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

PLAINTIFF'S AMENDED 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. Based on the claims rate, the Settlement will require Defendants to pay $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, 47 U.S.C. § 227.

Class Counsel have zealously prosecuted Plaintiff's claims for over six years, achieving the Settlement only after extensive first and third-party discovery and heavily-contested motion practice, including motions to dismiss and 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, followed by months of further negotiations between counsel for the parties.

As compensation for the substantial benefit conferred upon the Settlement Class and six years of grueling work, Class Counsel respectfully move the Court for an award of attorneys' fees of $3,150,000—equal to one-third of the Settlement Fund exclusive of Settlement Administration Expenses and any Incentive Award. This request is well within the range of reasonableness, and represents a more than $1 million reduction in the intended fee request identified in the Class Notice, which will help offset unexpected additional notice costs for the benefit of the Class. Class Counsel also seek reimbursement of $207,548.05 in out-of-pocket costs. This request should be approved because it (1) represents the market rate for this type of settlement and is in line with the Seventh Circuit's directive in *In re Synthroid*, and (2) is

reasonable and appropriate in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case.

Counsel originally requested one-third of the gross settlement amount. Dkt. 579. However, the circumstances surrounding this Settlement have changed since that filing, which was made before word of this Settlement "went viral." Because of the unanticipated (and sometimes inaccurate) notoriety of this Settlement, the administrative costs have more than tripled from the originally-anticipated $800,000, to approximately $3,000,000. Such circumstances have caused Counsel to revise their fee request to ask for one-third of the net settlement, pursuant to the formula promulgated in *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014), and *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014).

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 prerecorded-voice calls from 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 he violated Illinois law by recording the prerecorded-voice call RMG 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 at issue continued post-suit, Class Counsel successfully moved for leave to file a third amended complaint 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 was fabricated. Dkt. 512-1, Pascale Dep. at 94. Similarly, when Defendants hired a third party to run a calling campaign to conduct an on-the-spot "survey" of putative class members on what they recalled from calls they received years ago without notice to Class Counsel or informing the recipients about its adversarial purpose, 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. (McCue Decl. ¶ 14.) 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 650 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. (McCue Decl. ¶ 14.) 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. (McCue Decl. ¶ 14.)

The Court preliminarily approved the Settlement at presentment on July 6, 2017. Dkt. 575. Since then, Class Counsel have actively overseen implementation of the Settlement terms in compliance with this Court's Preliminary Approval Order, Dkt. 576, including by responding to Class Member inquiries about the claims and documentation process, moving for appropriate modifications to the Settlement schedule and process in coordination with defense counsel, and by participation in seven separate hearings regarding status and implementation of the notice and other Settlement requirements. Dkt. 589, 595, 618, 619, 633, 653, 657; (Burke Decl. ¶ 12).

This case received massive media attention both locally and on the national stage, far beyond the typical TCPA class settlement.[1] While such coverage undoubtedly supplemented the already robust notice procedures this Court approved under the Settlement, *see* Dkt. 569-1, Agr. ¶¶ 7.0-7.9, the parties' inability to control the information these third-party media outlets disseminated raised concerns about consumer misunderstandings concerning the scope and nature of the Settlement: for example, by suggesting that claimants "might be owed $900" without explaining that any recovery was dependent on the number of valid claims submitted and could ultimately (and, given the high claims rate, will) be a *pro rata* share of the Settlement Fund. Thus, on September 25, 2017, in coordination with defense counsel, Class Counsel moved to modify the notice procedures and provide supplemental notice to claimants intended to undo the effect of any misunderstanding, which the Court granted on October 3, 2017. Dkt. 592, 596.

Similarly, after it became apparent that an unknown but substantial number of Indirect Notice Recipients' claims were likely fraudulent—for example, through bulk claim submissions, multiple claims on the same phone number, etc.—Class Counsel coordinated with Defendants and the Settlement Administrator to develop an e-mail notice plan and procedure to verify Indirect Notice Recipient claims through a request for supplemental documentation, which this Court approved on March 5, 2018. Dkt. 615, 620. After the Settlement Administrator identified a subset of claimants for whom e-mail notice was unavailable, on April 25, 2018, Class Counsel also moved to extend the verification period to effectuate direct postcard notice to such individuals, and to allow all claimants additional time to submit supporting documentation. Dkt.

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[1] *E.g.*, http://abcnews.go.com/WNT/video/class-action-lawsuit-targets-lawsuits-49260456; http://abc7ny.com/finance/heads-up-you-may-be-due-money-in-cruise-robocall-case/2314364/; http://insider.foxnews.com/2017/08/16/free-cruise-robocalls-class-action-settlement-payments-announced; http://6abc.com/finance/free-cruise-robocall-class-action-lawsuit-settled-claims-available/2317637/; http://www.miamiherald.com/news/nation-world/national/article167363227.html; http://boston.cbslocal.com/2017/08/16/free-cruise-robocall-settlement-claim/.

626. The Court granted that motion on May 2, 2018. Dkt. 634. Further, when made necessary by the sheer volume of claimant responses, Class Counsel coordinated with Defendants to seek an extension of the Court's schedule to permit the parties to complete the Settlement's claim review process, Dkt. 654, which the Court granted on June 20, 2018. Dkt. 658.

Class Counsel have also addressed Class Member questions concerning the Settlement directly, ultimately fielding over 600 inquiries, requiring Class Counsel to retain temporary staff to adequately and timely respond to Class Member questions. (Burke Decl. ¶ 12.) Class Counsel thus extended substantial efforts to ensure that Class Members' interests were zealously advanced and protected throughout this litigation and the immediate notice and claims process.

B. The Settlement

The Settlement terms require 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 Agreement provides that Defendants will 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. Class Members had the opportunity to 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 in this case. *Id.* ¶ 2.49. Where the amount in payments exceeds the $12,500,000 cap—as is the case here given the known claims rate—Cash Awards to Settlement Class Members will be reduced on a *pro rata* basis. *Id.* Any amount remaining in the Settlement Fund after distribution will be provided to the National Consumer Law Center or another approved recipient as *cy pres*. *Id.* ¶ 8.4. Notice and administration is expected to cost approximately $3 million. (McCue Decl. ¶ 17.)

Plaintiff respectfully requests that the Court approve attorneys' fees equal to one-third of the Settlement Fund exclusive of Settlement Administration Expenses and Incentive Award, or $3,150,000, plus costs of $207,548.05. As detailed below, the requested award is in line with the market rate for similar legal services in this jurisdiction, and fairly reflects the result achieved.

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. *Am. Art China, Co. v. Foxfire Printing & Pkg., Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). "[T]he 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.*, No. 09-7670, 2011 WL 13257072, at *3 (N.D. Ill. Nov. 30, 2011).

IV. ARGUMENT

Class Counsel's requested fee is reasonable and within the market rate, whether calculated through the percentage-of-the-fund or through lodestar cross-check. Consequently, the requested fees and costs should, respectfully, be awarded, as further set forth herein.

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 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.

One of the advantages that the percentage of the fund has over lodestar, and a substantial reason why it 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); *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 "provides a more effective way of determining whether the hours expended were reasonable"), *aff'd*, 160 F.3d 361 (7th Cir. 1998). Thus, here, where Class Counsel has secured a non-reversionary, common fund TCPA class settlement for the benefit of the Class, fees should be determined on a percentage-of-the-fund basis.

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 weighing 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. Rather, *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: Class Counsel's requested fee award, $3,150,000, is 33⅓% of the total of requested attorneys' fees plus anticipated direct Settlement Class benefits—well under the 50% deemed presumptively reasonable under *Pearson*.[2]

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

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[2] $3,150,000 Fee Award ÷ ($3,150,000 Fee Award + ($12,500,000 Settlement Fund - $3,000,000 Estimated Settlement Administration Expenses - $3,150,000 Fee Award - $50,000 Incentive Award)) = roughly 0.3333

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 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. *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 before 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, and has submitted evidence that between 33⅓% and 40% is the market rate in consumer TCPA cases in this District. (McCue Decl. ¶ 13; Burke Decl. ¶ 17.) Such evidence supports a finding that the requested fee reflects the amount Class Counsel would have received had they negotiated their fee *ex ante*. *Taubenfeld*, 415 F.3d at 599.

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

"As the Seventh Circuit has held, attorney's fee awards in analogous class action settlements shed light on the market rate for legal services in similar cases." *Kolinek*, 311 F.R.D. at 493–94 (citation omitted). Here, Class Counsel's request for fees totaling one-third of the Settlement Fund exclusive of Settlement Administration Expenses and any Incentive Award—or approximately 25% of the *entire* Settlement Fund—finds support in numerous other decisions. Some TCPA cases approving fees in this range from this District are as follows: *Charvat v. AEP Energy, Inc.*, No. 14-3121, Dkt. No. 44 (N.D. Ill. November 20, 2015) (awarding fees in TCPA class action settlement of one-third total Settlement Fund) (Zagel, J.); *Martin v. Dun & Bradstreet, Inc.*, No. 12-215, Dkt. 63 (N.D. Ill. Jan. 16, 2014) (one-third of total payout) (Martin, J.); *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, Dkt. 91 (N.D. Ill. May 30, 2014) (Gottschall, J.) (one-third of common fund); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925, Dkt. 243 (N.D. Ill. June 21, 2013) (Bucklo, J.) (one-third of the fund); *Paldo Sign & Display Co. v. Topsail Sportswear, Inc.*, No. 08-5959, Dkt. 116 (N.D. Ill. Dec. 21, 2011) (Kennelly, J.) (one-third of settlement fund plus expenses); *CE Design Ltd. v. CV's Crab House North, Inc.*, No. 07-5456, Dkt. 424 (N.D. Ill. Oct. 27, 2011) (Kennelly, J.) (one-third of fund plus expenses); *Saf-T-Gard Int'l, Inc. v. Seiko Corp. of Am.*, No. 09-776, Dkt. 100 (N.D. Ill. Jan. 14, 2011) (Bucklo, J.) (fees and expenses equal to 33% of the settlement fund); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07-5953, Dkt. 146 (N.D. Ill. Nov. 1, 2010) (Kendall, J.) (fees of one-third of settlement plus expenses); *Hinman v. M&M Rentals, Inc.*, No. 06-1156, Dkt. 225 (N.D. Ill. Oct. 6, 2009) (Bucklo, J.) (fees and expenses equal to 33% of the fund); *Holtzman v. CCH*, No. 07-7033, Dkt. 33 (N.D. Ill. Sept. 30, 2009) (Nordberg, J.) (same); *CE Design, Ltd. v.*

Exterior Sys., Inc., No. 07-66, Dkt. 39 (N.D. Ill. Dec. 6, 2007) (Darrah, J.) (same).

Some other, non-TCPA cases supporting the reasonableness of Class Counsel's fee request include: *Spano v. The Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. March 31, 2016) (awarding 33⅓% 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 fund after deducting notice costs); *Bickel v. Sheriff of Whitley Cnty*, No. 08-102, 2015 WL 1402018 (N.D. Ind. Mar. 26, 2015) (awarding 43.7% of fund); *In re Dairy Farmers of Am., Inc.*, MDL No. 2031, 2015 WL 753946 (N.D. Ill. Feb. 20, 2015) (33.33% of the fund);[3] *Taubenfeld*, 415 F.3d at 600 (noting counsel had submitted a table of thirteen cases in N.D. Ill. where counsel were awarded fees amounting to 30–39% of settlement fund); *In re Ky. Grilled Chicken*, 2011 WL 13257072, at *5 (approving 32.7% of common fund); *City of Greenville v. Syngenta Corp Prot., Inc.*, 904 F. Supp. 2d 902, 908–09 (S.D. Ill. 2012) (approving one-third fee because a "contingent fee of one-third of any recovery after the reimbursement of costs and expenses reflects the market price," 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 settlement

[3] *Synthroid I* also says that District Courts may look to any data from pre-suit negotiations and class-counsel auctions, however such information is "basically non-existent" in a TCPA case like this one. *Kolinek*, 311 F.R.D. 501.

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. 20th 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).

Post-*Pearson*, some courts in this Circuit have employed a percentage-of-the-fund analysis that wholly excludes costs and any incentive award from the calculation under *Pearson*, while incorporating a percentage "risk adjustment" above the 30% the Seventh Circuit approved in *In re Synthroid Mktg. Litig.*, 325 F.3d at 979. *See, e.g.*, *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (awarding 38% of fund minus expenses, notice/admin costs, and service award) (Shah, J.); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (awarding 36% of fund minus notice/admin costs and service award) (Kennelly, J.); *Fulton Dental, LLC v. Bisco, Inc.*, 1:15-cv-11038, Dkt. No. 71 (N.D. Ill. Mar. 7, 2018) (Chang, J.) (awarding one-third of total settlement in TCPA junk fax case); *but see Castillo v. Noodles & Co.*, No. 16-3036, 2016 WL 7451626, at *4 (N.D. Ill. Dec. 23, 2016) (finding, post-*Pearson*, that "Plaintiffs' request for one-third of the settlement in attorneys' fees is consistent with the market in the Northern District of Illinois.") (Wood, J.). As discussed below, from the outset and over the past half-decade this case has been litigated, Class Counsel undertook substantial risk that they would ultimately achieve nothing for their tireless efforts on behalf of the Class. As such,

Class Counsel's request for fees of one-third of the Settlement Fund exclusive of Settlement Administration Expenses and any Incentive Award—or about 25% of the overall Fund, itself—is not only presumptively reasonable under *Pearson*; but the modest 3⅓% risk adjustment Class Counsel seek above 30% is fully supported given the substantial risk undertaken. *See In re Capital One*, 80 F. Supp. 3d at 805 (awarding 6% risk premium on top of 30% fee award for first $10 million in TCPA class settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 1:13-cv-2018, Dkt. No. 338 (N.D. Ill. Dec. 8, 2016) (St. Eve, J.) (awarding one-third of settlement amount after admin costs deducted). This is an extraordinary case that, respectfully, warrants comparable compensation.

In sum, Class Counsel's requested fee reflects fees approved by other courts in TCPA and other class cases in this Circuit. Consequently, the requested fee award is reasonable, and should be approved.

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 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.

Here, success, especially at the outset of this action, was by no means assured. Class Counsel accepted that litigating 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). This 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. ¶ 16); *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).

For instance, Class Counsel pursued this action without knowing the size and scope of the class—information solely in the possession of Defendants and their vendors—and

anticipating (correctly) that identifying such information would require extensive, contentious discovery. *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). Similarly, 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.[4]

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 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). As this Court knows, non-settlement class certification was particularly adversarial here, involving thousands of pages of briefing and multiple ancillary motions. Dkt. 492, 520, 521, 530, 531, 547, 548, 551, 553. A ruling denying certification would limit the case to Plaintiff's individual claims, which, given the TCPA's limited damages and lack of statutory fee shifting, would not permit counsel to be compensated

[4] 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.

for their time and expenses even upon later success on the merits. 47 U.S.C. § 227(b)(3).

And even if the class were certified, success at trial was far from guaranteed. In fact, it wasn't even settled at the time of filing whether the Cruise Defendants *could* be held vicariously liable for the calls in this case: Before the FCC's *Dish* ruling was issued on May 9, 2013—nine months after the case was filed—courts were divided 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.").

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 incongruous result from the consumer perspective.[5] In fact, Judge Zagel stayed this case as to the Cruise Defendants while the FCC considered the *DISH*

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

Network petition regarding vicarious liability, a ruling ultimately made in consumers' favor on May 9, 2013.[6] Dkt. 117. On July 10, 2015, the FCC also released an omnibus declaratory ruling clarifying numerous relevant issues affecting the TCPA, such as consent or the definition of an "automatic telephone dialing system" under the statute[7]—which itself was recently overturned in part in *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018). 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.[8] Any of these 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.

Plaintiff believes in the strength of his case, but success was by no means assured. Class Counsel pursued this action knowing that it would require significant expenditure of time, money, and resources — including potentially substantial expert expenses — for which they 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, inter alia, they would have to overcome dispositive defenses and certify a class); *Jamison*, 290 F.R.D. at 102–09 (denying certification in part because a class determination of consent would require "a series of mini-trials"); *Green*, 2010 WL 4628734, at *5 (granting summary judgment against TCPA plaintiff).

Thus, Class Counsel took on substantial risk in deciding to pursue this action, and to continue pursuing it over the past six years. Of course, the facts and circumstances of every case

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

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

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

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. (*E.g.*, McCue Decl. ¶ 12; Burke Decl. ¶ 16.) 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—one-third of the Settlement Fund exclusive of Settlement Administration Expenses and any Incentive Award, or about 25% of the Fund overall—is reasonable and should be granted.

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 $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 six years of arduous litigation. The more than 650 docket entries in this action are a testament to the extraordinary efforts by Class Counsel in ultimately achieving the Settlement now before the Court, providing the class with meaningful relief that is expected to be in line with other TCPA settlements.

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. (Burke Decl. ¶¶ 2-10; McCue Decl. ¶¶ 2-10; Broderick Decl. ¶¶ 2-10.) 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.

C. A Lodestar Cross-Check Supports the Fee Request.

Although "no Seventh Circuit case law suggests that a percentage-of-the-fund approach will yield a reasonable result only where it satisfies a lodestar cross-check[,]" *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015), a lodestar cross-check may further support the reasonableness of a fee request. *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011). "A multiplier is, within the court's discretion, appropriate when counsel assume

a risk of non-payment in taking a suit.... [T]he multiplier is designed to reflect the fact that, no matter how many hours were invested, there was, at the outset, the possibility of no recovery." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (remanding for multiplier determination, "as there was some probability that the suit would not result in success").

Here, the requested $3,150,000 award represents a multiplier of 1.17 of Class Counsel's lodestar of $2,685,207.50, which is well within the range of reasonableness in the Seventh Circuit. (McCue Decl. ¶¶ 20-21; Burke Decl. ¶¶ 12-14; Broderick Decl. ¶¶ 11-12); *see, e.g.*, *Harman*, 945 F.2d at 974 (Seventh Circuit confirming that "[m]ultipliers anywhere between one and four have been approved"); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (approving fee award with "multiplier of less than 2.5, which is not an unreasonable risk multiplier"); *Standard Iron Works v. ArcelorMittal*, No. 08-5214, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) ("[T]he requested lodestar 'multiplier' is approximately 1.97, which the Court finds is well within the range of reasonable multipliers awarded in similar contingent cases."). Thus, the reasonableness of Plaintiff's fee request is further supported by a lodestar cross-check, and it should, therefore, be approved.

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 exclusive of Settlement Administration Expenses and any Incentive Award, or $3,150,000, as well as a $207,548.05 reimbursement of their out-of-pocket costs.

Respectfully submitted,

PHILIP CHARVAT, on behalf of himself and others similarly situated

Dated: September 10, 2018

By: */s/ Alexander H. Burke*

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CERTIFICATE OF SERVICE

I certify that, on September 10, 2018, I caused the foregoing 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

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, the Sixth Circuit Court of Appeals, and the United States Supreme Court.

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 Kanawaha 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. 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.

14. 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").

15. As the Court is well aware, the claims administration of the settlement was complicated due to the submission of fraudulent claims. Over two million claims were initially received in this case. KCC assessed these initial submissions and appraised the Court of its concern that a significant number of these claims were fraudulent.

16. As a result, this Court approved a process pursuant to which class members submitted verification of their ownership of the phone numbers on which they received the purported illegal telemarketing calls at issue. The parties worked collaboratively with KCC to ensure this verification was effectuated fairly and accurately. Working through these issues required the dedication of substantial additional attorney time.

17. The complications experienced during the claims process have also significantly impacted costs of administration. KCC estimates that the total costs of administration through the completion of this case will be approximately three million dollars ($3,000,000).

18. In their initial fee petition, class counsel informed the Court that it would seek as a fee 1/3 of the total settlement fund.

19. Given the unanticipated claims response and the cost to remove fraud from that response, and given the effect the claims response has on administration expenses, class counsel will amend their fee request to seek 1/3 of the settlement fund ***after*** the payment of costs of administration. By voluntarily reducing their requested fee in this regard, class

counsel seek to preserve the maximum amount of the Settlement Fund for distribution to class members under these circumstances.

20. In total, my firm spent over 2,207 hours working on this litigation since its filing in the summer of 2012.

21. My billable rate for my work in TCPA class actions has been approved by other courts at $700 an hour. I am familiar with the rates of attorneys of similar background and experience nationally and am confident the rates are reasonable and in keeping with rates used by other attorneys with similar training and experience. I have used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions, and they have been approved as reasonable by numerous state and federal courts in approving settlements. *See e.g., Mey v. Frontier Communications Corporation,* No. 3:13-cv-1191-MPS (D. Ct. June 9, 2017) (approving fee award and recognizing hourly rate of $700); *Heidarpour v. Central Payment Co*., No. 16-cv-01215 (M.D. Ga. May 4, 2017) (same); *Mey v. Interstate National Dealer Services, Inc*., No. 14-01846 (N.D. Ga June 8, 2016) (same).

22. I am seeking reimbursement for expenses in the amount of $48,523. I am not seeking reimbursement for all expenses incurred working on this case. My expenses are detailed on an excel spread-sheet and are verified by credit card and bank records. These out of-pocket costs were expended for expenses such as travel, meals, deposition transcripts, witness fees, subpoena and service fees, transcript costs, copy costs, private investigator fees, expert fees, FOIA fees to the Federal Communications Commission, and mediation fees and expenses.

23. 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 six 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 10th DAY OF SEPTEMBER, 2018.

/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., and NCL (Bahamas), Ltd., Defendants	)	Case No. 1:12-cv-05746 Hon. Judge Andrea R. Wood Hon. Mag. Judge Mary M. Rowland

DECLARATION OF ALEXANDER H. BURKE

1. I am over the age of 18 years, have personal knowledge of the facts contained in this declaration, and can competently testify to them. I am the manager and owner of Burke Law Offices, LLC. I represent Plaintiff in this matter, and submit this declaration in support of Plaintiff's Amended Motion for Attorneys' Fees and Costs.

2. I opened Burke Law Offices, LLC in September 2008. The 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, 2015,2016 and 2017. 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 and staffers 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, and 2017, and have been asked to speak in 2018. 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 TCPA class actions and other cases that my firm has worked on include: *Rodriguez v. Premier Bankcard, LLC*, No. 3:16CV2541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (Defendant summary judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, No. 1:17-CV-335, 2018 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first

impression, holding that "direct drop" voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*, No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying motion to dismiss on statutory standing grounds); *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 573 (N.D. Ill. 2018) (certifying contested telemarketing TCPA class); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was 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.*, Case 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 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); *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); *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); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge vicarious liability case); *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 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. Int'l 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, Central, and Southern Districts of Illinois, Eastern and Western Districts of Wisconsin, Northern and Southern Districts of Indiana, the District of Nebraska, Western District of New York and Eastern District of Missouri. 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. I am aware of no conflicts between the representative plaintiff and the proposed settlement class, and I am aware of no special relationships or other conflicts between the representative plaintiff and counsel. My team and I negotiated the settlement agreement in this matter at arm's length and in good faith. The negotiations were difficult and adversarial. I believe the settlement in this matter is in the best interests of the class.

12. My firm and I fought hard in this case for Plaintiff and the class. My work on this case was substantive and voluminous. I personally drafted many of the filings in this case, and provided substantive edits and review on all of my team's court- filed materials. Of course, I also read and kept track of everything that the defendants and anyone else filed, too. My review of the filings in this case was not window-dressing: I actively participated in developing - and revising - our team's strategy, based upon the highs and lows of litigation. I took the depositions of Defendants' expert Margaret Daley, former employee and dialer operator Richard Borst, telemarketing floor supervisor Benny Aguilera, and Travel Services' IT professional Jamie Smith. I also participated as an active second-chair for the deposition of Elizabeth Valente and

Phil Charvat. I facilitated our expert's interview of Jamie Smith, which Judge Rowland oversaw. I attended and actively participated in the full-day mediation. I led many of the Plaintiff-requested meet and confer conversations with all Defendants, focusing on data preservation and recovery. As the Chicago-based attorney on the file, I personally attended nearly all of the approximately forty in-person status conferences and motions hearings, and was usually the primary speaker when I appeared. My office was a primary liaison with our expert witness, Jeffrey Hansen. Mr. McCue and I conducted the full-day mediation in this matter. I was intimately and substantively involved in dealing with the notice/claim anomalies, and responding to class member inquiries over the past months. Indeed, my co-counsel and I have spent substantial time addressing over 600 Class Member inquiries concerning the Settlement directly, even retaining temporary staff to adequately and timely respond to Class Member questions concerning the Settlement and its notice and documentation process. My firm records show that I spent 533 hours on this matter, that my associate Daniel J. Marovitch spent 235.7 hours, and that our paralegal Marina Romanelli spent 65 hours on this case.

13. To the extent that the Court finds a lodestar analysis or cross-check is appropriate, the following is a list of some matters in which certain hourly rates were considered or adopted, which would support using $550/hour as the rate to do so:

a. In *Smith v. State Farm Ins. Co.*, 1:13-cv-2018 (N.D.Ill. Dec. 16, 2016)), Dkt. No. 338, Judge St. Eve approved our fee petition *in toto*. My team and I requested fees as a percentage of the fund, and provided our lodestar as a cross-check. I requested an hourly rate of $550 per hour in the cross-check request.

b. In *Rose v. Bank of America*, 2014 WL 4273358 (N.D.Cal. Aug. 29, 2014), I submitted my time records and requested an hourly rate of $575. The Court approved all rates requested by all counsel as generally reasonable, although the opinion does not specifically mention me. See *Id*. at *8.

c. In *O'Hagan v. Blue Ribbon Taxi Association, Inc*., 1:11-cv-5269 (N.D.Ill. Sept. 20, 2013), final approval of a Fair Credit Reporting Act class action settlement was granted. Although fees were capped as part of the settlement, Magistrate Judge Rowland considered and approved all aspects of the settlement. My fee petition in that case requested an hourly rate of $550 per hour.

d. In *Ahmed v. Oxford Collection Services, Inc*., 1:11-cv-1938 (N.D.Ill. April 19, 2011), Judge Rebecca Pallmeyer of the Northern District of Illinois entered a judgment against the defendant including attorney's fees for my work at a rate of $340 per hour in an individual TCPA case where the defendant reneged on a settlement agreement.

e. In *Fike v. The Bureaus, Inc.*, 1:20-cv-2558 (N.D.Ill. Dec. 3, 2010), Judge Robert M. Dow, Jr. approved a common fund attorney's fee award based at least in part upon counsel's lodestar, which was calculated at $340 per hour. When I worked as an associate at another firm, in *Catalan v. RBC Mortg. Co*., 2009 WL 2986122 (N.D.Ill. Sept. 16, 2009), Judge Robert M. Dow, Jr. approved my hourly rate at $285 per hour while I was an associate arising out of a contested fee petition. Although the total fee award was reduced, hourly rates were not reduced.

f. I was also an associate at another firm when Magistrate Judge Jeffrey Cole approved my hourly rate at $288 in *Pacer v. Rockenbach Chevrolet*, 1:07-cv-5173 (N.D.Ill January 15, 2009).

14. $375 per hour is reasonable for Mr. Marovitch's work on the case. This hourly rate is justified because of Mr. Marovitch's experience in litigating TCPA actions, and because of rates that were approved for his work previously. Mr. Marovitch was approved at $310 per hour in the $6 million TCPA class settlement in *Benzion v. Vivint, Inc.*, No. 12-61826 (S.D. Fla.), as well as in an approved, $2.75 million TCPA class settlement in *Jonsson v. USCB, Inc.*, No. 13-8166 (C.D. Cal.). While neither court's order approving the settlement addressed this rate directly, they did not find it to be unreasonable. Likewise, Mr. Marovitch's billable rate is reasonably consistent with the $325 average hourly rate for a 3-5 year practicing consumer law attorney in Chicago, according to Ronald L. Burdge, United States Consumer Law Attorney Fee Survey Report (2013-2014). $90 per hour is reasonable for Marina Romanelli's work on the case. Ms. Romanelli worked for the firm for approximately a year and a half, and had approximately three years of paralegal experience before that.

15. 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).

16. When Burke Law Offices, LLC loses cases, 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 *Latner v. Mt. Sinai*, 879 F.3d 52 (2d Cir. 2018), *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 each; 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.

17. The contracts I draft and negotiate with my clients call for the client to pay, on a contingency basis, 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%. The retainer agreement in this case called for fees of 33⅓% of the total recovery.

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

Executed on September 10, 2018. /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,	)	Case No. 1:12-cv-05746
v.	)	Hon Judge Andrea R. Wood
Elizabeth Valente, Resort Marketing Group, Inc., Carnival Corporation & PLC, Royal Caribbean Cruises, Ltd., NCL (Bahamas) Ltd	)	
Defendants.	)	

DECLARATION OF EDWARD A. BRODERICK IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS

1. I make this declaration in support of the Plaintiff's Motion for Attorney's Fees and Costs, to describe the time and costs invested in this case, and to describe my experience litigating numerous class actions under the Telephone Consumer Protection Act ("TCPA").

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 been admitted to practice before the United States District Courts for the District of Massachusetts, the District of Michigan and the District of Colorado and the First Circuit Court of Appeals. From time to time, I have appeared in other Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice. Along with my co-counsel in this action, I will faithfully, effectively and zealously represent the interests of the class in this action. I have participated in every phase of this litigation, from investigation of Mr. Charvat's claims, discovery, extensive motion practice, court appearances, and the filing of this motion.

Qualifications 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. I was appointed class counsel in Benzion v. Vivint, Inc., USDC, SDFL, Civil Action No. 0:12-cv-61821-WJZ, TCPA class settlement of $6,000,000 granted final approval on February 23, 2015.

xviii. 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.

xix. 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.

xx. 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.

xxi. 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.

xxii. 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.

xxiii. 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.

xxiv. 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.

xxv. 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.

xxvi. Mey v. Got Warranty, Inc., et. al., USDC, ND. WV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of $650,000 granted preliminary approval on April 6, 2017.

xxvii. 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 April 6, 2017.

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

xxix. 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.

xxx. 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.

xxxi. 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.

xxxii. 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.

xxxiii. 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).

xxxiv. Abante Rooter and Plumbing, Inc. v. Alarm.com Incorporated and Alrm.com Holdings, Inc., USDC, NDCA, 4:15-cv-06314. Class certification in TCPA case

granted on June 5, 2017.

xxxv. Mey v. Venture Data, LLC and Public Opinion Strategies, USDC, NDWV, 5:14-cv-123. Class certification in TCPA case granted on June 6, 2017.

10. In over 16 years of prosecuting cases under the TCPA on behalf of plaintiff classes, this case was among the most vigorously contested I have participated in. Along with my partner Anthony Paronich, I have been involved in all aspects of this case, from initial investigation of the claim, drafting of the complaint and initial discovery, extensive discovery motion practice necessitating numerous court appearance in Chicago, substantive motion practice, including multiple motions to dismiss, depositions in multiple states, extensive review of documents produced by defendants and third parties and the filing of a motion for class certification.

11. My billable rate for this matter is $700.00 an hour. My partner Anthony Paronich's rate is $450 per hour. I am familiar with the rates of attorneys of similar background and experience nationally and am confident the rates are reasonable and in keeping with rates used by other attorneys with similar training and experience. Mr. Paronich and I have used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions, and they have been approved as reasonable by numerous state and federal courts in approving settlements. *See e.g., Mey v. Frontier Communications Corporation*, No. 3:13-cv-1191-MPS (D. Ct. June 9, 2017) (approving a $11,000,000 settlement and attorney fee of one-third that amount based on my hourly rate of $700 and $450 for Mr. Paronich); *Heidarpour v. Central Payment Co.*, No. 16-cv-01215 (M.D. Ga. May 4, 2017) (approving a $6,500,000 settlement and attorney fee of one-third that amount based on my hourly rate of $700 and $450 for Mr. Paronich); *Mey v. Interstate National Dealer Services, Inc.*, No. 14-01846 (N.D. Ga June 8, 2016) (approving

$4,200,000 settlement and attorney fee of one-third that amount based on my hourly rate of $700 and $450 for Mr. Paronich).

12. My firm spent 1,272.60 attorney hours (Mr. Paronich spent 551.6 hours and I spent 721) for total legal fees incurred in this matter of $752,920. My firm also incurred $19,760.45 in out of pocket expenses for deposition transcripts, photocopies, delivery expenses, travel, fees for process of service and pro hac vice fees.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 10th DAY OF SEPTEMBER 2018.

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