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9 **SUPERIOR COURT OF CALIFORNIA**
COUNTY OF LOS ANGELES

10 DAVE VACCARO, individually and on) Case No. 20STCV03833
11 behalf of all others similarly situated,)
12 Plaintiff,) *[Assigned for All Purposes to the Hon. David*
S. Cunningham, Dept. 11]

13 vs.)

14 SUPERCARE, INC. and DOES 1 through 10,) **PLAINTIFF’S NOTICE OF MOTION**
15 inclusive,) **AND MOTION FOR ATTORNEYS’**
16 Defendant.) **FEES, COSTS AND INCENTIVE**
AWARDS

) Date: March 7, 2023
) Time: 9:30 a.m.
) Department: 11

18)
19) **Submitted Under Separate Cover**

- 20) • Declaration of Todd Friedman;
21) Declaration of Dave Vaccaro and
22) [Proposed] Order.
23)
24)
25)

1 **ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE that on March 7, 2023, at 9:30 a.m., or as soon thereafter as
3 counsel may be heard, in Department 11 of the Los Angeles Superior Court, located 312 N.
4 Spring Street, Los Angeles, California, 90012, Plaintiff DAVID VACCARO (“Plaintiff”), by and
5 through his attorneys of record (“*Vaccaro Counsel*”) will move the Court for an Order Granting
6 Plaintiff’s Motion for Attorney’s Fees Costs and Incentive Award.
7

8 This Motion is based on this Notice of Motion, the accompanying Memorandum of
9 Points and Authorities, the Declarations of Todd M. Friedman, David Vaccaro and Brad
10 Madden, the complete file in this action and any other documentary and/or oral evidence as may
11 be presented at the time of the hearing on this Motion.

12
13 Dated: February 14, 2023

LAW OFFICES OF TODD M. FRIEDMAN

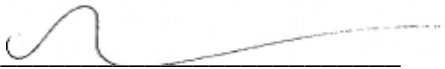
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15 By: 
16 TODD M. FRIEDMAN, ESQ.
17 ATTORNEY FOR PLAINTIFF
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Dave Vaccaro ("Plaintiff") seeks attorneys' fees, costs
4 and an incentive award as a result of the final approval of the proposed class action settlement
5 with Supercare, Inc., ("Defendant") who do not oppose this Motion. In the proposed settlement,
6 Defendant has agreed to pay \$750,000 ("Total Settlement Amount") to the members of the
7 settlement class. The Settlement resolves the Invasion of Privacy ("IPA") claims brought
8 against Defendant in this action.

9 The Settlement is the result of the hard work performed by Class Counsel, over the
10 period this case has been pending, including researching Defendant; interviewing Plaintiffs,
11 reviewing and analyzing the records during the Class Period, conducting confirmatory
12 discovery into the size of the class, negotiating and administering the settlement. As such,
13 Plaintiff should be awarded his fees and costs, the Claims Administrator should be paid for
14 providing its services, and the Class Representative should receive an incentive award for
15 expending considerable time and effort actively pursuing this matter to resolution.

16 Specifically, The Law Offices of Todd M. Friedman, PC ("Class Counsel") bring this
17 instant Motion for Attorneys' Fees, Costs and Incentive Awards based upon the share of the
18 Total Settlement Amount calculated to compensate Settlement Class Members with claims
19 factually similar to Plaintiff which accounts for \$250,000.00 in fees plus \$10,000.00 in costs of
20 the total \$750,000.00 in the Total Settlement Amount.

21 **II. FACTUAL BACKGROUND**

22 Plaintiff's operative Complaint alleges that Delta violated The California Invasion of
23 Privacy Act, Cal. Penal Code § 630 et seq. ("IPA") during every call, by recording consumers'
24 communications without telling them they are doing so at the outset of the conversation.
25 Plaintiff contends he and the Class are entitled to statutory damages pursuant to the IPA.
Defendant has vigorously denied and continue to deny that it violated the IPA, and denies all
charges of wrongdoing or liability asserted against it in the Action.

A. Proceedings to Date

Plaintiff's Complaint was filed on January 30, 2020, alleging violations of the IPA.
Plaintiff's claims stemmed from recorded phone calls made by Defendant that took place in or
about June of 2019. The Parties engaged in written discovery before agreeing to mediation.

1 The Parties attended a mediation with Lynn Frank on February 2, 2021. Through her guidance,
2 this Settlement was reached. *See Friedman Decl.*, ¶ 8.

3 Plaintiff filed a Motion for Preliminary Approval before this Honorable Court on July
4 20, 2021, which was Originally set for hearing on November 9, 2021. On November 8, 2021,
5 the Court issued a Checklist to the parties, advising of changes that needed to be made in
6 advance of any potential Preliminary Approval, including questions needed to be answered on
7 Defendant’s financial state, and the information exchanged between both parties that assisted
8 the joint decision to resolve this matter. This Honorable Court also ordered the parties to make
9 extensive changes to the agreement and notice, including, but not limited to, changes to the
10 Civil 1542 Waiver and final Judgment. *See Friedman Decl.*, ¶ 9.

11 Both parties worked to make changes to the settlement, notices and provide further
12 information to the Court and a new hearing on the parties Motion for Preliminary Approval was
13 set to be heard on April 22, 2022. On that date the Court issued an Order requiring more
14 supplemental briefing and information/changes to be provided before preliminary approval
15 could be granted. This information was provided to the Court on July 18, 2022, and on October
16 21, 2022, this Court granted Preliminary Approval of this settlement (Please Order Attached as
17 Exhibit “B”). *See Friedman Decl.*, ¶ 10.

18 After, notice was mailed to 75,234 Class Members’ last known addresses, fully laying
19 out the terms of the settlement agreement, the rights of the Class Members to object and the
20 rights of the Class Members to opt out of the class, less than 7% of which were returned without
21 finding an updated address. After the Class Members were so informed, ***zero objections and***
22 ***only five opt-outs*** were lodged. 11.2% of Class Members submitted claims, which is a very
23 good take rate for consumer class actions.

24 Class Counsel is knowledgeable about and has done extensive research with respect to
25 the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel
has diligently pursued an investigation of the Settlement Class Members’ claims against
Defendant. Based on the forgoing data and on their own independent investigation and
evaluation, Class Counsel is of the opinion that the settlement with the Defendant for the
consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and
adequate and is in the best interest of the Settlement Class Members in light of all known facts
and circumstances, including the risk of significant delay and uncertainty associated with

1 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.
2 Although it denies any liability, Defendant has agreed to settle the claims on the terms set forth
3 in the Settlement Agreement.

4 **III. THE SETTLEMENT**

5 Defendants agree to establish a Settlement Fund in the amount of \$750,000 (Agreement
6 § 4.1, p. 7) in order to fund the following:

7 (1) providing notice to Class Members; (2) providing settlement checks to Class Members
8 entitled to receive a settlement check; (3) creating and maintaining the Settlement Website; (4)
9 maintaining a toll-free telephone number (total estimated administration costs of under
10 \$110,000¹); (5) Litigation expenses of up to \$10,000.00; (6) to pay the proposed \$10,000
11 Service Award to the Plaintiff (Agreement § 7, p.8); (7) payment of the proposed Attorneys'
12 Fees of \$250,000.00 (33.33% of the Settlement Fund) (Agreement § 6, p. 8). *See Friedman*
Decl., ¶¶ 20-23. Any funds remaining after payment of all settlement costs and Payments to the
13 Settlement Class shall be paid 50% to EPIC and 50% to Public Justice, as cy pres recipients.

14 **IV. ARGUMENT**

15 **A. THIS COURT SHOULD AWARD CLASS COUNSEL FEES AND COSTS**

16 Both the United States Supreme Court and the California Supreme Court have long
17 recognized the need for class actions in consumer cases where recoveries are too small to
18 warrant individual prosecution. Over a quarter of a century ago, the California Supreme Court
19 explained:

20 Modern society seems increasingly to expose men to ... group injuries for which
21 individually they are in a poor position to seek legal redress, either because they
22 do not know enough or because such redress is disproportionately expensive. If
23 each is left to assert his rights alone if and when he can, there will at best be a
24 random and fragmentary enforcement, if there is any at all. This result is not only
25 unfortunate in the particular case, but it will operate seriously to impair the
deterrent effect of the sanctions which underlie much contemporary law.

26 *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971); *see also Linder v. Thrifty Oil Co.*, 23 Cal.
27 4th 429, 434 (2000) (“Courts long have acknowledged the importance of class actions as a
28 means to prevent a failure of justice in our judicial system.”).

29 The concerns articulated by the Court in *Vasquez* apply precisely to this action.

30 ¹ Plaintiff is now seeking \$120,265 in administration costs due to increased postage and paper
31 costs. See Declaration of Brad Madden filed concurrently with Plaintiff’s Motion for Final
32 Approval § 17.

1 Individual Class Members could, or would, not have undertaken the burden of investigation and
2 litigation necessary to prosecute individual claims against it. A class action was necessary to
3 vindicate their rights. As the United States Supreme Court explained in *Amchem Prods. Co. v.*
4 *Windsor*, 521 U.S. 591 (1997):

5 The policy at the very core of the class action mechanism is to overcome the
6 problem that small recoveries do not provide the incentive for any individual to
bring a solo action prosecuting his or her rights. A class action solves this
7 problem by aggregating the relatively paltry potential recoveries into something
worth someone's (usually an attorney's) labor.

8 *Id.* at 617.

9 The reality is that appropriate awards of attorneys' fees are absolutely necessary in order
10 to ensure that consumer and employee rights are protected and vindicated. One of the
11 fundamental axioms of class action law is that a plaintiff who obtains a settlement on behalf of
12 absentee class members is allowed to recover reasonable attorneys' fees and costs incurred in
13 the litigation. *See, e.g., Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)
14 (recognizing the right of class action plaintiffs who have obtained a settlement to recover
15 attorneys' fees and costs because, "[t]o allow the others to obtain full benefit from the plaintiff's
16 efforts without contributing equally to the litigation expenses would be to enrich the others
17 unjustly at the plaintiff's expense.").

18 Contingency fee litigation is always risky. Despite this risk, Class Counsel have
19 secured an excellent result in this litigation, and Class Counsel respectfully submit that the
20 award of \$250,000.00 in fees and \$10,000.00 in litigation costs as well as a service payment of
21 \$10,000 to the Class Representative is therefore appropriate. As explained below, the requested
22 fee reflects a modest lodestar multiplier of 1.34 after years of work on this litigation, of Class
23 Counsel's actual fees of \$186,690.00. Plaintiffs are entitled to recover reasonable attorneys'
24 fees, expenses and costs under Code of Civil Procedure § 1021.5. Moreover, when a party is
25 entitled to statutory fees, "the fee should ordinarily include compensation for all hours
reasonably spent, including those relating solely to the fee". *See Serrano v. Unruh*, 32 Cal. 3d
621, 624 (1982) ("*Serrano IV*"). California courts, in exercising their broad discretion to
determine the appropriate fee, may base their calculations on the "lodestar" and "multiplier"
method. *See Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 322 (1983); *Serrano v. Priest*, 20 Cal.
3d 25, 48-49 (1977) ("*Serrano III*"). That said, it is submitted that the fee award sought herein
is reasonable under both the lodestar/multiplier and common fund approaches in determining

1 reasonable attorney’s fees. Class Counsel’s costs are also fully documented, necessarily
2 incurred and otherwise reasonable.

3 The reaction of the Class to the Settlement terms relating to fees and costs must also be
4 recognized. To date, zero Class Members have opted out and zero Class Members have objected
5 to the Fee request. Courts have interpreted that response as evidence that the Settlement
6 warrants final approval. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*,
7 85 Cal. App. 4th 1135, 1152-53 (2000) (finding response of class members to be
8 “overwhelmingly positive” where “a mere 80 of the 5,454 absent class members elected to opt
9 out of the settlement.”).

10 **1. The requested attorney’s fees are reasonable, fair and appropriate**
11 **under the lodestar/multiplier approach**

12 Under the lodestar/multiplier approach, the court computes the “lodestar” amount by
13 multiplying the number of hours reasonably expended by each attorney or legal staff member by
14 their reasonable hourly rates. *See Serrano III*, 20 Cal. 3d at 48. However, “the lodestar formula
15 does not limit consideration to hours expended and hourly rate, though that is the foundation of
16 the calculation.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 40 (2000). The court
17 then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the
18 novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *See*
19 *Serrano III*, 20 Cal. 3d at 49; *see also Lealao*, 82 Cal. App. 4th at 26; *Thayer v. Wells Fargo*
20 *Bank*, 92 Cal. App. 4th 819, 834 (2001) (“[t]here is no hard-and-fast rule limiting the factors
21 that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).
22 Class Counsels’ fee demand is justified based upon the lodestar method of calculating fees.

23 ***a. The number of hours claimed is reasonable***

24 Counsel for prevailing parties are entitled to be compensated “for all time reasonably
25 expended in pursuit of the ultimate result achieved in the same manner that an attorney
traditionally is compensated by a fee-paying client for all time reasonably expended on a
matter.” *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983) (internal quotes and citation omitted);
see also Serrano IV, 32 Cal. 3d at 633 (parties “should recover for all hours reasonably spent”).
The amount of time Class Counsel spent on this case (238.40 hours), which culminated in the
very favorable Settlement, is entirely reasonable given the complexity of the issues involved,
Defendants’ vigorous defense, the length of time the litigation has been pending, and the

1 exceptional results obtained. Further, all of Class Counsel’s time is supported by the
2 declarations submitted concurrently with this Motion which themselves are based on records
3 that are maintained contemporaneously in the normal course of Class Counsel’s practice. *See, In*
4 *re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 511-12 (2009) (“We see no
5 reason why [the court] could not accept the declarations of counsel attesting to the hours
6 worked, particularly as he was in the best position to verify those claims by reference to the
7 various proceedings in the case.”); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
254-55 (2001).

8 **b. *The hourly rates requested are reasonable***

9 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable
10 market value of their legal services, based on their experience and expertise. *See Serrano IV*, 32
11 Cal. 3d at 640 n.31; *San Bernardino Valley Audubon Soc’y, Inc. v. County of San Bernardino*,
12 155 Cal. App. 3d 738, 755 (1984). “The reasonable hourly rate is that prevailing in the
13 community for similar work.” *PCLM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).
14 Payment at full market rates is essential to entice well-qualified counsel to undertake difficult
15 cases such as this one. *See Audubon Soc’y*, 155 Cal. App. 3d at 755. Class Counsel’s hourly
16 rates are fully supported by their experience and reputation in handling complex class action
17 litigation. *See Friedman Decl.* ¶¶ 42-52. Further, Class Counsel charge rates commensurate
18 with the prevailing market rates for attorneys of comparable experience and skill handling
19 complex litigation and Class Counsel made all reasonable attempts to assign tasks to
20 timekeepers at the appropriate billing rates.

21 **2. The requested attorneys’ fees and costs are reasonable, fair and**
22 **appropriate under the Common Fund Doctrine.**

23 As the California Supreme Court has held, a one-third attorney fee in a complex class
24 action is reasonable benchmark for complex class action settlements in California. *Laffitte v.*
25 *Robert Half Intern. Inc.* (2016) 1 Cal. 5th 480. While the lodestar method set forth above weighs
in favor of granting this Motion, a percentage of the common fund calculation supports the
requested fee as well. The concept of awarding attorneys’ fees from a common fund such as at
issue here was stated in the following manner by the California Supreme Court: “[W]hen a
number of persons are entitled in common to a specific fund, and an action brought by a
plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,

1 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” *Serrano III*, 20 Cal.
2 3d at 34; *see also Lealao*, 82 Cal. App. 4th at 26 (observing that “Fee spreading occurs when a
3 settlement or adjudication results in the establishment of a separate or so-called common fund
4 for the benefit of the class. Because the fee awarded class counsel comes from this fund, it is
5 said that the expense is borne by the beneficiaries.”). In addition to spreading the litigation fees
6 among all beneficiaries, awards of common fund fees are essential to furthering the important
7 societal goal of attracting competent counsel to handle these often complex contingency cases
8 “who will be more willing to undertake and diligently prosecute proper litigation for the
9 protection or recovery of the fund if [the attorneys are] assured that [they] will be promptly and
10 directly compensated should [their] efforts be successful.” *Melendres v. City of Los Angeles*, 45
11 Cal. App. 3d 267, 273 (1975) (quoting *In re Stauffer’s Estate*, 53 Cal. 2d 124, 132 (1959)). In
12 California, trial courts have inherent equitable power to award attorney’s fees on a common
13 fund basis when counsel’s efforts “have resulted in the preservation or recovery of a certain or
14 easily calculable sum of money.” *Serrano III*, 20 Cal. 3d at 35. The traditional method for
15 calculating a common fund fee is to award a percentage of the total fund. *See, e.g., Lealao*, 82
16 Cal. App. 4th at 26. Fee awards from a common fund can “average around one-third of the
17 recovery.” *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 558 n.13 (2009); *see also Chavez*
18 *v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

16 The determination of the proper quantum of attorneys’ fees in this case is not a
17 complicated matter, given the Total Settlement Amount of \$750,000. Thus, the fees sought by
18 Class Counsel represent a third of that amount, which is well within the realm of fees for such
19 work on a contingency basis. *Lealao*, 82 Cal. App. 4th at 47 (“As many courts have noted ...
20 the amount of attorney fees typically negotiated in comparable litigation should be considered
21 in the assessment of a reasonable fee in representative actions in which a fee agreement is
22 impossible.”).

22 In sum, the fees requested herein are more than reasonable due to the result achieved, the
23 reaction of the Class to the Settlement, as well as the entirely contingent nature of the work
24 undertaken by Class Counsel, for which they have yet to be paid one cent for their work.

24 **3. The requested costs are fully documented, necessarily incurred and**
25 **reasonable.**

To date, Class Counsel have documented and verified a total of \$11,072.42. in expenses

1 and costs incurred through the time of this Motion. *See* Friedman Decl. ¶53. The costs and
2 expenses for which counsel seeks reimbursement include filing fees, messenger services,
3 service of process, electronic filing fees and mediation expenses. *Id.* Plaintiff’s counsel has not
4 billed for miscellaneous expenses such as legal research expenses, printing expenses and
5 postage. All of these costs were necessarily incurred in the course of this litigation and should
6 be reimbursed. *Id.* Thus, Plaintiff’s request for \$10,000.00² in costs is reasonable.

7 **B. THE COURT SHOULD AWARD PLAINTIFF HIS REQUESTED INCENTIVE AWARD**

8 Twelve years ago, in *Cellphone Termination Cases*, 186 Cal. App. 4th 1380, 1396
9 (2010), the appellate court upheld the trial’s court approval of \$10,000 in incentive awards to
10 each class representative. The court reasoned, “[T]he rationale for making enhancement or
11 incentive awards to named plaintiffs is that they should be compensated for the expense or risk
12 they have incurred in conferring a benefit on other members of the class.” *Id.* at 1394 (quoting
13 *Clarke v. American Residential Servs. LLC*, 175 Cal. App. 4th 785, 806 (2009)).

14 Here, the Settlement Agreement calls for Plaintiff to receive a \$10,000 incentive award.
15 This incentive award is well deserved and justified by the fact that Plaintiff took action on
16 behalf of almost 10,000 class members and expended considerable effort to achieve the results.
17 Vaccaro Decl. ¶ 7-10; Plaintiff participated in a mediation and several discussions after, and a
18 as informal discovery. *Id.* Moreover, Plaintiff faced substantial financial risk by bringing this
19 claim because he had to give up his rights to pursue Defendant on any other basis. *Id.* By
20 bringing this action, Plaintiff furthered the public policy goals of consumer privacy. Therefore,
21 this time and effort made resolution of this case possible for the members of the Class.
22 Furthermore, Plaintiff has served as model class representative since the inception of this case.
23 By bringing this action, Plaintiff also furthered the well-established public policy goals of
24 protecting consumers from alleged and severe invasion of privacy practices.

25 **V. CONCLUSION**

For the reasons stated above, Plaintiff respectfully submits that this Motion should be
granted in its entirety. Specifically, Plaintiff seeks:

- \$250,000.00 for Class Counsel’s fees


² Costs were capped at \$10,000 per the Preliminary Approval order so Plaintiff is not requesting any excess despite incurring additional costs.

- \$10,000.00 for Class Counsel’s costs Capped despite incurring 10,809.25 in costs);
- \$120,265 for the cost of Claims Administration; and
- A \$10,000 incentive award to the Plaintiff.

Respectfully submitted,

Dated: February 14, 2023

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: 

Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiff Dave Vaccaro and the Class

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1 **PROOF OF SERVICE**

2 I am employed in Los Angeles County, California. I am over the age of 18 and not a
3 party to this action. My business address is 21031 Ventura Blvd Suite 340, Woodland Hills, CA
4 91364.

5 On February 14, 2023, I served the foregoing document, described as:

6 **MOTION FOR ATTORNEYS' FEES AND COSTS; DECLARATION OF TODD
7 M. FRIEDMAN WITH EXHIBITS; PROPOSED ORDER**

8 the original of the document
9 true copies of the document

10 Via Case Anywhere addressed as follows:

11 **BY EMAIL:** I transmitted the document(s) listed above electronically to the e-mail addresses of
12 all counsel and the Court, by agreement between counsel for the parties to accept service by
13 email of all pleadings via CASE ANYWHERE.

14 **BY U.S. MAIL:** I sealed and placed such envelope for collection and mailing to be
15 deposited on the same day at Los Angeles County, CA. The envelopes were mailed with postage
16 thereon fully prepaid. I am readily familiar with the Law Offices of Todd M. Friedman's
17 practice of collection and processing correspondence for mailing. Under this practice,
18 documents are deposited with the U.S. Postal Service on the same day that is stated in the proof
19 of service, with postage fully prepaid at Los Angeles County, CA, in the ordinary course of
20 business.

21 **BY ELECTRONIC MAIL:** I served the above documents in pdf format to the email
22 listed in the service caption above via Case Anywhere. A true and correct copy of transmittal
23 will be produced if requested by any party or the Court.

24 **STATE:** I declare under penalty of perjury under the laws of the state of California that
25 the above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.

Executed this February 14, 2023, at Orange, California.

/s Todd M. Friedman

Todd M. Friedman