UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-09093 JVS (AFMx) consolidated for settlement with SACV 12-00885 JVS(RNBx)	Date	October 23, 2017
Title	**Gail Medeiros, et al v. HSBC Card Services, Inc., et al** consolidated for settlement with Terry Fanning, et al v. HSBC Card Services, Inc., et al		

Present: The Honorable	James V. Selna	
Karla J. Tunis		Not Present
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: (IN CHAMBERS)

Order Granting Plaintiffs' Motion for Final Settlement Approval

Plaintiffs Terry Fanning ("Fanning"), Tatiana Jabbar ("Jabbar"), Stefan Lindgren ("Lindgren"), Gail Medeiros ("Medeiros"), Tracy Bomberger ("Bomberger"), Peter Morrissey ("Morrissey"), and Julie Pulatie ("Pulatie") (collectively, "Representative Plaintiffs"), on behalf of themselves and other similarly situated (collectively, "Plaintiffs"), filed a motion for final approval of the class action settlement with Defendants HSBC Card Services Inc. and HSBC Technology & Services (USA) Inc. (collectively, "HSBC"). (Mot., Docket No. 96.)[1] Defendants do not oppose the motion. Plaintiffs filed a reply to an objection to the settlement agreement and attorneys' fees. (Reply, Docket No. 101.) Defendants also filed a response to the objection to the settlement agreement. (Response, Docket No. 97.)

For the following reasons, the Court **grants** the motion for final approval.

Representative Plaintiffs also moved for an award of attorneys' fees, reimbursement of litigation costs and expenses, and service awards to Representative Plaintiffs. (Mot., Docket No. 94.) Defendants take no position regarding this motion.

For the following reasons, the Court **grants** the motion for attorneys' fees.

[1] For purposes of this Order, all docket citations are to the Medeiros docket, 2:15-cv-09093 JVS (AFMx).

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I. BACKGROUND

A. Procedural History

This dispute involves three similar class action lawsuits against HSBC. (Mot., Docket No. 94-1 at 2.) Plaintiffs assert that HSBC violated the California Invasion of Privacy Act ("CIPA"), section 630 et seq. of the California Penal Code, when it recorded the conversations of HSBC account holders in California without their consent. (Id.)

On June 4, 2012, Fanning and Jabbar filed the first class action lawsuit against HSBC Card Services Inc. and HSBC Technology and Services USA Inc. ("Fanning lawsuit"). (Id.) Lindgren filed a motion to intervene on October 7, 2013 ("Lindgren lawsuit"). (Id. at 4.) On November 10, 2014, this Court consolidated the Fanning lawsuit and the Lindgren lawsuit. (Id. at 5.) On July 29, 2014, Medeiros filed a class action complaint in the Southern District of California ("Medeiros lawsuit"). (Id. at 6.) After mediation in May 2015, the Medeiros lawsuit reached a settlement with HSBC for a total monetary payment of between $4.5 and $6.5 million. (Id.) However, the Lindgren and Fanning lawsuit Plaintiffs moved to intervene in the Medeiros lawsuit to oppose preliminary approval. (Id.) On October 9, 2015, the Court granted the motion to intervene, and on November 23, 2015, the Medeiros lawsuit was transferred to this Court. (Id.)

Once all three cases were before this Court, counsel for each suit worked together to enter into a settlement. (Id.) Counsel for all parties participated in formal mediations before the Honorable Edward J. Infante (Ret.) of JAMS on February 18, 2016, and March 24, 2016, with further discussions and negotiations thereafter. (Id.) Due to these mediations, the parties reached a settlement covering all three actions. (Id.)

On October 19, 2016, the Court preliminarily approved the settlement. (Id. at 7; Order, Docket No. 88.)

B. Summary of the Settlement

1. Plaintiff's Proposed Settlement Class

Plaintiffs request that the Court certify one proposed settlement class:

> [A]ll persons in California who received a telephone call during the Class Period [March 23, 2009 through May 1, 2012] from or on behalf of [Defendant] HSBC Card Services Inc. and whose call was recorded or monitored by or on behalf of [Defendants] HSBC Card Services Inc. or HSBC Technology & Services (USA) Inc. [(collectively, "HSBC")].

(Mot., Docket No. 96-1 at 3.)

2. Proposed Settlement Terms

The total settlement amount is $13,000,000.00, which includes payments to the class, attorneys' fees, litigation costs and expenses, service payments to the class representatives, costs of a third-party data analyst, and the costs of a third-party settlement administrator. (Id. at 3-4.) Any unclaimed funds will not revert to HSBC. (Id. at 4.) After the first distribution, if the remaining funds are sufficient to pay at least ten dollars to each class member, then a second distribution will occur. (Id.) Upon the Court's approval, any remaining funds after the second distribution will go to the Rose Foundation's Consumer Privacy Rights Fund. (Id.)

The settlement funds will be allocated to the Class members based on the strength of each member's claims. (Id.) The Class members include 54,191 California credit card account holders whose telephone numbers appear in HSBC's records of full-time recordings (the "Direct Payment Group"). (Id.) No claim form was required for those individuals in the Direct Payment Group because HSBC's records show that their calls were recorded. (Id.) Those Class members will receive funds on a per-call basis for each recorded call, with the per-call amount being three times the per-call amount paid to other class members (the "base award"). (Id.) For other Class members, HSBC's records show only that HSBC might have called them and might have recorded their calls. (Id.) These Class members must submit a claim form affirming that they received a telephone call regarding their HSBC credit card during the class period. (Id.) Evidence indicates that

HSBC recorded only three to thirty percent of calls to these Class members. (Id.) Therefore, these individuals will receive the base award amount for each call that could have been recorded. (Id.)

The settlement fund will be used to pay Court-approved service awards not to exceed $5,000 to Representative Plaintiffs Fanning and Lindgren, and not to exceed $1,500 to Representative Plaintiffs Jabbar, Medeiros, Bomberger, Morrissey, and Pulatie. (Id. at 5.) The settlement agreement permits class counsel to apply for reimbursement of litigation expenses and an award of attorneys' fees limited to one-third of the common fund. (Id.)

C. Preliminary Approval

On October 19, 2016, the Court (1) granted provisional certification of the settlement class, (2) granted preliminary approval of the settlement, and (3) directed dissemination of notice to the settlement class. (Order, Docket No. 88.)

D. Notice

Since receiving preliminary approval, the Settlement Administrator has published noticed and created a website with case materials, including Plaintiffs' Motion for Attorneys' Fees. (Mot., Docket No. 96-1 at 6-7.) The Settlement Administrator mailed postcard notices to 1,531,043 Class members, and emailed notice to another 179,731 Class members. (Id. at 7.)

E. Objections/Exclusions

According to the Court's preliminary approval order, all objections or requests for exclusion needed to be received by April 15, 2017. (Order, Docket No. 88.) Seven individuals filed a request for exclusion. (Robin Supp. Decl., Docket No. 99 at 2.) One individual, Christine Chavez ("Objector Chavez"), filed an objection to the class action settlement and request for attorneys' fees. (Objection, Docket No. 95.)

II. DISCUSSION

A. Class Certification

Rule 23(a) imposes four prerequisites for a class action: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

Under Rule 23(b), a plaintiff must show (1) that common factual and legal issues predominate over individual questions and (2) that a class action is the best method to resolve the class claims. Fed. R. Civ. P. 23(b)(3). There are several relevant factors to consider during this analysis: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and (4) the likely difficulties in managing a class action. Id. 23(b)(3)(A)-(D).

The Court preliminarily certified the proposed class in its prior order. (Order, Docket No. 88.) Nothing has changed in the interim that would warrant a deviation from the Court's prior ruling, with one exception. Objector Chavez argues that there is inadequate representation for class members who received calls on their cell phones. (Objection, Docket No. 95 at 7.) Objector Chavez argues that because there were less litigation risks for Class members who received calls on their cell phones, those Class members were entitled to the formation of a separate sub-class and separate counsel. (Id.) In response, Plaintiffs argue that the differences between Class members who were called on cell phones and Class members who were called on landlines does not affect the adequacy of representation. (Mot., Docket No. 96-1 at 16-17.) Further, Plaintiffs argue that the settlement Class does have a representative who received a call on a cell phone. (Id.) Representation is adequate when (1) the representative plaintiffs and counsel have no conflicts of interest with other class members and (2) representative plaintiffs and counsel will prosecute the action vigorously on behalf of the class. Staton v. Boeing Co.,

327 F.3d 938, 957 (9th Cir. 2003). The Ninth Circuit "does not favor denial of class certification on the basis of speculative conflicts." Cummings v. Connell, 316 F.3d 886, 896 (9th Cir. 2003). At this time, there does not appear to be any antagonism between cell phone users and landline users, especially given the significant litigation risks for both cell phone users and landline users and that the settlement allocates funds without regards to whether calls were made on landlines or cell phones. Therefore, the Court finds, as it did in its preliminary approval order, that the adequacy requirement is met. Accordingly, for the reasons specified in its preliminary approval order, the Court certifies the settlement Class for final approval of the settlement agreement.

B. Approval of Class Settlement

Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). A court considers several factors to determine whether a proposed settlement is fair, adequate, and reasonable. These include:

> (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011) (quoting Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)).

The Court analyzes the applicable factors, and it finds that the proposed settlement agreement is fair, adequate, and reasonable.

1. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

"An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). However, "a proposed settlement is not to be judged against a speculative measure of what might have been awarded in a judgment in favor of the class." Id.; see also Officers for Justice v. Civil Serv. Comm'n of the City and Cty. of San Francisco, 688 F.2d 615, 625 (9th Cir.1982) ("Neither the trial court nor [the appellate court] is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."). A second relevant factor "is the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010).

While Plaintiffs maintain a belief in the merits of their claims, they recognize that there are substantial risks involved in continuing this litigation. (Mot., Docket No. 96-1 at 9.) From the outset, HSBC has maintained that Plaintiffs cannot certify a class based on the absence of ascertainaibility, superiority, and manageability. (Id.; Response, Docket No. 97 at 5-7.) If the parties continued to litigate this action, class certification could be a substantial hurdle. (Mot., Docket No. 96-1 at 10.) This risk is significant in cases involving statutory damages, such as this, especially given that there are incomplete records of recordings of the calls and only some means of correlating those records with specific Class members. (Id.) Thus, establishing which Class members were actually recorded, when, and how often raises significant difficulties. (Id.) HSBC also contends that Plaintiffs would not be able to establish that each call between HSBC and the Class members was a confidential communication, as is required under CIPA, without individualized inquiries into the circumstances of each call. (Response, Docket No. 97 at 6.) Furthermore, HSBC contends that "even if [P]laintiffs were to prevail at class certification and at trial, an award of aggregated statutory damages would violate the excessive fines and due process provisions of the U.S. and California Constitutions." (Mot., Docket No. 96-1 at 11.) Finally, any decision on the merits is likely to be appealed, resulting in further delays, uncertainties, and greater expense. (Id.) Accordingly, these factors weigh in favor of final approval.

2. Risk of Maintaining Class Action Status Throughout the Trial

As stated above, there is a significant risk that the Class would not have been able to maintain class status were the litigation to proceed. The parties note that a number of recent cases have denied class certification or decertified classes in CIPA cases, indicating that the outcome here is uncertain. (Mot., Docket No. 96-1 at 10 (collecting cases); Response, Docket No. 97 at 6-7 (collecting cases).) Thus, Plaintiffs acknowledge that there is a significant risk that the Court would decline to certify this Class had the case not settled. (Id.) Accordingly, this factor weighs in favor of final approval.

3. Amount Offered in Settlement

Plaintiffs have secured a total settlement amount of $13,000,000.00 (id. at 11-12), which amounts to an average gross per-class-member recovery of approximately $7.54 (Supp. Brief, Docket No. 103 at 3). HSBC contends that this "compares favorably to nearly every other known all-cash call recording settlement." (Response, Docket No. 97 at 4.) In support of this contention, the parties cite a number of other CIPA cases in which courts have approved settlements with far lower average gross per-class-member recoveries than the settlement here–between $0.75 and $6.98 per class member. (Supp. Brief, Docket No. 103 at 3-5 (citing Knell v. FIA Card Services, No. 12-cv-00426 AJB WVG, Docket Nos. 62-1, 77, 79 (S.D. Cal. Aug. 15, 2014) ($2.75 million settlement for approximately 3,655,577 potential class members, or $0.75 per person); Nader v. Capital One Bank, N.A., No. 12-cv-01265 DSF, 2014 WL 12584442, Docket No. 145 (C.D. Cal. Nov. 17, 2014) ($3 million settlement for approximately 1,896,044 potential class members, or $1.58 per person); Hoffman v. Bank of America, N.A., No. 12-cv-00539 DHB, Docket Nos. 56-1, 67 (S.D. Cal. Nov. 6, 2014) ($2.6 million settlement for approximately 1,454,181 potential class members, or $1.79 per person); Cohorst v. BRE Properties, Inc., No. 10-cv-2666 JM, 2012 WL 153754, Docket Nos. 101, 109 (S.D. Cal. 2012) ($5.5 million settlement for approximately 1,170,584 potential class members, or $4.70 per person); Batmanghelich v. Sirius XM Radio, Inc., No. 09-cv-9190 VBF, Docket Nos. 72-1, 89 (C.D. Cal. Sept. 15, 2011) ($9.48 million settlement for approximately 1,765,594 potential class members, or $5.37 per person); Skuro v. BMW of North America, LLC, 10-cv-8672 GW, Docket Nos. 51, 56 (C.D. Cal. Aug. 28, 2012) ($300,000 settlement for approximately 43,000 potential class members, or $6.98 per

person).) Additionally, the "actual per-class-member recoveries in this case, unlike the other cited cases, are specifically targeted to reflect the strength of each member's claims." (Id. at 2 (emphasis and internal quotation marks omitted).) The settlement "will pay far more than the per capita average to class members whose claims are strongest–by paying each Direct [Payment Group] Class Member three times the base rate for each recorded call . . . and paying all other class members on a per-call basis." (Id. at 2-3.) Because the amount offered in settlement compares favorably to other CIPA class action settlements, the Court finds that the settlement in this case is fair, adequate, and reasonable.

Objector Chavez argues that the amount offered in settlement is an unfair discount on the potential damages that the Class could have achieved in litigation. (Objection, Docket No. 95 at 9.) Objector Chavez argues that the potential damages award based on the $5,000 statutory penalty available under CIPA is much greater than the amount agreed upon in settlement. (Id.) However, "[e]ven a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case." Millan v. Cascade Water Servs., 310 F.R.D. 593, 611 (E.D. Cal. 2015); see also Officers, 688 F.2d at 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair."); Jaffe v. Morgan Stanley & Co., No. C 06-3903 THE, 2008 WL 346417, *9 (N.D. Cal. Feb. 7, 2008) ("The settlement amount could undoubtedly be greater, but it is not obviously deficient, and a sizeable discount is to be expected in exchange for avoiding the uncertainties, risks, and costs that come with litigating a case to trial."). Thus, despite the significant discount from the potential recovery based on the statutory penalty available under CIPA, the Court finds that the settlement amount achieved in this case is fair, especially considering the significant risk of diminished recovery had the case proceeded.

Accordingly, the Court finds that this factor weighs in favor of approval.

4. Extent of Discovery Completed and the Stage of the Proceedings

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." Nat'l Rural Telecomms., 221 F.R.D. at 528. Absent evidence of fraud or collusion, courts also should accord "great weight" to the recommendations of counsel. Id. (citation omitted). Although this case had proceeded only to the certification stage, Plaintiffs indicate that their counsel have "engaged in substantial discovery beneficial to the class." (Mot., Docket No. 96-1 at 13.) This discovery includes "engaging in 14 discovery hearings and extensive expert analysis to secure the call recording data and autodialer logs." (Id.; Rubin Decl., Docket No. 94-2 at 7-8.) Class counsel indicate that they "understand the strength and limitations of the records they collected; and that the Court's prior rulings on the parties' initial summary judgment motions provided some level of predictability that informed the settlement process." (Mot., Docket No. 96-1 at 13.) Thus, the Court finds that the stage of the proceedings and extent of discovery conducted by class counsel indicate that they properly understood the basis and strength of Plaintiffs' claims and defenses. Accordingly, the Court finds that this factor weighs in favor of approval.

5. Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995). Class counsel have extensive experience litigating complex class actions, suggesting that they are well-positioned to assess the risks of continued litigation and benefits obtained by the settlement. (Mot., Docket No. 96-1 at 13.) Therefore, given counsel's experience in handling similar matters and the extent of discovery and motion practice completed, the Court finds that counsel's belief that settlement is fair, reasonable, and in the best interests of the Class should be given significant weight. See Vasquez, 266 F.R.D. at 490 ("Here, class counsel understood the complex risks and benefits of any settlement and concluded that the proposed Settlement was a just, fair, and certain result. This factor weighs in favor of approval."). Accordingly, the Court finds that this factor weighs in

favor of final approval.

6. Presence of a Governmental Participant

No governmental entity is present in this litigation. Accordingly, this factor does not apply in this case. See In re Toys R Us-Delaware, Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 455 (C.D. Cal. 2014) (factor does not apply in absence of government participant).

7. Reaction of the Class Members to the Proposed Settlement

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms., 221 F.R.D. at 529 (citations omitted); see also Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable."). Following the Court's preliminary approval of the proposed settlement, the Settlement Administrator mailed postcard notices to 1,531,043 Class members, and emailed notice to another 179,731 Class members. (Mot., Docket No. 96-1 at 7; Robin Decl., Docket No. 96-3 at 4-6.) When postcards were returned, the Settlement Administrated searched for updated addresses and re-mailed the Notices. (Mot., Docket No. 96-1 at 7; Robin Decl., Docket No. 96-3 at 5-6.) Only 70,848 of the mailed Notices were returned and not re-mailed because no new address could be found. (Mot., Docket No. 96-1 at 7; Robin Decl., Docket No. 96-3 at 5-6.) Of the 1.67 million Class members that were required to submit claim forms, approximately 183,430 filed claims, for a total claims rate of approximately 11%. (Mot., Docket No. 96-1 at 7; Robin Decl., Docket No. 96-3 at 6.) Moreover, there are 54,191 Class members in the Direct Payment Group who will receive a check without having to file a claim form. (Mot., Docket No. 96-1 at 7.) Thus, there is a total claims rate of approximately 13.8% when Direct Payment Group members are included. (Supp. Brief, Docket No. 103 at 2.) Out of the 1.7 million Class members to whom Notice was sent, only seven individuals

requested to be excluded and only one individual filed an objection.[2] (Mot., Docket No. 96-1 at 7; Robin Decl., Docket No. 96-3 at 6.) Thus, the Court finds that the overall reaction by Class members to the settlement has been positive, as there is a moderate though reasonable claims rate and a low number of objectors and exclusions. See Churchill, 361 F.3d at 577 (affirming district court's approval of settlement where 500 of 90,000 class members opted out (.56%) and 45 class members objected to the settlement (.05%)). Accordingly, this factor weighs in favor of approval.

Overall, the weight of the factors supports the Court's conclusion that the proposed settlement is fair, reasonable, and adequate. The Court next addresses the notice program and plan of allocation, and the objections thereto.

C. Notice

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1).

In its preliminary approval order, the Court approved the plan for sending notice to potential class members. (Order, Docket No. 88 at 4.) The Settlement Administrator mailed postcard notices to 1,531,043 Class members, emailed notice to another 179,731 Class members, operated a website to provide additional information and documents to Class members, and published Notice in the Los Angeles and San Francisco editions of *USA Today*. (Mot., Docket No. 96-1 at 6-7; Robin Decl., Docket No. 96-3 at 4-6.) The claim form mailed to Class members was a simple "tear-off post card with return postage paid that, upon being signed and dated, affirmed that the Class member received a telephone call from HSBC about their credit card account." (Id. at 22; Robin Decl., Docket No. 96-3, Exhibit D.)

[2] Seven requests for exclusion constitute only 0.00000411764% of the potential class members (7/1,700,000).

Objector Chavez argues that the claims form process is unnecessary and burdensome because it asks claimants to affirm that they received a call from HSBC during the class period. (Objection, Docket No. 95 at 11-12.) Objector Chavez argues that this process "creates an artificial barrier to obtaining compensation, while at the same time doing nothing to prevent good faith mistaken claims filings." (Id. at 12.) In response, Plaintiffs argue that the claim form was "necessary to avoid diluting Class Members' recovery through payments to individuals who are not Class Members." (Mot., Docket No. 96-1 at 21.) Plaintiffs assert that the settlement does not require that Class members in the Direct Payment Group submit a claim form because there is evidence in HSBC's records that their calls were recorded. (Id.) However, HSBC also has records of many other telephone numbers that it called during the class period, but no record establishing which of these calls were recorded. (Id.) Thus, Plaintiffs assert that while there is no way to determine who was in fact recorded, the only way to determine who might have been recorded is to determine who had a telephone conversation with HSBC during the class period. (Id. at 21-22.) As this information is not available in HSBC's records, Plaintiffs assert that the only way to know this information is to ask the proposed Class members in the claim form. (Id. at 22.) The Court agrees with Plaintiffs that the claim form process was reasonable, prudent, necessary, and not overly burdensome. Accordingly, the Court finds that notice to the settlement Class was adequate.

D. Plan of Allocation

Assessment of a plan of allocation of settlement proceeds in a class action under Federal Rule of Civil Procedure 23 is governed by the same standards of review applicable to the settlement as a whole—the plan must be fair, reasonable, and adequate. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1284-85 (9th Cir. 1992). "A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." In re Oracle Sec. Litig., No. C-09-0931-VRW, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994).

In the order granting preliminary approval, this Court examined the plan of allocation. (Order, Docket No. 87 at 4, 13.) Because class members will be paid on a per-call basis, Class members who suffered a greater statutory injury will receive greater

compensation. (Mot., Docket No. 96-1 at 8.) Therefore, the plan compensates Class members based on the extent of their injuries, and it is fair, reasonable, and adequate.

Objector Chavez argues that the plan of allocation does not fairly account for the reduced risks of litigation for Class members who were called on their cell phones. (Objection, Docket No. 95 at 7.) Objector Chavez contends that CIPA does not require individuals called on cell phones to prove that their conversations were "confidential," unlike individuals who were called on landlines, and therefore, the reduced risk to Class members called on cell phones should be reflected in higher settlement payments. (Id.) In response, Plaintiffs argue that Class members called on their cell phones would still have "to prove that they were called, that they had a conversation, that they were recorded, and that the recording violated CIPA." (Mot., Docket No. 96-1 at 7.) Additionally, Class members called on their cell phones would "have to prove one additional fact that Class members called on a landline did not–that they were physically in California when they received the call." (Id.) Thus, Plaintiffs argue that there were additional litigation risks to cell phone users that landline users would not have needed to overcome. (Id.) Thus, given that there were litigation risks for all Class members and that Class members will be paid based on the extent of their injuries on a per-call basis, the Court finds the allocation plan fair, reasonable, and adequate.

E. Attorneys' Fees and Costs

1. Existence of a Common Fund

The Common Fund doctrine dictates 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). The common fund doctrine is properly applied, however, only if "(1) the class of beneficiaries is sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee can be shifted with some exactitude to those benefitting." Paul, Johnson, Alston, & Hunt v. Graulty, 886 F.2d 268, 271 (9th Cir. 1989) (citations omitted). "The criteria are satisfied when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf." Boeing, 444 U.S. at 479.

Here, the Class of beneficiaries are identifiable through a review of HSBC's call records. The benefits are readily traceable because they are monetary payments directly to either the Class members for whom there is evidence in HSBC's records of their calls being recorded, the Direct Payment Group, or to the Class members who submitted the claim form affirming that they received calls from HSBC during the class period. Finally, the fee can be shifted with exactitude because each Class member will receive a payment based on the number of calls they received, with the Direct Payment Group receiving a per-call amount three times the per-call amount paid to other Class members. Each will pay an equivalent portion of the fee based on the strength of each class member's claim. Therefore, the Court finds that the common fund doctrine should apply. The Court now determines how to calculate what portion of the common fund should be awarded to class counsel.

2. Fees

A court may award reasonable attorneys' fees and costs in certified class actions where they are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Even when parties have agreed to a fee award, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." In re Bluetooth, 654 F.3d at 941. In common fund cases, the Ninth Circuit requires district courts to assess fee awards using either the "percentage of the fund" method or the "lodestar" method. Fischel v. Equitable Life Ass. Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). While courts have discretion to apply either method, the "use of the percentage method in common fund cases appears to be dominant." In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). However, courts routinely cross-check their "percentage of the fund" calculation with the lodestar method to ensure that class counsel is not overcompensated. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002).

Using the "percentage of the fund" method, the Court awards class counsel attorneys' fees in the amount of $4,333,333.33, based on an award of 33.33% of the common fund.

a. Percentage of the fund

In the Ninth Circuit, the benchmark for fee awards in common fund cases is 25% of the common fund. In re Bluetooth, 654 F.3d at 942 ("Where a settlement produces a common fund for the benefit of the entire class, . . . courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record for any 'special circumstances' justifying a departure."). The percentage may be adjusted according to several factors, including: (1) the results achieved; (2) the risk involved in undertaking the litigation; (3) the generation of benefits beyond the cash settlement fund; (4) the market rate for services; (5) the contingent nature of the fee; (6) the financial burden to counsel; (7) the skill required; (8) the quality of the work; and (9) the awards in similar cases. Vizcaino, 290 F.3d at 1048-49; Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

Here, Plaintiffs' counsel seek an award of 33.33% (one-third of the common fund)–an amount above the Ninth Circuit's established benchmark. "[C]ourts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions.'" In re Heritage Bond Litig., No. 02-ML-1475, 2005 WL 1594403, at *19 & n.14 (C.D. Cal. June 10, 2005) (collecting cases). Plaintiffs' counsel contend that an increased award is appropriate in this case. For the following reasons, the Court agrees.

i. *Results achieved*

"Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award." In re Heritage Bond Litig., No. 02-ML-1475, 2005 WL 1594389, at *27 (C.D. Cal. June 10, 2005) (citing Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)); Vizcaino, 290 F.3d at 1048 ("Exceptional results are a relevant circumstance."); Omnivision, 559 F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."). As discussed above, the Court finds the settlement amount fair, adequate, and reasonable. The results achieved exceed the gross per capita recovery in many other recently approved CIPA cases. (See Supp. Brief, Docket No. 103 at 3-5.) Moreover, the actual per-class-member recovery will almost certainly increase far beyond that amount because the participation rate is less than 100%. (Mot., Docket No. 94-1 at 12.) Further, unlike the other recent CIPA case settlements, the actual per-class-member recoveries in this case will be specifically targeted to reflect the strength of each Class member's claim

because Class members who suffered a greater statutory injury will receive greater compensation. (Mot., Docket No. 96-1 at 12.)

Moreover, class counsel were able to negotiate a financial settlement that is twice as much as the maximum value of the original settlement in the Medeiros lawsuit. (Id.) While Objector Chavez argues that class counsel in the Medeiros settlement initially sought 25% of the common fund, the Court does not find that this warrants a reduction in the current fees requested. (Objection, Docket No. 95 at 12-13.) The Medeiros lawsuit had been filed for less than a year by the time it reached its initial settlement with HSBC, with a correspondingly low lodestar. (Mot., Docket No. 94-1 at 6; Mot., Docket No. 96-1 at 23.) In contrast, the Fanning lawsuit was filed over five years ago, in June 2012. (Id. at 2.) The Fanning Plaintiffs engaged in significant discovery and motion practice, and during the course of the Fanning lawsuit, the Court decided a number of key factual and legal issues in Plaintiffs' favor. (Id. at 2-5.) Moreover, Plaintiffs engaged in additional targeted discovery in the Lindgren matter. (Id. at 5.) Once all three cases were before this Court, counsel in the consolidated Fanning and Lindgren lawsuit and counsel in the Medeiros lawsuit combined their efforts to achieve a more favorable settlement. (Id. at 6.) The Court does not find it unreasonable that the attorneys' fees requested in this case are a greater percentage of the common fund than those requested in the initial Medeiros settlement, given that the settlement covers all three actions. Moreover, the Medeiros settlement included a clear sailing arrangement providing for the payment of attorneys' fees separate and apart from class funds, under which HSBC agreed not to object to a fee request of up to 25%. (Mot., Docket No. 96-1 at 23.) A clear sailing arrangement, which is a sign of collusion in class action settlements, does not appear in the current settlement. (Id.)

Therefore, the Court finds that, overall, the results weigh in favor of the requested award.

ii. *Risks of litigation*

Another significant factor to be considered in determining attorneys' fees is the risk that counsel took of "not recovering at all, particularly [in] a case involving complicated legal issues." Omnivision, 559 F. Supp. 2d at 1046-47; Vizcaino, 290 F.3d

at 1048; Heritage, 2005 WL 1594389, at *14 ("The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award."). As discussed above, there were multiple risks involved in the continued litigation of Plaintiffs' case. The risks to Plaintiffs' case included: (1) the possibility that the Court would deny class certification, (2) that the calls to Class members would not qualify as "confidential communications" as is required under Penal Code section 632, (3) that HSBC account holders consented to the recordings, (4) that Plaintiffs' CIPA claims were preempted by federal laws and regulations, (5) that Representative Plaintiffs lacked standing, and (6) that an award of aggregated statutory damages would violate due process. (Mot., Docket No. 94-1 at 13-14.) Thus, Representative Plaintiffs and the Class faced numerous hurdles, both procedural and substantive, had the case continued and not settled. Accordingly, the Court finds that this factor supports the requested award.

iii. *Skills required and quality of the work*

The Court may also consider the skill required to prosecute the case and the quality of work performed by class counsel. Omnivision, 559 F. Supp. 2d at 1047. "The single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." Heritage, 2005 WL 1594389, at *12 (quoting Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 149 (E.D. Pa. 2000)). As stated above, class counsel has extensive experience litigating complex class actions. (Mot., Docket No. 96-1 at 13.) Moreover, Plaintiffs indicate that class counsel have "engaged in substantial discovery beneficial to the class," including "14 discovery hearings and extensive expert analysis to secure the call recording data and autodialer logs." (Mot., Docket No. 96-1 at 13; Rubin Decl., Docket No. 94-2 at 7-8.) As a result of class counsel's efforts, the Court decided many key factual and legal issues in Plaintiffs' favor. (Id. at 4.) The Court notes that counsel's efforts and experience have contributed to the favorable settlement and recovery obtained in this case. Moreover, as the Court discussed above, the results achieved compare favorably to the results in other recent call recording class action settlements. Therefore, this factor supports the requested award.

iv. *Contingent nature of the fee*

Attorneys are entitled to a larger fee award when their compensation is contingent in nature. See Vizcaino, 290 F.3d at 1048-50; see also Omnivision, 559 F. Supp. 2d at 1047. "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for . . . contingency cases." In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994). This ensures competent representation for plaintiffs who may not otherwise be able to afford it. Id. Here, Plaintiffs argue that when class counsel filed these actions it was with the knowledge that they would be required to devote thousands of hours of work to the case with no guarantee of success. (Mot., Docket No. 94-1 at 15.) The Court also acknowledges that class counsel litigated this action over the course of five years. (Id.) Thus, given the significant amount of time devoted by class counsel to this case and the risk of no recovery, this factor supports the requested award.

v. *Awards made in similar cases*

Plaintiffs contend that California and federal courts have routinely approved comparable fee awards of 33.33% in complex class actions. (Mot., Docket No. 94-1 at 16 (collecting cases).) The Court notes that in the various call recording class action cases cited by Plaintiffs for purposes of comparison regarding the settlement results achieved, the courts awarded fees closer to the Ninth Circuit's 25% benchmark. See Nader, 2:12-cv-01265-DSF-RZ, Docket No. 170 at 3 (awarding 25% of the common fund); Knell, 3:12-cv-00426-AJB-WVG, Docket No. 79 at 4-5, Docket No. 80 at 2 (awarding 25% of settlement fund); Cohorst, 2012 WL 153754, at *4 (awarding 28% of settlement fund); Batmanghelich, No. 2:09-cv-09190-VBF-JC, Docket No. 89 at 4-5 (awarding approximately 21% of settlement fund). While the request appears high compared to the fee awards in the other recent CIPA settlements, the Court finds that the comparably favorable results achieved in this case warrant a higher fee award. Additionally, the Court notes that the settlements in the other CIPA cases were not specifically structured to benefit Class members based on the strength of their claims. (Supp. Brief, Docket No. 103 at 2-5 (collecting cases).) As stated above, "courts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions." Heritage, 2005 WL 1594403, at *19 & n.14 (collecting cases). Considering the results achieved and that the settlement effectively covers three actions, the Court finds that this factor supports the requested award.

b. Lodestar method

Under the lodestar method, the court must multiply the numbers of hours reasonably expended on litigation by a reasonable hourly rate. Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). A court may adjust the lodestar figure "upward or downward by an appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors, 'including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.'" Bluetooth, 654 F. 3d at 941-42 (quoting Hanlon, 150 F.3d at 1029). Where the litigation has been protracted, "the lodestar calculation can be helpful in suggesting a higher percentage." Vizcaino, 290 F.3d at 1050. When used to cross-check a "percentage of the fund" calculation, the court's lodestar calculation "need not be as exhaustive as a pure lodestar calculation." Fernandez v. Victoria Secret Stores, LLC, No. CV 06–04149 MMM (SHx), 2008 WL 8150856, at *14 (C.D. Cal. July 21, 2008). "Instead, the lodestar calculation serves as a point of comparison by which to assess the reasonableness of a percentage award." Id. "As a result, the lodestar can be approximate and still serve its purpose." Id.

Class counsel calculated its lodestar amount at approximately $3,912,670.75, comprised of 1,988.1 hours spent at Altshuler Berzon LLP ($1,403,482.00), 1,795.2 hours spent at Arleo Law Firm ($1,301,520), 611.85 hours spent at Mehdi Law Firm ($391,723.75), 1,573 hours spent at Bailey & Galyen ($590,775), 295.3 hours spent at Hyde & Swigart ($126,826.50), 114.8 hours spent at Kazerouni Law Group ($68,441), and 44.3 hours spent at Law Offices of Todd M. Friedman ($29,902.50), for a total of over 6,422 hours spent on this litigation. (Mot., Docket No. 94-1 at 16-17; Reply, Docket No. 101 at 5; Pitts Decl., Docket No. 101-1 ¶¶ 13-14.)

i. *Reasonable hourly rate*

"The first step in the lodestar analysis requires the district court to determine a reasonable hourly rate for the fee applicant's services. This determination [involves] examining the prevailing market rates in the relevant community charged for similar services by lawyers of reasonably comparable skill, experience, and reputation." Cotton

v. City of Eureka, 889 F. Supp. 2d 1154, 1166 (N.D. Cal. 2012) (internal quotation marks and citation omitted); see also Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008). "The fee applicant has the burden of producing satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." Jordan v. Multnomah Cnty., 815 F.2d 1258, 1263 (9th Cir. 1987). The fee applicant may provide affidavits from the attorneys who worked on the present case, as well as affidavits from other area attorneys or examples of rates awarded to counsel in previous cases. See Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 262 (N.D. Cal. 2015); see also Parkinson v. Hyundai Motor Am., 796 F. Supp.2d 1160, 1172 (C.D. Cal. 2010) ("Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates."). Here, class counsel contend that their hourly rates are in line with prevailing market rates. (Mot., Docket No. 94-1 at 16 n.5.)

As to the hourly rates at Altshuler Berzon LLP, class counsel provide examples of other federal and state courts in California in which the courts have approved the hourly rates of attorneys, law clerks, and paralegals at Altshuler Berzon. (Rubin Decl., Docket No. 94-2 at 17.) This includes courts in the Ninth Circuit that have approved senior partner hourly rates of up to $930. (Id.) Objector Chavez objects to the hourly rates of two senior partners at Altshuler Berzon with hourly rates above $900. (Objection, Docket No. 95 at 14.) However, it appears that based on the partners' extensive experience and accomplishments and the other cases that have approved similar hourly rates for the senior partners, these rates, along with the other hourly rates at Altshuler Berzon, are reasonable. (Rubin Decl., Docket No. 94-2 at 2-3, 6, 17.)

Class counsel provides no similar examples supporting Arleo Law Firm's attorney's requests rate of $725 per hour. (Arleo Decl., Docket No. 94-3 at 6-7.) Nonetheless, upon conducting its own research, the Court finds that other courts have approved similar rates for San Diego area attorneys in class action settlements. Makaeff v. Trump Univ., LLC, No. 10-cv-0940 GPC (WVG), 2015 WL 1579000 at *4-5 (S.D. Cal. Apr. 9, 2015) (approving rates of $250-$440 for associates and $600-$825 for partners after considering the National Law Journal Survey).

As to the hourly rate of the attorney at Mehdi Law Firm, class counsel provide

examples of other federal cases in which the courts have approved the attorney's current and near-current hourly rates. (Mehdi Decl., Docket No. 94-5 at 5.) After conducting its own research of hourly rates for attorneys and paralegals in the San Francisco Bay area, the Court finds that Mehdi Law Firm's attorney's rate of $775 and paralegal's rate of $215 are reasonable. See Gutierrez v. Wells Fargo Bank, N.A., No. C 07–05923 WHA, 2015 WL 2438274 at *5 (N.D. Cal. May 21, 2015) (finding reasonable rates for Bay Area attorneys of between $475-$975 for partners, $300-$490 for associates, and $150-$430 for paralegals).

Class counsel provide no examples of cases which approved the hourly rates of the attorneys at Bailey & Galyen, who bill rates of between $450 and $225 per hour. (Maxwell Decl., Docket No. 94-4 at 4.) However, based on the Court's independent research of hourly rates for attorneys in the Fort Worth, Texas area, the Court finds these rates reasonable. See Hoffman v. L & M Arts, No. 3:10-CV-0953-D, 2015 WL 3999171 at *2-3 (N.D. Tex. July 1, 2015) (finding rates of $810-$601 for attorneys with varying level of experience practicing in the Dallas-Fort Worth-Arlington area reasonable).

As to the hourly rates of the attorneys at Kazerouni Law Group, class counsel provide examples of other federal and California state cases in which the courts have approved of the attorneys' current or near-current hourly rates. (Kazerounian Decl., Docket No. 94-6 at 3; Swigart Decl., Docket No. 94-7 at 2, 4-5; McGlophlin Decl., Docket No. 94-8 at 2-3.) Moreover, it appears that several of the attorneys also have extensive experience in class action litigation. (Kazerounian Decl., Docket No. 94-6 at 3, 5-9; Swigart Decl., Docket No. 94-7 at 3; McGlophlin Decl., Docket No. 94-8 at 3.) Thus, the Court finds the hourly rates of between $605-$375 per hour reasonable.

As to the hourly rate of the attorney at the Law Offices of Todd M. Friedman, class counsel provide examples of other actions in which the attorney's current or near-current hourly rate has been approved. (Friedman Decl., Docket No. 94-9 at 9-10.) Moreover, it appears that the attorney has extensive experience representing plaintiffs in class action cases. (Id. at 3-9.) Thus, the Court finds the hourly rate of $675 per hour reasonable.

Accordingly, the Court finds that class counsel's proposed hourly rates are reasonable for the purposes of a lodestar cross-check.

ii. *Reasonable hours*

Next, the Court examines whether the number of hours class counsel expended on the litigation was reasonable. Class counsel spent a total of approximately 6,422 hours on this litigation over the course of five years, which included extensive discovery and expert analysis to obtain call recording data and correctly identify class members, extensive motion practice, and multiple rounds of mediation. (Mot., Docket No. 96-1 at 24; Pitts Decl., Docket No. 101-1 ¶¶ 13-14.) The Court notes that Objector Chavez does not contest the hours incurred by class counsel. While the Court finds the number of hours incurred by class counsel high, it is within the range of reasonableness considering the duration of the litigation and that the settlement effectively covers three actions.

iii. *Lodestar calculation*

Here, applying the reasonable hourly fees that class counsel is seeking to the number of hours reasonably billed, class counsel's lodestar calculation is $3,912,670.75. (Mot., Docket No. 94-1 at 16-17; Reply, Docket No. 101 at 5.) "After determining the lodestar, the Court divides the total fees sought by the lodestar to arrive at the multiplier." Bellinghausen, 306 F.R.D. at 265. "The purpose of this multiplier is to account for the risk Class Counsel assumes when they take on contingent-fee cases." Hopkins v. Stryker Sales Corp., No. 11-CV-02786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013). "If the multiplier falls within an acceptable range, it further supports the conclusion that the fees sought are, in fact, reasonable." Bellinghausen, 306 F.R.D. at 265. In determining whether a multiplier is appropriate, the court considers the following factors:

> (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (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) whether the fee is fixed or contingent, (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.

Vizcaino, 142 F. Supp. 2d at 1306 (citing Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975)). "Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases." Hopkins, 2013 WL 496358, at *4; see also Vizcaino, 290 F.3d at 1051 n.6 (finding that, in approximately 83 percent of the cases surveyed by the Court, the multiplier was between 1.0 and 4.0); In re Prudential Ins. Co. Sales Practices Litig., 148 F.3d 283, 341 (3d Cir.1998) ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.").

Here, based on the lodestar amount of $3,912,670.75, the lodestar multiplier is just over 1.1 ($4,333,333.33/$3,912,670.75). In light of the results achieved, the duration of the case, the contingent nature of class counsel's fee arraignment, and the skill required to conduct this litigation, the Court believes that a multiplier of 1.1 is appropriate. See Vizcaino, 290 F.3d at 1051 n.6.

3. Costs

Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters. See Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994). Class counsel seek a total of $340,120 in costs and expenses. (Mot., Docket No. 94-1. at 20.) The declarations of class counsel detail the costs incurred. (Rubin Decl., Docket No. 94-2 at 20-21; Arleo Decl., Docket No. 94-3 at 7; Mehdi Decl., Docket No. 94-5 at 6-7; Maxwell Decl., Docket No. 94-4 at 4-5.) The majority of these funds were spent on IT consultants and data analysts to overcome HSBC's technical argument that it could not ascertain the identities of the its California account-holders whose conversations had been recorded. (Maxwell Decl., Docket No. 94-4 at 3-5.) Costs such as these are routinely reimbursed. See, e.g., Vasquez, 266 F.R.D. at 493. Accordingly, the Court awards class counsel $340,120 in costs and expenses.

4. Class Representative Incentive Award

Courts have the discretion to issue incentive awards to class representatives.

Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009) ("Incentive awards are fairly typical in class action cases."). The awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Id.

Pursuant to the settlement agreement, Representative Plaintiffs Fanning and Lindgren seek incentive awards of $5,000 and Representative Plaintiffs Jabbar, Medeiros, Bomberger, Morrissey, and Pulatie seek incentive awards of $1,500. (Mot., Docket No. 94-1 at 20.) "In this district, a $5,000 payment is presumptively reasonable." Bellinghausen, 306 F.R.D. at 266-67 (collecting cases). Representative Plaintiffs filed declarations setting forth their efforts in assisting class counsel, which included assisting with the discovery process, responding to document requests, and consulting with class counsel. (Fanning Decl., Docket No. 94-10 at 2-3; Lindgren Decl., Docket No. 94-11 at 2-3; Jabbar Decl., Docket No. 94-12 at 2-3; Medeiros Decl., Docket No. 94-13 at 2; Bomberger Decl., Docket No. 94-14 at 2; Morrissey Decl., Docket No. 94-15 at 2; Pulatie Decl., Docket No. 94-16 at 2.) The larger awards requested for Representative Plaintiffs Fanning and Lindgren reflect their additional contributions. (Mot., Docket No. 94-1 at 21.) For example, Fanning submitting a declaration in support of Plaintiffs' motions for summary judgment and evidentiary sanctions, which advanced the interests of the Class and increased the overall settlement value, and Lindgren was the only Representative Plaintiff who was deposed. (Fanning Decl., Docket No. 94-10 at 2-3; Lindgren Decl., Docket No. 94-11 at 3.) Moreover, Plaintiffs assert that the incentive awards requested are lower than incentive awards approved in other similar CIPA settlements. (Id. (collecting cases).) Therefore, the Court finds that the incentive awards requested by Representative Plaintiffs are reasonable.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-09093 JVS (AFMx) consolidated for settlement with SACV 12-00885 JVS(RNBx)	Date	October 23, 2017
Title	**Gail Medeiros, et al v. HSBC Card Services, Inc., et al** consolidated for settlement with Terry Fanning, et al v. HSBC Card Services, Inc., et al		

III. CONCLUSION

For the foregoing reasons, the Court **grants** the motion for final approval and **grants** the motion for attorneys' fees. The Court awards $5,000 incentive payments to Representative Plaintiffs Fanning and Lindgren and $1,500 incentive payments to Representative Plaintiffs Jabbar, Medeiros, Bomberger, Morrissey, and Pulatie. The Court also awards $4,333,333.33 in attorneys' fees and $340,120 in costs.

The Court ORDERS counsel to submit, forthwith, a proposed order in conformance with the Court's final order above.

IT IS SO ORDERED.

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