

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ASAL SALLY MANOUCHEHRI, on  
behalf of herself and all others similarly  
situated,  
  
Plaintiff,  
  
v.  
  
STYLES FOR LESS, INC., a California  
corporation, and DOES 1 through 20,  
  
Defendant.

Case No.: 14cv2521 NLS

**ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND PROVISIONAL CLASS  
CERTIFICATION**

**[Dkt. No. 63]**

1 Plaintiffs Asal Manouchehri and Pooneh Mehrazar-Arzani filed this putative class  
2 action seeking recovery on behalf of themselves and other customers of defendant Styles  
3 for Less, Inc. for violation of the Telephone Consumer Protection Act (TCPA). Plaintiffs  
4 now seek an order: (1) preliminarily approving the parties' proposed Settlement  
5 Agreement; (2) provisionally certifying the Class for settlement purposes only; (3)  
6 appointing Asal Sally Manouchehri and Pooneh Mehrazar-Arzani as Class  
7 Representatives; (4) appointing James R. Patterson of Patterson Law Group, APC and  
8 Evan M. Meyers of McGuire Law, P.C. as Class Counsel; (5) approving the form and  
9 dissemination of notice to Class Members; and (6) scheduling a final approval hearing.  
10 Pl. Mem. 2:1-6. The parties also jointly move for leave to file an amended complaint,  
11 adding Pooneh Mehrazar-Arzani as a plaintiff to this action. For the following reasons,  
12 this Court **GRANTS** Plaintiffs' motion for preliminary approval, and **GRANTS** the joint  
13 motion for leave to file an amended complaint.

14 **I. Leave to File Amended Complaint**

15 On October 22, 2014, plaintiff Manouchehri filed a class action in the U.S. District  
16 Court for the Southern District of California, alleging violations of the TCPA by Styles  
17 for Less. Pl. Mem. 3:4-5. On August 4, 2015, plaintiff Mehrazar-Arzani filed a class  
18 action in the U.S District Court for the Central District of California, alleging similar  
19 violations of the TCPA by Styles for Less. *Id.* at 3:7-8. In this motion, the parties jointly  
20 request leave to file an amended complaint adding plaintiff Pooney Mehrazer-Arzani to  
21 this action. *Id.* at 1, n.2. For good cause shown, the Court **GRANTS** this joint motion and  
22 **ORDERS** Plaintiffs to file Exhibit 2 of the James R. Patterson declaration as the first  
23 amended class action complaint by June 27, 2016.

24 **II. Relevant Background**

25 **A. Procedural Background**

26 Plaintiffs allege that defendant Styles for Less, a retailer, obtained phone numbers  
27 from its customers through its website and in its stores, then repeatedly and intentionally  
28 sent marketing and advertising text messages to its customers' cell phones. Compl. 1:27-

1 28-2:6-10. Plaintiffs assert that Defendant sent them advertising and marketing text  
2 messages using an automatic telephone dialing system without their granting of prior  
3 consent to receiving these messages, in violation of the TCPA<sup>1</sup> and 47 C.F.R. § 64.1200<sup>2</sup>.  
4 *Id.* at 4:23-28. Plaintiffs filed a class action on behalf of themselves “and all others  
5 similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3),” which  
6 includes:

7 All consumers who received a text message from styles for less from  
8 October 16, 2013, to December 15, 2015, which text message was not made  
9 for emergency purposes, was not made by a tax-exempt nonprofit  
10 organization, did not deliver a health care message, or was not made with the  
recipient’s prior express written consent.

11 Compl. 12:1-6. In approaching the deadline to complete class discovery, the parties  
12 consented to participating in a full day mediation session presided over by former federal  
13 Magistrate Judge Edward Infante, Ret., of JAMS-San Francisco on September 14, 2015.  
14 Pl’s Mem. 3:18-20. Judge Infante then “made a mediator’s proposal for a class-wide  
15 settlement, which was ultimately accepted by all Parties.” Pl’s Mem. 3:22-24. Plaintiffs  
16 subsequently filed this unopposed motion for preliminary approval of the class action  
17 Settlement.

## 18 **B. Settlement Terms**

19 Under the terms of the Settlement, defendant agrees to pay a \$3,600,000  
20 Settlement Fund to satisfy awards to class members, class representative payments, class  
21 counsel fees and litigation expenses, and settlement administrative costs. Patterson Decl.  
22 Ex. 1, at 6. Class members have the option of receiving a pro-rated Cash Award of up to  
23

---

24  
25 <sup>1</sup> The TCPA makes unlawful the sending of text messages using an “automatic telephone  
26 dialing system.” 47 U.S.C.A. § 227(b)(1)(a); *Satterfield v. Simon & Schuster, Inc.*, 569  
F.3d 946, 952 (9th Cir. 2009).

27 <sup>2</sup> No entity may send a text message “that includes or introduces an advertisement or  
28 constitutes telemarketing, using an automatic telephone dialing system” without “prior  
express written consent” of the receiving party. 47 C.F.R. § 64.1200.

1 \$10 cash, or a \$15 Voucher Award that is fully transferable, does not expire, and is as  
2 good as cash toward merchandise at Styles for Less retail stores. *Id.*; Pl. Mem. 11:16-18.  
3 Known class members—those members for whom Defendant has a name and home or  
4 email address on file—will receive the Voucher Award that may be used immediately  
5 upon receipt, along with a Claim Form and Summary Notice. Patterson Decl. Ex. 1, at 4,  
6 6. If these known class members select the Cash Award rather than the Voucher Award,  
7 they must return the Voucher Award and the Claim Form indicating their selection. *Id.* at  
8 11. Each known class member who fails to timely submit a Claim Form will be deemed  
9 to have elected the \$15 Voucher Award. *Id.* Those unknown class members for whom  
10 defendant cannot reasonably obtain a home or email address may submit a timely Claim  
11 Form indicating whether they choose to receive the Cash Award or the Voucher Award.  
12 *Id.* at 5. If an unknown class member fails to elect either the Cash Award or the Voucher  
13 Award on an otherwise valid and timely Claim Form, Defendant will issue that class  
14 member a Voucher Award. *Id.* However, unknown class members who fail to submit a  
15 valid and timely Claim Form will not be entitled to a Cash Award or Voucher Award. *Id.*

16 In addition to receipt of a cash or voucher award, “the Settlement provides for  
17 entry of a permanent injunction against [defendant], prohibiting text message marketing  
18 without obtaining the prior express written consent of the text message recipients.” Pl.  
19 Mem. 5:12-15 (citing Settlement Agreement, § III(F)). Also, Defendant will pay each  
20 Plaintiff an incentive award of up to \$7,500 for pursuing this litigation on behalf of the  
21 class, and will pay attorney fees of up to \$900,000 to Class Counsel, subject to the  
22 Court’s approval. Patterson Decl. Ex. 1, at 7. The parties have selected a Claims  
23 Administrator and determined a procedure for notice to class members of their options to  
24 receive settlement benefits, opt out of the Settlement, or object to the Settlement. Pl.  
25 Mem. 6:22-24.

### 26 **III. Preliminary Approval of Class Action Settlement**

27 Under Federal Rule of Civil Procedure 23(e), a class action settlement must be  
28 approved by the court. Review of a class action settlement generally consists of a

1 preliminary approval hearing and a fairness hearing. *True v. Am. Honda Motor Co.*, 749  
2 F. Supp. 2d. 1052, 1062 (C.D. Cal. 2010). “At the preliminary approval stage, a court  
3 determines whether a proposed settlement is ‘within the range of possible approval.’” *Id.*  
4 (citing *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 205 (5th Cir. 1981)).  
5 The judge must determine whether the proposed class satisfies the requirements of  
6 Federal Rule of Civil Procedure 23(a) and at least one subsection of Rule 23(b). Manual  
7 for Complex Litigation, § 21.632 (4th ed. 2004). A settlement can then be accepted if the  
8 judge approves the form and manner of notice and makes “a preliminary determination  
9 on the fairness, reasonableness, and adequacy of the settlement terms” pursuant to  
10 Federal Rule of Civil Procedure 23(e)(2). *Id.*

#### 11 **A. Conditional Class Certification**

12 To obtain a Conditional Class Certification from the Court, the Class Action must  
13 comply with the rigorous standards set forth by Federal Rule of Civil Procedure 23(a) and  
14 23(b)(1), (2), or (3). *Anchem Products, Inc., v. Windsor*, 521 U.S. 591, 614 (1997); *Wal-*  
15 *Mart Stores Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

#### 16 **1. Compliance with Federal Rule of Civil Procedure 23(a)**

17 For class certification in a class action lawsuit, a class must meet the prerequisites  
18 of numerosity, commonality, typicality, and adequate representation under Rule 23(a) as  
19 follows:

#### 20 **Rule 23. Class Actions**

21 (a) Prerequisites. One or more members of a class may sue or be sued  
22 as representative parties on behalf of all members only if:

- 23 (1) the class is so numerous that joinder of all members is impracticable;
- 24 (2) there are questions of law or fact common to the class;
- 25 (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 26 (4) the representative parties will fairly and adequately protect  
27 the interests of the class.

28 ///

1 a. Numerosity

2 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is  
3 impracticable” in order to qualify as a class action. Styles for Less records show that it  
4 transmitted text messages to approximately 300,000 consumers throughout the country  
5 during the Class Period. Pl. Mem. 15:27-28-16:1 (citing Patterson Decl. ¶ 6). The large  
6 estimated number of class members, combined with the fact that it is a national class with  
7 members dispersed throughout the country, renders joinder of all members impracticable.  
8 Pl. Mem. 16:1-3; *See Braun v. Safeco Ins. Co. of Am.*, 2014 U.S. Dist. LEXIS 184123  
9 (finding that 149 class members meets the numerosity requirement); *Parsons v. Ryan*,  
10 784 F.3d 571, 574 (9th Cir. 2015) (holding that 33,000 class members satisfied the  
11 numerosity requirement). The numerosity requirement is thus satisfied here.

12 b. Commonality

13 Under 23(a)(2), there must be “questions of law or fact common to the class” in  
14 order to satisfy class action requirements. Courts must apply a “rigorous standard” to this  
15 requirement, and must find “a single significant question of law or fact.” *Stockwell v. City*  
16 *& County of San Francisco*, 749 F.3d 1107, 1116 (9th Cir. 2014). Claims will satisfy the  
17 commonality requirement when the claims “depend upon a common contention . . . of  
18 such a nature that it is capable of classwide resolution—which means that determination  
19 of its truth or falsity will resolve an issue that is central to the validity of each one of the  
20 claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 342 (2011).

21 The action at bar involves only those consumers who received unsolicited text  
22 messages from Styles for Less “not made for emergency purposes . . . not made by a tax-  
23 exempt nonprofit organization, [which] did not deliver a health care message, or was not  
24 made with the recipient’s prior express written consent.” Patterson Decl. Ex. A, at 1. This  
25 action thus contains questions of law or fact common to the entire class, including “(1)  
26 whether Styles for Less obtained prior express written consent to send text messages to  
27 its customers; (2) whether the text messages were sent by an automatic telephone dialing  
28 system; and (3) whether Styles for Less acted willfully in sending the texts.” Pl. Mem.

1 16:18-23. All asserted claims concern the same underlying conduct by Defendant and  
2 will result in the precise resolution that will pertain to the entire class, satisfying  
3 commonality under Rule 23(a).

4 c. Typicality

5 To satisfy Class Action requirements, “the claims or defenses of the representative  
6 parties [must be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).  
7 “The test of typicality ‘is whether other members have the same or similar injury, whether  
8 the action is based on conduct which is not unique to the named plaintiffs, and whether  
9 other class members have been injured by the same course of conduct.’” *Ellis v. Costco*  
10 *Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v. Dataproducts*  
11 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Because Plaintiffs’ injury of receiving  
12 unsolicited text messages from the Defendant is the precise injury suffered by all  
13 members of the class involved, and arose from the same course of conduct and legal  
14 theory, the typicality requirement under Rule 23(a)(3) is satisfied. *See Ellis*, 657 F.3d at  
15 984.

16 d. Adequate Representation

17 Rule 23(a)(4) requires that “the representative parties . . . fairly and adequately  
18 represent the interests of the class.” Courts make two inquiries in determining whether a  
19 party adequately represents a named class of individuals: “(1) do the named plaintiffs and  
20 their counsel have any conflicts of interest with other class members and (2) will the  
21 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”  
22 *Ellis*, 657 F.3d at 985 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.  
23 1998)). “Adequate representation depends on, among other factors, an absence of  
24 antagonism between representatives and absentees, and a sharing of interest between  
25 representatives and absentees.” *Ellis*, 657 F.3d at 985. A conflict of interest will often  
26 arise between representatives and absentees when class members are “divided into  
27 conflicting discrete categories” or there is a “difference in severity of personal injury” to  
28 each class member. *Hanlon*, 150 F.3d at 1021.

1 It does not appear that there is a conflict of interest among the plaintiffs, their  
2 counsel, and other class members. The Settlement Agreement places all class members  
3 into one category: those who received non-consensual text messages from defendant.  
4 Patterson Decl. Ex. A, at 1. Each class member suffered the same injury as the  
5 representatives, receiving proper representation for their injuries. Nor is there any  
6 indication that the named plaintiffs did not take vigorous action on behalf of the entire  
7 class: “Plaintiff Manouchehri has been actively involved in the litigation...participat[ing]  
8 in the litigation and discovery and provid[ing] important information regarding [her]  
9 receipt of text messages from [defendant].” Patterson Decl. at 1:7-9. In fact, both  
10 plaintiffs Manouchehri and Mehrazar-Arzani “placed the Class’s interest before [their]  
11 own when [they] rejected Styles for Less’s Rule 68 offer of judgment.” Pl. Mem. 17:26-  
12 28. Moreover, proposed Class Counsel are competent and qualified to vigorously address  
13 this action, as they have “extensive experience in major complex litigation, and have  
14 been appointed class counsel in consumer class action lawsuits involving cellular phone  
15 technology and, in particular, the TCPA.” *Id.* at 18:4-8 (citing Patterson Decl. ¶ 8;  
16 Meyers Decl. ¶¶ 2-5). Thus, this court finds adequate representation at this stage of the  
17 action.

## 18 **2. Compliance with Federal Rule of Civil Procedure 23(b)(3)**

19 In addition to satisfying all requirements under Rule 23(a), a proposed class action  
20 must satisfy one of the provisions of Rule 23(b). *Anchem*, 521 U.S at 614. Plaintiffs in  
21 this case assert that they qualify for class certification for settlement purposes under Rule  
22 23(b)(3). Pl. Mem. 14:24-25. Rule 23(b)(3) permits certification of a class action when it  
23 is “not clearly called for” but “may nevertheless be convenient and desirable.” *Anchem*,  
24 521 U.S. at 615.

25 (b) Types of Class Actions. A class action may be maintained if Rule 23(a)  
26 is satisfied and if:

27 (3) the court finds that the questions of law or fact common to class  
28 members predominate over any questions affecting only individual  
members, and that a class action is superior to other available methods



1 for fairly and efficiently adjudicating the controversy. The matters  
2 pertinent to these findings include:

- 3 (A) the class members' interests in individually controlling the  
4 prosecution or defense of separate actions;
- 5 (B) the extent and nature of any litigation concerning the  
6 controversy already begun by or against class members;
- 7 (C) the desirability or undesirability of concentrating the  
8 litigation of the claims in the particular forum; and
- 9 (D) the likely difficulties in managing a class action.

10 a. Predominance of Common Questions of Law or Fact

11 Because plaintiffs assert class action authorization under Rule 23(b)(3), the court  
12 must find that “the questions of law or fact common to class members predominate over  
13 any question affecting only individual members.” Fed. R. Civ. P. 23(b)(3). The  
14 predominance inquiry asks whether “proposed classes are sufficiently cohesive to warrant  
15 adjudication by representation.” *See Anchem*, 521 U.S. at 623. “When common questions  
16 present a significant aspect of the case and they can be resolved for all members of the  
17 class in a single adjudication, there is clear justification for handling the dispute” on a  
18 class action basis. *Hanlon*, 150 F.3d at 1022 (citing Wright & Miller, § 1778.) Questions  
19 of law or fact common to class members will predominate over any question affecting  
20 individual members when damages can be calculated on a classwide basis. *See Tyson*  
21 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016); *Comcast Corp. v. Behrend*, 133 S.  
22 Ct. 1426, 1433 (2013). Correspondingly, when damages are likely to vary among class  
23 members, the class may be insufficiently cohesive to warrant a class action suit. *See*  
24 *Anchem*, 521 U.S. at 624.

25 The injury of all class members consists of receiving unsolicited text messages  
26 from Defendant, rendering common questions among class members and resulting in  
27 damages that are unlikely to vary among individuals. Patterson Decl. Ex. A at 1. All  
28 members’ claims can be resolved in a single adjudication, and damages can be calculated  
on a classwide basis using a common methodology of calculation. Common questions  
will thus predominate over individual questions in the instant case.

1                   b. Superiority of Class Action to Other Methods of Adjudication

2                   In addressing the superiority requirement of Rule 23(b)(3), courts must determine  
3 whether “the objectives of the particular class action procedure will be achieved in the  
4 particular case,” and comparatively evaluate “alternative methods of dispute resolution.”  
5 *Hanlon*, 150 F.3d at 1023. Accordingly, class actions are often the only feasible method  
6 of relief for individuals when the potential individual monetary recovery is small in size,  
7 satisfying the superiority requirement of Rule 23(b)(3). *See Leyva v. Medline Indus.*, 716  
8 F.3d 510, 515 (9th Cir. 2013).

9                   In the present case, each claim asserted individually, absent a class action, is  
10 statutorily limited to \$500. Pl. Mem. 19:20-21. Because this monetary relief for each  
11 customer who received unwanted text messages is relatively low, individual claims  
12 would not be successfully asserted or economically beneficial to class members. *See*  
13 *Patterson Decl. Ex. 1*, at 5; *Hanlon*, 150 F.3d at 2013; *Levy*, 716 F.3d at 511  
14 (considering plaintiff’s individual claim of “less than \$10,000” as too low for practicable  
15 individual adjudication). Class members would likely find individual claims  
16 uneconomical to litigate independently, thus rendering a class action superior to other  
17 available methods of adjudication for members of the class at hand. *See* Pl. Mem. 19:20-  
18 27; *Hanlon*, 150 F.3d at 2013.

19                   **B. Fairness of Settlement**

20                   In approving a class action settlement, a court must find that it was “fair,  
21 reasonable, and adequate,” enabling all class members to be bound. Fed. R. Civ. P.  
22 23(e)(2). Courts consider a variety of factors when assessing the fairness of a class action  
23 settlement, including “(1) the strength of the plaintiffs’ case; (2) the risk, expense,  
24 complexity, and likely duration of further litigation; (3) the risk of maintaining class  
25 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of  
26 discovery completed and the stage of the proceedings; (6) the experience and views of  
27 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class  
28 members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026; *In re Bluetooth Headset*

1 *Products Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *Churchill Village, L.L.C. v.*  
2 *General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

3 At the preliminary stage for approval of a settlement agreement the Court need  
4 only conduct a brief assessment of the Settlement “for the purpose of resolving any  
5 glaring deficiencies before ordering the parties to send the proposal to class members.”  
6 *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008) (citing *Molski v. Gleich*, 318  
7 F.3d 937, 953-54 (9th Cir. 2003)). Here, the relevant factors include whether the  
8 proposed settlement (1) appears to be the product of arm’s length, noncollusive  
9 negotiations; (2) contemplates fair fee and incentive awards; (3) was a result of sufficient  
10 discovery or investigation; and (4) integrates the adequacy of the experience and views of  
11 counsel to the litigation. *See Williams*, 2010 WL 761122, at \*5; *Monterrubio v. Best Buy*  
12 *Stores, L.P.*, 291 F.R.D. 443, 453-54 (E.D. Cal. 2013).

### 13 **1. Product of Noncollusive, Arms-Length Negotiations**

14 A mediator’s involvement during the course of settling a class action is evidence of  
15 arms-length, non-collusive negotiations. *See Hanlon*, 150 F.3d at 1029; *Gallucci*, 603  
16 Fed.Appx. at 534. The parties mediated the instant case before Judge Infante of JAMS-  
17 San Francisco on September 14, 2015. Patterson Decl. ¶ 4. “At the conclusion of the  
18 mediation, Judge Infante made a mediator’s proposal for a class wide settlement, which  
19 was ultimately accepted by all parties.” *Id.* Based on the Judge’s participation and  
20 considering the lack of evidence suggesting collusion, it appears at this time that all  
21 negotiations between the parties were made at arm’s length.

22 What is not clear by the papers, though, is what will happen to any outstanding  
23 money not claimed by the class. **In the final approval papers, the parties must**  
24 **explain what will happen to any unclaimed funds.**

### 25 **2. Attorneys’ Fees and Incentive Awards**

#### 26 a. Attorneys’ Fees

27 If attorneys’ fees are found unreasonably high in a class action, “the likelihood is  
28 that the defendant obtained an economically beneficial concession with regard to the

1 merits provisions, in the form of lower monetary payments to class members or less  
2 injunctive relief for the class than could otherwise have [been] obtained.” *Staton v.*  
3 *Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003). Such a case “has the potential of enabling  
4 a defendant to pay class counsel excessive fees and costs in exchange for counsel  
5 accepting an unfair settlement on behalf of the class.” *Id.* (quoting *Lobatz v. U.S. West*  
6 *Cellular*, 222 F.3d 1142, 1148 (9th Cir. 2000)). Courts often apply the “common fund”  
7 doctrine in determining attorneys’ fees in class action suits, in which the court grants the  
8 class counsel a certain percentage of the common fund calculated for distribution to the  
9 entire class. *See Staton*, 327 F.3d at 968. The Ninth Circuit “has established 25% of the  
10 common fund as the benchmark award for attorney fees.” *Id.* (citing *Hanlon*, 150 F.3d at  
11 1029); *Gallucci v. Gonzalez*, 603 Fed.Appx. 533, 534 (9th Cir. 2015). Because \$900,000  
12 represents 25% of \$3,600,000—the common fund for distribution to the class in  
13 question—the arranged attorney fees in the case at bar are adequately fair under  
14 established precedent.

15           b.           Class Representatives’ Incentive Awards

16           “Incentive awards are payments to class representatives for their service to the  
17 class in bringing the lawsuit.” *Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d  
18 1157, 1163 (9th Cir. 2013). The Ninth Circuit has expressed that in some circumstances  
19 incentive awards may be proper, but that district courts should be cautious in awarding  
20 them. *Id.* Courts should not routinely apply incentive awards and must “scrutinize  
21 carefully the awards so that they do not undermine the adequacy of the class  
22 representatives.” *Id.* Incentive awards produce the risk of rewarding individual members  
23 of the class disproportionately to the class as a whole. *See id.* (citing *Staton*, 327 F.3d at  
24 977). “Concerns over potential conflicts may be especially pressing where . . . the  
25 proposed service fees greatly exceed the payments to absent class members.” *Radcliffe*,  
26 715 F.3d at 1165 (quoting *White v. Experian Info. Solutions, Inc.*, 803 F.Supp.2d 1086,  
27 1112 (C.D.Cal.2011)). “If class representatives expect routinely to receive special awards  
28 in addition to their share of the recovery, they may be tempted to accept suboptimal

1 settlements at the expense of the class members whose interests they are appointed to  
2 guard.” *Staton*, 327 F.3d at 975 (quoting *Weseley v. Spear, Leeds & Kellogg*, 711 F.Supp.  
3 713, 720 (E.D.N.Y.1989)). However, incentive awards that are intended to compensate  
4 class representatives for work undertaken on behalf of a class “are fairly typical in class  
5 action cases.” *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 943 (9th Cir.  
6 2015).

7         The Ninth Circuit denied a class action settlement motion when the class  
8 representatives’ award was premised on support of the settlement. *See Radcliffe*, 715 F.3d  
9 at 1164. However, when there are “no structural differences in the claims of the class  
10 representatives and the other class members,” and when “the amount sought and awarded  
11 [is] relatively small . . . within the usual norms of ‘modest compensation’ paid to class  
12 representatives for services performed,” class action incentive awards will be permitted.  
13 *Online DVD-Rental*, 779 F.3d at 943. In determining fairness of incentive awards, courts  
14 must also weigh relevant factors, such as “the actions the plaintiff has taken to protect the  
15 interests of the class, the degree to which the class has benefited from those actions . . .  
16 the amount of time and effort the plaintiff expended in pursuing the litigation, and  
17 reasonable fears of workplace retaliation.” *Staton*, 327 F.3d at 977 (quoting *Cook v.*  
18 *Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

19         As the present incentive awards are not premised on support of the settlement  
20 agreement, and the representatives’ claims are identical to those of unnamed class  
21 members, the remaining issue at bar is whether the class representative incentive award  
22 of \$7,500 is disproportionately unfair based on the effort expended in pursuing this  
23 litigation on behalf of the class. Where class representatives received \$5,000 in incentive  
24 payments and unnamed class members received approximately \$12 each from a total  
25 settlement fund of \$27,250,000, the Ninth Circuit held that the incentive award was fair.  
26 *Online DVD-Rental*, 779 F.3d at 941; *cf. In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
27 463 (9th Cir. 2000) (approving an incentive award of \$5,000 in a settlement of \$1.725  
28 million involving a class of 5,400 members). This Court held that an incentive award of

1 \$30,000 was fair from a settlement agreement of \$14,500,000 where plaintiff played an  
2 active role in litigation, alleging a total of 120 hours of work and taking a financial risk.  
3 *Mirkarimi v. Nevada Property 1, LLC*, No. 12cv2160, 2016 U.S. Dist. WL 795878 at \*6  
4 (S.D. Cal. Feb. 29, 2016). California District Courts have emphasized that *preliminary*  
5 approval of incentive awards may be granted so long as the incentive award “does not  
6 necessarily render the settlement unfair or unreasonable,” and is “within the range of  
7 possible approval.” *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-0026, 2012 U.S.  
8 Dist. LEXIS 166704 at \*20 (N.D. Cal. Nov. 20, 2012); *Harris v. Vector Mktg. Corp.*, No.  
9 C-08-5198, 2011 U.S. Dist. LEXIS 48878 at \*27-29 (N.D. Cal. April 29, 2011).

10 At this point in this action there is insufficient information to determine that the  
11 proposed incentive award of \$7,500 for both Plaintiffs is fair. Plaintiffs have offered no  
12 information as to whether they were deposed and do not describe the efforts each Plaintiff  
13 made or the hours of work each spent in helping to respond to discovery. Further,  
14 counsel provides no information as to plaintiff Mehrazar-Arzani’s part in the litigation.  
15 Both Plaintiffs seek an equal award, yet there is evidence of more extensive discovery on  
16 the part of Plaintiff Manouchehri, who was “actively involved in the  
17 litigation...participated in the litigation and discovery and provided important  
18 information regarding [her] receipt of text messages from Styles for Less.” Patterson  
19 Decl. ¶ 2. While this Court needs more detailed evidence as to the number of hours and  
20 effort expended by both Plaintiffs, there is sufficient information to *preliminarily* approve  
21 this Settlement Agreement, with the expectation that the requested information will be  
22 subsequently provided by the parties. *See Young v. Polo Retail, LLC*, No. C-02-4546,  
23 2006 U.S. Dist. LEXIS 81077, at \*15-16 (N.D. Cal. Oct. 25, 2006) (preliminarily  
24 approving settlement agreement where a \$25,000 incentive award compared to a  
25 maximum award of \$3,000 for unnamed class members raised questions of fairness);  
26 *Monterrubio*, 291 F.R.D. at 447-48 (preliminarily approving settlement agreement  
27 entitling plaintiff to an incentive award of “up to \$7,500” where the average unnamed  
28 class member would receive \$65.79 in damages when the extent of plaintiff’s

1 participation was not fully detailed).

2         The parties are advised that this Court will not approve the incentive award  
3 amounts without detailed evidence specific to each Plaintiff, indicating the extent of each  
4 representative's role in discovery and litigation. *See Van Vranken v. Atlantic Richfield*  
5 *Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (decreasing the plaintiff's incentive award  
6 from \$100,000 to \$50,000 where plaintiff did not list the number of hours spent toward  
7 litigation, but "participated in 49 telephone conferences and five meetings with Class  
8 Counsel, attended three pre-trial hearings, had his deposition taken twice, and testified at  
9 trial").

### 10                 **3. Extent of Discovery Completed**

11         Plaintiffs' counsel propounded formal discovery requests after investigating  
12 potential claims, "including Interrogatories, Requests for Production, and Requests for  
13 Admission," and deposed Defendant under Rule 30(b)(6). Patterson Decl. at 1:10-14.  
14 Defendant "responded to the discovery requests and produced responsive documents." *Id.*  
15 at 1:12-13. The parties engaged in discovery over the course of eleven months, after  
16 which both parties mediated the case before a retired judge, briefing their positions prior  
17 to the mediation. *Id.* at 1:16-18; Ex. 1, at 4.

18         It appears that the parties exercised considerable discovery before mediation;  
19 however, this Court requires more detailed information concerning the full extent of  
20 discovery by both plaintiffs to this action. The Court would like to see the precise number  
21 and type of discovery requests, including depositions, so it can determine whether all  
22 possible claims were investigated, deliberated, and discussed between the parties, and  
23 that agreements were not made in haste or in the absence of relevant information  
24 pertaining to the issue at hand. *See Hanlon*, 150 F.3d at 1027. These issues must be  
25 addressed by the parties prior to the final fairness hearing in order to finalize this  
26 Settlement Agreement. However, this present lack of information does not prevent a  
27 *preliminary* approval of the Settlement. *See Monterrubio*, 291 F.R.D. at 454 (where "the  
28 parties did not fully complete discovery prior to settlement negotiations, but rather

1 engaged in a process of informal discovery, approval of a class action settlement [was]  
2 proper as long as discovery allowed the parties to form a clear view of the strengths and  
3 weaknesses of their cases”).

#### 4 **4. Experience and Views of Counsel**

5 Patterson Law Group, class counsel to plaintiff Manouchehri, focuses on class  
6 action litigation, is “recognized as a leader on both the state and national levels,” and its  
7 attorneys “have successfully served as class counsel, or co-class counsel...recovering  
8 hundreds of millions of dollars in benefits for individuals across the country.” Patterson  
9 Decl. 2:12-18; Ex. 3, at 2. In Patterson’s view, the proposed settlement is the best option  
10 for the parties, considering “summary judgment, the difficulties of complex litigation, the  
11 risk of reversal on appeal, and the potential for delay.” Patterson Decl. 1:27-2:1-2.

12 Evan M. Meyers, attorney with McGuire Law, P.C., represents both Plaintiffs.  
13 Meyers Decl. 1:5-7. Meyers has “extensive experience in class action lawsuits similar in  
14 size and complexity to the instant case...ha[s] served as Class Counsel in multiple class  
15 action lawsuits, including TCPA actions...[and] ha[s] intimate knowledge of the law in  
16 the field of telecommunications and cellular telephone technology.” *Id.* at 1:11-25. In his  
17 experienced opinion, based upon “knowledge of the facts and relevant law, including  
18 Defendant’s potential defenses in this matter...this proposed settlement is fair, reasonable  
19 and adequate.” *Id.* at 2:20-22.

20 Plaintiffs’ Counsel asserts that “[i]f this case does not settle, there are risks that the  
21 class may not be certified and that Plaintiffs will face lengthy and expensive litigation,  
22 delaying any relief for Class Members, or that Plaintiffs and the Class Members will  
23 receive no relief whatsoever.” Pl. Mem. 11:10-13. Continued litigation may likely be  
24 unproductive and economically detrimental to Plaintiffs and all class members,  
25 suggesting the benefit of the present Settlement Agreement.

#### 26 **C. Proposed Notice**

27 In order to approve a class action settlement agreement, notice must be given “in a  
28 reasonable manner to all class members who would be bound by the proposal.” Fed. R.



1 Civ. P. 23(e)(1). Notice provided pursuant to Rule 23(e) must "generally describe the  
2 terms of the settlement in sufficient detail to alert those with adverse viewpoints to  
3 investigate and to come forward and be heard." *Lane v. Facebook, Inc.*, 696 F.3d 811,  
4 826 (9th Cir. 2012) (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir.  
5 2009)). Further, "[f]or any class certified under Rule 23(b)(3), the court must direct to  
6 class members the best notice that is practicable under the circumstances, including  
7 individual notice to all members who can be identified through reasonable effort." Fed.  
8 R. Civ. P. 23(c)(2)(B).

9       The Settlement Agreement outlines a detailed method of notice for absent class  
10 members that satisfies Rule 23(e) and Rule 23(c)(2) requirements. Within seven days  
11 after preliminary approval of the settlement, the Defendant will provide class members'  
12 contact information available from its records, including names, mailing addresses,  
13 telephone numbers, and e-mail addresses. Patterson Decl. Ex. 1, at 7. Within fourteen  
14 days after "preliminary approval of the Settlement, the Claims Administrator will mail [a]  
15 Summary Class Notice and Claim Form . . . and \$15 Voucher Award" to those members  
16 whose mailing addresses were on file, and email such forms to those members with only  
17 an email address on file. Decl. Ex. 1, at 7; Ex. B; Ex. D. If a form is returned due to  
18 incorrect address, "the Claims Administrator will promptly search for a more current  
19 address . . . and re-mail" the forms, "taking reasonable steps to trace the mailing  
20 address[es]." Patterson Decl. Ex. 1, at 7. Furthermore, "the Claims Administrator will  
21 commence a 30-day social media campaign . . . on websites geared to reach the target  
22 audience" and will "create and maintain a settlement website containing" the Summary  
23 Class Notice and Claim Form available for submittal. Patterson Decl. Ex. 1, at 8. The  
24 Class Notice form contains a detailed description of what the lawsuit entailed, reasons for  
25 the settlement, and what the class members' options are. *See* Patterson Decl. Ex. A. The  
26 Court finds that this plan for providing notice is adequate.

27       **D. Proposed Class Counsel and Representatives**

28       Federal Rule of Civil Procedure 23(g)(2) states that "When one applicant seeks

1 appointment as class counsel, the court may appoint that applicant only if the applicant is  
2 adequate under Rule 23(g)(1) and (4).” “If more than one adequate applicant seeks  
3 appointment, the court must appoint the applicant best able to represent the interests of  
4 the class.” *Radcliffe v. Hernandez*, No. 14-56101, 2016 U.S. App. LEXIS 5691 at \*25  
5 (9th Cir. Mar. 28, 2016). Under Rule 23(g)(1), the court must consider:

- 6 (i) the work counsel has done in identifying or investigating potential  
7 claims in the action;
- 8 (ii) counsel's experience in handling class actions, other complex  
9 litigation, and the types of claims asserted in the action;
- 10 (iii) counsel's knowledge of the applicable law; and
- 11 (iv) the resources that counsel will commit to representing the class.

12 Class counsel has a duty to “fairly and adequately represent the interest of the class,” and  
13 in addition to the Rule 23(g)(1)(a) factors, the Court may “consider any other matter  
14 pertinent to counsel's ability to fairly and adequately represent the interests of the class.”  
15 Fed. R. Civ. P. 23(g)(4), (g)(1)(B).

16 The proposed class counsel adequately satisfies Rule 23(g) requirements. Evan M.  
17 Meyers, attorney with McGuire Law, P.C., has been involved in this lawsuit “since  
18 before its commencement,” has “diligently investigated the facts and claims in this matter  
19 and ha[s] also dedicated substantial resources to this matter and will continue to do so.”  
20 Meyers Decl. ¶ 7. Attorneys at McGuire Law, P.C. “have extensive experience in class  
21 action lawsuits similar in size and complexity to the instant case” and “have intimate  
22 knowledge of the law in the field of telecommunications and cellular telephone  
23 technology.” *Id.* ¶ 2-4. Meyers has previously been involved in “consumer class actions  
24 involving unauthorized telephone calls under the TCPA” and has “been appointed as  
25 class counsel in numerous complex consumer class actions,” along with other attorneys at  
26 McGuire Law, P.C. *Id.* ¶ 4.

27 Before filing this lawsuit, Patterson Law Group investigated Plaintiff’s potential  
28 claims. Patterson Decl. ¶ 3. After filing, Patterson Law Group “propounded formal  
discovery requests, including Interrogatories, Requests for Production, and Requests for

1 Admission” and “also deposed [Defendant] pursuant to Federal Rule of Civil Procedure  
2 30(b)(6).” *Id.* Patterson Law Group “substantially concentrates its practice in the  
3 prosecution of class actions” and is “recognized as a leader on both the state and national  
4 levels.” *Id.* at ¶ 8; Ex. 3. Attorneys at Patterson Law group “have successfully served as  
5 class counsel, or co-class counsel . . . recovering hundreds of millions of dollars in  
6 benefits for individuals across the country.” Patterson Decl. ¶ 8; Ex. 3. “The parties agree  
7 that the proposed Class meets the requirements of Federal Rules of Civil Procedure 23 for  
8 settlement purposes.” Patterson Decl. ¶ 5.

9 Because the class representatives satisfy the Rule 23(a) requirements of typicality,  
10 commonality, and adequate representation, this Court finds that plaintiffs are adequate  
11 representatives for this class action. *See Nursing Home Pension Fund v. Oracle Corp.*,  
12 No. C01-00988, 2006 U.S. Dist. LEXIS 94470 at \*44 (N.D. Cal. Dec. 20, 2006); *In re DJ*  
13 *Orthopedics, Inc.*, No. 01-CV-2238-K, 2003 U.S. Dist. LEXIS 21534 at \*29 (S.D. Cal.  
14 Nov. 16, 2003); *Civil Rights Educ. & Enforcement Ctr. v. Ashford Hospitality Trust, Inc.*,  
15 No. 15-cv-00216, 2015 U.S. Dist. LEXIS 170416 at \*21 (N.D. Cal. 2015)

#### 16 **IV. Conclusion**

17 Because the present class action Settlement Agreement satisfies the requirements  
18 set forth by Rule 23(a) and 23(b), and provides an adequate means of notice to absent  
19 class members, this Court **preliminarily approves** this Settlement Agreement. In  
20 addition, this Court approves the appointment of representatives and class counsel to this  
21 action. This court, however, requires more detailed evidence as to the extent of discovery  
22 completed and both Plaintiffs’ roles in the litigation prior to the final fairness hearing.  
23 Accordingly, the Court **ADOPTS** the following proposed order submitted by Plaintiffs,  
24 **as amended by this Court:**

25 This Action is pending before this Court as a putative class action. The named  
26 Plaintiffs, Class Counsel, and Defendant Styles for Less, Inc. have applied to this Court  
27 for an order preliminarily approving the settlement of this action in accordance with a  
28 Class Action Settlement Agreement, which sets forth the terms and conditions for a

1 proposed settlement and dismissal of the Action with prejudice. The Court has read and  
2 considered the unopposed motion for preliminary approval and supporting documents  
3 and now, **ORDERS:**

- 4 1. This Order incorporates by reference the definitions in the Settlement Agreement,  
5 and all terms defined therein shall have the same meaning in this Order as set forth  
6 in the Settlement Agreement.
- 7 2. It appears to the Court on a preliminary basis that the Settlement Agreement is fair,  
8 adequate, and reasonable. It appears to the Court **at this time** that adequate  
9 investigation and research has been conducted, such that counsel for the parties at  
10 this time are able to reasonably evaluate their respective positions. **But the parties**  
11 **must provide further detailed information regarding discovery and the**  
12 **participation of each specific named Plaintiff in the final approval papers, as**  
13 **well as an explanation as to what will happen to any unclaimed funds.** It  
14 further appears to the Court that settlement, at this time, will avoid substantial  
15 additional costs by all parties, as well as avoid the delay and risks that would be  
16 presented by the further prosecution of the Action. It further appears that the  
17 Settlement Agreement has been reached as the result of intensive, serious, and  
18 arms-length negotiations with the help of a highly respected mediator, the  
19 Honorable Edward A. Infante (Ret.).
- 20 3. The Court preliminarily finds that the Settlement Agreement appears to be within  
21 the range of reasonableness of a settlement that could ultimately be given final  
22 approval by this Court. Indeed, the Court has reviewed the monetary recovery that  
23 is being granted as part of the settlement and preliminarily finds that the monetary  
24 settlement awards made available to all putative class members are fair, adequate,  
25 and reasonable when balanced against the potential outcomes of further litigation.
- 26 4. For settlement purposes only, the Court finds that the prerequisites for class action  
27 treatment under Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been  
28 preliminarily satisfied. The Court finds that the Class is so numerous that joinder

1 of all Class Members is impracticable; Plaintiffs' claims are typical of the Class's  
2 claims; there are questions of law and fact common to the Class, which  
3 predominate over any questions affecting only individual Class Members; and  
4 class certification is superior to other available methods for the fair and efficient  
5 adjudication of the controversy. The Court hereby conditionally certifies the  
6 following Class for settlement purposes only:

7 All consumers who received a text message from Defendant  
8 from October 16, 2013 to December 15, 2015, which text  
9 message was not made for emergency purposes, was not made  
10 by a tax-exempt nonprofit organization, did not deliver a health  
11 care message, or was not made with the recipient's prior  
12 express written consent.

- 13 5. Asal Sally Manouchehri and Pooneh Mehrazar-Arzani are hereby preliminarily  
14 appointed and designated, for all purposes, as the representatives for the Class, and  
15 the law firms of Patterson Law Group, APC and McGuire Law, P.C., are hereby  
16 preliminarily appointed and designated as Class Counsel to act on behalf of  
17 Plaintiffs and the Class.
- 18 6. Class Counsel is authorized to act on behalf of Class Members with respect to all  
19 acts or consents required by, or which may be given pursuant to, the Settlement  
20 Agreement, and such other acts reasonably necessary to consummate the  
21 Settlement Agreement. Any Class Member may enter an appearance through  
22 counsel of his or her own choosing and at his or her own expense. Any Class  
23 Member who does not enter an appearance or appear on his or her own will be  
24 represented by Class Counsel.
- 25 7. A Final Approval Hearing shall be held before this Court on **October 6, 2016 at**  
26 **2:30 p.m., in Courtroom 1A, Edward J. Schwartz Federal Courthouse, 221**  
27 **West Broadway, San Diego, California 92101**, to determine all necessary matters  
28 concerning the Settlement Agreement, including: whether the proposed settlement  
of the Action on the terms and conditions provided for in the Settlement

1 Agreement is fair, adequate, and reasonable and should be finally approved by the  
2 Court; whether a Judgment, as provided in the Settlement Agreement, should be  
3 entered herein; whether the plan of allocation contained in the Settlement  
4 Agreement should be approved as fair, adequate, and reasonable to the Class  
5 Members; and to award attorneys' fees and costs, the class representative  
6 enhancement award, and settlement administration costs.

7 8. The Court hereby approves, as to form and content, the Notices to be distributed to  
8 Class Members attached as Exhibits A through E to the Settlement Agreement. The  
9 Court finds that the distribution of the Notices, in the manner and form set forth in  
10 the Settlement Agreement, meets the requirements of Due Process, is the best  
11 notice practicable under the circumstances, and shall constitute due and sufficient  
12 notice to all persons entitled thereto.

13 9. The Court hereby appoints CPT Group as Settlement Administrator and hereby  
14 directs the Settlement Administrator within **30 days after entry of this Order** to  
15 mail or cause to be mailed to Class Members the Notice by first class mail, provide  
16 email and published notice to Class Members, and create and maintain a settlement  
17 website in accordance with the Settlement Agreement.

18 10. Any Class Member may choose to be excluded from the Class by following the  
19 instructions for requesting exclusion, which are set forth in the Notice. Any such  
20 request must be postmarked or submitted via the Settlement Website within **75**  
21 **days of entry of this Order**. Any person who opts to be excluded from the class  
22 will not be entitled to any recovery under the Settlement Agreement and will not  
23 be bound by the Settlement or have any right to object, appeal, or comment  
24 thereon. Class Members who have not requested exclusion shall be bound by all  
25 determinations of this Court, by the Settlement Agreement, and by the Judgment.

26 11. Any Class Member may appear at the Final Approval Hearing and may object to or  
27 express his or her views regarding the Settlement Agreement, present evidence, or  
28 file papers that may be proper and relevant to the issues to be heard and determined

1 by the Court as provided in the Notice, provided that the Class Member has served  
2 by hand or by first class mail, within 75 days of the date of this Order, written  
3 objections to the Settlement Agreement as provided in the Notice. Any Class  
4 Member who does not make his or her objection in the manner provided in the  
5 Notice shall be deemed to have waived any objections and shall be foreclosed from  
6 making any objection to the Settlement Agreement.

7 12. All papers supporting Plaintiffs' request for an award of attorneys' fees and costs  
8 and class representative enhancement award, **which must be supported by**  
9 **further facts as described in this order**, shall be filed no later than 14 calendar  
10 days before the Claim Deadline.

11 13. All papers in support of final approval of the Settlement Agreement shall be filed  
12 with the Court and served no later than 14 calendar days before the Final Approval  
13 Hearing.

14 14. The Settlement Agreement is not a concession or admission, and shall not be used  
15 against any of the parties as an admission or indication with respect to any claims.  
16 Whether or not the Settlement Agreement is fully approved, neither the Settlement  
17 Agreement, nor any document, statement, proceeding, or conduct related to the  
18 Settlement Agreement, nor any reports or accounts thereof, shall in any event be:

19 a. Construed as, offered or admitted in evidence as, received as or deemed to  
20 be evidence for any purpose as to the claims or defenses in the Action,  
21 including, but not limited to, evidence of a presumption, concession,  
22 indication or admission by any party of any liability, fault, wrongdoing,  
23 omission, concession or damage; or

24 b. Disclosed, referred to, or offered or received in evidence against any of the  
25 parties in any further proceeding in the Action, or in any other civil,  
26 criminal, or administrative action or proceeding, except for purposes of  
27 enforcing the Settlement Agreement.

28 15. As of the date this Order is signed, all dates and deadlines associated with this

1 Action shall be stayed, other than those pertaining to the administration of the  
2 Settlement of the Action.

3 16. In the event the Settlement Agreement is not finally approved, or is terminated,  
4 cancelled, or fails to become effective for any reason, this Order shall be rendered  
5 null and void and shall be vacated, and the parties shall revert to their respective  
6 positions as or before entering into the Settlement Agreement.

7 The Court reserves the right to adjourn or continue the date of the Final Approval  
8 Hearing and all dates provided for in the Settlement Agreement without further notice to  
9 Class Members, and retains jurisdiction to consider all further applications arising out of  
10 or connected with the Settlement Agreement.

11 **IT IS SO ORDERED.**

12 Dated: June 20, 2016



13  
14 Hon. Nita L. Stormes  
15 United States Magistrate Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28