

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

CRAIG MOSKOWITZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

ATL HAWKS, LLC; and DOES 1 through  
100, inclusive,

Defendants.

CIV CASE NO. 2017CV288354

**PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND  
COSTS TO CLASS COUNSEL AND INCENTIVE PAYMENT TO THE CLASS  
REPRESENTATIVE AND SUPPORTING BRIEF**

Pursuant to O.C.G.A. § 9-11-23, plaintiff and class representative Craig Moskowitz ("Plaintiff" or "Class Representative") and his counsel ("Class Counsel"), and without opposition from the ATL Hawks, LLC ("Hawks" or "Defendant"), hereby moves the Court for an award of attorneys' fees and costs to Class Counsel and incentive payment to the Class Representative as set forth in the Stipulated Settlement Agreement And Release entered by the parties on March 31, 2017 ("Agreement").

## I. INTRODUCTION

As is more fully set forth in the motion for final approval of class action settlement set for hearing concurrently with this Motion, this is a class action case that, through the diligence of Class Counsel and the Class Representative, has resulted in a non-reversionary cash fund in the amount of \$250,000. Agreement ¶ 13(a).

Additionally, there are non-pecuniary benefits achieved by the settlement which requires Hawks to implement a written Fair and Accurate Credit Transactions Act ("FACTA") compliance policy. Agreement ¶ 13(e).

As is further explained below, courts consistently approve a percentage for attorney fee awards which are 33⅓% of the total settlement fund. Here, one-third of the \$250,000 fund equals \$83,333.33, which Class Counsel seeks as attorneys' fees. Agreement ¶ 22. Class Counsel also seeks an award of litigation costs of \$3,988.43. *Ibid.*

Although not necessary given that Class Counsel seeks one-third of the cash fund, the fact that non-pecuniary benefits were obtained is itself a basis for awarding attorneys' fees. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue). Thus, this too further supports the reasonableness of Class Counsel's fees request because, once the value of the non-pecuniary benefits is added to the cash benefits obtained by the Settlement, the amount in fees sought would represent less than one-third of the total benefits secured by the Settlement.

As also further explained below, reviewing Class Counsel's lodestar as a cross check on the percentage method also supports the reasonableness of the requested fee award.

In addition, and as also further explained below, the Class Representative respectfully seeks an incentive award of \$5,000 (Agreement ¶ 21), which is a fair and reasonable amount and similar to awards in other FACTA cases.

## II. USE OF THE PERCENTAGE METHOD IS WARRANTED

### A. The Law Encourages Awards To Class Counsel In Cases Like This One

Courts have long recognized that appropriate awards of attorneys' fees in class action cases such as this encourage attorneys to seek redress for wrongs caused to classes of persons and to discourage similar future misconduct:

"[C]ourts ... have acknowledged the economic reality that in order to encourage 'private attorney general' class actions brought to enforce ... laws on behalf of persons with small individual losses, a financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid."

*Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 679, 687 (M.D. Ala. 1988); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 348-49 (N.D. Ga. 1993); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV., 2008 WL 649124 (S.D. Fla. Jan. 31, 2008); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1338-39 (S.D. Fla. 2007); *see also Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-339 (1980).<sup>1</sup>

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<sup>1</sup> The Georgia Civil Practice Act's class action provisions are modeled on the Federal Rules of Civil Procedure ("FRCP"), and federal class-action decisions guide Georgia courts. *See Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 953 (1975) ("Since there are only a few definitive holdings in Georgia on this particular section of the Civil Practice Act, we also look to federal cases to aid us."); *see also Stevens v. Thomas*, 257 Ga. 645, 648 (1987).

As a practical matter, the percentage of the fund method reflects the practical realities of the legal marketplace. Typically, consumer clients do not pay an hourly fee but instead enter into a contingency fee agreement whereby counsel's fee is based upon a percentage of any recovery. The percentage of the fund method reflects this aspect of the market, including the risks, burdens and uncertainties of contingent litigation. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 and n.6 (9<sup>th</sup> Cir. 2002).

Under Georgia law, where, as here, "a common fund is generated in a class action for the benefit of the class, a percentage of the fund goes to pay for reasonable attorney fees." *Teachers Ret. Sys. v. Plymel*, 296 Ga. App. 839, 846 (2009). *See Barnes v. City of Atlanta*, 281 Ga. 256, 260 (2006) ("With respect to attorney's fees, Georgia adheres to the common-fund doctrine"); *Friedrich*, 247 Ga. App. at 707 ("we find the percentage of the fund approach to be the most equitable, sensible, and fair. We therefore hold that when assessing attorney fees in a common fund case, a percentage of the fund analysis is the preferred method of determining these fees, unless unusual circumstances would make its use unfair or impractical.").

The percentage method is also supported by a long line of authorities that recognize that when counsel's efforts result in the recovery of benefits to unnamed class members, counsel have a right to be compensated for the value of those benefits recovered. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("The 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"); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9<sup>th</sup> Cir. 1977) ("[A] private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation,

including attorneys' fees.... [T]he doctrine is designed to spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone and the 'stranger' beneficiaries do not receive their benefits at no cost to themselves.")

Likewise, in the Eleventh Circuit, class counsel is awarded a percentage of the fund generated through a class settlement. As the Eleventh Circuit held, "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774.

While the "percentage" method is the preferred means of calculating attorneys' fees when a class action settlement involves a common fund, use of the lodestar for calculating such fees is appropriate where there is no common fund and the plaintiffs are to be provided with prospective relief. *Friedrich v. Fidelity Nat. Bank*, 247 Ga. App. 704, 707 (2001) (stating that the "percentage of the fund" method of determining attorneys' fees "is the preferred method of determining these fees, unless unusual circumstances would make its use ... impractical"). Here, the Settlement involves a common fund, and the percentage of the fund method should be applied.

As explained further below, even applying a lodestar approach, Class Counsel's request for attorneys' fees is more than reasonable. In fact, Class Counsel's lodestar exceeds the amount of fees sought by Class Counsel under the percentage method.

**B. Fee Awards Of 33 $\frac{1}{3}$  Percent Of Settlement Benefits Are Routinely Awarded**

Courts have consistently approved fees in class action cases that equal one-third or a greater percentage of the settlement value. *See, e.g., See Barnes v. City of Atlanta*, 275 Ga. App.

385, 392 (2005) ("attorney fees of 33 1/3 percent of the common fund"); *In re Southeastern Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at \*3 (E.D. Tenn. May 17, 2013) (approving 33% attorneys' fees award [totaling \$52.9 million] in common fund settlement and noting that "the percentage requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at \*4 (W.D. Mich. Oct. 26, 2007) (approving 31-32% attorneys' fees award and noting that "[e]mpirical studies show that...fee awards in class actions average around one-third of recovery") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09-14596, 2013 WL 2197624, at \*12 (E.D. Mich. May 20, 2013) (preliminarily approving 33% attorneys' fees award in common fund settlement of collective action and noting that "[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages"). *See, e.g., In re Clarus Corp. Sec. Litig.*, (N.D. Ga. Jan. 6, 2005) (33.33%); *In re Pediatrics Servs. of Am., Inc. Sec. Litig.*, 99-0670 (N.D. Ga. Mar. 15, 2002) (33.33%); *In re Profit Recovery Group Intl, Inc. Sec. Litig.*, Civil Action No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (33.33%); *In re Theragenics Corp. Sec. Litig.*, Civil Action No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (33.33%); *In re Harbinger Corp. Sec. Litig.*, Civil Action No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (33.33%); *In re The Maxim Group, Inc. Sec. Litig.*, Civil Action No. 1:99-CV-1280-CAP (N.D. Ga. July 20, 2004) (33.33%); *In re Medirisk, Inc. Sec. Litig.*, Civil Action No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (33.33%); *Zinman v. Avemco Corp.*, No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (50%); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (43.87%); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (40.4%); *Howes v.*

*Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (40%); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (33.3%).

Although not necessary given that Class Counsel seeks one-third of the cash fund, the fact that non-pecuniary benefits were obtained is itself a basis for awarding attorneys' fees. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue).

As explained above, here there are non-pecuniary benefits achieved by the settlement which require Hawks to implement a written FACTA compliance policy. Agreement ¶ 13(e). This FACTA compliance policy ensures that Hawks will not continue to violate the law, willfully, inadvertently or otherwise.

Thus, this too further supports the reasonableness of Class Counsel's fees request because, once the value of the non-pecuniary benefits is added to the cash benefits obtained by the Settlement, the amount in fees sought would represent less than one-third of the total benefits secured by the Settlement.

This is especially true with a consumer protection statute such as FACTA which serves both a compensatory and "deterrent purpose." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010). "In fashioning FACTA, Congress aimed to 'restrict the amount of information available to identity thieves.'" *Ibid.*

"The mere fact that AMC changed the content of its receipts to comply with FACTA after the lawsuit was filed does not suggest that certification of the class would have limited deterrent effect. To the contrary, we are quite sure that certification of a class here would preserve, if not amplify, the deterrent effect of FACTA." *Bateman*, 623 F.3d at 723.

Thus, in addition to obtaining pecuniary relief for the Settlement Class, the Class Representative and Class Counsel have also effectuated substantial change of conduct and policy, thereby accomplishing the "deterrent" objectives of FACTA.

### **III. REVIEWING CLASS COUNSEL'S LODESTAR AS A CROSS CHECK ON THE PERCENTAGE METHOD ALSO SUPPORTS THE REASONABLENESS OF THE FEES REQUESTED**

Reviewing Class Counsel's lodestar as a cross check on the percentage method also supports the reasonableness of a \$83,333.33 award of fees to Class Counsel.

The lodestar figure is calculated by "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate" for the attorneys' services. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The product of this calculation yields the "lodestar" amount. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563 (1986).

Utilizing the lodestar approach, Class Counsel's actual time and hourly rate exceeds the amount of fees requested.

#### **A. Hours Worked By Class Counsel**

Up to March 8, 2018, Class Counsel Chant Yedalian has devoted 125 hours of his time on this case (and this does not include additional time expected to be incurred). Yedalian Decl. ¶ 46.

Up to March 8, 2018, Class Counsel Shaun O'Hara has devoted 50 hours of his time on this case (and this does not include additional time expected to be incurred). O'Hara Decl. ¶ 14.



To the extent the Court would like to review the different tasks performed by Class Counsel, Class Counsel Chant Yedalian has submitted for *in camera* review, an unredacted paper copy of each of his itemized time records which establish the hours devoted by him. Yedalian Decl. ¶ 47.<sup>2</sup>

These itemized time records show the tasks performed by Class Counsel and the amount of time Class Counsel worked on each task on each date. Yedalian Decl. ¶ 48.

Each and every task concerns the FACTA cause of action prosecuted, and ultimately settled, in this case. Yedalian Decl. ¶ 49. The hours worked were therefore plainly reasonable to accomplish these tasks and could and would certainly have been billed to a private client who hired counsel to pursue such litigation. *Ibid; Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9<sup>th</sup> Cir. 2008) ("The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.")

This includes all steps that contribute to the ultimately successful resolution of this case (even if, along the way, the district court does not adopt each contention raised). *Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1053 (9<sup>th</sup> Cir. 1991). Accordingly, and consistent with this approach, Class Counsel's work related to the fee award motion is likewise time that is reasonably incurred:

""[F]ederal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable.' *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9<sup>th</sup> Cir. 1985). This is so because it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time

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<sup>2</sup> Because the time records are unredacted, they contain sensitive and privileged information as well as work product, and they are therefore submitted for *in camera* review.

they reasonably spent in establishing their rightful claim to the fee." *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 981 (9<sup>th</sup> Cir. 2008).

Courts must also by and large defer to a fee proponents professional judgment on how much time was required to be spent on the case:

"It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.... By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Moreno*, 534 F.3d 1106, 1112.

The hours here were worked by skilled class action counsel who have the necessary skill and experience to litigate the nuances, and achieve settlement, of a consumer class action case. Yedalian Decl. ¶¶ 23-44.

**B. Reasonable Hourly Rate**

Class Counsel, Mr. Yedalian's current hourly rate is \$650 and that rate is well supported by his skill and experience with class action and FACTA matters. Yedalian Decl. ¶¶ 50-54, 26-39. Mr. Yedalian is one of the most experienced FACTA class action attorneys in the nation. Yedalian Decl. ¶¶ 26-39. He was among one of the first attorneys in the nation to prosecute FACTA cases and he has successfully prosecuted to conclusion several FACTA cases on a class basis. *Ibid.*

Class Counsel, Shaun O'Hara's current hourly rate is \$300 and that rate is well supported by his skill and experience. O'Hara Decl. ¶¶ 10-14.

Class Counsel's rates are further supported by the fact that this is a class action case, and class action work requires specialized learning and experience. Yedalian Decl. ¶ 54; O'Hara Decl. ¶ 10-13.

**C. Class Counsel's Lodestar: Hours Worked Multiplied By**

**The Reasonable Hourly Rate**

125 hours for Mr. Yedalian multiplied by his \$650 hourly rate yields a lodestar of \$81,250.00. Yedalian Decl. ¶ 55.

50 hours for Mr. O'Hara multiplied by his \$300 hourly rate yields a lodestar of \$15,000. O'Hara Decl. ¶ 14.

Thus, the lodestar by Class Counsel equals at least \$96,250.00.

**D. Class Counsel's Lodestar, And Its Use As A Cross Check To The**

**Percentage Method, Also Demonstrates That The Fees And Costs**

**Sought Are Reasonable**

Class Counsel's lodestar of \$96,250.00 and its use to cross check the percentage method, further demonstrates that the \$83,333.33 in fees sought by Class Counsel is reasonable.

**IV. REIMBURSEMENT OF CLASS COUNSEL'S COSTS**

Class Counsel seek reimbursement of costs in the amount of \$3,988.43 as set forth in Class Counsel Mr. Yedalian's Declaration at paragraph 58.

The FCRA's specific remedial provision at issue in this case, 15 U.S.C. § 1681n(a)(3), authorizes an award of all non-taxable costs "when it is 'the prevailing practice in a given community' for lawyers to bill those costs separate from their hourly rates." *Grove v. Wells Fargo Financial California, Inc.*, 606 F.3d 577, 580-581 (9<sup>th</sup> Cir. 2010). All of the costs for which reimbursement is sought are costs that would be billed to a fee paying client separate from hourly rates, consistent with the prevailing practice.

**V. THE INCENTIVE AWARD REQUESTED FOR THE CLASS REPRESENTATIVE IS REASONABLE AND CONSISTENT WITH AWARDS IN OTHER FACTA CASES**

Class Counsel respectfully requests that the named Plaintiff and only Class representative, Craig Moskowitz, be awarded an incentive award in the amount of \$5,000.

"Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9<sup>th</sup> Cir. 2009). "[They] are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Ibid.*

In assessing incentive awards, courts may also apply the following guideposts articulated in *Staton v. Boeing Co.*, 327 F.3d 938 (9<sup>th</sup> Cir. 2003):

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments. The district court must evaluate their awards individually, using 'relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.'" *Staton*, 327 F.3d at 977.

Each of these factors, as it applies to the Class Representative in this case, is explained as follows:

First, were it not for the Class Representative stepping forward and shouldering the duties of protecting and prosecuting the interests of other Settlement Class members, it is likely the interests of the Settlement Class would neither have been prosecuted, nor benefited. Yedalian Decl. ¶ 61. Indeed, the parties have acknowledged that, to their knowledge, there is no other

litigation, either pending or otherwise, on a class or individual basis, concerning the claims in this lawsuit. *Ibid.*

Moreover, Mr. Moskowitz has done all things reasonably expected of him in his capacity as Class Representative. Yedalian Decl. ¶ 62. Mr. Moskowitz was subjected to liability for defense costs in the event the litigation was unsuccessful. *Ibid.* By stepping forward to shoulder this action on behalf of the class, Mr. Moskowitz also took on other risks, including the risk of subjecting himself to intrusive discovery. *Ibid.* Mr. Moskowitz also regularly and consistently communicated with Class Counsel throughout the time this lawsuit was pending. *Ibid.* He also reviewed relevant documents, provided his input, and otherwise kept apprised of litigation related events and developments. *Ibid.* He also provided his ideas and input to Class Counsel in the various rounds of settlement negotiations and exchanges. *Ibid.* He also participated in the process to finalize the written settlement terms and documents, and the post-agreement phases that followed. *Ibid.* In sum, Mr. Moskowitz contributed as much of his valuable time as this litigation demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the Class. *Ibid.* In addition to satisfying the first *Staton* factor, these facts further support an incentive award because they "recognize [a class representatives] willingness to act as a private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9<sup>th</sup> Cir. 2009).

Many of the facts supporting the first factor also support the second *Staton* factor in so far as that the Class has benefited from the Class Representative's actions. It is fair to say that but for Mr. Moskowitz actions, there would be no resulting benefit to individual Settlement Class members or *cy pres* benefits. Yedalian Decl. ¶ 63. Moreover, it is as a result of the Settlement

that Defendant agreed to implement a FACTA compliance policy. *Ibid.* Thus, Mr. Moskowitz effectuated substantial change of conduct, thereby accomplishing the "deterrent" objectives of FACTA. He was also willing and stepped forward to act as a private attorney general where, to my knowledge, no other plaintiff has done so. *Ibid.*

The fact that the Court has already made a preliminary finding that the settlement is fair, adequate and reasonable, also supports the significance of the benefits achieved through the Class Representative's initiative and perseverance. Yedalian Decl. ¶ 64.

Third, it is estimated that Mr. Moskowitz devoted approximately 25 hours of his time to pursue this matter. Yedalian Decl. ¶ 65. By definition, the time he devoted to this matter was time spent away from work and/or leisure in an effort to advance the interests of the entire class.

Although the fourth *Staton* factor (fear of workplace retaliation) is not applicable to this type of case, a similar concern, the Class Representative stepping forward and thereby taking on the risks of being subjected to intrusive discovery and defense costs in the event the litigation was unsuccessful, are factors discussed in connection with the first factor, above.

Another factor properly considered by the Court in assessing an incentive award is the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014):

"An incentive award may be appropriate when a class representative will not gain any benefit beyond that he would receive as an ordinary class member. See *Razilov*, 2006 WL 3312024, at \*4 (approving the payment of an incentive award where the only benefit a class representative was going to receive from a settlement was the same statutory damages other class members would receive); *Van Vranken*, 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction of the common fund,' a substantial incentive award was appropriate). The named plaintiffs in this action will receive no relief beyond that available to

members of the class in general; absent an incentive award, they will each be eligible to submit a claim for a \$5, \$15, or \$30 voucher. This factor, therefore, also favors approval of an incentive award." *Ibid.*

The amount requested is also reasonable in relation to other cases. In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

The amount requested is also similar to incentive awards in various other FACTA cases. Yedalian Decl. ¶ 68. For example, in *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496 CRB (N.D. Cal. January 9, 2009), the court awarded each of the two class representatives a \$5,000 incentive payment. In *Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-422 DMG (ANx) (C.D. Cal. November 12, 2010) the court awarded the only class representative a \$5,000 incentive payment. In *Jarchaffian v. American Multi-Cinema, Inc., et al.*, CV09-03434 JHN (AJWx), 2011 U.S. Dist. LEXIS 158005 \*6, (C.D. Cal. October 6, 2011), the court awarded the only class representative a \$5,000 incentive payment. In *Sakamoto v. One Parking, Inc. et al.*, SACV11-1249 MLG (C.D. Cal. June 21, 2012) the court awarded the only class representative a \$5,000 incentive payment. In *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014), the court awarded each of the three class representatives a \$5,000 incentive payment.

In sum, the requested incentive award of \$5,000 to Mr. Moskowitz, the only Class Representative in this case, for the valuable time and resources he contributed to advance this litigation is fair and reasonable, and it is respectfully requested that the Court approve and award this amount as his incentive award. Yedalian Decl. ¶ 69.

## VI. CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the Court grant the Motion For Award Of Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representative.

Respectfully submitted this 12<sup>th</sup> day of March, 2018.



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Charles Austin Gower Jr.  
Georgia Bar No. 303528  
Shaun Patrick O'Hara  
Georgia Bar No. 749503  
CHARLES A. GOWER PC  
1425 Wynnton Road  
P.O. Box 5509  
Columbus, GA 31906  
Telephone: 706.324.5685  
Facsimile: 706.322.2964  
austin@cagower.com  
shaun@cagower.com

Chant Yedalian (*pro hac vice*)  
California Bar No. 222325  
CHANT & COMPANY  
A Professional Law Corporation  
1010 N. Central Ave.  
Glendale, CA 91202  
Telephone: 877.574.7100  
Facsimile: 877.574.9411  
chant@chant.mobi



*Counsel for Plaintiff Craig Moskowitz Individually  
and on Behalf of Others Similarly Situated*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a copy of the within and foregoing **PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL AND INCENTIVE PAYMENT TO THE CLASS REPRESENTATIVE AND SUPPORTING BRIEF** to be served by depositing same in the United States mail, with proper postage affixed thereto, addressed to the following attorneys of record for Defendant:

Nathan L. Garroway, Esq.  
Jeff Zachman, Esq.  
DENTONS US LLP  
303 Peachtree Street, NE Suite 5300  
Atlanta, GA 30308

This 12<sup>th</sup> day of March, 2018.



Shaun Patrick O'Hara