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

KEARBY KAISER, on behalf of themselves and others similarly situated, Plaintiffs, v. CVS PHARMACY, INC., MINUTECLINIC, LLC, and WEST CORPORATION, Defendants.	)	Case No. 1:14-cv-03687 Hon. Judge John Z. Lee Hon. Mag. Judge M. David Weisman

PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 2

III. THE SETTLEMENT 4

IV. LEGAL STANDARD FOR ATTORNEYS' FEE DECISIONS 5

V. ARGUMENT 7

A. Class Counsel's Requested Fee Award Is Reasonable. 7

1. Seventh Circuit Attorney Fee Analysis 7

2. The risk associated with this litigation justifies the requested fee award 10

3. The requested fee comports with the contract between Plaintiff and Class Counsel, and typical contingency fee agreements in this Circuit. 14

4. The requested fee reflects the fees awarded in other settlements. 15

5. The quality of performance and work invested support the fee request. ...18

6. The stakes of the case further support the fee request. 19

B. The Court Should Also Award Reasonable Reimbursement for Expenses. 20

C. The Incentive Award to the Class Representative Should Be Approved. 21

VI. CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

Cases

Abbott v. Lockheed Martin Corp.,
No. 06-701, 2015 WL 4398475 (N.D. Ill. July 17, 2015) 18

ACA Int'l v. FCC,
885 F.3d 687 (D.C. Cir. 2018) 12-13

Aliano v. Joe Caputo & Sons-Algonquin, Inc.,
No. 09-910, 2011 WL 1706061 (N.D. Ill. May 5, 2011) 14

Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.,
480 F. Supp. 1195 (S.D.N.Y. 1979) 17

Beesley v. Int'l Paper Co.,
No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014) 20

Benzion v. Vivint, Inc.,
No. 12-61826 (S.D. Fla. Feb. 23, 2015) (Dkt. No. 201) 22

Bickel v. Sheriff of Whitley Cnty,
No. 08-102, 2015 WL 1402018 (N.D. Ind. Mar. 26, 2015) 18

Birchmeier v. Caribbean Cruise Line, Inc.,
896 F.3d 792 (7th Cir. 2018) 17

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 5, 7, 20

CE Design Ltd. v. CV's Crab House North, Inc.,
No. 07-5456 (N.D. Ill. Oct. 27, 2011) (Dkt. No. 424) 16

CE Design, Ltd. v. Exterior Sys., Inc.,
No. 07-66 (N.D. Ill. Dec. 6, 2007) (Dkt. No. 39) 16-17

Charvat v. AEP Energy, Inc.,
No. 13-662 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 44) 8

City of Greenville v. Syngenta Corp Prot., Inc.,
904 F. Supp. 2d 902 (S.D. Ill. 2012) 17

Cook v. Niedert,
142 F.3d 1004 (7th Cir. 1998) 21

Craftwood Lumber Co. v. Interline Brands, Inc., No. 11-4462,

2015 WL 1399367, at *5 (N.D. Ill. Mar. 23, 2015)……9

Cummings v. Sallie Mae,
No. 12-9984 (N.D. Ill. May 30, 2014) (Dkt. No. 91) 8, 16

Desai v. ADT Sec. Servs., Inc.,
No. 11-1925 (N.D. Ill. June 21, 2013) (Dkt. No. 243) 16, 22

Espejo v. Santander Consumer USA, Inc.,
No. 11-8987, 2019 WL 2450492 (N.D. Ill. June 12, 2019)..... 13

Florin v. Nationsbank of Ga., N.A.,
34 F.3d 560 (7th Cir. 1994) 6

G.M. Sign, Inc. v. Finish Thompson, Inc.,
No. 07-5953 (N.D. Ill. Nov. 1, 2010) (Dkt. No. 146)..... 16

Gaskill v. Gordon,
160 F.3d 361 (7th Cir. 1998) 15

Gaskill v. Gordon,
942 F. Supp. 382 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) 6

Golan v. Veritas Entm't, LLC,
No. 14- 69, 2017 WL 3923162 (E.D. Mo. Sept. 7, 2017) 14

Greene v. Emersons Ltd.,
No. 76-2178, 1987 WL 11558 (S.D.N.Y. May 20, 1987) 17

Hale v. State Farm Mut. Auto. Ins. Co.,
No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368……...9, 20, 21

Heekin v. Anthem, Inc.,
No. 05-01908, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012)..... 22

Hinman v. M&M Rentals, Inc.,
No. 06-1156 (N.D. Ill. Oct. 6, 2009) (Dkt. No. 225)..... 16

In re Ampicillin Antitrust Litig.,
526 F. Supp. 494 (D.D.C. 1981)..... 17

In re Bankcorp. Litig.,
291 F.3d 1035 (8th Cir. 2002) 17

In re Capital One TCPA Litig.,
80 F. Supp. 3d 781 (N.D. Ill. 2015)..... 6, 8, 17

In re Combustion, Inc.,
968 F. Supp. 1116 (W.D. La. 1997)..... 17

In re Cont'l Ill. Sec. Litig.,
962 F.2d 566 (7th Cir. 1992) 6

In re Dairy Farmers of Am., Inc.,
MDL No. 2031, 2015 WL 753946 (N.D. Ill. Feb. 20, 2015)..... 18

In re Iowa Ready-Mix Concrete Antitrust Litig.,
No. 10-4038, 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011)..... 21

In re Marsh ERISA Litig.,
265 F.R.D. 128 (S.D.N.Y. 2010) 19

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 17

In re Synthroid Mkt. Litig.,
264 F.3d 712 (7th Cir. 2001) 5, 14, 18, 20, 21

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,
724 F. Supp. 160 (S.D.N.Y. 1989) 6

Jamison v. First Credit Servs.,
290 F.R.D. 92 (N.D. Ill. 2013)..... 12

Kirchoff v. Flynn,
786 F.2d 320 (7th Cir. 1986) 10, 15

Kolinek v. Walgreen Co.,
311 F.R.D. 483 (N.D. Ill. 2015)..... 16, 17, 18

Luster v. Green Tree Servicing, LLC,
No. 14-1763 (N.D. Ga. Sept. 5, 2018) (Dkt. No. 153)..... 12

Mangone v. First USA Bank,
206 F.R.D. 222 (S.D. Ill. 2001) 14

Marks v. Crunch San Diego, LLC,
904 F.3d 1041 (9th Cir. 2018) 13

Martin v. Dun & Bradstreet, Inc.,
No. 12-00215 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 63) 8, 16

Martin v. JTH Tax, Inc.,
No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Dkt. No. 86)..... 17

McCue v. MB Fin., Inc.,
No. 15-988, 2015 WL 4522564 (N.D. Ill. July 23, 2015) 18

Paldo Sign & Display Co. v. Topsail Sportswear, Inc.,
No. 08-5959 (N.D. Ill. Dec. 21, 2011) (Dkt. No. 116) 16

Pearson v. NBTY, Inc.,
772 F.3d 778 (7th Cir. 2014) 6, 7, 8, 17

Pinkus v. Sirius XM Radio, Inc.,
319 F. Supp. 3d 927 (N.D. Ill. 2018) 13

Prena v. BMO Fin. Corp.,
No. 15-09175, 2015 WL 2344949 (N.D. Ill. May 15, 2015) 18

Redman v. RadioShack Corp.,
768 F.3d 622 (7th Cir. 2014) 6

Retsky Family Ltd. P'ship v. Price Waterhouse, LLP,
No. 97-7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001) 15

Romero v. Dep't Stores Nat'l Bank, 199 F. Supp. 3d 1256 (S.D. Cal. 2016)……13

Saf-T-Gard Int'l, Inc. v. Seiko Corp. of Am.,
No. 09-776 (N.D. Ill. Jan. 14, 2011) (Dkt. No. 100) 16

Saf-T-Gard Int'l, Inc. v. Vanguard Energy Servs., LLC,
No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) 11

Silverman v. Motorola Solutions, Inc.,
739 F.3d 956 (7th Cir. 2013) 10

Spano v. The Boeing Co.,
No. 06-743, 2016 WL 3791123 (S.D. Ill. March 31, 2016) 18

Spicer v. Chi. Bd. Options Exch., Inc.,
844 F. Supp. 1226 (N.D. Ill. 1993) 20

Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016)……13

Sutton v. Bernard,
504 F.3d 688 (7th Cir. 2007) 5, 10, 18

Taubenfeld v. AON Corp.,
415 F.3d 597 (7th Cir. 2005) 14, 17

Van Gemert v. Boeing Co.,
516 F. Supp. 412 (S.D.N.Y. 1981) 17

Will v. Gen. Dynamics Corp.,
No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010) 17

Zolkos v. Scriptfleet, Inc.,
No. 12-8230, 2015 WL 4275540 (N.D. Ill. July 13, 2015) 18

Statutes

15 U.S.C. § 1681n(a) 15

15 U.S.C. § 1692k(a) 15

47 U.S.C. § 227(b)(3) 14, 15, 19

Other Authorities

In re Rules & Regs. Implementing the TCPA,
30 FCC Rcd. 7961 (2015) 11, 12

Rules

Fed. R. Civ. P. 23 ..... 11, 12, 20

Regulations

47 C.F.R. § 64.1200(a)(1)(iii) 2

I. INTRODUCTION

On August 5, 2019, this Court preliminarily approved a proposed class action settlement between Plaintiff Kearby Kaiser ("Plaintiff" or "Mr. Kaiser") and Defendants CVS Pharmacy, Inc. ("CVS Pharmacy"), MinuteClinic, LLC ("MinuteClinic") (collectively, "CVS"), and West Corporation ("West") (collectively with Plaintiff, the "Parties"). Dkt. 417.

The Settlement provides for the establishment of a non-reversionary, $15,000,000 common fund to be distributed to applicable Settlement Class Members associated with 233,079 unique cell phone numbers called with a message offering a CVS Pharmacy shopping pass during MinuteClinic's 2013 flu shot reminder calling campaign, less the costs of notice and administration, Class Counsel's attorneys' fees and expenses, and any incentive award to Plaintiff.[1] Notice is being effectuated through letters mailed directly to Settlement Class Members with identifiable addresses, supplemented with internet-based notice. Class Members with known addresses will be able to receive Settlement relief without the need to submit a Claim Form, while the expectedly small percentage of Class Members for whom no address is identified may submit Claim Forms by mail or directly through a dedicated Settlement Website.

As compensation for the substantial benefit conferred upon the Settlement Class, Plaintiff respectfully moves the Court for an award to Class Counsel of attorneys' fees of $5,000,000, which represents one-third of the Settlement Fund, or 34% of the Settlement Fund net of the costs of administration of the class and the incentive award to the class representative. Class Counsel additionally seek reimbursement of their out-of-pocket costs of $402.991.03 incurred in prosecuting the case.[2] This request should be approved because it (1) represents the market rate

[1] All capitalized terms not defined herein have the meanings set forth in the Parties' Settlement Agreement and Release ("Agr." or "Agreement"), filed at Dkt. 411-1.

[2] Class Counsel's requested expenses are less than that set forth in the notice to the class, which referenced anticipated expenses of $450,000. Dkt. 411-1, Ex. C-1.

for this type of settlement, and (2) represents a reasonable and appropriate amount in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case. Plaintiff also respectfully moves the Court for an award of $15,000 to Plaintiff Kaiser for his work on behalf of the Class. As detailed herein, Plaintiff's motion should, respectfully, be granted.

II. BACKGROUND

This case rests on alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, which prohibits, *inter alia*, calling a cell phone using an ATDS or an artificial or prerecorded voice. 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

On May 20, 2014, Plaintiff filed a class action complaint in the United States District Court for the Northern District of Illinois, alleging violations of the TCPA arising from nonconsensual calls allegedly made by or on behalf of CVS to the cellular telephone numbers of himself and others using an automatic telephone dialing system or an artificial or prerecorded voice. Plaintiff also alleged violations of the Illinois Automatic Telephone Dialers Act ("ATDA"), 815 ILCS 305/1 *et seq.*, arising out of Defendants' use of an autodialer to call his and others' phones, and impeding caller identification. Plaintiff subsequently amended his pleadings to add a CVS calling vendor, West, as a defendant, filing a First Amended Complaint on April 13, 2015 (the "Complaint").[3]

As the Court is aware, this litigation was hard-fought, with the case opening with a motion to stay pending a ruling on petitions for a declaratory ruling on calling a reassigned or wrong phone number, which was later renewed by CVS. Dkt. 25, 134. Defendants additionally moved to dismiss on jurisdictional grounds. Dkt. 223. Class Counsel and Plaintiff's expert

[3] Kaiser was joined in these proceedings with another consumer plaintiff, Carl Lowe. Mr. Lowe has since dismissed his individual claims, Dkt. 419, and he is not a part of this Settlement.

reviewed over 135 GB of data, which included hundreds of thousands of pages of documents and over seven billion rows of call and consent-related data, and took and defended eight depositions in Illinois, Massachusetts, Nebraska, Rhode Island and New Hampshire. Exhibit B, Broderick Decl. ¶¶ 5-7. Plaintiff engaged in numerous meet and confer discussions - several of which wound up being multi-hour in-person contentious marathons - filed multiple discovery motions, and went through two rounds of briefing on class certification oral argument. Dkt. 52, 141, 156, 160, 173, 179, 189, 202-1, 287, 363, 366. This case was not easy: Defendants were well-represented by skilled counsel, who used every available resource and angle to defend the case.

In addition to numerous informal discussions between counsel, the Parties participated in two all-day mediation sessions with two mediators. On November 9, 2015, the Parties engaged in an all-day, in-person, arms-length mediation with the Rodney A. Max, Esq. Agr. ¶ 1.02. This mediation did not result in settlement, and the Parties thereafter continued to aggressively litigate the case, including through contested motion practice, extensive adversarial discovery, and briefing and oral argument on class certification. *Id.* On September 21, 2018, the Parties again participated in mediation, with Hon. Diane M. Welsh (Ret.) of JAMS. This mediation was, likewise, unsuccessful. Agr. ¶ 1.03.

In April 2019, counsel for the Parties reopened communications to determine the possibility that this case could be resolved through negotiated settlement, which efforts were ultimately successful at reaching an agreement in principle. Agr. ¶ 1.04. Based on their investigation and negotiations, which included extensive class and expert discovery, and taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to the Settlement Agreement, Plaintiff and his Counsel concluded that a

settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. At all times, the Parties' settlement negotiations were adversarial, non-collusive, and at arm's-length.

III. THE SETTLEMENT

The Settlement requires Defendants to pay $15,000,000 for the benefit of a Settlement Class, which includes the users or subscribers of the 233,079 telephone numbers on the Class List. The Class List is comprised of cellular telephone numbers used or owned by persons in the United States whom CVS called using an unattended message in MinuteClinic's 2013 flu shot reminder campaign that offered a CVS Pharmacy retail coupon, where: (1) the call was made to a cell phone number, or (2) the person was an Illinois resident. Dkt. 411-1, Agr. ¶¶ 2.09, 2.29; Dkt. 417, Order ¶ 4. Each Class Member with a known address[4] or who otherwise submits an approved claim is entitled to a pro rata share of the Settlement Fund less notice and administrative costs, Class Counsel's fees and expenses, and any incentive award the Court may award. Dkt. 200-1, Agr. ¶ 4.2.1. The Settlement is completely non-reversionary—all unclaimed or undistributed amounts remaining in the Settlement Fund after all payments under the Settlement Agreement will, to the extent administratively feasible, be redistributed to the Settlement Class or, if not administratively feasible, to a Court-approved *cy pres* recipient. *Id.* ¶ 4.2.6. Class Members with known addresses or who submit approved claims are expected to receive approximately $39 or more. Dkt. 411, at 5, fn 4.

Plaintiff respectfully requests that the Court approve attorneys' fees of $5,000,000 and costs of $402,991.03, as well as a $15,000 incentive award for Plaintiff Kaiser. As explained

[4] Class Members with a known address will be mailed a settlement check directly, while those without a known address will have the opportunity to submit a claim for payment under the Settlement. Dkt. 411-1, Agr. ¶ 8.04.

below, the requested fee award is in line with the market rate for similar attorney services in this jurisdiction, and fairly reflects the result achieved. Similarly, the requested incentive award is comparable to other TCPA cases and should be approved.

IV. LEGAL STANDARD FOR ATTORNEYS' FEE DECISIONS

The Seventh Circuit requires courts to determine class action attorneys' fees by "[d]oing their best 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 Mkt. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*") (collecting cases). 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)." *Id.* 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.*

The "common fund" doctrine applies where, as here, litigation results in the recovery of a certain and calculable fund on behalf of a group of beneficiaries: 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) ("[A] 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) ("[T]he attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit.").

The approach favored for consumer class actions in the Seventh Circuit is to compute attorneys' fees as a percentage of the benefit conferred upon the class; "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); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (finding percentage-of-the-fund to be the "normal practice in consumer class actions"). As other courts have explained:

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

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

The Seventh Circuit has also determined that, in assessing the reasonableness of requested attorneys' fee, courts should consider the ratio of "(1) the fee to (2) the fee plus what the class members received." *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014) (omitting administrative costs and incentive awards from analysis). The Seventh Circuit has clarified that the "presumption" should be that "attorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel." *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014).

V. ARGUMENT

A. Class Counsel's Requested Fee Award Is Reasonable.

The percentage-of-the-fund method should be used here. *See Florin*, 34 F.3d at 566. Class Counsel's and Plaintiff's efforts have resulted in a $15,000,000 non-reversionary Settlement Fund that provides substantial, actual value to the Settlement Class. Class Members will have the opportunity to obtain a settlement distribution of approximately $39. Dkt. 411-1, Broderick Decl. ¶ 15. Class Counsel seek attorneys' fees of one-third of the Settlement Fund, or $5,000,000, plus out-of-pocket costs of $402,991.03. Given the result obtained for the Class, and the fact that the fee request is set at the "market range," the requested fee award is presumptively reasonable. Further, the requested fee award of one-third of the total Settlement Fund is also consistent with the "market price" as reflected in the fees approved by judges in this Circuit in other TCPA class cases, considering the risks of non-payment, the quality and extent of Class Counsel's work on behalf of the Settlement Class, and the overall stakes of the case.

1. Seventh Circuit Attorney Fee Analysis

"Reversionary" or "claims made" settlements, where the defendant takes back any amount of unclaimed/unused settlement funds, have come under scrutiny by the Seventh Circuit. Here, however, there is a non-reversionary, "true" lump-sum cash fund of $15,000,000. Dkt. 411-1, Agr. ¶ ¶ 2.32, 4.02. *Pearson*'s discussion of *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980), highlights the difference:

> [I]n [*Boeing*] the "harvest" created by class counsel was an actual, existing judgment fund, and each member of the class had "an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf." *Id.* at 479. "Nothing in the court's order made Boeing's liability for this amount contingent upon the presentation of individual claims." *Id.* at 480 n.5. The class members [in *Boeing*] were known, the benefits of the settlement had been "traced with some accuracy," and costs could be "shifted with some exactitude to those benefiting." *Id.* at 480-81. [Unlike in *Boeing*,] … [t]here is no fund in the

> present case and no litigated judgment, and there was no reasonable expectation in advance of the deadline for filing claims that more members of the class would submit claims than did.

Pearson, 772 F.3d at 782.

In contrast, the $15,000,000, non-reversionary common Settlement Fund here presents precisely the type of "actual, existing judgment fund" cited with approval by the Seventh Circuit in *Pearson*. Further, each Class Member has "an undisputed and mathematically ascertainable claim" to their share of a lump-sum judgment. And while, in a reversionary settlement like the one addressed in *Pearson*, "class counsel lack any incentive to push back against the defendant's creating a burdensome claims process in order to minimize the number of claims," *id.*, the notice plan in *this* case (*i.e.*, direct mail notice supplemented with a dedicated settlement website) presents no such issue because no money will revert to Defendant.

Here, Class Counsel's requested fee award easily satisfies the *Pearson* presumption of reasonableness: It is one-third of the total Settlement Fund, and approximately 34% of the Settlement Fund net of administrative costs and the class representative award—well under the 50% high-mark identified as presumptively reasonable by the Seventh Circuit in *Pearson*.

Class Counsel submit that this fee request is reasonable, consistent with market rates, and should be approved. *See Charvat v. AEP Energy, Inc.*, No. 13-662 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 44) (awarding one-third of common fund in TCPA case, which was 40% of common fund less administration costs); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781 (N.D. Ill. Feb. 15, 2015) (awarding 36% of common fund in fees for the first $10,000,000 of TCPA settlement); *Martin v. Dun & Bradstreet, Inc.*, No. 12-00215 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 63) (awarding one-third of total payout for fees in TCPA case); *Cummings v. Sallie Mae*, No. 12-9984 (N.D. Ill. May 30, 2014) (Dkt. No. 91) (awarding one-third of fund in fees in TCPA case).

In addition to their substantial litigation efforts, Class Counsel devoted many hours to negotiating the Settlement, as well, which included preparing their client's submission for two mediation sessions, and proceeding through further arms' length settlement negotiations with defense counsel by phone and e-mail. Exhibit A, Burke Decl. ¶ 18; Exhibit B, Broderick Decl. ¶¶ 4-13. Class Counsel also spent substantial time preparing the settlement papers and notice documents, working with the independent notice provider, and drafting the motion for preliminary approval, and will continue to do so through final approval. Exhibit A, Burke Decl. ¶ 18; Exhibit B, Broderick Decl. ¶ 14.

As another judge in this District has held, "a lodestar cross-check of the attorney's fees is not warranted." *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-4462, 2015 WL 1399367, at *5 (N.D. Ill. Mar. 23, 2015) (St. Eve, J.) (citing *Americana Art China Co., Inc. v. Foxfire Printing and Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014)). However, should the Court decide to consider Class Counsel's lodestar, a total of 4,914.35 attorney hours were spent generating a combined lodestar of y $3,683,632.50. *See* Exhibit A, Burke Decl. ¶ 16; Exhibit B, Broderick Decl. ¶¶ 16-17; Exhibit C, McCue Decl. ¶¶ 12-13; Exhibit D, Murphy Decl. ¶ 3. This results in a low multiplier of approximately 1.86 to reach the requested fee of $5,000,000 that is below the market rate for similar class litigation. Even for courts performing a lodestar cross check, this multiplier is consistent with decisions in this district. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *53 (S.D. Ill. Dec. 13, 2018) (approving multiplier of 2.83). Class Counsel additionally incurred $402,991.03 in expenses for the benefit of the Settlement Class. *See* Exhibit A, Burke Decl. ¶ 17; Exhibit B, Broderick Decl. ¶ 16; Exhibit C, McCue Decl. ¶ 12; Exhibit D, Murphy Decl. ¶ 3.

2. The risk associated with this litigation justifies 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 Sutton*, 504 F.3d at 694 (finding abuse of discretion where lower court, in applying percentage-of-the-fund approach, 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, whose only source of a fee was a contingent one, was undercompensated").

Plaintiff's allegations in this case presented unique difficulties for class certification, summary judgment, and trial, which support the fee request. For example, Class Counsel took on this case without knowing the extent and scope of the calling at issue, and (based on past experience) anticipating a prolonged discovery battle over class-wide data production. Exhibit A, Burke Decl. ¶ 19.This proved to be even more involved than Class Counsel imagined: They went through multiple rounds of motions to compel and then had to expend significant attorney time and expert costs in order to analyze the substantial documentation and billions of rows of data Defendants ultimately produced. *Id.* If Class Counsel hadn't so zealously pursued discovery in this case, overcoming setback after setback in response to Defendants reticent to provide the materials Plaintiff believed were necessary to effectively litigate this action, this substantial

$15,000,000 settlement would not have been reached. *Id.*

Defendant's consent defense to the calls at issue also presented a hurdle to Plaintiff's ability to certify a Fed. R. Civ. P. 23(b)(3) class. Unlike in many other TCPA cases, Plaintiff Kaiser and other class members were prior customers of CVS, whom CVS contends provided their phone numbers to it during a prior healthcare-related transaction. This thus was not the typical case involving an unsolicited telemarketing call from a business with whom the consumer lacked any prior relationship. And this case was *further* complicated by the fact that the TCPA itself exempts HIPAA-related calling from its written consent requirement, *see* 47 U.S.C. § 227(b)(1)(A)(iii), and because the FCC has granted an exemption for certain healthcare-related calls under the TCPA, *see In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, ¶ 147 (2015). Though Class Counsel disagree with the decisions' outcomes, several courts have decided against consumers when it comes to "flu shot reminder" call claims under the TCPA. *E.g., Latner v. Mt. Sinai Health Sys., Inc.*, 879 F.3d 52 (2d Cir. 2018) (affirming dismissal of TCPA class action based on flu shot reminder calling after consumer visit to facility years prior); *Bailey v. CVS Pharmacy, Inc.*, No. 17-11482, 2018 WL 3866701, at *8 (D.N.J. Aug. 14, 2018) (applying TCPA "Healthcare Exemption" to flu shot reminder texts); *Zani v. Rite Aid Headquarters Corp.*, 246 F. Supp. 3d 835 (S.D.N.Y. 2017) (dismissing "flu shot reminder" case based on consent purportedly previously provided during a prior transaction). While Plaintiff believes this case is distinguishable based on the dual-purpose and upsell telemarketing nature of the calling at issue, there was risk this Court would disagree, precluding any relief for the class.

Indeed, on the consent issue alone, courts have reached drastically different results. *Compare, e.g., Saf-T-Gard Int'l, Inc. v. Vanguard Energy Servs., LLC*, No. 12-3671, 2012 WL 6106714, at *6 (N.D. Ill. Dec. 6, 2012) (certifying TCPA class and finding no evidence that

issues of consent would be individualized), *with Jamison v. First Credit Servs.*, 290 F.R.D. 92, 106-07 (N.D. Ill. 2013) (declining to certify because "issues of individualized consent predominate when a defendant sets forth specific evidence showing that a significant percentage of the putative class consented to receiving calls on their cellphone"). There was thus a real risk that the Court would find that Defendants' consent evidence precluded class certification based on lack of predominating common questions. Indeed, defendants in similar TCPA cases have at times been successful at arguing that poor quality or purported inconsistencies in their *own* records from which the class may be identified preclude a finding of predominance under Fed. R. Civ. P. 23(b)(3). *E.g., Luster v. Green Tree Servicing, LLC*, No. 14-1763 (N.D. Ga. Sept. 5, 2018) (Dkt. No. 153, at 15-17) (accepting general defense assertions that it obtains consent in a variety of manners in finding lack of predominance, despite fact that defendant's data admittedly lacked flags it used to track consent to place the calls at issue).

The fact that call recipients were past customers also created risk that the Court might accept Defendants' arbitration-based arguments based Defendants' online terms; indeed, on April 5, 2016, the Court granted them leave to amend their answers to reflect this defense. Dkt. 154, 163. *See Thompson v. Sutherland Glob. Servs., Inc.*, No. 17-3607, 2019 WL 1470238, at *1 (N.D. Ill. Apr. 3, 2019) (granting motion to compel arbitration based on online terms).

Further, the law governing the calls at issue has been in a state of flux. Numerous petitions to the FCC regarding the TCPA were pending when Class Counsel first took on this case—including on such basic applicable issues as the definition of an "automatic telephone dialing system." The FCC ultimately issued a major, omnibus declaratory ruling on July 10, 2015, *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, at ¶¶ 10-24 (2015), which the D.C. Circuit eventually vacated in part, in *ACA Int'l v. FCC*, 885 F.3d 687, 695 & 706

(D.C. Cir. 2018). Courts are still dealing with the aftermath of the *ACA Int'l* decision, and some have interpreted *ACA Int'l* to effectively preclude much of what has traditionally been considered an autodialer in the industry and under longstanding TCPA precedent. *See Pinkus v. Sirius XM Radio, Inc.*, 319 F. Supp. 3d 927, 939 (N.D. Ill. 2018) (adopting restrictive Third Circuit interpretation of what constitutes an ATDS); *but see Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th Cir. 2018) (rejecting restrictive ATDS interpretation by the Third Circuit post-*ACA Int'l*); *Espejo v. Santander Consumer USA, Inc.*, No. 11-8987, 2019 WL 2450492, at *8 (N.D. Ill. June 12, 2019) (citing *Marks* in finding dialer constitutes ATDS). The risk presented by this uncertainty in the law was not hypothetical: A key part of Defendants' argument in this case was based on their position that the dialer used to call Plaintiff and the Class did not constitute an ATDS. Dkt. 134-1 at 16-18. If the Court had ruled in their favor, this would have severely curtailed or eliminated many Class Members' ability to obtain *any* redress.

Defendants additionally asserted that Mr. Kaiser had not suffered an "injury-in-fact" sufficient to grant him standing to pursue his or the class' claims. *E.g.*, Dkt. 134. Even after the Supreme Court's ultimate ruling in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), the possibility of summary dismissal of this class was tangible. Some post-*Spokeo* courts have held that a plaintiff who has received an unsolicited call in violation of the TCPA, without more, has not alleged a sufficient Article III harm. *See, e.g.*, *Romero v. Dep't Stores Nat'l Bank*, 199 F. Supp. 3d 1256 (S.D. Cal. 2016) ("One singular call, viewed in isolation and without consideration of the purpose of the call, does not cause any injury that is traceable to the conduct for which the TCPA created a private right of action, namely the use of an ATDS to call a cell phone.").

Class Counsel pursued this litigation on a contingency basis despite knowing that, even if they were ultimately successful at trial, they would likely face a lengthy appeal process or even a

reduction in the amount of recovery to the Class based on the extent of statutory damages, especially where some courts view awards of aggregate, statutory damages with skepticism and either refuse to certify a class or reduce such awards on due process grounds. *See, e.g., Aliano v. Joe Caputo & Sons-Algonquin, Inc.*, No. 09-910, 2011 WL 1706061, at *13 (N.D. Ill. May 5, 2011) ("[T]he Court cannot fathom how the minimum statutory damages award for willful FACTA violations in this case — between $100 and $1,000 per violation — would not violate Defendant's due process rights …. Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature."); *Golan v. Veritas Entm't, LLC*, No. 14- 69, 2017 WL 3923162, *4 (E.D. Mo. Sept. 7, 2017) (reducing amount of damages in TCPA case).

Class Counsel assumed the risk of this litigation, including not only the generous disbursement, apportionment, and allotment of time for each of the firms involved, but also the advancement of financial costs and expenses necessary to prosecute this matter zealously on behalf of Plaintiff and the Class. Given the lack of fee shifting under the TCPA, 47 U.S.C. § 227(b)(3), the uncertainty surrounding relevant law under the TCPA, and the unknown variables in relation to the size and nature of the class pre-suit, whether this Court would ultimately certify Plaintiff's proposed class on a litigation basis, and whether Plaintiff would ultimately be successful on the merits of his claims, the risk Class Counsel assumed was significant.). This factor supports the requested fee award.

3. The requested fee comports with the contract between Plaintiff and Class Counsel, and typical contingency fee agreements in this Circuit.

The "actual fee contracts that were negotiated for private litigation" may also be relevant considerations to a fee request *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (citing *Synthroid I*, 264 F.3d at 719); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (requiring weight be given to the judgment of the parties and their counsel where, as here,

the fees were agreed to through arm's length negotiations after the parties agreed on the other key deal terms).

The customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (finding 40% to be "the customary fee in tort litigation"); *Retsky Family Ltd. P'ship v. Price Waterhouse, LLP*, No. 97-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (customary contingent fee is "between 33 1/3% and 40%"). This contingency range is further supported by the fact that the TCPA is not fee-shifting; as such, the attorney's fee model is more akin to personal injury matters than fee-shifting cases such as those brought under the Fair Credit Reporting Act, *see* 15 U.S.C. § 1681n(a), or the Fair Debt Collection Practices Act, *see* 15 U.S.C. § 1692k(a). This absence of fee shifting increases the risk to counsel, especially where, as here, the underlying statute places a cap on the amount of statutory damages available per violation to $500 or, at most, $1,500 at the Court's discretion upon a finding of willfulness, *see* 47 U.S.C. § 227(b)(3)—an amount that, in the absence of an exceptionally large number of calls or class-wide recovery, would be cost-prohibitive considering the fact that, for example, the extent of possible monetary relief under the TCPA for a single, non-willful violation barely covers the cost of filing a lawsuit.

In sum, the fees contemplated under Class Counsel's representation agreements for cases in this District and elsewhere generally fall within the one-third to 40% range. Exhibit A, Burke Decl. ¶ 14. This factor supports a finding that the requested fee reflects the amount Class Counsel would have received had they negotiated their fee ex ante and should be awarded.

4. 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 v. Walgreen Co.*, 311 F.R.D. 483, 493-94 (N.D. Ill. 2015) (citation omitted).

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

07-66 (N.D. Ill. Dec. 6, 2007) (Dkt. 39) (same).[5]

Indeed, Plaintiff's fee request entirely comports with the *Pearson* reasonableness ratio (*i.e.*, fee as a percentage of the fee plus total in direct benefits to the class); that 34% figure likewise plainly falls within the range of reasonableness in this Circuit—especially given the exceptional result achieved. *E.g.*, *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795 (7th Cir. 2018) (affirming post-*Pearson* fee award in TCPA class action for, inter alia, "the sum of 36% of the first $10 million"), *cert. denied*, 139 S. Ct. 923 (2019); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (same); *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Dkt. 86) (37% of TCPA class settlement fund exclusive of expenses, administration costs, and service award, per Dkt. 76); *Kolinek*, 311 F.R.D. at 501 (36% of TCPA class settlement fund exclusive of notice/admin costs and service award). Plaintiff respectfully submits that the success Class Counsel secured on behalf of the Class despite the considerable obstacles and risk faced in this litigation supports the requested fee.

Class Counsel's requested fee also reflects post-*Pearson* fees approved by other courts in

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

non-TCPA cases in this Circuit. *Spano v. The Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. March 31, 2016) (awarding 33 1/3% of the monetary settlement); *McCue v. MB Fin., Inc.*, No. 15-988, 2015 WL 4522564 (N.D. Ill. July 23, 2015) (awarding 33.33% of the fund plus costs); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475 (N.D. Ill. July 17, 2015) (awarding 33.33% of the fund plus costs); *Zolkos v. Scriptfleet, Inc.*, No. 12-8230, 2015 WL 4275540 (N.D. Ill. July 13, 2015) (awarding 33.33% of the fund plus expenses); *Prena v. BMO Fin. Corp.*, No. 15-09175, 2015 WL 2344949 (N.D. Ill. May 15, 2015) (awarding 33.5% of the fund after deducting notice costs); *Bickel v. Sheriff of Whitley Cnty*, No. 08-102, 2015 WL 1402018 (N.D. Ind. Mar. 26, 2015) (awarding 43.7% of the fund); *In re Dairy Farmers of Am., Inc.*, MDL No. 2031, 2015 WL 753946 (N.D. Ill. Feb. 20, 2015) (awarding 33.33% of the fund).[6]

Consequently, the requested fee award falls in line with numerous other settlements approved as reasonable in this Circuit and it, respectfully, should be approved.

5. The quality of performance and work invested support the fee request.

The quality of Class Counsel's performance and time invested through substantial discovery and adversarial negotiations to achieve a $15 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 substantial litigation. They conducted a pre-suit investigation, propounded discovery, conducted review of approximately 135 GB of data, subpoenaed third parties, retained an expert, moved for class certification, overcame dispositive motion practice,

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

participated in two all-day mediations in Chicago (with two different nationally recognized mediators, both of which were preceded by mediation briefs), spent weeks negotiating and finalizing the settlement and ancillary papers, and otherwise zealously prosecuted this action for the benefit of the Class. Exhibit A, Burke Decl. ¶ 18; Exhibit B, Broderick Decl. ¶¶ 4-17.

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. *See* Exhibit A, Burke Decl. ¶¶ 2-11, 16, Exhibit B, Broderick Decl. ¶¶ 19-25, Exhibit C, McCue Decl. ¶¶ 5-11; Exhibit D, Murphy Decl. ¶¶ 3 (incorporating prior declaration by reference). And 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 strength of the Settlement, the extensive discovery conducted, and the adversarial nature of the litigation and settlement discussions, Class Counsel respectfully submit that their experience and the quality and amount of work invested for the benefit of the Class supports the requested fee.

c. The stakes of the case further support the fee request.

The stakes of the case further support the requested fee award. This case involves more than Settlement Class Members who allegedly received nonconsensual robocalls from Defendants on 233,079 unique cellular telephone numbers. Dkt. 411-1, Agr. Ex. C-2 ¶ 5. The amount each Settlement Class Member is individually eligible to recover is low—between $500 and $1,500 per violation, *see* 47 U.S.C. § 227(b)(3)—and thus individuals are unlikely to file individual lawsuits, especially because the TCPA does not provide for the recovery of attorneys' fees. 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.

B. The Court Should Also Award Reasonable Reimbursement for Expenses.

It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses. *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, *3 (S.D. Ill. Jan. 31, 2014) (citing Fed. R. Civ. P. 23; *Boeing*, 444 U.S. at 478). The Seventh Circuit has held that costs and expenses should be awarded based on the types of "expenses private clients in large class actions (auctions and otherwise) pay." *Synthroid I*, 264 F.3d at 722; *see also Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (noting that courts regularly award reimbursement of those expenses that are reasonable and necessarily incurred in the course of litigation). *Hale v. State Farm*, 2018 U.S. Dist. LEXIS 210368, at *48-49 (S.D. Ill. Dec. 13, 2018) (requested expenses are only 2.8% of the common fund, which is significantly less than the average of "4 percent of the relief for the class.")[7]; *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27, 70 (2004)). Moreover, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley*, 2014 U.S. Dist. LEXIS 12037, 2014 WL 375432, at *3. Furthermore, here, as in *Beesley*, "the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these

[7] Class Counsel's expenses are approximately 2.7% of Settlement Fund.

expenses to the Class makes this fee request all the more reasonable." *Id.* Finally, Class Counsel incurred significant costs after submitting their motion—and will continue to do so until the settlement is finalized—for which they have not sought reimbursement. *Hale v. State Farm* 2018 U.S. Dist. LEXIS 210368, at *48-49.

Here, Class Counsel have incurred $402,991.03 in reimbursable expenses related to filing, appearances, discovery, subpoenas, data analysis, mediation, litigation, and travel. Exhibit A, Burke Decl. ¶ 17; Exhibit B, Broderick Decl. ¶ 16; Exhibit C, McCue Decl. ¶ 12. Exhibit D, Murphy Decl. ¶ 3. These expenses included expert fees to analyze the massive amount of data produced in the case as well as data storage charges that were necessary to prosecute litigation of this size and complexity on behalf of the Settlement Class. *Id.* Class Counsel's expenses are typical of expenses regularly awarded in large-scale class actions, based on counsel's experience. *Id.* Accordingly, Class Counsel request that the Court approve as reasonable expenses in the amount of $4402,991.03.

C. The Incentive Award to the Class Representative Should Be Approved.

Class Counsel also respectfully request that the Court grant a service award of $15,000 to Plaintiff Kearby Kaiser. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *Synthroid I,* 264 F.3d at 722 ("Incentive awards are justified when necessary to induce individuals to become named representatives."). Indeed, without Plaintiff serving as Class Representative, the Class would not have been able to recover anything. *See In re Iowa Ready-*

Mix Concrete Antitrust Litig., No. 10-4038, 2011 WL 5547159, at *5 (N.D. Iowa Nov. 9, 2011) ("[E]ach … plaintiff has provided invaluable assistance and demonstrated an ongoing commitment to protecting the interests of class members. The requested incentive award for each named plaintiff recognizes this commitment and the benefits secured for other class members, and is thus reasonable under the circumstances of this case.").

Mr. Kaiser spent considerable time pursuing Class Members' claims. In particular, Mr. Kaiser communicated with counsel to keep apprised of this matter, participated in the pre-suit investigation and discovery process, including producing documents and responding to information requests, sitting for a deposition, and ultimately approving and executing the Settlement Agreement. Exhibit A, Burke Decl. ¶ 20.

Moreover, the amount requested here, $15,000, is comparable to or less than other awards approved by federal courts in this Circuit. *See, e.g., Cook*, 142 F.3d at 1016 (affirming $25,000 incentive award); *Heekin v. Anthem, Inc.*, No. 05-01908, 2012 WL 5878032, *1 (S.D. Ind. Nov. 20, 2012) (approving $25,000 incentive award to lead class plaintiff over objection); *Will*, 2010 WL 4818174, at *4 (awarding $25,000 each to three named plaintiffs); *Benzion v. Vivint, Inc.*, No. 12-61826 (S.D. Fla. Feb. 23, 2015) (Dkt. 201) (awarding $20,000 incentive award in TCPA class settlement); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925 (N.D. Ill. June 21, 2013) (Dkt. 243 ¶ 20) (awarding $30,000 incentive awards in TCPA class settlement).

VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant this motion and award Class Counsel $5,000,000 in fees and $402,991.03 to reimburse their out-of-

pocket costs. Class Counsel further request that the Court approve a service award to Plaintiff Kaiser in the amount of $15,000.

Respectfully submitted,

KEARBY KAISER, individually and on behalf of a class of all persons and entities similarly situated

Dated: October 2, 2019

By: */s/ Edward A. Broderick*

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Counsel for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that I have on this day, October 2, 2019, filed the within and foregoing motion, memorandum, and exhibits using the CM/ECF system, which shall serve such on all counsel of record.

/s/ Edward A. Broderick
Edward A. Broderick

EXHIBIT A: BURKE DECLARATION

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

CARL LOWE and KEARBY KAISER, on behalf of themselves and others similarly situated, Plaintiffs, v. CVS PHARMACY, INC., MINUTECLINIC, LLC, and WEST CORPORATION, Defendants.	)	Case No. 1:14-cv-03687 Hon. Judge John Z. Lee Hon. Mag. Judge M. David Weisman

DECLARATION OF ALEXANDER H. BURKE

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

1. I am Alexander H. Burke, manager of Burke Law Offices, LLC. I make this declaration in connection with Plaintiff's motion for attorneys' fees, expenses, and an incentive award in this action. I can competently testify as to the facts stated herein if called upon to do so.

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 historically has sometimes accepted 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 the occasional 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, 2017 and 2018. 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 *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 2018, and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013, 2017 and 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: *Leeb v. Charter Commc'ns, Inc.*, 2019 WL 1472587 (E.D. Mo. Apr. 3, 2019) (appointing Burke Law Offices as Fed.R.Civ.P. 23(g) interim lead class counsel), *earlier*

decision 2019 WL 144132 (Jan. 19, 2019) (compelling class data in TCPA case); *Brown v. DirecTV, LLC*, 2019 WL 1434669, at *1 (C.D. Cal. Mar. 29, 2019) (granting class certification in TCPA case, appointing Burke Law Offices as class counsel); *Rodriguez v. Premier Bankcard, LLC*, No. 3:16-cv-02541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (defense summary judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, 319 F.Supp.3d 907 (W.D. Mich. 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 and "mootness" 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 Chicago Bar Association, the Seventh Circuit Bar Association, and the American Bar Association, as well as the National Association of Consumer Advocates.

11. The firm has one associate, Daniel J. Marovitch. Mr. Marovitch is a 2010 graduate of Loyola University Chicago School of Law, and is admitted to practice in the State of Illinois and United States District Court for the Northern District of Illinois.

12. When Burke Law Offices, LLC loses cases, my firm takes in no money whatsoever, regardless of how hard we worked and regardless of how much money was spent on depositions, experts, and other out-of-pocket costs.

13. For example, we lost class certification in *Tomeo v. CitiGroup, Inc*., No. 13 C 4046, 2018 WL 4627386 (N.D. Ill. Sept. 27, 2018) (Westlaw does not appear to have picked up my participation in this case); *Fitzhenry v. ADT Corp.*, No. 14-80180, 2014 WL 6663379 (S.D.

Fla. Nov. 3, 2014), and *Luster v. Green Tree Servicing, LLC*, 1:14-cv-1763-ELR (N.D.Ga.), class cert. denied. Dkt. 152 (Sept. 5, 2018), reconsideration denied, Dkt. 158 (Nov. 27, 2018). Defendant Green Tree went bankrupt eight days after the parties stayed the case pursuant to mediation. Dkt. 161 (joint motion to stay filed Feb. 6, 2019) Dkt. 162 (Notice of Bankruptcy). All three of these decisions came after protracted, expensive – and at times vicious – discovery and briefing. These are not the only cases we have lost, but they illustrate the risks associated with this kind of contingency practice.

14. The market rate for TCPA representation in Chicago – where I practice – is between 33% and 40%. I know this because the contracts I typically 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%.

15. Co-counsel and I committed our time and resources to this case without any guarantee of compensation, whatsoever, achieving the Settlement after substantial litigation and a thorough investigation into the Parties' claims and defenses in this case.

16. The firm's records indicate that I spent 1,065.9 hours, and that the firm's associate, Daniel J. Marovitch, spent 1,311.5 hours, prosecuting this case, for a total lodestar of $1,184,647.50. The following data supports an hourly rate of at least $650 for my work and $375 for the work of Mr. Marovitch:

a. In *Leeb v. Charter Commc'ns*, Inc., No. 4:17-cv-02780 (E.D. Mo. Sept. 26, 2019), Dkt. 139, the defendant agreed to pay $550 per hour, as a reduced hourly rate, which the court approved. That defendant's agreement to pay $550 per hour in an adversarial setting suggests that $650 per hour is reasonable for an actual paying client.

b. In *Toney v. Quality Resources, Inc.*, No. 13-42 (N.D. Ill. final approval Sept. 25, 2018) (Castillo, J.), I requested $575 per hour as part of a lodestar cross-check. While the Court appears to have decided attorneys' fees based upon a percentage of the fund, the Court did not take issue with the $575/hour rate. See Dkt. 415.

c. In *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018 (N.D. Ill. Dec. 8, 2016) (St. Eve, J.), I submitted my lodestar at a rate of $550 an hour in support of class counsel's request for a fee award amounting to one-third of the fund less notice and administration costs. The court granted class counsel's full fee request. Dkt. Nos. 337-38.

d. In *Rose v. Bank of America*, No. 11-2390, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) (Davila, J.), 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.

e. In *O'Hagan v. Blue Ribbon Taxi Association, Inc*., No. 1:11-cv-5269 (N.D. Ill. Sept. 20, 2013) (Rowland, J.), 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.

f. In *Ahmed v. Oxford Collection Services, Inc*., No. 1:11-cv-1938 (N.D. Ill. April 19, 2011) (Pallmeyer, J.), the Court 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.

g. In *Fike v. The Bureaus, Inc.*, No. 1:09-cv-2558 (N.D. Ill. Dec. 3, 2010) (Dow, J.), the Court approved a common fund attorney's fee award based at least in part upon counsel's lodestar, which was calculated at $340 per hour.

h. 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 Dow 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.

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

j. Mr. Marovitch's $375 per hour rate is justified because of his experience in litigating TCPA actions. Among other cases, in the $7 million TCPA class settlement in *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018 (N.D. Ill. final approval Dec. 8, 2016), Mr. Marovitch submitted a fee request based on a rate of $340 an hour, although the court ultimately approved fees on a percentage-of-the-fund basis. In the $1.8 million TCPA class settlement in *Beecroft v. Altisource Bus. Sols. Pvt. Ltd.*, No. 15-2184 (D. Minn. final approval Mar. 16, 2018), he submitted a fee request based on a rate of $350 an hour, with the court likewise ultimately approving fees on a percentage-of-the-fund basis. He was also appointed co-class counsel in the $3.3 million TCPA class settlement in *Toney v. Quality Resources, Inc.*, No. 13-42 (N.D. Ill. final approval Mar. 16, 2018), in which he submitted a fee request based on a rate of $375 an hour, with the court again ultimately approved fees on a percentage-of-the-fund basis. While these courts' orders approving settlement did not address these rates directly, they did not find it to be unreasonable. Likewise, Mr. Marovitch's billable rate is reasonably consistent with (and, indeed, below) the $429 average hourly rate for a 6-10 year practicing consumer law attorney in Chicago, per Ronald L. Burdge, United States Consumer Law Attorney Fee Survey Report, at 224 (2015-2016).

17. The firm's records also show that it spent $194,599.69 in prosecuting this case. Those costs fall into the following categories:

a. Expert Costs: Defendants produced billions of rows of call and consent-related data through numerous different files and dissimilar file formats, which was processed and analyzed by Plaintiff's expert, Jeffrey A. Hansen. Mr.

Hansen's initial invoice for this work totaled $222,395 for 739.45 hours of work. However, we were able to negotiate a roughly 20% cut to this amount, down to $177,395.

b. Travel Expenses: $5,324.14 for airfare, lodging, meals and taxi charges, particularly in relation to travel required to depose representatives of Defendants.

c. Court Costs: $400 filing fee.

d. Process Servers: $375 for process servers with respect to service of process and subpoenas.

e. Printing/Binding Services: $445.36 for printing-related costs.

f. Deposition/Court Reporter Costs: $10,660.19 for deposition and videographer charges, as well as for payments to court reporters for hearing transcripts.

18. This case was hard-fought. Co-Counsel and I conducted a thorough pre-suit investigation, propounded discovery, reviewed expansive document and data productions, subpoenaed third parties, retained an expert, moved for class certification, overcame dispositive motion practice, participated in two all-day mediations in Chicago (with two different nationally recognized mediators, both of which were preceded by mediation briefs), spent weeks negotiating and finalizing the settlement and ancillary papers, and otherwise zealously prosecuted this action for the benefit of the Class. In addition to our substantial litigation efforts, co-counsel and I devoted many hours to negotiating the Settlement, which included preparing our client's submission for two mediation sessions, and proceeding through further arms' length settlement negotiations with defense counsel by phone and e-mail. We also spent substantial time

preparing the settlement papers and notice documents, working with the Settlement Administrator, and drafting the motion for preliminary approval, and will continue to do so through final approval.

19. Co-counsel and I took on this case without knowing the extent and scope of the calling at issue, and (based on past experience) anticipating a prolonged discovery battle over class-wide data production. We went through multiple rounds of motions to compel, and had to expend significant time and costs in order to analyze the substantial documentation and billions of rows of data Defendants produced in the case. If we hadn't so zealously pursued discovery in this case, the substantial $15,000,000 settlement would not have been reached.

20. Plaintiff spent considerable time pursuing Class Members' claims. In particular, Mr. Kaiser communicated with counsel to keep apprised of this matter, participated in the pre-suit investigation and discovery process, including producing documents and responding to information requests, sitting for a deposition, and ultimately approving and executing the Settlement Agreement.

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

Executed on October 2, 2019.

/s/ Alexander H. Burke
Alexander H. Burke

EXHIBIT B:

BRODERICK DECLARATION

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

KEARBY KAISER, on behalf of themselves and others similarly situated, Plaintiffs, v. CVS PHARMACY, INC., MINUTECLINIC, LLC, and WEST CORPORATION, Defendants.	)	Case No. 1:14-cv-03687 Hon. Judge John Z. Lee Hon. Mag. Judge M. David Weisman

DECLARATION OF EDWARD A. BRODERICK IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARD

1. I make this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses and Incentive Award, to describe the work done in investigating and prosecuting the claims in the case, to state my opinion that the settlement represents an excellent result for the Settlement Class and that Plaintiff's motion for attorneys' fees, expenses and incentive award should be granted.

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.

Work Done in Investigating and Prosecuting the Case

3. Plaintiff filed this action on August 18, 2013.

4. I was involved in every stage of litigation in this case, from pre-trial investigation, analysis of Plaintiff's potential claims, drafting and researching the complaint and discovery work, review of documents, motion practice, including moving for class certification,

discovery responses, depositions and general preparation for trial. I also additionally participated in settlement negotiations and strategy, participated in the mediation process and contributed on preparing the proposed settlement agreement and motion for preliminary approval.

5. Defendants produced over 135 GB of data in this case, which represents hundreds of thousands of pages of documents. The review of these materials was painstaking and required extensive charges simply to store the data in a searchable format. Plaintiff retained an expert to analyze and sort the data, which also resulted in significant expenses.

6. The litigation was hard fought throughout, with both defendants represented by extremely experienced and capable counsel. Plaintiff successfully opposed multiple motions to dismiss, filed an amended complaint, and filed multiple rounds of briefing on class certification and argued certification.

7. Class Counsel also took and defended eight deposition in Illinois, Massachusetts, Nebraska, Rhode Island and New Hampshire.

8. Class Counsel additionally retained an expert witness to identify class members called on cell phones.

9. On November 9, 2015, the Parties engaged in an all-day, in-person, arms-length mediation with the Rodney A. Max, Esq. This mediation did not result in settlement, and the Parties thereafter continued to aggressively litigate the case, including through contested motion practice, extensive adversarial discovery, and engaging in two sets of briefings on class certification, in addition to oral argument. As part of the mediation process, both parties provided extensive written analyses of the legal and factual issues in the case.

10. On September 21, 2018, the Parties again participated in mediation, with Hon.

Diane M. Welsh (Ret.) of JAMS. This mediation was, likewise, unsuccessful.

11. In April 2019, counsel for the Parties reopened communications to determine the possibility that this case could be resolved through negotiated settlement, which efforts were ultimately successful at reaching an agreement in principle.

12. Based on their investigation and negotiations, which included extensive class and expert discovery, and taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to this Settlement Agreement, Plaintiff and his Counsel have concluded that the settlement with Defendants is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

13. At all times, the Parties' settlement negotiations were adversarial, non-collusive, and at arm's-length. These discussions culminated in the Settlement Agreement for which Plaintiff seeks final approval.

14. Class Counsel spent significant time in negotiating and documenting the settlement and obtaining preliminary approval from the Court. Class Counsel will also spend time in the future responding to class member inquiries, administration issues and seeking final approval.

15. In light of significant legal issues facing Plaintiff, and in light of the excellent result and the fact that class members receiving mailed notice will not need to make claims, I believe the settlement here represents an excellent result for the class and based on my experience in litigating TCPA cases, if all attorneys' fees, expenses incentive award and administration expenses are award the estimated per class member recovery would greatly exceed the ordinary per class member recovery in most approved TCPA settlements without class members having to submit claim forms. This is atypical in TCPA settlements, which ordinarily

have a claims process for payment. Plaintiff's counsel estimate that the average per class member payout will be approximately $39.

16. My firm's expenses on this action to date are $9,810.58, primarily incurred on expert fees and service charges. Total final expenses between the three firm's representing Plaintiff are $402,991.03.

17. I spent 391.6 hours on this file, and Mr. Paronich spent 439.6 hours, for total hours of 831.2 yielding a lodestar at the hourly rates described below of $471,940.

18. My billable rate, which has been approved by multiple courts, is $700.00 an hour. My former partner Anthony Paronich's rate was $450 per hour. Mr. Paronich and I used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions. *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 for myself 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); *Jay Clogg Realty Group, Inc. v. Burger King Corporation,* No. 13-cv-00662 (D. Md. April 15, 2015) (approving $8,500,000 settlement and attorney fee of one-third that amount based on my hourly rate of $700, plus $425 for Mr. Paronich (who was then an associate); *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC,* No. 11-02467 (D. Md. Feb. 12, 2015) (approving settlement of $4,500,000 and attorney fee of one-third that amount based on my hourly rate of $700 for

myself, plus $425 for Anthony Paronich, who was an associate at the time).

Qualifications of Counsel

19. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the 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 former partner Anthony Paronich have been approved as reasonable by numerous federal courts in approving settlements.

20. 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.

21. 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.

22. 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.

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

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

25. A sampling of other class actions in which I have represented classes of consumers 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 grant 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 grant 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 grant of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See Terra Nova Insurance v. Fray-Witzer et. al.*, 449 Mass. 206 (2007). There was then a TCPA class settlement of $1,800,000 which was granted final approval.

viii. *Shonk Land Company, LLC v. SG Sales Company*, Circuit Court of Kanswaha

County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for $2,450,000, final approval granted in September of 2009.

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

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

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

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

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

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

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

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

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

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

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

xx. *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.

xxi. *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. $3,250,000 recovered against insurance carrier through settlement of subsequent declaratory judgment action.

xxii. *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. Second settlement on behalf of class against two remaining defendants of $3,300,000 granted on September 25, 2018.

xxiii. *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.

xxiv. *Mey v. Frontier Communications Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of $11,000,000 granted final approval on June 2, 2017.

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

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

xxvii. *Heidarpour v. Central Payment Co.*, USDC, MD. Ga., 4:15-cv-139 (CDL), a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

xxviii. *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 final approval on February 27, 2018.

xxix. *Fulton Dental, LLC v. Bisco, Inc*., USDC, NDIL, 1:15-cv-11038. TCPA class settlement for $262,500 granted final approval on March 7, 2018.

xxx. *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.

xxxi. *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).

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

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

xxxiv. *Charvat and Wheeler v. Plymouth Rock Energy, LLC*, et al, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of $1,675.000 granted final approval on July 31, 2018.

xxxv. *Mey v. Venture Data, LLC and Public Opinion Strategies*, USDC, NDWV, 5:14-cv-123. Final approval of TCPA settlement granted on September 8, 2018.

xxxvi. *In Re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*, USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement of $28,000,000 granted final approval on June 12, 2018.

xxxvii. *Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc.*, USDC, NDCA 4:15-cv-06314-YGR. TCPA class settlement of $28,000,000 granted final approval on August 15, 2019.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 2nd DAY OF OCTOBER, 2019 IN THE COMMONWEALTH OF MASSACHUSETTS.

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

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

KEARBY KAISER, on behalf of themselves and others similarly situated, Plaintiffs, v. CVS PHARMACY, INC., MINUTECLINIC, LLC, and WEST CORPORATION, Defendants.	)	Case No. 1:14-cv-03687 Hon. Judge John Z. Lee Hon. Mag. Judge M. David Weisman

Declaration of Matthew P. McCue in Support of Motion for
Attorneys' Fee, Expenses and Incentive Award

I, Matthew P. McCue, declare under penalty of perjury:

1. I respectfully submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement to describe the work that I and my co-counsel have done in identifying, investigating and prosecuting the claims in the action and to set forth my qualifications to serve as class counsel and to state that based on my experience I consider this settlement an excellent result for the class and that Plaintiff's Motion for Attorneys' Fees, Expenses should be approved.

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.

3. I am admitted to practice in this case *pro hac vice* as co-counsel of record to Plaintiff Kearby Kaiser.

4. I was involved in every stage of litigation in this case, from pre-trial investigation, analysis of Plaintiff's potential claims, drafting and researching the complaint and discovery work, review of documents, discovery responses, depositions and general preparation

for trial. I additionally participated in settlement negotiations and strategy, participated in the mediation process and contributed on preparing the proposed settlement agreement and motion for preliminary approval.

5. 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.

6. 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.

7. 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.

8. 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.

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

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

11. A sampling of other class actions in which I have represented classes of consumers follows:

i. Mey v. Herbalife International, Inc., USDC, D. W. Va., Civil Action No. 01-C-263M. Co-lead counsel with Attorney Broderick and additional co- counsel, prosecuting consumer class action pursuant to TCPA on behalf of nationwide class of junk fax and prerecorded telephone solicitation recipients. $7,000,000 class action settlement preliminarily approved on July 6, 2007 and granted final approval on February 5, 2008.

ii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk Superior Court, 2005-01619 (Donovan, J.). Representing class of Massachusetts consumers who received unsolicited facsimile advertisements in violation of the TCPA and G.L. c. 93A. Case certified as a class action, and I was appointed co-lead counsel with Attorney Edward Broderick by the Court on February 17, 2006, settlement for $475,000 granted final approval by the Court on July 25, 2007.

iii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, NO. 02-5827 Business Session, (Van Gestel, J.). In this case, the defendant filed two Motions to Dismiss challenging the plaintiff's right to pursue a private right of action and challenging the statute at issue as violative of the telemarketer's First Amendment rights. Both Motions to Dismiss were denied. Class certification was then granted and I was appointed co-lead class counsel. Companion to this litigation, my co-counsel and I successfully litigated the issue of whether commercial general liability insurance provided coverage for the alleged illegal telemarketing at issue. We ultimately appealed this issue to the Massachusetts Supreme Judicial Court which issued a decision reversing the contrary decision of the trial court and finding coverage. See Terra Nova Insurance v. Fray-Witzer et al., 449 Mass. 206 (2007). This case resolved for $1,800,000.

iv. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanawha County, West Virginia, Civil Action No. 07-C-1800 (multi-state class action on behalf of recipients of faxes in violation of TCPA, 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., C.A. 1:08CV11312-RGS, class action on behalf of recipients of faxes in violation of TCPA, settlement for $1,000,000, final approval granted in January of 2010.

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

vii. Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC, USDC, D. Mass. C. A. 1:09-cv- 11261-DPW, class action on behalf of recipients of faxes in violation of TCPA, settlement for $1,800,000, final approval granted August 17, 2011 (Woodlock, J.).

viii. Collins v. Locks & Keys of Woburn Inc.., Massachusetts Superior Court, Civil Action No. 07-4207-BLS2 (December 14, 2011) (final approval granted for TCPA class settlement). This matter settled for $2,000,000.

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

x. Collins, et al v. ACS, Inc. et al, USDC, District of Massachusetts, Civil Action No. 10-CV-11912 a TCPA case for illegal fax advertising, which settled for $1,875,000.

xi. Desai and Charvat v. ADT Security Services, Inc., USDC, Northern District of Illinois, Civil Action No. 11-CV-1925, settlement of $15,000,000, approved, awarding fees of one third of common fund.

xii. Benzion v. Vivint, 0:12cv61826, USDC S.D.Fla., settlement of $6,000,000 granted final approval in February of 2015.

xiii. Kensington Physical Therapy v. Jackson Physical Therapy Partners, USDC, District of Maryland, 8:11cv02467, settlement of $4,500,000 granted final approval in February of 2015.

xiv. Jay Clogg Realty v. Burger King Corp., USDC, District of Maryland, 8:13cv00662, settlement of $8.5 million granted final approval in May of 2015.

xv. Charvat v. AEP Energy, 1:14cv03121 ND Ill, class settlement of $6 million granted final approval on September 28, 2015.

xvi. Thomas Krakauer v. Dish Network, L.L.C., USDC, MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. I was co-trial counsel in the case which resulted in a jury verdict in favor of plaintiff and the class of $20,446,400 on January 19, 2017. (Dkt. 292). 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).

xvii. Dr. Charles Shulruff, D.D.S. v. Inter-med, Inc., 1:16-cv-00999, ND Ill, class settlement of $400,000 granted final approval on November 22, 2016.

xviii. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, 13-cv-00042. A TCPA class settlement was granted final approval on December 1, 2016 in the amount of $2,150,00 with one of three defendants. A second settlement with the two remaining defendants for $3,300,000 granted final approval on September 25, 2018.

xix. Bull v. US Coachways, Inc., 1:14-cv-05789, in which a TCPA class settlement was finally approved on November 11, 2016 with an agreement for judgment in the amount of $49,932,375 with an assignment of rights against defendant's insurance carrier. $3,250,000 recovered against insurance carrier through settlement of subsequent declaratory judgment

action.

xx. 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.

xxi. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of $11,000,000 granted final approval on June 2, 2017.

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

xxiii. 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.

xxiv. Heidarpour v. Central Payment Co., USDC, MD. Ga. 4:15-cv-139 (CDL), a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

xxv. 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 final approval on February 27, 2018.

xxvi. 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.

xxvii. Charvat v. Elizabeth Valente, et al, USDC, NDIL, 1:12-cv-05746, $12,500,000 TCPA settlement granted preliminary approval on July 6, 2017.

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

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

xxx. Charvat and Wheeler v. Plymouth Rock Energy, LLC, et al, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of $1,675.000 granted final approval on July 31, 2018

xxxi. Fulton Dental, LLC v. Bisco, Inc., USDC, NDIL, 1:15-cv-11038. TCPA class settlement for $262,500 granted final approval on March 7, 2018.

xxxii. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC, NDGA, 1:15-cv-03262-AT. TCPA class settlement of $12,000,000 granted

final approval on December 14, 2017.

xxxiii. Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc., USDC, NDCA 4:15-cv-06314-YGR. TCPA class settlement of $28,000,000 granted final approval on August 15, 2019.

Costs

12. Through the over six years of this litigation, my firm expended 364 hours in time on this litigation which at my current rate of $700 per hour yields a lodestar of $254,800 and I have incurred $5,395 in unreimbursed litigation costs in prosecuting this case, including mediation, travel expenses, flights, hotels and meals.

13. I am familiar with the rates nationally, and in Boston, charged by attorneys with similar level of experience and expertise, and believe my rate of $700 per hour is comparable to those rates. Courts have previously approved these rates in my other TCPA cases. *See Charvat, et. al. v. National Guardian Life Insurance Company, et. al.*, 3:15-cv-00043, USDC, W.D. Wi. (August 3, 2016); *Mey v. Interstate National Dealer Services, Inc.*, Civil Action No. 14-cv-01846-ELR, USDC, N.D. Ga. (June 8, 2016); *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, Civil Action No. 13-cv-00662, USDC, D. MD (April 15, 2015); *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, USDC, D. MD, Civil Action No. 11-CV-02467 (October 28, 2014).

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 2nd DAY OF OCTOBER, 2019 IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Matthew P. McCue
Matthew P. McCue

EXHIBIT D: MURPHY DECLARATION

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

CARL LOWE and KEARBY KAISER, on behalf of themselves and others similarly situated, Plaintiffs, v. CVS PHARMACY, INC., MINUTECLINIC, LLC, and WEST CORPORATION, Defendants.	)	Case No. 1:14-cv-03687 Hon. Judge John Z. Lee Hon. Mag. Judge M. David Weisman

DECLARATION OF BRIAN K. MURPHY

1. I make this declaration in support of the Plaintiff's Motion for and Memorandum in Support of Award of Attorneys' Fees, Costs, and Incentive Award. This Declaration is limited to providing the attorney time and expenses incurred by my firm and the role that Mr. Johansen played as Class Representative in this matter. I submitted a prior declaration (ECF 411-5) in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, to describe the work done in investigating and prosecuting the claims in the case, to set forth my qualifications to serve as class counsel and to state my opinion that the settlement represents an excellent result for the Settlement Class and merits preliminary approval.

2. Our firm's billable rates, which have been approved by multiple courts, is $700.00 an hour for myself and my partners, $400.00 and hour for our associates, and $150.00 and hour for paralegals. We have used similar rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions. See, e.g., *In re Allergan, Inc. Proxy Violation Securities Litigation*, Case No. 8:14-cv-02004-DOC-KESx (C.D. Calif. August 14, 2018)(approving fees

in $250,000,000.00 settlement of insider trading allegations); In re Bank of New York Mellon Corporation Foreign Exchange Transactions Litigation, Case No. 1:12-md-023335-LAK-JLC (S.D.N.Y. September 24, 2015)(approving fees in $335,000,000.00 settlement of bank customer class claims related to inflated foreign currency exchange prices.)

3. My firm spent a total of 1,341.75 attorney and paralegal hours for total legal fees incurred in this matter of $771,245.00. My firm also incurred expenses related to ESI storage and processing fees, investigative fees, expert fees, travel, and research charges in the amount of $193,185.76.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 2nd DAY OF OCTOBER, 2019 IN COLUMBUS, OHIO.

/*s/ Brian K. Murphy*
Brian K. Murphy