

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

THERESA LOMAS,

Plaintiffs,

v.

Case No. 6:22-cv-00679-PGB-DCI
LEAD CASE

HEALTH INSURANCE ASSOCIATES
LLC,

Defendants.

ROBIN TAYLOR,

Plaintiffs,

v.

Case No. 6:22-cv-01564-PGB-DAB

HEALTH INSURANCE ASSOCIATES
LLC,

Defendants.

**CLASS COUNSEL'S MOTION FOR CLASS COUNSEL FEES AND
EXPENSES AND INCORPORATED MEMORANDUM IN SUPPORT**

I. INTRODUCTION

Plaintiffs and Defendant Health Insurance Associates LLC reached a class action settlement agreement (“Settlement Agreement” or “Agreement”)¹ that establishes a non-reversionary Settlement Sum in the amount of \$990,000 for the benefit of the Class. Defendant has also agreed, as a result of this Action, to institute enhanced policies and procedures to ensure compliance with the Telephone Consumer Protection Act. This meaningful remedial relief is itself valuable.

This is an excellent result. If approved, the settlement will bring an end to what has otherwise been, and likely would continue to be, hard-fought litigation centered on unsettled factual and legal questions.

On March 20, 2023, the Court preliminarily approved the settlement. ECF 30. Accordingly, Plaintiffs and Class Counsel hereby move the Court for entry of an order granting Class Counsel’s attorneys’ fees and reasonable expenses. Specifically, for the reasons set forth in this memorandum and in the papers previously submitted in support of approval, pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel respectfully requests that the Court enter an order approving Class Counsel’s requested attorneys’ fees of \$330,000, equal to one third of the Settlement Fund and approximately 22% of the estimated total value of the Settlement, and out-of-pocket litigation costs of \$8,668.79. The requested amount is in line with amounts approved in similar TCPA class action settlements in this Circuit and across the country. The amount also reflects the risk and exceptional

¹ The Settlement Agreement can be found at ECF 30-1. All capitalized terms used herein have the same definitions as those defined in the Agreement.

results corresponding to this case, particularly given the Defendant's financial condition, and was specifically included in the Notice documents to the Class.²

Accordingly, Class Counsel respectfully request that the Court approve the requested fees and costs at or after the fairness hearing.³

II. BACKGROUND

On April 7, 2022, Plaintiff Lomas filed the Complaint against Defendant in this action asserting claims under the TCPA's prerecorded voice call provision (ECF 1). On May 23, 2022, Defendant answered the Complaint denying all liability (ECF 13). The parties then participated in a Rule 26 conference and prepared a joint scheduling report and discovery plan (ECF 18).

Thereafter, the Parties engaged in written discovery involving a set of written discovery to Defendant, a set of discovery requests to Plaintiff, meet and confers through which the parties were able to resolve their discovery disputes without the need for motion practice, Plaintiff's subpoenas to Defendant's third party vendors involved in telemarketing, and Plaintiff's review of more than ten thousand pages of electronic documents relating to Defendant's calling practices and defenses. Declaration of Avi Kaufman, attached as Exhibit 1, ("Kaufman Decl.") at ¶ 5.

On August 30, 2022, Plaintiff Taylor filed her Complaint against Defendant

² The Court-approved Notice documents advise class members that Class Counsel intend to request fees in an amount not to exceed one-third of the Settlement Sum, plus reimbursement of out-of-pocket Expenses incurred in the litigation. *See* ECF 30-1 at Exhibit B.

³ A proposed order that includes Class Counsel fees and costs will be submitted with the Motion for Final Approval.

asserting claims under the TCPA's prerecorded voice call provision and National Do Not Call Registry provisions (Case No. 6:22-cv-01564, ECF 1). On October 12, 2022, Defendant answered the Complaint denying all liability (Case No. 6:22-cv-01564, ECF 10). After the parties met and conferred, on November 21, 2022, Defendant filed an unopposed motion to consolidate the Taylor and Lomas cases. The cases were consolidated the next day.

Plaintiffs engaged in extensive expert analysis of the call records at issue. This same analysis was then utilized at and following the mediation to assist in negotiations and inform the mediator.

On February 6, 2023, the Parties engaged in a full-day, mediation with Daniel Methe of Matrix Mediation that involved, among other things, the exchange of information concerning the Defendant's financial condition. *Id.* at ¶ 8. The Parties engaged in further negotiations ultimately reaching an agreement in principle as to a class wide resolution, culminating in the Settlement Agreement. *Id.*

The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendant through trial and potential appeals. Kaufman Decl. ¶ 9. Plaintiffs' counsel has considered the strength of Defendant's defenses, Defendant's consistent denials of liability, difficulties in obtaining class certification and proving vicarious liability, the uncertain outcome and risk of the litigation especially in complex actions such as this one, the inherent delays in such litigation, the risk that a change in the law, including a ruling by this Court concerning the constitutionality of the TCPA, could nullify Plaintiffs' claims, and, in particular, the risk that the case could be litigated

to judgment only for the class to recover nothing as a result of Defendant's inability to pay. *Id.*; see *Creasy v. Charter Communs., Inc.*, 2020 U.S. Dist. LEXIS 177798 (E.D. La. Sep. 28, 2020) (finding that TCPA claims based on calls preceding the Supreme Court's ruling in *Barr v. Am. Assn. of Political Consultants, Inc.*, 140 S. Ct. 2335, 591 U.S. ___, (July 6, 2020), are not actionable because the TCPA was unconstitutional until a 2015 amendment was severed in *Barr*). Plaintiffs' counsel believes that the proposed settlement confers substantial and immediate benefits upon the Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. *Id.* Based on their evaluation of all these factors, Plaintiffs and Plaintiffs' counsel have determined that the settlement is in the best interests of Plaintiffs and the Class. *Id.*

III. CLASS COUNSEL'S APPLICATION FOR FEES AND EXPENSES IS FAIR, REASONABLE, AND JUSTIFIED, AND SHOULD BE APPROVED

Pursuant to the Agreement, and as indicated in the Notices, consistent with recognized class action practice and procedure, Class Counsel respectfully requests an award of attorneys' fees of \$330,000, which is estimated to equal 22% of the settlement's total value and one third of the Settlement Fund. Class Counsel also respectfully requests that it be reimbursed for its reasonable out of pocket litigation expenses of \$8,668.79. The settlement is not contingent on the award of any Class Counsel fees or costs. Kaufman Decl. ¶ 10.

Rule 23 permits a court to award "reasonable attorney's fees... that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers

a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The requested fee is well within the range of reason under the factors listed in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). For the reasons detailed herein, Class Counsel submits that the requested fee is appropriate, fair, and reasonable and respectfully requests that it be approved by the Court.

The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989) (citation omitted). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. As a result, the Supreme Court, the Eleventh Circuit, and other courts have all recognized that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001). Courts have also recognized that appropriate fee awards in cases such as this encourage redress for wrongs caused to entire classes of persons, and deter future misconduct of a similar nature. *Id.*

In the Eleventh Circuit, class counsel are awarded a percentage of the funds

obtained through a settlement. In *Camden I* – the controlling authority regarding attorneys’ fees in common-fund class actions – the Eleventh Circuit held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774; *see also Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749-CIV-COHN/SELTZER, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (attorneys representing a class action are entitled to attorneys’ fees based upon the total value of the benefits afforded to the class by the settlement).

The Court has discretion in determining the appropriate fee percentage. “There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case.” *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774).

The Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award as attorneys’ fees to class counsel in class actions:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of her acceptance of the case;
- (5) the customary fee;

- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the Clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). “Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Camden I*, 946 F.2d at 775.

As applied, these *Camden I* factors support the requested fee.

1. The Claims Against Defendant Required Substantial Time and Labor

Plaintiffs and the class’s claims demanded considerable time and labor, making this fee request reasonable. Kaufman Decl. ¶¶ 4-8, 23-34. Class Counsel devoted substantial time to investigating the claims against Defendant. Kaufman Decl. ¶ 30. Class Counsel also expended resources researching and developing the legal claims at issue. Kaufman Decl. ¶¶ 30-32. Time and resources were also dedicated to conducting extensive formal discovery, which included responding to

extensive discovery to Plaintiff Lomas, discovery to Defendant, numerous meet and confers regarding disputes that were resolved without Court intervention, resulting in among other things the production of call records and ESI discovery, subpoenas to three non-party vendors of Defendant, review of over ten thousand pages of electronic documents relating to Defendant's calling practices and defenses. Kaufman Decl. ¶ 31. Class Counsel also expended time and resources working with Plaintiff's expert to distill the information in the call records gained through discovery. Kaufman Decl. ¶ 31.

Settlement negotiations, including preparing for and attending mediation, consumed further time and resources. Kaufman Decl. ¶ 33. Finally, significant time was devoted to negotiating and drafting the Agreement, obtaining preliminary approval, and to all actions required thereafter pursuant to the preliminary approval order. Kaufman Decl. ¶¶ 32-34.

All told, Class Counsel's work resulted in an excellent result—the settlement provides immediate monetary relief of \$990,000 to the Class and meaningful injunctive relief directed towards the precise calling conduct resulting in Plaintiffs' and the class's claims. Each of the above-described efforts was essential to achieving the settlement now before the Court. The time and resources devoted to this Action readily justify the requested fee. Kaufman Decl. ¶ 38.

2. The Issues Involved Were Novel and Difficult, and Required the Skill of Highly Talented Attorneys

Courts have long recognized that “particularly in class action suits, there is an overriding public interest in favor of settlement,” ... because ... ‘class action suits

have a well-deserved reputation as being most complex.” *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). “Settlement ‘has special importance in class actions with their notable uncertainty, difficulties of proof, and length.’” *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016).

“[P]rosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). The quality of Class Counsel’s legal work is evidenced by the substantial benefit conferred to the settlement Class in the face of significant litigation obstacles. Class Counsel’s work required the acquisition and analysis of a significant amount of factual and legal information.

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel trained in class action law and procedure as well as the specialized issues presented here. Class Counsel is particularly experienced in the litigation, certification, and settlement of nationwide class action cases, and Kaufman P.A.’s participation added value to the representation of this settlement Class. Kaufman Decl. ¶¶ 16-21. To date, not including this settlement, Class Counsel has recovered over \$100 million through TCPA class action settlements for the benefit of consumers. Kaufman Decl. ¶ 17.

In evaluating the quality of representation by Class Counsel, the Court should also consider opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler v.*

Jacobson, 149 F.R.D. 651, 654 (M.D. Fla. 1992). Throughout the litigation, Defendant was represented by capable counsel, Wendy Stein Fulton of Mound Cotton. They were worthy, highly competent adversaries. Kaufman Decl. ¶ 11.

3. Class Counsel Achieved a Successful Result

In determining whether a fee award is reasonable, the most critical factor is the results achieved, *i.e.*, the overall result and benefit to the class from the litigation. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). This factor addresses monetary relief as well as the value of any remedial relief. *See Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (the right to fees “must logically extend, not only to litigation that confers a monetary benefit on others, but also litigation ‘which corrects or prevents an abuse which would be prejudicial to the rights and interests’ of those others”).

Given the significant litigation risks the Class faced and Defendant’s financial condition, the settlement represents a successful result. Rather than facing years of costly and uncertain litigation, the settlement makes available an immediate cash benefit of \$990,000 to settlement Class Members and provides meaningful remedial relief with an estimated value of over \$500,000, making the settlement’s total estimated value to the settlement Class and society approximately \$1,500,000. Kaufman Decl. ¶¶ 14-15.

To estimate the dollar value of the injunctive relief provided to the Class and society, Plaintiffs have relied on a willingness to pay analysis developed by economists specifically for valuing injunctive relief in TCPA cases. This analysis implies a mean value of \$.2265 per call for each call prevented by the injunctive relief. *See, e.g.*, Economic Assessment of the Value of Remedial Relief in

Connection with Class Action Settlement Agreement (ECF 217-1) in *Wright v. eXp Realty, LLC*, No. 6:18-CV-01851-PGB-EJK (M.D. Fla.). In this case, based on the Defendant's calling agent having made more than 500,000 unsolicited telemarketing calls in the one year preceding this filing of this action, assuming that the volume of calling would have remained the same (as opposed to increasing, as it had done in the year prior to the filing of this action), the injunctive relief is anticipated to prevent more than 500,000 calls per year, which equates to a present value of more than \$500,000 for the next five years. Similar analyses have been accepted by courts for valuing remedial relief in TCPA settlements. *See id.*; *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022) (Schlesinger, J.) (granting final approval to a TCPA class settlement aided by economist's valuation of the remedial relief).

The monetary relief alone is significant. Kaufman Decl. ¶ 13. The per claiming settlement Class Member recovery is expected to be approximately \$120. *Id.* This amount is greater than the per claim payouts in the vast majority of TCPA class action settlements, including in cases involving direct liability against companies larger than Defendant. *See, e.g., Rose v. Bank of Am. Corp.*, 2014 WL 4273358 at *10 (N.D. Cal. Aug. 29, 2014) (direct liability; \$20-\$40 per claimant); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (direct liability; \$30 per claimant); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (direct liability; \$24 per claimant; deemed an “excellent result”); *Goldschmidt v. Rack Room Shoes*, No. 18-21220-CIV, ECF 86 (S.D. Fla. Jan. 16, 2020) (direct liability; \$10 voucher and \$5 in cash, less attorneys' fees, costs, notice

and administration costs, and service award, per claimant); *Halperin v. You Fit Health Clubs, LLC*, No. 18-61722, ECF 44 (S.D. Fla. Nov. 1, 2019) (direct liability; less than \$9 per claimant).

4. The Claims Presented Serious Risk

As discussed above, the settlement is fair and reasonable given the extensive litigation risks. Kaufman Decl. ¶ 9. Consideration of the “litigation risks” factor under *Camden I* “recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term ‘undesirable.’” *Sunbeam*, 176 F. Supp. 2d at 1336.

The risk of no recovery here—and in complex cases of this type more generally—is real. In numerous hard-fought lawsuits, plaintiffs’ attorneys (including the undersigned) have received little or no fee—despite *years* of excellent, professional work—due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or a decision of a judge, jury, or court of appeals. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming district court’s ruling overturning jury verdict in favor of plaintiff class); *In re Oracle Corp. Secs. Litig.*, No. 01- cv-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010) (affirming summary judgment for defendants after eight years of litigation). Here, major hurdles remain in this litigation, including class certification and summary judgment.

Class Counsel accepted substantial risk in taking this case given the possibility

that this Court, the Eleventh Circuit, or the Supreme Court could take action that might extinguish Plaintiffs' claims. Moreover, Class Counsel accepted the risk that even if successful on a class basis the case could still result in no recovery due to the Defendant's financial condition.

The settlement benefits obtained through the settlement are substantial, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement. Any of these risks could easily have impeded, if not altogether derailed, Plaintiffs' successful litigation of these claims on behalf of settlement Class Members.

The recovery achieved by this settlement must be measured against the fact that any recovery by Plaintiffs and settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiffs were able to certify a class and establish liability and damages at trial; (ii) the final judgment was affirmed on appeal; and (iii) Defendant was then able to satisfy the final judgment. The settlement is an extremely fair and reasonable recovery for the Class in light of Defendant's defenses, including specifically its challenges to vicarious liability and its consent defense, and the challenging and unpredictable path of litigation Plaintiffs and any certified class would have faced absent the settlement. Kaufman Decl. ¶ 9.

Despite Plaintiffs' confidence that this Court would certify the proposed class, they recognize that class certification is far from automatic. *Compare Head v. Citibank, Inc.*, 340 F.R.D. 145 (D. Ariz. 2022) (certifying a TCPA class over objection) *with Revitch v. Citibank, N.A.*, No. C 17-06907 WHA, 2019 WL 1903247, at *2 (C.D. Cal. Apr. 28, 2019) (denying class certification); *Sliwa v. Bright House*

Networks, LLC, 333 F.R.D. 255, 271–72 (M.D. Fla. 2019) (same). The risks of the litigation, including the ever-changing TCPA landscape, the complexity of the issues involved, and the contingent nature of Class Counsel’s representation, as discussed below, justify the requested fees. *See Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, at *19 & *35 (N.D. Cal. Dec. 11, 2015) (awarding class counsel fees of one third of common fund based in part on the significant risks of litigation including potential changes in law and contingent nature of engagement.).

Interpretations of the TCPA are ever-evolving and notoriously unpredictable, further injecting uncertainty into the outcome. And even had Plaintiffs succeeded on the merits and prevailed on appeal, a reduction in statutory damages was possible. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (vacating “the district court’s denial of the defendant’s post-trial motion challenging the constitutionality of the statutory damages award to permit reassessment of that question guided by the applicable factors.”).

Underscoring the fairness of the compensation recovered for Class Members, the court in *Markos v. Wells Fargo Bank, N.A.* characterized a \$24 per-claimant recovery in a TCPA class action—less than what participating settlement Class Members stand to receive here—as “an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter.” No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017). Here, Plaintiffs’ counsel has secured a result that exceeds the recovery in *Markos* from a defendant with less ability to pay than Wells Fargo Bank.

5. Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis

“The importance of ensuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see Berry v. Wells Fargo & Co.*, No. 3:17-cv-00304-JFA, 2020 U.S. Dist. LEXIS 143893, at *35 (D.S.C. July 29, 2020) (“class counsel undertook to prosecute this action without any assurance of payment for their services. Counsel’s entitlement to payment was entirely dependent upon achieving a good result for Plaintiff and the class. Contingency fee arrangements are customary in class action cases and such arrangements are usually one-third or higher. Therefore, this factor supports the reasonableness of the requested fee award” (internal citation omitted)). Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988)); *see also Birch v. Office Depot Inc.*, No. 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747, at *7 (S.D. Cal. Sep. 28, 2007) (“Class Counsel has proceeded on a contingency basis despite the uncertainty of any fee award. Class Counsel risked that it would not obtain any relief on behalf of Plaintiff or the Class, and so no recovery of fees. In addition, Class Counsel was precluded from pursuing other potential sources of revenue due to its prosecution of the claims in this action.”).

Because Class Counsel was working entirely on a contingency basis, only a successful result – at trial or by settlement – would result in any fees and recovery of costs. Kaufman Decl. at ¶¶ 37-38. Nevertheless, Class Counsel spent 288 hours and \$8,668.79 to zealously promote the Class’s interests. Kaufman Decl. at ¶ 37. The contingent nature of Class Counsel’s representation strongly favors approval of the requested fee.

6. The Requested Fee Comports with Fees Awarded in Similar Cases

Counsel’s requested fee of \$330,000, which is 22% of the Settlement’s total estimated value and one third of the Settlement Fund, is well within the range of fees typically awarded in similar cases. Numerous decisions within and outside of the Middle District of Florida and the Eleventh Circuit have found that a fee of one-third of a settlement’s value is the benchmark fee percentage under the factors listed by the *Camden I. Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *16 (M.D. Fla. Apr. 23, 2020) (collecting cases and stating that “district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund” and approving Class Counsel fees of more than one third of a TCPA settlement fund); *Wolff v. Cash 4 Titles*, No. 03-22778- CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.”) (citing Circuit case law and listing Southern and Middle District of Florida attorneys’ fee awards).

In fact, Class Counsel’s fee request also falls specifically within the range of awards in TCPA cases within this Circuit and elsewhere. *See Wright et al. v. Exp*

Realty, LLC, No. 6:18-cv-01851-PGB-EJK, ECF No. 230 (M.D. Fla. Oct. 26, 2022) (granting fees and costs amounting to one-third of the \$26.9 million monetary relief and less than one-third of the total settlement value when including other non-monetary benefits to class members); *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting fees and costs amounting to one-third of the \$8,000,000 common fund and less than one-third of the total settlement value when including other non-monetary benefits to class members); *ABC Bartending School of Miami, Inc., v. American Chemicals & Equipment, Inc.*, No. 15-CV-23142-KMV (S.D. Fla. April 11, 2017) (granting fees and costs amounting to one-third of the \$1,550,000 settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.*, Case No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) (granting fees and costs amounting to one-third of the \$4,500,000 settlement fund); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of one-third on TCPA class action).

Consequently, the attorneys' fee requested here is appropriate and should be awarded.

7. Class Counsel's Request for Expenses Is Reasonable

Rule 23(h) also permits the Court to "award . . . nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Courts typically allow counsel to recover their reasonable out-of-pocket expenses. Indeed, courts normally grant expense requests in common fund cases as a matter of course." *Hanley*, 2020 U.S. Dist. LEXIS 89175, at *17 (collecting cases and

approving cost award of approximately \$27,000). The settlement permits Class Counsel to seek reimbursement of its reasonable expenses.

Class Counsel has incurred expenses in the prosecution of this action totaling \$8,668.79 for filing fees, service of process fees, expert fees, travel, and mediation fees. Kaufman Decl. ¶ 35. These expenses were reasonable and necessary for the prosecution of this action and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. *Id.*

IV. CONCLUSION

Plaintiffs and Class Counsel respectfully request that this Court award Class Counsel attorneys' fees in the amount of \$330,000 and reasonable costs in the amount of \$8,668.79.

Local Rule 3.01(g) Certification

I certify that on May 15, 2023 counsel for Plaintiffs met and conferred with counsel for Defendant, by phone, and Defendant does not oppose Class Counsel's request for fees and expenses.

Dated: May 19, 2023

Respectfully submitted,

/s/ Avi Kaufman

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Coral Gables, FL 33133

Telephone: (305) 469-5881

Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 19, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and it is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Avi R. Kaufman _____

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

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**DECLARATION OF AVI R. KAUFMAN
IN SUPPORT OF PLAINTIFFS' AND CLASS COUNSEL'S
MOTION FOR CLASS COUNSEL FEES AND EXPENSES**

Avi R. Kaufman declares as follows:

1. I am the attorney designated as Class Counsel for Plaintiffs under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant

Health Insurance Associates LLC.¹ I submit this declaration in support of Plaintiffs' and Class Counsel's Motion for Class Counsel Fees and Expenses. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Plaintiffs and Defendant Health Insurance Associates LLC reached a class action settlement agreement that establishes a non-reversionary Settlement Sum in the amount of \$990,000 for the benefit of the Class. Defendant has also agreed, as a result of this Action, to institute enhanced policies and procedures to ensure compliance with the TCPA. This meaningful remedial relief itself is valuable. This is an excellent result.

3. Class Counsel respectfully requests that the Court enter an order approving Class Counsel's requested attorneys' fees of \$330,000, equal to one third of the Settlement Fund and approximately 22% of the estimated total value of the Settlement, and out-of-pocket litigation costs.

4. On April 7, 2022, Plaintiff Lomas filed the Complaint against Defendant in this action asserting claims under the TCPA's prerecorded voice call provision (ECF 1). On May 23, 2022, Defendant answered the Complaint denying all liability (ECF 13). The parties then participated in a Rule 26 conference and prepared a joint scheduling report and discovery plan (ECF 18).

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

5. Thereafter, the Parties engaged in written discovery involving a set of written discovery to Defendant, a set of discovery requests to Plaintiff, meet and confers through which the parties were able to resolve their discovery disputes without the need for motion practice, Plaintiff's subpoenas to Defendant's third party vendors involved in telemarketing, and Plaintiff's review of more than ten thousand pages of electronic documents relating to Defendant's calling practices and defenses.

6. On August 30, 2022, Plaintiff Taylor filed her Complaint against Defendant asserting claims under the TCPA's prerecorded voice call provision and National Do Not Call Registry provisions (Case No. 6:22-cv-01564, ECF 1). On October 12, 2022, Defendant answered the Complaint denying all liability (Case No. 6:22-cv-01564, ECF 10). After the parties met and conferred, on November 21, 2022, Defendant filed an unopposed motion to consolidate the Taylor and Lomas cases. The cases were consolidated the next day.

7. Plaintiffs engaged in extensive expert analysis of the call records at issue. This same analysis was then utilized at and following the mediation to assist in negotiations and inform the mediator.

8. On February 6, 2023, the Parties engaged in a full-day, mediation with Daniel Methe of Matrix Mediation that involved, among other things, the exchange of information concerning the Defendant's financial condition. The Parties engaged in further negotiations ultimately reaching an agreement in principle as to a class wide resolution, culminating in the Settlement Agreement.

9. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendant through trial and potential appeals. Plaintiffs' counsel has considered the strength of Defendant's defenses, Defendant's consistent denials of liability, difficulties in obtaining class certification and proving vicarious liability, the uncertain outcome and risk of the litigation especially in complex actions such as this one, the inherent delays in such litigation, the risk that a change in the law, including a ruling by this Court concerning the constitutionality of the TCPA, could nullify Plaintiffs' claims, and, in particular, the risk that the case could be litigated to judgment only for the class to recover nothing as a result of Defendant's inability to pay. Plaintiffs' counsel believes that the proposed settlement confers substantial and immediate benefits upon the Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. Based on their evaluation of all these factors, Plaintiffs and Plaintiffs' counsel have determined that the Settlement is in the best interests of Plaintiffs and the Class.

10. The Settlement is not contingent on the award of any Class Counsel fees or costs.

11. Throughout the litigation, Defendant was represented by capable counsel, Wendy Stein Fulton of Mound Cotton. They were worthy, highly competent adversaries.

12. The monetary relief on a per settlement Class Member basis and the injunctive relief agreed to by Defendant place the Settlement well within the range

of possible approval. Defendant will pay \$990,000 into a common settlement fund to resolve this matter.

13. The monetary relief alone is significant. The per claiming settlement Class Member recovery is expected to be approximately \$125. This amount is greater than the per claim payouts in the vast majority of TCPA class action settlements, including in cases involving direct liability against companies larger than Defendant.

14. Given the significant litigation risks the Class faced, the settlement represents a successful result. Rather than facing years of costly and uncertain litigation, the Settlement makes available an immediate cash benefit of \$990,000 to settlement Class Members and provides meaningful remedial relief, with a total estimated value to the settlement Class and the society of approximately \$1,500,000.

15. To estimate the dollar value of the injunctive relief provided to the Class and society, Plaintiffs have relied on a willingness to pay analysis developed by economists specifically for valuing injunctive relief in TCPA cases, which implies a mean value of \$.2265 per call for each call prevented by the injunctive relief. *See, e.g.,* Economic Assessment of the Value of Remedial Relief in Connection with Class Action Settlement Agreement (ECF 217-1) in *Wright v. eXp Realty, LLC*, No. 6:18-CV-01851-PGB-EJK (M.D. Fla.). In this case, based on the Defendant's calling agent having made more than 500,000 unsolicited telemarketing calls in the one year preceding this filing of this action, assuming that

the volume of calling would have remained the same (as opposed to increasing, as it had done in the year prior to the filing of this action), the injunctive relief is anticipated to prevent more than 500,000 calls per year, which equates to a present value of more than \$500,000 for the next five years. Similar analyses have been accepted by courts for valuing injunctions and remedial relief in TCPA settlements. *See id.*; *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022) (Schlesinger, J.) (granting final approval to a TCPA class settlement aided by Dr. Haghayeghi's valuation of the remedial relief).

16. Class Counsel has extensive experience and expertise prosecuting complex class actions, and is particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

17. Since 2008, the attorneys of Kaufman P.A. have worked on consumer class action cases. To date, not including this settlement, Class Counsel have recovered over \$100 million through TCPA class action settlements for the benefit of consumers. Kaufman P.A.'s attorneys have also successfully recovered millions of dollars in settlements and judgments for plaintiffs in breach of contract actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

18. I have a degree in government from Harvard University and a JD from Georgetown University Law Center, and have been practicing law for over ten years. For more than five years after graduation, I was a litigation associate at the law firm of Carlton Fields in its national class action and commercial litigation

practice groups. During that time, I represented plaintiffs and defendants in various types of individual and class litigation, including securities and TCPA class actions. In 2016, I joined the law firm of Kopelowitz Ostrow Ferguson Weiselberg Gilbert as a partner to work exclusively on consumer class actions. From 2016 until January 2018, when I departed KOFWG to start my own law firm, I represented plaintiffs in class actions arising from products defects, illegal payday loans, false advertising, and TCPA violations, including as lead counsel in a TCPA class action against CITGO Petroleum Corp. that settled for \$8.3 million in 2017.

19. I am a member of the Florida bar, and am admitted to practice in all federal district courts in Florida and in the Eleventh Circuit. I am also admitted to practice in the Third Circuit, Eastern District of Wisconsin, Eastern District of Michigan, Northern District of Illinois, District of Colorado, Western District of Arkansas, and the Central District of Illinois.

20. Rachel E. Kaufman, Esq. has degrees in communications and philosophy from Northwestern University and a JD from Boston University School of Law. Prior to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its commercial litigation practice and Epstein, Becker & Green in its class action, commercial litigation, and healthcare practices. Rachel is a member of the California, Florida, and Washington, D.C. bars. Rachel is also admitted to practice in all federal district courts in California, the Southern and Middle Districts of Florida, the Eleventh Circuit and the Ninth Circuit.

21. Since starting Kaufman P.A., I have focused almost exclusively on

TCPA class actions, litigating in various jurisdictions across the country. Among other cases, our firm has been appointed class counsel in the following TCPA cases:

- *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida Telephone Consumer Protection Act class action resulting in a \$925,110 class wide settlement.
- *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.4 million class wide settlement.
- *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$2.2 million class wide settlement.
- *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone Consumer Protection Act class action resulting in a \$492,250 class wide settlement.
- *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$9.7 million class wide settlement.
- *Donde v. Freedom Franchise Systems, LLC, et al.* (S.D. Fla. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$948,475.50 class wide settlement.
- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action making \$5.16 million available to the settlement class.

- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Beiswinger v. West Shore Home LLC* (M.D. Fla. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,347,500 class wide settlement.
- *Bumpus, et al. v. Realty Brokerage Group LLC* (N.D. Cal. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million class wide settlement.
- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$738,375 class wide settlement.
- *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,950,000 class wide settlement.
- *Taylor v. Cardinal Financial Company, LP* (M.D. Fla. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$7,200,000 class wide settlement. (Final approval hearing scheduled for June 2023).

22. Class Counsel zealously represented Plaintiffs and the Class Members' interests throughout the litigation and will continue to do so.

23. Prosecuting Plaintiffs and the Class's claims demanded considerable time and labor, making this fee request reasonable. Below, I set forth the nature of the work performed and time expended by Kaufman P.A. in the Action to demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

24. I was involved in all major aspects of litigating this Action. Those efforts generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-filing investigation and discovery; (c) motion practice; (d) settlement; and (e) case and settlement management.

25. I am the attorney who oversaw the day-to-day activities in this Action and have reviewed the firm's time records in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time entries, as well as the necessity for, and reasonableness of, the time and expenses committed to this Action. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

26. In total, Kaufman P.A. devoted 288 hours to this litigation, as of May

19, 2023.² A breakdown of the Kaufman P.A. hours devoted to this matter per attorney is provided below.

27. Class Counsel has been awarded attorneys' fees as a percentage of the fund in TCPA class actions based on lodestar cross-checks using Mr. Kaufman's hourly rate of \$800 and Ms. Kaufman's hourly rate of \$730. *See Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022); *Wright, et al. v. eXp Realty, LLC*, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct. 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11, 2021); *Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020). Courts in this district have found similar rates reasonable in similar class action settlements involving similarly specialized and successful class counsel. *Junior v. Infinity Ins. Co.*, No. 6:18-cv-1598-WWB-EJK, 2021 U.S. Dist. LEXIS 58354, at *10 (M.D. Fla. Mar. 25, 2021) (approving fee award based, in part, on the reasonableness of the lodestar cross-check, where counsel's hourly rates were \$850 and \$800), recommendation and order adopted and approved at ECF 72 (Apr. 29, 2021).

28. Based on the hourly rates of \$730 for Ms. Kaufman and \$800 for Mr. Kaufman, the total lodestar amount for Class Counsel's time expended to date in this action is \$223,940. Accordingly, the lodestar amount is a 1.47 times multiplier

² Detailed billing records are available for the Court's in camera inspection on request.

of the requested fee—a multiplier well below the range approved in similar cases. In fact, a multiplier of 2.5-4 times lodestar is typically awarded in class actions in this Circuit to compensate for contingency risk. *E.g.*, *In re Health Ins. Innovs. Sec. Litig.*, No. 8:17-cv-2186-TPB-SPF, 2021 U.S. Dist. LEXIS 61051, at *39-40 (M.D. Fla. Mar. 23, 2021); *Jimenez v. Pizzerias, LLC*, No. 1:16-CV-22035-KMM, 2017 U.S. Dist. LEXIS 129820, at *14 (S.D. Fla. Aug. 14, 2017); *Martin v. Glob. Mktg. Resch. Servs.*, No. 6:14-cv-1290-Orl-31KRS, 2016 U.S. Dist. LEXIS 164770, at *5 (M.D. Fla. Nov. 30, 2016).

29. Moreover, the estimated lodestar does not include additional time that will be expended by Kaufman P.A. Based on my experience in prior class-wide litigation, I conservatively anticipate that Kaufman P.A. will expend an additional 30 hours, on top of the below-itemized time, in drafting a motion for final approval, preparing for, traveling to, and attending the final fairness hearing, continuing to oversee the notice program, overseeing the claims process for the settlement, and responding to settlement Class members' inquiries.

Pre-filing Investigation and Pleadings

30. Before filing the Action, Kaufman P.A. conducted a thorough investigation into the facts of the case, including by investigating Plaintiffs' relationships and experiences with Defendant, if any, as well as researching the potential claims Plaintiffs and the Class had against the Defendant. This phase also involved drafting the respective Complaints and other initiating documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>

Avi R. Kaufman	\$800	20.5	\$16,400
Rachel E. Kaufman	\$730	12.5	\$9,125
	Total	33	\$25,525

Post-filing Investigation and Discovery

31. In this phase of litigation the work performed by Kaufman P.A. included, but was not limited to communicating with Plaintiffs regarding the facts pertinent to their claims and the progress of the case; preparing a discovery plan; preparing multiple third party subpoenas; preparing discovery requests to Defendant; preparing discovery responses to Defendant's discovery requests; engaging in meet and confers with opposing counsel and Defendant's vendors regarding Defendant's discovery responses and subpoena responses; reviewing and analyzing over ten thousand pages of electronic documents; and extensive consulting and working with Plaintiff's expert to analyze the call records.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	84	\$67,200
Rachel E. Kaufman	\$730	42.5	\$31,025
	Total	126.5	\$98,225

Law and Motion Practice

32. During this phase of the litigation, the work performed by Kaufman P.A. included, but was not limited to, analyzing Defendant's Answers to the respective Complaints; meeting and conferring with opposing counsel and preparing

a joint Rule 26 report; meeting and conferring regarding the motion to consolidate the actions; meeting and conferring with opposing counsel regarding mediation, settlement, and other case management issues; researching and briefing the motions for preliminary approval and for Class Counsel fees and expenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	38	\$30,400
Rachel E. Kaufman	\$730	23	\$16,790
	Total	61	\$47,190

Settlement

33. During this phase of the litigation, Kaufman P.A. was engaged in all aspects of settlement with opposing counsel, including, but not limited to, engaging in negotiations with opposing counsel; strategizing regarding negotiations; participating in pre-mediation calls with Plaintiff and the mediator; preparing a mediation report; participating in mediation; participating in settlement calls with Plaintiff; and drafting and revising various iterations of the settlement agreement and associated documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	25	\$20,000
Rachel E. Kaufman	\$730	12	\$8,760
	Total	37	\$28,760

Case and Settlement Management

34. During this phase of the litigation, Kaufman P.A.'s work included dealing with scheduling issues; revising the claims form and notices; coordinating with and overseeing the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website, reviewing claims, and addressing questions as they arose; and evaluating the notice program.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	23	\$18,400
Rachel E. Kaufman	\$730	8	\$5,840
	Total	31	\$24,240

Reasonable Expenses

35. The costs incurred by Kaufman P.A. total \$8,668.79, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Filing fees	\$804
Process server fees	\$440
Mediation fees	\$1,050

Expert fees	\$5,456
Travel	\$918.79
Total	\$8,668.79

36. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

37. Class Counsel spent 288 hours and more than \$8,000 to zealously promote the Class's interests. Class Counsel represented Plaintiffs and the Class on a purely contingent basis. Class Counsel assumed the significant risk that it would not be compensated for time and out of pocket expenses invested into this contentious case. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

38. The time and resources devoted to this Action readily justify the requested fee. Moreover, Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved and Defendant's vigorous defense of Plaintiffs' and the Class's claim. Despite Class Counsel's effort in litigating this Action, Class Counsel remains completely uncompensated for the time invested in the Action, in addition to the expenses advanced.

39. The settlement provides an extremely fair and reasonable recovery for the Settlement Class given the combined litigation risks, including the strength of Defendant's defenses, the challenging and unpredictable path of litigation, Defendant's financial condition, and the changing TCPA law landscape.

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

Dated: May 19, 2023

/s/ Avi R. Kaufman
Avi R. Kaufman