THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

COOPER MOORE and ANDREW GILLETTE, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

ROBINHOOD FINANCIAL LLC, a Delaware limited liability company,

Defendant.

Case No. 2:21-cv-01571-BJR

PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS, AND SERVICE AWARDS

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I. INTRODUCTION

Plaintiffs Cooper Moore and Andrew Gillette request that the Court award Class Counsel attorneys' fees of $2,250,000, or 25% of the $9 million settlement fund, allow reimbursement of out-of-pocket costs of $142,407.76, and approve a $10,000 service award to each Plaintiff.[1] These requests are well in-line with applicable law. The requested fee is equal to the Ninth Circuit's benchmark and the expenses requested to be reimbursed are of the kind charged to fee paying clients. The service awards are the same as those approved in similar cases. These requests are further supported by the particular facts of this case, including the quality of the result achieved and the contributions of Class Counsel and the Plaintiffs to the accomplishment of that result. The $9 million all-cash non-reversionary settlement is an excellent outcome for Settlement Class members, who need only submit a claim form to receive a pro rata payment. To achieve this result, Plaintiffs and Class Counsel vigorously litigated this case for more than two years. During that time, Class Counsel assumed the financial risk associated with contingent fee litigation and demonstrated their skill in this area by effectively and efficiently litigating, and ultimately resolving, this case. The substantial benefits for the Settlement Class could not have been achieved without Class Counsel's time, effort, and skill, as well as Plaintiffs' dedication and active participation. Plaintiffs respectfully request the Court grant their motion.

II. BACKGROUND

Class Counsel litigated this case extensively for over two years before the parties settled. Class Counsel took written discovery, including third-party discovery, litigated (and prevailed on) multiple motions, took two depositions and defended Plaintiffs' depositions, and worked with an expert who prepared a report in support of class certification.

A. The parties engaged in substantial discovery and motion practice over two years.

Plaintiff Moore filed the initial complaint on August 9, 2021, in the U.S. District Court for the Northern District of California on behalf of a proposed class of similarly situated

[1] Unless otherwise defined, all capitalized terms have the same meaning as in the parties' Settlement Agreement, ECF 93-1.

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individuals, alleging that Robinhood violated the Washington Commercial Electronic Mail Act, RCW 19.190, *et seq.* ("CEMA") and the Washington Consumer Protection Act, RCW 19.86, *et seq.* ("CPA") by assisting its users to send unsolicited advertising text messages to Washington residents through the Robinhood referral program. ECF 1. Robinhood moved to dismiss for failure to state a claim and moved to transfer the case to the Western District of Washington. ECF 21, 22. Both motions were fully briefed and argued. ECF 27, 30, 31, 32, 33. The court declined to reach the motion to dismiss and transferred the case to this Court. ECF 33.

Plaintiff filed a First Amended Complaint on February 9, 2022, that added Plaintiff Gillette. ECF 54. Robinhood again moved to dismiss and the Court denied Robinhood's motion. ECF 55, 56, 57, 63.

The parties completed substantial discovery. Plaintiffs propounded five sets of requests for production, five sets of interrogatories, and requests for admission on Robinhood. In addition to over 30,000 pages of documents, Robinhood produced extensive sample data related to the referral program. Plaintiffs responded to, and supplemented their responses to, two sets of requests for production, two sets of interrogatories, and requests for admission, and produced over 1,000 pages of documents. Plaintiffs took two Rule 30(b)(6) depositions of Robinhood representatives, and were deposed in full-day in-person depositions. Terrell Decl. ¶¶ 6, 8.

The parties met and conferred in writing and by videoconference numerous times to negotiate the scope of the parties' discovery responses and document productions. *Id.* ¶ 6. On May 26, 2022, the Court ordered Robinhood to produce documents, deposition transcripts, declarations, and discovery from related litigation. ECF 60. On March 22, 2023, the Court resolved a second discovery dispute, ordering Robinhood to produce a randomized and anonymized sample of 1000 entries of referral data along with other documents. ECF 71.

The parties also engaged in extensive third-party discovery. Plaintiffs subpoenaed one of Robinhood's vendors for relevant data. Terrell Decl. ¶ 8. Robinhood deposed the two individuals who sent Plaintiffs refer-a-friend text messages. *Id*. Robinhood also issued a subpoena to the operator of classaction.org seeking documents related to Class Counsel's investigation of

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Robinhood's conduct and the initiation of Plaintiffs' retainment of their counsel, which implicated Plaintiffs' and potential class members' communications with Class Counsel. Plaintiffs and their counsel successfully moved to quash. *See Moore v. Robinhood Fin. LLC*, No. 23-mc-76 (S.D.N.Y. April 26, 2023), ECF No. 24. The parties also issued subpoenas to several cell providers for data and documents, including Consumer Cellular, Verizon, and AT&T. Terrell Decl. *Id.* ¶ 8.

The parties had commenced expert discovery when they mediated. Plaintiffs retained an expert on database applications and served his opening report related to class certification days before the mediation, and responded to a subpoena related to his work. *Id.* ¶ 10.

B. With the assistance of an experienced mediator, the parties negotiated a settlement that provides significant monetary relief.

On October 30, 2023, the parties attended a full-day in-person mediation with Robert A. Meyer, Esq. of JAMS in Los Angeles, having exchanged detailed mediation statements beforehand. While the parties did not reach a settlement at the mediation, they made significant progress towards resolution and continued arms-length negotiations with Mr. Meyer's assistance. On November 30, 2023, the parties executed a Settlement Terms Sheet. The parties then spent several weeks finalizing the terms of the settlement, which are memorialized in the Settlement Agreement, ECF 93-1 ("SA"). Terrell Decl. ¶ 11.

The settlement requires Robinhood to pay $9,000,000 as a non-reversionary common fund for the Settlement Class and, in exchange, Settlement Class Members will release all claims related to text messages regarding the Robinhood referral program that were or could have been brought in this action. SA ¶¶ 1.13, 1.20. The Settlement Fund will be used to make payments to the Settlement Class, the costs of administering the settlement, and any amounts approved by the Court for attorneys' fees, litigation costs, and service awards for the Class Representatives. Each eligible Settlement Class Member who submits a timely and valid Claim Form will receive an equal *pro rata* distribution from the fund should the Court grant final approval. SA ¶ 4.06.

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III. ARGUMENT

A. The percentage-of-recovery method is the appropriate method for determining a reasonable attorneys' fee in this case.

Because Plaintiffs assert state law claims, Washington law governs the award of fees in this case. *Ginzkey v. Nat'l Sec. Corp.*, No. C18-1773 RSM, 2022 WL 16699092, at *1 (W.D. Wash. Nov. 3, 2022) (citing *Vizcaino v. Microsoft*, 290 F.3d 1043, 1047 (9th Cir. 2002)). "Under Washington law, the percentage-of-recovery approach is generally used to calculate fees in common fund cases." *Id.* (citing *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72 (1993)). The common fund doctrine is an equitable exception to the American rule that litigants must bear their own attorneys' fees. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). It is settled that "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." *Id.* The common fund doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Id.* A court can "prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.* As a matter of public policy, awarding fees from a common fund promotes "greater access to the judicial system" by making it easier for class plaintiffs to obtain counsel. *Bowles*, 121 Wn.2d at 72.

1. A fee award of 25% of the total Settlement value will fairly compensate Class Counsel for their work on behalf of the Settlement Class.

Under the "percentage of recovery" method attorneys are awarded a reasonable percentage of the total recovery, "often in the range of 20 to 30 percent." *Bowles*, 121 Wn.2d at 72; *see also In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure."); *City of Seattle v. Okeson*, 137 Wn. App. 1051, 2007 WL 884827, at *7 (2007) (unpublished) ("Twenty to thirty percent of the recovery is a typical benchmark used in awarding attorney fees under the

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common fund doctrine, but that figure can be adjusted based on the circumstances of the case."). Courts in this district "typically weigh[ ] five factors in determining what constitutes a reasonable award under the percentage-of-recovery method: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden; and (5) awards made in similar cases." *Ginzkey*, 2022 WL 16699092, at *1 (citing *Vizcaino*, 290 F.3d at 1048-50). Consideration of these factors supports a fee award of $2,250,000, which is 25% of the $9 million Settlement Fund.

a. Class Counsel achieved an excellent settlement for the Class.

The $9,000,000 Settlement is an excellent result for the Settlement Class. *See Bowles*, 121 Wn.2d at 72 ("In common fund cases, the size of the recovery constitutes a suitable measure of the attorneys' performance."). If the Court approves the requested notice and administration costs (estimated to be just under $670,000), attorneys' fees ($2,250,000), out-of-pocket litigation costs ($142,407.76), and service awards to the Plaintiffs ($20,000), the remainder of the Fund (approximately $5,917,592.24) will be distributed *pro rata* to Settlement Class Members who timely file a Claim Form. Assuming a claims rate of 5-10%,[2] the payment to each claimant will be $45–$90, or 9%-18% of the Settlement Class Members' $500 in statutory damages.

The settlement compares favorably to other settlements involving claims for allegedly unwanted telemarketing texts and calls. *See, e.g.*, *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 597-8 (N.D. Cal. 2020) (amount of settlement providing $4 per claimant, or "7.4% of estimated damages," weighed in favor of approval); *Estrada v. iYogi, Inc.*, No. 13-1989, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (preliminarily approving Telephone Consumer Protection Act ("TCPA") settlement where class members estimated to receive $40); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (approving settlement of state consumer law claims providing for $14.81 per claimant, finding it "represents a significant

[2] Claims rates are notoriously difficult to estimate and the actual claims rate may be on the lower end of the range (or even lower) because the estimate is based on a class size of 1.3 million people. Some of those people may not be Class Members because they did not receive the text messages, consented to receive them, or resided outside of Washington when they received them.

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portion of the recovery that class members could expect if they were to achieve total victory at trial."); *Rose v. Bank of Am. Corp*., No. 11-2390, 2014 WL 4273358, at *10 (N.D. Cal. 2014) (approving TCPA settlement where claimants were estimated to receive $20 to $40); *Dennings v. Clearwire Corp.*, No. 10-1859, 2013 WL 1858797, at *2-3 (W.D. Wash. May 3, 2013) (approving attorneys' fees incurred in litigating CPA claims that settled with average claim payment of $16.02).

This factor weighs in favor of Class Counsel's fee request.

b. Class Counsel litigated the case on a contingency basis and assumed a significant risk of no recovery.

Class Counsel's fee request also reflects that the case was risky and handled on a contingency basis. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015); *Vizcaino*, 290 F.3d at 1048; *see also Jenson v. First Trust Corp.*, No. CV 05–3124, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that *any* recovery ultimately would be obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of expenses, is important to determining a proper fee award." (internal citation omitted)). Class Counsel represented Plaintiffs and the Settlement Class entirely on a contingent basis, investing over 1,771 hours and $142,400 over the course of two years. Terrell Decl. ¶¶ 35, 39-41; Drake Decl. ¶¶ 21-22, 28. Courts recognize that "[w]ith respect to the contingent nature of the litigation … above-market-value fee awards [are] more appropriate in this context given the need to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees." *Destefano v. Zynga, Inc.,* No. 12-cv-04007-JSC, 2016 WL 537946, at *18 (N.D. Cal. Feb. 11, 2016) (citing *In re Wash. Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)).

Here, recovery was far from certain, in part because case law applying CEMA is still evolving—the Washington Supreme Court has issued only a single opinion addressing the statute's provision, *Wright v. Lyft*, 189 Wn.2d 718 (2017)—and the strength of Plaintiffs' claims could be impacted by new decisions that differ from their understanding of the law. For example,

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the parties dispute the evidence Robinhood needs to prove its consent defense. In an unpublished decision, the Washington court of appeals held that whether a person consented is a question of fact and "a person clearly and affirmatively consents by unambiguously asserting voluntary agreement or concurrence or, in other words, by making an expression of affirmation of agreement or concurrence in a manner easily understood." *Budke v. Dan's Herbs, LLC*, 25 Wn. App. 2d 1005, 2022 WL 17969245, at *2 (2022) (unpublished), *rev. denied*, 1 Wn.2d 1013 (2023). Robinhood asserted that it could satisfy this burden by showing individuals consent to receive referral text messages by voluntarily providing their phone numbers to the Robinhood customers who sent the texts or by communicating with those individuals about Robinhood and the referral program. Plaintiffs disagree with Robinhood's interpretation of the law but recognize the risk this issue presents to both class certification and the merits of their claims.

At the time of settlement, Plaintiffs had yet to overcome several procedural hurdles before they could recover anything for Settlement Class members. They would have to obtain and maintain class certification, defend the admissibility of their experts' opinions, defeat a likely motion for summary judgment, and persevere through any appeals. The outcome of trial is always uncertain, and even a total success at trial could be partially or wholly reversed on appeal. This risk was especially pronounced here, where there are few judicial opinions addressing the specific provision under which Plaintiffs' claims were brought, and where Plaintiffs' ability to satisfy the elements of their claims on a class basis would have been hotly contested, both legally and factually.

Due to these multiple risks, Class Counsel faced the very real possibility they would not recover any fees and costs. *See Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (awarding fees above the 25% benchmark where, absent settlement, "there would remain a significant risk that the Settlement Class may have recovered less or nothing"); *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1046–47 (N.D. Cal. 2008) ("The risk that further litigation might result in Plaintiffs not recovering at all,

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particularly a case involving complicated legal issues, is a significant factor in the award of fees."). This factor weighs in favor of Class Counsel's fee request.

c. Class Counsel demonstrated skill and quality of work.

Class Counsel were able to litigate this case efficiently because of their experience in litigating class action cases, including cases involving CEMA claims and similar claims such as claims for violations of the TCPA. *See* Terrell Decl. ¶¶ 12, 14-15; Drake Decl. ¶¶ 11-12. Class Counsel relied on their depth of experience with these types of claims and class action litigation to focus their discovery efforts, identify the strengths and weaknesses of Plaintiffs' claims, and negotiate a settlement that capitalized on the strength of the claims while taking into account the risks of continued litigation. Class Counsel attained this relief for the Settlement Class even as they faced the vigorous defense of Robinhood's skilled counsel. *See, e.g.*, *Destefano*, 2016 WL 537946, at *17 ("The quality of opposing counsel is also relevant to the quality and skill that class counsel provided."); *Lofton*, 2016 WL 7985253, at *1 (the "risks of class litigation against an able defendant well able to defend itself vigorously" support an upward adjustment in the fee award). This factor supports the fee request.

d. Awards in similar cases show that the requested fee is reasonable.

The Ninth Circuit has held that in determining an appropriate fee, it is "appropriate to examine lawyers' reasonable expectations, which are based on the circumstances of the case and the range of fee awards out of common funds of comparable size." *Vizcaino*, 290 F.3d at 1050. Washington courts routinely award attorneys' fees of 25% or more of the common fund. *See Bowles*, 121 Wn.2d at 72 (fee awards are "often in the range of 20 to 30 percent" of the common fund); *Okeson*, 2007 WL 884827, at *7. A fee of 25% of the common fund is also the Ninth Circuit benchmark. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d at 942; *see also Reed v. Light & Wonder, Inc.*, No. 18-CV-565-RSL, 2022 WL 3348217, at *1 (W.D. Wash. Aug. 12, 2022) ("the mean percentage award of attorneys' fees in class actions in the Ninth Circuit is 24.5% of the common fund, and the mean percentage award in this District is 26.98"). Class Counsel's request for a fee award of 25% of the common fund is consistent with awards in

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similar cases in both state and federal court. *See Ferrando v. Zynga Inc.*, No. 22-CV-214-RSL, 2022 WL 17741841, at *1 (W.D. Wash. Dec. 1, 2022) (awarding award 25% of a $12 million common fund as attorneys' fees); *Advanced Interventional Pain & Diagnostics of Western Arkansas, LLC v. Adva Holdings, LLC*, No. 20-cv-02704 (M.D. Fla. June 22, 2021) (ECF 108) (awarding 25% of a $9 million common fund in TCPA settlement as attorneys' fees); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 3:08-cv-00248 (S.D. Cal. Sept. 28, 2012) (ECF 137) (awarding class counsel 30% of a $9 million common fund in TCPA settlement).

2. A lodestar crosscheck confirms the requested fee is reasonable.

a. Class Counsel's lodestar is reasonable.

Because Class Counsel's fee request is reasonable under the percentage-of-the-recovery method, the Court is not required to conduct a lodestar crosscheck. *See Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) ("This Court has consistently refused to adopt a crosscheck requirement, and we do so once more."). But the Court may use a rough calculation of the lodestar as a crosscheck to assess the reasonableness of an award based on the percentage method. *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."); *see also Glass v. UBS Fin. Servs.*, 331 F. App'x 452, 456-57 (9th Cir. 2009) (affirming fee award of 25% of a settlement fund with an "informal" lodestar crosscheck and despite "the relatively low time-commitment by plaintiff's counsel" because "the district court did not abuse its discretion in giving weight to other factors, such as the results achieved for the class and the favorable timing of the settlement").

Courts use a two-step process in applying the lodestar method. First, the court calculates the "lodestar figure" by multiplying the number of hours reasonably expended by a reasonable rate. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). "The calculation of reasonable hours and hourly rate is entrusted to the discretion of the court … in light of the court's first-hand contact with the litigation and attorneys involved." *Morris v. FPI Mgmt., Inc.*, No. 2:19-CV-0128-TOR, 2022 WL 3013076, at *6 (E.D. Wash. Feb. 3, 2022) (citing *Costa v.*

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Comm'r of Soc. Sec. Admin., 690 F.3d 1132, 1135 (9th Cir. 2012)). Once the lodestar is determined, courts may adjust the amount to account for several factors, such as the benefit obtained for the class, the risk of nonpayment, the complexity and novelty of the issues presented, and awards in similar cases. *See In re Bluetooth*, 654 F.3d at 942. "Foremost among these considerations … is the benefit obtained for the class." *Id.* "The aim is to 'do rough justice, not to achieve auditing perfection.'" *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628, 2023 WL 6370233, at *6 (C.D. Cal. Sept. 14, 2023) (citation omitted).

Class Counsel expended a reasonable number of hours litigating this case from its inception through discovery and motion practice and negotiation of the settlement and related briefing. In all, Class Counsel have dedicated over 1,771 hours to the litigation to date. Terrell Decl. ¶¶ 32-36; Drake Decl. ¶¶ 22-23, 27-28. This total excludes time that Class Counsel removed as administrative, that did not benefit the Settlement Class, or that was arguably excessive. Terrell Decl. ¶ 34; Drake Decl. ¶ 27. As in every case, counsel will spend additional hours to see this case through to final resolution, including the work necessary to prepare the motion for final approval, attend the hearing on final approval, and ensure the claims process is properly carried out.

Class Counsel's hourly rates of $125-$1,180 are also reasonable. These rates are consistent with the prevailing market rates in the relevant community, which is the forum in which the district court sits. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). Courts approve rates that are comparable to "the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007); *see also Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005) (hourly rates are reasonable if they fall within the range of "prevailing market rates in the relevant community" given "the experience, skill, and reputation of the attorney"). Courts consider declarations from plaintiffs' counsel and fee awards in other cases as evidence of prevailing market rates. *Welch*, 480 F.3d at 947.

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Class Counsel are experienced, highly regarded members of the bar with extensive expertise in class actions and complex litigation involving claims like the claims at issue in this case. They have provided the Court with declarations describing their background and experience. Terrell Decl. ¶¶ 12-20; Drake Decl. ¶¶ 4-14, Ex. 1. Class Counsel set their rates for attorneys and staff members based on a variety of factors, including the experience, skill, and sophistication required for the types of legal services performed, the rates customarily charged in the markets where legal services are typically performed, and the experience, reputation, and ability of the attorneys and staff members. Terrell Decl. ¶ 37; Drake Decl. ¶ 26.

Federal and state courts in Washington and elsewhere have approved Class Counsel's rates. Terrell Decl. ¶ 38; Drake Decl. ¶ 26; *see also*, *e.g.*, *Berman v. Freedom Financial Network, LLC*, No. 4:18-cv-01060-YGR (N.D. Cal. Feb. 23, 2024) (ECF 368 at 8-11) (approving Terrell Marshall partner rates from $725 to $775 and staff rates from $125 to $295);[3] Final Approval Order and Judgment ¶ 17, *Shaw v. Schell & Kampeter, Inc.*, No. 2:20-cv-01620-RAJ (W.D. Wash. Oct. 4, 2021) (approving similar rates);[4] Final Approval Order and Judgment ¶ 19, *Mael v. Evanger's Dog & Cat Food Co., Inc.*, No. 3:17-cv-05469-RBL (W.D. Wash. June 12, 2020), ECF No. 138 (approving partner rates of $500-$750 per hour);[5] Order Approving Award of Attorneys' Fees and Costs ¶ 10, *Terrell v. Costco Wholesale Corp.*, No. 16-2-19140-1 SEA (King County Super. Ct. June 19, 2018) (approving similar rates for Terrell Marshall and Berger Montague); *Stewart v. Snohomish County Public Utility Dist. No. 1*, No. C16-0020-JCC, 2017 WL 4538956, at *1 (W.D. Wash. Oct. 11, 2017) (paralegal rates ranging from $145 to $240 are reasonable). Even at the high end of the requested partner-level rates (which apply to a small number of hours billed), the rates requested here are in line with those approved in other cases in this district. *See Brazile v. Comm'r of Soc. Sec.*, No. C18-5914-JLR, 2022 WL 503779, at *3

[3] The hourly rates are set forth in counsel's declaration filed at ECF 357.
[4] The hourly rates are set forth in counsel's declaration filed at ECF 49.
[5] The hourly rates are set forth in counsel's declaration filed at ECF 128.

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(W.D. Wash. Feb. 18, 2022) (noting "that fee awards with hourly rates exceeding $1,000 have been approved by courts in this district on numerous occasions," and citing cases).

b. The requested multiplier is reasonable.

Using Class Counsel's current rates, Class Counsel's fee request of $2,250,000 represents a reasonable multiplier of 1.98 on their $1,136,709.00 lodestar. Courts regularly award multipliers of up to four. *Vizcaino*, 290 F.3d at 1051 n.6 (collecting cases and finding that in approximately 83% the multiplier was between 1.0 and 4.0 and affirming a multiplier of 3.65). Courts approach multipliers differently when the lodestar method is used a crosscheck because they "are not bound by the Supreme Court's rulings that limit multiplied lodestars in the fee-shifting context." 5 Newberg on Class Actions § 15:91 (6th ed. Nov. 2023 update); *see also Vizcaino,* 290 F.3d at 1051 ("courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases"). Multipliers are therefore commonplace when courts use the lodestar method to cross-check a percentage-of-the-recovery fee. 5 Newberg § 15:49 ("In common fund cases, fee adjustments—or multipliers—are common."). As the Washington Supreme Court has recognized, "[t]he experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 598 (1983) (citation omitted); *see also* 5 Newberg § 15:91 ("[B]ecause most class suits are contingent fee cases in which counsel only get paid if they prevail, a bonus is generally defensible on the ground that it provides an incentive that encourages lawyers to undertake such work—absent some 'upside' on their loan of services to their clients, they would have no economic reason to invest in such cases.").

In light of the above recognition of the need for an incentive, as well as of the delayed payment lawyers in contingent fee cases experience, courts routinely find higher multipliers appropriate when using the lodestar method as a crosscheck for a percentage-of-the-recovery award. *See, e.g., Reyes v. Experian Info. Sols., Inc.*, 856 F. App'x 108, 111 (9th Cir. 2021) ("Assuming a 25% award, the lodestar crosscheck returns a multiplier of 2.88. Similar lodestars

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are routinely approved by this court.").[6] Notably, even if Class Counsel's requested rates and hours were substantially adjusted, the requested multiplier would still fall comfortably within the range of multipliers that are routinely granted in similar cases.

In addition to evaluating the numeric value of the requested multiplier, courts also keep in mind additional factors when evaluating ta requested multiplier, including the risk of nonpayment, the delay in payment, the benefit obtained for the class, and the quality of the representation. *See* David F. Herr, Manual for Complex Litig. § 14.122 (4th ed. May 2023 update); *see also Stanikzy v. Progressive Direct Ins. Co.*, No. 2:20-CV-118 BJR, 2022 WL 1801671, at *7 (W.D. Wash. June 2, 2022) (approving a multiplier of "nearly 3" where "the matter appears to have been handled efficiently, led by counsel with substantial experience litigating the types of claims at issue here, and was settled at a relatively early stage, which the Court is pleased to reward"), *aff'd,* No. 22-35524, 2023 WL 4837875 (9th Cir. July 28, 2023). These factors also support the reasonability of the requested multiplier here. Class Counsel achieved an excellent result, requiring Robinhood to pay $9 million for the benefit of the Settlement Class despite strong defenses to class certification and liability. Class Counsel provided high quality representation throughout the litigation and resolution of the case, as demonstrated by both Class Counsel's success on contested motions, and the relative speed with which the settlement was achieved. Finally, Class Counsel undertook this litigation on a

[6] *See also Steiner v. Am. Broad Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding a multiplier of approximately 6.85 to be "well within the range of multipliers that courts have allowed" when crosschecking a fee based on a percentage of the fund); *Morris*, 2022 WL 3013076, at *6 (approving a fee of 25% of the settlement fund with a lodestar multiplier of 3.64); *McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc.*, No. 1:16-cv-00157, 2017 WL 5665848, at *8 (E.D. Cal. Nov. 27, 2017) (finding a multiplier of 3.95 "within the range of acceptable lodestar multipliers previously approved by this court and others"); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358 (S.D.N.Y. 2002) (finding a "modest multiplier of 4.65 is fair and reasonable" when cross-checking a fee of ⅓ of the settlement fund); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (finding multiplier of 3.6 "well within the acceptable range" and explaining that "[m]ultipliers in the 3-4 range are common"); *Bowles*, 121 Wn.2d at 73 (finding reasonable a fee awarded under the percentage method that was three times the lodestar amount); *Bowers*, 100 Wn.2d at 601 (no abuse of discretion to award a fee that was a 50% premium on lodestar "to reflect the contingent nature of the recovery of fees").

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contingency basis with no guarantee of payment and to the preclusion of other work. Terrell Decl. ¶ 32; Drake Decl. ¶ 17. A multiplier of 1.98 is fair compensation for Class Counsel's work and the risk they assumed.

B. Class Counsel's litigation costs were necessarily and reasonably incurred.

Class Counsel incurred $142,407.76 in litigation costs, including expert fees, professional fees, filing and service fees, mediation fees, postage, and transcript costs. Class Counsel incurred substantial professional fees necessary for the legal representation of third parties that had been subpoenaed by Robinhood, including the operator of classaction.org, an agent of Berger Montague that connected Class Counsel with Plaintiffs and other potential class members, and the individuals that sent Plaintiffs the text messages at issue in this case. These costs were expended to benefit Plaintiffs and the Class, as Robinhood sought to discover privileged class member communications with one subpoena and sought documents and testimony from Plaintiffs' friends and family members with the other. Terrell Decl. ¶ 40; Drake Decl. ¶ 19. These costs, and the others incurred by Class Counsel, were reasonable and necessary to this litigation and the type of costs normally charged to a paying client. Terrell Decl. ¶ 40. Courts routinely reimburse these types of costs. 5 Newberg § 16.10 (class counsel can typically recover costs from a common fund that would "normally be charged to a fee paying client"); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Corson v. Toyota Motor Sales U.S.A., Inc.*, No. CV 12-8499, 2016 WL 1375838, at *9 (C.D. Cal. Apr. 4, 2016) ("Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable"); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (awarding costs for document review, depositions, and experts).

C. Plaintiffs' requested service awards should be approved.

Service awards "are intended to compensate class representatives for work undertaken on

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behalf of a class" and "are fairly typical in class action cases." *In re Online DVD*, 779 F.3d at 943 (citation omitted). The awards recognize class representatives' efforts and the financial or reputational risk they undertake in bringing the case, and their willingness to act as private attorneys generals. *Rodriguez v. W. Publishing*, 563 F.3d 948, 958-59 (9th Cir. 2009). They are generally approved if they are reasonable and do not undermine the class representative's adequacy. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013).

Here, each Plaintiff dedicated substantial time to the litigation for the benefit of all Settlement Class members, including by developing the claims, responding to discovery, producing documents and personal text messages, and attending in-person depositions in Seattle that went for most of the day. *See* Declaration of Cooper Moore ¶¶ 7-12, 14; Declaration of Andrew Gillette ¶¶ 7-12, 14. They also assisted in the settlement process by authorizing the settlement in principle and reviewing and executing the Settlement Agreement. Moore Decl. ¶ 15; Gillette Decl. ¶ 15. Perhaps most importantly, Plaintiffs rejected individual settlement offers so they could pursue a result that benefited all Class members and not just themselves—and did so despite Robinhood's threats that doing so could subject them to substantial personal liability. Moore Decl. ¶ 9; Gillette Decl. ¶ 9. Service awards of $10,000 are appropriate in this case. *See Tuttle v. Audiophile Music Direct, Inc.*, No. C22-1081JLR, 2023 WL 8891575, at *16 (W.D. Wash. Dec. 26, 2023) (approving service of award of $10,000, and citing cases approving similar awards); *Morris*, 2022 WL 3013076, at *7 (approving service award of $10,000 because of the plaintiff's efforts on behalf of the Settlement Class, and even though it was "noticeably greater than the $30.67 award for all unnamed class members"); *Wilson v. Huuuge, Inc.*, No. 18-CV-5276-RSL, 2021 WL 512229, at *2 (W.D. Wash. Feb. 11, 2021) (approving service award of $10,000); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 JLR, 2019 WL 5536824, at *3 (W.D. Wash. Oct. 25, 2019) (approving service award of $10,000).

IV. CONCLUSION

Plaintiffs request the Court approve a fee award of $2,250,000, or 25% of the $9 million settlement fund, reimbursement of $142,407.76 in costs, and service awards of $10,000 each.

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RESPECTFULLY SUBMITTED AND DATED this 12th day of April, 2024.

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