

THE HONORABLE BRIAN MCDONALD
Hearing Date: Friday, November 19, 2021
Hearing Time: 9:00 am
With Oral Argument

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR KING COUNTY

MIKE AALAND, individually and on behalf of
those similarly situated,

Plaintiff,

v.

CONTRACTORS.COM LLC, a California
Limited Liability Company, and ONE PLANET
OPS INC., a Delaware Corporation,

Defendants.

NO. 19-2-24212-4 SEA

**UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

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1 John B. Bates, Jr. of JAMS but were unable to resolve their dispute. *Id.* After the failed
2 mediation, the parties resumed discovery efforts. *Id.* Eventually the Parties began discussing
3 resolution among counsel, which ultimately resulted in a settlement agreement a year after the
4 mediation. *Id.*

5 On July 19, 2021, this Court granted Plaintiff's motion for preliminary approval because
6 the settlement was fair and adequate. Dkt. 28. Now, having performed all requisite steps as set
7 forth in the parties' Settlement Agreement and the Court's Order Granting Preliminary Approval,
8 Plaintiff now requests that the Court grant final approval of this Class Action Settlement.

9 **B. The Settlement Agreement Was the Result of Arms-Length**
10 **Negotiations**

11 The Parties participated in a good-faith, arms-length, full-day mediation with John B.
12 Bates, Jr. of JAMS in May 2020. Rittereiser Decl. ¶ 6. Though they were initially unable to
13 resolve their dispute, after resuming discovery efforts, the Parties later began discussing the
14 potential of resolution among counsel. Nearly a year after the failed mediation, the parties were
15 able to reach a settlement agreement that the Court previously approved, and for which it granted
16 preliminary approval. Dkt. 28.

17 **C. The Parties Have Fully Complied with the Order Granting**
18 **Preliminary Approval**

19 Pursuant to the Court's order granting preliminary approval, Court-appointed Class
20 Claims Administrator, JND Legal Administration mailed the Court-approved Notice of the
21 Settlement of Class Action to potential Class Members at the 2,420 addresses located through
22 reverse and manual searches. *See* Declaration of Vanessa Padelford ("Padelford Dec.") ¶ 7. The
23 Notice provided explicit instructions as to how to file a claim, object to the settlement, or exclude
24 oneself from the settlement. *See* Padelford Decl. at Exhibit A. Additionally, the Notice provided
25 a toll-free telephone number for Class Members to call with any questions, as well as a
26 settlement-specific website to view additional information. *Id.* The Notice sent to each Class
27 Member explains that the Net Settlement Fund will be distributed to all participating Class
Members, and that there are two types of benefits: 1) a cash payment between \$120 and \$1,500

1 and 2) six free leads (valued at \$50 each). *Id.* at Ex. A. The Notice also included directions to the
2 website in Spanish, where the long form notice available on the settlement website is available in
3 both English and Spanish. *Id.* at Exs. A-C. The website also contained copies of the Claim Form
4 that could be mailed in or submitted online. *Id.* at Ex. E.

5 Because the only contact information the parties had for the potential class members was
6 a phone number—in some cases years old—JND and the parties exerted extraordinary effort to
7 locate the greatest number of addresses possible. *See* Rittereiser Decl. ¶ 10; Padelford Decl. ¶¶ 5-
8 6. Of the 2,976 mobile telephone numbers to which a text message was sent by Defendant, there
9 were 2,085 unique phone numbers. Padelford Decl. ¶¶ 3-4. JND was initially only able to find
10 mailing addresses for 1,728 unique name and address combinations and left 840 records for
11 whom reverse lookup searches yielded no results. *Id.* at ¶ 5. Because counsel for the parties
12 wanted to ensure that the greatest number of class members benefited from the settlement,
13 counsel requested that JND perform manual searches of the 840 phone numbers. *Id.* at ¶ 6;
14 Rittereiser Decl. ¶ 10. After this search, JND was able to locate address information for an
15 astounding majority – 692 of the 840 – leaving only 7 percent for whom no name address could
16 be located. Padelford Decl. ¶ 6.

17 As a result of JND’s complex searches, 2,420 mailing addresses representing 1,937
18 unique mobile numbers were located and mailed the Postcard Notice. *See id.* at ¶¶ 7-8. As of
19 November 3, 2021, 281 were returned as undeliverable, and 37 of those were able to be remailed
20 to a new address. *Id.* at ¶ 10. Of those, none were returned as undeliverable. *Id.* Of the 2,420
21 notices, 90 percent have been deemed delivered, and only 10 percent undeliverable *Id.* JND did
22 not receive any objections or any opt-outs. *Id.* at ¶¶ 21, 23. JND received a total of 37 Claim
23 Forms, 29 of which were received online and eight of which were received by mail. *Id.* at 25. Of
24 the Claim Forms received, 31 are valid. *Id.* As of November 3, 2021, JND had not received any
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1 requests to redeem Lead Benefits, but the Class Members have an entire year after final approval
2 to redeem these leads.¹ Padelford Decl. ¶ 26; *see also* Padelford Decl. at Ex. B at 4.

3 **D. The Parties' Settlement Confers Substantial Benefits to the Class**
4 **and A Local Cy Pres Recipient.**

5 The parties structured their settlement to convey both monetary and invaluable benefits to
6 Class Members. Rittereiser Decl. ¶ 9. Given the nature of the claims, that defendant sent
7 unauthorized text messages to cellular telephone numbers within Washington state, the identity
8 of class members beyond their cellular telephone numbers was not readily identifiable. This fact
9 required an opt-in settlement structure to first verify the identity of individuals associated with
10 cellular telephone numbers that received text messages from defendant while within the State of
11 Washington and to enable the settlement administrator to properly procure settlement funds to
12 named individual class members. Rather, the parties created a simple Claim Form system to
13 ensure that the person damaged (*i.e.*, the person who received the text message) would be the
14 actual beneficiary of the settlement sum. *Id.* The payout to each Class Member who submitted a
15 Claim Form is \$1,500. *Id.* at ¶ 11. This number represents the maximum statutory damages,
16 including the maximum statutory liquidated damages, a person would be able to recover. *See*
17 *infra* Part IV (A)(3). Additionally, the parties wanted to ensure that even those Class Members
18 who failed to submit a Claim Form would still be able to participate in the recovery and grow
19 their individual businesses in immeasurable ways. This settlement accomplishes this goal
20 because Class Members who never submitted a Claim Form still have an entire year to access an
21 additional \$300 worth of benefits by claiming their six free leads (each valued at \$50). Rittereiser
22 Decl. at ¶ 11.

23 Under the terms of the Settlement Agreement, rather than reverting to the Defendant, any
24 amount remaining in the Net Settlement fund after providing the maximum cash benefit to each
25 Class Member who has submitted a Claim Form shall be distributed to charity as a Cy Pres.

26 ¹ The "Redeem Leads" function of the settlement website was inadvertently disabled for a short period of time, but
27 it was reinstated on October 28, 2021 and at no time were Class Members unable to redeem leads through the toll-
free number. *See* Padelford Decl. ¶ 24 n.3.

1 Settlement Agreement ¶¶ 11.2, 11.4. The parties have stipulated that the Cy Pres recipient will be
2 Downtown Seattle Association, but the Court has authority to designate a different charity should
3 it so choose. *Id.* at ¶ 11.4. Based on the Plaintiff’s Counsel’s calculations, the Cy Pres recipient
4 will receive a minimum of \$187,644.57.

5 III. ISSUES PRESENTED

6 Whether the Court should grant final approval of the Class Action Settlement because it
7 is fair, adequate, and reasonable, and otherwise satisfies the requirements for final approval.

8 IV. EVIDENCE RELIED UPON

9 This motion is based upon the accompanying declarations of Jason A. Rittereiser, Peter
10 Stutheit, and Vanessa Padelford, together with the exhibits attached thereto, all pleadings and
11 records on file herein, and such other documentary evidence or arguments as may be presented to
12 the Court prior to or at the hearing on the motion.

13 V. AUTHORITY AND ARGUMENT

14 A. The Court Should Grant Final Approval of This Settlement

15 "Although CR 23 is silent in guiding trial courts in their review of class settlements, it is
16 universally stated that a proposed class settlement may be approved by the trial court if it is
17 determined to be ‘fair, adequate, and reasonable.’” *Pickett v. Holland Am. Line-Westours, Inc.*,
18 145 Wn.2d 178, 188, 35 P.3d 351(2001). Because CR 23 is identical to its federal counterpart,
19 Fed.R.Civ.P. 23 . . . federal cases interpreting the analogous federal provision are highly
20 persuasive.” *Id.*

21 When faced with a motion for final approval of a class action settlement under CR 23, a
22 court’s inquiry is whether the settlement is “fair, adequate, and reasonable.” *Staton v. Boeing*
23 *Co.*, 327 F.3d 938, 959 (9th Cir. 2003). A settlement is fair, adequate, and reasonable, and merits
24 final approval, when “the interests of the class as a whole are better served by the settlement than
25 by further litigation.” *See Manual for Complex Litig.* (4th) § 21.61, at 480 (2004). The Court’s
26 role is to ensure that “the agreement is not the product of fraud or overreaching by, or collusion
27 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and

1 adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998),
2 *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541,
3 180 L. Ed. 2d 374 (2011) (internal quotes and citations omitted).

4 **1. The Class Notice was Adequate**

5 CR 23(e)(1)(B) states that notice of any proposed comprise shall be given to all members
6 of the class in a manner the Court directs. Further, taken together with CR 23(b)(3), the Court
7 “shall direct to the members of the class the best notice practicable under the circumstances,
8 including individual notice to all members who can be identified through reasonable effort.” *See*
9 CR 23(c)(2). At a minimum, the individual notice must advise each member (1) that the class
10 member will be excluded if he so requests by a certain date, (2) that the class member will be
11 included in any judgment if he does not request exclusion, and (3) that the class member may
12 enter an appearance through counsel if he wishes. *See id.* Although the Washington Supreme
13 Court has not yet given full guidance on what constitutes proper notice, the U.S. Supreme Court
14 has held that when addresses may be identified, the best notice “practicable under the
15 circumstances” is mailed notice. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173, 94 S. Ct.
16 2140, 40 L. Ed. 2d 732 (1974).

17 The parties executed the notice plan detailed in Plaintiff’s Motion for Preliminary
18 Approval, which was approved by the Court on July 19, 2021. *See* Dkt. 28. On August 18,
19 2021, the Postcard Notice was sent via first class U.S. Mail directly to all Class Members for
20 whom addresses could be identified. Padelford Decl. at ¶¶ 9-10. The final class list included
21 2,085 unique phone numbers belonging to Class Members, but did not include any email
22 addresses to whom JND could send the Email Notice. *See* Dkt. 26-01 at Ex. A (Settlement
23 Agreement ¶ 6.2.1 states, “...Defendant shall provide to the Settlement Administrator the names,
24 mailing addresses, and email addresses, *if any*”) (emphasis added). The Email Notice, though not
25 ultimately emailed to Class Members because no email addresses were available, was still
26 accessible to view on the Settlement Website. *See* Padelford Decl. at ¶ 14 n.3 and Ex. D.

1 The content of the Notice complied with, and exceeded the information required by, CR
2 23. Class Members were informed of: (1) the basis of the claims; (2) who is included in the
3 class; (3) who is eligible for payment; (4) the minimum and maximum amounts of the cash
4 payment (i.e., between \$120 and \$1,500) and explanation of the six free leads; (5) how Class
5 Members may exclude themselves from the settlement; (6) the right to object to the settlement;
6 (7) the right to an appearance of an attorney of the Class Member’s choosing; and (8) the contact
7 information for any inquiries, including a toll-free telephone number and settlement-specific
8 website. *See* Padelford Decl. at Ex. A. The Notice adequately described the terms of the
9 settlement in sufficient detail to alert any person who viewed the settlement adversely of their
10 rights to exclude themselves or object to the settlement. *Id.* The Notice also clearly directed
11 Class Members to a highly-informative settlement-specific website which provided detailed
12 information in both English and Spanish. *See id.* at Exs. A-D; *see also*
13 <https://www.optextclassaction.com/>. Consequently, adequate notice has been provided.

14 **2. The Proposed Settlement is Fair Because it was the Product of Arm’s Length
15 Non-Collusive Negotiations**

16 The requirement that the proposed Settlement be conducted by arm’s-length, and non-
17 collusive negotiations protects the proposed Class Members. Generally, “[t]here is a presumption
18 of fairness when a proposed class settlement, which was negotiated at arm’s-length by counsel
19 for the class, is presented for Court approval.” *Newberg On Class Actions* § 11.31 (4th ed. 2013);
20 *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d
21 939 (9th Cir. 1981) (“considerable weight” given to settlement reached after hard-fought
22 negotiations). As described in the parties’ Motion for Preliminary Approval, the proposed
23 Settlement in this case is presumptively fair because of the parties’ contentious litigation, which
24 included the exchange of more than 4,000 pages of discovery. Rittereiser Dec. ¶ 6. *See also*
25 *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542–43 (W.D. Wash. 2009) (approving settlement
26 “reached after good faith, arms-length negotiations”); *see also In re Phenylpropanolamine (PPA)*

1 *Prods. Liab. Litig.*, 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement “entered into
2 in good faith, following arms-length and non-collusive negotiations”).

3 **3. The Proposed Settlement is Reasonable and Adequate**

4 In determining whether a settlement is adequate and reasonable, the Court should balance
5 the following factors: “the strength of the plaintiffs’ case; the risk, expense, complexity, and
6 likely duration of further litigation; the risk of maintaining class action status throughout the
7 trial; the amount offered in settlement; the extent of discovery completed, and the stage of the
8 proceedings; the experience and views of counsel.” *Hanlon*, 150 F.3d at 1026.

9 This settlement is far better than adequate. As a result of this resolution, Class Members
10 who have opted in for the cash payment will recover the maximum amount they could have
11 recovered had they filed an individual case—including full payment of treble damages.
12 Rittereiser Dec. ¶ 11. Additionally, *all* Class Members are able to redeem six free leads (for a
13 total value of \$300) anytime between now and one year following final approval. *Id.*

14 This is a more than reasonable result in a class action settlement. *See Officers for Justice*
15 *v. Civil Serv. Comm’n of City & Cty. Of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982)
16 (citation omitted) (recognizing that, “the very essence of a settlement is compromise, ‘a yielding
17 of absolutes and an abandoning of highest hopes”). Courts routinely approve settlements that
18 pay class members a fraction of their actual loss. *See 7-Eleven Owners for Fair Franchising v.*
19 *Southland Corp.*, 85 Cal. App. 4th 1135, 1150, 102 Cal. Rptr. 2d 777 (2000) citing *Linney v.*
20 *Cellular Alaskan Partnership*, 151 F.3d1234, 1242 (9th Cir. 1998) (noting that courts routinely
21 approve settlements where the recovery for the Class constitutes only “a fraction of the potential
22 recovery.”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1346 (S.D. Fla.
23 2011) (finding that “standing alone, nine percent or higher constitutes a fair settlement even
24 absent the risks associated with prosecuting these claims”); *In re Newbridge Networks Sec.*
25 *Litig.*, CIV. A. 94-1678-LFO, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) (noting that “an
26 agreement that secures roughly six to twelve percent of a potential trial recovery . . . seems to be
27 within the targeted range of reasonableness”).

1 Moreover, the compensation provided in this resolution strikes a reasonable balance
2 between the legal issues presented in this case and the statutory damages authorized by CEMA
3 and, by analogy, the TCPA, and *exceeds* the range of settlements approved in similar cases. *See,*
4 *e.g., Manouchehri v. Styles for Less, Inc.*, 14CV2521 NLS, 2016 WL 3387473, at *2, 5 (S.D.
5 Cal. June 20, 2016) (approving TCPA settlement of \$10.00 cash or \$15.00 voucher for class
6 members); *Estrada v. iYogi, Inc.*, CV21301989WBSCKD, 2015 WL 5895942, at *7 (E.D. Cal.
7 Oct. 6, 2015) (\$40.00 cash for class members); *Kolinek v. Walgreen Co.*, No. 13-4806 (N.D. Ill.
8 2015) (providing approximately \$30 to each claiming class member); *In re Capital One TCPA*
9 *Litig.*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (providing \$34.60 per claiming class member);
10 *Wojcik v. Buffalo Bills, Inc.*, No. 12-2414, Dkt. 73 (M.D. Fla. Apr. 17, 2014) (providing for \$57,
11 \$65, or \$75 gift cards redeemable only at defendant’s stores); *In re Jiffy Lube Int’l, Inc. Text*
12 *Spam Litig.*, No. 11-2261, Dkt. 97 (S.D. Cal. 2013) (providing for a \$20 voucher to each
13 claiming class member, which could be redeemed for \$15 cash after nine months); *Kazemi v.*
14 *Payless Shoesource, Inc.*, No. 09-05142, Dkt. 94 (N.D. Cal. 2012) (providing for a \$25 voucher
15 to each claiming class member); *Garret, et al. v. Sharps Compliance, Inc.*, Case No. 1:10-cv-
16 04030, ECF No. 65 (N.D. Ill. Feb. 23, 2012) (providing class members between \$27.42 and
17 \$28.51 cash); *Cabbage v. Talbots, Inc.*, No. 09-cv- 00911-BHS, ECF No. 114 (W.D. Wash. Nov.
18 5, 2012) (\$40.00 cash or \$80.00 certificate); *Garret, et al. v. Sharps Compliance, Inc.*, No. 1:10-
19 CV-04030, Dkt. No. 65 (N.D. Ill. Feb. 23, 2012) (claimants received between \$27.42 and
20 \$28.51).

21 Here, unlike many of the cases above, Class Members who have opted in are receiving
22 their *maximum* possible statutory recovery, including treble damages. Those Class Members, as
23 well as those who have not opted in, are receiving an *additional* \$300 worth of valuable leads to
24 further their businesses that they can redeem at any time up to a year after final approval,
25 regardless of whether they opted in. This result is more than reasonable given that the value to
26 each class member is a minimum of \$300 and a maximum of \$1,800. Additionally, as a result of
27

1 this lawsuit, Defendant has ceased its call center operations in Washington State and no longer
2 sends out text messages to contractors in Washington State.

3
4 **4. Plaintiff’s Counsel Assessed the Known Risks and Determined That the
Settlement is in the Best Interest of Class Members**

5 “When experienced and skilled class counsel support a settlement, their views are given
6 great weight.” *Pickett*, 145 Wn.2d at 200. The experienced views of all counsel involved support
7 final approval. Counsel for Plaintiff has substantial experience prosecuting class actions,
8 including CEMA and TCPA cases. *See Rittereiser Decl.* ¶¶ 3-5; *Stutheit Decl.* ¶¶ 2-4. Though
9 Plaintiff believes he would ultimately prevail, litigating the case would be time-consuming,
10 expensive, and, like most all class actions, risky. Based on their experience, Plaintiff’s counsel
11 evaluated these various issues, including the strengths and weaknesses of the case and the
12 consequences of not settling, and concluded that the Settlement is in the best interest of Class
13 Members.

14 In entering into this Settlement, Plaintiff recognized the significant risks associated with
15 proving liability and obtaining a judgment against Defendants. While Plaintiff believed his
16 claims are meritorious and valid, they are not without challenges, particularly with continued
17 discovery. For example, several of the key witnesses Defendants disclosed are in the Philippines
18 which would provide challenging in terms of having jurisdiction to conduct their depositions.
19 *Rittereiser Decl.* ¶ 8. Additionally, proving that Defendants intentionally violated the statute
20 would have been difficult, thus potentially limiting each class member’s damages by two thirds.
21 *Id.* Additionally, proving that Class Members physically were in Washington when they received
22 the text message would have been exceedingly difficult. *Id.* Furthermore, and especially in light
23 of the ongoing pandemic, there were risks that Defendants would not be able to pay for a
24 judgment at the conclusion of protracted and hard-fought litigation. *Id.*

25 In agreeing to the settlement sum, Plaintiff and Class Counsel have considered the risks
26 inherent to litigation and the defenses available to Defendants, including Defendants’ potential
27 defense that they obtained consent to send the text messages at issue in this case. *Rittereiser*

1 Decl. ¶ 7. Another issue stemming from this potential defense was whether the consent was
2 obtained through a third party, and whether any evidence of that consent was discoverable given
3 that records may not have been retained by Defendants or the third parties. *Id.* At the certification
4 stage, Defendants would have likely argued that class certification was not appropriate because
5 determination of consent would require a showing of individualized, rather than classwide,
6 proof. *Id.* While Plaintiff and his counsel disagree with Defendants' arguments and believe class
7 certification would be appropriate, they are aware of the possibility that a court might accept
8 Defendants' arguments and deny any motion for class certification or deny liability. If the class
9 was certified, it is a near certainty that Defendants would move to decertify. *Id.* Furthermore,
10 even if Plaintiff was able to prove liability, the amount of any award issued was not certain, in
11 particular with liquidated damages. *Id.*; Additionally, even if the class was certified and was
12 successful at trial, Defendants likely would have sought a remittitur to limit the amount of
13 statutory damages paid to the class. *Id.* Moreover, even if Plaintiff were to prevail on a classwide
14 basis, with treble damages (*i.e.*, damages of \$1,500 versus \$500), any recovery could be delayed
15 for years by an appeal.

16 In contrast, the Settlement provides substantial monetary relief to Settlement Class
17 Members without further delay and is preferable to the risks that each party would face if the
18 case were litigated further. In fact, the value to the Class Members who participate in the
19 Settlement *exceeds* their potential statutory damages, including full treble damages awards,
20 because they are receiving the full \$1,500 plus the additional \$300 lead benefits. Even if the
21 Class Members were to win at trial, they still may not have been awarded the full benefit they
22 will receive as a result of this settlement if the jury decided against willfulness. Based on these
23 risks, a thorough investigation, and extensive litigation, Class Counsel determined that a
24 resolution through settlement negotiations was in the best interest of the Class and provided the
25 most certainty that the Class Members would recover significant damages.

26 **5. Class Members Have Responded Favorably to the Settlement**

27

1 A positive response to a settlement by the class—as evidenced by the lack of opt-outs and
2 objectors—further supports final approval. *See Pelletz*, 255 F.R.D. at 543. Here, no one has
3 objected to the settlement nor requested to be exuded from the settlement. *See Padelford Decl.* ¶¶
4 21, 23. This means that all every single Class Member who could be reached by JND remains in
5 the class and remains eligible for an entire year following final approval to claim and redeem
6 their leads, even if the Class Member did not choose to submit Claims Forms for the cash
7 component. *See Id.* at ¶ 27 and Ex. B at 4. Given this overwhelming approval rate, this factor
8 weighs heavily in favor of final approval.

9 **B. The Amounts Requested as Attorneys’ Fees and Out-Of-Pocket Costs are**
10 **Reasonable**

11 Plaintiff is also requesting attorneys’ fees and litigation costs for Class Counsel of
12 \$458,700.00 and \$5,790.43², respectively. The \$458,700.00 figure represents 30 percent of the
13 Total Settlement Value, and the \$5,790.43 figure represents the out-of-pocket litigation costs
14 paid in total by Class Counsel. *See Settlement Agreement* at ¶¶ 1.17, 4.2 and *Rittereiser Decl.* ¶
15 13. These numbers are reasonable given the exceptional results Class Counsel were able to
16 obtain for the Class, the risks associated with the claims, the contingent nature of the litigation,
17 the complexity of the case and claims, and the expenses incurred by Class Counsel throughout
18 the course of this case.

19 Washington courts use the percentage-of-recovery approach to calculate attorneys’ fees
20 in common fund cases like this one. *Bowles v. Washington Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72,
21 847 P.2d 440 (1993); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The only
22 significant difference between state and Ninth Circuit federal law on calculating attorneys’ fees
23 is that Washington law applies the percentage method without the use of any “lodestar
24 crosscheck.” *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1302 (W.D. Wash 2001), *aff’d*
25 290 F.3d 1043 (9th Cir. 2002) (“Under Washington law, the percentage method, without a

26 ² Plaintiff has incurred an additional court administration \$64.98 since disclosing his prior costs of \$5,696.27 at the
27 preliminary approval stage.

1 lodestar cross-check, should be used in common fund cases.”). In these types of cases, attorneys’
2 fees are results-oriented – the size of the recovery constitutes a suitable measure of the attorneys’
3 performance.” *Bowles*, 121 Wn.2d at 72. Once the benefit to the class is determined, the court
4 can award a percentage of that benefit in the form of attorneys’ fees. *Id.* at 72-73. Awards of fees
5 of 35 percent or more are not unusual in common fund cases. 4 Alba Conte and Herbert B.
6 Newberg, *Newberg On Class Actions*, §14.6 (4th ed. 2002) (awards typically range in the 20% to
7 50% of the common fund); *see, e.g., Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir.
8 2003) (Ninth Circuit approved 33%); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir.
9 1995) (same). In a study of attorney’s fee awards in 2006-2007, “[m]ost fee awards were
10 between 25-35 percent.” Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*
11 *and Their Fee Awards*, 7 J. Empirical Legal Studs. 811, 833 (2010). According to *Newberg*,
12 “empirical studies show that, regardless whether the percentage method or lodestar method is
13 used, fee awards in class actions average around one-third of the recovery.” 4 *Newberg on Class*
14 *Actions* § 14:6 (4th Ed. Online).

15 Trial courts in Washington routinely approve attorneys’ fee awards of 30 to 33 percent.
16 *See, e.g., Main v. Quick & Clear*, King County Superior Court No. 16-2-29685-8 SEA (Feb. 8,
17 2018) (awarding fees equal to 33 percent of the common fund settlement in Washington wage
18 case); *Humphrey v. Swedish Health Sys.*, King County Superior Court No. 12-2-25691-8 SEA
19 (Aug. 8, 2014) (awarding attorneys’ fees of approximately 30 percent of the common fund);
20 *O.S.T. v. Regence Blueshield*, King County Superior Court No, 11-2-34187-9 (Sep. 8, 2015)
21 (awarding 35 percent of the common fund as attorneys’ fees); *Carson v. AMD Kashi Inc., et al.*,
22 King County Superior Court No. 17-2-29644-9 (Jan. 10, 2020) (same); *Yi et al. v. The Kroger*
23 *Co.*, No. 14-2-19935-0 (Nov. 13, 2020) (awarding Class Counsel 33 percent of the common fund
24 as attorneys’ fees); *McGann v. Ladybug Espresso*, King County Superior Court Case No. 19-2-
25 31531-8 SEA (Jan. 21, 2021) (awarding Class Counsel 30 percent of the common fund as fees).
26 Class Counsel’s request for 30 percent of the common fund in this case is amply supported by
27 precedent and the record facts.

1 Here, the results are a significant justification for a fee award of 30 percent of the fund.
2 The Class Members achieved an excellent result because experienced Class Counsel committed
3 themselves to this case and provided outstanding legal representation to their own financial risk.
4 *See Rittereiser Dec. ¶ 13; Stutheit Dec. ¶ 5.* Class Members obtained justice and will receive a
5 substantial payment for having received a text message from Defendants. *See Rittereiser Dec. ¶*
6 *13.* Moreover, the circumstances of this case, the Gross Settlement Amount, the risk taken on by
7 Class Counsel, and the fact that the amount of attorneys' fees which were fully disclosed to Class
8 members in the notice, all show that the requested attorneys' fees are appropriate. *See Hanlon,*
9 *150 F.3d at 1027.*

10 The reasonableness of the 30 percent fee award is supported by the overwhelmingly
11 positive reaction of the class. Of the 2,420 Postcard Notices were mailed which included the
12 settlement terms, including counsel's fee request, not a single Class Member objected or opted
13 out. This reaction is "significant evidence that the proposed fee request is fair." *In re Ravisent*
14 *Tech., Inc. Sec. Litig.,* No. CIV.A.00-CV-1014, at *11 2005 (E.D. Pa., April 18, 2005)
15 (collecting cases).

16 In addition to an award of reasonable attorneys' fees, in common fund cases like this one,
17 counsel are entitled to recover their reasonable litigation costs. *See Staton, 327 F.3d at 969–70*
18 (quoting *Boeing Co. v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676*
19 (1980)); *see also In re Media Vision Tech. Sec. Litig., 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)*
20 ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common
21 fund are reimbursed proportionately by those class members who benefit from the settlement.").
22 The request for an award of \$5,790.43 in this case would compensate Class Counsel for the costs
23 it actually incurred for mediation, legal research, couriers, and other reasonable litigation
24 expenses. *Rittereiser Dec. ¶ 13, Ex. A.* These costs were advanced by Class Counsel without any
25 assurance of outcome. *Id.* Such costs were necessarily incurred to secure the resolution of this
26 litigation and should be reimbursed. *See In re Immune Response Sec. Litig., 497 F. Supp. 2d*
27 *1166, 1177–1178 (S.D. Cal. 2007)* (finding that costs similar to those incurred in this case are

1 relevant and necessary expenses in prosecuting class action cases). Therefore, the Court should
2 approve Class Counsel's request for costs.

3 **C. The Claims Administrator's Reasonably-Incurred Costs Should Be**
4 **Approved**

5 The parties seek final approval of JND's settlement administration costs of up to \$70,865.
6 The Settlement Administration fees and expenses incurred reflect the Settlement Administration
7 work JND has performed pursuant to the Settlement Agreement and Preliminary Approval Order
8 including: (i) obtaining addresses for Settlement Class Members using reverse phone number
9 searches (as described); (ii) performing manual research to obtain additional mailing addresses;
10 (iii) mailing the Postcard Notice to Settlement Class Members; (iv) tracking non-delivered
11 Postcard Notices and taking reasonable steps to re-mail to an updated address; (v) monitoring
12 incoming mail to track and timely report any written requests for exclusion or objections to the
13 Settlement to the Parties; (vi) tracking and timely reporting Claim Forms submitted
14 electronically and by mail to the Parties; (vii) preparing the reports and declarations relating to
15 administration of the Settlement; (viii) establishing and maintaining the Settlement Website with
16 online claim filing functionality and an online form for Class Members to redeem their Lead
17 Benefits; (ix) receiving and processing Claim Form submissions and validating claims; (x) and
18 establishing a toll-free telephone number and an email address for Settlement Class Members to
19 contact JND. Padelford Decl. ¶ 27. As of the date of this filing, JND has received and responded
20 to 10 telephonic inquiries. *Id.* at ¶ 17. Between August 18 and November 3, 2021, there were
21 2,241 views of the Settlement website by 318 unique visitors to the website. JND has continued
22 to update and maintain the website, and will continue to do so throughout the settlement
23 administration process. *Id.* at ¶ 15. JND has acted in accordance with the Settlement Agreement
24 and has completed its duties thus far, and remains committed to administration of this settlement
25 through all phases. *See* Padelford Decl. ¶¶ 4-12, 14, 16-18, 27-29. JND has incurred \$46,809.57
26 in fees and expenses to date, and estimates that it will incur an additional \$24,055 during the
27 twelve months following final approval. *Id.* at ¶¶ 27-28. JND has agreed that its total fees and

1 expenses will not exceed \$70,865. *Id.* at ¶ 28. Accordingly, JND’s reasonable costs of \$70,865
2 should be given final approval along with the remainder of the settlement terms.

3 **D. Named Plaintiff’s Fair and Reasonable Service Awards Should be**
4 **Approved**

5 The parties seek final approval of a \$5,000 service award for Class Representative
6 Michael Aaland. The goal of service awards is to “compensate class representatives for work
7 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
8 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
9 *Peterson v. Kitsap Cmty. Fed. Credit Union*, 171 Wn. App. 404, 430, 287 P.3d 27, 39 (2012).
10 Such an award promotes a public policy of encouraging individuals to undertake the
11 responsibility of representative lawsuits, as well as reflects the time, cost, and effort a class
12 representative often must personally undertake in order to bring relief to the class. Service
13 awards are routinely approved in class settlements. *See Grays Harbor Adventist Christian Sch.*
14 *v. Carrier Corp.*, 05-05437 RBL, 2008 WL 1901988, at *7 (W.D. Wash. Apr. 24, 2008); *see also*
15 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), *as amended* (June 19,
16 2000); *Manual for Complex Litig.* (4th) § 21.62 n.971 (2004) (incentive awards may be “merited
17 for time spent meeting with class members, monitoring cases, or responding to discovery”)
18 (citation omitted).

19 Named Plaintiff’s award is fair and reasonable given his services benefited a class of at
20 least 1,796 individuals in obtaining a substantial recovery that they can use to benefit their
21 respective small businesses. *See Rittereiser Dec.* ¶ 14. But for his service and commitment to the
22 Class Members, the class-wide relief would not have been possible. *Id.* Named Plaintiff initiated
23 and maintained this lawsuit with no assurances of outcome. *Id.* He actively participated in the
24 case, including assisting Class Counsel in investigating the claims, advancing discovery efforts,
25 and participating in mediation. *Id.* Defendants do not oppose the service award to the Named
26 Plaintiff. *See Settlement Agreement* ¶ 4.3. As such, Named Plaintiff respectfully requests that
27 his service award be finally approved.

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VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court (1) grant final approval of the parties' settlement; (2) grant Class Counsel's fee petition; (3) grant Named Plaintiff's service award; and (4) award JND Legal Administration its settlement administration fees.

DATED this 5th day of November, 2021.

/s/ Jason A. Rittereiser

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Class Counsel

I certify that this motion contains 5,901 words, in compliance with the Local Civil Rules.

1 **CERTIFICATE OF SERVICE**

2 I, Klarisse Leonor, certify under penalty of perjury under the laws of the State of
3 Washington that I have caused service of a true and correct copy of the foregoing document, to
4 be effected on the following named counsel in the manner identified below:

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[] Via U.S. First Class Mail
[] Via Process Service
[X] Via King County E-Service
[] Via Facsimile
[] Via Email

12 *Attorneys for Defendant Contractors.com LLC*

13 DATED this 5th day of November, 2021 at Seattle, Washington.

14 /s/ Klarisse Leonor
15 Klarisse Leonor, Paralegal
16 **HKM EMPLOYMENT ATTORNEYS LLP**