UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRANCE GUIDRY,

Plaintiff,

CASE NO.: 6:19-cv-1936-Orl-41LRH

v.

PENN CREDIT CORPORATION,

Defendant.
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PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, COSTS, AND EXPENSES AND SERVICE AWARD AND MEMORANDUM OF LAW IN SUPPORT

In accord with Eleventh Circuit precedent, Plaintff seeks attorney's fees of 30% of the Settlement Fund[1]—or $1,402,500—as well as costs and expenses of $38,817.38. Plaintiff also requests that the Court reserve on ruling whether Settlement Class Representative Terrance Gruidry ("Plaintiff" or "Class Representative") may receive a Service Award of $2,500, reflecting his commitment to this case, pending the *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020).

The requested relief is demonstrably reasonable and appropriate and amply supported by the record.[2] The Settlement expressly reflects the Parties' arms-length

[1] Unless otherwise noted, all capitalized terms are defined in the Class Action Settlement Agreement ("Settlement" or "S.A."), previously filed at Doc. 57-1.

[2] Plaintiff specifically incorporates by this reference Plaintiff's Motion for Preliminary Approval (including attachments and declarations) ("Preliminary Approval Motion"), (Doc. 55), and the Joint Response to Court's Order Regarding Motion for Preliminary Approval ("Joint Response") (Doc. 59).

and separately negotiated agreement to the relief sought. This factor alone merits great weight and consideration by the Court in ruling on this motion. Further, Plaintiff seeks a fee award that is reasonable under the controlling "percentage of the benefit" fee-assessment method adopted by the Eleventh Circuit in *Camden I Condominium Ass'n v. Dunkle,* 946 F.2d 768, 774-75 (11th Cir. 1991).[3] Plaintiff also seeks a cost and expense reimbursement of $38,817.38, comprising out-of-pocket costs and expenses reasonably advanced by Plaintiff's Counsel in prosecuting this action—and the parallel *Thomas/Gurzi* action (discussed below)—to a final, successful resolution.

Accordingly, Plaintiff, respectfully submits this Motion for Attorneys' Fees, Costs, and Expenses and Service Award and Incorporated Memorandum of Law.

I. INTRODUCTION

This case involves alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. §227(b), ("TCPA"), which prohibits the use of automatic telephone dialing systems ("ATDS") to call or text cellular telephones unless the caller has the "prior express consent" of the called party to make such calls. *See* 47 U.S.C. § 227(b)(1)(A)(iii). Plaintiff alleges that Defendant, Penn Credit Corporation ("Defendant" or "Penn"), (together with Plaintff, the "Parties"), violated the TCPA by initiating debt collection calls via ATDS or prerecorded voice to a cellular telephone

[3] Under *Camden 1*, the benefit of the fund analysis controls; the loadstar/multiplier analysis is improper, although some courts use the latter valuation to cross-check the former. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1302 (11th Cir. 1999) ("[W]hile we have decided in this circuit that a loadstar calculation is not proper in common fund cases, we may refer to that figure for comparison."). As discussed infra, the fee request is well supported by the loadstar/multiplier method, should the Court choose to reference it as a cross-check to the percentage of the benefit calculation.

number, and the recipient did not consent to receive such calls. (Doc. 1).

Penn denies any liability and has asserted substantial defenses, (Doc. 10). Specifically, Penn disputes that the ringless voice mails ("RVMs") at issue violate the TCPA, disputes that VoApps, Inc. ("VoApps") was its agent; contends that Plaintiff's claims are not amenable to class certification; and denies that Plaintiff and class members are entitled to damages or injunctive relief. Moreover, Penn – due to its financial condition and limited available insurance – would be unable to withstand a class-wide judgment requiring it to fully compensate all persons who may have received an RVM during the class period.

Nonetheless, the Settlement provides broad relief for all persons who were sent and/or received RVMs from VoApps on behalf of Penn on the voicemail platform associated with their cellular telephones and requires Penn to institute certain meaningful changes to its business practices to help prevent future such calls to cellular telephones without consent. Further, the Settlement provides for the creation of a Settlement Fund, from which payments will be made to a subclass of the Settlement Class whose cellular telephone numbers were obtained via the use of "skip tracing" or similar techniques (the "Skip Trace Subclass"). Importantly, members of the Settlement Class whose cellular telephone numbers were not so obtained (the "Non Skip Trace Subclass") will *not* release their individual damages claims against Penn.

II. BACKGROUND

A. Nature of the Claims and Procedural History

1. *Guidry* Matter

On July 31, 2019, Plaintiff filed a class action Complaint against Defendant in the United States District Court for the Western District of Louisana. (Doc. 1). The Complaint alleged violations of the TCPA and sought class certification, statutory damages, injunctive relief, and an award of attorneys' fees, costs and expenses on behalf of Plaintiff and the proposed class. (Doc. 1). On August 23, 2019, Defendant filed an Answer and Affirmative Defenses. (Doc. 10).

On October 1, 2019, Defendant filed a motion to transfer this matter to this Court, (Doc. 17), which was granted, (Doc. 22). On November 26, 2019, the Court entered its Case Management and Scheduling Order No. 1, which established deadlines for class discovery and Plaintiff's Motion for Class Certification. (Doc. 44).

Plaintiff served written discovery requests, including a Rule 30(b)(6) Deposition Notice, interrogatories, and requests for production of documents, to which Defendant served written responses. Plaintiff also sought third-party discovery aimed at Defendant's vendor VoApps. Declaration of John Yanchunis, attached hereto as Exhibit A, ¶ 15 (hereinafter "Yanchunis Decl.").

On September 24, 2020, Class Counsel took the deposition of Defendant's corporate representative. On November 10, 2020, Plaintiff took the deposition of third party VoApps, LLC. During this time, Class Counsel was likewise interfacing with an expert regarding identifying and ascertaining the members of the class, in anticipation of the motion for class certification. Yanchunis Decl. ¶ 16.

Subsequently, the Parties began exploring the potential for resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the

Parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant arising out of the alleged TCPA violations.

The Parties agreed to Hon. John Thornton (ret.) of JAMS as a mediator. Judge Thornton is well known as a highly skilled and experienced mediator who has mediated many complex and class action cases. On December 22, 2020, the Parties conducted a full-day mediation session to explore settlement. During the mediation, the Parties set forth and discussed their respective positions on the merits of the class claims and the potential for a settlement that would involve class-wide relief. The Parties exchanged offers and counteroffers, and negotiated the points of each vigorously. At all times, the Parties' negotiations were adversarial, non-collusive, and conducted at arm's length. The mediation resulted in the material terms set forth in the Settlement before this Court for consideration. *See* Yanchunis Decl. ¶¶ 17–18.

2. *Thomas/Gurzi* Matter

While this case was ongoing, a parallel case was also proceeding before this Court, *Thomas v. Penn Credit Corp*., No. 6:19-cv-00823-GAP-EJK (M.D. Fla. filed Apr. 30, 2019) (hereinafter "*Thomas*" or "*Thomas/Gurzi*"). The named plaintiff in that matter, Angela Gurzi—who was later replaced with her bankruptcy estate's trustee, Robert E. Thomas, on December 15, 2020[4]—sought similar redress for prerecorded-voice debt collection calls Penn made.

[4] *See Thomas* Doc. 183.

Plaintiff's counsel conducted extensive discovery in the *Thomas/Gurzi* matter, including issuing and responding to first-party written discovery requests; defending Ms. Gurzi and Mr. Thomas during their respective depositions on February 4, 2020, and January 14, 2021; deposing Penn's declarant David King on December 2, 2019; issuing third-party subpoenas to VoApps and multiple cellular carriers; deposing Sprint on December 6, 2019; securing declarations from AT&T and T-Mobile pertinent to class certification issues; and deposing Defendant's Rule 30(b)(6) representative Thomas Perrotta on February 7, 2020. *See* Declaration of Alexander Burke, attached hereto as Exhibit B, at ¶ 18 (hereinafter "Burke Decl."). Discovery in the *Thomas* matter did not come easy: Penn produced the bulk of its responsive materials only after Ms. Gurzi's counsel moved to compel on October 22, 2019. *See Thomas* Doc. 25; Burke Decl. ¶ 16. In addition to reviewing Penn's document production, Ms. Gurzi's counsel processed and analyzed *tens of millions* of rows of data produced by Defendant, VoApps, and Sprint. *See Thomas* Doc. 188-1 & Doc. 101 (at Marovitch Decl.); Burke Decl, ¶ 18.

The *Thomas* proceedings were far along when this settlement was reached. On December 3, 2019, Penn filed an early summary judgment motion on the issue of whether its VoApps messages constituted "calls" under the TCPA. *Thomas* Doc. 35. After full briefing, the Court ruled in Ms. Gurzi's favor. *Gurzi v. Penn Credit, Corp.*, 449 F. Supp. 3d 1294, 1296 (M.D. Fla. 2020). On April 9, 2020, Penn moved for leave to file an interlocutory appeal of the Court's ruling, which the Court denied after full

briefing. *Gurzi v. Penn Credit, Corp.*, 2020 WL 3288016 (M.D. Fla. June 18, 2020). Plaintiff's counsel didn't let up after this victory: On April 24, 2020, they moved to dedesignate as confidential a memorandum from a Penn attorney, which warned Penn before the class period that whether VoApps messages were "calls" under the TCPA would likely fall in consumers' favor. *Thomas* Doc. 72. The Court granted that motion on May 5, 2020. *Thomas* Doc. 80. Plaintiff's counsel also successfully defended against Penn's motions to strike Ms. Gurzi's pleadings since her bankruptcy, and for case-ending sanctions in relation to a confidentiality issue. *Thomas* Doc. 108, 109. On June 29, 2020, Ms. Gurzi's counsel moved for class certification, for summary judgment, and to strike the report of Penn's expert, Jan Kostyun. *Thomas* Doc's 116-118. When Penn responded with a new declaration from its expert with additional analysis, Ms. Gurzi's counsel moved to strike that, as well, on August 12, 2020. *Thomas* Doc. 156.

In response to the Court's order of August 27, 2020, Ms. Gurzi's bankrtupcy trustee, Mr. Thomas, moved to join and amend the complaint to identify himself as a named plaintif, which the Court granted over Penn's objection. *Thomas* Doc's 171, 179, 180. On December 15, 2020, Thomas's counsel filed an amended complaint identifying Thomas as the named plaintiff, to which Penn responded with a motion for judgment on the pleadings on February 26, 2021. *Thomas* Doc's 183, 186. On February 26, 2021, Thomas's counsel submitted conformed and updated versions of the motions for class certification and for summary judgment, and on March 12, 2021, they responded to Penn's motion for judgment on the pleadings. These motions

remained actively pending until the Court stayed these proceedings in light of the instant Settlement. *Thomas* Doc's 188, 189, 193, 201; *see also* Burke Decl. ¶¶ 16–17.

While *Thomas/Gurzi* counsel feel confident that Trustee Thomas would be a satisfactory class representative, he is not participating in this class settlement on behalf of Ms. Gurzi's estate, in order to avoid potential objections or other arguments arising from his special citcumstances as a trustee. Thomas and the estate have thus agreed to step aside and permit Guidry to act as class representative for the settlement.

3. Combined Request

If the Settlement is finally approved, the *Thomas* matter will be dismissed by the parties there. In connection with the Settlement before the Court here, counsel for the plaintiffs in both cases have agreed to seek fees, costs, and expenses, together, in solely this matter, and to split any such fee award 50% to counsel in *Thomas/Gurzi* and 50% to counsel in *Guidry*. This agreement was finalized on or about May 3, 2021, and thus was not reflected in Plaintiff's Motion for Preliminary Approval, filed on April 1, 2021.

Accordingly, herein below, Plaintiff has separately accounted for the lodestar, costs, and expenses incurred by counsel in both cases.

B. Summary of the Settlement Terms

The Settlement Class includes:

> all persons within the United States that were sent and/or received, without consent, a prerecorded voicemail message sent by VoApps to the individual's cellular voicemail service on behalf of Penn from April 30, 2015 through and including the date the Preliminary Approval Order is entered by the Court.

S.A. ¶ 1.10.

The Settlement Class consists of two subclasses of Class Members – the Skip Trace Subclass Members and the Non Skip Trace Subclass Members. S.A. ¶ 1.10. The Skip Trace Subclass includes the approximately two million Class Members whose cellular telephone numbers were obtained by Penn via the use of "skip tracing" or similar techniques, as identified on the Skip Trace Subclass List. S.A. ¶ 1.41. The Skip Trace Subclass is a Rule 23(b)(3) opt-out class. Skip Trace Subclass Members are eligible for the monetary relief descrbied below.

The Non Skip Trace Subclass includes all persons who are Class Members but are not also Skip Trace Subclass Members. S.A. ¶ 1.23. The Non Skip Trace Subclass is a Rule 23(b)(2) class, and thus the Parties are not required to provide the right to "opt out" to these class members, nor are the Parties required to provide notice. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011). The Non Skip Trace Subclass Members will receive the benefit of the Stipulated Injunction, described below, but retain their rights to pursue individual actions for damages. S.A. ¶ 5.2.

1. Monetary Relief for the Benefit of the Settlement Class.

The Settlement requires the establishment of a Settlement Fund in the amount of $4,675,000. S.A. ¶ 1.38. The Settlement Fund shall be used to pay all: (i) Skip Trace Subclass claims; (ii) Attorneys' Fees and Costs; and (iii) Settlement Administration Expenses. S.A. ¶ 1.38. Each Skip Trace Subclass Member who submits a timely and valid claim form will receive a payment of the *pro rata* share of the Settlement Fund after (a) payment of Attorneys' Fees and Costs; (b) payment of the Service Award, if any, to the Class Representative; and (c) payment of Settlement Administration

Expenses. Thus, the amounts paid to each valid claimant shall be determined once the total number of valid claims is determined. S.A. ¶ 3.7.

2. Stipulated Injunction.

The Settlement also requires Penn to implement certain changes to its business practices via the entry of a Stipulated Injunction, pursuant to which:

1. Penn shall update and improve its processes and procedures concerning compliance with the TCPA. Such processes and procedures shall include implementation of a scrub of phone numbers placed by clients or otherwise obtained to determine whether the number is a cell phone.

2. If a scrub determines a phone number is a cell phone, Penn shall not itself, nor through any third party, send any prerecorded messages to the number unless it has a good faith basis to believe there is consent to call the number or the law otherwise permits such calls.

3. Penn shall not itself, nor through any third party, send any prerecorded messages to any numbers Penn obtains through "skip tracing" or similar means unless it has a good faith basis to believe there is consent to call the number or the law otherwise permits such calls.

4. Penn shall revise its written TCPA processes, procedures, and training materials.

5. Penn shall implement regular training for its employees concerning its TCPA processes and procedures.

6. Penn shall use its best efforts to ensure that all existing and newly hired Penn debt collectors execute an acknowledgement confirming their understanding of Penn's policies and procedures regarding the TCPA.

7. The Stipulated Injunction will lapse and expire ten (10) years after it is entered by the Court.

8. Penn will be required to issue quarterly reports to Class Counsel concerning TCPA litigation during the injunctive period.

9. Penn shall submit proof of compliance with the injunction to Class Counsel by way of providing the training and testing materials used in the training upon the commencement of such training. Furthermore, a declaration of the responsible person at Penn for ensuring compliance with the training requirements of the injunction shall be provided upon completion of the training.

10. At the end of the Stipulated Injunction, Penn shall submit to Class Counsel a declaration from its training coordinator confirming that training

> was provided on a regular basis during the injunction term, as required by the Stipulated Injunction. Further, at the end of the Stipulated Injunction, Penn shall also submit to Class Counsel an exemplar of the revised TCPA testing materials to confirm Penn's compliance with the Stipulated Injunction.

S.A. ¶¶ 3.3–3.6; S.A. Exh. 6.

III. ARGUMENT

A. The Requested Fee is Reasonable under the Common Fund Doctrine

Courts have long recognized the common fund doctrine, under which attorneys who create a recovery benefitting a group of people may be awarded their fees and costs from the recovery. *See, e.g.*, *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). "It is axiomatic that attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund[.]"[5] In a class case as this one, the Eleventh Circuit has directed that the fee be based upon a percentage of the class benefit. *Camden I*, 946 F.2d at 774-75. Courts have a great deal of discretion in choosing the proper percentage. "There is no hard and fast rule … because the amount of any fee must be determined upon the facts of each case." *Id.* at 774. The court should look at such factors as the time required reaching a settlement, whether there are any substantial objections, the economics of a class action, the criteria set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) and any other "unique" circumstances. *Camden 1* at 775. In *Camden I,* the Eleventh Circuit recognized that a fee award of 50 percent of the benefit is the upper limit; that the

[5] *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1200 (S.D. Fla. 2006) (internal quotations and citation omitted); *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.").

majority of fee awards fall between 20 and 30 percent. *Camden I*, 946 F.2d at 774-75. As stated in *Camden I*, 25 percent serves as the default "benchmark."[6]

For purposes of determining fees under the controlling percentage of the benefit fee-assessment method, the total value of the common fund or class benefit, both monetary and nonmonetary relief, are considered. *Camden I*, 946 F.2d at 771. Said differently, non-monetary relief provided to the class is "part of the settlement pie." *Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 628 (11th Cir. 2015). Thus, "[w]hen the non-cash relief can be reliably valued, courts often include the value of this relief in the common fund and award class counsel a percentage of the total fund."[7]

Here, the Settlement establishes a Settlement Fund of $4,675,000 to be used to pay all: (i) Skip Trace Subclass claims; (ii) Attorneys' Fees and Costs; and (iii) Settlement Administration Expenses. S.A. ¶ 1.38. Moreover, singifcant, and valuable nonmonetary relief is also provided, specifically, the above described processes, procedures, written material revisions, training, and 10-year reporting requirements Penn has agreed to implement and abide by pursuant to the Settlement. S.A. ¶¶ 3.3–3.6; *see also* (Doc. 57-7) (proposed stipulated injunction).

Yet, Plaintiff seeks a fee award of 30% of the monetary Settlement Fund—or $1,402,500. However, the injunctive relief, although not explicitly valued, has inherent

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[6] *Id.* at 774-75; *see also In re Friedman's, Inc. Securities Litig.*, 2009 WL 1456698, at *2 (N.D. Ga. May 22, 2009) ("[C]ommon fund cases in district courts in the Eleventh Circuit have awarded fee percentages within a range close to the 30% requested here.").

[7] *In re: Checking Account Overdraft Litig.*, 2013 WL 11319391, at *13 (S.D. Fla. Aug. 5, 2013); *Marty v. Anheuser-Busch Companies, LLC*, 2015 WL 6391185, at *2 (S.D. Fla. Oct. 22, 2015).

monetary value to the Settlement Class Members and essentially all consumers who interact with Defendant; Defendant agreed to implement the agreed upon actions in order to avoid future violations of the TCPA. Therefore, although not explicitly valued, these measures do have monetary value, which would push the fee award percentage lower than the requested 30%.

A. The *Camden I* Factors Clearly Support the Requested Fee.

The Eleventh Circuit's factors for evaluating the reasonable percentage to award class-action counsel are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (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 client; (12) awards in similar cases. *Camden I*, 946 F.2d at 772 n. 3 (citing factors originally set forth in *Johnson*, 488 F.2d at 717-19).

These twelve factors are not exclusive. "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." *In re Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). These factors are merely guidelines, and the Eleventh

Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Id*. (quoting *Walco Inv., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997)). The *Camden I* factors are discussed below.

1. Time and Labor Involved

As recounted above, and as set forth in the supporting declarations of John Yanchunis, Alexander Burke, David Marco, and Larry Smith (attached hereto as Exhibits A–D), Counsel expended significant effort to achieve the settlement for the Class. Class Counsel have litigated this action for over two years, and reached a hard-fought settlement only after mediation. Although the present case was resolved before trial, Class Counsel invested significant time and resources investigating and litigating this action. Specifically, among other work, Class Counsel (1) consulted with Plainitff throughout the course of this case; (2) investigated his claims; (3) drafted the Complaint; (4) prepared and served discovery on Defendant; (5) reviewed the discovery responses from Defendant; (6) communicated and conferred with Defendant regarding discovery issues; (7) communicated with, and provided documents to, expert to help ascertain class size; (8) attended and conducted deposition of third party VoApps, LLC; (9) attended and conducted the corporate representative deposition of Defendant; (10) attended mediation, where they negotiated a comprehensive class action settlement; (11) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; and (12) drafted and filed this motion for attorneys' fees, costs and expenses and class representative service award. Yanchunis Decl. ¶ 40. *Thomas/Gurzi* counsel heavily litigated that matter. Burke

Decl. ¶¶ 16–18; Marco Decl. ¶ 13. The time and labor spent litigating each matter on a class-wide basis supports Class Counsel's fee request. *See, e.g.*, Burke Decl. ¶ 15.

In performing the aforementioned work on behalf of the Class, *Guidry* Class Counsel spent over 239 hours of attorney and other professional time—and *Thomas/Gurzi* counsel spent over 1,162 hours—without any assurance that the commitment of time and effort to this case would result in the payment of any fee. Counsel should be compensated for the substantial time and labor invested to obtain this resolution on behalf of the Class and should not be punished for their persistence in achieving a positive result.

2. The Novelty and Difficulty of the Questions Involved Required the Skill of a Highly Talented Team of Attorneys.

This factor strongly favors an award of the fees requested. "Class actions are inherently complex to prosecute because the legal and factual issues are complicated and uncertain in outcome." *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677, 2008 WL 649124, at *15 (S.D. Fla. Jan. 31, 2008). That this dispute presents complex issues as outlined above is evidenced by the caliber of lawyers representing the Parties.[8] "The fact that this level of legal talent was available to the Settlement Class is another compelling reason in support of the fee requested... In the private marketplace, as pointed out by several of Plaintiffs' experts, counsel of exceptional skill commands a

[8] *See Walco*, 975 F. Supp. at 1472 (explaining that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results"); *see also Camden I*, 946 F.2d at 772 n. 3 (in assessing the quality of representation by Class Counsel, Court also should consider the quality of their opposing counsel.); *Johnson.*, 488 F.2d at 718; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992).

significant premium." *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1363 (S.D. Fla. 2011).

Here, Class Counsel enjoy a strong reputation in the area of complex and class action litigation. (Doc. 57-9 ¶¶ 3–7, and its Exh. 1); Ex's A–D. Class Counsel have successfully litigated and settled similar cases across the country, and, in this case, have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf. Yanchunis Decl. ¶¶ 6–7; Burke Decl. ¶ 6; Marco Decl. ¶ 8.

3. The Claims Against Defendants Entailed Considerable Risk.

Prosecuting these claims was a significant undertaking. The risks incurred in pursuing the case were great. "The simple fact is that there were a larger than usual number of ways that Plaintiffs could have lost this case, and they still managed to achieve a successful settlement. A significant amount of the credit for this must be given to Class Counsel's strategy choices, effort and legal acumen." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364. "A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk." *In re Sunbeam*, 176 F. Supp. 2d at 1336.

Here, the central legal issues affecting Skip Trace Subclass Members are whether the RVMs constitute calls under the TCPA, whether VoApps was acting as Penn's agent, and, critically, whether Penn obtaining Skip Trace Subclass Members cellular telephone numbers via "skip tracing" or similar techniques broadly establishes that Penn lacked consent to call them.

Conversely, for the Non Skip Trace Subclass, individualized inquiry is a much more significant hurdle so far as determining whether each member consented to such calls. Because the members of that subclass are affected by issues of individual inquiry—namely, whether each consented to the calls at issue—Plaintiff pursued the best available remedy for them: significant and meaningful injunctive relief along with the preservation of their individual claims.

Nevertheless, and despite the strength of the Settlement, Plaintiff is pragmatic in his awareness of the various defenses available to Penn, as well as the risks inherent to continued litigation. Penn consistently denied the allegations raised in the Complaint, and made clear at the outset that it would vigorously defend this case through trial as needed, including contesting class certification issues.

Additionally, Penn is a small business of limited net worth and does not have the resources to fund a larger settlement. Penn possesses limited applicable insurance – the policy limits of which are being *fully exhausted* between the establishment of the Settlement Fund and the payment of its own legal fees, costs and expenses. To be clear, Penn has put everything available on the table in this Settlement. Anything more would likely result in Penn's seeking relief under the United States Bankruptcy Code. Thus, financial realities dictate that a larger pool of available financial resources following trial would be highly unlikely.[9] (Doc. 57-9 ¶ 19).

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[9] *See In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 508 (W.D. Pa. 2003) ("Under these circumstances, even if the Class were to proceed to trial successfully against Rent-Way, it is highly doubtful that the Class would be able to secure a better recovery than that provided by the proposed Settlement. This factor therefore strongly favors approval of the proposed Settlement."); *In re AmeriSoft Corp. Sec. Litig.*,

Thus, Class Counsel's skill and dogged determination in pursuing this matter has led to a favorable result for the Class, despite the significant risks this matter faced. Accordingly, this factor also militates in favor of awarding the requested fee amount.

4. Class Counsel Assumed Substantial Risk in Pursuing this Action on a Pure Contingency Basis, and Were Precluded from Other Employment.

Class Counsel prosecuted this case entirely on a contingent fee basis. Yanchunis Decl. ¶ 38; *see also* Burke Decl. ¶ 14. As such, they assumed a significant risk of nonpayment or underpayment. Numerous cases recognize the importance of this factor in determining the fee award. "A contingency fee arrangement often justifies an increase in the award of attorney's fees."[10]

As Judge King has observed:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548. Class Counsel spent substantial time litigating this case that they could not spend on other matters. Thus, consideration of this factor also

210 F.R.D. 109, 125 (D.N.J. 2002) ("The Defendants' inability to withstand greater judgment militates in favor of settlement.").

[10] *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens*, 118 F.R.D. at 548); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs' counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 ("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award."); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama State Ed. of Education*, 631 F. Supp. 78, 86 (M.D. Ala. 1986).

justifies the requested fee.

5. The Fee Requested Comports with Customary Fees Awarded in Similar Cases.

"In private litigation, attorneys regularly contract for contingent fees between 30% and 40% directly with their clients." *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (approving award equal to 30% of common fund). "These percentages are the prevailing market rates throughout the United States." *Id.* An award of 30% is below the upper-benchmark and less than the growing trend in this Circuit of 33 1/3% or above.[11] Likewise, such an award comports with other fee awards in similar cases.[12] Accordingly, Class Counsel's requested fee award of 30% of

[11] *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33 1/3 % of settlement of $40 million); *Seghroughni v. Advantus Rest, Inc.*, No. 12-2000, 2015 WL 2255278, at *1 (M.D. Fla. May 13, 2015) ("An attorney's fee ... which is one-third of the settlement fund ... is fair and reasonable in light of the results obtained by the Lead Counsel, the risks associated with this action, the Lead Counsel's ability and experience in class action litigation, and fee awards in comparable cases."); *Wolff v. Cash 4 Titles*, No. 03-22778, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012) ("One-third of the recovery is considered standard in a contingency fee agreement."); *Morefield v. NoteWorld, LLC*, No. 10-117, 2012 WL 1355573 (S.D. Ga. April 18, 2012) (awarding fees of 33 1/3% of the $1,040,000 settlement fund in addition to expenses); *Atkinson v. Wal-Mart Stores, Inc.*, No. 08-691, 2011 WL 6846747, at *6 (M.D. Fla. Dec. 29, 2011) (approving class settlement with one-third of the maximum $2,020,000 common fund); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-1317, (Doc. 1557 at 8-10) (S.D. Fla. Apr. 19, 2005) (awarding class counsel 33.3% of settlement fund in part because they prosecuted the action on a wholly contingent basis); *In re: Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% of settlement of $100 million); *Gutter v. E.I. DuPont De Nemours & Co.*, No. 95-2152, (Doc. 626 at 7) (S.D. Fla. May 30, 2003) (awarding class counsel 33.3% of the Settlement Fund as attorneys' fees ($1,201,728.42) because they expended significant time and resources on a purely contingent basis under the common fund theory).

[12] *See, e.g.*, *Med. & Chiropractic Clinic, Inc. v. KMH Cardiology Centres Inc.*, 8:16-CV-644-T-23JSS, 2017 WL 11046397, at *2 (M.D. Fla. Nov. 17, 2017) (awarding 30% fee in TCPA class case); *James v. JPMorgan Chase Bank, N.A.*, 8:15-CV-2424-T-23JSS, 2017 WL 2472499, at *2 (M.D. Fla. June 5, 2017) (approving a 30% fee in TCPA class action); *Wreyford v. Citizens for Transp. Mobility, Inc.*, 1:12-CV-2524-JFK, 2014 WL 11860700, at *1 (N.D. Ga. Oct. 16, 2014) (awarding 33 1/3 % in TCPA class case); *see also Cooper v. Nelnet, Inc.*, 6:14-CV-314-ORL, 2015 WL 4623700, at *2 (M.D. Fla. July 31, 2015) (awarding 27.78% of the Settlement Fund in TCPA class case that had only been pending for one and a half years).

the Settlement Fund is appropriate.

6. The Remaining *Camden I* and Other Factors Favor Approval of The Fee Requested.

The remaining *Camden I* factors also support Class Counsel's fee request. The burdens of this litigation and the results obtained on behalf of Plaintiff and the Class weigh in favor of the fee requested. The fee request is firmly rooted in "the economics involved in prosecuting a class action." *In re Sunbeam*, 176 F. Supp. 2d at 1333. "[P]roper incentives must be maintained to insure that attorneys of this caliber are available to take on cases of significant public importance like this one." *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d at 1368.

In addition, the fact that the Parties negotiated arduously and at length during the mediation session, and that, to date at least, no class member has objected to the Settlement or its provision on attorneys' fees, costs, and expenses, weighs in favor of the fee requested.[13] *See, e.g.*, *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) ("The lack of significant objection from the Class supports the reasonableness of the fee request.") (collecting cases); *Gevaerts v. TD Bank*, No. 14-20744, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015).

B. A Lodestar Analysis Confirms the Reasonableness of the Requested Fee.

Under *Camden I*, use of the lodestar analysis is improper in common fund

[13] Plaintiff notes, however, that the deadline for objections is July 23, 2021. (Doc. 60 at 9).

cases.[14] Still, it has been used as a "cross-check" to the percentage-of-the-fund.[15]

To determine the lodestar amount, the "court must multiply the number of hours reasonably expended by a reasonable hourly rate." *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996). "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). "After the lodestar is determined . . . the court must next consider the necessity of an adjustment for results obtained." *Id.* at 1302. "If the results obtained were exceptional, then some enhancement of the lodestar might be called for." *Id.* (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986), *supplemented*, 483 U.S. 711 (1987)). "[E]nhancement may be appropriate if there is a risk of non-recovery of a fee in the case," such as in a contingent fee arrangement. *Id.*

The following chart summarizes the time and hourly rates of Class Counsel and their professional staff in this matter:

Name	**Hourly Rate**	**Hours Billed**	**Total**
MORGAN & MORGAN COMPLEX LITIGATION GROUP			
John Yanchunis, Lead Partner	$950	34.3	$32,585.00
Octavio Tav Gomez	$894	73.9	$66,066.60

[14] *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362-63 (declining to perform lodestar cross-check because *Camden I* "mandated the exclusive use of the percentage approach in common fund cases" and noting that "courts in this Circuit regularly award fees . . . without discussing lodestar at all") (internal quotations marks, brackets and emphasis omitted).

[15] *Waters*, 190 F.3d at 1298 ("[W]hile we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison."); *Pinto*, 513 F. Supp. 2d at 1343 (noting that "[s]ome courts use the lodestar method as a cross-check of the percentage of the fund approach") (citing *In re Sunbeam*, 176 F. Supp. 2d at 1336).

Patrick Barthle	$658	79.7	$52,442.60
Michael Braun	$894	8.4	$7,509.60
Jonathan Cohen	$742	20.8	$15,433.60
Kenya Reddy	$894	0.4	$357.60
Lorraine Carreiro, Paralegal	$202	2.8	$565.60
Jennifer Cabezas, Paralegal	$202	2.9	$585.80
Jason Placeres, Paralegal	$202	16.1	$3,525.20
Total		**239.3**	**$179,071.60**

Yanchunis Decl. ¶ 24.

The following chart summarizes the time and hourly rates of attorneys and the professional staff of the firms in the *Thomas/Gurzi* matter:

Name	Hourly Rate	Hours Billed	Total
BURKE LAW OFFICES, LLC			
Alexander Burke	$650	505.2	$328,380.00
Daniel J. Marovitch	$425	514.3	$218,577.50
SubTotal		**1,019.5**	**$546,957.50**
SMITHMARCO, P.C.			
David M. Marco	$500	43	$21,500.00
Larry P. Smith	$550	92.5	$50,875.00
Paralegal	$145	7.5	$1,087.50
Total		**143**	**$73,462.50**
***Thomas* Matter Totals**		**1,162.5**	**$620,420.00**

See Burke Decl. ¶ 20; Marco Decl. ¶ 17.

These rates have been approved by various courts across the country, including here in the Middle District of Florida. Yanchunis Decl. ¶ 28; Burke Decl. ¶¶ 20–21; Marco Decl. ¶ 16. Here, in the two years that Counsel have been prosecuting these claims against Defendant, in both *Guidry* and *Thomas/Gurzi*, they have expended over 1,400 hours. Yanchunis Decl. ¶ 24. At their current hourly rates, the lodestar is $799,491.60. *Id.* Of course, as this Court knows, Class Counsel will continue to invest significant time in this matter through the settlement administration process, preparing the motion for final approval, responding to any objections, preparing for and

attending the final approval hearing, and defending the Court's Final Judgment on any subsequent appeals. Yanchunis Decl. ¶ 31. Likewise, the Settlement envisions a 10-year injunction-compliance reporting period, for which Class Counsel is responsible for reviewing, and that aspect of the Settlement will likewise require substantial, additional time over the coming decade. Plaintiff estimates that the resulting additional anticipated lodestar will be approximately $100,500, without considering any potential appeal should there be one. Yanchunis Decl. ¶ 31. That additional anticipated time will only further increase the total loadstar to $899,991.60, thus decreasing the associated multipler to 1.56. Yanchunis Decl. ¶ 39.

Had there been no common fund in the proposed Settlement and attorneys' fees were determined based solely on the lodestar method, Class Counsel would have sought a "multiplier" to apply to their lodestar for reasons earlier discussed, in particular, the result achieved for the Class, the complexity of the dispute and issues Class Counsel had to skillfully address, and the contingent nature of Class Counsel's fee arrangement.[16] This would potentially dwarf the fees requested under the percentage-of-the-fund approach and the proposed Settlement.

C. Class Counsel's Costs and Expenses Are Reasonable.

In addition to attorneys' fees, Class Counsel seek reimbursement of the costs

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[16] *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) (applying a multiplier of four times lodestar to "reflect such considerations as (1) the contingent nature of the fee; (2) the risk of the case (*i.e.*, the likelihood of success viewed at the tune of the filing); (3) the quality of representation; and (4) the result achieved," and surveying cases applying multipliers of approximately 4 to 9 times lodestar).

and expenses incurred in prosecuting these cases against Defendant. Since the filing of the case, and as of this filing, Class Counsel incurred expenses of $29,661.35. Yanchunis Decl. ¶ 33. The amount of costs and expenses actually expended and advanced by counsel include: filing and PACER fees, process service, copying and mailing expenses, expenses in connection with the mediation, as well as the costs of the mediation fee. *Id.* ¶ 34. *Thomas/Gurzi* counsel have incurred expenses of $9,156.03. Burke Decl. ¶ 22; Marco Decl. ¶ 20. Accordingly, Plaintiff seeks a total cost and expense reimbursement of $38,817.38.

As this Court can certainly be assured, however, this litigation is not over, and Class Counsel will continue to incur and advance costs through final judgment, and, if necessary, through any appeals. Moreover, with the Settlement's injuctive component, Class Counsel's commitment in this case will require further time and potential expenses over the next 10 years. Yanchunis Decl. ¶ 31. A supplemental declaration of additional lodestar, costs, and expenses will be submitted to the Court prior to the fairness hearing in September. Accordingly, Class Counsel respectfully submit that they are entitled to recover these expenses.

D. Plaintiff Requests the Court Reserve Ruling on the Service Award.

The Settlement proposes that the Class Representative receive a Service Award of $2,500.00 for his participation in this action and service to the Settlement Class. Plaintiff has worked diligently in service of the Class. Yanchunis Decl. ¶ 41. Mr. Guidry worked hand-in-hand with Plaintiff's Counsel from the start, having many conversations about this case, staying involved in and apprised of litigation strategy

from day one. Mr. Guidry was involved in and approved the settlement terms reached in this case. Yet, the subject of service awards was not raised nor negotiated until after the Parties had reached a settlement of the underlying claims, and the Plaintiff's consent and agreement to the terms of the Settlement was not, nor is it in any way, conditioned on his receipt of a service award. Yanchunis Decl. ¶ 42. Indeed, Mr. Guidry is aware that, under current Eleventh Circuit precedent, he is not able to obtain a service award. *Id.*

Accordingly, Plaintiff requests the Court reserve ruling on the service award issue pending the *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020).

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the request for attorney's fees, costs, and expenses in the amounts requested, and reserve ruling on the request for a service award.

Dated: July 2, 2021

Respectfully submitted,

MORGAN & MORGAN
COMPLEX LITIGATION GROUP

/s/ John A. Yanchunis
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to all attorneys of record in this matter.

/s/ John A. Yanchunis
John A. Yanchunis

Exhibit A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRANCE GUIDRY,

Plaintiff,

CASE NO.: 6:19-cv-1936-Orl41LRH

v.

PENN CREDIT CORPORATION,

Defendant.
_______________________________/

DECLARATION OF JOHN A. YANCHUNIS IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARD

1. I, John A. Yanchunis, pursuant to 28 U.S.C. § 1746, declare as follows:

2. I am one of the attorneys representing Plaintiff in this matter and was preliminarily appointed as Class Counsel. I submit this declaration in support of Plaintiff's Unopposed Motion for Attorney's Fees, Costs, and Expenses and Service Award. The facts herein stated are true, of my own personal knowledge, and if called to testify to such facts, I could and would do so competently

I. BACKGROUND

3. I have been licensed to practice law in the state of Florida since 1981 and in the state of Texas since 1980.

4. I was one of the principal lawyers in charge of all aspects of the litigation and I worked to ensure that Plaintiff and the class which he sought to represent was zealously represented, while also ensuring efficiency and reducing duplicative effort.

5. I began the practice of law following the completion of a two-year clerkship with the Honorable Carl O. Bue, Jr. (deceased), United States District Judge, Southern District of Texas, Houston Division. The vast majority of my practice, spanning more than 39 years, has concentrated on complex litigation, including consumer class actions for over 20 of those years. I have represented consumers in class action cases, including as co-lead counsel in the successful prosecution and settlement of two of the largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM, and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). My role as lead counsel in these cases is particularly noteworthy as these cases were filed against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis/Nexis), and other companies to protect the important privacy rights of consumers.

6. I also represented a class of consumers in *Zyburo v. NCSPlus, Inc.*, No. 12-Cv-6677, a TCPA action before Judge Jed S. Rakoff in the Southern District of New York, which was certified on a contested motion for class certification as a class action on September 15, 2014. The certification order was upheld on appeal to the Second Circuit. That case was successfully settled on

the eve of trial, and a Final Judgment approving the class settlement was entered on June 29, 2015. In addition, I represented a class of consumers in *Swift v. Bank of America Corp*., et al., No. 14-cv-01539, a TCPA action in which a class settlement was approved by the Middle District of Florida on July 20, 2016, *Black-Brown v. Terminix Int'l Co. Ltd. Partnership*, No. 16-cv-23607, another TCPA action in which a class settlement was approved by the Southern District of Florida on February 23, 2018, and *Preman v. Pollo Operations, Inc*., No. 16-cv-00443, an additional TCPA action in which a class settlement was approved by the Middle District of Florida on November 21, 2018.

7. My partner Patrick Barthle and I also represented a class of consumers in *Swaney v. Regions*, 2:13-cv-00544-JHE (N.D. Ala.), a TCPA action in which a class settlement was finally approved by Judge Proctor in the Northern District of Alabama, and in *Peterson v. Apria Healthcare Group Inc*., 6:19-cv-856-GAP-LRH (M.D. Fla.), a TCPA case before this Court, which was given final approval in November 2020.

8. These experiences have given me the necessary background to assess the issues and Settlement in this case.

9. I presently serve and have served in the past as lead, co-lead, or class counsel in numerous class actions across the country in a wide variety of areas affecting consumers, including, but not limited to, antitrust, defective products, life insurance, annuities and unfair and deceptive acts and practices. I also serve as lead counsel or co-lead counsel in several multi-district class cases

in federal courts across the United States, including one involving 194 million U.S. and 270,000 Israeli users of Yahoo's services (which achieved final approval)[1] as well as the data breach involving Capital One, which impacted the information of nearly 100 million individuals.

10. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers regarding allegations of price fixing, bid rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

11. I also have significant trial experience and over the years I have tried many cases. One case in particular, an insurance coverage case filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc., where, during the 17 years that case was pending, I was lead trial counsel for seven of the 42 insurance companies sued at the inception of the case. While five of those seven insurance companies settled at various times in the case, two

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[1] *See In re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK, 2020 WL 4212811 (N.D. Cal. July 22, 2020).

of my insurance company clients did not settle and eventually prevailed at trial. The case was tried in three phases and took almost 200 trial days over several years. I continued to represent and successfully defended those clients through appeals.

12. We filed this matter on behalf of Mr. Guidry on July 31, 2019, accusing Penn Credit Corporation ("Defendant" or "Penn"), of violating the Telephone Consumer Protection Act, 47 U.S.C. § 227(b) ("TCPA"), by sending ringless voice mails ("RVMs") to his cell phone without consent.

13. On August 23, 2019, Penn filed is Answer. (Doc. 10).

14. On October 1, 2019, Penn filed a motion to transfer this matter to this Court, (Doc. 17), which was granted, (Doc. 22). On November 26, 2019, the Court entered its Case Management and Scheduling Order No. 1, which established deadlines for class discovery and Plaintiff's Motion for Class Certification. (Doc. 44).

15. Plaintiff served written discovery requests, including a Rule 30(b)(6) Deposition Notice, interrogatories, and requests for production of documents, to which Defendant served written responses. Plaintiff also sought third-party discovery aimed at Defendant's vendor VoApps.

16. On September 24, 2020, Class Counsel took the deposition of Defendant's corporate representative. On November 10, 2020, Plaintiff took the deposition of third party VoApps, LLC. During this time, Class Counsel was

likewise interfacing with an expert regarding identifying and ascertaining the members of the class, in anticipation of the motion for class certification.

17. Subsequently, the Parties began exploring the potential for resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the Parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant arising out of the alleged TCPA violations.

18. The Parties agreed to Hon. John Thornton (ret.) of JAMS as a mediator. Judge Thornton is well known as a highly skilled and experienced mediator who has mediated many complex and class action cases. On December 22, 2020, the Parties conducted a full-day mediation session to explore settlement. During the mediation, the Parties set forth and discussed their respective positions on the merits of the class claims and the potential for a settlement that would involve class-wide relief. The Parties exchanged offers and counteroffers, and negotiated the points of each vigorously. At all times, the Parties' negotiations were adversarial, non-collusive, and conducted at arm's length. The mediation resulted in the material terms set forth in the Settlement before this Court for consideration.

19. Attorneys' fees, costs, expenses and the service award to the Class Representative were not discussed or negotiated until after the Parties had reached an agreement on the framework and material terms of the Settlement.

Thereafter, the Parties focused their efforts on documenting the terms of the settlement, which were ultimately memorialized in the Settlement Agreement ("Settlement"), attached to the Motion for Preliminary Approval.

20. Throughout the settlement process, proposed Class Counsel—Mr. Barthle, Mr. Gomez, and I—carefully weighed: (1) the benefits to the Class Representative and the Class under the terms of this Settlement, which provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation, an assessment I felt confident I could make based on my trial experience, as well as the difficulties and delays inherent in such litigation, including the challenges to certification of a class, both at the trial court level and at the appellate level if we were successful in obtaining an order certifying the class; (3) the desirability of consummating the present Settlement to ensure that the Class receives a fair and reasonable Settlement; and (4) providing Plaintiff and Class Members prompt relief, especially in light of ever-evolving TCPA and standing jurisprudence (often not in Plaintiff's favor).

21. In the Settlement, the Parties agreed to a resolution of this action that would involve the certification, for settlement purposes only, of a nationwide class of consumers described with greater particularity in the Settlement. The Settlement is subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if finally approved, will result in certification of the Class and dismissal of the

Action. It is my opinion that the Settlement achieves a result which is fair, reasonable, and adequate.

22. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of $950 per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation. Prior to submitting the motion for attorneys' fees, costs and expenses, I compared and confirmed the hourly rate of the professionals in my firm with lawyers at other law firms whose practice is focused on class litigation. Moreover, as I have been retained as an expert on attorneys' fees in other class cases, and as part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by courts on attorneys' fee requests. Again, based upon my research, our rates are within the range of lawyers with our levels of experience and credentials, which are further explained below

II. CLASS COUNSEL'S PROFESSIONAL TIME

23. As of June 30, 2021, *Guidry* Class Counsel has spent over 239 hours working on this case, for a total lodestar amount of $179,071.60. My firm's time records were prepared from contemporaneous, daily time records

prepared and maintained by my firm, which are available at the request of the Court.

24. Each attorney and staff member has provided me with their lodestar in this case as set forth in the charts below and the declarations of Alexander Burke and David Marco, filed in tandem with the instant motion. Combined, for all counsel, in both the *Guidry* and *Thomas/Gurzi* cases, expended time is 1,401.8 hours, for a lodestar total of $799,491.60 (prior to accounting for estimated future lodestar, discussed below).

<u>Morgan & Morgan</u>

Name	**Position**	**Hours**	**Rate**	**Lodestar**
John Yanchunis	Partner	34.3	$950	$32,585.00
Octavio Tav Gomez	Partner	73.9	$894	$66,066.60
Patrick A. Barthle	Associate	79.7	$658	$52,442.60
Jonathan Cohen	Associate	20.8	$742	$15,433.60
Kenya Reddy	Associate	0.4	$894	$357.60
Michael Braun	Associate	8.4	$894	$7,509.60
Lorraine Carreiro	Paralegal	2.8	$202	$565.60
Jennifer Cabezas	Paralegal	2.9	$202	$585.80
Jason Placeres	Paralegal	16.1	$202	$3,525.20
TOTAL		**239.3**		**$179,071.60**

25. Due to the amount of privileged information contained in the hourly billing records, those detailed records are not attached here, but can be provided *in camera* should this Court wish to review them.

26. The hourly rates for the partners, associates and professional staff are the same as the rates that would be charged for these services by our firms in non-contingent matters (excluding pro bono or other special considerations).

27. The rates sought by the professionals and paraprofessionals at my firm are consistent with their credentials, level of experience, and past awards, as set out below:

a. Octavio "Tav" Gomez – 21 years in practice. Mr. Gomez graduated with a Juris Doctor from Florida State University College of Law in 2000. Before joining Morgan & Morgan in 2015, Mr. Gomez serves as a Hillsborough County State Attorney. He later joined Taracks Gomez & Rickman were he became a named partner. Mr. Gomez has appeared in over eight hundred (800) federal cases throughout the US. Almost all of them being consumer law related and over 650 of those cases were TCPA cases. Mr. Gomez is licensed to practice by the State Bar of Florida, Georgia and Pennsylvania. Mr. Gomez has tried 62 jury trials to a verdict. Mr. Gomez's resume, further detailing his experience, was submitted in connection with the Motion for Preliminary Approval. *See* (Doc. 57-9 at 14–15).

b. Patrick A. Barthle II – Attorney, 9 years in practice, $658 per hour. Mr. Barthle graduated, *cum laude*, with a double major in History and Criminology from the University of Florida in 2009. While at UF, he was inducted into the Phi Beta Kappa Honor Society. Mr. Barthle graduated *summa cum laude* from Washington and Lee University School of Law in 2012. He was a Lead Articles Editor for the Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society. Before joining Morgan & Morgan in 2015, Mr. Barthle worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Mr. Barthle was selected as a Florida Super Lawyer Rising Star in 2019, 2020, and 2021 in the field of Class Actions, and regularly speaks on class action topics, as

set out in his resume, submitted in connection with the Motion for Preliminary Approval. *See* (Doc. 57-9 at 12–13). Mr. Barthle billed at hourly rates of $658 per hour based upon the rates set by myself, as Lead Counsel, in this matter.

c. Jonathan B. Cohen – Attorney, 14 years in practice, $742 per hour. Mr. Cohen earned his Bachelor of Arts degree in Journalism from Indiana University in 1996. He graduated from Stetson University College of Law in 2005. Before joining Morgan & Morgan in 2013, Mr. Cohen was a partner at James, Hoyer, Newcomer & Smiljanich, P.A., a firm specializing in the prosecution of nationwide consumer class actions and whistleblower (qui tam) complaints. Mr. Cohen billed at $742 per hour, below than the cap set by myself, as Lead Counsel, in this matter.

d. Michael Braun – Attorney, 25 years of practice, $894 per hour. Mr. Braun has represented shareholders and consumers in class action litigation for the past 25 years, has served as lead or liaison counsel in well over a hundred cases. He was named Lawyer of the Year in 2000 by California Lawyer Magazine, and a Super Lawyer from 2005-2019 by Los Angeles Magazine. Mr. Braun is a graduate of the London School of Economics, Loyola Law School, The Hague Academy of International Law and the University of California at Los Angeles. Mr. Braun is a member of the California, New York and District of Columbia bars, and is also licensed as an English Solicitor.

e. Kenya J. Reddy – Attorney, over 20 years of practice, $894 per hour. Ms. Reddy graduated from Duke University in 1997 with a degree in political science, and in 2000, received her law degree from the University of Virginia School of Law. After graduating from law school, Ms. Reddy served as a law clerk for two years for the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida. She then clerked for a year for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit. Following her clerkships, Ms. Reddy joined Carlton Fields, P.A., where she was elected as a shareholder in 2009. Her primary areas of practice were antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in a broad array of other practice areas including labor and employment, products litigation, ERISA and employee benefits law, healthcare, and securities litigation. After leaving Carlton Fields, Ms. Reddy spent two years clerking for the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and another two years clerking for the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida. Thereafter, she joined

Morgan & Morgan where she has practiced exclusively in the consumer class action department.

f. Jennifer Cabezas - Paralegal, billing rate is $202 per hour. Ms. Cabezas is a paralegal with more than 15 years of experience. She obtained her Associates in Arts, paralegal studies from Keiser University in 2007, and later obtained her Bachelors in Arts in Criminal Justice from Florida International University in Miami, Florida. She assisted the attorneys with document preparation, court filings, preparing deposition materials, electronic discovery materials, mediation materials and other clerical tasks. These billing rates reflect her ordinary and customary rate, which has increased during the time of this litigation. Her billing rate has been approved for paralegals of her experience level by other state and federal courts.

28. The billable rates charged by the attorneys and other professionals in my law firm, for non-document review work, as set forth herein have been approved by other federal and state courts as follows:

a. *Peterson v. Apria Healthcare Group Inc.*, 6:19-cv-856-GAP-LRH, ECF No. 55 at 22–23, (M.D. Fla.) (approving as reasonable, on lodestar cross-check, rates of $950 for Mr. Yanchunis, $658 for Mr. Barthle, $894 for Mr. Braun, $742 for Mr. Cohen, and $202 for Ms. Cabezas and Ms. Carriero).

b. *In re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (approving as reasonable rates of class counsel, which included $900 for John Yanchunis, and $550 for Messrs. Barthle and Cohen, and finding as reasonable: "billing rates for partners range from about $450 to $900, depending on seniority level," "billing rates for non-partner attorneys, including of counsel, associates, and staff/project attorneys, range from about $160 to $850, with most under $500," and "billing rates for paralegals range from $50 to $380")

c. *In re: Equifax Inc. Customer Data Security Breach Litigation*, Case No 1:17-md-02800-TWT, ECF 956 at 105 (N.D. Ga. Jan. 13, 2020), (approving as reasonable rates of class counsel, which included $950 for John Yanchunis, and approving rates ranging from $750 - $1050 for lead counsel).

d. *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387, ECF 117 (N.D. Cal. July 11, 2019), *id.*, ECF 113-1 (May 8, 2019) (identifying

Morgan and Morgan rates of $864-950 for partners, $450-636 for associates, $196 for paralegals, and $300 for investigators);

e. *Finerman v. Marriott Ownership Resorts, Inc.*, No. 3:14-cv-01154, ECF 222 (M.D. Fla. Aug. 15, 2018); *id.*, ECF 222 (May 7, 2018) (identifying Morgan and Morgan rates of $950 for John Yanchunis, $450-864 for associates, $196 for paralegals, and $300 for investigators);

f. *Sanborn v. Nissan N. Am., Inc.*, No. 0:14-cv-62567, ECF 200 at 3 (S.D. Fla. Jan. 6, 2017); *id.*, ECF 195-3 at 4 (Oct. 14, 2016) (identifying Morgan and Morgan rates of $950 for John Yanchunis, $450 for associate); and

g. *Dyer v. Wells Fargo Bank, N.A.*, No. 3:13-cv-02858, ECF 51 at 10 (N.D. Cal. Oct. 22, 2014); *id.*, ECF 43-1 (July 11, 2014) (identifying Morgan and Morgan rates of $900 for John Yanchunis, $550 for associate).

29. Class Counsel made significant efforts toward the efficient allocation of work between them. Partners in the firms coordinated their work assignments on a regular basis to prevent unnecessary duplication of work.

30. The work performed in this case was reasonable and necessary to the prosecution and settlement of this case. Class Counsel conducted a factual investigation during the prosecution of this action. Because of their comprehensive evaluation of the facts and law, Class Counsel was able to settle this case for a very substantial sum. Class Counsel provided Class Members with substantive and certain relief much sooner than if litigation of this matter had continued.

31. As settlement administration is ongoing, and based on my experience in previous consumer protection class actions, the lodestar figures reported herein will meaningfully increase by the time the settlement is

completely and finally administered, as well as in responding to objections if any, obtaining final approval, and defending the final judgment on appeal, if needed. Likewise, the Settlement envisions a 10-year injunction-compliance reporting period, for which Class Counsel is responsible for reviewing, and that aspect of the Settlement will likewise require substantial, additional time over the coming decade. I estimate that an additional 75 hours will be required to prepare the motion for final approval and responds to any objections therein, to prepare for and attend the final hearing, and to oversee the implementation of the distribution of the benefits of the Settlement. If there is an appeal, the additional lodestar will be much higher. I further estimate that additional time spent by Class Counsel during the 10-year reporting period will be approximately 50 hours. I anticipate that the additional time estimated here is likely to be incurred in equal parts between myself and my co-Class Counsel Mr. Barthle. Our blended hourly rate is $804 per hour,[2] resulting in additional anticipated lodestar in this matter of $100,500.

III. CLASS COUNSEL'S EXPENSES

32. This litigation required Class Counsel to advance costs and certain expenses. Where corporate defendants and their attorneys are well funded, as was true here and in most national consumer protection cases, this type of litigation can prove to be expensive and risky. Because the risk of advancing

[2] $950/hour + $658/hour = $804/hour.

costs in this type of litigation is significant, doing so is often cost prohibitive to many attorneys.

33. As of June 30, 2021, my firm expended costs of approximately $29,661.35. These expenses are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. All of the expenses incurred were reasonable and necessary for the effective and efficient prosecution of this case.

34. A further breakdown of my firm's costs and expenses is below:

Description	Subtotals	Totals Per Category
Court Fees		**$610.00**
Filing Fee	$400.00	
Pro Hac Vice Fee for John A. Yanchunis	$105.00	
Pro Hac Vice Fee for Jonathan Cohen	$105.00	
Professional Fees		**$28,908.00**
PACER	$3.50	
SLK Investigations – Service of Process	$240.00	
Class Experts Group, LLC	$22,974.00	
JAMS, Mediation	$3,233.00	
Postage	$7.40	
Deposition Transcripts	$2,289.10	
Long Distance Telephone Calls	$58.25	
Printing	$102.75	
Expense Reimbursements		**$143.35**
Patrick Barthle – Mediation Related	$143.35	
	Total	**$29,661.35**

35. Expense information for the *Thomas/Gurzi* matter is discussed in the declarations of Alexander Burke and David Marco, filed in tandem with the instant motion. Combined, the total costs and expenses for all counsel, in both the *Guidry* and *Thomas/Gurzi* cases, is $38,817.38.

36. Additional costs and expenses will be incurred before our work is done in this case, as is true of the additional services which we will provide to the class.

IV. THE REQUESTED AMOUNTS ARE REASONABLE

37. In accordance with best practices and the terms of the Settlement, the Parties waited to negotiate attorneys' fees, costs, and expenses, and the service awards until agreement was reached on all of the substantive terms of the Settlement.

38. Class Counsel prosecuted this case on a contingent-fee basis with no guarantee of recovery. My firm was forced to forgo other employment in order to devote the time necessary to pursue this litigation. Class Counsel advanced expenses with the understanding that we would be paid a fee and receive reimbursement for expenses only if successful.

39. The request of $1,402,500 for attorneys' fees represents a multiplier of 1.75 to Class Counsel's combined lodestar to date.[3] However, as noted above, additional time will be expended in this matter during settlement

[3] $1,402,500 ÷ $799,491.60 = 1.754.

administration, responding to objections if any, obtaining final approval, and defending the final judgment on appeal, and in reviewing and ensuring compliance with the stipulated injunction during the 10-year injunction-compliance reporting period. Accounting for that additional time, the multiplier is only 1.56.[4] Accordingly, over the entire span of the Settlement, that multiplier number will only further reduce.

40. Although the present case was resolved before trial, we invested significant time and resources investigating and litigating this action. Specifically, among other work, we (1) consulted with Plaintiff Terrance Guidry throughout the course of this case; (2) investigated his claims; (3) drafted the Complaint; (4) prepared and served discovery on Defendant; (5) reviewed the discovery responses from Defendant; (6) communicated and conferred with Defendant regarding discovery issues; (7) communicated with, and provided documents to, expert to help ascertain class size; (8) attended and conducted deposition of third party VoApps, LLC; (9) attended and conducted corporate representative deposition of Defendant; (10) attended mediation, where we negotiated a comprehensive class action settlement; (11) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; and (12) drafted and filed this motion for attorneys' fees, costs and expenses and class representative service award.

[4] $1,402,500 ÷ ($799,491.60 + $100,500) = 1.5583.

41. Throughout my involvement in the Litigation, Class Counsel have maintained contact with Plaintiff regarding the prosecution of this Litigation. Plaintiff has been at the helm of this Litigation at all times. Plaintiff was, and continues to be, focused on the advancement of the interests and claims of the Class over his own interest, and he has always been concerned about obtaining a result that was best for the Class. Mr. Guidry fully supports the Settlement and he does not possess any interests antagonistic to the Settlement Class.

42. Mr. Guidry reviewed and approved of the complaint filed in this case, and kept up with the ongoing developments of the case. He was also consulted regarding the relief reached at mediation. The subject of a service award was not raised nor negotiated until after the Parties had reached a settlement of the underlying claims, and Mr. Guidry's consent and agreement to the terms of the Settlement was not, nor is it in any way, conditioned on his receipt of a service award. Mr. Guidry is likewise aware that, under current Eleventh Circuit precedent, he is not able to obtain a service award. I support the reasonable serve award of $2,500 for Mr. Guidry and request the Court reserve on the issue pending the *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020).

V. CONCLUSION

43. For the above reasons, it is my considered opinion as a seasoned and experienced class action lawyer that the requested attorneys' fees and costs of Class Counsel, are reasonable and appropriate.

44. On behalf of Plaintiff and Class Counsel, I respectfully request that the Court award the requested attorneys' fees, costs, and expenses and reserve ruling on the requested service award pending the *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this Friday, July 2, 2021, at Tampa, Florida.

/s/ John A. Yanchunis, Esq.
John A. Yanchunis, Esq.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRANCE GUIDRY, individually and on behalf of others similarly situated,	)	
	)	**6:19-cv-1936-Orl-3LRH**
Plaintiff,	)	
	)	
v.	)	**Judge Presnell**
	)	**Magistrate Judge Kidd**
PENN CREDIT, CORPORATION,	)	
	)	
Defendant.	)	

DECLARATION OF ALEXANDER H. BURKE

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

1. I am the manager and owner of Burke Law Offices, LLC. I represent Trustee Robert Thomas and Angela Gurzi in *Thomas v. Penn Credit Corp.*, No. 6:19-cv-823-GAP-EJK (M.D.Fla.), and have agreed to support the settlement in this case. I submit this declaration in support of the fee petition in this case, and have an agreement with Morgan & Morgan to share in the fees from this settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I opened Burke Law Offices, LLC in September 2008. The firm concentrates on consumer class action and consumer work on the plaintiff side. Since the firm began, it has focused on prosecuting cases pursuant to the Telephone Consumer Protection Act, although the firm accepts the occasional action pursuant to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Equal Credit

Opportunity Act, Electronic Funds Transfer Act, Illinois Consumer Fraud Act, Truth in Lending Act and the Fair Labor Standards Act, among others. The firm also sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis.

3. I have been 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 2019, 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. My efforts have yielded hundreds of millions of dollars for consumers' benefit. Some notable TCPA class actions and other cases that my firm has worked on include: *Kyle v. Federal Trade Commission,* 2021 WL 1407960 (W.D. Mo. Apr. 14, 2021) (in case of first impression, ordering FTC to share the Do Not Call Registry for litigation purposes); *Bilek v. National Congress of Employers, Inc.,* 2021 WL 25543 (N.D. Ill. Jan. 4, 2021) (compelling class and vicarious liability discovery in TCPA case); *Kyle v. Charter Commc'ns, Inc.*, 2020 WL 2028269 (W.D. Mo. Apr. 27, 2020) (motion to dismiss or stay TCPA case denied); *Gurzi v. Penn Credit, Corp.*, 2020 WL 1501893 (M.D. Fla. Mar. 30, 2020) (finding VoApps calls to be covered by the TCPA); *Hoagland v. Axos Bank*, 2020 WL 583974 (S.D. Cal. Feb. 6, 2020) (motion to dismiss or stay TCPA case denied); *Charvat v. Valente*, 2019 WL 5576932 (N.D. Ill. Oct. 28, 2019) ($12.5M TCPA settlement finally approved); *Brown v. DirecTV, LLC*, 2019 WL 6604879 (C.D. Cal. Aug. 5, 2019) (certifying TCPA litigation class); *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.*, No. 1:17-cv-00335, 2018 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first impression, holding that "direct drop" voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*, No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying motion to dismiss on statutory standing grounds); *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 573 (N.D. Ill. 2018) (certifying contested telemarketing TCPA class); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D.Ga.) (final approval granted for $16M class settlement where I was lead counsel); *Tillman v. The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016) (motion to compel TCPA class case into arbitration denied); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016); (motion to compel arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No. 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction

motion denied); *Bell v. PNC Bank, Nat'. Ass'n*., 800 F.3d 360 (7th Cir. 2015) (class certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting plaintiff's motion to compel vicarious liability/agency discovery in TCPA case); *Lees v. Anthem Ins. Cos. Inc*., 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA case on primary jurisdiction grounds); *In re Capital One TCPA Litig*., No. 11-5886, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.,* 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc*., 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for $4.5 million nonreversionary TCPA settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge TCPA 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, Eastern District of Missouri, and District of Colorado. 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, the United States District Court for the Northern District of Illinois and District of Colorado, and the Seventh Circuit Court of Appeals.

12. When Burke Law Offices, LLC loses cases, my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Greene v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734 (N.D. Ill. 2010), *Elkins v. Medco Health Solutions, Inc.*, No. 12-2141, 2014 WL 1663406 (E.D.

Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm put substantial time and money into these; resources that could have been allocated to other cases, and which hit hard given the firm's small size and finite resources. I believed that the plaintiff/class would prevail in these cases when I accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

13. The contracts I 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%.

14. Co-counsel and I pursued the *Thomas* case on an entirely contingent-fee basis, devoting time and resources without any guarantee of payment.

15. The *Thomas* and *Guidry* cases involved identical equipment and underlying factual issues, as well as nearly identical factual issues. I believe it is fair to say that our work in *Thomas*—from prevailing on Penn's summary judgment motion and obtaining necessary class discovery, to briefing class certification and our own summary judgment motion—paved the way for the *Guidry* settlement and provided the substantial basis for this settlement.

16. The *Thomas* case had extensive motion practice. Discovery was not easy; Defendant only produced the bulk of its discovery after we filed a motion to compel on October 22, 2019. On December 3, 2019, Penn filed an early summary judgment motion on the issue of whether its VoApps messages constituted "calls" under the TCPA. *Thomas* Doc. 35. After full briefing, the Court ruled in Ms. Gurzi's favor. *Gurzi v. Penn Credit, Corp.*, 449 F. Supp. 3d 1294, 1296 (M.D. Fla. 2020). On April 9, 2020, Penn moved for leave to file an interlocutory appeal of the Court's ruling, which the Court denied after briefing. *Gurzi v. Penn Credit, Corp.*, 2020 WL 3288016 (M.D. Fla. June 18, 2020). On April 24, 2020, we moved to dedesignate as confidential a memorandum from a Penn attorney, which warned Penn before the class period that whether VoApps messages were "calls" under the TCPA would likely fall in consumers' favor. *Thomas* Doc. 72. The Court granted that motion on May 5, 2020. *Thomas* Doc. 80. We also successfully defended against Penn's motions to strike Ms. Gurzi's pleadings since her bankruptcy, and for sanctions in relation to

a confidentiality issue. *Thomas* Doc. 108, 109. On June 29, 2020, we moved for class certification, for summary judgment, and to strike the report of Penn's expert, Jan Kostyun. *Thomas* Doc. 116-118. When Penn responded with a new declaration from its expert with additional analysis, we moved to strike that, as well, on August 12, 2020. *Thomas* Doc. 156.

17. We were also appointed as counsel for Ms. Gurzi's bankruptcy trustee, Robert E. Thomas, in relation to these proceedings. In response to the Court's order of August 27, 2020, Mr. Thomas moved to join and amend the complaint to identify himself as a named plaintiff, which the Court granted over Penn's objection. *Thomas* Doc's 171, 179, 180. On December 15, 2020, we filed an amended complaint identifying Thomas as the named plaintiff, to which Penn responded with a motion for judgment on the pleadings on February 26, 2021. *Thomas* Doc's 183, 186. On February 26, 2021, we submitted conformed and updated versions of the motions for class certification and for summary judgment, and on March 12, 2021, we responded to Penn's motion for judgment on the pleadings. These motions remained actively pending until the Court stayed these proceedings in light of the instant Settlement. *Thomas* Doc. 188, 189, 193, 201.

18. Discovery was also thorough and extensive. My office and co-counsel conducted extensive discovery in the *Thomas* matter, including issuing and responding to first-party written discovery requests, defending Ms. Gurzi and Mr. Thomas during their respective depositions on February 4, 2020 and January 14, 2021, deposing Penn's declarant David King on December 2, 2019, issuing third-

party subpoenas to VoApps and multiple cellular carriers, deposing Sprint on December 6, 2019, securing declarations from AT&T and T-Mobile pertinent to class certification issues, and deposing Defendant's Rule 30(b)(6) representative Thomas Perrotta on February 7, 2020. In addition to reviewing Penn's document production, Ms. Gurzi's counsel processed and analyzed *tens of millions* of rows of data produced by Defendant, VoApps, and Sprint. *See Thomas* Doc. 188-1 & Doc. 101 (at Marovitch Decl.).

19. This case was complex. Because of the nature of Plaintiff's claims under the TCPA, data relevant to the class was of central importance, including in relation to identifying violations and ascertaining class members. This proved particularly difficult here, given the way in which Penn Credit memorialized calls and consumer consent (or really, how its records established the *lack* of consent), and Defendant's adversarial arguments against class certification and the merits resulting from, for example, perceived difficulties in establishing ascertainability and predominance on a non-settlement basis, or even proving whether a prerecorded message was made during a particular call.

20. Upon review of the firm's records, this firm's total lodestar for the *Thomas* case is $546,957.50—resulting from 505.2 attorney hours I worked at a rate of $650/hour, plus 514.3 hours the firm's associate, Daniel J. Marovitch, worked at a rate of $425/hour. This does not include time spent on seeking fees or expenses, and also does not include prospective time that the settlement will require, such as

addressing payouts and completion of the Settlement. The following data supports an hourly rate of at least $650 for my work:

a. In *Kondash v. Citizens Bank, N.A.*, 2020 WL 7641785, at *2 (D.R.I. Dec. 23, 2020), the District Judge referred the discrete issue of determining an appropriate fee award for a class TCPA settlement to the Magistrate Judge. As part of a lodestar cross-check, the Magistrate Judge found my proposed hourly rate of $600 per hour to be "well within the realm of reasonable for attorneys of their experience in a case of this type," and approved fees on a percentage of the fund. The District Judge adopted this opinion, *in toto*. *Kondash*, 2021 WL 63409, at *1 (D.R.I. January 7, 2021).

b. In *Leeb v. Charter Commc'ns*, Inc., No. 4:17-cv-02780 (E.D. Mo.), 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 $600 per hour a year later is reasonable for an actual paying client.

c. In *Toney v. Quality Resources, Inc.*, No. 13-42 (N.D. Ill. final approval Sept. 25, 2018), 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.

d. In *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018 (N.D. Ill. Dec. 8, 2016), 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.

e. In *Rose v. Bank of America*, No. 11-2390, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014), I submitted my time records and requested an hourly rate of $575. The Court approved all rates requested by all counsel as generally reasonable, although the opinion does not specifically mention me. See *Id*. at *8.

f. In *O'Hagan v. Blue Ribbon Taxi Association, Inc.*, No. 1:11-cv-5269 (N.D. Ill. Sept. 20, 2013), final approval of a Fair Credit Reporting Act class action settlement was granted. Although fees were capped as part of the settlement, Magistrate Judge Rowland considered and approved all aspects of the settlement. My fee petition in that case requested an hourly rate of $550 per hour.

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

h. 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.

i. 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.

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

21. Mr. Marovitch’s $425 per hour rate is justified because of his experience in litigating TCPA actions, as detailed below.

a. In *Kondash v. Citizens Bank, N.A.*, 2020 WL 7641785, at *2 (D.R.I. Dec. 23, 2020), the District Judge referred the discrete issue of determining an appropriate fee award for a class TCPA settlement to the Magistrate Judge. As part of a lodestar cross-check, the Magistrate Judge found $375 per hour for Mr. Marovitch to be “well within the realm of reasonable for attorneys of their experience in a case of this type,” and approved all fees on a percentage of the fund. The District Judge adopted this opinion, *in toto*. *Kondash*, 2021 WL 63409, at *1 (D.R.I. January 7, 2021).

b. 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.

c. 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.

d. 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 approved fees on a percentage-of-the-fund basis.

e. With respect to the $317,000 TCPA class settlement in *Meredith v. United Collection Bureau, Inc.*, No. 1:16-cv-01102 (N.D. Ohio), he submitted a rate of $375 an hour, with the court again approving full requested fees on a percentage-of-the-fund basis.

f. He was also appointed co-class counsel in the $10.5 million TCPA class settlement in *Abante Rooter & Plumbing, Inc.*, No. 1:15-cv-09025 (N.D. Ill. final approval Dec. 10, 2019), in which he submitted a fee request based on a rate of $375 an hour, which 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.

g. Likewise, Mr. Marovitch's billable rate is reasonably consistent with the $379 average hourly rate for a 6-10 year practicing consumer law small firm attorney in Chicago, per Ronald L. Burdge, United States Consumer Law Attorney Fee Survey Report, at 86 (2017-2018); *see also, e.g., Barnes v. Aryzta, LLC*, 2019 WL 277716, at *2 (N.D. Ill. Jan. 22, 2019) (approving rate of $375 for 4-year associate in consumer privacy class action); *Kasalo v. Trident Asset Mgmt., LLC*, 2015 WL 2097605, at *3 (N.D. Ill. May 3, 2015) (approving $375/hour rate for attorney in consumer FDCPA case with less experience than Marovitch).

22. Burke Law Offices, LLC has $7,799.33 in out-of-pocket costs for the class's benefit for which we seek reimbursement, including costs for case-related travel $853.88, service of process for subpoenas $1,778.90, a $1.03 secretary of state online research charge, and deposition/videographer charges $5,165.52.

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

Executed on July 2, 2021.

/s/ Alexander H. Burke

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRANCE GUIDRY, individually and on behalf of all others similarly situated, *Plaintiff*, v. PENN CREDIT CORPORATION, *Defendant*	Case No.: 6:16-cv-1936-Orl-41LRH

DECLARATION OF DAVID MARCO IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

1. I am one of the founding partners of the law firm of SmithMarco, P.C.; I submit the following declaration in support of my firm's application for an award of attorneys' fees in connection with the services rendered in this case, as well as the reimbursement of expenses incurred by firm with this litigation.

2. I am a member in good standing of the Bars of Illinois and Florida. I have also been admitted to practice before, and am presently a member in good standing of, the Bars of the following courts: United States Court of Appeals, 6th Circuit; United States Court of Appeals, 7th Circuit; United States Court of Appeals, 8th Circuit; United States Court of Appeals, 11th Circuit; Eastern District of Arkansas; Western District of Arkansas; District of Colorado; Northern District of Florida; Middle District of Florida; Southern District of Florida; Northern District of Illinois; Central District of Illinois; Southern District of Illinois; Northern District of Indiana;

Southern District of Indiana; Eastern District of Michigan; Western District of Michigan; Eastern District of Missouri; District of Nebraska; District of New Mexico; Eastern District of Oklahoma; Northern District of Oklahoma; Western District of Oklahoma; Eastern District of Wisconsin; and Western District of Wisconsin.

3. I have been admitted *pro hac vice* in this case and in myriad other jurisdictions across the country, including, Arkansas, Arizona, California, Georgia, Iowa, Indiana, Kansas, Kentucky, Minnesota, New York, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

4. I began practicing law in 2000 and the overwhelming majority of my years as a practicing attorney have been spent exclusively representing the interests of consumers in cases arising from common law fraud and violations of multifarious consumer protection statutes such as various state deceptive business practices acts and lemon laws, and cases arising from violations of consumer federal statutes such as the Fair Credit Reporting Act, Telephone Consumer Protection Act, Truth in Lending Act, Fair Debt Collection Practices Act and Magnusson-Moss Warranty Act.

5. I have worked with my law partner, Larry Smith, for many years. I first worked with Mr. Smith 2002 at another consumer rights firm. In November 2005, Mr. Smith started the law firm of Larry Smith & Associates, Ltd.; I joined his firm in January 2009 as his senior associate, responsible for all aspects of the litigation for the firm. I subsequently became a partner and the name of our firm was changed to SmithMarco, P.C.

6. Mr. Smith and I are actively involved in the National Association of Consumer Advocates; in 2013, we were named as Co-Chairmen for the Illinois Chapter. In that capacity, SmithMarco, P.C., assisted in the organization and scheduling of a three-day seminar regarding the defending of consumer debt lawsuits. Further, I have been repeatedly invited by NACA to deliver a seminar on the Fair Credit Reporting Act.

7. I strive to keep current on the areas of law in which I practice and each year I attend the annual conference of the National Consumer Law Center Consumer Rights Litigation Conference. In addition, I have attended many subject-specific conferences offered by the NCLC, including multiple conferences regarding the Fair Credit Reporting Act and the Fair Debt Collection Practices Act. Further, in addition to Illinois and Florida's mandatory CLE requirements, since 2011 I have attended in excess of 150 continuing legal education classes on a wide range of consumer related issues.

8. In representing the rights of consumers around the country I have successfully prosecuted multiple cases to trial in various forums, including the following: *Carr v. Oak Lawn Mazda, LLC*, 08 M1 109198 (Cook Co., IL) (an action prosecuted for common law fraud and for a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and based upon the defendant's intentional misrepresentation about the history of a used vehicle sold to a consumer. The case proceeded to trial and a successful result was obtained for the consumer); *Copeland v. Kramer & Frank, P.C.,* 09-cv-00310 (E.D. Mo.) (an aggressively contested action

brought against a law firm for its violation of the Fair Debt Collection Practices Act and for misrepresentations made by said firm during the course of the underlying tribunal. The defendant's motion to dismiss (2009 WL 1684661), and motion for summary judgment, were both denied (2010 WL 2232712) and the matter ultimately proceeded to trial. At trial, the jury returned a unanimous verdict for the maximum allowable statutory damages. After the trial, the defendant filed multiple motions, including a motion for new trial based on claimed juror misconduct, putative inappropriate jury instructions, and supposed incorrect evidentiary rulings and a motion for judgment as a matter of law. Each of defendant's motions was denied and defendant filed a notice of appeal with the Eighth Circuit. The matter was ultimately favorably resolved in favor of the plaintiff with the judgment in favor of the consumer remaining intact); *Herring v. Country Chevrolet, Inc.,* 2009 L 124 (Kankakee Co., IL) (proceeded to trial based on the defendant's conduct, which constituted common law fraud and was violative of the Illinois Consumer Fraud and Deceptive Business Practices Act. Specifically, the defendant misrepresented the terms and conditions of the financing of the sale of a vehicle such that the plaintiff's father, a Vietnam veteran, was erroneously solely financially responsible for the vehicle and was subject to a plethora of harassment by collectors and repossession companies. At the conclusion of the plaintiff's case-in-chief, the defendant made a motion for directed verdict, which was denied. The case was subsequently resolved in favor of the consumer and her father); *Lisa Stevens & Gareth Griswold v. Castle Buick* (AAA – Cook Co.) (case predicated on auto dealer's fraudulent misrepresentation about the history and condition of a

vehicle purchased by a consumer. The vehicle had sustained considerable accident damage and was unsafe to drive. The matter was taken to arbitration pursuant to an agreement entered into between the parties and a finding was returned in favor of the consumer); *Keatts v. Ford Motor Company*, 60-cv-10-4722 (Pulaski Co., AR) (one of a number of cases prosecuted in favor of consumers in other jurisdictions. This matter was brought pursuant to the Magnusson-Moss Warranty Act and the Arkansas lemon law. The jury returned a unanimous verdict in favor of the consumer, which ultimately resulted in the defective Ford vehicle being repurchased from the consumer for full value. Though Ford appealed the verdict to the Arkansas Appellate Court, it was unsuccessful in its attempt to overturn the verdict); *Krolicki v. Infiniti of Orland Park, Inc.,* 10 M1 197483 (Cook Co., IL) (a case predicated on the defendant's fraudulent concealment of catastrophic damage to a vehicle it sold to a consumer and one that was being used exclusively by her teenage son. After a five (5) day trial, the jury returned a unanimous verdict on plaintiff's common law fraud count in favor of the plaintiff for her actual damages and for punitive damages. The court further found in favor of the plaintiff for her claim of a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, also for actual damages and punitive damages. Combined with the attorneys' fees and costs awarded, a judgment was entered against the defendant in the amount of $130,115.00); *Clemons v. Nissan North America, Inc.,* 09-L-000339 (Sangamon Co., IL) (breach of warranty case brought against Nissan North America for its failure to comply with the terms of its warranty and its failure to carry our repairs to a consumer's vehicle. The defendant filed a motion to dismiss on the

eve of trial, which was granted by the trial court. We appealed the dismissal of the plaintiff's case and prevailed with the Appellate Court. The matter was remanded to trial and five (5) years after the filing of the complaint, the jury returned a verdict in favor of Ms. Clemons for the full amount of the diminution in value with a petition for fees and costs currently pending with the court); *Legittino v. Metro Auto Traders, Inc.,* (AAA – Cook Co., IL) (binding arbitration wherein auto dealer was found to have violated the Illinois Consumer Fraud and Deceptive Business Practices Act relative to its failure to properly apprise the consumer about the history and condition of the vehicle being purchased); *Schenk v. Crystal Lake Chrysler Jeep* (McHenry Co., IL) (binding arbitration wherein auto dealer was found to have violated the Illinois Consumer Fraud and Deceptive Business Practices Act by misrepresenting the prior history of the subject vehicle, representing the vehicle has having a clean history despite having been a lemon law buyback); *Heling v. Creditors Collection Service, Inc.,* 2:15-cv-01274-JPS (E.D. Wis) (an FDCPA action brought against a debt collector for falsely representing the amount owed. The defendant's motion to dismiss, motion for summary judgment, and post-trial motions were all denied and a jury verdict was entered in favor the plaintiff); *Spina v. Quality Asset Recovery, LLC*, 8:15-cv-02155-TBM (M.D. Fl) (an FDCPA action brought against a debt collector for falsely representing the amount owed, failing to report the disputed nature of the debt, and repeatedly calling the plaintiff's place of employment and leaving messages for the plaintiff's colleagues regarding an unpaid debt; jury verdict in favor of the plaintiff); *Kansy v. Mariner Finance, LLC*, 1:16-cv-01861-PAG (N.D. Oh.) (an FCRA case that was

compelled to arbitration; the plaintiff brought suit against Mariner Finance for repeatedly reporting inaccurate payment information to the consumer reporting agencies to reflect that the plaintiff was late with her payments. The plaintiff had never been late, and she disputed the erroneous reporting. The plaintiff alleged that Mariner failed to conduct a reasonable investigation into the plaintiff's disputes and continued to report inaccurate payment history. Finding in favor of the plaintiff).

9. Since 2009 I have personally resolved more than 1,200 consumer related cases ranging from credit reporting issues, consumer fraud problems, breach of warranty claims, debt collection harassment cases, and TCPA violations.

10. I have personally litigated hundreds of FCRA cases around the country.

11. I have been appointed as Class Counsel in the following cases: *Ronald Lees v. Anthem Blue Cross Blue Shield*, (1:13-cv-04836) a TCPA cases in the Eastern district of Missouri, resulting in a class settlement of $6.25 million; *Jennifer Ossola, et al v. American Express, et al,* (13 CV 4836), a TCPA case in the Northern District of Illinois, resulting in a class settlement of $9.25 million for two separate classes; *Sharon Crosby v. CoreMark Distributors, Inc.,* (1:15-cv-04198) an FCRA case in the Northern District of Georgia, resulting in a class settlement of $259,200; *Deborah Meredith v. United Collection Bureau, Inc.* (1:16-cv-01102) a TCPA case in the Northern District of Ohio, resulting in a class settlement of $317,000; *Yvonne Mack v. Resurgent Capital Services, LP & LVNV Funding,* (1:18-cv-06300) an FDCPA case in the Northern District of Illinois;

Nicholas Der-Hacopian v. DarkTrace, Inc. (4:18-cv-06726), an FCRA case in the Northern District of California, resulting in a class settlement of $82,500.

12. Aside from the class action matters mentioned above, I am also currently counsel in other currently pending class action cases, including: *Deaton v. Trans Union, LLC*, an FCRA case pending in the Eastern District of Pennsylvania, *Persinger v. Southwest Credit Systems*, an FCRA case pending in the Southern District of Indiana, and *Saunders v. Dyck O'Neal, Inc*, a TCPA case currently pending in the Western District of Michigan.

13. My firm acted as Class Counsel with Burke Law Offices in this action and I personally handled or was directly involved in all aspects of this litigation from its inception. The tasks my firm performed can be summarized as follows:

a. Pre-suit investigation of the claims;
b. Drafting of the Class Action Complaint and Amended Class Action Complaints;
c. Review of responsive pleadings and investigation of Defendant's myriad defenses and affirmative defenses;
d. Drafting discovery;
e. Reviewing Defendant's discovery responses;
f. Receiving and reviewing documents produced by the Defendant;
g. Preparing Plaintiff for deposition;
h. Reviewing deposition testimony obtained in case and analyzing for continued litigation;

i. Preparing for all settlement meetings and conferences;

j. Reviewing and researching countless motions filed by Defendant including multiple motions for summary judgment and class certification;

k. Editing and revising Plaintiff's Motion for Attorneys' fees and Costs; and,

l. Researching, drafting, editing and revising Plaintiff's Motion for Class Certification.

14. The hourly rates charged by my firm as set forth herein are the same as the regular current rates charged to clients who retain my firm in connection with non-class matters.

15. The hourly rates are supported by the contingent nature of our representation of Plaintiff and the Class, the time and labor required to bring this matter to a successful resolution, the requisite skill required to properly perform the legal services, the experience reputation of the lawyers involved and the results obtained.

16. The hourly rate charged by me is $500; for Mr. Smith the hourly rate is $550; and, for the paralegals that worked on this case, the hourly rate is $145. The rates charged by the attorneys and paralegals of my firm are reasonable and within the range of the appropriate market rates charged by attorneys with comparable experience levels for litigation of a similar nature, given their experience level, practice concentration and background and my firm's hourly rates have been approved by myriad courts to which fee petitions have been submitted.

17. As of June 30, 2021, my firm has spent 143 hours working on this case, for a total lodestar amount of $73,462.50. My firm's time records were prepared from contemporaneous, daily time records prepared and maintained by my firm, which are available at the request of the Court:

Name	**Position**	**Hours**	**Rate**	**Lodestar**
David M. Marco	Partner	43	$500	$21,500.00
Larry P. Smith	Partner	92.5	$550	$50,875.00
Staff	Paralegal	7.5	$145	$1,087.50
TOTAL		**143**		**$73,462.50**

18. The hourly rates requested are commensurate with the prevailing rates for attorneys that practice federal law. As the case at bar was filed pursuant to a federal remedial statute, the rates charged by other attorneys practicing federal law may be compared to determine an appropriate rate. *See Laffey v. Northwest Airlines, Inc.,* 572 F. Supp. 354, 371 (D.D.C. 1983).

19. As of June 30, 2021, my firm expended costs and expenses of approximately $1,356.70. These expenses are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. All of the expenses incurred were reasonable and necessary for the effective and efficient prosecution of this case.

20. A further breakdown of my firm's costs and expenses is below:

Description	**Subtotals**	**Totals Per Category**
Court Fees		**$600.00**
Filing Fee	$400.00	
Service of Process	$50.00	
Pro Hac Vice Fee for Larry Smith	$150.00	
Professional Fees		**$79.65**
Deposition Transcript – Plaintiff Gurzi	$79.65	
Expense Reimbursements		**$677.05**
Travel Expense- Deposition of Plaintiff-Gurzi	$677.05	
	Total	**$1,356.70**

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

Signed this 30th day of June 2021.

/s/ David M. Marco
DAVID M. MARCO

Attorney for Plaintiff Thomas/Gurzi

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRANCE GUIDRY, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PENN CREDIT CORPORATION,

Defendant

Case No.: 6:16-cv-1936-Orl-41LRH

DECLARATION OF LARRY P. SMITH ON BEHALF OF SMITHMARCO, P.C.

I, Larry P. Smith, declare as follows:

1. I am the founding partner of the law firm of SmithMarco, P.C.

2. I began practicing law in 1993, and since 1998 have been devoted exclusively to handling consumer rights cases such as Fair Credit Reporting Act, Fair Debt Collection Practices Act, Consumer Fraud, Lemon Law, Electronic Funds Transfers Act, and Telephone Consumer Protection Act Cases. In 2005, I started my own practice, Larry P. Smith & Associates, Ltd., which had been changed to SmithMarco, P.C. when David Marco became my partner. Our cases have been exclusively consumer rights cases. In 2013, I was named by the National Association of Consumer Advocates as a co-chairman of the Illinois Chapter. As co-chair, I was part of a steering committee that organized and produced a weekend long seminar on the issue of defending credit card lawsuits on behalf of debtors.

3. I am licensed in the state of Illinois, the Northern, Central and Southern Districts of Illinois, The Eastern and Western Districts of Wisconsin, the Northern and Southern Districts of Indiana, the Eastern District of Missouri, the Eastern and Western Districts of Michigan, and the District Courts of Arkansas, Colorado, Nebraska, and Oklahoma. I am licensed in both the Seventh and Eighth Circuit Appellate courts.

4. I received my undergraduate degree in political science from the University of Illinois in Champaign-Urbana, IL in 1990. From there, I went directly to law at The John Marshall Law School, in Chicago, IL where I received my degree in June of 1993.

5. Prior to 1998, I worked mostly in the field of personal injury. I spent three years working at Smith & Alberts, P.C. (no relation to the named partner) as a litigation attorney where I handled literally hundreds of smaller personal injury matters at both arbitration and trial. I spent two years also practicing personal injury on my own wherein I handled, again, numerous personal injury and civil rights matters in court. Of my highlights would be the matter of *Shirley Vasquez v. Walmart Stores*, wherein I secured a verdict of over $384,000 for an 82-year-old woman who fractured her hip in a Sam's Club, and *Genowefa Zajdel v. Szala's Restaurant* for over $392,000 for another 80-year-old woman who fell and fractured her hip in a banquet hall.

6. I turned to the practice of consumer's rights in 1998 when I began work for the law firm of Krohn & Moss, Ltd. At K&M, I was hired to manage the consumer fraud department where I over saw a case load of over 75 consumer fraud cases. There,

I tried over a dozen cases to verdict on issues dealing primarily with fraud committed in automobile sales transactions – both in the sale and financing of the vehicle. We also handled matters of public interest. In 2003, I handled a multi-plaintiff trial against a person running a modeling agency scam, *Bianca Jackson v. Willis Domingo, Individually and Marc Verlaine Studios*, where we were able to obtain a verdict against the individual, piercing the corporate veil, in the amount of $75,000.

7. I argued before the Seventh Circuit on five occasions, all in cases under the Fair Credit Reporting Act: *Westra v. Credit Control*, 04-3139, argued Feb. 11, 2005; *Sarver v. Experian*, 04-1423, argued Sept. 29, 2004; *Wantz v. Experian*, 04-1272, argued June 17, 2004; *Bagby v. Experian*, 04-2593, argued Dec. 2, 2004; and *Ruffin-Thompkins v. Experian*, 04-1127, argued Nov. 8, 2004.

8. I was also called upon to handle matters out of state as an attorney admitted *pro hac vice* in the states of Wisconsin, Missouri, and Georgia. Most notably, in the matter of *Susan Smith and Cherisse Vawda v. Janesville RV Center* I tried a case involving the sale of a recreational vehicle that was misrepresented as a newer model when it was actually a few years older. In that matter I received a verdict in Rock County, Wisconsin for a total of over $22,000 inclusive of attorney fees.

9. In November of 2005, I opened my own consumer rights firm, Larry P. Smith & Associates, Ltd. At that time, it was just a two-person law firm. Our focus has been exclusively claims for consumers under Fair Credit Reporting Act, Fair Debt Collection Practices Act, Consumer Fraud, Lemon Law, Electronic Funds Transfers Act, and Telephone Consumer Protection Act Cases.

10. While on my own, I handled a number of federal trials in the Northern District of Illinois. In February of 2008, I was counsel for plaintiff in *Fadia Farra v. Wexler & Wexler* , 06 CV 0071, in which my opponent was former judge Wayne Rhine. In that matter, we obtained a verdict under the Fair Debt Collection Practices Act for a total of $875, and were awarded attorney fees in the amount of $32,480. I also handled the trial in the matter of *Wayne Talley v. U.S. Department of Agriculture,* 09 CV 2123 a FCRA case wherein the federal government defended itself on immunity grounds. We were able to secure a verdict for Mr. Talley in the amount of $10,000 after a bench trial before Hon. Wayne Anderson (retired) against the government for misreporting a payment history on a loan. We also had to defend an appeal to the Seventh Circuit, which ultimately required a rehearing *en banc*.

11. Other federal trials I have handled in other matters of consumers' rights include *Cruz v. Affordable Autos*, 01 cv 1861, (dealership sold vehicle to Spanish speaking customer without making any disclosures in native language; verdict for Plaintiff for $5,001, and attorney fees awarded of $15,294), and *Bond v. JVDB Associates*, 03 cv 1804 (violation of FDCPA for harassment and failing to provide validation notice; verdict for Plaintiff for $3,250 plus attorney fees awarded of $15,295).

12. My partner, David M. Marco, began practicing law in 2000, and the overwhelming majority of his years as a practicing attorney have been spent exclusively representing the interests of consumers in cases arising from common law fraud and violations of multifarious consumer protection statutes such as various state deceptive business practices acts and lemon laws, and cases arising from violations of

consumer federal statutes such as the Fair Credit Reporting Act, Telephone Consumer Protection Act, Truth in Lending Act, Fair Debt Collection Practices Act and Magnusson-Moss Warranty Act.

13. In order to further represent the interests of consumers, SmithMarco, P.C. has teamed up with other consumer rights attorneys around the country, including the law firm of Burke Law Offices, LLC, and notably Alex Burke. Mr. Burke focuses on consumer class action cases, with a particular focus on cases arising under the Telephone Consumer Protection Act. Further, Mr. Burke is regularly asked to speak regarding TCPA issues, on the national level and is actively engaged in policymaking as to TCPA issues; indeed, he has had several meetings with various decision makers at the Federal Communications Commission.

14. My firm has handled in excess of 4,000 consumer rights cases. My firm and I first started prosecuting "autodialer" TCPA actions in 2012. Since then, we have successfully prosecuted over fifty (50) individual and class TCPA actions. As for class actions, SmithMarco, P.C. attorneys Larry Smith and David Marco have been appointed as Class Counsel in the following cases: *Jennifer Ossola, et al v. American Express, et al*, (13 CV 4836), a TCPA case in the Northern District of Illinois, resulting in a class settlement of $9.25 million for two separate classes; *Ronald Lees v. Anthem Blue Cross Blue Shield*, (13-cv-01411), a TCPA cases in the Eastern district of Missouri, resulting in a class settlement of $6.25 million; *Sharon Crosby, et al v. Core-Mark Distributors, Inc.,* (15-cv-04198), a Fair Credit Reporting Act case in the Northern District of Georgia, resulting in a class settlement of $494,200 to the class and a

$10,000 incentive award to the class representative; *Debey Meredith v. United Collection Bureau*, (16-cv-01102) a TCPA case in the Northern District of Ohio resulting in a class settlement of $317,000 for a class of 140 people.

15. Aside from the class action matters mentioned above, I am also currently counsel in other currently pending class action cases, including: *Der-Hacopian v. Sentrylink*, (8:18-cv-03001-PWG) in the District of Maryland—class certification pending; *Der-Hacopian v. DarkTrace, Inc.,* (4:18-cv-06726-HSG) in the Northern District of California—class certification pending; *Persinger v. Southwest Credit Systems* (1:19-cv-00853-RLY-MJD) in the Southern District of Indiana – class certification pending; and *Gurzi v. Penn Credit Corporation* (6:19-cv-00823-GAP-EJK) in the Middle District of Florida.

16. As with each and every case that SmithMarco, P.C. handles, we undertook the representation of Ms. Gurzi, the originally named Plaintiff in *Gurzi v Penn Credit*, 6:19-cv-00823-GAP-EJK (subsequently amended to Robert E. Thomas in his capacity as Chapter 7 Trustee of the Estate of Angela Gurzi v. Penn Credit) and the class in this case on a contingency fee basis. We have spent substantial time and resources on the prosecution of this case, both of which could have been spent on other matters. Notwithstanding this fact, we invested our time and resources in the prosecution of this claim to ensure an appropriate remedy for Ms. Gurzi and Mr. Thomas in his capacity as trustee, and the class, cognizant of the fact that we would recover nothing without securing either a favorable settlement or judgment. Together with the law firm of Burke Law Offices, LLC, SmithMarco, P.C. bore the risk of

expending these significant costs and time in litigating the present case action without any guarantee of recovery.

17. I have personally litigated hundreds of federal consumer rights cases in federal courts around the country and my firm acted as Class Counsel with Burke Law Office in this action.

Dated: June 29, 2021

/s/ Larry P. Smith
Larry P. Smith