, LLC; and, PENDRICK CAPITAL
6 PARTNERS II, LLC (“Defendants”), who do not oppose this Motion.

7 **II. LEGAL STANDARD**

8 The RFDCPA and FDBPA each provide that reasonable attorneys’ fees and
9 costs shall be awarded to a prevailing plaintiff. Specifically, Cal. Civ. Code §
10 1788.30(c) of the RFDCPA states that:

11 [i]n the case of any action to enforce any liability under this title, the
12 prevailing party shall be entitled to costs of the action. Reasonable
13 attorney’s fees, which shall be based on time necessarily expended to
14 enforce the liability, shall be awarded to a prevailing debtor...

15 The RFDCPA incorporates a majority of the Federal Fair Debt Collection
16 Practices Act (“FDCPA”) through Cal. Civ. Code § 1788.17. As such, State Courts
17 issuing orders based upon the RFDCPA often rely upon FDCPA decisions as well.
18 *See Akins v. Enterprise Rent-A-Car. Co.* (2000) 79 Cal. App. 4th 1127, 1133.
19 (“However, the case law on [the FDCPA] attorney fees awards . . . is instructive to
20 us on this question”).

21 Similarly, the FDBPA also permits the recovery of attorneys’ fees and costs
22 by the prevailing consumer. *See* Cal. Civ. Code § 1788.62(c)(1).

23 **III. ARGUMENT**

24 Both the United States Supreme Court and the California Supreme Court
25 have long recognized the need for class actions in consumer cases where
26 recoveries are too small to warrant individual prosecution. The California Supreme
27 Court explained:

1 Modern society seems increasingly to expose men to ... group
2 injuries for which individually they are in a poor position to
3 seek legal redress, either because they do not know enough or
4 because such redress is disproportionately expensive. If each is
5 left to assert his rights alone if and when he can, there will at
6 best be a random and fragmentary enforcement, if there is any
7 at all. This result is not only unfortunate in the particular case,
8 but it will operate seriously to impair the deterrent effect of the
9 sanctions which underlie much contemporary law.

10 *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 807; *see also Linder v. Thrifty Oil*
11 *Co.* (2000) 23 Cal. 4th 429, 434 (“Courts long have acknowledged the importance
12 of class actions as a means to prevent a failure of justice in our judicial system.”).

13 In the case at hand, individual consumers who received collection
14 communications without the required disclosures could, or would, not have
15 undertaken the years of investigation and litigation necessary to prosecute
16 individual claims against Defendants. As such, a class action was necessary to
17 vindicate their rights. The United States Supreme Court explained in *Amchem*
18 *Prods. Co. v. Windsor* (1997) 521 U.S. 591:

19 The policy at the very core of the class action mechanism is to
20 overcome the problem that small recoveries do not provide the
21 incentive for any individual to bring a solo action prosecuting
22 his or her rights. A class action solves this problem by
23 aggregating the relatively paltry potential recoveries into
24 something worth someone’s (usually an attorney’s) labor.

25 (*Id.* at 617.)

26 The reality is that appropriate awards of attorneys’ fees are absolutely
27 necessary in order to ensure that consumer privacy rights are protected and
28 vindicated. Contingency fee litigation is always risky. With that being said,
29 despite that risk, Class Counsel have secured an excellent result in this litigation,
30 and as explained below, the requested fee of \$115,000.00 reflects a more than
31 reasonable amount, after nearly two years of work on this litigation. As discussed

1 at length below, Anderson is entitled to recover reasonable attorneys’ fees,
2 expenses and costs under both the RFDCPA and FDBPA as the prevailing party in
3 this litigation. Anderson is also entitled to Anderson’s attorneys’ fees; and, costs
4 pursuant to the Parties’ Settlement Agreement.

5 **A. THIS COURT SHOULD AWARD RECOVERY OF ANDERSON’S**
6 **ATTORNEYS’ FEES; AND, COSTS.**

7 “California law permits fee shifting in favor of the prevailing party on
8 certain statutory causes of action when a plaintiff has acted as a private attorney
9 general by enforcing an important right affecting the public interest . . .” (*Laffitte*
10 *v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 489 (internal citations
11 omitted).) “Once a party has established that he is entitled to attorneys’ fees, [i]t
12 remains for the court to determine what fee is reasonable.” (*Hensley v. Eckerhart*
13 (1983) 461 U.S. 424, 433.) California courts, in exercising their broad discretion to
14 determine the appropriate fee pursuant to a fee-shifting statute, may base their
15 calculations on the “lodestar” method. (*Espejo v. The Copley Press, Inc.* (2017) 13
16 Cal. App. 5th 329, 383 quoting *PLCM Grp., Inc. v. Drexler* (2000) 22 Cal. 4th
17 1084, 1095-96; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal. 3d 311, 322;
18 *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48-49 (“*Serrano III*”).)

19 The lodestar calculation is produced by multiplying the number of hours
20 reasonably expended by counsel by a reasonable hourly rate. (*Lealao v. Beneficial*
21 *Cal., Inc.* (2000) 82 Cal. App. 4th 19, 26.) Once the lodestar is fixed, the court
22 may, in its discretion, increase or decrease that amount by applying a positive or
23 negative “multiplier” based on other factors. (*Id.*) That said, for the reasons set
24 forth below the fee award sought herein is reasonable, fair, and appropriate under
25 the lodestar approach. Anderson’s Counsel’s costs are fully documented,
26 necessarily incurred and otherwise reasonable. [See Exhibits A; and, B for a full
27

1 and detailed documentation of all fees and costs incurred during the course of
2 litigation attached hereto].

3 **1. The requested attorney’s fees are reasonable, fair and**
4 **appropriate under the lodestar/multiplier approach.**

5 As stated above, under the lodestar/multiplier approach, the court computes
6 the “lodestar” amount by multiplying the number of hours reasonably expended by
7 each attorney or legal staff member by their reasonable hourly rates. (*See Serrano*
8 *III*, 20 Cal. 3d at 48; and *Lealao*, 82 Cal. App. 4th at 26.)

9 However, “the lodestar formula does not limit consideration to hours
10 expended and hourly rate, though that is the foundation of the calculation.”
11 (*Lealao*, 82 Cal. App. 4th at 40.) The court then enhances this lodestar figure by a
12 “multiplier” to account for a range of factors, such as the novelty and difficulty of
13 the case, its contingent nature, skill displayed by class counsel, and the degree of
14 success achieved. (*See Roos v. Honeywell Internat, Inc.* (2015) 241 Cal. App. 4th
15 1472, 1491; *Serrano III*, 20 Cal. 3d at 49; *see also Lealao*, 82 Cal. App. 4th at 26;
16 *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 834 (2001) (“[t]here is no hard-
17 and-fast rule limiting the factors that may justify an exercise of judicial discretion
18 to increase or decrease a lodestar calculation”). Anderson’s fee demand is more
19 than justified based upon the lodestar method of calculating fees.

20 ***a. The number of hours claimed is reasonable***

21 Counsel for prevailing parties are entitled to be compensated “for all time
22 reasonably expended in pursuit of the ultimate result achieved in the same manner
23 that an attorney traditionally is compensated by a fee-paying client for all time
24 reasonably expended on a matter.” (*Hensley v. Eckerhart* (1983) 461 U.S. 424,
25 431 (internal quotes and citation omitted); *see also Laffittee, supra*, 1 Cal. 5th at
26 491-92; and *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 632-33 (*Serrano IV*) (parties
27 “should recover for all hours reasonably spent”); *Roth v. Plikaytis* (2017) 15 Cal.

1 App. 5th 283, 290 quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133
2 ([P]arties who qualify for a fee should recover compensation for “all the hours
3 reasonably spent”)

4 The amount of time Anderson’s Counsel spent on this case (nearly 122
5 hours to date), which culminated in the very favorable Settlement, is entirely
6 reasonable given the issues, proposed defenses, the length of time the litigation has
7 been pending, and the exceptional results obtained. Further, all of Anderson’s
8 Counsel’s time is supported by the declarations submitted concurrently with this
9 Motion which themselves are based on records that are maintained
10 contemporaneously in the normal course of Anderson’s Counsel’s practice. (*See In*
11 *re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 511-12
12 (“We see no reason why [the court] could not accept the declarations of counsel
13 attesting to the hours worked, particularly as he was in the best position to verify
14 those claims by reference to the various proceedings in the case.”); *see also*
15 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254-55.)

16 **b. *The hourly rates requested are reasonable.***

17 Class Counsel are entitled to be compensated at hourly rates that reflect the
18 reasonable market value of their legal services, based on their experience and
19 expertise. (*Serrano IV*, 32 Cal. 3d at 640 n.31; *San Bernardino Valley Audubon*
20 *Soc’y, Inc. v. County of San Bernardino*, (1984) 155 Cal. App. 3d 738, 755.) “The
21 reasonable hourly rate is that prevailing in the community for similar work.”
22 (*PCLM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095; *see also Syers*
23 *Props. III, Inc. v. Rankin* (2014) 226 Cal. App. 4th 691, 702.) Payment at full
24 market rates is essential to entice well-qualified counsel to undertake difficult cases
25 such as this one. (*San Bernardino Valley Audubon Soc’y v. Cty. Of San Bernardino*
26 (1984) 155 Cal. App. 3d 738, 755.)

1 Here, all of Anderson’s attorneys assigned to this matter have considerable
 2 experience litigating a variety of consumer rights issues. Kazerounian and Swigart
 3 seek \$645 per hour while Loker and Cardoza seek \$525 per hour.¹ Moreover,
 4 similar rates sought by counsel herein have been approved by other Courts. *See*,
 5 *e.g.*, *Hooker, Jr., et al. v. Sirius XM Radio, Inc.*, 13-cv-003 (E.D. Va. May 11,
 6 2017) (Approving hourly rate of \$625 for Kazerounian and Swigart); *Maxin v.*
 7 *RHG & Company, Inc.* No. 16-2625 JLS (BLM), 2018 U.S. Dist. LEXIS 26795
 8 (S.D. Cal. Feb. 16, 2018) (awarding \$625 per hour for Kazerounian and Swigart
 9 with Loker at \$495 per hour); and, *Giffin v. Universal Protein Supplements*
 10 *Corporation d/b/a Animal Pak*, No. BC613414, 2018 Cal. Super. LEXIS 3 (Sup.
 11 Ct. Los Angeles Feb. 7, 2018) (awarding \$625 per hour for Kazerounian and
 12 Swigart with Loker at \$505 per hour). A full breakdown of those hours is as
 13 follows, and a detailed Time Sheet is attached as Exhibit A. Said hours are
 14 summarized as follows:

15	COUNSEL:	RATE:	HOURS:	TOTAL:
16	ABBAS KAZEROUNIAN	\$645.00	38.3	\$25,026.00
17	JOSHUA B. SWIGART	\$645.00	19.1	\$12,319.50
18	MATTHEW M. LOKER	\$525.00	53.4	\$28,035.00
19	MICHAEL F. CARDOZA	\$525.00	11.05	\$5,801.25
20	TOTAL:		121.85	\$71,181.75

21 Thus, Class Counsel should be awarded the agreed-upon amount of
 22 \$115,000.00 in attorneys’ fees’ and, costs.

25 ¹ Kazerounian; Swigart; and, Loker submitted Declarations in support of
 26 Preliminary Approval supporting their experience. Said Declarations are
 27 incorporated herein. Moreover, Cardoza submits a Declaration in support of
 Cardoza’s experience concurrently herewith.

1 **c. Counsel request only a modest multiplier.**

2 To date, Anderson’s counsel have expended almost 122 hours of work in
3 this litigation and accumulated \$71,181.75 in attorneys’ fees and costs. To be sure,
4 trial courts have substantial discretion in adjusting the lodestar to account for
5 various factors. *See Lealao*, 82 Cal. App. 4th at 26, 39-45; *see also Serrano III*, 20
6 Cal. 3d at 49. In addition, it has been held that “[m]ultipliers can range from 2 to 4
7 or even higher.” *See Wershba*, 91 Cal. App. 4th at 255; *see also Van Vranken v.*
8 *Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (“[m]ultipliers in
9 the 3-4 range are common in lodestar awards for lengthy and complex class action
10 litigation”). Here, Anderson seeks a modest and reasonable multiplier of .6 times
11 the actual fees and costs incurred at this time.² Anderson’s attorneys’ fees and
12 costs will increase as Anderson finalizes this class action settlement. This too
13 weighs in favor of this Motion being granted.

14 **B. ANDERSON’S ATTORNEYS ARE ENTITLED TO AN AWARD OF COSTS AND**
15 **LITIGATION EXPENSES.**

16 As detailed in Anderson’s Memorandum of Costs, Anderson requests an
17 award of costs and litigation expenses in addition to an award of attorneys’ fees,
18 pursuant to the Parties’ Settlement Agreement. “Even though not normally taxable
19 as costs, out-of-pocket expenses incurred by an attorney which would normally be
20 charged to a fee paying client are recoverable as attorneys’ fees...” *Id.* citing to
21 *Chalmers v. City of Los Angeles*, 796 F.2d 1215, 1216 n.7 (9th Cir. 1986). *See*
22 *also Grover v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010)
23 (“[W]e repeatedly have allowed prevailing plaintiffs to recover non-taxable costs
24

25 ² The exact multiplier is 0.61897 is referred to as .6 in the interest of brevity.
26 Anderson anticipates this small multiplier will be further reduced as Anderson
27 incurs additional attorneys’ fees and costs for answering class members questions
and the time necessary to obtain Final Approval.

1 where statutes authorize attorneys’ fees awards to prevailing parties”); *Giovannoni*
2 *v. Bidna & Keys*, 225 Fed. Appx. 124, 126 (9th Cir. 2007); *Lowe v. Elite Recovery*
3 *Solutions L.P.*, 2008 U.S. Dist. LEXIS 8353 (E.D. Cal. 2008); and, *Gooray v.*
4 *Unifund CCR Partners*, 2008 U.S. Dist. LEXIS 47130 (D. Haw. 2008).

5 Of the agreed upon \$115,000 for attorneys’ fees; and, costs, Anderson seeks
6 reimbursement of costs totaling \$5,379.10. [See Exhibit B]. Anderson’s litigation
7 expenses and costs are commensurate with those expenses, and are compensable.

8 **C. REVIEW OF THE *KERR* FACTORS ALSO SUPPORTS THE REASONABLENESS**
9 **OF ANDERSON’S DEMAND.**

10 While “there is a strong presumption that the lodestar represents a
11 reasonable fee,” California Superior Courts may also review the *Kerr* Factors.
12 *Clapp v. Terry*, No. C076562, 2016 Cal. App. Unpub. LEXIS 8378, at *8 (Nov.
13 23, 2016) citing to *Morales v. City of San Rafael*, 96 F.3d 359, 363-364 n. 8 (9th
14 Cir. 1996). Said factors examine: (1) the time and labor required; (2) the novelty
15 and difficulty of the questions involved; (3) the skill requisite to perform the legal
16 service properly; (4) the preclusion of other employment by the attorney due to
17 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or
18 contingent; (7) limitations imposed by the client or circumstances; (8) the amount
19 involved and the results obtained; (9) the experience, reputation, and ability of the
20 attorneys; (10) the ‘undesirability’ of the case; (11) the nature and length of the
21 professional relationship with the client; and, (12) awards in similar cases.
22 *Morales v. City of San Rafael*, 96 F.3d at 363-364 n. 8 citing to *Kerr v. Screen*
23 *Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

24 Most of these factors are subsumed in the lodestar analysis above. Review
25 of the remaining *Kerr* factors also supports Anderson’s demand because
26 Anderson’s counsel was precluded from engaging in other employment while
27 working on this matter. Moreover, the contingent nature of this case in

1 comparison to the small individual recovery imposed significant burdens on
2 Anderson’s counsel since no recovery of any kind was guaranteed. Thus,
3 Anderson should be granted the agreed upon amount of \$115,000.00 for
4 Anderson’s attorneys’ fees and costs.

5 **D. ANDERSON IS ENTITLED TO THE REQUESTED INCENTIVE AWARD.**

6 As *In re Cellphone Termination Cases*, 186 Cal. App. 4th 1380, 1396
7 (2010), the appellate court upheld the trial’s court approval of \$10,000 in incentive
8 awards to each class representative. The court reasoned, “[T]he rationale for
9 making enhancement or incentive awards to named plaintiffs is that they should be
10 compensated for the expense or risk they have incurred in conferring a benefit on
11 other members of the class.” *Id.* at 1394 (quoting *Clarke v. American Residential*
12 *Servs. LLC*, 175 Cal. App. 4th 785, 806 (2009)).

13 Here, the Settlement Agreement calls for Anderson to receive a \$1,000
14 incentive award. This incentive award is well deserved and justified by the fact
15 that Anderson took action after realizing the conduct at issue herein was illegal.
16 Moreover, Anderson faced substantial financial risk by bringing this claim because
17 Anderson had to give up his rights to pursue Defendants on any other basis. By
18 bringing this action, Anderson furthered the public policy goals of the consumer
19 protection statutes at issue herein and was active during the entire litigation process
20 while promptly responded to any questions. Therefore, Anderson’s time and effort
21 made resolution of this case possible for the members of the Class. By bringing
22 this action, the Plaintiff also furthered the well-established public policy goals of
23 consumer class actions as recognized by our Supreme Court:

1 Not only do class actions offer consumers a means of recovery
2 for modest individual damages, but such actions often produce
3 “several salutary by-products, including a therapeutic effect
4 upon those sellers who indulge in fraudulent practices, aid to
5 legitimate business enterprises by curtailing illegitimate
6 competition, and avoidance to the judicial process of the burden
7 of multiple litigation involving identical claims.”

8 *Linder*, 23 Cal. 4th at 445 (quoting *Vasquez*, 4 Cal. 3d at 808).

9 Thus, Anderson’s requested incentive award should be granted.

10 **IV. CONCLUSION**

11 Class counsel undertook the representation of Anderson at Class Counsel’s own
12 expense and risk with no assurances that Class Counsel would receive any
13 compensation. (*Graham v. DaimlerChrysler Corp.*, (2004) 34 Cal. 4th 553, 579-
14 580). The time billed reflects the time required to successfully prosecute this
15 Action, whether on an individual or class basis and the hourly rates of \$645 for
16 Kazerounian and Swigart; and, \$525 for Loker and Cardoza sought by Anderson’s
17 attorneys are a reasonable market rate.

18 Moreover, an award of reasonable attorneys’ fees and costs was a material term
19 agreed upon in the Parties’ Settlement Agreement. Thus, Anderson respectfully
20 submits that this Motion should be granted as follows: \$115,000.00 for Anderson’s
21 Counsel’s fees and costs; and, \$1,000 incentive award to Anderson. As discussed
22 herein, awarding the requested amount does not dilute the funds received by those
23 consumers who have not opted out.

24 Dated: March 22, 2018

KAZEROUNI LAW GROUP, APC

25 
26 _____
27 ABBAS KAZEROUNIAN, ESQ.

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kazerouni Law Group, APC, 1303 East Grand Avenue, Suite 101, Arroyo Grande, CA 93420. On March 21, 2018, I served the within document(s):

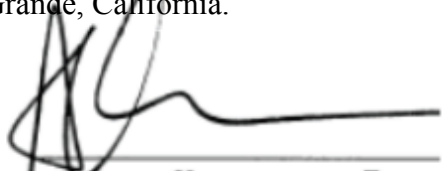
PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES; AND, COSTS

- E-MAIL - by transmitting via e-mail the document(s) listed above to the e-mail address(es) listed below on this date before 11:59 p.m.
- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Arroyo Grande, California addressed as set forth below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via.
- CM/ECF - by transmitting electronically the document(s) listed above to the electronic case filing system on this date before 11:59 p.m. The Court’s CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record who are registered with the Court’s CM/ECF system.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 21, 2018, at Arroyo Grande, California.



ABBAS KAZEROUNIAN, ESQ.