IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Philip Charvat, on behalf of himself and others similarly situated, Plaintiff, v. Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd., Defendants.	)	Case No. 1:12-cv-05746 Hon. Judge Andrea R. Wood Hon. Mag. Judge Mary Rowland

MOTION FOR ATTORNEYS' FEES AND COSTS
AND INCORPORATED MEMORANDUM IN SUPPORT

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I. INTRODUCTION

On July 6, 2017, this Court preliminarily approved a proposed class action settlement between Plaintiff Philip Charvat and Defendants Resort Marketing Group, Inc. and its principal, Elizabeth Valente (collectively, "RMG"), and Carnival Corporation & PLC ("Carnival"), Royal Caribbean Cruises, Ltd. ("Royal"), and NCL (Bahamas) Ltd. ("Norwegian") (collectively, the "Cruise Defendants"). Dkt. 576. The Settlement requires Defendants to pay between $7,000,000 and $12,500,000 into a common fund for the benefit of millions of consumers to whom RMG made prerecorded telemarketing calls referencing the Cruise Defendants, in alleged violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

Class Counsel have zealously prosecuted Plaintiff's claims for over five years, achieving the Settlement only after extensive first and third-party discovery and heavily-contested motion practice, including motions to dismiss, motions to compel, tens of thousands of pages of discovery, and thousands of pages of class certification briefing. The Settlement was reached only after an in-person mediation with Bruce Friedman of JAMS, followed by months of further negotiations between counsel for the parties.

As compensation for the substantial benefit conferred upon the Settlement Class and five years of grueling work, Class Counsel respectfully move the Court for an award of attorneys' fees equal to one-third of the Settlement Fund. While the amount of the Settlement Fund will depend upon how many class members submit claim forms, Counsel seeks one-third of the fund paid out; an amount that is well within the range of reasonableness. Additionally, Class Counsel also seek reimbursement of their out-of-pocket costs incurred in prosecuting the case, currently amounting to $211,193.05. This request should be approved because (1) it represents the market rate for this type of settlement and is in line with the Seventh Circuit's directive in *In re*

Synthroid, particularly as it is not a "mega-fund" case which yield lower percentages of settlement funds to attorneys, and (2) represents a reasonable and appropriate amount in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case.

II. BACKGROUND AND SETTLEMENT

A. Background

This case concerns alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, which prohibits, *inter alia*, initiating telemarketing calls using an artificial or prerecorded voice without prior express consent. 47 U.S.C. § 227(b)(1).

Specifically, beginning in February 11, 2011, Defendant RMG (a/k/a "Travel Services") repeatedly called Plaintiff's phone with a prerecorded message informing Mr. Charvat that he had been "selected" to receive a cruise with the Cruise Defendants. Dkt. 463, 3d Am. Compl. ¶ 98, 104, 109, 116, Ex. 7. Mr. Charvat had not consented to receive these pre-recorded message calls from the Defendants. *Id.* ¶ 123. Rather, these were unsolicited telemarketing calls promoting Cruise Defendant cruises, made as part of a widespread robocalling campaign to consumer phone numbers purchased through third parties. *Id.* ¶ 84; Dkt. 492 at 14.

Plaintiff Charvat filed this action on July 23, 2012, and hard-fought litigation proceeded for years to follow. After Plaintiff amended his complaint on September 25, 2012, the Cruise Defendants moved to dismiss and to stay discovery. Dkt. 23, 26, 30, 32, 37. Class Counsel responded to the motions to dismiss and moved for leave to file a second amended complaint, which Defendants opposed. Dkt. 46, 47, 52. After Judge Zagel—to whom this case was originally assigned—granted leave to amend, Defendants again filed motions to dismiss, requiring Class Counsel to engage in further briefing. Dkt. 61, 66, 78, 92, 96, 104, 108, 112. On

April 11, 2013, Judge Zagel stayed the case as to the Cruise Defendants pending the FCC's anticipated declaratory ruling regarding vicarious liability issues in *In re Joint Pet. by DISH Network, LLC et al for Declaratory Ruling Concerning the TCPA Rules*, CG Docket No. 11-50 (FCC), and Class Counsel ultimately succeeded in defending against Defendants' dispositive motions after the FCC ruled in consumers' favor in May 2013. Dkt. 117, 141, 143. It is worth noting that Plaintiff Philip Charvat was the consumer who prosecuted the *Dish* action in the FCC on behalf of consumers, that Mr. Charvat was represented by Class Counsel team member Matthew McCue through a substantial portion of the *Dish* proceedings, that these efforts had a significant impact on this litigation (being the reason Defendants' motion to dismiss was denied), and was a real win for Americans who hate robocalls, generally.

On May 3, 2013, Defendants RMG and Valente filed answers to Plaintiff's complaint, along with a counterclaim by RMG against Plaintiff Charvat, personally, based on allegations that Mr. Charvat had violated Illinois law by recording the prerecorded-message call RMG had placed to his phone. Dkt. 123. Class Counsel successfully defended against this counterclaim, and RMG voluntarily withdrew it on May 1, 2014, after Class Counsel filed a motion for summary judgment. Dkt. 191.

Heavily contested proceedings continued in this action after the case was reassigned from Judge Zagel to this Court on November 18, 2013, and discovery disputes and motion practice persisted both before this Court and Magistrate Judge Rowland, to whom discovery matters were referred on March 20, 2014. Dkt. 162, 181, 184. Among other things, after discovering that the telemarketing about which this lawsuit relates continued to be made well after the suit was filed, Class Counsel successfully moved for leave to file a third amended complaint in order to capture that continued allegedly illegal calling, over Defendants' objection. Dkt. 308, 351, 443, 453, 454.

When Defendants submitted the affidavit of a third-party to suggest that Mr. Charvat was fishing for TCPA violations, Class Counsel went on the offensive, deposed the affiant, and obtained testimony confirming that the purported "opt-in" lead data Defendants claimed showed that Mr. Charvat consented to the calls at issue was fabricated. Dkt. 512-1, Pascale Dep. at 94. Similarly, when Defendants hired a third-party vendor to run a calling campaign to conduct an on-the-spot "survey" of putative class members about what they remembered from calls they received years ago without notice to Class Counsel or informing the recipients about the adversarial purpose of the call, Class Counsel sought to have the vendor's declaration stricken. Dkt. 477, 487, 489. While that motion was denied by Judge Rowland without prejudice in terms of a discovery sanction, the briefing forced Defendants to commit to having only proffered the declarant as a non-expert, lay witness, contemplating later consideration by *this* Court as to whether the survey should be admitted on evidentiary grounds. Dkt. 509 at 1.

Discovery in this case was particularly hard-fought. Class Counsel prepared and served multiple sets of written discovery requests on Defendants, worked with Mr. Charvat to respond to Defendants' requests and prepare both him and his daughter for their depositions, worked with Plaintiff's expert to ensure proper data analysis and prepare him for his deposition, and participated with defense counsel in a total of 15 depositions across four states. (Burke Decl. ¶ 15.) Class Counsel filed a total of seven motions to compel discovery in this action, Dkt. 131, 137, 159, 175, 246, 248, 303, and defended against numerous others, Dkt. 139, 179, 211, 213, 214, 241, 254, 433, 446. Defendants appealed some of Magistrate Judge Rowland's orders to this Court, requiring further briefing. Dkt. 232, 233, 236, 237, 238, 292, 294, 315, 327, 367, 430, 482, 504, 511, 512. This advocacy permitted the development of an ample evidentiary record, ensuring effective argument—and, ultimately, settlement negotiations—while protecting against

overreaching or improper discovery. The more than 570 docket entries in this case evidence Class Counsel's zealous advocacy on behalf of the class; indeed, between March 2014 and August 2016, Magistrate Judge Rowland held over *30 discovery hearings.*

With discovery completed, Plaintiff initiated class certification briefing on May 16, 2016. Dkt. 492. This, too, was heavily argued, with the parties submitting thousands of pages in briefing and exhibits, along with multiple motions to exclude the other side's expert or other evidence. Dkt. 492, 520, 521, 530, 531, 547, 548, 551, 553. Several months later, the parties decided to discuss the possibility of class-wide settlement, and met for an all-day mediation with Bruce Friedman of JAMS in Miami, Florida, on March 18, 2017, preceded by the submission of mediation briefs. (Burke Decl. ¶ 15.) The parties failed to reach a settlement, but through continued, arms' length negotiations between counsel for the parties over subsequent months, they ultimately reached the instant Settlement now before the Court. (Burke Decl. ¶ 15.)

B. The Settlement

The Settlement requires Defendants to pay between $7,000,000 and $12,500,000 for the benefit of a Settlement Class defined as:

> [A]ll Persons in the United States who were the owner, subscriber or user of residential or cellular telephone numbers located in the RMG Defendants' dialer databases and who received pre-recorded telemarketing calls from the RMG Defendants, which referred to the trade names of any of the Cruise Defendants between July 23, 2009 through March 8, 2014. The class is limited to those phone numbers contained in the Call Records of the RMG Defendants as defined in the Agreement.
>
> Excluded from the Settlement Class are the following: (i) any trial judge that may preside over this Action; (ii) the Cruise Defendants; (iii) any of the Released Parties; (iv) Class Counsel and their employees; (v) the immediate family of any of the foregoing persons; (v) any member of the Settlement Class who has timely submitted a Request for Exclusion by the Objection/Exclusion Deadline; (vi) any person who has previously given a valid release of the claims asserted in the Action; and (vii) persons who received or may have received a call or calls

> referencing the goods and services of any of the Cruise Defendants, but which were not made by Defendant RMG (a/k/a "Travel Services").

Dkt. 569-1, Agr. ¶ 2.46 (spacing provided). The Settlement requires Defendants to create a non-reversionary common fund of at least $7,000,000, or up to $12,500,000, as needed to pay the amount of all Approved Claims, Settlement Administration Expenses, any Incentive Award to Mr. Charvat, and Class Counsel's attorneys' fees and costs. *Id.* ¶¶ 2.49, 4.2. Settlement Class Members may recover up to $300 per call, with a cap at three calls, on any of their phone numbers that are part of the Class and contained in the Call Records obtained in this case. *Id.* ¶ 2.49. Should the amount in payments exceed the $12,500,000 cap, Cash Awards to Settlement Class Members will be reduced on a *pro rata* basis. *Id.* Conversely, any of the $7,000,000 minimum remaining in the Settlement Fund after distribution will be provided to the National Consumer Law Center or another approved recipient as *cy pres*. *Id.* ¶ 4.2. Notice and administration through Kurtzman Carson Consultants LLC ("KCC") is expected to cost approximately $800,000. (Burke Decl. ¶ 15.)

Plaintiff respectfully requests that the Court approve attorneys' fees equal to one-third of the Settlement Fund,[1] plus costs of $211,193.05. As explained below, the requested fee award is in line with the market rate for similar attorney services in this jurisdiction, and fairly reflects the result achieved.

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[1] Under the terms of the Settlement, the Settlement Fund includes not only the total amount of Approved Claims, Settlement Administration Expenses, and the amount of any incentive award, but the total of Class Counsel's attorneys' fees and costs, as well. Agr. ¶ 2.49. Thus, unless there are enough claims to cause the fund to hit the cap, Class Counsel's requested fees do not affect the amount in Cash Benefits going to individual Settlement Class members who submit Approved Claims; the amount in attorneys' fees and costs is *in addition to* the Settlement Class Recovery.

III. LEGAL STANDARD FOR ATTORNEYS' FEE DECISIONS

The Seventh Circuit and other federal courts have long recognized that when counsel's efforts result in the creation of a common fund that benefits the plaintiff and unnamed class members, counsel have a right to be compensated from that fund for their successful efforts in creating it. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("lawyer who recovers a common fund … is entitled to a reasonable attorneys' fee from the fund as a whole"); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) ("the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit"). The goal is to award counsel "the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*") (collecting cases).

In common fund cases, courts have discretion to use one of two methods to determine whether the request reflects the market rate for legal services: (1) percentage of the fund; or (2) lodestar plus a risk multiplier. *Americana Art China, Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). However, "the approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 379 (N.D. Ill. 2011).

IV. ARGUMENT

A. The Court Should Calculate Fees as a "Percentage of the Fund."

Courts in this District routinely hold that the percentage of the fund reflects the "market rate" for TCPA class actions because "given the opportunity … class members and Plaintiff's counsel would have bargained for" such. *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-4462, 2015 WL 1399367, at *5 (N.D. Ill. Mar. 23, 2015); *Aranda v. Caribbean Cruise Line,*

Inc., No. 12-4069, 2017 WL 1369741, at *2, 9 (N.D. Ill. Apr. 10, 2017) (using percentage-of-the-fund method in TCPA case and declining to engage in lodestar analysis); *Wright v. Nationstar Mortg. LLC*, No. 14-1045, 2016 WL 4505169, *17 (N.D. Ill. Aug. 26, 2016) (same); *In re Capital One Tel. Consumer Prot. Act Litig.* ("*In re Capital One*"), 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (percentage of the fund method is "more likely to yield an accurate approximation of the market rate" in TCPA case, and that, "had an arm's length negotiation been feasible, the court believes that the class would have negotiated a fee arrangement based on a percentage of the recovery, consistent with the normal practice in consumer class actions"); The overwhelming preference for the percentage-of-the-fund approach makes sense because it best reflects the way fees work in such cases. In a non-fee-shifting matter like a personal injury or TCPA case, the only way for a lawyer to be paid is through a percentage of the client's recovery. It would be nonsensical for a client to pay a lawyer hourly for a TCPA case because the fees for hourly work would quickly eat up the client's possible recovery. An even stronger case can be made where the lawyer is very experienced because the higher hourly rate would surpass the client's recovery even more quickly.

One of the advantages that the percentage of the fund has over lodestar, and a substantial reason why percentage of the fund more accurately represents the "market rate," is that "the lodestar method [would] require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a class of nine million lightly-injured plaintiffs likely would not be interested in doing." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (using percentage-of-the-fund method in TCPA class action). Indeed, "there are advantages to utilizing the percentage method in common fund cases because of its relative

simplicity of administration." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994). As one seminal case found:

> The percentage method is bereft of largely judgmental and time-wasting computations of lodestars and multipliers. These latter computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They do not guarantee a more fair result or a more expeditious disposition of litigation.

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig., 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to establish market based contingency fee percentages than to "hassle over every item or category of hours and expense and what multiple to fix and so forth"); *Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. Ill. 1996) (percentage of fund method "provides a more effective way of determining whether the hours expended were reasonable."), *aff'd*, 160 F.3d 361 (7th Cir. 1998).

B. Counsel's Request Is Within the "Market Rate."

The Seventh Circuit has held that courts should determine this percentage by approximating the market rate, and in *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975-80 (7th Cir. 2003) ("*Synthroid II*"), itself determined the "market" fee as a percentage of the *entire* settlement fund. More recently, in *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014), the Court established a presumption for fee requests, holding that notice and administration costs should be deducted before calculating the percentage for attorney's fees.

However, *Pearson* did not overrule *Synthroid II*, and did not purport to lower the "market rate" for attorney's fees in consumer class actions like this one. Instead, *Pearson* held that the calculation for *comparing* settlements must account for costs as a benefit to counsel rather than a benefit to the class. *Pearson* holds that district courts enjoy wide discretion to award whatever fees are reasonable and appropriate; under the *Pearson* presumption, fees in any given settlement

should not "exceed a third or at most a *half* of the total amount of money going to class members and their counsel." *Pearson*, 772 F.3d at 782 (emphasis added).

Here, Plaintiff's fee request falls squarely within the *Pearson* presumption: Indeed, under the terms of the Settlement, more than 98% of the Settlement Class would have to fail to submit Approved Claims in order for the *Pearson* presumption of reasonableness to *not* be met.[2] To demonstrate, the following chart identifies the impact of varying claims rates under the Settlement, assuming estimated Settlement Administration Expenses of $800,000, approximate costs of $211,000, and approval of the requested incentive award of $50,000:

Approved Claims	**Settlement Class Recovery**	**Attorneys' Fees (33⅓% of Fund)**	**Settlement Fund**	***Pearson* Presumption Met?**
20,000 (5% claims rate)	$6,000,000 ($300 each)	$3,530,500	$10,591,500	Yes (Fees = 37.0% of Fees + Class Recovery)
30,000 (7.5% claims rate)	$7,272,333.34 ($242.41 each)	$4,166,666.66	$12,500,000 (ceiling)	Yes (Fees = 36.4% of Fees + Class Recovery)
40,000 (10% claims rate)	$7,272,333.34 ($181.80 each)	$4,166,666.66	$12,500,000 (ceiling)	Yes (Fees = 36.4% of Fees + Class Recovery)

The Seventh Circuit has elucidated 'benchmarks' that can assist courts in estimating the market rate, including "the fee contract between the plaintiff and counsel, data from similar cases, and information from class-counsel auctions," *Kolinek*, 311 F.R.D. at 501 (citing *Synthroid I*, 264 F.3d at 719). Other factors are relevant, as well, including the risk counsel

[2] Under the Court's preliminary approval order, implementation of the Notice plan commences the day of this filing; hence, data regarding the claims rate does not yet exist. Dkt. 576 at 5. Plaintiff will submit supplemental claim results closer to the date of the Final Approval Hearing.

undertook in accepting the case, the quality of performance and the stakes of the case. *Synthroid I*, 264 F.3d at 721. As explained below, each of these factors supports the requested fee.

1. The Fee Comports with the Contract between Plaintiff and Counsel.

The requested fee award is not only supported by the fee awards deemed reasonable in similar class cases; it is in line with representation agreements commonly entered into in this District, including between Plaintiff and his counsel. In addition to analyzing the market price for legal services from analogous cases, courts also may examine "actual fee contracts that were negotiated for private litigation." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *see also Stumpf v. PYOD*, 12-4688, 2013 WL 6123156, at *2 (N.D. Ill. Nov. 20, 2013) ("The named plaintiff's agreement to a floor of 33.33% of any net recovery supports the claim that 30% of the net recovery is tied to the market."); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (requiring weight be given to the judgment of the parties and their counsel where, as here, the fees were agreed to through arm's length negotiations after the parties agreed on the other key deal terms).

The customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40% and affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled prior to trial); *Retsky Family Ltd. P'ship v. Price Waterhouse, LLP*, No. 97-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (recognizing that a customary contingent fee is "between 33 1/3% and 40%" and awarding counsel one-third of the common fund).

Here, Plaintiff entered into a retainer agreement with Class Counsel that reflects this fee range, 33⅓%, as up to 40% is normal in consumer TCPA cases in this District. (Burke Decl. ¶ 14.) Such evidence supports a finding that the requested fee reflects the amount Class Counsel would have received had they negotiated their fee *ex ante*.

2. The Requested Fee Reflects the Fees Awarded in Other Settlements.

a. Pre-Pearson Percentage of the Fund Settlements

Awards of one-third of the entire settlement fund were commonplace before *Pearson*. Some TCPA cases where this happened are as follows: *Martin v. Dun & Bradstreet, Inc.*, No. 12-215 (N.D. Ill. Jan. 16, 2014) (Martin, J.) (Dkt. No. 63) (one-third of total payout); *Hanley v. Fifth Third Bank*, No. 12-1612 (N.D. Ill.) (Dkt. No. 87) (awarding attorneys' fees of one-third of total settlement fund); *Cummings v. Sallie Mae*, No. 12-9984 (N.D. Ill. May 30, 2014) (Gottschall, J.) (Dkt. No. 91) (one-third of common fund); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925 (N.D. Ill. June 21, 2013) (Bucklo, J.) (Dkt. No. 243) (one-third of the settlement fund); *Paldo Sign & Display Co. v. Topsail Sportswear, Inc.*, No. 08-5959 (N.D. Ill. Dec. 21, 2011) (Kennelly, J.) (Dkt. No. 116) (fees equal to one-third of the settlement fund plus expenses); *CE Design Ltd. v. CV's Crab House North, Inc.*, No. 07-5456 (N.D. Ill. Oct. 27, 2011) (Kennelly, J.) (Dkt. No. 424) (fees equal to one-third of settlement plus expenses); *Saf-T-Gard Int'l, Inc. v. Seiko Corp. of Am.*, No. 09-776 (N.D. Ill. Jan. 14, 2011) (Bucklo, J.) (Dkt. No. 100) (fees and expenses equal to 33% of the settlement fund); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07-5953 (N.D. Ill. Nov. 1, 2010) (Kendall, J.) (Dkt. No. 146) (fees of one-third of settlement plus expenses); *Hinman v. M&M Rentals, Inc.*, No. 06-1156 (N.D. Ill. Oct. 6, 2009) (Bucklo, J.) (Dkt. No. 225) (fees and expenses equal to 33% of the fund); *Holtzman v. CCH*, No. 07-7033 (N.D. Ill.

Sept. 30, 2009) (Nordberg, J.) (Dkt. No. 33) (same); *CE Design, Ltd. v. Exterior Sys., Inc.*, No. 07-66 (N.D. Ill. Dec. 6, 2007) (Darrah, J.) (Dkt. No. 39) (same).

Some other, non-TCPA cases where one-third of the entire fund was awarded, include: *Taubenfeld*, 415 F.3d at 600 (noting counsel had submitted a table of thirteen cases in the Northern District of Illinois where counsel was awarded fees amounting to 30–39% of the settlement fund); *In re Ky. Grilled Chicken*, 280 F.R.D. at 380–81 (citing cases, and describing a fee of 32.7% of the common fund as "well within the market rate and facially reasonable"); *City of Greenville v. Syngenta Corp Prot., Inc.*, 904 F. Supp. 2d 902, 908–09 (S.D. Ill. 2012) (approving a one-third fee because a "contingent fee of one-third of any recovery after the reimbursement of costs and expenses reflects the market price" and citing cases); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, *3 (S.D. Ill. Nov. 22, 2010) (finding "the market rate for complex plaintiffs' attorney work in this case and similar cases is a contingency fee" and agreeing "a one-third fee is consistent with the market rate"); *In re Bankcorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of 36% of the settlement fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of attorneys' fees equal to 33.33% of the total recovery); *Greene v. Emersons Ltd.*, No. 76-2178, 1987 WL 11558, at *8 (S.D.N.Y. May 20, 1987) (awarding attorneys' fees and expenses in excess of 46% of the settlement fund); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1131–32 (W.D. La. 1997) (awarding attorneys' fees equal to 36% of the common fund); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 503 (D.D.C. 1981) (awarding attorneys' fees in excess of 40% of the settlement fund); *Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.*, 480 F. Supp. 1195, 1198–99 (S.D.N.Y. 1979) (awarding fees in excess of 50% of the settlement fund); *Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 420 (S.D.N.Y. 1981) (awarding fees of 36% of fund).

b. Post-Pearson: The Pearson Presumption Did Not Alter the Market Rate for Fees.

The fee award requested here – 36.5% or less for anything more than a 6% claims rate, after deducting administration costs, expenses, and any service award – represents the post-*Pearson* market price, and is therefore reasonable. That the rate is within the market is reflected in the following fees approved by judges in this District in TCPA cases since *Pearson*:

- 36% of total fund: *In re Capital One*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (36% of the first $10 million of the settlement) (Holderman, J.).
- 33%: *Charvat v. AEP Energy, Inc.*, No. 14-cv-03121, Dkt. No. 44, (N.D. Ill. November 20, 2015) (Zagel, J.).
- 38% of fund minus expenses, notice/admin costs, and service award: *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Shah, J.).
- 36% of fund minus notice/admin costs and service award: *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.).
- 33% of fund minus notice/admin costs: *Allen v. JPMorgan Chase Bank, NA*, No. 13-8285 (N.D. Ill. Oct. 21, 2015) (Dkt. No. 93 at 6) (Pallmeyer, J.).[3]

Class Counsel's requested fee also reflects post-*Pearson* fees approved by other courts in non-TCPA cases in this Circuit. *Spano v. The Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. March 31, 2016) (awarding 33 1/3% of the monetary settlement); *McCue v. MB Fin., Inc.*, No. 15-988, 2015 WL 4522564 (N.D. Ill. July 23, 2015) (awarding 33.33% of the fund plus costs); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475 (N.D. Ill. July 17, 2015) (awarding 33.33% of the fund plus costs); *Zolkos v. Scriptfleet, Inc.*, No. 12-8230, 2015 WL 4275540 (N.D. Ill. July 13, 2015) (awarding 33.33% of the fund plus expenses); *Prena v. BMO Fin. Corp.*, No. 15-09175, 2015 WL 2344949 (N.D. Ill. May 15, 2015) (awarding 33.5% of the fund after deducting notice costs); *Bickel v. Sheriff of Whitley Cnty*, No. 08-102, 2015 WL

[3] The calculations here are for the first $10 million of the settlement. To the extent that these settlements exceeded $10 million, some of the Courts used a diminishing sliding scale.

1402018 (N.D. Ind. March 26, 2015) (awarding 43.7% of the fund); *In re Dairy Farmers of Am., Inc.*, MDL No. 2031, 2015 WL 753946 (N.D. Ill. Feb. 20, 2015) (awarding 33.33% of the fund).[4] Consequently, the requested fee award falls in line with numerous other settlements approved as reasonable in this Circuit.

3. Other Factors Support the Requested Fee.

Beyond comparisons to similar fee awards and agreements, the market price for legal fees "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Sutton*, 504 F.3d at 693 (quotation and internal marks omitted). Given the outstanding result achieved for the benefit of the Settlement Class in this case, considering the risk of nonpayment to Class Counsel and extensive resources expended over the years this litigation has been pending, Class Counsel respectfully submit that their requested fee is reasonable and appropriate under the totality of circumstances, and should be approved.

a. Risk of Nonpayment

From changing regulatory precedent and Supreme Court jurisprudence, to the inability to establish an absence of predominating individualized issues sufficient for certification of a litigation class, Class Counsel faced substantial risk and uncertainty at the outset of this action that they would receive no compensation despite investing the time and resources necessary to adequately prosecute this case. This risk supports the requested fee award.

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic

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[4] *Synthroid I* also says that District Courts may look to any data from pre-suit negotiations and class-counsel auctions, but such information is "basically non-existent" in the TCPA context. *Kolinek*, 311 F.R.D. 501.

counsel." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citing *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)). Thus, the risk of non-payment is a key consideration in assessing the reasonableness of a requested fee, and must be incorporated into any ultimate fee award. *See Florin*, 34 F.3d at 565 ("[A] risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel had no sure source of compensation for their services.... [T]he need for such an adjustment is particularly acute in class action suits. The lawyers for the class receive no fee if the suit fails, so their entitlement to fees is inescapably contingent.") (quotations and citations omitted); *Sutton*, 504 F.3d at 694 (finding abuse of discretion where court refused to account for the risk of loss on basis that "class actions rarely go to trial and that they all settle[,]" noting that "there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit[;] ... [b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel … was undercompensated").

In this context, "at the time" is at the start of the case: the Court must "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)." *Synthroid I*, 264 F.3d at 718. That is so because "[t]he best time to determine this rate is the beginning of the case, not the end (when hindsight alters of the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets." *Id.* Thus, because this case was filed in July of 2012, the Court must look at the risks associated with the case on that date.

There was no guarantee that the Cruise Defendants might be held vicariously liable for the calls in this case; the *Dish* ruling was issued on May 9, 2013, nine months after the case was

filed. Indeed, courts were divided before that time as to whether vicarious liability attaches for telemarketing calls like those at issue here. *See Charvat v. EchoStar Satellite, LLC*, 630 F.3d 459, 466 (6th Cir. 2010) ("[C]ourts have reached different conclusions about whether an entity on whose behalf a call is made can be liable under the [TCPA], announcing different measures for determining whether an independent contractor or an agent acts on behalf of a company."); *compare Mais v. Gulf Coast Collection Bureau, Inc.*, 944 F. Supp. 2d 1226, 1243 (S.D. Fla. 2013) ("Congress chose to provide liability only for those who 'make' calls in violation of the TCPA."), *rev'd in part*, 768 F.3d 1110 (11th Cir. 2014), *with Worsham v. Nationwide Ins. Co.*, 772 A.2d 868, 878 (Md. App. Ct. 2001) ("[T]he existence of an independent contractor relationship ... would not, in itself, insulate [defendant] from liability under the TCPA.").

Class Counsel agreed to pursue this action on a contingent fee basis without the benefit of discovery regarding the size or ascertainability of the asserted class. Class Counsel accepted the case despite that contentious class discovery would likely be required, with not only the several Defendants but also third parties who may have participated in making the calls at issue. Class Counsel also accepted the possibility that, given the class period going back several years before the suit was filed, and the fact that businesses often purge their call records on a regular basis, necessary class call data would likely be difficult to obtain or even destroyed, potentially obliterating any ability to identify class members and ultimately obtain class-wide relief.[5]

Moreover, even assuming sufficient discovery could be obtained, Class Counsel accepted the risk that the Court might ultimately deny certification. This is a very real concern, as, for example, courts are divided as to whether consent issues predominate over common questions in TCPA cases, depending on the circumstances of the case. *Compare Jamison v. First Credit*

[5] This concern proved to be well-founded: Defendants used the absence of historic call recordings in this case as a basis for arguing against class certification on an adversarial basis. Dkt. 520 at 29-30.

Servs., 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action) and *Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, 527 (E.D. Wis. 2014) (same), with *Saf-T-Gard Int'l v. Vanguard Energy Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized) and *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same).

And throughout much of this litigation, the FCC was considering numerous petitions, many of which were made by industry advocates urging the FCC to loosen prohibitions against robocalls like the ones at issue in this case, and the process before the FCC can be unpredictable. For example, on October 30, 2014, the FCC issued an order re-confirming its unequivocal prior orders that fax advertisements must contain specific language explaining how recipients can "opt-out" of receiving more faxes, but providing *retroactive immunity* for violators that file petitions with the FCC—a wholly unexpected and incongruous result from the consumer perspective.[6] In fact, Judge Zagel stayed this case as to the Cruise Defendants while the FCC considered the *DISH Network* petition regarding vicarious liability, a ruling ultimately made in consumers' favor on May 9, 2013.[7] Dkt. 117. On July 10, 2015, the FCC also released an omnibus declaratory ruling clarifying numerous relevant issues affecting the TCPA, such as consent under the statute.[8] And then there were the overhanging *Spokeo* and *Campbell-Ewald Co.* cases before the Supreme Court affecting standing and defendants' ability to "pick-off" named plaintiffs through a settlement offer or Rule 68 offer of judgment.[9] Any of these

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6 *See* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1030/FCC-14-164A1.pdf.

7 See https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-54A1_Rcd.pdf.

8 *See* https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf.

9 *See generally Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016); *Campbell-Ewald Co., v. Gomez*, 136 S. Ct. 663 (2016).

regulatory or legal proceedings could have had severe, negative impact on Plaintiff's case or the ability of Class Counsel to recover *any* compensation or expenses reimbursement for their years of prolonged advocacy on behalf of the Class in this matter.

Success, especially at the outset of this action, was by no means assured. Class Counsel accepted that litigating these and other issues risked recovering nothing for the class, Plaintiff, or counsel, and would have required significant expenditure of time, money, and resources — including potentially substantial expert expenses — for which Class Counsel would receive absolutely no compensation upon losing at summary judgment, class certification, or trial. S*ee In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1035-35 (N.D. Ill. 2011) (finding significant risk of nonpayment where, among other reasons, counsel would have to overcome case dispositive defenses and certify a class); *Jamison*, 290 F.R.D. at 102–09 (denying class certification in part because a class-wide determination of consent would require "a series of mini-trials"); *Green v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734, at *5 (N.D. Ill. Nov. 8, 2010) (granting summary judgment against TCPA plaintiff). The risk was real. As detailed in the accompanying declarations of counsel, plaintiffs' lawyers lose TCPA cases regularly, both through summary judgment and through denial of class certification. (Burke Decl. ¶ 13); *see, e.g., Donaca v. Dish Network, LLC.*, 303 F.R.D. 390, 396-402 (D. Colo. 2014) (denying class certification in TCPA action); *Fitzhenry v. ADT Corp.*, No. 14-80180, 2014 WL 6663379, at *8 (S.D. Fla. Nov. 3, 2014) (order denying class certification); *Brey Corp. v. LQ Mgmt. LLC*, No. 11-718, 2014 WL 943445, at *1 (D. Md. Jan. 30, 2014).

One of the primary battles in every TCPA action involves class plaintiffs' attempts to determine the size and scope of the class. Those facts are not (and cannot be) known by plaintiffs' counsel *ex ante*, and typically require contentious discovery and litigation before ever

becoming known. This case is no different; Class Counsel engaged in contested motion practice during discovery in an effort to determine the scope of the class. *E.g.*, Dkt. 175, 186. TCPA plaintiffs sometimes lose such motions and are unable to proceed on a class basis as a result. *See, e.g.*, *Gusman v. Comcast Corp.*, 298 F.R.D. 592, 596–97 (S.D. Cal. 2014) (denying motion to compel production of call data). And, as this Court knows, non-settlement class certification in this case was particularly adversarial, involving thousands of pages of briefing and multiple ancillary motions. Dkt. 492, 520, 521, 530, 531, 547, 548, 551, 553. While Class Counsel were successful in fighting off dispositive motions by Defendants, even if the class was certified, success at trial was far from guaranteed.

Plaintiff believes that he would have prevailed on these issues, but success was by no means assured. Litigating these issues against Defendants would have risked recovering nothing for the class, and would have required significant additional expenditure of time, money, and resources — including potentially substantial expert expenses — for which Class Counsel would not be compensated should they lose on summary judgment or fail to certify a class. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d at 1035–35 (finding class counsel incurred significant risk of nonpayment where, among other reasons, class counsel would have to overcome case dispositive defenses and certify a class); *Jamison*, 290 F.R.D. at 102–09 (denying class certification in part because a class-wide determination of consent would require "a series of mini-trials"); *Green*, 2010 WL 4628734, at *5 (granting summary judgment against TCPA plaintiff).

That risk was meaningful. Of course, the facts and circumstances of every case are different and must be individually considered and separately analyzed, but it bears noting that Class Counsel have lost a number of TCPA class actions without any recovery for the class or

receiving any compensation for their fees or costs. (Burke Decl. ¶ 13; McCue Decl. ¶ 12; Broderick Decl. ¶ 12; Paronich Decl. ¶ 9.) To be sure: Class Counsel do not accept representation for cases they do not believe they will prevail in, but litigation is an uncertain and risky business, and those losses demonstrate such. In light of the considerable risk undertaken by Class Counsel in prosecuting this action on a purely contingent fee basis, the requested fee award is reasonable and should be granted. *In re Capital One*, 80 F. Supp. 3d at 805 (awarding 6% risk premium on top of 30% fee award in TCPA class settlement, where some class members may have agreed to be called, there were potential manageability issues in relation to the ability to determine from defendants' records whether class members consented, and FCC petitions similarly at issue in this case potentially could have affected the plaintiffs' claims).

b. Quality of Performance and Work Invested

The quality of Class Counsel's performance and time invested in fighting through years of contested motion practice, substantial discovery, and adversarial negotiations to achieve a $7 to $12.5 million Settlement Fund for the benefit of the Settlement Class further supports the requested fee award. *Sutton*, 504 F.3d at 693. In addition to accepting considerable risk in litigating this action, Class Counsel committed their time and resources to this case without any guarantee of compensation, whatsoever, only achieving the Settlement after five years of arduous litigation. Each claimant will receive $300 for each of up to three telemarketing calls per phone number—an excellent result given that the TCPA itself provides for base statutory damages of $500 per violation without any fee shifting. Agr. ¶ 2.49; 47 U.S.C. § 227(b)(3). The Settlement also greatly exceeds recoveries in many other TCPA settlements. Indeed, in *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493-494 (N.D. Ill. 2015), the court approved $30 per claimant, saying it was within the range of approved TCPA settlements, citing *In re Capital One Tel. Consumer*

Prot. Act Litig., 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (approving $34.60 per claimant), and *Rose v. Bank of Am. Corp.*, No. 11-2390, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (approving recovery of between $20-$40 per claimant).

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. (Burke Decl. ¶¶ 2-10; McCue Decl. ¶¶ 3-9; Broderick Decl. ¶¶ 3-9; Paronich Decl. ¶¶ 3-6.) Moreover, because they were proceeding on a contingent fee basis, Class Counsel "had a strong incentive to keep expenses at a reasonable level[.]" *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Given the outstanding settlement obtained for the class, and the half a decade spent in intense, adversarial litigation, zealously advocating on behalf of the class and Mr. Charvat, Class Counsel respectfully submit that their experience and the quality and amount of work invested in this action for the benefit of the class supports the requested fee award.

c. Stakes of the Case

The stakes of the case further support the requested fee award. This case involves millions of Settlement Class Members who allegedly received unsolicited prerecorded telemarketing calls from RMG for the benefit of the Cruise Defendants. The amount each Settlement Class Member is individually eligible to recover is low (between $500 and $1,500 per call), and thus individuals are unlikely to file individual lawsuits, especially as here each class member only received a small number of these telemarketing calls. Indeed, individual litigants likely would have to provide proof of calls well beyond what is required here to submit a claim and call records may not be available going back to the beginning of the class period, making it even less likely that people would file individual lawsuits. A class action is realistically the only way that many individuals would receive any relief. In light of the number of Settlement Class Members and the fact that they likely would not have received any relief without the assistance

of Class Counsel, the requested fee is reasonable and should be granted.

V. CONCLUSION

WHEREFORE, Class Counsel respectfully request that the Court grant this motion and award Class Counsel attorneys' fees in the amount of one-third of the Settlement Fund, as well as a $211,193.05 reimbursement of their out-of-pocket costs.

Respectfully submitted,

PHILIP CHARVAT, on behalf of himself and others similarly situated

Dated: August 7, 2017

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CERTIFICATE OF SERVICE

I hereby certify that, on August 7, 2017, I caused the foregoing document to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Alexander H. Burke

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Philip Charvat, on behalf of himself and others similarly situated, Plaintiff, v. Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd., Defendants.	)	Case No. 1:12-cv-05746 Hon. Judge Andrea R. Wood Hon. Mag. Judge Mary Rowland

DECLARATION OF ALEXANDER H. BURKE

I, Alexander H. Burke, hereby declare as follows:

1. I am Alexander H. Burke, manager and owner of Burke Law Offices, LLC. I submit this declaration in support of Plaintiff's motion for attorneys' fees and costs in relation to the proposed class action settlement in this matter. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. In September 2008, I opened Burke Law Offices, LLC. This firm concentrates on consumer class action and consumer work on the plaintiff side. Since the firm began, it has focused on prosecuting cases pursuant to the Telephone Consumer Protection Act, although the firm accepts the occasional action pursuant to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, Electronic Funds Transfer Act, Illinois Consumer Fraud Act, Truth in Lending Act and the Fair Labor Standards Act, among others. The firm also

sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis.

3. I am regularly asked to speak regarding TCPA issues, on the national level. For example, I conducted a one-hour CLE on prosecuting TCPA autodialer and Do Not Call claims pursuant to the Telephone Consumer Protection Act for the National Association of Consumer Advocates in summer 2012, and spoke on similar subjects at the annual National Consumer Law Center ("NCLC") national conferences in 2012, 2013, 2014, 2015 and 2016. I also spoke at a National Association of Consumer Advocates conference regarding TCPA issues in March 2015, and in May 2016, I spoke on a panel concerning TCPA issues at the 2016 Practicing Law Institute Consumer Financial Services meeting in Chicago, Illinois.

4. I also am actively engaged in policymaking as to TCPA issues, and have had several *ex parte* meetings with various decision makers at the Federal Communications Commission.

5. I make substantial efforts to remain current on the law, including class action issues. I attended the National Consumer Law Center's Consumer Rights Litigation Conference in 2006 through 2016, and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013. In October 2009, I spoke on a panel of consumer class action attorneys welcoming newcomers to the conference. In addition to regularly attending Chicago Bar Association meetings and events, I was the vice-chair of the Chicago Bar Association's consumer protection section in 2009 and the chair in 2010. In November 2009, I moderated a panel of judges and attorneys discussing recent events and decisions concerning arbitration of consumer claims and class action bans in consumer contracts.

6. Some notable autodialer TCPA class actions and other cases that my firm has worked on include: *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2017 WL 2798387 (N.D. Ill. June 28, 2017) (certifying Fed.R.Civ.P. 23(b)(2) litigation class in TCPA autodialer case); *Fulton Dental, LLC v. Bisco, Inc.*, 860 F.3d 541 (7th Cir. 2017) (rejecting notion that a Fed.R.Civ.P. 67 tender of funds to the Court can "moot" a TCPA class action); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016); (motion to compel arbitration denied), *aff'd*, --- Fed. Appx. ---- 2017 WL 957188 (11th Cir. Mar. 13, 2017); *Cross v. Wells Fargo, N.A.*, No. 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D. Ga.) (final approval granted for $30M class settlement where I was co-lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D.Ga.) (final approval granted for $16M class settlement where I was co-lead counsel); *Tillman v. The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016) (motion to compel TCPA class case into arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No. 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction motion denied); *Bell v. PNC Bank, Nat'. Ass'n.*, 800 F.3d 360 (7th Cir. 2015) (class certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting plaintiff's motion to compel vicarious liability/agency discovery in TCPA case); *Lees v. Anthem Ins. Cos. Inc.*, 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA case on primary jurisdiction grounds); *In re Capital One TCPA Litig.*, No. 11-5886, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md.

2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc*., 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for $4.5 million nonreversionary TCPA settlement); *Markovic v. Appriss, Inc*., 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc*., 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (Denlow, J.) (certifying litigation class and appointing me as sole class counsel) (final approval granted for $7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for $15 million TCPA class settlement granted); *Martin v. CCH, Inc*., No. 1:10-cv-3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for $2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co*., 2011 WL 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*, 2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for $800,000 TCPA settlement in autodialer case against debt collection agency); *Donnelly v. NCO Fin. Sys., Inc*., 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975

(N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

7. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc*., 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc*., 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc*., 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc*., 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp., C.A.* No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action settlement, and resulting in a $12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C*., No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification granted); *Nichols v. Northland Groups, Inc*., Nos. 05 C 2701, 05 C 5523, 06 C 43, 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification granted for concurrent classes against same defendant for ongoing violations); *Lucas v. GC Services, L.P*., No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004) (compelling discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186, 2005 WL 1323364 (N.D. Ill. May 5, 2006)

(Report and Recommendation granting class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy Receivables, Inc*., No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying motion to dismiss in class case against debt collector for suing on time-barred debts).

8. I graduated from Colgate University in 1997 (B.A. International Relations), and from Loyola University Chicago School of Law in 2003 (J.D.). During law school I served as an extern to the Honorable Robert W. Gettleman of the District Court for the Northern District of Illinois and as a law clerk for the Honorable Nancy Jo Arnold, Chancery Division, Circuit Court of Cook County. I also served as an extern for the United States Attorney for the Northern District of Illinois, and was a research assistant to adjunct professor Hon. Michael J. Howlett, Jr.

9. I was the Feature Articles Editor of the Loyola Consumer Law Review and Executive Editor of the International Law Forum. My published work includes International Harvesting on the Internet: A Consumer's Perspective on 2001 Proposed Legislation Restricting the Use of Cookies and Information Sharing, 14 Loy. Consumer L. Rev. 125 (2002).

10. I became licensed to practice law in the State of Illinois in 2003 and the State of Wisconsin in March 2011, and am a member of the bar of the United States Court of Appeals for the First, Second, Seventh, Eighth, and Eleventh Circuits, as well as the Northern District of Illinois, Central District of Illinois, Southern District of Illinois, Eastern District of Wisconsin, Western District of Wisconsin, Northern District of Indiana, Southern District of Indiana,the District of Nebraska, the Western District of New York, the Eastern District of Michigan, and the Western District of Michigan. I am also a member of the Illinois State Bar Association, the Seventh Circuit Bar Association, and the American Bar Association, as well as the National Association of Consumer Advocates.

11. The above experience, qualifications, decisions and settlements demonstrate my ability and commitment to prosecuting TCPA class cases, and justify the fee requested here. Moreover, my office took this matter on a contingency fee basis, which means that the firm would receive no remuneration absent a settlement or judgment. This matter has required me to spend significant time and resources that would have otherwise been spent on other matters. Because my co-counsel and I undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse dispositive decision. As such, we also had a strong incentive to, and did, work efficiently and without unnecessary expense.

12. In deciding to pursue the prosecution of this action, my co-counsel and I accepted that contentious class discovery would likely be required, with not only the defendants, but also then-unknown third parties which may have relevant information pertaining to the calls at issue. We also accepted the real possibility that—especially given the class period going back to 2008 and the fact that many vendors reside overseas and often purge their call records on a regular basis—necessary class call and other records might be difficult to obtain and, in fact, might have already been destroyed, potentially obliterating any ability to ultimately obtain class-wide relief.

13. When Burke Law Offices, LLC loses cases—whether through summary judgment or trial, denial of class certification, or otherwise—my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Greene v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734 (N.D. Ill. 2010), *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm

put substantial time and money into both; resources that could have been allocated to other cases. I believed that the plaintiff/class would prevail in these cases when I accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

14. The contracts I draft and negotiate with my clients have called for the client to pay, on a contingency basis, between one-third and 40% of the total amount of any judgment or settlement after costs had been deducted. When the firm began taking TCPA cases, its agreement with clients called for fees in the amount of one-third after expenses. However, because I had focused on TCPA cases for quite some time and believed the market would bear such, in around 2011, I raised my contingency fee to 40%, after expenses. I have not had any potential clients balk a 40% fee—indeed, even former clients who returned with new potential cases agreed to this fee arrangement; ostensibly because they believed I deserved such a fee because of my representation and results. Based upon conversations with other TCPA lawyers in Chicago and around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%. This belief is corroborated by the fact that the contract between Plaintiff's counsel and Mr. Charvat in this case calls for fees of 33⅓% of the net amount collected by settlement or judgment.

15. My firm and I have dedicated a substantial resources time investigating, litigating, and negotiating Plaintiff's and the class' claims, and Defendants have pushed back at every turn. This litigation was "hot," to say the least. Co-counsel and I conducted a thorough pre-suit

investigation, drafted pleadings, and pursued rigorous discovery with Defendants and third parties. Discovery in this case was particularly hard-fought. Class Counsel prepared and served multiple sets of written discovery requests on Defendants, worked with Mr. Charvat to respond to Defendants' requests and prepare both him and his daughter for their depositions, worked with Plaintiff's expert to ensure proper data analysis and prepare him for his deposition, and participated with defense counsel in a total of 15 depositions across four states. My co-counsel and I devoted numerous hours to negotiating the settlement, which included preparing mediation submissions, attending an all-day mediation session, and following up with the mediator and opposing counsel over the phone and through e-mail. Several months after class certification briefing, the parties decided to discuss the possibility of class-wide settlement, and met for an all-day mediation with Bruce Friedman of JAMS in Miami, Florida, on March 18, 2017, preceded by the submission of mediation briefs. The parties failed to reach a settlement, but through continued negotiations between counsel for the parties over subsequent months, we ultimately reached the instant Settlement now before the Court. Negotiations were at all times adversarial and at arm's-length, and Defendants did not, and have not, swayed from their position that they did not violate the TCPA and that Plaintiff and the class would, absent settlement, be unable to succeed on the merits of their claims, let alone on a class-wide basis. My co-counsel and I have thereafter spent substantial time preparing and fine-tuning the settlement papers and notice documents, and drafting the motion for preliminary approval. With defense counsel, we also worked to select a settlement administrator who would provide a robust notice plan while keeping costs to a minimum, ultimately selecting Kurtzman Carson Consultants LLC ("KCC"), with estimated notice and administrative costs of approximately $800,000.

16. Burke Law Offices, LLC incurred $139,264.60 in prosecuting and settling this action. Costs include case filing ($400.00), process server fees ($485.00), deposition/court reporter costs ($12,680.40), technology consulting regarding call data ($1,000.00), travel-related expenses ($823.58), a FedEx charge ($6.82), PACER charges ($88.80), and the bill for Plaintiff's expert ($123,780.00).

17. Based upon my previous experience as noted above, I believe this Settlement, and the requested fee and service award, to be fair and reasonable under the circumstances and in the best interest of the class. For over five years, my co-counsel and I have zealously prosecuted this action, including by aggressively pursuing discovery supporting Plaintiff's claims, ensuring well-informed negotiations in the best interests of the class based on the production of relevant class information, and engaging in months of intense settlement negotiations, including through formal mediation with a third-party neutral. I respectfully request that Plaintiff's motion for attorneys' fees and costs be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2017, in Evanston, Illinois.

/s/ Alexander H. Burke

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Philip Charvat on behalf of himself and others similarly situated, Plaintiff, v. Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd. Defendants.	)	Case No. 1:12-cv-5746 Hon. Judge Andrea R. Wood

DECLARATION OF MATTHEW P. MCCUE

1. I make this declaration in support of the Plaintiff's motion for attorneys' fees and costs in relation to the proposed class action settlement in this matter. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I have extensive experience in the prosecution of class actions on behalf of consumers.

Qualifications Of Counsel

3. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts. Following graduation from law school, I served as a law clerk to the Justices of the Massachusetts Superior Court. I then served a second year as a law clerk for the Hon. F. Owen Eagan, United States Magistrate Judge for the USDC District of Connecticut.

4. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the United States District Court for the District of Massachusetts,

the First Circuit Court of Appeals, the United States District Court for the District of Colorado and the Sixth Circuit Court of Appeals.

5. Following my clerkships, I was employed as a litigation associate with the Boston law firm of Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation associate where I focused my trial and appellate practice on plaintiff's personal injury and consumer protection law.

6. In the summer of 2002, I was recognized by the legal publication Massachusetts Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of consumers and accident victims.

7. In November of 2004, I started my own law firm focusing exclusively on the litigation consumer class actions and serious personal injury cases.

8. I am in good standing in every court to which I am admitted to practice.

9. A sampling of other class actions in which I have represented classes of consumers and been appointed class counsel follows:

i. Mey v. Herbalife International, Inc., Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. $7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the granting of a contested class certification motion.

ii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of $475,000 following the granting of a contested class certification motion, granted final approval by the Court on July 25, 2007.

iii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the granting of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See* Terra Nova Insurance v. Fray-Witzer et. al., 449 Mass. 206 (2007). There was then a TCPA class settlement of $1,800,000 which was granted final approval.

iv. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanswaha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for $2,450,000, final approval granted in September of 2009.

v. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., Civil Action No. 1:08-CV-11312-RGS, TCPA class settlement of $1,000,000, final approval granted in January of 2010.

vi. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc., Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement $1,300,000 granted final approval on February 3, 2011.

vii. Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of $1,800,000, final approval granted August 17, 2011.

viii. Collins v. Locks & Keys of Woburn, Inc.., Suffolk Superior Court (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of $2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.

ix. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of $1,575,000 granted final approval in March of 2012.

x. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-11912, TCPA class settlement $1,875,000 granted final approval on September 25, 2012.

xi. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of $15,000,000 granted final approval on June 21, 2013.

xii. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of $4,500,000 granted final approval on February 12, 2015.

xiii. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of $8,500,000 granted final approval on April 15, 2015.

xiv. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of $6,000,000 granted final approval on September 28, 2015.

xv. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of $4,200,000 granted final approval on June 8, 2016.

xvi. Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company, USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for $1,500,000 granted final approval on August 4, 2016.

xvii. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, TCPA class settlement finally approved on November 11, 2016 with an agreement for

judgment in the amount of $49,932,375 and an assignment of rights against defendant's insurance carrier.

xviii. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al., USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of $2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. The case continues against the two non-settling defendants.

xix. Smith v. State Farm Mut. Auto. Ins. Co. , et. al., USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of $7,000,000.00 granted final approval on December 8, 2016.

xx. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of $11,000,000 granted preliminary approval on January 26, 2017.

xxi. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., a TCPA class settlement of $2,900,000 following a contested class certification motion granted final approval on April 24, 2017.

xxii. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of $1,100,000 granted final approval on May 3, 2017.

xxiii. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

xxiv. Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company, USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of $3,250,000 granted preliminary approval on May 18, 2017.

xxv. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of $368,000.00 granted final approval on May 19, 2017.

xxvi. Thomas Krakauer v. Dish Network, L.L.C., USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of $20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of $61,339,200. (Dkt. No. 338).

xxvii. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of $650,000 granted final approval on July 26, 2017.

xxviii. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of $3,700,000 granted preliminary approval on July 26, 2017.

10. The above experience, qualifications, decisions and settlements demonstrate my ability and commitment to prosecuting TCPA class cases, and justify the fee requested here. Moreover, my office took this matter on a contingency fee basis, which means that the firm would receive no remuneration absent a settlement or judgment. This matter has required me to spend significant time and resources that would have otherwise been spent on other matters. Because my co-counsel and I undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse dispositive decision. As such, we also had a strong incentive to, and did, work efficiently and without unnecessary expense.

11. In deciding to pursue the prosecution of this action, my co-counsel and I accepted that contentious class discovery would likely be required, with not only the defendants, but also then-unknown third parties which may have relevant information pertaining to the calls at issue. We also accepted the real possibility that—especially given the class period going back to 2008 and the fact that many vendors reside overseas and often purge their call records on a regular basis—necessary class call and other records might be difficult to obtain and, in fact, might have already been destroyed, potentially obliterating any ability to ultimately obtain class-wide relief.

12. When our firm loses cases—whether through summary judgment or trial, denial of class certification, or otherwise—my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm put substantial time and money into both; resources that could have been allocated to other cases. I believed that the plaintiff/class would prevail in these cases when I

accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

13. The contracts I draft and negotiate with my clients have called for the client to pay, on a contingency basis, between one-third and 40% of the total amount of any judgment or settlement after costs had been deducted. Based upon conversations with other TCPA lawyers in Boston and around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%. This belief is corroborated by the fact that the contract between Plaintiff's counsel and Mr. Charvat in this case calls for fees of 33⅓% of the net amount collected by settlement or judgment.

14. My firm and I have dedicated a substantial resources time investigating, litigating, and negotiating Plaintiff's and the class' claims, and Defendants have pushed back at every turn. Co-counsel and I conducted a thorough pre-suit investigation, drafted pleadings, and pursued rigorous discovery with Defendants and third parties. Discovery in this case was particularly hard-fought. Class Counsel prepared and served multiple sets of written discovery requests on Defendants, worked with Mr. Charvat to respond to Defendants' requests and prepare both him and his daughter for their depositions, worked with Plaintiff's expert to ensure proper data analysis and prepare him for his deposition, and participated with defense counsel in a total of 15 depositions across four states. My co-counsel and I devoted numerous hours to negotiating the settlement, which included preparing mediation submissions, attending an all-day mediation session, and following up with the mediator and opposing counsel over the phone and through e-mail. Several months after class certification briefing, the parties decided to discuss the

possibility of class-wide settlement, and met for an all-day mediation with Bruce Friedman of JAMS in Miami, Florida, on March 18, 2017, preceded by the submission of mediation briefs. The parties failed to reach a settlement, but through continued negotiations between counsel for the parties over subsequent months, we ultimately reached the instant Settlement now before the Court. Negotiations were at all times adversarial and at arm's-length, and Defendants did not, and have not, swayed from their position that they did not violate the TCPA and that Plaintiff and the class would, absent settlement, be unable to succeed on the merits of their claims, let alone on a class-wide basis. My co-counsel and I have thereafter spent substantial time preparing and fine-tuning the settlement papers and notice documents, and drafting the motion for preliminary approval. With defense counsel, we also worked to select a settlement administrator who would provide a robust notice plan while keeping costs to a minimum, ultimately selecting Kurtzman Carson Consultants LLC ("KCC"), with estimated notice and administrative costs of approximately $800,000.

15. My firm spent a total of $52,168 prosecuting and settling this action. These out-of-pocket costs were expended for expenses such as travel, transcript costs and mediation expenses.

16. Based upon my previous experience as noted above, I believe this Settlement, and the requested fee and service award, to be fair and reasonable under the circumstances and in the best interest of the class. For over five years, my co-counsel and I have zealously prosecuted this action, including by aggressively pursuing discovery supporting Plaintiff's claims, ensuring well-informed negotiations in the best interests of the class based on the production of relevant class information, and engaging in months of intense settlement negotiations, including through formal mediation with a third-party neutral. I respectfully request that Plaintiff's motion for attorneys' fees and costs be granted.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 7th DAY OF AUGUST, 2017.

/s/ Matthew P. McCue
Matthew P. McCue

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Philip Charvat on behalf of himself and others similarly situated, Plaintiff, v. Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd. Defendants.	)	Case No. 1:12-cv-5746 Hon. Judge Andrea R. Wood

DECLARATION OF EDWARD A. BRODERICK

1. I make this declaration in support of the Plaintiff's motion for attorneys' fees and costs in relation to the proposed class action settlement in this matter. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I have extensive experience in the prosecution of class actions on behalf of consumers.

Qualification of Counsel

3. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the Telephone Consumer Protection Act, 47 U.S.C. §227. ("TCPA"). As a result of my extensive experience litigating TCPA class claims, I am well-aware of the significant time and resources needed to litigate such actions, and my firm possesses the resources necessary to prosecute these actions successfully. My firm keeps contemporaneous

time records, and the rates for our attorneys and personnel are commensurate with my experience and are commensurate with market rates in Boston for attorneys with similar levels of experience. My hourly rate and that of my partner Anthony Paronich have been approved as reasonable by numerous state and federal courts in approving settlements.

4. I am a 1993 graduate of Harvard Law School. Following graduation from law school, I served as a law clerk to the Honorable Martin L.C. Feldman, United States District Judge in the Eastern District of Louisiana.

5. Following my clerkship, from 1994 to December 1996, I was an associate in the litigation department of Ropes & Gray in Boston, where I gained class action experience in the defense of a securities class action, Schaeffer v. Timberland, in the United States District Court in New Hampshire, and participated in many types of complex litigation.

6. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a three-lawyer Boston firm focused on the representation of consumers in class actions.

7. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing my practice on complex litigation and the representation of consumers.

8. In 2003, I started my own law firm focusing exclusively on the litigation consumer class actions.

9. A sampling of other class actions in which I have represented classes of consumers and been appointed class counsel follows:

i. In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation Agreements Litigation (MDL Docket No. 1192) (N.D. Ill) (nationwide class action challenging reaffirmation practices of General Electric Capital Corporation, settlement worth estimated $60,000,000.)

ii. Hurley v. Federated Department Stores, Inc., et al, USDC D. Mass. Civil Action No. 97-11479-NG (nationwide class action challenged bankruptcy reaffirmation practices of Federated Department Stores and others; $8,000,000 recovery for class.)

iii. Valerie Ciardi v. F. Hoffman LaRoche, et al, Middlesex Superior Court Civil Action No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act, M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing conspiracy by manufactures of vitamins; settled for $19,600,000.)

iv. Shelah Feiss v. Mediaone Group, Inc, et al, USDC N. District Georgia, Civil Action No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class recovery of $15,000,000--$20,000,000.)

v. Mey v. Herbalife International, Inc., Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. $7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the granting of a contested class certification motion.

vi. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of $475,000 following the granting of a contested class certification motion, granted final approval by the Court on July 25, 2007.

vii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the granting of a contested class certification motion, a companion case went to the Massachusetts Supreme

Judicial Court, which issued a decision finding insurance coverage. *See* Terra Nova Insurance v. Fray-Witzer et. al., 449 Mass. 206 (2007). There was then a TCPA class settlement of $1,800,000 which was granted final approval.

viii. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanswaha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for $2,450,000, final approval granted in September of 2009.

ix. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., Civil Action No. 1:08-CV-11312-RGS, TCPA class settlement of $1,000,000, final approval granted in January of 2010.

x. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc., Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement $1,300,000 granted final approval on February 3, 2011.

xi. Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of $1,800,000, final approval granted August 17, 2011.

xii. Collins v. Locks & Keys of Woburn, Inc.., Suffolk Superior Court (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of $2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.

xiii. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of $1,575,000 granted final approval in March of 2012.

xiv. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-11912,

TCPA class settlement $1,875,000 granted final approval on September 25, 2012.

xv. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of $15,000,000 granted final approval on June 21, 2013.

xvi. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of $4,500,000 granted final approval on February 12, 2015.

xvii. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of $8,500,000 granted final approval on April 15, 2015.

xviii. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of $6,000,000 granted final approval on September 28, 2015.

xix. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of $4,200,000 granted final approval on June 8, 2016.

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USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of $2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. The case continues against the two non-settling defendants.

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xxvi. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of $1,100,000 granted final approval on May 3, 2017.

xxvii. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

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xxix. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of $368,000.00 granted final approval on May 19, 2017.

xxx. Thomas Krakauer v. Dish Network, L.L.C., USDC MDNC, Civil Action No.

1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of $20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of $61,339,200. (Dkt. No. 338).

xxxi. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of $650,000 granted final approval on July 26, 2017.

xxxii. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of $3,700,000 granted preliminary approval on July 26, 2017.

10. The above experience, qualifications, decisions and settlements demonstrate my ability and commitment to prosecuting TCPA class cases, and justify the fee requested here. Moreover, my office took this matter on a contingency fee basis, which means that the firm would receive no remuneration absent a settlement or judgment. This matter has required me to spend significant time and resources that would have otherwise been spent on other matters. Because my co-counsel and I undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse dispositive decision. As such, we also had a strong incentive to, and did, work efficiently and without unnecessary expense.

11. In deciding to pursue the prosecution of this action, my co-counsel and I accepted that contentious class discovery would likely be required, with not only the defendants, but also then-unknown third parties which may have relevant information pertaining to the calls at issue. We also accepted the real possibility that—especially given the class period going back to 2008

and the fact that many vendors reside overseas and often purge their call records on a regular basis—necessary class call and other records might be difficult to obtain and, in fact, might have already been destroyed, potentially obliterating any ability to ultimately obtain class-wide relief.

12. When our firm loses cases—whether through summary judgment or trial, denial of class certification, or otherwise—my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm put substantial time and money into both; resources that could have been allocated to other cases. I believed that the plaintiff/class would prevail in these cases when I accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

13. The contracts I draft and negotiate with my clients have called for the client to pay, on a contingency basis, between one-third and 40% of the total amount of any judgment or settlement after costs had been deducted. When the firm began taking TCPA cases, its agreement with clients called for fees in the amount of one-third after expenses. However, because I had focused on TCPA cases for quite some time and believed the market would bear such, in around 2015, I raised my contingency fee to 40%, after expenses. I have not had any potential clients balk a 40% fee—indeed, even former clients who returned with new potential cases agreed to

this fee arrangement; ostensibly because they believed I deserved such a fee because of my representation and results. Based upon conversations with other TCPA lawyers in Boston and around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%. This belief is corroborated by the fact that the contract between Plaintiff's counsel and Mr. Charvat in this case calls for fees of 33⅓% of the net amount collected by settlement or judgment.

14. My firm and I have dedicated a substantial resources time investigating, litigating, and negotiating Plaintiff's and the class' claims, and Defendants have pushed back at every turn. Co-counsel and I conducted a thorough pre-suit investigation, drafted pleadings, and pursued rigorous discovery with Defendants and third parties. Discovery in this case was particularly hard-fought. Class Counsel prepared and served multiple sets of written discovery requests on Defendants, worked with Mr. Charvat to respond to Defendants' requests and prepare both him and his daughter for their depositions, worked with Plaintiff's expert to ensure proper data analysis and prepare him for his deposition, and participated with defense counsel in a total of 15 depositions across four states. My co-counsel and I devoted numerous hours to negotiating the settlement, which included preparing mediation submissions, attending an all-day mediation session, and following up with the mediator and opposing counsel over the phone and through e-mail. Several months after class certification briefing, the parties decided to discuss the possibility of class-wide settlement, and met for an all-day mediation with Bruce Friedman of JAMS in Miami, Florida, on March 18, 2017, preceded by the submission of mediation briefs. The parties failed to reach a settlement, but through continued negotiations between counsel for the parties over subsequent months, we ultimately reached the instant Settlement now before the Court. Negotiations were at all times adversarial and at arm's-length, and Defendants did not,

and have not, swayed from their position that they did not violate the TCPA and that Plaintiff and the class would, absent settlement, be unable to succeed on the merits of their claims, let alone on a class-wide basis. My co-counsel and I have thereafter spent substantial time preparing and fine-tuning the settlement papers and notice documents, and drafting the motion for preliminary approval. With defense counsel, we also worked to select a settlement administrator who would provide a robust notice plan while keeping costs to a minimum, ultimately selecting Kurtzman Carson Consultants LLC ("KCC"), with estimated notice and administrative costs of approximately $800,000.

15. Our firm spent a total of $19,760.45 prosecuting and settling this action. These out-of-pocket costs were expended for expenses such as travel, transcript costs and mediation expenses.

16. Based upon my previous experience as noted above, I believe this Settlement, and the requested fee and service award, to be fair and reasonable under the circumstances and in the best interest of the class. For over five years, my co-counsel and I have zealously prosecuted this action, including by aggressively pursuing discovery supporting Plaintiff's claims, ensuring well-informed negotiations in the best interests of the class based on the production of relevant class information, and engaging in months of intense settlement negotiations, including through formal mediation with a third-party neutral. I respectfully request that Plaintiff's motion for attorneys' fees and costs be granted.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 4th DAY OF AUGUST, 2017.

/s/ *Edward A. Broderick*
Edward A. Broderick

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Philip Charvat on behalf of himself and others similarly situated, Plaintiff, v. Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd. Defendants.	)	Case No. 1:12-cv-5746 Hon. Judge Andrea R. Wood

DECLARATION OF ANTHONY I. PARONICH

1. I make this declaration in support of the Plaintiff's motion for attorneys' fees and costs in relation to the proposed class action settlement in this matter. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I have extensive experience in the prosecution of class actions on behalf of consumers.

Qualification of Counsel

3. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the Telephone Consumer Protection Act, 47 U.S.C. §227.

4. I am a 2010 graduate of Suffolk Law School. In 2010, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the Federal District Court for the District of Massachusetts. From time to time, I have appeared in other State and Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

5. I am a partner at Broderick & Paronich, P.C. in Boston, Massachusetts.

6. A sampling of other class actions in which I have represented classes of consumers and been appointed class counsel follows:

i. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of $1,575,000 granted final approval in March of 2012.

ii. Collins, et al v. ACS, Inc. et al, USDC, D. Mass., Civil Action No. 10-CV-11912, TCPA class settlement $1,875,000 granted final approval on September 25, 2012.

iii. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of $15,000,000 granted final approval on June 21, 2013.

iv. Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of $4,500,000 granted final approval on February 12, 2015.

v. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of $8,500,000 granted final approval on April 15, 2015.

vi. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of $6,000,000 granted final approval on September 28, 2015.

vii. Mey v. Interstate National Dealer Services, Inc., USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of $4,200,000 granted final approval on June 8, 2016.

viii. Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company, USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for $1,500,000 granted final

approval on August 4, 2016.

ix. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, TCPA class settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of $49,932,375 and an assignment of rights against defendant's insurance carrier.

x. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al., USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of $2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. The case continues against the two non-settling defendants.

xi. Smith v. State Farm Mut. Auto. Ins. Co. , et. al., USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of $7,000,000.00 granted final approval on December 8, 2016.

xii. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of $11,000,000 granted preliminary approval on January 26, 2017.

xiii. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., USDC, 4:14-cv-00566-RH-CAS, a TCPA class settlement of $2,900,000 granted final approval on April 24, 2017.

xiv. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of $1,100,000 granted final approval on May 3, 2017.

xv. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

xvi. Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company, USDC,

SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of $3,250,000 granted preliminary approval on May 18, 2017.

xvii. Abramson v. CWS Apartment Home, LLC, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of $368,000.00 granted final approval on May 19, 2017.

xviii. Thomas Krakauer v. Dish Network, L.L.C., USDC, MD. NC., Civil Action No. 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of $20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of $61,339,200. (Dkt. No. 338).

xix. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of $650,000 granted final approval on July 26, 2017.

xx. Mey v. Patriot Payment Group, LLC, USDC, ND. WV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of $3,700,000 granted preliminary approval on July 26, 2017.

7. The above experience, qualifications, decisions and settlements demonstrate my ability and commitment to prosecuting TCPA class cases, and justify the fee requested here. Moreover, my office took this matter on a contingency fee basis, which means that the firm would receive no remuneration absent a settlement or judgment. This matter has required me to spend significant time and resources that would have otherwise been spent on other matters. Because my co-counsel and I undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse dispositive decision. As such, we also had a strong incentive to, and did, work efficiently and without unnecessary expense.

8. In deciding to pursue the prosecution of this action, my co-counsel and I accepted that contentious class discovery would likely be required, with not only the defendants, but also then-unknown third parties which may have relevant information pertaining to the calls at issue. We also accepted the real possibility that—especially given the class period going back to 2008 and the fact that many vendors reside overseas and often purge their call records on a regular basis—necessary class call and other records might be difficult to obtain and, in fact, might have already been destroyed, potentially obliterating any ability to ultimately obtain class-wide relief.

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/s/ Anthony I. Paronich
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