

1 THE HONORABLE BRIAN MCDONALD
2 NOTING DATE: Friday, July 16, 2021
3 Without Oral Argument
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6
7 SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR KING COUNTY

8 MIKE AALAND, individually and on behalf of
9 those similarly situated,
10 Plaintiff,

v.

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

NO. 19-2-24212-4 SEA

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

14 **I. INTRODUCTION AND RELIEF REQUESTED**

15 Named Plaintiff Mike Aaland, on behalf of a putative class of, respectfully moves the
16 Court for an order granting this unopposed Motion for Preliminary Approval of Class Action
17 Settlement. Plaintiff makes this unopposed Motion on the grounds that the settlement is fair,
18 adequate, and reasonable, and otherwise satisfies the requirements for preliminary approval.
19 Attached as Exhibit A to the Declaration of Jason Rittreiser in Support of Unopposed Motion
20 for Preliminary Approval of Class Action Settlement (“Rittreiser Decl.”) is a fully-executed
21 copy of the Settlement Agreement and Release (“Settlement Agreement”) entered into by the
22 parties to this action.

23 The Class Members contemplated by the Parties’ settlement agreement are contractors
24 and other home professionals. As explained herein, the Parties’ settlement on behalf of these
25 professional is not just adequate—it is outstanding. Under the Parties’ settlement, Class
26 Members may be able to recover not only their maximum statutory damages—including
27 statutory liquidated damages—but also significant non-monetary benefits that will aid them in

1 the growth of their individual businesses. Additionally, since filing this lawsuit, Defendants have
2 ceased the conduct that Plaintiff alleged in his Complaint as violating the law. It is against this
3 backdrop that Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the
4 settlement; (2) approve the form, content, and method of delivering notice to the Class as set out
5 in the Settlement Agreement; (3) provisionally certify the proposed settlement class; (4) appoint
6 JND Legal Administration as Settlement Administrator to administer the settlement; and (5)
7 schedule a final approval hearing in accordance with the deadlines proposed in the Settlement
8 Agreement and in this Motion. A Proposed Order in the form approved by the parties is being
9 submitted with this Motion for the Court's consideration.

10 **II. STATEMENT OF FACTS**

11 **A. Facts and Procedural History**

12 Defendant Contractors.com is a lead generation company that markets to contractors and
13 that it charges per leads generated. Dkt. 9 at ¶ 4.2. On September 16, 2019, Plaintiff, a general
14 contractor, filed his proposed class action complaint against Defendants, alleging that Defendant
15 sent text messages to Plaintiff and other contractors and home professionals in violation of the
16 Washington Consumer Protection Act, RCW 19.190.010 et seq. (the "WCPA") and purporting to
17 represent a class of "[a]ll residents of Washington state with a cellular telephone number to
18 which at least one electronic commercial text message was transmitted by . . . Defendants."

19 Dkt. 1. Defendant has admitted that it sent text messages to contractors, but denied, and
20 continues to deny, its liability to Plaintiffs. *See* Dkt. 9 at ¶ 4.3, Settlement Agreement at 2.
21 Despite these denials, as a result of this lawsuit, Defendant has ceased its call center operations
22 in Washington State and no longer sends out text messages to Contractors in Washington State.

23 After filing the Complaint, Plaintiff reviewed nearly 4,000 pages of Defendants' records
24 in discovery and began readying his list of deponents. Rittreiser Decl. ¶ 8. However, before
25 taking depositions, the Parties paused their litigation efforts to see if resolution was possible. *Id.*
26 On May 12, 2020, the Parties participated in a good-faith, arms-length, full-day mediation with
27 John B. Bates, Jr. of JAMS but were unable to resolve their dispute. Rittreiser Decl. ¶ 9. After

1 the failed mediation, the parties resumed discovery efforts. *Id.* ¶ 10. Eventually the Parties began
2 discussing resolution among counsel, which ultimately resulted in a settlement agreement a year
3 after the mediation. *Id.* Plaintiff now presents those terms for the Court’s preliminary approval.

4 **B. The Terms of the Settlement Agreement**

5 Plaintiff offers the following summary of the terms of the Settlement Agreement.

6 **1. Provisional Class Certification**

7 The Court has not yet certified this case as a class action. For settlement purposes,
8 Plaintiff respectfully requests that the Court provisionally certify the following class:

9 [A]ll residents of Washington state with a cellular telephone number to which at
10 least one electronic commercial text message was transmitted by
11 Contractors.com, or someone acting on behalf of Defendant. The Settlement Class
12 is defined to include all persons who could claim to have suffered any injury or
could assert any claims as a result of the sending or receipt of Text Messages to
the mobile telephone numbers listed on Exhibit 5.

13 Settlement Agreement ¶ 1.33. The Class is believed to include approximately 2,515 individuals.

14 See *id.* at Ex. 5.¹

15 **2. Settlement Benefits to the Class Members**

16 For the benefit of all Class Members, Defendants will pay a total of \$774,500.00 into a
17 settlement fund (“Gross Settlement Payment”). Settlement Agreement ¶ 1.18. This amount will
18 be used to satisfy the following categories of recovery: (1) payments to the Class members; (2)
19 any class representative service award made to Mr. Aaland; (3) an award of attorneys’ fees to
20 Class Counsel plus actual litigation costs approved by the Court; and (4) payment of settlement
21 administrator fees and expenses. See Settlement Agreement ¶¶ 1.18, 4.2, 4.3, and 5.5. No
22 amount of the settlement fund will be returned to Defendant.

23 As additional consideration, Defendants will also provide codes for six (6) redeemable
24 Leads to Settlement Class Members. See Settlement Agreement ¶ 3.3. Each Lead is valued at
25 \$50.00, which translates into an additional class benefit of \$754,500.00. *Id.* Settlement Class
26
27

¹ Exhibit 5, containing the final Class list, will be filed on or before the Noting Date for the Court’s review.

1 Members will be able to redeem the leads relevant to the Settlement Class Member’s business
2 needs. *See id.* at Ex. 4, p. 4.

3 The Total Settlement Value to Class Members is \$1,529,000.00, reflecting the combined
4 total of the Gross Settlement Payment plus the Leads. *See id.* at ¶ 1.17.

5 **3. Attorneys’ Fees, Litigation Costs, and Class Representative Award**

6 Defendants have agreed not to oppose attorneys’ fees to Class Counsel in an amount that
7 does not exceed thirty percent of the Total Settlement Value (\$458,700.00) plus actual litigation
8 costs. *See id.* at ¶¶ 1.17, 4.2. These costs are currently \$5,696.27. Rittreiser Decl. ¶ 14. Plaintiff
9 requests a class representative service award of up to \$5,000.00, which Defendants do not
10 oppose. Settlement Agreement ¶ 4.3.

11 **4. Release and Waiver of Claims**

12 In exchange for the benefits provided under the Settlement, Class Members who do not
13 opt out will waive any and all claims, demands, and causes of action that either were raised in the
14 Complaint or that could have been raised in the Complaint, an individual arbitration, or any other
15 legal proceeding, and that relate in any way to or arise from Text Messages received from any or
16 on behalf of Defendants to specific mobile telephone numbers. Settlement Agreement ¶ 1.27; *see*
17 *also id.* at ¶¶ 6.4.1 and 9.1 and Ex. 5.

18 **5. Notice**

19 Within ten (10) days after the Preliminary Approval Date, Defendants shall provide to the
20 Settlement Administrator the names, mailing addresses, and email addresses, if any, associated
21 with the relevant list of unique cellular telephone numbers. Settlement Agreement ¶ 6.2.1, Ex. 5.
22 The Settlement Administrator will then perform reverse look-ups on the relevant list of telephone
23 numbers for which Defendants did not produce associated addresses. *Id.*

24 On or before the Notice Deadline, the Settlement Administrator will (1) send a Postcard
25 Notice² via first-class mail to Settlement Class Members at the addresses produced by
26
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² *See* Settlement Agreement at Ex. 2.

1 Defendants or obtained through reverse look-up, (2) send an Email Notice³ to Settlement Class
2 Members at the email addresses produced by Defendant, and (3) activate the Settlement Website.
3 *Id.* at ¶ 6.2.2. Postcard Notices returned with a forwarding address shall be re-mailed, and those
4 returned without a forwarding address will be skiptraced and remailed. *See id.*

5 Both the Postcard Notice and the Email Notice will include a reference to the Settlement
6 Website where the Class Members can obtain additional information about the Settlement. *Id.*
7 For example, it is on the Settlement Website where Class Members will be able to access the
8 Detailed Notice. *Id.* at Ex. 4. The Detailed Notice is a document which includes basic
9 information, who is included in the settlement, what the settlement benefits are, how to obtain
10 the settlement benefits, how to remain in or exclude oneself from the settlement, identification of
11 class counsel, how to object to the settlement, how to participate in the final approval hearing,
12 what happens if the class member does nothing, and how to obtain more information. *Id.*

13 To submit a claim for payment from the Net Settlement Fund, a Settlement Class
14 Members will submit a Claim Form to the Settlement Administrator on or before the Claim
15 Deadline. *Id.* ¶ 6.3. To redeem leads, a Settlement Class Member will enter a unique “Lead ID.”
16 *See id.* ¶ 3.3 and Ex. 4 at p. 4.

17 **6. Settlement Administration**

18 The parties have selected JND Legal Administration to act as the Settlement
19 Administrator in this case. In performance of its duties, JND will administer all aspects of the
20 Settlement, such as obtaining addresses for Settlement Class Members, distributing the Class
21 Notice, processing Class Members’ requests for exclusion, calculating individual settlement
22 shares, processing settlement payments to the Class Members, and establishing a Settlement
23 Website and call number, among other duties. Settlement Agreement ¶ 5.2.

24
25
26 ³ See Settlement Agreement at Ex. 3 which will be filed on or before the Noting Date for the Court’s review. This
27 “Email Notice” will be in substantially the same form, or identical to, Ex. 2 (“Postcard Notice”) but has not yet been
finalized by the Settlement Administrator and thus has not been included as of the date of this filing. Rittereiser
Decl. ¶ 7.

1 **7. Request for Exclusion and Objection Rights**

2 On or before the Exclusion Deadline, any Settlement Class Member who wishes to be
3 excluded must submit to JND a valid written request which must include Settlement Class
4 Member’s full name, address, and telephone number, a statement that the Settlement Class
5 Member submitting the request wishes to be excluded from the Settlement, and the signature of
6 the Settlement Class Member submitting the request or an individual authorized to sign on behalf
7 of the Settlement Class Member. Settlement Agreement ¶ 6.4.2.

8 On or before the Objection Deadline, any Settlement Class Member may submit to the
9 Court any written objection which must (a) clearly identify the case name and number, and (b)
10 be filed with the Clerk of the Court and mailed to Class Counsel and Defense Counsel.
11 Settlement Agreement ¶ 6.5.1. The written objection must include: (1) the Settlement Class
12 Member’s full name and address; (2) the telephone number or numbers the Settlement Class
13 Member maintains received a text; (3) all of the Settlement Class Member’s objections and the
14 grounds for each such objection; (4) and various information regarding the Settlement Class
15 Member’s participation in the Final Approval Hearing. *Id.*

16 **8. Deadlines Contemplated by Settlement Agreement**

17 The following table sets out the proposed deadlines:

EVENT	SCHEDULED DATE
Deadline for Defendants to (1) Provide Names, Mailing Addresses, and Email Addresses and (2) Transfer Initial Payment to Cover Expected Notice and Administration Costs to Settlement Administrator	10 days after entry of Preliminary Approval Order
Deadline for Settlement Administrator to Send Postcard Notice and Email Notice (“Notice Deadline”)	30 days after entry of Preliminary Approval Order
Deadline to Submit a Claim (“Claim Deadline”) or to Request Exclusion (“Exclusion Deadline”) or Object (“Objection Deadline”)	60 days after Notice Deadline
Deadline for Settlement Administrator to Provide List of Claims Forms and Exclusions Received	5 days after Claim/Exclusion/Objection Deadline

1 2	Deadline for Filing Motion for Final Approval	No earlier than 10 days after Claim Deadline (BRIEFING SCHEDULE TO BE SET BY THE COURT)
3 4	Final Approval Hearing	No earlier than 120 days after entry of Preliminary Approval Order (HEARING DATE TO BE SET BY THE COURT)
5 6 7 8 9 10	Settlement Effective Date	(i) The date on which the deadline to seek appellate review of the Final Approval Order and Judgment has passed, or the date the Final Approval Order is entered if no objection has been filed; or (ii) the date by which a final decision or opinion is rendered affirming the Final Approval Order and Judgment following an appeal, or the date any such appeal is dismissed or withdrawn
11 12	Deadline for Defendants to Transfer the Remaining Funds to Settlement Administrator (“Transfer Date”)	10 days after Settlement Effective Date
13 14 15 16	Payment of Settlement Payments to Class Members, Payment of Attorneys’ Fees and Costs to Class Counsel, Payment of Class Representative Award, and Payment of Outstanding Settlement Administration Expenses	Within 15 days after Transfer Date
17 18	Deadline for Class Members to Cash or Deposit Individual Settlement Payment Checks or Redeem Any Alternative Form of Payment	180 days from the mailing of Payment to Settlement Class Members
19 20	Deadline for Class Members to Redeem Leads	365 Days after Settlement Effective Date

9. Distribution of Individual Settlement Payments & Lead Benefits

Each Settlement Class Member who participates in the Settlement will receive a minimum cash payment of \$120 and a maximum cash payment of \$1,500. Settlement Agreement ¶ 11.2. If the cash payment would exceed \$1,500 after pro rata distribution, any remaining amount of the Net Settlement Fund will be distributed to a Cy Pres recipient. *Id.* at ¶¶ 11.2, 11.4 The parties have agreed upon the Downtown Seattle Association as the recipient, subject to the

1 Court's approval. *Id.* at ¶ 11.4. In additional to the cash payment, each Settlement Class Member
2 will receive codes for six redeemable Leads, with each Lead valued at \$50 (for a total value of
3 \$300). *Id.* at ¶ 3.3. These leads will be available for Settlement Class Members to redeem for one
4 year after the Effective Date, and after that date, it is at Defendants' discretion whether to honor
5 leads. *See id.* ¶¶ 3.3 and 5.6.

6 III. ISSUES PRESENTED

7 Whether the Court should preliminarily approve the Settlement as fair, adequate, and
8 reasonable, and as otherwise satisfying the requirements for preliminary approval.

9 IV. EVIDENCE RELIED UPON

10 This motion is based upon the accompanying Declaration of Jason Rittereiser and the
11 attachments thereto, all pleadings and records on file herein, and such other documentary
12 evidence or arguments as may be presented to the Court prior to or at the hearing on the motion.

13 V. AUTHORITY AND ARGUMENT

14 Although CR 23 is silent in guiding trial courts in their review of class settlements, it is
15 universally stated that a proposed class settlement may be approved by the trial court if it is
16 determined to be "fair, adequate, and reasonable." *Pickett v. Holland Am. Line-Westours, Inc.*,
17 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (expressly adopting federal standard for class action
18 settlement approval). The approval of a class action settlement takes place in two stages:
19 preliminary approval and final approval. *West v. Circle K Stores, Inc.*, CIVS040438WBSGGH,
20 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006). At the preliminary approval stage, the Court
21 "must make a preliminary determination on the fairness, reasonableness, and adequacy of the
22 settlement terms and must direct the preparation of the notice of the certification, proposed
23 settlement, and date of the final fairness hearing." *See In re M.L. Stern Overtime Litig.*, 07-CV-
24 0118-BTM JMA, 2009 WL 995864, at *3 (S.D. Cal. Apr. 13, 2009) (quoting Manual on
25 Complex Litigation Fourth § 21.632 (2004)). During the preliminary process, the Court simply
26 determines "whether there is any reason to notify the class members of the proposed class
27 settlement and to proceed with the fairness hearing." *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3

1 (7th Cir. 1982). The Court’s review is limited to the extent necessary to reach a reasoned
2 judgment that “the agreement is not the product of fraud or overreaching by, or collusion
3 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
4 adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San*
5 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). If there are no obvious deficiencies, and the
6 settlement falls into the range of possible approval, it should be preliminarily approved. *See*
7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1057 (9th Cir. 1998), *overruled on other grounds by*
8 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011); *Alaniz*
9 *v. California Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976). As set forth below, the
10 proposed Settlement amply meets the relatively low bar for preliminary approval.

11 **1. The Proposed Settlement Is Fair Because It Was the Product of Arm’s Length**
12 **Non-Collusive Negotiations**

13 Generally, “[t]here is a presumption of fairness when a proposed class settlement, which
14 was negotiated at arm’s-length by counsel for the class, is presented for Court approval.”
15 *NEWBERG ON CLASS ACTIONS* § 11.41; *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D.
16 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981) (“considerable weight” given to
17 settlement reached after hard-fought negotiations).

18 The proposed Settlement in this case is presumptively fair because it was reached through
19 arm’s length negotiations and there is nothing to suggest that there was any collusion between
20 the parties. *See Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542–43 (W.D. Wash. 2009)
21 (approving settlement “reached after good faith, arms-length negotiations”). Plaintiff’s counsel
22 are experienced class action attorneys, including on claims involving text messaging cases like
23 this one. *See Rittereiser Decl.* ¶¶ 3-5. After engaging in substantial discovery, whereby Plaintiff
24 reviewed approximately 4,000 pages of documents produced by Defendants, the parties agreed to
25 attend mediation. *Rittereiser Decl.* ¶ 8. Thereafter, the parties participated in a full-day mediation
26 with a respected mediator, John B. Bates, Jr. of JAMS, on May 12, 2020. *Id.* ¶ 9. The parties
27 were unable to settle at the mediation and thus resumed their discovery efforts. *Id.* ¶¶ 9-10.

1 Eventually, counsel for the Parties began resolution discussions between counsel which
2 ultimately resulted in a settlement agreement. *Id.* ¶ 10. Thus, the negotiations before Mr. Bates
3 (and in subsequent negotiations among counsel) were well tempered by a record sufficiently
4 developed to allow experienced counsel to evaluate the case for settlement. *See Hughes v.*
5 *Microsoft Corp.*, C93-0178C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (“A
6 presumption of correctness is said to attach to a class settlement reached in arms-length
7 negotiations between experienced capable counsel after meaningful discovery”). Accordingly,
8 the Settlement Agreement is entitled to a presumption of fairness.

9 **2. The Settlement Is Reasonable and Adequate**

10 In determining whether the Settlement is adequate and reasonable, the Court must
11 ultimately balance the following factors: “the strength of the plaintiff’s case; the risk, expense,
12 complexity, and likely duration of further litigation; the risk of maintaining class action status
13 throughout the trial; the amount offered in settlement; the extent of discovery completed, and the
14 stage of the proceedings; the experience and views of counsel.” *Hanlon*, 150 F.3d at 1026.

15 Here, the settlement represents an exceptional result for the class. After deductions for
16 litigation costs, administrative expenses and attorneys’ fees, Plaintiff’s counsel estimates that
17 each of the 2,515 Class Members, will receive a minimum cash payment of \$120 and maximum
18 cash payment of \$1,500, in addition to six Leads (valued at \$300). Rittereiser Decl. ¶ 15. As set
19 forth below, this settlement delivers substantial benefits and an excellent value to the Class
20 Members. *See Officers for Justice*, 688 F.2d at 624 (internal citation omitted) (recognizing that,
21 “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
22 highest hopes.’”).

23 **a. Plaintiff’s Assessment of the Risks and Determination that the Settlement Is 24 in the Best Interest of Class Members**

25 Prior to agreeing to this settlement, the Parties engaged in discovery and thoroughly
26 evaluated the factual and legal underpinnings of Plaintiff’s claims. Rittereiser Decl. ¶ 11.
27 However, if the case were to proceed further, the proposed class would face considerable

1 impediments to discovery. *Id.* ¶¶ 11-12. For instance, several of the key witnesses Defendants
2 disclosed are in the Philippines which would provide challenging in terms of having jurisdiction
3 to conduct their depositions. *Id.* ¶ 12. Additionally, proving that Defendants intentionally
4 violated the statute would have been difficult, thus potentially limiting each class member's
5 damages by two thirds. *Id.* ¶ 13. Additionally, proving that Class Members physically were in
6 Washington when they received the text message would have been exceedingly difficult. *Id.*
7 Furthermore, and especially in light of the ongoing pandemic, there were risks that Defendants
8 would not be able to pay for a judgment at the conclusion of protracted and hard-fought
9 litigation. *Id.*

10 In agreeing to the settlement sum, Plaintiff and Class Counsel have considered the risks
11 inherent to litigation and the defenses available to Defendants, including Defendants' potential
12 defense that they obtained consent to send the text messages at issue in this case. Rittereiser
13 Decl. ¶ 11. Another issue stemming from this potential defense was whether the consent was
14 obtained through a third party, and whether any evidence of that consent was discoverable given
15 that records may not have been retained by Defendants or the third parties. *Id.* At the certification
16 state, Defendants would have likely argued that class certification was not appropriate because
17 determination of consent would require a showing of individualized, rather than classwide,
18 proof. *Id.* While Plaintiff and his counsel disagree with Defendants' arguments and believe class
19 certification would be appropriate, they are aware of the possibility that a court might accept
20 Defendants' arguments and deny any motion for class certification or deny liability. If the class
21 was certified, it is a near certainty that Defendants would move to decertify. *Id.* Furthermore,
22 even if Plaintiff was able to prove liability, the amount of any award issued was not certain, in
23 particular with liquidated damages. *Id.*; *see also id.* ¶ 13. Additionally, even if the class was
24 certified and was successful at trial, Defendants likely would have sought a remittitur to limit the
25 amount of statutory damages paid to the class. *Id.* ¶ 11. Moreover, even if Plaintiff were to
26 prevail on a classwide basis, with treble damages (*i.e.*, damages of \$1,500 versus \$500), any
27 recovery could be delayed for years by an appeal.

1 In contrast, the Settlement provides substantial monetary relief to Settlement Class
2 Members without further delay and is preferable to the risks that each party would face if the
3 case were litigated. In fact, the value to the Class Members who participate in the Settlement is
4 nearly equivalent to their statutory damages and, in some cases, may even *exceed* their potential
5 treble damages awards. This is because even if the Class Members were to win at trial, they still
6 may not be awarded the full benefit they will receive as a result of this settlement. In Plaintiff's
7 Counsel's assessment, this Settlement is the best and most certain way for Class Members to
8 obtain substantial benefits that they can use to further their businesses now.

9 **b. The Requested Service Award Is Reasonable**

10 Service awards are routinely approved in class settlements. *See, e.g., Grays Harbor*
11 *Adventist Christian Sch. v. Carrier Corp.*, 05-05437 RBL, 2008 WL 1901988, at *7 (W.D.
12 Wash. Apr. 24, 2008); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), *as*
13 *amended* (June 19, 2000); *Manual for Complex Litig.* (Fourth) § 21.62 n.971 (2004) (incentive
14 awards may be “merited for time spent meeting with class members, monitoring cases, or
15 responding to discovery”) (citation omitted). *See also Probst v. State of Wash. Dep't of Ret. Sys.*,
16 150 Wn. App. 1062 (2009) (unpublished) (affirming \$7,500 service award to named plaintiff).
17 Service awards up to \$5,000 are presumptively reasonable in the Ninth Circuit. *See, e.g., Smith v.*
18 *Am. Greetings Corp.*, 14-CV-02577-JST, 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016).

19 Plaintiff requests an award of \$5,000.00, in addition to his Individual Settlement
20 Payment. Plaintiff seeks an award for bringing and litigating because such an award promotes a
21 public policy of encouraging individuals to undertake the responsibility of representative
22 lawsuits, as well as reflects the time, cost, and effort a class representative often must personally
23 undertake in order to bring relief to the class. Moreover, in this case, Plaintiff actively
24 participated and assisted in counsel's investigation of the claims, discovery efforts, and in the
25 attempted mediation. Rittereiser Decl. ¶ 16.

1 **c. The Attorneys’ Fees and Litigation Costs Requested Are Reasonable**

2 Plaintiff is also requesting attorneys’ fees and litigation costs for Class Counsel of
3 \$458,700.00 and \$5,696.27, respectively. The \$458,700.00 figure represents 30 percent of the
4 Total Settlement Value, and the \$5,696.27 figure represents the out-of-pocket litigation costs
5 paid in total by Class Counsel. *See Settlement Agreement* at ¶¶ 1.17, 4.2 and Rittereiser Decl. ¶
6 14. These numbers are reasonable given the exceptional results Class Counsel were able to
7 obtain for the Class, the risks associated with the claims, the contingent nature of the litigation,
8 the complexity of the case and claims, and the expenses incurred by Class Counsel throughout
9 the course of this case.

10 **i. Plaintiff’s Requested Attorneys’ Fee Award of 30 Percent of the Total
11 Settlement Value Is Reasonable**

12 Under Washington law, courts use the percentage of recovery approach when calculating
13 fees in class action settlements that result in a common settlement fund. *See Bowles v. Wash.*
14 *Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440, 450 (1993). Such an approach is practical
15 because counsel is recognized as having an equitable right to be compensated from the fund that
16 their successful efforts helped create. *See Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir.
17 2003) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than
18 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” (quoting
19 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)). In
20 common fund cases like this one, attorneys’ fees are results-oriented – the size of the recovery
21 constitutes a suitable measure of the attorneys’ performance. *See Bowles*, 121 Wn.2d at 72.

22 Here, the requested percentage award of 30 percent of the Total Settlement Value is well
23 within the reasonable range for common fund fee awards in Washington. *See Bowles*, 121
24 Wn.2d at 72–73. *See also, e.g., Main v. Quick & Clear*, King County Superior Court No. 16-2-
25 29685-8 SEA (Feb. 8, 2018) (awarding fees equal to 33 percent of the common fund settlement
26 in Washington wage case); *O.S.T. v. Regence Blueshield*, King County Superior Court No, 11-2-
27 34187-9 (Sep. 8, 2015) (awarding 35 percent of the common fund as attorneys’ fees).

1 Plaintiff's requested fee award is reasonable given the nature of the case, the uncertain
2 nature of the litigation, and remarkable results obtained.

3 **ii. Counsel Are Entitled to Be Reimbursed for Litigation Costs Reasonably**
4 **Expended During this Litigation**

5 "Reasonable costs and expenses incurred by an attorney who creates or preserves a
6 common fund are reimbursed proportionately by those class members who benefit from the
7 settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996),
8 *citing Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391– 92, 90 S. Ct. 616, 24 L. Ed. 2d 593
9 (1970). In advancing this lawsuit, Class Counsel incurred out-of-pocket costs of \$5,697.27. *See*
10 *Rittereiser Decl.* ¶ 14. These out-of-pocket costs included filing fees, service fees, legal research
11 fees, and mediation-related expenses. *See id.* All of these expenses were necessary to secure the
12 resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–
13 78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses,
14 postage, telephone and fax costs, computerized legal research fees, expert fees, and mediation
15 expenses are relevant and necessary expenses in a class action litigation).

16 **3. The CR 23(a) & (b) Factors are Satisfied.**

17 For settlement purposes only, Plaintiff requests that the Court conditionally certify the
18 proposed Class for settlement purposes only because all the applicable certification requirements
19 of CR 23(a) and (b) are satisfied. CR 23(a) requires that there must be numerosity, commonality,
20 typicality, and adequacy of representation; CR 23(b) requires that there be predominance of
21 common question.

22 **a. The CR 23(a) Factors of Numerosity, Commonality, Typicality, and**
23 **Adequacy of Representation Are All Satisfied.**

24 The Class of 2,515 individuals well exceeds the numerosity requirement given that more
25 than 40 members generally suffices. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d
26 49 (2003). The commonality requirement of Rule 23(a)(2) is satisfied because there are questions
27 of law and fact common to the settlement Class regarding whether Defendants' alleged practice of
sending text messages without consent violates the Washington Consumer Protection Act. *See*

1 *Gragg v. Orange Cab Co., Inc.*, C12-0576RSL, 2014 WL 794266, at *2 (W.D. Wash. Feb. 27,
2 2014) (finding “there are common questions of both law and fact in this matter” on similar claims).
3 Typicality is met because Plaintiff’s claims arise from the same course of conduct as those of other
4 Class Members, based on the same legal theories. *See Pellino v. Brink’s Inc.*, 164 Wn. App. 668,
5 684, 267 P.3d 383 (2011). So too is adequacy satisfied because Plaintiff’s interests are not
6 antagonistic to the other Class Members and are represented by qualified counsel. *Hansen v. Ticket*
7 *Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003). Plaintiff and his counsel will adequately
8 represent the interests of the Class here.

9 **b. The CR 23(b)(3) Criteria is Satisfied.**

10 The Settlement Class satisfies the predominance requirements of CR 23(b)(3). Common
11 issues predominate because the central liability question in this case — whether Defendants sent
12 unsolicited commercial electronic text messages to Washington residents — can be established
13 through generalized evidence. *See Gragg*, 2014 WL 794266, at *4. Because the claims are being
14 certified for purposes of settlement, there are no issues with manageability. *Amchem Products,*
15 *Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997) (“Confronted with
16 a request for settlement-only certification, a district court need not inquire whether the case, if
17 tried, would present intractable management problems ... for the proposal is that there be no
18 trial.”). Additionally, resolution of thousands of claims in one action is far superior to individual
19 lawsuits and promotes consistency and efficiency of adjudication. *See Amchem Products, Inc.*,
20 521 U.S. at 617 (noting the “policy at the very core of the class action mechanism is to overcome
21 the problem that small recoveries do not provide the incentive for any individual to bring a solo
22 action prosecuting his or her rights”). Certification for purposes of settlement is appropriate.

23 **4. The Class Notice Is Adequate**

24 CR 23(c)(2) of the Washington Rules of Civil Procedure provides that “the court shall
25 direct to the members of the class the best notice practicable under the circumstances, including
26 individual notice to all members who can be identified through reasonable effort. The notice
27 shall advise each member that (A) the court will exclude them from the class if they so request

1 by a specified date; (B) the judgment, whether favorable or not, will include all members who do
2 not request exclusion; and (C) any member who does not request exclusion may, if he or she
3 desires, enter an appearance through their counsel.” Moreover, any “notice of the proposed
4 dismissal or compromise shall be given to all members of the class in such manner as the court
5 directs.” CR 23(e). Notice of settlement is “satisfactory if it ‘generally describes the terms of the
6 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
7 forward and be heard.’” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)
8 (citing *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The proposed
9 notice to the Class Members fully satisfies these requirements, and does so in three different
10 formats so as to reach the largest number of Class Members. *See* Postcard Notice, Email Notice,
11 and Detailed Notice (Settlement Agreement, Exs. 2, 3,⁴ and 4).

12 VI. CONCLUSION

13 For the foregoing reasons, Plaintiff respectfully requests that the Court (1) grant
14 preliminary approval of the settlement, including payment to the class, attorneys’ fees and costs
15 payment, class representative service award, and the costs of claims administration; (2)
16 provisionally certify the class for settlement purposes only; (3) approve the form, content, and
17 method of delivering notice to the Class as set out in the Settlement Agreement; (4) appoint JND
18 Legal Administration as Settlement Administrator to administer the settlement; and (5) schedule
19 final approval hearing in accordance with the deadlines proposed in the Settlement Agreement
20 and in this Motion.

21
22 DATED this 2nd day of July, 2021.

23 /s/ Jason A. Rittereiser

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25 Rachel M. Emens, WSBA No. 49047
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⁴ As stated previously in n.3, Ex. 3 will be filed on or before the Noting Date.

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I certify that this memorandum contains
5,387 words, in compliance with the Local
Civil Rules.

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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:

5
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13
14 DATED this 2nd day of July, 2021, at Seattle, Washington.

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