CAMPAIGN FOR ACCOUNTABILITY

October 23, 2018

BY FAX: (775)-684-1108

The Honorable Adam Laxalt
Attorney General of Nevada
100 North Carson Street
Carson City, NV 89701

BY MAIL:

U.S. Postal Inspection Service
Criminal Investigations Service Center
ATTN: Mail Fraud
433 W Harrison Street, Room 3255
Chicago, IL 60699-3255

Re: Request for Investigation of Vivint Solar

Dear Attorney General Laxalt:

Campaign for Accountability (CfA), a nonprofit watchdog group in Washington, DC, respectfully renews its request for an investigation into rooftop solar companies with specific attention to Vivint Solar. On April 24, 2018, CfA requested an investigation into Vivint Solar Holdings, Inc. and other rooftop solar companies following the New Mexico Attorney General's lawsuit against the company.[1] After CfA submitted the request, a local media outlet uncovered evidence that Vivint is continuing to victimize consumers in Nevada.

Background

In the fall of 2016, CfA launched a nationwide investigation into the deceptive marketing practices of solar companies, after two consumer watchdogs – Public Citizen and the National Consumer Law Center – warned government regulators about the exploitative contracts used by

[1] Letter from CfA Executive Director Daniel Stevens to Attorney General Adam Laxalt, April 24, 2018, *available at* https://campaignforaccountability.org/work/letters-to-attorneys-general-in-arizona-nevada-and-new-york-calling-for-investigations-of-rooftop-solar-industry/.

solar companies.[2] Following CfA's investigation, the New Mexico Attorney General filed a lawsuit against Vivint alleging systematic fraud, deceptive business practices and racketeering.[3]

As CfA noted in its previous letter, Vivint began operating in Nevada in July 2015, but suspended operations just two weeks later after a dispute with the state over net metering.[4] On June 8, 2017, Vivint Solar announced its plan to relaunch residential solar energy services in Nevada following its two-year hiatus.[5] In April, CfA wrote specifically:

> Given the company's track record, it seems highly likely that the misconduct alleged in the New Mexico complaint also may have occurred in Nevada. And, like New Mexico, Nevada has laws barring deceptive trade practices,[6] fraud,[7] and racketeering.[8]

Indeed, press reports indicate that CfA's warnings have proved prescient. On September 7, 2018, the Las Vegas affiliate of ABC, *KTNV*, reported that a Vivint salesperson had distributed misleading fliers to customers in the Las Vegas area.[9] Homeowners found the bright yellow fliers posted on their houses and in their mailboxes.[10] The fliers claimed that a new law requires the local utility company, NV Energy, to help residents convert to renewable energy.[11]

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[2] Letter from Public Citizen Energy Program Director Tyson Slocum to Federal Trade Commission Chairwoman Edith Ramirez, August 22, 2016, *available at* https://www.citizen.org/sites/default/files/federal-trade-commission-comments-solar-consumer-protections-august-2016.pdf; National Consumer Law Center, Comments to the Consumer Financial Protection Bureau regarding 12 CFR Part 1040 [Docket No. CFPB-2016-00200] RIN 3170-AA51 81 Fed. Reg. 32830 (May 24, 2016) Arbitration Agreements, August 22, 2016, *available at* https://www.nclc.org/images/pdf/arbitration/comments-arbitration-agreements-2016.pdf.

[3] Complaint, *State of New Mexico, ex rel. v. Vivint Solar Developer, et al.,* D-202-CV-2018-01936 (N.M. 2nd Dist. March 8, 2019) *available at* https://www.courthousenews.com/wp-content/uploads/2018/03/NM-v-Vivint.pdf.

[4] Katherine Tweed, Vivint Pulls Out of Nevada After Only 2 Weeks in the State, *Greentech Media*, August 20, 2015, *available at* https://www.greentechmedia.com/articles/read/vivint-pulls-out-of-nevada-after-only-two-weeks-in-the-state#gs.uI9sinM.

[5] http://investors.vivintsolar.com/company/investors/Press-Releases/Press-Release-Details/2017/Vivint-Solar-to-Relaunch-Residential-Solar-Energy-Services-in-Nevada/default.aspx.

[6] NRS Chapter 598.

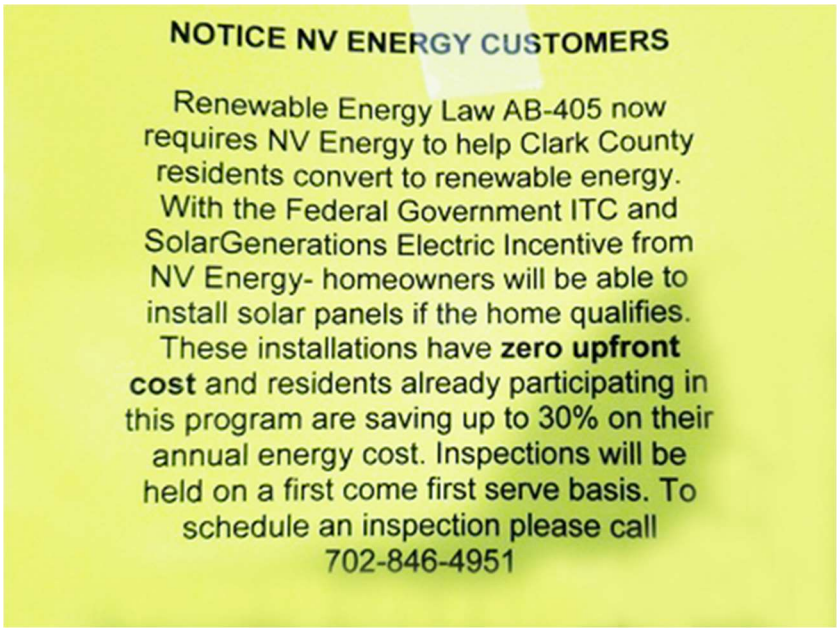
[7] NRS 205.380.

[8] NRS 207.350 *et seq.*

[9] Joe Bartels, Mysterious 'Renewable Energy' Notices Posted on Some Las Vegas Homes, *KTNV*, September 7, 2018, *available at* https://www.ktnv.com/news/investigations/mysterious-renewable-energy-notices-posted-on-some-las-vegas-homes.

[10] *Id.*

[11] *Id.*



Picture of the Flier Distributed to Las Vegas Residents

The flier looked like it was distributed by NV Energy, but the phone number belonged to a salesperson for Vivint Solar.[12] The salesperson told *KTNV* that he partnered with NV Energy, but the utility company said, "they do not partner with any solar contractor" and they do not sell any services door-to-door.[13] The fliers themselves do not include any identifying information. Vivint told *KTNV* that the fliers were not created by any Vivint employee, and the company warned that any employees caught using them would be disciplined or possibly terminated.[14]

The fraudulent fliers were not the only dishonest tactics employed by Vivint salespeople. On September 20, 2018, *KTNV*, reported that a customer interested in solar panels found one of the yellow fliers in her mailbox and called the number.[15] The customer then met with a Vivint salesperson to discuss adding solar panels to her house.[16] After discussing the fees and financing required to install the solar panels, the customer provided her husband's social security number to investigate her financing options.[17]

The salesperson told the customer several weeks later that she was not eligible to purchase solar panels because her husband's credit score was too low.[18] The customer's husband, who had a respectable credit score of 700, later found out that his credit score had

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[12] *Id.*
[13] Bartels, *KTNV*, Sept. 7, 2018.
[14] *Id.*
[15] Joe Bartels, Solar Panel Salesman 'Ghosts' Las Vegas Senior, Credit Score Plummets, *KTNV*, September 20, 2018, *available at* https://www.ktnv.com/news/investigations/las-vegas-senior-says-credit-score-plummeted-after-solar-panel-sales-pitch.
[16] *Id.*
[17] *Id.*
[18] *Id.*

plummeted after Vivint submitted several requests to credit agencies for the score.[19] When the customer questioned the Vivint salesperson about the issue, he disappeared.[20] Vivint told *KTNV* that it was unlikely that the company had caused the drop in the credit score, but they offered to address the issue with credit agencies anyway.[21]

KTNV's reports on the fliers indicate that Vivint Solar is continuing to prey on Nevadans. The full extent of the problem is unknown since the Office of the Attorney General has declined to release any consumer complaints to CfA. Other states though, are starting to rein in the company. In California, for instance, a superior court judge issued an injunction requiring Vivint to provide customers with contracts that are in the same language the company's salespeople use to speak to customers.[22] The injunction followed a lawsuit where two Spanish speaking customers said the company sold them solar panels by speaking to them in Spanish but offering them a contract in English.[23] The injunction only applies to consumers in California, but Nevadans should be concerned: Pew Research Center has estimated that as many as 500,000 Nevada residents speak a language at home other than English.[24]

Potential Violations of Law

As you know, Nevada law created the Bureau of Consumer Protection ("BCP") within the Office of the Attorney General and it enforces the Nevada Deceptive Trade Practices Act. *See* NRS 228.310(2). The BCP may initiate criminal or civil proceedings to enforce provisions of the Nevada Deceptive Trade Practices Act without obtaining leave of court. NRS 598.0963(2) and NRS 598.0999. If, after conducting an investigation, the BCP has reason to believe that a person is engaging in or has engaged in deceptive trade practices, it may file an action with the court, including requesting a temporary restraining order, a preliminary injunction, a permanent injunction, or other relief. NRS 598.0963(3). The Attorney General and the BCP have broad authority to investigate potential deceptive trade practices, including the authority to issue subpoenas to discover the nature, extent and existence of such practices. NRS 598.0963(4).

Under Nevada law, "knowingly making a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease is a deceptive trade practice." NRS 598.0915(2). Additional penalties may be assessed if the person engaged in deceptive trade practices directed toward an individual 60 or older, or a person with a disability. NRS 598.0973. By creating and distributing fliers designed to appear as if they were sponsored by NV Energy, while they were, in fact, produced and sponsored by Vivint Solar, Vivint Solar appears to have violated Nevada law.

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[19] Bartels, *KTNV*, Sept. 20, 2018.
[20] *Id.*
[21] *Id.*
[22] Case No. RG16838596, Judith Garcia and Juana Mercado vs. Vivint Solar Developer, LLC, Superior Court of the State of California, County of Alameda, Stipulated Injunction, February 8, 2018, *attached as* Exhibit A.
[23] *Id.*
[24] http://www.pewhispanic.org/states/state/nv/.

In addition, 18 U.S.C. § 1725 prohibits anyone from knowingly and willfully depositing any mailable matter, including circulars, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter. Each violation is subject to a fine. Many Nevada residents found Vivint's deceptive notices in their mailboxes, a clear violation of federal law.

Conclusion

The distribution of the flier, combined with the violations under investigation in New Mexico, and the repeated unauthorized credit inquiries, indicate Nevada residents are at a high risk of being victimized by Vivint's deceptive trade practices. Campaign for Accountability urges you to investigate Vivint and hold the company accountable for any violations of Nevada law.

Sincerely,

Daniel E. Stevens
Executive Director

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JUDITH GARCIA and JUANA MERCADO,

Plaintiffs,

vs.

VIVINT SOLAR DEVELOPER, LLC, a Delaware limited liability company; and DOES 1-50, inclusive,

Defendants.

Case No. RG16838596

~~[PROPOSED]~~ STIPULATED INJUNCTION

Judge Brad Seligman
Department 23

Plaintiffs Judith Garcia and Juana Mercado ("Plaintiffs") and Defendant Vivint Solar Developer, LLC ("Vivint Solar"), have entered into a settlement agreement (the "Settlement Agreement") that disposes of all claims in this action and provides for entry of this Stipulated Injunction (the "Injunction").

NOW THEREFORE, IT IS HEREBY ORDERED:

For a period of at least four years from the entry of a Judgment incorporating this Injunction, Vivint Solar shall:

1. Provide all of its current and future California sales representatives with written and video training materials that direct that sales presentations must be conducted in the language of the customer's Residential Solar Power Purchase Agreement ("PPA"). Such materials shall be available within sixty (60) days of entry of a Judgment that incorporates this Stipulated Injunction.

2. Implement and maintain a foreign language screening process whereby within sixty (60) days of entry of a Judgment that incorporates this Stipulated Injunction, Vivint Solar will incorporate a question into its standard new-customer 'Welcome Call' that asks the prospective customer what language the sales representative predominantly used during the sales presentation. Vivint Solar shall not install a rooftop solar system on the home of any customer if the answer to this query is a language that is different than the language of the signed PPA that Vivint Solar has received for that customer.

3. Implement and maintain a protocol whereby any customer who prevails in arbitration on a claim against Vivint Solar that arises from the fact that the customer's PPA with Vivint Solar was not written in the language principally used in the customer's oral sales presentation shall be entitled to $5,000 if they elect to remain a Vivint Solar customer and execute a new PPA in the language used during the presentation (rather than pursuing

some other statutory remedy).

4. Implement (on or before April 1, 2018) and maintain a Spanish language PPA.

Pursuant to Code of Civil Procedure § 664.6, the Court retains jurisdiction over the Parties with respect to all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Injunction.

DATED: 2/8/18

The Honorable Brad Seligman

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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Garcia Plaintiff/Petitioner(s) VS. Vivint Solar Developer, LLC Defendant/Respondent(s) (Abbreviated Title)	No. RG16838596 Order Motion for Attorney Fees Granted

The Motion for Attorney Fees was set for hearing on 05/29/2018 at 03:00 PM in Department 23 before the Honorable Brad Seligman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Plaintiffs Judith Garcia and Juana Mercado's (collectively, "Plaintiffs") Motion for Award of Attorneys' Fees and Costs is GRANTED IN PART AND DENIED IN PART. The Court awards Plaintiffs $236,483.75 in attorneys' fees and $13,128.09 in costs.

Plaintiffs seek an award of attorneys' fees in the sum of $472,967.50 and costs in the sum of $13,128.09, pursuant to section 5 of the parties' Settlement Agreement, Code of Civil Procedure sections 1021.5, 1032(b) and 1033.5, Civil Code 1780(e), and Business & Professions Code section 7160. Plaintiffs claim all of their fees and costs in this action based on the successful prosecution of this action which resulted in individual relief to Plaintiffs and a stipulated injunction that protects future non-English speaking customers against signing agreements with Defendant Vivint Solar Developer, LLC ("Defendant") that they do not understand. Defendant argues that Plaintiffs' fee award should be reduced so that they are proportional to the claims for which Plaintiffs were successful.

Plaintiffs filed a class action complaint against Defendant, a solar panel installer, for claims based on Defendant's 20-year power purchase agreements ("PPA"). Plaintiffs assert that Defendant advertised the PPAs as a way to save customers money on electricity, but allege that some of the potential customers would not save money or would pay more for electricity because certain low-income customers could get a lower rate as part of the California Alternative Rates for Energy program (CARE Program). Plaintiffs contend that Defendant forged Garcia's signature, lied about the costs she would save by switching to solar, and falsely promised that she would not have to sign a contract (the "fraud and forgery claims"). The complaint sought class action status, and, for class members, injunctive relief, a right to cancel their contracts and monetary penalties. In March 2017, Plaintiffs added a new plaintiff, Juana Mercado, and a new claim that alleged that the PPA and Right to Cancel agreements were void because they were only provided in English when the product was presented to some customers in Spanish (the "language claim").

Defendant moved to compel arbitration based on an arbitration clause in each Plaintiffs' PPA. Plaintiffs' defenses against binding arbitration were that Plaintiff Garcia never checked the box to agree to binding arbitration, that the PPAs were void for fraud in the execution, and that the arbitration agreements were unconscionable. At the hearing on the motion to compel arbitration on August 11, 2017, the Court held that unconscionability was a question for the arbitrator in view of the delegation

clause of the PPAs, and concluded that it would hold a limited evidentiary hearing to supplement the record on the issues of fraud in the execution and formation of Plaintiffs' PPAs. (Declaration of Dominic Valerian ("Valerian Dec.") ¶ 14.) The parties thereafter reached a settlement.

In the settlement, Garcia obtained an individual settlement of $15,403.48, which includes an agreement to remove her solar system, a cancellation of her PPA, $15,000 in damages, and a refund of her payment to Defendant.

Mercado obtained an individual settlement of $16,482, which includes an agreement to remove her solar system, a cancellation of her PPA, $15,000 in damages, and a refund of her payment to Defendant. While the settlements required dismissal of class claims, and included no monetary relief or right to rescind contracts to the class, it included injunctive relief with respect to the language claim, which required translating the next version of the PPA into Spanish, reintroducing a "welcome call" that Defendant previously used as part of its customer onboarding process, training for sales staff, and providing an option for modest monetary relief for customers who prevail in arbitration arising from a failure to receive a contract in Spanish if they elect to remain a customer and execute a new contract in Spanish.

ENTITLEMENT TO FEES AND COSTS

There is no question that Plaintiffs are prevailing parties under all of the statutes they seek fees. Defendant does not contest the right to fees, only the reasonableness of the amount requested.

Under Code of Civil Procedure section 1021.5, "a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." "When it comes to section 1021.5, the successful party is 'the party to litigation that achieves its objectives.'" (La Mirada Ave. Neighborhood Ass'n of Hollywood v. City of Los Angeles (2018) 232 Cal. Rptr. 3d 338, 345.) The party need not obtain judgment in its favor, personally benefit from the success, or succeed on all of its claims. (Id.) "It is enough to show that the lawsuit was a 'catalyst' that motivated the defendant to alter its behavior, be it through voluntary action growing out of a settlement or otherwise." (Id.)

Plaintiffs' entitlement to fees under this statute does not turn on their personal recoveries. Instead, Plaintiffs predict that the injunctive relief will benefit at least 3,750 customers and prospective customers based on statistics of Californians who do not speak English at home or very well. While Defendant questions the accuracy of Plaintiffs' calculations, there is no question that a significant number of Spanish-speaking future customers will benefit from the injunctive relief in the settlement. While one could debate whether Plaintiffs have shown the second prong of 1021.5 entitlement-the necessity of private enforcement where plaintiffs recover a significant individual award ("[T]he private attorney general doctrine was [not] designed to reward plaintiffs who, in pursuit of their own interests, just happened to bring about the enforcement of a statute that benefits the public." (Norberg v. California Coastal Comm'n (2013) 221 Cal. App. 4th 535, 541.))- Plaintiffs' entitlement to fees under other statutes is straightforward and beyond serious dispute.

Thus, for example, under Civil Code section 1780(e), "[t]he court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to [the Consumer Legal Remedies Act]." The statute does not define the term "prevailing plaintiff," but courts have held that a plaintiff "is a prevailing plaintiff either because he obtained a net monetary recovery or because he achieved most or all of what he wanted by filing the action or a combination of the two." (Kim v. Euromotors W./The Auto Gallery (2007) 149 Cal. App. 4th 170, 181.) "Conferral of public interests and public benefits by an attorney fee award is not part of the analysis under . . . the CLRA[.]" (Graciano v. Robinson Ford Sales, Inc. (2006) 144 Cal. App. 4th 140, 153.) "It is settled that 'plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" (Id.) Since Plaintiffs obtained a "net monetary recovery," the Court finds that Plaintiffs are also entitled to costs and attorneys' fees under Civil Code section 1780(e).

REASONABLENESS OF FEES AND COSTS

Defendant argues that the fees sought by Plaintiffs should be reduced for three reasons: (1) the lodestar amount is inflated because it includes unnecessary work and excessive rates; (2) the fees are unreasonable inasmuch as they include work for unsuccessful class fraud and forgery claims; and (3) there is no basis for a positive multiplier.

As to the first argument, the Court funds that Plaintiffs' counsel's hourly rates are well documented and within the range of reasonableness. While Defendant argues the staffing was inefficient, the Court funds otherwise. The big firm model of staffing a case is no guarantee of efficiency. An experienced attorney may often accomplish tasks much faster than less experienced attorneys. Defendant has failed to show that a different staffing model was the only reasonable way to staff this case. Moreover, the Court finds that the time spent on discrete tasks was not unreasonable.

The more substantial question is whether all hours should be compensated where Plaintiffs did not obtain all-or arguable even the main relief sought. Courts have confronted the issue of "whether plaintiffs are entitled to all hours reasonably spent in pursuit of this litigation or whether compensation for legal theories on which the plaintiffs did not prevail should be excluded from the award, even though the litigation was ultimately successful." (Sundance v. Mun. Court (1987) 192 Cal. App. 3d 268, 273.) With respect to fees recovered under Code of Civil Procedure section 1021.5, courts have stated that the statute "itself simply states that awards are to be made to successful parties, with no mention of excluding compensation for the successful parties' unsuccessful legal theories." (Id.) The court reasoned that "as a practical matter, it is impossible for an attorney to determine before starting work on a potentially meritorious legal theory whether it will or will not be accepted by a court years later following litigation." (Id.) "It must be remembered that an award of attorneys' fees is not a gift." (Id.) "It is just compensation for expenses actually incurred in vindicating a public right." (Id.) "To reduce the attorney's fees of a successful party because he did not prevail on all his arguments, makes it the attorney, and not the defendant, who pays the cost of enforcing that public right." (Id.) As a result, it is left "to the discretion of the trial court to determine whether time spent on an unsuccessful legal theory was reasonably incurred." (Id. at 274.)

Here the issue is not simply whether Plaintiffs failed to recover on some theories. It is whether the fact that Plaintiffs recovered under no theory for class relief for all monetary and contract-voiding claims and fraud-related injunctive relief requires the overall fee to be reduced.

Defendant claims that a vast majority of Plaintiffs' counsel's time was spent on (1) pursuing Plaintiffs' allegedly unsuccessful fraud claims; (2) seeking discovery regarding Plaintiffs' allegedly unsuccessful forgery claim; (3) unsuccessfully opposing arbitration on principles of unconscionability; and (4) seeking its fees. (Valerian Dec. ¶¶ 7, 11, 15, 21, 23, 25, 31, 40-41; id., Ex. 5.) Defendant asserts that based on Garcia's deposition, she did not have evidentiary support for her fraud and forgery claims.

Defendant asserts that the only time spent on the language claim was the time spent investigating Mercado's claim, drafting the First and Second Amended Complaint, and discussing settlement. (Valerian Dec. ¶¶ 14-15, 20, 28, 33, 40.) Defendant also contends there was no factual dispute with respect to Mercado's straightforward language claim and the language claim did not require any discovery.

However, Plaintiff's counsel block-billed the time spent on the language claims with time spent on the fraud and forgery claims, so there is no way to determine how much of counsel's time was spent on each. (Valerian Dec., Ex. 5.) Defendant argues that the claim on which Plaintiffs successfully obtained relief (which Defendant contends was the language claim) was unrelated to the fraud theories underlying the unsuccessful class fraud and forgery claims for which a majority of the legal work was expended. The language claims, absent in the initial complaint, were of secondary importance in the amended complaint.

The Court finds that a reduction in the requested fees is necessary based on the reasonableness factor. While the Court recognizes that the relief obtained by Plaintiffs is substantial, the Court finds that the fees and costs sought are disproportionate to the result achieved. Plaintiffs' work on this litigation include prosecution of claims that would likely be found subject to binding arbitration (which involved substantial motion practice by Plaintiffs' counsel), and fraud claims for which Plaintiffs did not obtain any injunctive or class relief. Moreover, as noted above, the class relief ultimately obtained was limited

to the language injunctive relief (and indeed class allegations are dismissed under the settlement).

To determine reasonable fees, the Court begins with "lodestar" figure, which is "'calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." (Harman v. City & Cty. of San Francisco (2007) 158 Cal. App. 4th 407, 416.) "[T]he initial lodestar calculation should exclude 'hours that were not 'reasonably expended' in pursuit of successful claims.'" (Harman, 158 Cal. App. 4th at 417.) "Counsel's work on such unsuccessful and unrelated claims 'cannot be deemed to have been 'expended in pursuit of the ultimate result achieved . . . and therefore no fee may be awarded for services [on such claims].'" (Id.) The question is whether the "different claims for relief ... are based on different facts and legal theories." (Id.) "If so, they qualify as unrelated claims." (Id.)

Then the court must "still evaluate the 'significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.'" (Harman, 158 Cal. App. 4th at 417.) "If there was only 'partial or limited success,' full compensation 'may be ... excessive.'" (Id.) "Where 'the plaintiff achieved only limited success,' the court 'should award only that amount of fees that is reasonable in relation to the results obtained.'" (Id. at 417-18.) "In conducting this analysis, a court 'may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.'" (Id. at 418.) "The court may appropriately reduce the lodestar calculation 'if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.'" (Id.) "The most critical factor is the degree of success obtained." (Id.)

"[T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." (Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1132.)

The Court finds that while Plaintiffs have been successful in their individual claims, and to a limited extent in the injunctive relief claims, their attorneys' fees should be reduced to reflect the unsuccessful broader class claims. As such, the Court reduces the lodestar to 25% of the requested fees.

However, the Court also finds a positive multiplier of 2 is warranted in this case primarily based on the contingent nature of the case. (Ketchum, 24 Cal.4th at 1137-38.)

Finally, the Court finds that Plaintiffs are entitled to their costs. Under Code of Civil Procedure section 1032(b), "a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." A "prevailing party" includes "the party with a net monetary recovery." (CCP § 1032(a)(4).) Here, the prevailing party is Plaintiffs. (deSaulles v. Cmty. Hosp. of Monterey Peninsula (2016) 62 Cal. 4th 1140, 1158 ["[A] plaintiff that enters into a stipulated judgment to be paid money in exchange for a dismissal has obtained a 'net monetary recovery.'"].) Defendant failed to show that any item of costs was unreasonably incurred. Thus, Plaintiffs are entitled to recover all costs.

Plaintiffs shall serve a copy of this order upon all parties forthwith and file a proof of service with the Court.

Dated: 05/29/2018

facsimile

Judge Brad Seligman