

**IN THE MISSOURI CIRCUIT COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF ST. CHARLES**

SUZANNE DEGNEN, D.M.D., P.C.)	
d/b/a SUNSET TOWER FAMILY)	No. 1511-CC00766-01
DENTISTRY,)	
)	Div. 1
Plaintiff,)	
v.)	
)	
KOMET USA, LLC,)	
)	
Defendant.)	

**PLAINTIFF’S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEY’S FEES
AND AN INCENTIVE AWARD TO THE CLASS REPRESENTATIVE**

Introduction

Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry alleged that Defendant Komet USA, LLC violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by sending unsolicited facsimile advertisements to recipients in Missouri and nationwide. After hard-fought litigation, the parties ultimately reached an agreement to resolve this matter that will provide meaningful benefits to those among the greater than 13,000 class members who chose to receive compensation. If finally approval is granted, each claiming class member will receive a voucher worth \$90 to use to purchase products available for sale from Defendant, such as dental burs, and will receive prospective relief regarding future Fax Advertisements.

In accordance with the Court’s preliminary approval order dated March 6, 2017, the claims administrator distributed notice of the settlement—via direct mail to 13,021 members of the settlement class. The notice detailed the terms of the settlement, directed the class members to the website, www.degnenkometsettlement.com, which included a copy of the Settlement Agreement and Long Form Notice detailing that

Defendant would establish a Settlement Fund of \$400,870 to be used to pay attorneys' fees and expenses to proposed Class Counsel of up to one-third the value of the available Vouchers and to pay up to a \$10,000 incentive award to Plaintiff for its service on behalf of the class. **Not a single class member lodged an objection to any aspect of the settlement. Not a single class member opted out.**

Given the significant result reached for the class, and in light of the overwhelmingly positive reaction from class members, Plaintiff and its counsel now seek an award of attorneys' fees of one-third the value of the \$1,171,890 in available vouchers, i.e., \$390,630, inclusive of costs and expenses, and a \$10,000 incentive award for Plaintiff. These requests are well supported by applicable law.

Argument

I. Class Counsel's request for an award of attorneys' fees equal to one-third of the \$1,171,890 in available vouchers, inclusive of costs and expenses, is fair, reasonable, and firmly supported by case law.

The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In Missouri courts and elsewhere the percentage-of-the-available-benefit method is the preferred method to determine an appropriate attorneys' fees award. *See See Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. E.D. 2011) ("[I]n the class action context, a one-third contingent fee award is not unreasonable."); *Central Alarm Sys., Inc. v. Business Fin. Servs., Inc.*, No. 1622-CC09599 (St. Louis City Cir. Ct. Aug. 9, 2016) (finally approving \$1.7 million TCPA fax settlement and awarding 1/3 of fund, plus costs and expenses, and incentive award of \$15,000); *Radha Geismann M.D., P.C. v. GE Healthcare, Inc.*, No. 1622-CC00286 (St.

Louis City Cir. Ct. May 6, 2016) (finally approving \$4 million TCPA fax settlement and awarding 1/3 of fund, plus \$16,727 in expenses, and incentive award of \$15,000); *see also Prater v. Medicredit, Inc.*, No. 4:14-cv-00159-ERW, 2015 U.S. Dist. LEXIS 167215, at **7, 11 (E.D. Mo. Dec. 7, 2015) (awarding attorneys' fees of 1/3 of fund, plus costs and expenses); *West v. PSS World Med., Inc.*, No. 4:13-CV-574 CDP, 2014 U.S. Dist. LEXIS 57150, at **3-5 (E.D. Mo. Apr. 24, 2014) (awarding attorneys' fees of 33% of common fund) (citing *Johnston v. Comerica Mortg. Co.*, 83 F.3d 241, 244-46 (8th Cir. 1996)); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming attorneys'-fee award of 36% of fund).

Class Counsel here seeks an award of attorney's fees equal to one-third the \$1,171,890 in available vouchers, inclusive of costs and expenses. Such request is supported by applicable case law from state and federal courts in Missouri, in the Eighth Circuit Court of Appeals, and in other courts nationwide with respect to class actions generally and to those under the TCPA specifically.

A. The percentage-of-the-available-benefit method is used to calculate attorneys' fees awards in cases like this one.

"[T]he 'percentage of the benefit' approach, permits an award of fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation." *Johnston*, 83 F.3d at 244-45. While the lodestar approach is well suited for cases involving statutory fee-shifting claims, awards of attorneys' fees in cases like this one, which involve no fee-shifting claims,¹ should be determined by the percentage-of-the-benefit method. *Id.* at 245 (citing *Report of the Third Circuit Task Force (Task Force), Court Awarded Attorney Fees*, 108 F.R.D. 237

(1985))²; see also *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (“It is well established in this circuit that a district court may use the ‘percentage of the fund’ methodology to evaluate attorney fees in a common-fund settlement”); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (use of percentage method of awarding attorney fees in common-fund case is well established).

The Eighth Circuit based this preference on the well-documented deficiencies in the lodestar process, as it explained in *Johnston*:

First, calculation of the lodestar increases the workload of an already over-taxed judicial system. Second, the elements of the lodestar process are insufficiently objective and produce results that are far from homogenous. Third, the lodestar process creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law. Fourth, the lodestar is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount. Fifth, although designed to curb certain abuses, the lodestar approach has led to others. Sixth, the lodestar creates a disincentive for the early settlement of cases. The report in this area added ‘. . . there appears to be a conscious, or perhaps, unconscious, desire to keep the litigation alive despite a reasonable prospect of settlement, to maximize the number of hours to be included in computing the lodestar.’ Seventh, the lodestar does not provide the district court with enough flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered. Eighth, the lodestar process works to the particular disadvantage of the public interest bar. Ninth, despite the apparent simplicity of the lodestar formulation, considerable confusion and lack of predictability remain in its administration.

83 F.3d at 245 n.8 (citing *Court Awarded Attorney Fees*, 108 F.R.D. at 246-49).

¹ Unlike many consumer protection statutes, such as the Fair Debt Collection Practices Act, the TCPA does not provide for an award of attorneys’ fees to a prevailing plaintiff.

² At least two circuits have explicitly rejected the use of the lodestar method in common fund cases like this one. See *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). And at least four other circuits, including the Eighth Circuit, have shown a strong preference for the percentage-of-the-fund method. See *Johnston*, 83 F.3d at 245; *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995); *In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 572-73 (7th Cir. 1992); *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 526 n.10 (1st Cir. 1991).

B. An award of attorneys' fees equal to one-third of the available benefit is consistent with, or a lower percentage than, awards of attorneys' fees in similar class actions.

The requested fee-and-expense award of one-third of the available benefit is consistent with, or a lower percentage, than awards in in similar class actions. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d at 1038 (affirming award of 36% for attorneys' fees); *Suzanne Degnen, D.M.D., P.C. v. Zimmer Dental, Inc.*, No. 4:15-cv-01103-RLW (Doc. 47) (E.D. Mo. Apr. 20, 2015) (granting final approval of class-wide TCPA settlement, with 1/3 of fund for attorneys' fees); *Lees v. Anthem Ins. Cos., Inc.*, No. 4:13CV1411 SNLJ, 2015 U.S. Dist. LEXIS 74902, at *10 (E.D. Mo. June 10, 2015) (awarding 34% of fund as attorneys' fees in TCPA class action); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-cv-4321NKL, 2015 U.S. Dist. LEXIS 70166, at **9-12 (W.D. Mo. June 1, 2015) (awarding fees of 1/3 of fund); *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litig.*, No. 4:04-md-1907-ERW (Doc. 355) (E.D. Mo. Feb. 26, 2013) (Webber, J.) (awarding fees of 1/3 of fund, plus expenses); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 U.S. Dist. LEXIS 130180, at **16-17 (N.D. Iowa Nov. 9, 2011) (awarding fees of 36.04% of \$18.5 million fund).³

The same is true for numerous courts outside of Missouri. *See, e.g., Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 15-2485, 2016 U.S. App. LEXIS 2610, at **7-

³ *See also West*, 2014 U.S. Dist. LEXIS 57150, at *4 (“[T]he court believes that 33 percent is a reasonable percentage for attorney’s fees. It is appropriate to apply a reasonable percentage to the gross settlement fund.”); *Wiles v. Southwestern Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 U.S. Dist. LEXIS 64163, at **10-13 (W.D. Mo. June 9, 2011) (awarding 1/3 of fund in attorneys’ fees); *Ray v. Lundstrom*, No. 8:10CV199, 4:10CV3177, 8:10CV332, 2012 U.S. Dist. LEXIS 160089, at **10-13 (D. Neb. Nov. 8, 2012) (awarding 1/3 of fund in fees, plus \$77,900 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of award in fees); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061, 1067-68 (D. Minn. 2010) (awarding 1/3 of \$16 million fund, plus \$245,000 in expenses); *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280, 286 (D. Minn. 1997) (awarding 1/3 of \$86 million fund).

11 (3d Cir. Feb. 16, 2016) (affirming award to class counsel equal to 1/3 of \$625,000 fund); *In re P. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award to class counsel equal to 1/3 of \$12 million settlement fund); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 472 (S.D.N.Y. 2013) (awarding fees of 1/3 of \$4.9 million settlement fund); *Capsolas v. Pasta Res. Inc.*, No. 10-cv-5595 (RLE), 2012 U.S. Dist. LEXIS 144651, at *24 (S.D.N.Y. Oct. 5, 2012) (awarding fees equal to 33.33% of \$5.25 million settlement fund); *Febus v. Guardian First Funding Grp., LLC*, 870 F. Supp. 2d 337, 339-40 (S.D.N.Y. 2012) (awarding 33.33% of \$850,000 settlement fund); *deMunecas v. Bold Food, LLC*, No. 09 Civ. 00440(DAB), 2010 U.S. Dist. LEXIS 87644, at **19 (S.D.N.Y. Aug. 23, 2010) (awarding 33% of \$800,000 fund); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 337 (E.D. Pa. 2007) (awarding 35% of \$39,750,000 fund); *In re Ravisent Techs., Inc. Sec. Litig.*, No. CIV.A.00-CV-1014, 2005 U.S. Dist. LEXIS 6680, at **38-39, 51 (E.D. Pa. Apr. 18, 2005) (awarding 1/3 of \$7,000,000 fund); *Antonopoulos v. N. Am. Thoroughbreds, Inc.*, No. 87-0979G(CM), 1991 U.S. Dist. LEXIS 12579, at **5-9 (S.D. Cal. May 6, 1991) (awarding 33% of \$3,098,000 fund; “to encourage first-rate attorneys to represent plaintiffs on a contingent basis in this type of important litigation, the attorney’s fees awarded must be sufficient to reward them for their efforts and to allow them to fight again another day for deserving clients”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (citing cases in which “30-50 percent of the fund were awarded” in “smaller funds of less than \$10 million”); *In re Pub. Serv. Co. of N. M.*, No. 91-0536M, 1992 WL 278452 (S.D. Cal. 1992) (33.4% of \$33 million).

In the TCPA class action context, the customary fee—one-third of the available benefit—is also supported by empirical evidence. The Northern District of Illinois

recently performed an in-depth analysis of the risks associated with TCPA litigation to determine proper awards of attorneys' fees in TCPA class action settlements. *See In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 805-807 (N.D. Ill. Feb. 12, 2015) (Holderman, J.).

Assessing the risks associated with TCPA class actions, Judge Holderman recognized that "Class Counsel in this case faced a variety of serious obstacles to success in bringing the lawsuit, and faced the real prospect of recovering nothing." After analyzing these serious risks inherent with TCPA litigation, Judge Holderman determined that an appropriate risk-adjusted fee for TCPA class settlements is an award of 36 percent of the common fund—up to the first \$10 million in recovery. *Id.* at 807. Because one-third of the available benefit, which is sought here, is less than the risk-adjusted fee found to be appropriate when determining awards of attorneys' fees in TCPA class action settlements under \$10 million, Class Counsel's request is reasonable and should be approved. *See Lees*, 2015 U.S. Dist. LEXIS 74902, at *10, (Limbaugh, Jr., J.) (awarding 34% of fund as attorneys' fees in TCPA class settlement).

C. The *Johnson* factors strongly support a fee award of one-third of the Settlement Fund.

The factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974), are commonly used in TCPA cases. *See Barfield*, 2015 U.S. Dist. LEXIS 70166, at **13-14. The *Johnson* factors are:

- (1) the time and labor involved;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) any prearranged fee—this is helpful but not determinative;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the undesirability

of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. (citing *Allen v. Tobacco Superstore, Inc.*, 475 F.3d 931, 944 n.3 (8th Cir. 2007) (citing *Johnson*, 488 F.2d at 717-19)). Here, the *Johnson* factors overwhelmingly support an award of attorneys' fees equal to one-third of the available benefit.

1. The time and labor to resolve this matter were significant.

1. As outlined in the attached Affidavit of Ronald J. Eisenberg (**Ex. 1**), Class Counsel has spent significant time litigating this case since 2015. During that time, Class Counsel (a) conducted an extensive investigation into the underlying facts; (b) thoroughly researched class members' claims and Defendant's defenses; (c) prepared and filed a detailed class-action petition, specifying the violations of the TCPA by Defendant; (d) researched and filed a motion for class certification; (e) opposed a motion to limit the class to Missouri residents; (f) conducted discovery, including propounding document requests and interrogatories; (g) took and defended depositions, (h) tracked relevant proceedings before the FCC concerning retroactive waivers; (i) investigated expert witnesses regarding class certification; (j) prepared an in-depth mediation statement that analyzed the merits of Degnen's claims and the defenses available to Defendant; (k) engaged in mediation and over a period of months negotiated the parties' settlement agreement; (l) obtained preliminary approval of the class-action settlement; (m) oversaw the notice and claims administration process, including reviewing monthly reports from the settlement administrator; (n) prepared motion papers in support of preliminary and final approval of the settlement, and (o) regularly communicated with Degnen in person, by email, and by telephone. (*Id.* ¶ 21.)

Because this action required a substantial investment of time and labor since

2015, the requested attorney’s fee award is reasonable and should be approved.

2. Various questions underlying this matter were both novel and difficult.

When Plaintiff moved for preliminary approval, Plaintiff noted that the validity of the “Solicited Fax Rule”—the FCC regulation requiring opt out language on solicited faxes—was then before the DC Circuit. *See Bais Yaakov of Spring Valley v. FCC*, No. 14-1234 (D.C. Cir.). Plaintiff noted that should the DC Circuit invalidate the Solicited Fax Rule, the claims of any member of the Settlement Class that provided prior consent to receive a fax at issue might be eliminated. Since that time, the D.C. Circuit issued its decision *Bais Yaakov of Spring Valley v. F.C.C.*, 852 F.3d 1078 (D.C. Cir. 2017), ruling in a way potential favorable to TCPA defendants; however, that decision is not yet final.

In addition, when Plaintiff initially filed suit, *Spokeo v. Robins*, 136 S. Ct. 1540 (2016), concerning standing had not been decided, and its impact on TCPA cases is still subject to debate as various courts attempt to follow that case. As a result, the risk that Plaintiff’s counsel assumed in litigating this matter was significant, particularly because the TCPA does not include a fee-shifting provision.

3. Plaintiff’s counsel relied on particular skill and experience to properly perform the legal services required.

Where “Class Counsel’s knowledge and experience . . . significantly contributed to a fair and reasonable settlement, this factor supports a request for a large amount of attorneys’ fees.” *Lane v. Page*, 862 F. Supp. 2d 1182, 1254 (D.N.M. 2012) (internal quotation omitted). Here, the knowledge and experience of Plaintiff’s counsel with TCPA and other class actions helped to bring about settlement in this matter. (Ex. 1 ¶¶ 7-8, 11-13, 21.)

Plaintiff's counsel has litigated approximately eighty TCPA class actions in federal and state courts in Missouri since January 2014, perhaps more than any other Missouri law firm. (*Id.* ¶¶ 11.) *See, e.g., Golan v. Veritas Entm't, LLC*, 788 F.3d 814 (8th Cir. 2015) (obtained reversal of dismissal of TCPA class action seeking \$2 billion to \$6 billion in damages for 4 million illegal telephone calls). He has previously been appointed lead counsel in several cases. (*Id.* ¶ 7.) *See Golan v. Veritas Entm't, LLC*, No. 4:14CV00069 ERW, 2017 WL 193560, at *5 (E.D. Mo. Jan. 18, 2017) (obtaining appointment as class counsel in contested TCPA robocall case involving 4 million illegal calls; noting that "Plaintiffs' counsel are respected attorneys who have handled litigation of this magnitude in the past"); *Connector Castings, Inc. v. Arshon Silicon Technologies, Inc.*, No. 4:15-cv-01148-PLC (Doc. 64) (E.D. Mo. Sept. 21, 2016) (finally approving nationwide TCPA junk-fax settlement involving thousands of faxes); *Suzanne Degnen, D.M.D., P.C. v. Zimmer Dental, Inc.*, No. 4:15-cv-01103-RLW (Doc. 47) (E.D. Mo. Apr. 20, 2015) (settled on class-wide basis with class members receiving 100% of challenged fee); *Suzanne Degnen, D.M.D., P.C. v. United Bankcard, Inc.*, No. 4:13-cv-00567-CEJ (E.D. Mo. 2013) (settled on class-wide basis with class members receiving 100% of challenged fee); *Suzanne Degnen, D.M.D., P.C. v. NCMIC Fin. Corp*, No. 14SL-CC03477 (St. Louis County Cir. Ct.) (Mar. 28, 2016) (nationwide settlement concerning merchant processing overcharges); *Suzanne Degnen, D.M.D., P.C. v. Entrust Cos. LLC*, No. 12SL-CC04715 (St. Louis County Cir. Ct.) (Dec. 17, 2015) (settled on class-wide basis, with attorneys' fees and expenses equaling 41% of benefit to class).

4. Acceptance of this matter precluded Plaintiff's counsel from taking on other employment.

Class Counsel's firm—Schultz & Associates LLP—is a small firm with three attorneys. Thus, the amount of work that Class Counsel can handle at any given time is limited. Class Counsel's efforts in connection with, and commitment to, this matter took substantial time and hindered his ability to take on other employment. In addition, since he began focusing his practice on representing plaintiffs in TCPA cases, Class Counsel has ceased representing defendants in class actions.

5. A customary fee in a TCPA case is approximately one-third of the economic benefit available to the class.

As noted above, the requested fee is consistent with fees awarded in TCPA class actions in Missouri, in state and federal courts and nationwide, and in cases in which Class Counsel settled nationwide class actions. *See supra*, Argument, Section I.A-B. The requested fee is also less than the judicially endorsed “risk-adjusted fee structure” for TCPA class actions. *See In re Capital One*, 80 F. Supp. 3d at 807. As a result, this factor supports the reasonableness of the requested fee.

6. Plaintiff and Class Counsel entered into a contingency fee agreement.

Plaintiff entered into a contingent attorney's fee agreement, which permitted Class Counsel to apply for an award of attorneys' fees in the amount sought here. That the fee arrangement was a contingency agreement weighs in favor of the requested fee award, because such a large investment of time and money “place[s] incredible burdens upon . . . law practices and should be appropriately considered.” *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012).

7. Class Counsel is experienced and has a good reputation.

Class Counsel has extensive experience litigating class actions filed under the TCPA and other areas of law, *see supra*, Argument, Section I.D.3, has litigated approximately 80 TCPA class actions, and has been appointed class counsel many times. (Ex. 1. ¶¶ 6, 10.) Class Counsel has eighteen years of lawyering experience, has achieved a Martindale-Hubbell® Peer Review Ratings™ of AV® Preeminent™, has federal and appellate clerkship experience, and has trial and appellate experience. (*Id.* ¶¶ 5-12.)

8. The nature and length of Class Counsel's relationship with Plaintiff is significant.

Class Counsel has represented Plaintiff since 2013, including in multiple successful TCPA class actions. (*Id.* ¶ 26.) The relationship has included frequent communications in person, by telephone, and by email. (*Id.*)

D. The universal support for Class Counsel's fee request further demonstrates its reasonableness.

Of the 13,021 class members to whom direct notice was distributed, none excluded themselves from the settlement and none objected to the settlement, much less to the fee portion. The absence of objections strongly indicates that the requested fee award is fair and reasonable. *See Wallace v. Powell*, No. 3:09-cv-286, 2015 U.S. Dist. LEXIS 172326, at *82 (M.D.Pa. Dec. 21, 2015) (absence of objections supports reasonableness of request).

II. Plaintiff's request for a \$10,000 incentive award is fair, reasonable, and supported by law.

"Incentive awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *see Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (explaining that incentive awards are typically awards to class representatives

for their often extensive involvement). These awards “serve an important function in promoting class action settlements.” *Sheppard v. Cons. Edison Co. of N.Y., Inc.*, No. 94-CV-0403(JG), 2002 U.S. Dist. LEXIS 16314, at *16 (E.D. N.Y. Aug. 1, 2002).

Here, Plaintiff took significant steps to protect the Class. Plaintiff never attempted to negotiate a settlement offer on an individual basis (Ex. 1 ¶ 27), and Plaintiff moved for class certification simultaneously with filing of the initial class-action petition to prevent a “pick off.” Plaintiff spent considerable time pursuing class members’ claims. This was the rare TCPA case that went so far as the taking of depositions, including Plaintiff’s deposition. (*Id.* ¶ 26.) In addition, Plaintiff attended and participated actively in a day-long mediation, received and reviewed the significant documents in the case, suggested edits, assisted with development of the facts, met with Class Counsel, and engaged in regular email and telephone conversations with Class Counsel about the merits and status of the case and the settlement. (*Id.*) In settling, Plaintiff insisted on not only monetary relief but also injunctive relief. (*Id.* ¶ 27.)

Plaintiff’s request for a \$10,000 incentive award is in line with incentive awards approved in comparable Missouri court matters, as well as smaller class action cases. *See, e.g., Central Alarm Sys., Inc.*, No. 1622-CC09599 (St. Louis City Cir. Ct. Aug. 9, 2016) (\$15,000 incentive award); *Radha Geismann M.D., P.C.*, No. 1622-CC00286 (St. Louis City Cir. Ct. May 6, 2016) (\$15,000 incentive award); *Suzanne Degnen, D.M.D., P.C. v. Entrust Cos. LLC*, No. 12SL-CC04715 (St. Louis County Cir. Ct.) (Dec. 17, 2015) (\$10,000 incentive award in class action settlement totaling less than \$105,000). Courts in other jurisdictions also frequently award lead plaintiffs at least \$10,000. *See Suzanne Degnen, D.M.D., P.C. v. Zimmer Dental, Inc.*, No. 4:15-cv-01103-RLW (Doc. 47) (E.D. Mo. Apr. 20, 2015) (\$15,000 incentive award); *see also Cook v. Niedert*, 142

F.3d 1004, 1016 (7th Cir. 1998) (upholding \$25,000 incentive award); *Carlson v. FedEx Ground Package Sys.*, No. 8:05-cv-1380-T-24-TGW, 2016 U.S. Dist. LEXIS 95654, at *6 (M.D. Fla. July 15, 2016) (\$15,000 award to *each* lead plaintiff); *Prater*, No. 4:14-cv-00159-ERW, 2015 U.S. Dist. LEXIS 167215, at *11 (\$20,000 award); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 (SRN/JSM), 2015 U.S. Dist. LEXIS 91385, at **10-11 (D. Minn. July 13, 2015) (\$25,000 award to *each* named plaintiff); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 U.S. Dist. LEXIS 49477, at *47 (N.D. Cal. Apr. 22, 2010) (finding \$20,000 award to be well justified); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 award); Given the foregoing, the requested incentive award of \$10,000 is fair and reasonable.

WHEREFORE, Plaintiff Suzanne Degnen, D.M.D., P.C., requests this Court grant Class Counsel an award of attorney's fees \$390,630, inclusive of costs and expenses, grant Plaintiff a \$10,000 incentive award for serving as lead plaintiff, and grant any additional relief deemed proper.

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CERTIFICATE OF SERVICE

The above-signed certifies that on July 3, 2017, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all registered counsel of record.