

**IN THE MISSOURI CIRCUIT COURT  
FOR THE TWENTY-FIRST JUDICIAL CIRCUIT  
ST. LOUIS COUNTY**

**ASSOCIATED MANAGEMENT )  
SERVICES, INC., and CHARLES )  
D. FUSZNER, D.M.D., P.C., )  
individually and on behalf of all )  
others similarly situated, )**

**Plaintiffs,**

**v.**

**MEDICAL WASTE SERVICES, )  
LLC d/b/a MEDICAL WASTE )  
SERVICES and LARRY D. CASEY, )**

**Defendants.**

**No. 19SL-CC00832-01**

**Div. 35**

**PLAINTIFFS’ MOTION FOR AN AWARD OF ATTORNEY’S FEES AND EXPENSES  
AND INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES**

**Introduction**

Plaintiffs Associated Management Services, Inc. (AMS), and Charles D. Fuszner, D.M.D., P.C. (Fuszner), alleged that Defendants Medical Waste Services, LLC d/b/a Medical Waste Services and Larry D. Casey violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by sending unsolicited facsimile advertisements to recipients in Missouri and nationwide. After many rounds of negotiations, unsuccessful mediation, and then more negotiations, the Parties ultimately reached an agreement to resolve this matter that will provide a tangible benefit to those among the 4,466 members of the Settlement Class who wish to receive a \$60 check. Additionally, Defendants have agreed to prospective relief regarding future Fax Advertisements.

In accordance with the Court’s preliminary approval order, the claims administrator distributed notice of the settlement via direct mail to the members of the

settlement class. The notice detailed the terms of the settlement, directed the class members to the settlement website, which included a copy of the Settlement Agreement and Long Form Notice detailing the \$60 available benefit per claiming class member, and noted that at the Final Approval Hearing, Class Counsel would ask the Court for an award of attorney's fees and expenses in an amount up \$82,500, which is less than one-third of the Settlement Fund, plus incentive awards of \$10,000 and \$5,000 to AMS and Fuszner, respectively. **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 positive reaction from the class, Plaintiffs and Class Counsel request an award of attorney's fees and expenses of \$82,500 and incentive awards of \$10,000 to AMS and \$5,000 to Fuszner. These requests are appropriate and well supported.

### **Argument**

#### **I. Class Counsel's request for \$82,500 for attorney's fees 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 Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. E.D. 2011) Class Counsel here seeks an award of attorney's fees and expenses of \$82,500, which is slightly less than one-third of the value of the \$250,000 Settlement

Fund and unlike many settlements which award one-third of the fund for attorneys' fees, plus out-of-pocket expenses, here the \$82,500 encompasses the expenses.

**A. An award of attorney's fees and expenses equal to less than one-third of the Settlement Fund benefit is consistent with, or a lower percentage than, awards of attorney's fees in TCPA class actions in Missouri courts, in the Eighth Circuit, and nationwide.**

**1. TCPA awards in Missouri courts.**

Class Counsel's requested fee-and-expense award of slightly less than one-third of the Settlement Fund is consistent with, or a lower percentage than, awards in similar TCPA class actions in Missouri. The following state courts have recently awarded such fee-and-expense requests. *See Gorss Motels, Inc. v. BES Indus., Inc.*, No. 1922-CC00404 (St. Louis City Cir. Ct. Sept. 9, 2019) (finally approving TCPA fax settlement and awarding 1/3 of available \$1.5 million fund for attorney's fees and expenses, plus awarding \$15,000 incentive award); *Radha Geismann, M.D. v. Rexall, Inc.*, No. 1822-CC11147 (St. Louis City Cir. Ct. Sept. 9, 2019) (finally approving \$6.9 million TCPA fax settlement and awarding 1/3 of fund, plus \$65,000 in out-of-pocket expenses, and 2 incentive awards totaling \$29,000); *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 \$15,000 incentive award); *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).

## 2. TCPA awards in the Eighth Circuit.

Class Counsel's requested fee-and-expense award of slightly less than one-third of the Settlement Fund is also consistent with, or a lower percentage than, awards in TCPA class actions entered by federal courts within the Eighth Circuit. *See In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming attorneys'-fee award of 36% of fund); *Prater v. Mediacredit, Inc.*, No. 4:14-cv-00159-ERW, 2015 WL 8331602, at \*3 (E.D. Mo. Dec. 7, 2015) (awarding attorneys' fees of 1/3 of fund, plus costs and expenses); *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.*, No. 4:13CV1411 SNLJ, 2015 WL 3645208, at \*4 (E.D. Mo. June 10, 2015) (awarding 34% of fund as attorneys' fees in TCPA class action); *West v. PSS World Med., Inc.*, No. 4:13-CV-574 CDP, 2014 WL 1648741, at \*1 (E.D. Mo. Apr. 24, 2014) (awarding attorneys' fees of 33% of fund) (citing *Johnston v. Comerica Mortg. Co.*, 83 F.3d 241, 244-46 (8th Cir. 1996)); *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) (awarding fees of 1/3 of fund, plus expenses).<sup>1</sup>

## 3. TCPA awards nationwide.

The same is true for numerous courts outside of Missouri. *See, e.g., Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 883 (3d Cir. 2016) (affirming award to class counsel equal to 1/3 of \$625,000 fund); *In re P. Enters. Sec. Litig.*, 47

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<sup>1</sup> *See also West*, 2014 WL 1648741, at \*1 (“[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 WL 2416291, at \*\*1, 5 (W.D. Mo. June 9, 2011) (awarding 1/3 of fund in attorneys’ fees).

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 1/3 of \$4.9 million fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding \$2.8 million, representing 36% of fund); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 WL 5547159, at \*3 (N.D. Iowa Nov. 9, 2011) (awarding 36.04% of \$18.5 million fund); *deMunecas v. Bold Food, LLC*, No. 09 Civ. 00440(DAB), 2010 WL 3322580, at \*8 (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); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (citing cases in which 30%-50% 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 of one-third of the available benefit, which is slightly greater than what is sought here, 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, 805-07 (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-quarter 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.

**B. The percentage-of-the-available-benefit method is used to calculate attorney's 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 with statutory fee-shifting claims, awards of attorneys' fees in cases like this one, with no fee-shifting claims, 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)); *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").

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).

**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. 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.

*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, many of which are addressed in detail below, overwhelmingly support the requested fee award.

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

As outlined in the attached Affidavit of Ronald J. Eisenberg (**Ex. 1**), Class Counsel has spent significant time in litigating this case in that he (a) conducted an extensive investigation into the underlying facts; (b) thoroughly researched class members’ claims and Defendants’ potential defenses; (c) prepared and filed a detailed class-action petition, specifying the violations of the TCPA by Defendants; (d) obtained information about the number of class members; (e) spent a day mediating the case but

not achieving a settlement, (f) engaged in many rounds of subsequent negotiations to negotiate the Parties' settlement agreement; (g) prepared the 21-page Settlement Agreement and Release, (h) prepared the exhibits to the Settlement Agreement, including the Proposed Final Approval Order and Judgment, the Long Form Notice, the Direct Mail Notice, Proposed Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and the Claim Form; (i) researched and prepared the 18-page Unopposed Motion for Preliminary Approval of Class Action Settlement; (j) evaluated potential settlement administrators; (k) participated in the preliminary approval hearing; (l) oversaw the notice and claims administration process, including reviewing weekly reports from the settlement administrator; (m) prepared the motion for final approval of the settlement; (n) prepared Plaintiffs' motion for an award of attorney's fees and expenses and incentive awards to the Class Representatives; (o) prepared the accompanying affidavits, and (p) regularly communicated with AMS and Fuszner by email, by telephone, and sometimes in person. (*Id.* ¶ 23.) Plaintiffs' counsel is committed to devoting additional time in seeing this case through to conclusion, including communicating with class members still submitting claims and with the settlement administrator. (*Id.* ¶28.)

Because this action required a substantial investment of time and labor, the requested attorney's fee award, which encompasses out-of-pocket expenses, is reasonable and should be approved.

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

TCPA jurisprudence is ever-changing. For example, some defendants in TCPA cases, like those here, have argued that federal courts lack jurisdiction over the lawsuits

for want of standing under Article III of the United States Constitution. In *St. Louis Heart Center, Inc. v. Nomax*, 899 F.3d 500 (8th Cir. 2018), *cert. denied*, 139 S.Ct. 11908 (2019), the Eighth Circuit Court of Appeals agreed with the district court that, based on the facts of that case, Article III standing was lacking; however, the Eighth Circuit concluded that the proper disposition was not dismissal but rather remand to the state court under 28 U.S.C. § 1447(c). *Id.* at 503. The Eighth Circuit therefore vacated the judgment of dismissal and instructed the district court to return the case to state court, noting that “state courts are not bound by the limitations of an Article III case or controversy.” *Id.* at 505; *see* U.S. Const. art. III § 2 cl. 1.

An additional hurdle also made the settlement here even appropriate. Recently, the DC Circuit Court of Appeals issued its decision in *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078 (D.C. Cir. 2017), invalidating the “Solicited Fax Rule”—the FCC regulation requiring opt-out language on solicited faxes—by holding that the TCPA does not grant the FCC authority to require opt-out notices on solicited faxes. *Id.* at 1083. As a result, the risk that Plaintiffs’ counsel assumed in litigating this matter was significant, particularly because the TCPA, unlike many federal statutes, such as the Fair Debt Collection Practices Act, does not include a fee-shifting provision.

**3. Plaintiffs’ counsel relied on particular skill and experience to 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 Plaintiffs’ counsel with TCPA and other class actions helped bring about this settlement. (Ex. 1 ¶¶ 6-9, 12-14.)

Plaintiffs' counsel has litigated more than 100 TCPA class actions in federal and state courts since January 2014, perhaps more than any other Missouri law firm, and he has repeatedly been appointed as class counsel. (*Id.* ¶ 12.) *See, e.g., Ryoo Dental, Inc. v. OCO Biomedical, Inc.*, No. 8:16-cv-01626-DOC-KES (C.D. Ca. June 4, 2018) (obtaining appointment as class counsel in TCPA junk-fax case involving thousands of faxes); *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 3.3 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 Techs., 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) (\$1.6 million nationwide TCPA fax settlement); *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; complimented by Court on obtaining settlement of real benefit to class); *BPP v. Brasseler U.S.A. Dental*, No. 1611-CC00730-01 (St. Charles County Cir. Ct. Jan. 11, 2019) (appointed lead counsel in \$4.9 million nationwide TCPA fax settlement); *Performance Chiropractic v. Aspen Medical Prods., Inc.*, 17SL-CC02661 (St. Louis County Cir. Ct. May 14, 2018) (appointed lead counsel in nationwide TCPA fax settlement); *BPP v. Integrated Media Solutions, LLC*, No. 17SL-CC01069-01 (St. Louis County Cir. Ct. May 11, 2018) (appointed lead counsel and obtained approval in nationwide TCPA settlement involving 25,000 faxes); *Swinter Group, Inc. v. FleetOne, L.L.C.*, No. 1611-CC00730-01 (St. Charles County Cir. Ct. Jan. 19, 2018) (appointed lead counsel in nationwide TCPA settlement with 15,000

class members); *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) (same).

**4. Acceptance of this matter precluded Plaintiffs’ counsel from taking on other employment.**

Class Counsel’s firm—Schultz & Associates LLP—is a small firm with only two full-time attorneys. (*Id.* ¶ 3.) 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 on representing plaintiffs in TCPA cases, Class Counsel has ceased representing defendants in class actions.

**5. The fee request here is slightly less than the customary fee of one-third in a TCPA case.**

As noted above, the requested fee is consistent with, or lesser than, 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. In addition, the valuable injunctive relief obtained for the Class buttresses the requested fee.

**6. Plaintiffs and Class Counsel entered into contingency fee agreements.**

Plaintiffs entered into contingent attorney’s fee agreements, which permitted Class Counsel to apply for an award of attorney’s fees in excess of the amount sought

here. (Ex. 1 ¶ 32.) That the fee arrangements were a contingency ones 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. Time limitations imposed by the client or the circumstances.**

Because this is a class action, in order to encompass the largest possible class, Class Counsel acted quickly in filing this lawsuit after being retained to do so. AMS received its fax from Medical Waste Services on February 11, 2019, at AMS’s fax number, 314-991-8960, then AMS’s president, Janet L. Weisberg and its account manager, Jaqueline A. Jordan, communicated with each other about the fax, and then Ms. Weisberg promptly forward the fax to Class Counsel that day, and AMS filed suit two weeks later on February 25. (Ex. 1. ¶ 15; Weisberg Aff. (Ex. 2) ¶¶ 1, 5-7); Jordan Aff. (Ex. 3) ¶¶ 3, 8-9.) Every bit of delay could have resulted in a decrease in the size of the class given the TCPA’s statute of limitations. (Ex. 1 ¶ 15.)

**8. Class Counsel is experienced and has a good reputation.**

Class Counsel has extensive experience litigating class actions under the TCPA and other areas of law, *see supra*, Argument, Section I.C.3, has litigated more than 100 TCPA class actions, and has been appointed class counsel many times. (Ex. 1. ¶¶ 6, 8-9, 12.) Class Counsel has twenty-one years of lawyering experience, federal and appellate clerkship experience, trial and appellate experience, a Martindale-Hubbell® Peer Review Ratings™ of AV® Preeminent™, and an *Avvo* Rating of 10.0 out of 10.0, with recognition as a Top Contributor in Class Actions. (*Id.* ¶¶ 5, 10-11.)

**9. The nature and length of Class Counsel’s relationship with Plaintiffs is significant.**

Class Counsel has represented AMS in two other TCPA class actions and many other matters since 2018 and has represented Fuszner in three other TCPA class actions. (*Id.* ¶ 28.) The relationship has included frequent communications between Class Counsel and Plaintiffs, by email, by telephone, and in person. (*Id.*)

**D. The lack of opposition to Class Counsel’s fee request by the Class further demonstrates the reasonableness of the request.**

Of the thousands of class members to whom direct notice was distributed, none objected to the settlement, much less to the fee portion, and none even excluded themselves from the settlement. “The utter absence of objections from the class itself militates strongly in favor of approval of the settlement.” *Sala v. National R.R. Passenger Corp.*, 721 F. Supp. 80, 83 (E.D. Pa. 1989)).

**II. AMS’s and Fuszner’s request for incentive awards of \$10,000 and \$5,000, respectively, 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. Consolidated Edison Co. of New York*, No. 94-CV-403 (JG), 2002 WL 2003206, at \*5 (E.D.N.Y. Aug. 1, 2002). Without the availability of incentive awards, far fewer lead plaintiffs would be willing to stake their time and reputations in the pursuit of class actions.

Upon receiving the fax from Medical Waste Services on February 11, 2019, AMS acted promptly by forwarding the fax to Class Counsel that same day. (Ex. 2 ¶¶ 7-9; Ex.

3 ¶¶ 8-9.) Here, Plaintiffs took significant steps to protect the Class. Although AMS and Fuszner probably could have received more than \$10,000 each by settling on an individual basis and gotten paid sooner, they stayed true to the Class and did not settle on an individual basis. (Ex. 1 ¶ 29.) They each spent time pursuing class members' claims, remaining loyal to the class and helping to negotiate a strong class-wide outcome that will not only provide real relief to the class but will insure that any future faxed advertisements sent by Defendants contain TCPA-compliant opt-out notices.

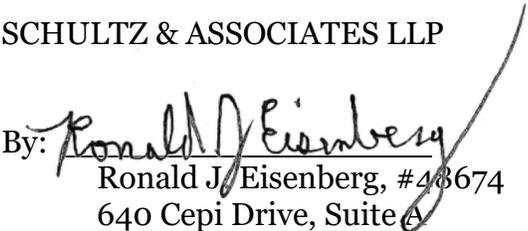
AMS's request for an incentive award of \$10,000 and Fuszner's request for \$5,000 are consistent with or less than incentive awards approved in comparable Missouri court matters, as well as smaller class action cases. *See, e.g., BPP v. Integrated Media Solutions, LLC*, No. 17SL-CC01069-01 (St. Louis County Cir. Ct. Feb. 27, 2018) (preliminarily approving TCPA settlement with \$12,000 incentive award); *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) (\$10,000 incentive award); *see also Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding \$25,000 incentive award); *Prater*, No. 4:14-cv-00159-ERW, 2015 WL 8331602, at \*4 (\$20,000 award); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 award). Given the foregoing, the requested incentive awards are fair and reasonable.

The reason for the differing amounts of the incentive awards is that AMS was a party to the case from its inception when the case was filed in this Court in February 2019. Once the case was removed to federal court, AMS was the sole plaintiff in the litigation until after the case was remanded to this Court and a motion to add Fuszner as an additional plaintiff was filed in February 2020. Apart from being involved in the case for a full year more than Fuszner, AMS devoted a day to in-person mediation.

Fuszner, in turn, added a great benefit to Class Counsel's ability to leverage the settlement, because once it became known to Defendants that even if they were to prevail at trial against AMS rather than settle, they could have faced a new lawsuit from Fuszner. In addition, Fuszner had been actively involved in communicating with Class Counsel, reviewing relevant documents, and in monitoring the notice administration.

WHEREFORE, Plaintiffs requests this Court grant Class Counsel an award of attorney's fees \$82,500, inclusive of costs and expenses, grant AMS an incentive award of \$10,000 for serving as a lead plaintiff, grant Fuszner an incentive award of \$5,000 for serving as a lead plaintiff, and grant any additional relief deemed proper.

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**CERTIFICATE OF SERVICE**

The above-signed certifies that this motion was filed through the eFiling system on April 29, 2020, and thus served by email to all registered counsel of record.