



1 On June 22, 2023, following a two-week class action jury trial, the jury found  
2 Defendants Vervent, Inc., Activate Financial LLC, and David Johnson liable under the  
3 Racketeer Influenced and Corrupt Organizations Act (“RICO”). (ECF No. 300.) The jury  
4 awarded Plaintiffs \$4 million in compensatory damages, which was trebled pursuant to the  
5 RICO statute, *see* 18 U.S.C. § 1964(c), for a total recovery of \$12 million. (*Id.*) Thereafter,  
6 Plaintiffs filed a motion to alter the judgment to include an award of \$51.5 million, the  
7 stipulated amount class members paid to Defendants in loan payments. (ECF No. 313.)  
8 The Court denied Plaintiff’s motion finding that the jury’s verdict was supported by  
9 substantial evidence. (ECF No. 345.)

10 In the present motion, Plaintiffs ask the Court to enter final judgment in the amount  
11 of \$16,008,282.67, against Defendants Vervent, Activate Financial LLC, and David  
12 Johnson. This sum consists of the trebled amount awarded by the jury, \$12 million, plus  
13 prejudgment interest in the amount of \$4,008,282.67. Defendants ask the Court to deny  
14 Plaintiffs’ application for prejudgment interest and enter final judgment in the amount of  
15 \$12 million.

## 16 II. DISCUSSION

### 17 A. Treble Damages

18 18 U.S.C. § 1964(c) “provides that a person injured in his business or property by  
19 reason of a violation of § 1962 may bring suit in the district court and ‘shall recover  
20 threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s  
21 fee.’” *Naoom v. Secured Assets Income Funds*, Case No. 05-cv-1207 H (CAB), 2007 WL  
22 9776596 at \*17 (S.D. Cal. Mar. 8, 2007) (quoting 18 U.S.C. § 1964(c)). The jury returned  
23 a verdict in favor of Plaintiffs for civil violations of RICO and awarded \$4 million in  
24 compensatory damages. Thus, the Court finds and the parties do not dispute that Plaintiffs  
25 are entitled to treble damages in the amount of \$12 million under 18 U.S.C. § 1964(c).

### 26 B. Prejudgment Interest

27 Federal law governs the availability of prejudgment interest for Plaintiffs’ civil  
28 RICO claims. *Naoom*, 2007 WL 9776596 at \*24 (S.D. Cal. Mar. 8, 2007) (citing *In re*

1 *Southland + Keystone*, 132 B.R. 632 641 (B.A.P. 9th Cir. 1991)) (“An award of interest in  
2 an action arising under a federal statute is a matter of federal law.”). Under federal law,  
3 the award of prejudgment interest “rests within the sound discretion of the court.” *Home*  
4 *Sav. Bank, F.S.B. by Resolution Trust Corp. v. Gillam*, 952 F.2d 1152, 1165 (9th Cir. 1991).  
5 “The essential rationale for awarding prejudgment interest is to ensure that an injured party  
6 is fully compensated for its loss.” *City of Milwaukee v. Cement Div., Nat. Gypsum Co.*,  
7 515 U.S. 189, 196 (1995). “Therefore, when determining whether to award prejudgment  
8 interest, the district court should be mindful of the fact that prejudgment interest is an  
9 element of compensation, not a penalty.” *See W. Pac. Fisheries, Inc. v. SS President Grant*,  
10 730 F.2d 1280, 1288 (9th Cir. 1984).

11 Plaintiffs ask the Court to exercise its discretion to award prejudgment interest on  
12 Plaintiffs trebled recovery of \$12 million. Notably, RICO is silent as to whether a  
13 prevailing plaintiff is entitled to prejudgment interest in addition to treble damages. Thus,  
14 in exercising its discretion, some district courts have held that a plaintiff is not entitled to  
15 recover prejudgment interest because mandatory trebling more than compensates an  
16 injured plaintiff. *See e.g., Davis v. Standefor*, 2009 WL 10672743 at \*1 (C.D. Cal. July  
17 30, 2009) (citing *Pac. Gas & Elec. Co. v. Howard P. Foley Co., Inc.*, 1993 WL 299219, at  
18 \*2 (N.D. Cal. July 27, 1993); *Louisiana Power & Light Co. v. United Gas Pipe Line Co.*,  
19 642 F. Supp. 781, 811 (E.D. La 1986)); *In re Crazy Eddie Sec. Litigation*, 948 F. Supp.  
20 1154, 1166 (E.D.N.Y. 1996) (“Since the class plaintiffs are entitled to trebled damages  
21 under RICO, they will be more than adequately compensated for the loss of the use of their  
22 money. . . .”) The Sixth Circuit, however, has held that prejudgment interest may be  
23 appropriate “where treble damages do not adequately compensate a plaintiff for the actual  
24 damages suffered, or where a defendant has sought unreasonably and unfairly to delay or  
25 obstruct the course of litigation.” *In re ClassicStar Mare Lease Litigation*, 727 F.3d 473,  
26 495 (6th Cir. 2013) (quoting *Bingham v. Zolt*, 810 F. Supp. 100, 102 (S.D.N.Y. 1993)  
27 (finding that “treble damages will usually more than adequately compensate a plaintiff for  
28 actual damages suffered” but “recogniz[ing] the possibility that exceptional circumstances

1 may exist” warranting an award of prejudgment interest). Neither the Supreme Court nor  
2 the Ninth Circuit has squarely addressed this issue.

3 Plaintiff contends the Court should adopt the Sixth Circuit’s standard and award  
4 prejudgment interest because Defendants unreasonably and unfairly delayed the litigation.  
5 *ClassicStar*, 727 F.3d 473 at 495. Specifically, Plaintiffs contend “Defendants repeatedly  
6 attempted to pick off the class representatives for the very purpose of eliminating this  
7 action, or at the very least, delaying it” and “Defendants further delayed the course of the  
8 litigation by appealing this Court’s denial of their motion to compel arbitration.” (Pls.’  
9 Mot. at 4.) The Court acknowledges that Defendants’ legal strategy may have delayed  
10 litigation but finds that such tactics were not unreasonable or unfair. While Defendants  
11 conduct of “picking off” class representatives was aggressive, the Court is not prepared to  
12 find under the present circumstances that Defendants acted unfairly or unreasonably.  
13 Additionally, Defendants’ appeal of the Court’s order denying their motion to compel  
14 arbitration did not unreasonably delay the case because the Court declined to stay the case  
15 while the appeal was pending. Defendants did not engage in unreasonable or unfair  
16 litigation tactics warranting an award of prejudgment interest even under the Sixth Circuit’s  
17 more deferential standard. Further, Plaintiffs may be too quick to blame Defendants  
18 entirely for the delay in judgment. Plaintiffs’ multiple post-trial motions seeking to pursue  
19 their UCL claim and asking the Court to increase the jury’s verdict from \$4 million to \$51.5  
20 million also contributed to the delay.

21 Ultimately, the Court finds that RICO’s mandatory trebling provision adequately  
22 compensates Plaintiffs for their loss. Requiring Defendants to pay prejudgment interest  
23 would be more punitive than compensatory in nature, particularly when measured by the  
24 jury’s verdict. *See Barnhard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013) (“We have  
25 held that prejudgment interest is an element of compensation, not a penalty.”). Plaintiffs  
26 contend “Defendants’ willful bad conduct in facilitating this illegal fraud persisted for  
27 nearly a decade and fully justifies prejudgment interest as a matter of fairness to their  
28 victims.” (Pls.’ Reply at 8.) However, this statement and much of Plaintiffs’ application

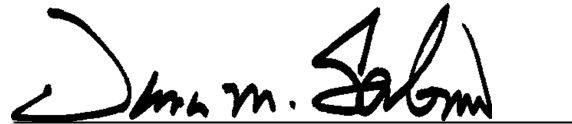
1 for prejudgment interest seeks to penalize Defendants for their conduct and is fairly  
2 accounted for by RICO’s trebling of damages. The Court may not award prejudgment  
3 interest as a penalty for Defendants’ bad faith conduct. *See City of Milwaukee*, 515 U.S.  
4 189 at 197 (“[P]rejudgment interest is not awarded as a penalty; it is merely an element of  
5 just compensation.”); *Davis*, 2009 WL 10672743 at \*1 n.4 (“Indeed, Plaintiffs stress the  
6 egregiousness of [Defendant]’s criminal conduct in urging the Court to award prejudgment  
7 interest, reinforcing the Court’s sense that an award of prejudgment interest would be  
8 punitive in nature.”). Thus, the Court respectfully declines to award Plaintiffs prejudgment  
9 interest and affirms the jury’s verdict of \$4 million prior to mandatory trebling under RICO.

10 **III. CONCLUSION & ORDER**

11 For the foregoing reasons, the Court **GRANTS** Plaintiffs’ motion for entry of final  
12 judgment and **DENIES** Plaintiffs’ application for prejudgment interest. Final judgment  
13 will be entered against Defendants Vervent, Inc., Activate Financial LLC, and David  
14 Johnson in the amount of \$12 million, plus attorneys’ fees and costs in an amount yet to be  
15 determined.

16 **IT IS SO ORDERED.**

17 Dated: June 18, 2024

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19 Hon. Dana M. Sabraw, Chief Judge  
20 United States District Court  
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