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14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**  
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 HEATHER TURREY, et al.,  
 18 Plaintiffs,  
 19 v.  
 20 VERVENT, INC., etc., et al.,  
 21 Defendants.

Case No. 3:20-cv-00697-DMS-AHG  
**CLASS ACTION**

**PLAINTIFFS' MEMORANDUM IN  
 SUPPORT OF MOTION FOR  
 ENTRY OF FINAL JUDGMENT  
 AND APPLICATION OF  
 PREJUDGMENT INTEREST**

**Date: April 5, 2024**  
**Time: 2:30 p.m.**

District Judge Dana M. Sabraw  
 Courtroom 13A, 13th Fl. (Carter-Keep)  
 Magistrate Judge Allison H. Goddard  
 Chambers Room 3B, (Schwartz)

Complaint Filed: April 10, 2020

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1 **I. INTRODUCTION**

2 On June 22, 2023, the jury returned a verdict in favor of Plaintiffs and the Class  
3 on their RICO claim (18 U.S.C. § 1962(d)) as to Defendants Vervent, Inc., Activate  
4 Financial, LLC, and David Johnson, and in favor of Defendant Laurence Chiavaro.  
5 ECF No. 300. The jury awarded Plaintiffs and the Class \$4,000,000, pre-trebling. *Id.*

6 Plaintiffs now move based on the jury’s verdict for entry of judgment in the  
7 amount of \$15,865,997.12, jointly and severally against Vervent, Activate, and  
8 Mr. Johnson. This sum consists of treble the amount awarded by the jury pursuant to  
9 18 U.S.C. § 1964(c) and prejudgment interest in the amount of \$3,865,997.12.  
10 Plaintiffs and the Class will seek an award of attorney’s fees and reimbursement of  
11 costs and expense after entry of judgment pursuant to Fed. R. Civ. P. 54(d) and CivLR  
12 54.1.

13 **II. ARGUMENT**

14 **A. RICO Treble Damages**

15 RICO provides for mandatory treble damages. 18 U.S.C. § 1964(c); *Beneficial*  
16 *Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271, 277 (9th Cir. 1988) (“[T]reble  
17 damages [are] mandated by RICO...”); *see also Rancheria v. Howard*, No. 2:20-CV-  
18 2109-JAM-DMC-P, 2022 U.S. Dist. LEXIS 2493, at \*11 (E.D. Cal. Jan. 5, 2022); and  
19 *Ally Bank v. Karakasevic*, No. 11-cv 00896-YGR (MEJ), 2015 U.S. Dist. LEXIS  
20 193875, at \*37 (N.D. Cal. Oct. 16, 2015). Defendants agree. ECF No. 245  
21 (Defendants’ Trial Brief) at 8.

22 Accordingly, Plaintiffs respectfully request that the final judgment reflect the  
23 trebled amount of the jury’s award, \$12 million, prior to prejudgment interest and any  
24 award of attorneys’ fees and costs and service awards to the Plaintiffs.

25 **B. Prejudgment Interest**

26 “It is well settled that prejudgment interest is a substantive part of a plaintiff’s  
27 claim, rather than a merely procedural mechanism.” *In re Exxon Valdez*, 484 F.3d  
28

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1 1098, 1101 (9th Cir. 2007). “The purpose of awarding prejudgment interest is to  
2 compensate a plaintiff for the loss of use of the money from the date of injury until  
3 the date of judgment.” *Id.* (citations and internal quotations omitted).

4 There is a presumption in favor of awarding prejudgment interest on a federal  
5 claim such as RICO. *See, e.g., In re Oracle Sec. Litig.*, 132 F.R.D. 538, 547 (N.D.  
6 Cal. 1990) (“[T]he main claims at bar being Federal, a presumption favoring the  
7 award of prejudgment interest at defendants’ cost of funds applies.”); *see also United*  
8 *Phosphorus, Ltd. v. Midland Fumigant, Inc.*, 205 F.3d 1219, 1236-37 (10th Cir. 2000)  
9 (discussing presumption in favor of awarding prejudgment interest on successful  
10 federal claims); *accord Ally Bank v. Kar*, No. 11-cv-00896-YGR (MEJ), 2015 U.S.  
11 Dist. LEXIS 193882, at \*47 n.4 (N.D. Cal. June 30, 2015) (awarding prejudgment  
12 interest on plaintiffs’ RICO claim).

13 Prejudgment interest should be awarded on the trebled amount. *See, e.g., In re*  
14 *ClassicStar Mare Lease Litig.*, 727 F.3d 473, 495–97 (6th Cir. 2013), *aff’g* 823 F.  
15 Supp. 2d 599, 644–45 (E.D. Ky. 2011) (civil RICO action applying the award of  
16 prejudgment interest to the entire RICO treble damages amount); *Aetna Cas. & Sur.*  
17 *Co. v. P&B Autobody*, 43 F.3d 1546, 1571 (1st Cir. 1994) (upholding the award of  
18 prejudgment interest on the entire treble damages amount under the RICO claims);  
19 *Akishev v. Kapustin*, No. 13-cv-07152(NLH)(AMD), 2015 U.S. Dist. LEXIS 187996,  
20 at \*19 (D.N.J. Sept. 21, 2015) (holding defendants jointly and severally liable to  
21 plaintiffs “for the prejudgment interest award on the full amount of actual damages  
22 trebled under RICO”).

23 Factually, the money recovered represents money paid by Plaintiffs and the  
24 other Class members to Defendants because of the RICO conspiracy. As a result, they  
25 have lost the use of that money, and should be paid interest along with the return of  
26 money paid.

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1           Additionally, in civil RICO cases, an award of prejudgment interest is  
2 particularly appropriate “where a defendant has sought unreasonably and unfairly to  
3 delay or obstruct the course of litigation.” *ClassicStar*, 727 F.3d at 496 (citation and  
4 internal quotations omitted). Here, Defendants repeatedly attempted to pick off the  
5 class representatives for the very purpose of eliminating this action or, at the very  
6 least, delaying it. Defendants’ “pick off” tactics required locating new class members  
7 willing to act as class representatives, multiple motions to amend the complaint to add  
8 the new class representatives (ECF Nos. 84 and 133), briefing on Defendants’  
9 repeated oppositions to adding new class representatives, multiple motions for class  
10 certification (ECF Nos. 87 and 143), and oppositions to Defendants’ repeated motions  
11 for summary judgment (ECF Nos. 85 and 158).

12           As this Court observed in its order denying in part and deferring in part  
13 Defendants’ (second) motion for summary judgment:

14           [M]any of these delays are of Defendants’ own making. Defendants filed  
15 both the instant motion for summary judgment and their prior summary  
16 judgment motion prematurely, before discovery had closed, at moments  
17 when Ms. Turrey was the only plaintiff remaining in the litigation.  
18 Defendants are of course free to extend settlement offers to class  
19 representatives early in the litigation. But Defendants cannot then be  
20 surprised when Plaintiff seeks leave to amend to add new plaintiffs. Nor  
21 can Defendants expect that they can capitalize on having settled with  
22 some class representatives to seek wholesale summary adjudication of  
23 the claims in this case in moments when only one plaintiff remains.

24 ECF No. 128 at 9 n.3.

25           Defendants further delayed the course of litigation by appealing this Court’s  
26 denial of their motion to compel arbitration (ECF Nos. 45 and 51) while  
27 simultaneously forcing Class Counsel to litigate and oppose their efforts to stay the  
28 underlying litigation. ECF Nos. 68 and 79.

          Thus, especially considering the foregoing, prejudgment interest applied to the  
treble RICO damages amount is warranted.

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1 As to the rate of interest, the applicable prejudgment interest rate is generally  
2 the same as the rate applicable to postjudgment interest set forth at 28 U.S.C. § 1961.  
3 See *Van Asdale v. Int'l Game Tech.*, 763 F.3d 1089, 1093 (9th Cir. 2014). As detailed  
4 in the Weir Declaration, prejudgment interest calculated at the federal statutory rate  
5 and compounded daily<sup>1</sup> amounts to \$3,865,997.12.<sup>2</sup> Declaration of Colin B. Weir  
6 (“Weir Decl.”), ¶ 15.

7 Plaintiffs and the Class are also entitled to post-judgment interest as set forth  
8 in 28 U.S.C. § 1961 to accrue from the date of the entry of the judgment until the  
9 judgment is satisfied in full. See *Nat'l Fire Ins. Co. v. Shangri La Constr.*, No. CV  
10 17-7664-R, 2018 U.S. Dist. LEXIS 238427, at \*7 (C.D. Cal. June 7, 2018).

11 **C. Joint and Several Liability**

12 Judgment should be entered jointly and severally against each of the defendants  
13 whom the jury found liable. See *Oki Semiconductor Co. v. Wells Fargo Bank*, 298  
14 F.3d 768, 775 (9th Cir. 2002) (“If a RICO conspiracy is demonstrated, ‘all  
15 conspirators are liable for the acts of their conspirators.’”) (quoting *Sec. Investor Prot.*  
16 *Corp. v. Vigman*, 908 F.2d 1461, 1468 (9th Cir. 1990.)); see also *id.* (“Holding RICO  
17 conspirators jointly and severally liable for the acts of their conspirators reflects the  
18 notion that the damage wrought by the conspiracy ‘is not to be judged by  
19 dismembering it and viewing its separate parts, but only by looking at it as a whole.’”)  
20 (quoting *Vigman*, 908 F.2d at 1468); accord *Fleischhauer v. Feltner*, 879 F.2d 1290,  
21 1301 (6th Cir. 1989) (“the nature of the RICO offense mandates joint and several  
22 liability.”).

23  
24  
25 <sup>1</sup> See *Termine v. Williams S. Hart Union High Sch. Dist.*, 288 Fed. Appx. 360,  
26 363 (9th Cir. 2008) (“Compound prejudgment interest is the norm in federal litigation  
27 and the decision whether to award it is left to the trial court’s discretion.”).

28 <sup>2</sup> Should the Court be inclined to award prejudgment interest on the non-trebled  
RICO award of \$4,000,000, that amount is \$1,288,665,71. Weir Decl., ¶ 15.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request entry of the concurrently submitted  
3 Proposed Final Judgment, which includes entry of judgment in the total amount of  
4 \$15,865,997.12.

5  
6 Respectfully submitted,

7 Dated: February 5, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury that the foregoing is true and correct. Executed on February 5, 2024.

*s/ Timothy G. Blood*

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