

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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COLIN LATEANO, individually and on	)	
behalf of others similarly situated,	)	
Plaintiff,	)	Case No.: 1:23-cv-02757
	)	
v.	)	
	)	Honorable Joan B. Gottschall
CHICAGO CUBS BASEBALL CLUB,	)	
LLC,	)	
Defendants.	)	
	)	

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**Amended Motion for Preliminary Approval of Class Action Settlement**

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Pursuant to Fed. R. Civ. P. 23(e) and the Court's order of January 10, 2024 (Doc. 42), Plaintiff Colin Lateano ("Lateano") files this amended motion for preliminary approval of a proposed classwide settlement agreement with the defendant Chicago Cubs Baseball Club, LLC ("the Cubs"). As set forth below, Plaintiff has addressed the issues set forth in the Court's order and moves for preliminary approval of an amended agreement attached hereto in redline as Appendix A.

## **I. SUMMARY OF CHANGES**

Plaintiff originally moved for preliminary approval on December 14, 2023. Doc. 37. On January 10, 2024, the Court denied the motion without prejudice, asking Lateano to address four issues in a re-filed motion for preliminary approval on or before January 31, 2024. Doc. 42.

First, the Court asked Lateano to provide information concerning the number of text messages each class member received in violation of the TCPA to assist the Court's consideration of the recovery provided and the proposed distribution of the settlement on a pro rata basis. *Id.* at 2-3. Lateano provides that information below in Section III and further addresses these issues in Section V(c)(3)-(4). As explained below, while there is some variation in the number of text messages received per class member, the mean, mode, and median number of qualifying text messages received per class member are all 5 text messages. Moreover, few class members received significantly more text messages. Accordingly, payment on a pro rata basis is fair way of distributing the settlement funds. Nevertheless, the parties have agreed to accept whichever distribution method the Court prefers, either pro rata per class member or per text received.

Second, the Court asked Lateano to either replace the proposal for postcard notice with notice via regular mail, or to provide additional information so that it can assess the efficacy of



postcard notice; namely, how much notice via regular mail would increase administration costs and how many class members' email addresses are known for the class. Lateano advises that email addresses are available for 1,932 of the 2,486 class members, and that an updated estimate for notice indicates that notice via regular mail will increase notice costs by approximately \$2,000. Given the Court's concerns about the efficacy of postcard notice,<sup>1</sup> however, the parties have agreed to revise the notice plan to replace postcard notice with notice via regular mail. The revised notice is addressed below in section V(d).

Third, the Court asked for clarification on whether class members who did not elect a preferred payment method (check or EFT) would be paid. The answer is yes. Both the original settlement agreement, and the agreement as proposed for revision, provide that class members who do not elect a preferred payment method will receive a default payment by check (if a mailing address is available) or by EFT (if only email is available). *See Appendix A* at ¶ 62. The option to elect a preference was simply to add a convenience to those who would prefer a different payment method.

Fourth and finally, the Court asked Lateano to either remove the requirement that an objector *personally* sign the objection or provide legal justification for the requirement. As can be seen below, the Parties have removed the requirement for *personal* signature, thus allowing an objector's attorney to sign the objection on the objector's behalf. *See Appendix A* at ¶ 59; *id.* at Notice, ¶ 16; *id.* at Preliminary Approval Order, ¶ 15.

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<sup>1</sup> Plaintiff's counsel have had great success with postcard notice in recent cases. *See Sherman v. Brandt Industries USA Ltd.*, ECF No. 84, at 8, 20-cv-1185 (C.D. Ill.) (postcard notice delivered to 93.3% of the class); *Quarles v. Pret a Manger (USA) Limited*, ECF No. 50, at 7, 20-cv-7179 (N.D. Ill.) (postcard notice delivered to 90.8% of the class); *Marquez v. Bobak Sausage Company*, 2020 CH 04259 (Cir. Ct. Cook. Cty.) (postcard notice delivered to 97.64% of the class).

## II. INTRODUCTION TO THE SETTLEMENT

Lateano filed a class action complaint alleging the Cubs violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(c), and the FCC’s implementing regulations at 47 C.F.R. § 64.1200(d)(3), by failing to institute the procedures necessary to honor do-not-call requests. Doc. 1 at ¶ 34. In support of that claim, Lateano alleged that the Cubs placed marketing text messages to his cell phone after he sent a stop request, and he proposed certification of a class of similarly situated individuals who also received these messages after a stop request. *Id.* at ¶15-16, 21.

After discovery and a full day mediation before the Honorable Thomas Rakowski (Ret.) with JAMS, the Parties reached a classwide settlement agreement that would resolve the claims of 2,486 persons who also received text messages promoting the Cubs after they sent a stop request. Appendix A – Settlement Agreement. If approved by the Court, the agreement requires the Cubs to pay \$1,225,000 into a non-reversionary settlement fund from which class members will receive cash payments without needing to submit a claim form. Lateano estimates that the class members will receive approximately \$300 each if the fund is distributed on a pro rata basis, or \$61 per qualifying text if distributed on a per text basis, with the average class member still receiving approximately \$300 based on the average of 5 qualifying texts per class member.<sup>2</sup>

This is an outstanding result for the class. It is even more outstanding when compared to the majority of TCPA class settlements that require a claim form where the estimated class recovery is based on a five to ten percent claim rate. In this case, a five percent claim rate would

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<sup>2</sup> The settlement fund will be used to pay the cost of class notice and settlement administration, any attorneys’ fees and expenses and any incentive award approved by the Court. *App. A* at ¶ 34, 48-52. The total settlement fund net those payments is estimated to be approximately \$747,218.41 which equals a little over \$300 per class member.

equal \$6,000 per claimant and a ten percent claim rate would equal \$3,000 per claimant, with the remaining class members receiving nothing. Instead of a windfall to a small portion of the class, each class member will receive significant monetary relief.

Moreover, the procedural do-not-call claim at issue here provides statutory damages only *up to* \$500 per violation and requires two calls/texts in a twelve month period for a violation. *See* 47 U.S.C. § 227(c)(5). This is in contrast to the more common TCPA claims concerning automated or prerecorded robocalls under § 227(b), which are not at issue here, and which provide for *mandatory* damages of \$500 even for a single call. As shown below, this settlement provides substantially more monetary relief than the vast majority of settlements even for claims under § 227(b) providing a minimum recovery of \$500 per call.

The proposed settlement is more than fair and reasonable and satisfies Rule 23's requirements for certification. Accordingly, Lateano respectfully requests that the Court grant preliminary approval of the Settlement, certify the proposed Settlement Class, appoint Lateano as class representative and his attorneys as Class Counsel, approve the proposed form and method of Class Notice, and set a Final Approval Hearing.

### **III. RELEVANT BACKGROUND**

The TCPA, and the FCC's implementing regulations, require persons who place calls for telemarketing purposes to maintain procedures necessary to honor do-not-call requests within a reasonable time from the date of the request. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(3).

Lateano filed his complaint on May 2, 2023, alleging the Cubs violated these provisions by placing marketing text messages to his cell phone after he sent a stop request, and proposing certification of a class of similarly situated individuals who also received these messages after a stop request. Doc. 1. The Cubs answered on June 23, 2023, denying that it violated the law, and

asserting as defenses, among other things, that it had implemented reasonable practices and procedures to honor do-not-call requests (aff. defense no. 2, 3), that the case is not appropriate for class certification (aff. defense no. 4), and that plaintiff's claims and the class members' claims were "subject to binding arbitration pursuant to the arbitration provision set forth in the Terms of Use Agreement for mlb.com" (aff. defense no. 10). Doc. 13 at 9-11.

On July 26, 2023, the Court entered a discovery schedule for discovery related to arbitrability. Doc. 23. Over the next few months, the Parties exchanged discovery concerning the arbitrability of the plaintiff's claims. Appendix A at ¶¶ 40-41. During the course of that discovery, the Parties agreed to mediate the case on a classwide basis, and to that end also exchanged discovery concerning the text messages sent to the putative class (i.e., classwide text message data of texts sent after a stop request), which showed there were 2,486 unique cellular telephone numbers (including Plaintiff's number) that received cubs marketing text messages after making a stop request. *Id.* at 41-42; see also Doc. 24.

In total, the class members received 12,175 text messages that could trigger liability under the statute, which prohibits two or more text messages within a 12 month period after a stop request. *Appendix B – Keogh Declaration* at ¶ 11; see also 47 U.S.C. § 227(c)(5). While there is some variation in the number of text messages received per class member,<sup>3</sup> the mean, mode, and median number of qualifying text messages received per class member are all 5 text messages. *Id.* at ¶ 12.

On October 12, 2023, the Parties appeared before the Honorable Thomas Rakowski (Ret.) of JAMS and conducted a full-day in-person mediation at arms-length, during which the

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<sup>3</sup> At the extreme end, only 1% of the class received more than 9 text messages, with the most received being 29. *Appendix B - Keogh Declaration* at ¶ 13.

parties vigorously defended their claims and asserted defenses. Appendix A at ¶ 41. The mediation resulted in a class wide settlement, which the Parties formalized into the agreement set forth herein over the following weeks. *See* Doc. 29.

#### **IV. THE PROPOSED SETTLEMENT**

The Settlement Agreement is attached hereto as *Appendix A*. For purposes of preliminary approval, the following summarizes the Agreement's terms:

##### **a. The Settlement Class.**

The Settlement Class is defined as follows:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12 month period (3) promoting its goods for sale (4) at least 30 days after receipt of a "stop" reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

*App. A* at ¶ 29.

##### **b. Monetary relief for Settlement Class Members.**

The Agreement requires Defendant to create a non-reversionary Settlement Fund of \$1,225,000 (*id.* at ¶ 35, 48) from which each Settlement Class Member will be paid a pro rata share of the fund without the need to submit a claim form after payment of notice and administration costs, any attorneys' fees and expenses approved by the court, and any incentive award to the class representative approved by the Court. *Id.* at ¶ 34, 48 – 52. No amount of the Settlement Fund will revert to Defendant. *Id.* at ¶ 35.

Assuming the court approves the above referenced payments from the Settlement Fund, Plaintiff's Counsel estimate payments of approximately \$300 to each class member if payment is

made on a pro rata per class member basis, or \$61 per qualifying text if distributed on a per text basis, with the average class member still receiving approximately \$300 based on the average of 5 qualifying texts per class member.<sup>4</sup> Payments will be made by check or electronic deposit as selected by each class member. *Id.* at ¶ 62. If no selection is made, class members will receive a default payment by check (if a mailing address is available) or by EFT (if only email is available). *Ibid.* If, after expiration of those payments, there remains money in the Settlement Fund sufficient to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, that remaining money will be distributed on a pro rata basis to those Settlement Class Members in a Subsequent Distribution. *Id.* at ¶ 63.

If there is not enough money for a Subsequent Distribution, or if any checks or deposits from the Subsequent Distribution remain uncashed after the stale date, the remaining funds shall be distributed to a *cy pres*. *Ibid.* Subject to Court approval, Plaintiff suggests any such funds be sent to the National Consumer Law Center (“NCLC”) and earmarked for working to safeguard the protections of the TCPA, as one would be hard pressed to find another organization more closely aligned with the class’s interests than NCLC. *See Ira Holtzman, C.P.A., & Assocs. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013) (TCPA class action rejecting Legal Assistance Foundation of Metropolitan Chicago as a *cy pres* recipient because, although court acknowledged it was “a worthy organization,” it was not closely related to class’s interests and “does not directly or

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<sup>4</sup> The amended costs of notice and administration will be approximately \$28,594.00. Plaintiff’s counsel anticipate they will request 36% of the fund after these admin costs are deducted as a reasonable fee (\$430,706.16); out of pocket expenses of \$8,481.43; and an incentive award of \$10,000. Assuming these payments are approved, the net balance will be approximately \$747,218.41, which is \$300.57 per class member in the 2,486 person class.

indirectly benefit” those interests).<sup>5</sup>

**c. Administration and Notice.**

All costs of notice and administration will be advanced by Defendant and credited against the Settlement Fund. *Id.* at ¶ 61. The Parties have agreed that American Legal Claim Services, LLC will serve as the Settlement Administrator, subject to this Court’s approval. *Id.* at ¶ 27. The Administrator will have the following duties: (1) issuing Class Notice as set forth below; (2) maintaining the settlement fund account; (3) setting up and maintaining the settlement website; (4) maintaining a list of persons who submit opt-out requests, and (5) distributing payments from the settlement fund account. *Id.* at ¶ 36, 54, 56-57, 61-63

Within twenty-one (21) days of entry of the Preliminary Approval Order, the Administrator will issue notice (Ex. 1 to the Agreement) via regular mail to all class members for whom the Administrator has a mailing address, and via email to all class members for whom the Administrator has an e-mail address but not a mailing address. *Id.* at ¶ 14, 16, 54. Before

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<sup>5</sup> NCLC has fought to preserve the TCPA’s protections for years before Congress, before the Federal Communications Commission (“FCC”), and before the courts as an *amicus curiae*, and is a leading consumer advocacy organization on TCPA matters. Since 2014, it has commented on almost every major proceeding, and many minor proceedings, before the FCC concerning the TCPA. *See Robocalls & Telemarketing*, National Consumer Law Center, <https://www.nclc.org/issues/robocalls-and-telemarketing.html> (last visited Apr. 18, 2022). NCLC staff meet regularly with staff of the former and current FCC Chairman’s office as well as with staff of other Commissioners’ office and staff of the Consumer and Governmental Affairs Bureau. *Id.* NCLC staff have also testified before both the House of Representatives and the Senate concerning the TCPA. *Id.* In addition, NCLC has submitted amicus briefs to the Supreme Court and Federal Courts of Appeal in numerous TCPA cases. *Id.* Thus, NCLC’s work reasonably approximates the interests pursued by the class. Given NCLC’s proven record of TCPA advocacy, numerous courts have approved NCLC as a *cy pres* recipient in TCPA class actions, often over defendant’s objection. *See e.g., Braver v. Northstar*, 5:17-cv-00383-F (W.D. Okla. 2020), ECF No. 273; *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 205-06 (N.D. Ill. 2018); *Keim v. ADF Midatlantic, LLC*, 2020 U.S. Dist. LEXIS 49933, \*11 (S.D. Fla. 2020); *Lee v. Global Tel\*Link Corp.*, 2018 U.S. Dist. LEXIS 163410, \*23-25 (S.D. Cal. 2018); *Martinez v. Medicredit, Inc.*, 2018 U.S. Dist. LEXIS 81818, \*4-5 (E.D. Mo. 2018); *Jonsson v. USCB, Inc.*, 2015 U.S. Dist. LEXIS 69934, \*30 (C.D. Cal. 2015); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS, Doc. 269 (D.N.M. Oct. 24, 2016); *see also Legg v. AEO*, 14-cv-02440-VEC (S.D.N.Y. 2017) (TCPA) (approving NCLC for TCPA class case); *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn. Nov. 10, 2016) (Same).

sending the notice, the Administrator will perform a reverse look up for any telephone numbers who do not have either an associated mailing address or an e-mail address in the Class List and will search for updated addresses via the USPS national change of address database. *Id.* at ¶ 54. The Settlement Administrator shall re-mail once any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices. *Ibid.*

The Administrator will also establish and maintain a website at [www.cubstcpsettlement.com](http://www.cubstcpsettlement.com), wherein the notice will be posted, along with instructions for selecting preferred payment methods, updating their address, opting out or objecting, as well as copies of the public pleadings, the Settlement Agreement, and any petitions for payment of attorneys' fees, expenses, and incentive awards. *Ibid.* As mentioned above, the Parties have removed the requirement for *personal* signature on objections, thus allowing an objector's attorney to sign the objection on the objector's behalf. *See Appendix A* at ¶ 59; *id.* at Notice, ¶ 16; *id.* at Preliminary Approval Order, ¶ 15.

**d. Settlement Class release.**

In exchange for the benefits allowed under the Settlement, Settlement Class Members who do not opt-out of the settlement will provide a release tailored to the specific practice at issue in this case. Specifically, they will release claims "regarding any Cubs-related text messages sent by or on behalf of Defendant." *Id.* at ¶ 64.

**e. Class Representative Incentive Award.**

The Agreement provides that Plaintiff may petition the Court for an incentive award. *Id.* at ¶ 51. There is no clear sailing provision as to this request. *Ibid.* The incentive award shall be paid out of the Settlement Fund and is subject to this Court's approval. *Ibid.* Neither Court



approval nor the amount of the incentive award is a condition of the Settlement. *Ibid.* Given Plaintiff's extensive efforts prosecuting this action for the Settlement Class, Plaintiff anticipates requesting an incentive award of \$10,000.00. The petition for an incentive award and attorney fees will be filed the day notice will be mailed and posted on the settlement website for class members to review. Further, the Class Notice will advise the Settlement Class of Plaintiff's request. *Id.* at Ex. 1 (Notice).

**f. Attorneys' fees and costs.**

At the same time as notice is sent, Plaintiff's Counsel will apply to the Court for an award of attorneys' fees and costs. *Id.* at ¶ 50. As with the incentive award to the class, the Agreement does not contain a clear sailing agreement as to attorney fees or costs. *Ibid.* As will be addressed in Class Counsel's motion for attorneys' fees, courts in this district commonly award approximately 36% after administration costs are first deducted plus reasonable expenses in common fund class settlements. *See, e.g., Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 796-97 (7th Cir. 2018) (affirming attorney fees in TCPA class action of 36% of the first \$10 million, 30% of the next \$10 million, and 24% of the next \$34 million).

As explained below and in the forthcoming petition, this amount is appropriate to compensate Class Counsel for the work performed in procuring a settlement for the Settlement Class and for the work remaining to be performed in documenting the settlement, securing Court approval of it, overseeing settlement implementation and administration, assisting Settlement Class Members, and obtaining dismissal of the action. It should be noted, however, that the Settlement is not contingent on Court approval of an award of attorneys' fees or costs. *Id.* at ¶ 50.

Once again, this petition will be posted on the settlement website for class members to review. Further, the Class Notice will inform the Settlement Class Members that Class Counsel

will seek 36% of the fund net administration costs as well as the exact dollar amount this equals.

*Id.* at Ex. 1.

## V. ARGUMENT

### a. The preliminary approval process.

The claims of a class may be settled only with court approval. Fed. R. Civ. P. 23(e). At the preliminary approval stage, the Court must conduct three inquiries. *In re Tiktok, Inc., Consumer Privacy Litig.*, 565 F. Supp. 3d 1076, 1083 (N.D. Ill. 2021). First, the Court must determine whether “it will likely be able” to certify the class under Rule 23 for purposes of entering judgment on the proposed settlement. *Ibid.* (citing Fed. R. Civ. P. 23(e)(1)(B)(ii)). Second, the Court must determine whether “it will likely be able to” finally approve the settlement as “fair, reasonable, and adequate” after a final approval hearing pursuant to Rule 23(e)(2). *Ibid.* (citing Fed. R. Civ. P. 23(e)(1)(B)(i)). This inquiry asks whether the proposed settlement is “within the range of possible approval” with regard to the criteria set forth in Rule 23(e)(2). *Ibid.* Third, if the court finds that it will likely be able to certify the putative class and that the proposed settlement is within the range of possible approval, it must direct the best notice that is practicable under the circumstances to the class. *Ibid.* (citing Fed R. Civ. P. 23(c)(2)(B)).

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

*Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”)

**b. The Proposed Settlement Class Satisfies Rule 23**

As Plaintiff demonstrates below, the Settlement Class satisfies Rule 23(a), which requires: (i) the proposed class be so numerous that joinder of individual class members is impracticable; (ii) there be questions of law or fact common to the class; (iii) the class representative’s claims be typical of the class members’ claims; and (iv) the class representative and counsel will fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a).

And, because the Settlement provides for monetary relief, the Settlement Class also satisfies Rule 23(b)(3)’s requirements that: (i) common questions of law or fact predominate over individual issues; and (ii) the class action device is superior to other means of resolving the claims. Fed. R. Civ. P. 23(b)(3). As explained below, the Settlement Class satisfies all of these prerequisites and should therefore be certified for settlement purposes.

**1. The Settlement Class is sufficiently numerous.**

Rule 23(a)(1) requires a class be so numerous that joinder of all members is impracticable. A class of as few as 40 is sufficient. *Swanson v. American Consumer Industries, Inc.*, 415 F.2d 1326, 1333, fn.9 (7th Cir. 1969). Here, the Settlement Class consists of approximately 2,486 persons, which easily satisfies numerosity.

**2. Plaintiff’s claims are typical.**

A putative class representative also must demonstrate that his claims are typical of the claims of the class she seeks to represent. Fed. R. Civ. P. 23(a)(3). A claim is typical if it “arise[es]

from the same events or course of conduct that gives rise to the putative class members' claims." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018). Typicality is a "low hurdle" requiring "neither complete coextensivity nor even substantial identity of claims." *Owner-Operator Indep. Drivers Ass'n v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 282 (N.D. Ill. 2005).

Here, there is no daylight between Plaintiff's claims and those of the Settlement Class. They are identical and flow directly from Defendant's automated text platform sending telemarketing texts after the receipt of a stop request. Thus, Plaintiff's TCPA claims arise out of the same "event, practice or course of conduct that gives rise to the claim[s] of the other class members" and "are based on the same legal theory." *Parker v. Risk Mgmt. Alternatives, Inc.*, 206 F.R.D. 211, 213 (N.D. Ill. 2002). Consequently, Plaintiff's claims are typical of the Class.

### **3. Plaintiff and Counsel are adequate.**

Adequacy requires that Plaintiff and his counsel "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Here, both Plaintiff and proposed Class Counsel fully satisfy this requirement. In order to be an adequate representative, the named plaintiff must "be part of the class and possess the same interest and suffer the same injury as the class members." *Amchem Prods. v. Windsor*, 521 U.S. 591, 625-26 (1997). Plaintiff meets this standard. Having received the same post-stop-request text messages as every other class members, Plaintiff falls within the class definition and possesses the same interests as every other class member.

Plaintiff's counsel are also adequate to represent the class. They have extensive experience in complex litigation and consumer class actions involving TCPA claims, and have been found adequate and appointed as class counsel in dozens of actions arising under the TCPA and various other consumer protection statutes. *Appendix B - Keogh Declaration* at ¶ 18-60.

**4. Commonality is satisfied.**

Commonality requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The class claims must “depend upon a common contention . . . capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “There need only be one question of law or fact common to the class.” *Woestman v. Signode Indus. Grp.*, 594 F. Supp. 3d 993, 997 (N.D. Ill. 2022)

Here, commonality is satisfied because all of the key questions can be resolved for the entire class in “one stroke,” including (1) whether the arbitration provision in the Terms of Use at mlb.com encompass the class members’ TCPA claims, (2) whether the text messages qualify as “telemarketing,” and (3) the essential question in this litigation - whether Defendant maintained procedures sufficient to honor do-not-call requests. *See* 47 C.F.R. § 64.1200(d)(3). The answers to these questions will not vary among the class members.

**5. Common questions predominate.**

Rule 23(b)(3) requires that “the questions of law or fact common to the class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). “Individual questions need not be absent. The text of Rule 23(b)(3) itself contemplates that such individual questions will be present. The rule requires only that those questions not predominate over the common questions affecting the class as a whole.” *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). As just shown, all of the key questions in this litigation can be resolved for the class in a single stroke. To the extent any individual questions exist, they do not predominate this action.

**6. A class action is the superior means of resolving this dispute.**

Rule 23(b)(3) requires that “a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation.” *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982). This is particularly true in actions like this one, where numerous individual claimants each suffer a relatively small harm. “Rule 23(b)(3) was designed for situations . . . in which the potential recovery is too slight to support individual suits, but injury is substantial in the aggregate.” *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006); accord *Sadowski v. Med1 Online, LLC*, 2008 U.S. Dist. LEXIS 41766, \*14 (N.D. Ill. May 27, 2008)(“In consumer actions involving small individual claims, such as this one, class treatment is often appropriate because each member’s damages ‘may be too insignificant to provide class members with incentive to pursue a claim individually.’”) (quoting *Murray v. New Cingular Wireless Servs.*, 232 F.R.D. 295, 303 (N.D. Ill. 2005)).

Here, the alternative to class resolution is over 2,000 individual lawsuits for modest statutory damages without the ability to recover attorneys’ fees since the TCPA is not fee shifting. As each case would require resolution of identical factual and legal issues, the efficiencies achieved by class-wide resolution are obvious. And there are no manageability issues here because the claims are being certified for purposes of settlement. *See, e.g., Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”).

**c. The Proposed Settlement Warrants Preliminary Approval.**

Finally, the court must next determine whether the settlement is within the range of possible approval by considering whether: (A) the class representative and class counsel have adequately represented the class; (B) the proposed settlement was negotiated at arm's-length; (C) the relief provided for the class is adequate, taking into account, (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposed settlement treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). Each of these factors support preliminary approval.

**1. The Class has been adequately represented.**

First, the named plaintiff and class counsel have adequately represented the class. Fed. R. Civ. P. 23(e)(2)(A). This requirement is satisfied as already shown above. Plaintiff's interests in this case are aligned with those of the class she seeks to represent. Plaintiff and the other Settlement Class Members all share identical claims arising from a common course of conduct. To vindicate those claims, Plaintiff has vigorously prosecuted this action on behalf of the Settlement Class by retaining counsel, assisting his attorneys in investigating the Settlement Class's TCPA claims, reviewing and approving the complaint, answering discovery and producing documents, regularly conferring with his attorneys throughout the litigation and during mediation, and reviewing and approving the Settlement Agreement. *Appendix B – Keogh Dec.* at ¶ 17.

Likewise, Plaintiff's counsel have extensive experience as class counsel in TCPA class actions and, drawing on this experience, were able to efficiently resolve the litigation through precise pleadings, targeted discovery, and a full-day mediation where they vigorously presented the case for the class. *Id.* at ¶ 14-32.

**2. The Settlement resulted from arm's length negotiation.**

Second, the settlement was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B). The settlement resulted from an in-person, day-long mediation before an experienced mediator and former judge (Thomas Rakowski (Ret.)), where the Parties agreed on the principle terms of the Settlement. *See* Doc. 29. Once those terms were in place, the Parties spent another two months negotiating the finer details of the Agreement. *See* Doc. 32, 34.

The arms-length nature of the Parties' discussions is also borne out by the terms of the Agreement itself. The settlement is non-reversionary, provides significant cash payments to all members of the Settlement Class without any need for a claim form, and is devoid of any provision that could indicate fraud or collusion such as a "clear sailing" or "kicker" clause related to attorney's fees or the incentive award. *See Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, at \*15 (N.D. Ill. May 14, 2019) (granting preliminary approval where agreement had "no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's length negotiation"); *see also Schulte v. Fifth Third Bank*, No. 09-CV-6655, 2010 U.S. Dist. LEXIS 144810, at \*15-16 n.5 (N.D. Ill. Sept. 10, 2010) (noting courts "presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered").

**3. The relief provided to the Settlement Class is more than adequate.**

Third, the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2)(C). "Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (cleaned up).



Here, Defendant has agreed to create a \$1,225,000.00 non-reversionary Settlement Fund for a class of 2,486 persons, which is an equivalent gross value of \$493 per person.

As noted above, do-not-call claims at issue do not provide a minimum \$500 per call/text but instead provides statutory damages only *up to* \$500 per violation, which requires two calls/texts in a twelve month period for a violation. This is in contrast to the common TCPA claims concerning automated or prerecorded robocalls under § 227(b), which are not at issue here, providing for mandatory damages of \$500 per call.

This relief exceeds most other TCPA class actions settlements even under § 227(b) that provides for a minimum \$500 for call. Indeed, courts have granted preliminary and final approval of TCPA class action settlements that achieved much smaller recoveries. *See, e.g., Connor v. JPMorgan Chase Bank, N.A.*, No. 10 CV 01284 GPC BGS (S.D. Cal. Feb. 5, 2015), ECF No. 160 (Final Judgment and Order of Dismissal entering final approval of settlement valued at approximately \$4.50 per person); *Kramer v. Autobytel*, No. 10-cv-02722, 2012 U.S. Dist. LEXIS 185800 (N.D. Cal. Jan. 27, 2012) (approving \$12.2 million settlement to benefit 47 million class members, or \$.26 per person); *Malta v. Fed. Home Loan Mortg. Corp.*, No. 10-cv-1290, 2013 U.S. Dist. LEXIS 15731 (S.D. Cal. Feb. 5, 2013) (preliminarily approving \$17.1 million settlement to 5,887,508 class members, or \$2.90 per person; final approval granted at ECF No. 91); *Adams v. AllianceOne Receivables Mgmt. Inc.*, No. 08-cv-00248 (S.D. Cal. Sept. 28, 2012), ECF Nos. 116 and 137 (approving \$9 million settlement to benefit 6,696,743 class members), or \$1.34 per person); *Palmer v. Sprint Nextel Corp.*, No. 09-cv-01211 (W.D. Wash. Oct. 21, 2011), ECF Nos. 84 and 91 (approving \$5.5 million settlement to benefit 18.1 million class members, or \$.30 per person).

Moreover, whether paid on a pro rata basis, or per text basis, the cash payments class

members will actually receive exceeds those provided in most TCPA settlements. *See e.g., In re Capital One TCPA Litigation*, 12-cv-10064 (MDL No. 2416) (N.D. Ill. Feb. 12, 2015) (granting final approval where each class member who submitted claims would be awarded \$39.66); *Wright v. Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729, \*28 (N.D. Ill. 2016) (finally approving “\$45.00 recovery per claimant”); *Garret, et al. v. Sharps Compliance, Inc.*, No. 1:10-cv-04030, Dkt. No. 65 (N.D. Ill. Feb. 23, 2012) (claimants received between \$27.42 and \$28.51); *Gehrich v. Chase Bank U.S.A, N.A.*, 2016 U.S. Dist. LEXIS 26184 (N.D. Ill 2016) (final approval where “the actual recovery per claimant is approximately \$52.50”); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (finding that thirty dollars per claimant is “‘within the range of recoveries’ in TCPA class actions”); *Charvat v. Valente*, 2019 WL 5576932, at \*6 (N.D. Ill. Oct. 28, 2019) (“While the average consumer payout of \$22.17 is not anywhere the statutory maximum, it is also not out of line with other approved TCPA class action settlements.”); *Steinfeld v. Discover Fin. Svcs.* 12-cv-01118 (N.D. Cal.) (Final Approval of \$46.98 to each claimant); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at \*4 (N.D. Ga. Jan. 30, 2017) (finding that the cash recovery of \$24 per claimant in a TCPA class action—far less than the anticipated recovery here—is “an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter”); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358, at \*5 & 10 (N.D. Cal. Aug. 29, 2014) (approving \$20-40 per claimant).

As noted above, if this settlement were compared to the average TCPA class settlement where a claims process is required, the estimated recovery per claimant here would equal \$6,000 for a five percent claim rate and \$3,000 for a ten percent claim rate, with the remaining class members getting nothing. Instead, every class member will receive approximately \$300 if paid on a pro rata basis, and the average class member will receive \$300 if paid on a per text basis. Thus,

in an apples to apples comparison, this settlement is a terrific result far exceeding many other TCPA settlements.

Finally, the above comparison is not even an apples to apples comparison as the above approved claims were under the more common TCPA claim concerning automated or prerecorded robocalls under § 227(b)(3), that provides for *mandatory* damages of \$500 per violation. Here the TCPA do not call claims at issue requires two calls to even state a claim and then provides statutory damages only *up to* \$500 per violation . 47 U.S.C. § 227(c)(5). Thus, there is no guarantee of \$500 per violation even if the class were to prove liability as there is most other TCPA actions.

In sum, the relief provided by the proposed Settlement is more than adequate and exceeds the recoveries provided by other TCPA class settlements found to be fair, adequate and reasonable, making the Settlement here a great result for the Class. And, as shown below, the sub-factors set forth in Rule 23(e)(2)(C) further confirm the adequacy of the class relief.

**a. The risks of continued litigation weigh in favor of approval.**

When evaluating the adequacy of class relief, a court should first compare the costs, risks, and delay of trial against the immediate benefits afforded by the proposed settlement. Fed. R. Civ. P. 23(e)(2), Advisory Committee's Note to 2018 amendment. This sub-factor weighs heavily in favor of approval because the proposed Settlement provides immediate relief to Settlement Class Members while avoiding potentially years of costly, complex litigation, and appeals and the associated risk.

While Plaintiff remains confident in the strength of his claims, Defendant denied all of the material allegations while raising myriad legal and factual defenses that, if successful, could preclude any recovery for the Settlement Class. As an initial matter, this Court stayed all discovery except arbitration discovery. If Defendant was successful with that defense, the class would have recovered nothing.

Another defense is that Defendant maintained reasonable procedures in good faith to honor do-not-call requests but failed to do so here due to an honest error. *See* Doc. 13 at 9 (affirmative defense no. 2, 3). It is worth noting that this defense is not even available under the more common TCPA claims under § 227(b).

Moreover, Plaintiff would also need to prevail at class certification, which would entail extensive motion practice on several hotly contested issues with no guarantee of success. *See* Fed. R. Civ. P. 23(e)(2), Advisory Committee’s Note to 2018 Amendment (directing courts to consider the likelihood of certification when evaluating this sub-factor). Though Plaintiff maintains this case is ideal for certification, success is certainly not guaranteed and Defendant would vigorously oppose. *See* Doc. 13 at 10 (affirmative defense No. 4) (asserting certification is inappropriate).

Taking these realities into account and recognizing the risks involved in any litigation, the monetary relief available to each Settlement Class Member represents an excellent result. Instead of facing the uncertainty of a potential award in their favor years from now, the Settlement allows Plaintiff and Settlement Class Members to receive immediate and certain relief. *See, e.g., Goldsmith*, 1995 U.S. Dist. LEXIS 15093 at \*14-15 (“As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later.”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”).

**b. The proposed method of distribution is effective.**

The next sub-factor analyzes the whether the proposed method for distributing relief to the class is effective. Fed. R. Civ. P. 23(3)(2)(C)(ii). Effective distribution methods are those that “get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.” 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed.).

Here, class members who do not opt-out of the settlement will automatically receive

payment via check or EFT without any need to submit a claim form. *App. A - Agreement* at ¶ 52, 62. The only instance where they need to submit anything is if they elect to receive a different payment method for their convenience. *Ibid.* This proposed method of distribution is about as simple and expeditious as a settlement can get and is equitable to the class members.

**c. The proposed attorney fee award and timing of payment**

The final relevant sub-factor<sup>6</sup> analyzes the adequacy of the class relief in light of “the terms of any proposed award of attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii).

Here, the Agreement does not guarantee any set fee, nor does it provide that Defendant has agreed to any set fee amount. Instead, class counsel anticipates asking the Court to approve a fee award of 36% of the Settlement Fund (excluding administration and other Settlement Costs incurred)—an amount courts within the Seventh Circuit routinely award in TCPA and other class actions. *See, e.g., Birchmeier*, 896 F.3d at 796-97 (affirming attorney fees in TCPA class action of 36% of first \$10 million); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (36% of fund net admin costs in TCPA class action); *In re Capital One*, 80 F. Supp. 3d 781, 807 (N.D. Ill. 2015) (36% of first \$10 million of TCPA class settlement); *see also Martin v. Jth Tax*, No. 1:13-cv-6923, 2015 U.S. Dist. LEXIS 199180, at \*8-9 (N.D. Ill. Sep. 23, 2015) (34% of total TCPA fund); *Lopez-McNear v. Superior Health Linens, LLC*, No.19-cv-2390 (N.D. Ill. Apr. 27, 2021), ECF No. 69 (awarding 35% of fund); *Cornejo v. Amcor Rigid Plastics USA, LLC*, No. 1:18-cv-

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<sup>6</sup> The fourth sub-factor directs courts to consider any side deals or separate agreements reached by the parties in connection with the settlement agreement. *See* Fed. R. Civ. P. 23(e)(2)(c)(iv). Because the Parties have reached no such agreement (Appendix B – Keogh Dec. at ¶ 7) this sub-factor does not factor into the analysis, *see, e.g., Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at \*20 (S.D. Ill. Dec. 13, 2018) (“The parties have not identified, nor is the Court aware of, any agreement—other than the Settlement itself—that must be considered pursuant to Rule 23(e)(3). This factor is neutral.”).

07018, ECF No. 57 (N.D. Ill. Sept. 10, 2020) (awarding 35% of fund).

Class Counsel will file their fee application on the same date notice is sent to the class, and a copy will be posted on the Settlement Website allowing Class Members to review or object. Only after the expiration of the deadline to appeal the Court's final approval order would any fee payment be made. *App. A – Agreement* at ¶ 33, 61(B). Considering all these factors, the relief provided to the class is more than adequate.

**4. The proposed Settlement treats Settlement Class Members equitably.**

Fourth, the proposed settlement treats all class members equitably. Fed. R. Civ. P. 23(e)(2)(D). “Generally, a settlement that provides for pro rata shares to each class member will meet this standard.” *T.K. v. Bytedance Tech. Co., Ltd.*, 2022 U.S. Dist. LEXIS 65322, \*42 (N.D. Ill. March 25, 2022); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is “assured by straightforward pro rata distribution of the limited fund”).

While the Court has questioned whether payment should be made on a per text or pro rata basis, pro rata payment per class member is regularly upheld as an equitable method of distribution, even in those rare instances where the payment structure has garnered an objection. *See Gehrich v. Chase Bank United States*, 316 F.R.D. 215, 231 (N.D. Ill. 2016) (overruling objection that payments were not made per call); *Amadeck v. Capital One Fin. Corp.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (same); *Wright v., Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729, \*28 (N.D. Ill. Aug. 29, 2016) (same); *Wilkins v. HSBC Bank Nev., N.A.*, 2015 U.S. Dist. LEXIS 23869, \* 27-28 (N.D. Ill. Feb. 27, 2015) (same); *Thomas v. Dun & Bradstreet Credibility Corp.*, 2017 U.S. Dist. LEXIS 235064, \* 42-43 (C.D. Cal. Mar. 23, 2017) (same).

Here, given that average class member will received approximately the same amount

(\$300) via a pro rata distribution and via a per text distribution, a pro rata distribution is an equitable and efficient way to administer payment. If one of the very few class members who happened to receive significantly more than the average of 5 calls wishes to opt out of the settlement, they can do so. Because a pro rata distribution treats class members equitably, the Settlement merits approval. Should the Court prefer to approve payment per text received, the Parties have no objection. Appendix A, at ¶ 52. Moreover, the proposed notice covers both options, depending on the Court's order. *Id.* at Exhibit 1 (highlighted language about payment depending on number of text messages received will be included should the court order payment per text).

**d. The Notice Plan Satisfies Rule 23(c)(2)(B)**

Finally, as the proposed settlement would provide monetary relief and the settlement class would be certified pursuant to Rule 23(b)(3), the Court must “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Further, the notice “must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”

*Id.*

The proposed form of Notice, attached as Exhibit 1 to the Agreement set forth this information and are more than adequate. The Notice Plan provides that direct, individual notice

(“Mail Notice”) will be mailed,<sup>7</sup> or emailed, by the Administrator to each Settlement Class Member at the address in the class list, or to the address the Administrator obtains via reverse look-up for numbers where the class lists contains no address, within twenty-one (21) days of the entry of Preliminary Approval Order. App. A – Agreement at ¶ 14, 16, 54. Further, the Settlement Administrator will re-mail once any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices. *Ibid.*

The Administrator will also establish and maintain a website at [www.cubstcpsettlement.com](http://www.cubstcpsettlement.com), wherein the notice will be posted, along with instructions for selecting preferred payment methods, updating their address, opting out or objecting, as well as copies of the public pleadings, the Settlement Agreement, and any petitions for payment of attorneys’ fees, expenses, and incentive awards. *Ibid.* Accordingly, the proposed Notice Plan passes muster and should be approved.

WHEREFORE, the Court should enter the preliminary approval order attached hereto as *Appendix C*, certifying the settlement class, appointing plaintiff as class representative along with plaintiff’s counsels as class counsel, preliminarily approving the class action settlement, and approving notice plan

Respectfully submitted,

PLAINTIFF COLIN LATEANO, on behalf  
of the proposed settlement class,

By: *s/Timothy J. Sostrin*  
Timothy J. Sostrin  
Keith J. Keogh

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<sup>7</sup> As mentioned above, this notice via regular mail replaces the postcard notice proposed in Plaintiff’s prior motion for preliminary approval and is the full long-form notice that was originally proposed for inclusion on the settlement website.



KEOGH LAW, LTD.  
55 W. Monroe St., Ste. 3390  
Chicago, IL 60603  
tsostrin@keoghlaw.com  
Keith@KeoghLaw.com  
*Attorneys for Plaintiff*

# APPENDIX A

**AMENDED SETTLEMENT AGREEMENT AND RELEASE**

**I. PREAMBLE**

1. This Amended Settlement Agreement is made and entered into as of the dates of Execution set forth below, by and among (1) Plaintiff Colin Lateano, individually and on behalf of the Settlement Class, (2) Settlement Class Members, (3) Chicago Cubs Baseball Club, LLC.

**II. DEFINITIONS**

2. “**Action**” means the pending action styled *Colin Lateano, individually and on behalf of all others similarly situated v. Chicago Cubs Baseball Club, LLC*, in the United States District Court for the Northern District of Illinois, Case No. 23-cv-02757.

3. “**Agreement**” means this Settlement Agreement and Release.

4. “**Attorneys’ Fees and Litigation Expenses**” means the attorneys’ fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement to be paid out of the Settlement Fund.

5. “**CAFA Notice**” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

6. “**Class Counsel**” means Keith J. Keogh and Timothy J. Sostrin of Keogh Law, Ltd.

7. “**Class List**” means the list of 2,486 Settlement Class Members, which will include, to the extent Defendant has the information, the full names, telephone number used to subscribe to receive text messages, and last known email and mailing addresses of the Settlement Class Members.

8. “**Class Period**” means the period from May 2, 2019 to May 2, 2023.

9. “**Court**” means the United States District Court for the Northern District of Illinois.

10. “**Defendant**” means Chicago Cubs Baseball Club, LLC.

11. “**Execution**” means the signing of this Agreement by all signatories hereto.

12. “**Final Approval Hearing**” means the hearing during which the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of Attorneys’ Fees and Litigation Expenses awarded to Class Counsel and the amount of any Settlement Class Representative Incentive Payment.

13. “**Final Approval Order**” means the final judgment and order of dismissal approving the Settlement and dismissing the Action with prejudice, which the parties agree to propose in the form attached hereto as Exhibit 3. “Final Approval” occurs on the date that the Court enters the Final Approval Order.

14. “**Notice**” means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 1.
15. “**Notice and Administration Costs**” means any and all costs associated with administering the Settlement by the Settlement Administrator, including, but not limited to, delivery costs, mailing costs, printing costs, taxes and tax-related expenses incurred by or in connection with handling the Settlement Fund, all costs of providing notice to the Settlement Class, costs for creating the Notice, and any different or additional notice that might be ordered by the Court and any other costs associated with administering the Settlement.
16. “**Notice Deadline**” means the date the Court sets for Notice to be provided to the Settlement Class in accordance with the Agreement. The Parties agree to propose that the Notice Deadline will be 21 days following the entry of the Preliminary Approval Order, unless extended by the Court.
17. “**Opt-Out Request**” means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.
18. “**Opt-Out/Objection Period**” means the period that begins the day after the earliest date on which the Notice is first sent, and ends 60 days after mailing of the Notices to putative class members, or such other date as the Court determines. The deadline for the Opt-Out Period/Objection Period will be specified in the Notice.
19. “**Parties**” means Colin Lateano and Chicago Cubs Baseball Club, LLC.
20. “**Plaintiff**” means Colin Lateano.
21. “**Preliminary Approval Order**” means the order certifying the Settlement Class and preliminarily approving the Settlement, which the parties agreed to propose in the form attached as Exhibit 2. “Preliminary Approval” occurs on the date the Court enters the Preliminary Approval Order.
22. “**Release**” means the release contained in this Agreement.
23. “**Released Claims**” means all claims to be released as set forth in the Release.
24. “**Released Parties**” means and refers to Defendant and “MLB Entities,” which shall mean the Office of the Commissioner of Baseball (“BOC”), its Bureaus, Committees, Subcommittees and Councils, MLB Advanced Media, L.P., Major League Baseball Properties, Inc., The MLB Network, LLC, Tickets.com, LLC, the Major League Baseball Clubs and Professional Development League Clubs (“Clubs”), including but not limited to Chicago Cubs Baseball Club, LLC, each of their respective present and future parent, subsidiary, affiliated and related entities, successors and assigns, any entity which, now or in the future, controls, is controlled by, or is under common control with the Clubs or the BOC, and the owners, general and limited partners, shareholders, directors, officers, employees and agents of the foregoing entities.

25. **“Releasing Settlement Class Members”** means Plaintiff and all Settlement Class Members, other than those who submit timely and proper Opt-Out Requests, and their heirs, executors, estates, personal representatives, administrators, agents, attorneys, predecessors, successors, assigns, affiliates, employers, employees, consultants, associates, insurers, accountants, financial and other advisors, underwriters, lenders, auditors, investment advisors, or trusts.

26. **“Settlement”** means the compromise and settlement of the Action as contemplated by this Agreement.

27. **“Settlement Administrator”** means American Legal Claim Services, LLC, subject to approval by the Court. The Settlement Administrator shall be responsible for providing the class Notice as well as the services related to the administration of the Settlement that are addressed and defined herein.

28. **“Settlement Awards”** means the cash payments that may be available to Settlement Class Members who do not submit a timely Opt-Out Request.

29. **“Settlement Class”** means the individuals defined and identified as follows:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12 month period (3) promoting its goods for sale (4) at least 30 days after receipt of a “stop” reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

30. **“Settlement Class Members”** means the Settlement Class Representative and all members of the Settlement Class.

31. **“Settlement Class Representative”** means Colin Lateano, who is the Plaintiff in the Action, and who is also the person Class Counsel shall request to be appointed by the Court as Class Representative for purposes of the Settlement Class. Plaintiff is also a member of the Settlement Class.

32. **“Settlement Class Representative Incentive Payment”** means the additional amount Plaintiff may request he be paid as Class Representative under this Agreement.

33. **“Settlement Effective Date”** means the first business day after the last of the following occurrences:

A. Expiration of the date to appeal entry of the Final Approval Order with no appeal or other judicial review having been taken or sought; or

B. If an appeal or other judicial review has been taken or sought on this Action, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Approval Order is entered by the District Court after remand and the time to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

34. “**Settlement Costs**” means all costs incurred by Plaintiff, Class Counsel, and the Settlement Administrator in connection with the Action, including: (i) the Attorneys’ Fees and Litigation Expenses approved by the Court; (ii) any Settlement Class Representative Incentive Payment approved by the Court; (iii) Notice and Administration Costs; and (iv) the fees, expenses, and all other costs of the Settlement Administrator.

35. “**Settlement Fund**” means the non-reversionary common fund of \$1,225,000.00, to be funded by Defendant pursuant to this Agreement, for purposes of paying Settlement Awards and Settlement Costs, as the foregoing are defined herein.

36. “**Settlement Website**” means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to the Notice and other information regarding the lawsuit and the Settlement. The parties agree that the following URL will be used: [www.cubstcpsettlement.com](http://www.cubstcpsettlement.com).

37. “**Unknown Claims**” means claims that could have been raised in the Action and that any or all of the Releasing Settlement Class Members do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Settlement Effective Date, the Releasing Settlement Class Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, the Releasing Settlement Class Members also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Settlement Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the

subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

### III. RECITALS

38. Plaintiff filed the Action on behalf of himself and on behalf of a putative class of similarly situated individuals alleging Defendant violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(c), and implementing regulations at 47 C.F.R. § 64.1200(d), by sending Plaintiff telemarketing text messages after he opted out.

39. On June 23, 2023, Defendant filed its answer, asserting among other affirmative defenses that (1) it had implemented adequate procedures to prevent telephone solicitations in violation of § 227(c); (2) it had implemented adequate procedures for maintaining an internal do-not-call list as set forth in 47 C.F.R. § 64.1200(d); (3) the class members' claims were subject to arbitration; and (4) that class certification was not appropriate.

40. On July 26, 2023, the Court set a preliminary discovery schedule limited to the issue of arbitrability.

41. After exchanging arbitration-related discovery the Parties participated in a private mediation with the Honorable Judge Rakowski (Ret.) of JAMS on October 12, 2023. The Parties reached a settlement in principle at the mediation.

42. Plaintiff and Class Counsel believe this Action is meritorious. Class Counsel thoroughly investigated the case and diligently pursued Plaintiff's and the Settlement Class Members' claims against Defendant, including, but not limited to: (i) filing pleadings, (ii) obtaining necessary discovery from Defendant and third parties, including classwide text-message data; and (iii) researching the applicable law and the potential defenses. Based on their full, independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses raised by Defendant, class certification risk, summary judgment risk, the risk associated with potential changes in the applicable law, trial risk and appellate risk.

43. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged, and asserts its actions comply with all applicable provisions of federal and state law, and that in any event it is not liable for any of the claims asserted. Defendant also continues to assert the Action fails to meet the prerequisites necessary for class treatment under applicable law. Despite this belief, Defendant will not oppose certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Defendant does not waive its objections to certification of the Settlement Class.

44. The parties contemplate that entry of the Final Approval Order shall dismiss with prejudice Plaintiff's and the Settlement Class Members' claims against Defendant and the Released Parties,

with the exception of claims of Settlement Class Members who properly exclude themselves from the Settlement, if any, in accordance with the Opt-Out Process described in Section VIII of this Agreement. Defendant shall retain any existing defenses to such excluded claims. The Parties agree to cooperate in good faith and take all steps reasonable and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

45. Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

#### IV. CERTIFICATION OF THE SETTLEMENT CLASS

46. The Settlement contemplates Plaintiff will move for a preliminary approval order granting certification of the Settlement Class. The Parties agree certification of the Settlement Class is conditional and for settlement purposes only. This Settlement further contemplates, and all counsel, Parties, and Released Parties agree that none of the Released Parties are admitting that class certification is appropriate, or that any violation of any state, federal or local statute or common law occurred, or that any damages were suffered by Plaintiff or any putative class member. The Released Parties retain their rights to object to certification of this Action, or any other class action, should the Settlement ultimately not receive final approval.

47. If the Court does not grant final approval of the Settlement, or if final approval is granted but ultimately reversed on appeal, or if the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party, and Released Party, shall retain all of their respective rights as they existed prior to Execution of this Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, may be admissible or used for any purpose in this Action, or any other action against any of the Released Parties. Certification of the Settlement Class for settlement purposes is in no way an admission by the Released Parties that class certification is proper.

#### V. TERMS OF SETTLEMENT

48. **Settlement Fund.** Subject to the other terms and conditions of this Agreement, and subject to Court approval, within fourteen (14) days of the entry of the Settlement Effective Date, an all-inclusive payment of ONE MILLION, TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$1,225,000.00) (the Settlement Fund) shall be deposited by or on behalf of Defendant to an account maintained by the Settlement Administrator to settle the Action with the Plaintiff Colin Lateano and the other Settlement Class Members pursuant to this Agreement. The Settlement Fund will be used to pay Settlement Awards and Settlement Costs, as described in this Agreement. In no event will Defendant's and the other Released Parties' payment obligations exceed the \$1,225,000.00 payment comprising the Settlement Fund. The Settlement contemplates the Settlement Fund shall be used to pay Settlement Awards and Settlement Costs, except as provided below. The Settlement Funds will be used to satisfy the claims of Plaintiff and the Settlement Class Members in exchange for the comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.



49. **Notice and Administration Costs.** Notice and administration shall be paid from the Settlement Fund.

50. **Attorneys' Fees and Litigation Expenses.** With no clear sailing provision, Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. Attorneys' Fees and Litigation Expenses approved by the Court shall be paid from the Settlement Fund. The Settlement Administrator shall pay to Class Counsel the amount of the Attorneys' Fees and Litigation Expenses awarded by the Court, as directed by Class Counsel. In the event the Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement. Plaintiff and Class Counsel retain their right to appeal any decision by the Court regarding the award of Attorneys' Fees and Litigation Expenses.

51. **Settlement Class Representative Incentive Payment.** With no clear sailing provision, Plaintiff will petition to the Court for a Settlement Class Representative Incentive Payment for the Settlement Class Representative, to be paid in addition to any Settlement Award he may receive under this Agreement. The Class Representative Incentive Payment shall be paid from the Settlement Fund. The Settlement Administrator shall pay Plaintiff, c/o Class Counsel, the amount of incentive payment awarded by the Court. The denial by the Court of any such application shall not affect the validity and enforceability of the Settlement. Plaintiff retains his right to appeal any decision by the Court regarding the application.

52. **Settlement Award to Settlement Class Members.** The Settlement Awards paid to Settlement Class Members for whom a mailing or e-mail address has been obtained will be a cash payment, the amount of which depends upon the amount of Settlement Costs, and which may be paid *pro rata* in an equal amount per class member, or, if required by the Court, proportionally to the number of qualifying text messages received. All Settlement Class Members who do not opt out shall be paid by check or electronic deposit their share of the Settlement Funds after Settlement Costs are deducted as just described.

## VI. NOTICE TO THE CLASS

53. Within five (5) days of the Court's entry of the Preliminary Approval Order, Defendant shall produce the Class List to the Settlement Administrator.

54. The Settlement Administrator will manage the notice process in cooperation with Class Counsel and Defendant, and in accordance with this Agreement. The Settlement Administrator shall implement the notice program, as set forth in this Section and directed by the Court. The Settlement Administrator shall, by the Notice Deadline, provide:

A. Direct Notice.

The notice attached as Exhibit 1 shall be mailed to those class members for whom the Settlement Administrator has a mailing address. For those who do not have a mailing address but have an e-mail address, the same notice shall be sent via e-mail.

Prior to sending notice, the Settlement Administrator shall perform a reverse look up for any telephone numbers who do not have either an associated mailing address or an e-mail address in the Class List. Subsequently, it shall search for updated addresses via the USPS national change of address database.

The notices shall contain a class member ID and shall direct recipients to the Settlement Website to allow them to obtain additional information, update their address, and/or select whether payment will be via check or electronic payment.

The Settlement Administrator shall re-mail once any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices.

B. **Settlement Website.** The Claims Administrator will establish and maintain an internet site, using an agreed-upon domain name dedicated to the Settlement, on which will be posted the Notice and other information regarding the case, including the public pleadings. A copy of the Agreement shall be available on the Settlement Website promptly following entry of the Preliminary Approval Order and remain until after the stale date of the Settlement Awards. The Settlement Administrator shall secure the URL [www.cubstcpasettlement.com](http://www.cubstcpasettlement.com) for the Settlement Website, or, if unavailable, shall secure another URL mutually agreed upon by the Parties or determined by the Court.

## VII. CAFA NOTICE

55. Pursuant to 28 U.S.C. §1715(b), Defendant shall provide CAFA Notice to the appropriate governmental authorities no later than the end of the ten (10) day period provided by CAFA.

## VIII. OPT-OUT PROCESS

56. A Settlement Class Member who wishes to exclude themselves from this Settlement shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice within the Opt-Out/Objection Period. Opt-Out Requests must: (i) be timely submitted within the Opt-Out/Objection Period; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Lateano v. Chicago Cubs action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

57. The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out Requests and shall provide such list to the Parties upon written request.

## IX. OBJECTION PROCESS

58. A Settlement Class Member who wishes to object to any matter concerning the Settlement must notify the Court and the parties' counsel of his or her objection, in writing, within the Opt-Out/Objection Period, or by other deadline set by the Court.

59. To state a valid objection to the Settlement, an objecting Settlement Class Member must sign the objection and provide the following information with it: (i) class member ID, full name, current address, current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position.

60. Subject to approval of the Court, an objecting Settlement Class Member may, but does not need to, appear in person or by counsel at the Final Approval Hearing. To do so, the objecting Settlement Class Member must file with the Court, and serve on all counsel designated in the Notice, a notice of intention to appear within the Opt-Out/Objection Period, or by other deadline set by the Court. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely provide a notice of intention to appear in conformance with the requirements set out in the Notice and Website Notice, and who has not timely filed an objection in accordance with the requirements set out in the Notice, will be deemed to have waived any objection to the Settlement and can be barred from presenting any views at the Final Approval Hearing.

## **X. DISTRIBUTION PROCESS**

61. The timing of Defendant's funding of the Settlement Fund shall be as follows:

A. Within 7 days after the Court enters the Preliminary Approval Order, Defendant shall transfer the Notice and Administration Costs to the Settlement Administrator, which amount will be credited against the Settlement Fund. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Settlement Administrator for notice and administration shall not be refundable to Defendant.

B. Within 14 days after the Settlement Effective Date, the remaining amount of the Settlement Fund shall be deposited by or on behalf of Defendant. Class Counsel shall instruct the Settlement Administrator as to whom the Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment should be distributed. Defendant shall not, under any circumstances or for any reason, be obligated to pay any amounts in addition to the Settlement Fund in connection with the Settlement.

62. ***Settlement Award Payments.*** Settlement Awards shall be paid by check or electronic payment as selected by the class member. If no selection is made, class members who have a mailing address shall receive a paper check and for those who only have an e-mail address, electronic payment shall be sent. The Settlement Administrator shall undertake reasonable means to locate current addresses for all returned checks. Checks will be valid for ninety (90) days from the date on the check. The amounts of any checks that remain uncashed more than ninety (90) days after the date on the check will be included as part of a Subsequent Distribution (as defined below).

63. ***Subsequent Distribution.*** If, after the expiration date of the checks distributed pursuant to Paragraph 62 above, there remains money in the Settlement Fund sufficient to pay at least \$5.00

to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, that remaining money will be distributed on a *pro rata* basis to those Settlement Class Members (the “Subsequent Distribution”). The Subsequent Distribution shall be made within thirty (30) days after the expiration date of the checks distributed pursuant to Paragraph 64 above, and shall be paid in the same manner as the original Settlement Award. Checks issued pursuant to the Subsequent Distribution will be valid for sixty (60) days from the date on the check. If there is not enough money to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, or if any checks or deposits from the subsequent distribution remain uncashed after the stale date, those funds shall be distributed to a *cy pres* to be agreed upon or if the parties cannot agree, to be decided by the Court at Preliminary Approval.

## **XI. RELEASE**

64. Subject to the Court’s final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Releasing Parties, release and absolutely forever discharge the Released Parties of and from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, damages, punitive, exemplary or multiplied damages, debts, liabilities, accounts, obligations, costs, expenses, attorneys’ fees, liens, actions, rights, and/or causes of action, including Unknown Claims, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the TCPA or other state, federal, local, statutory or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding any Cubs-related text messages sent by or on behalf of Defendant, including all claims that were brought or could have been brought in the Action.

65. Releasing Settlement Class Members acknowledge the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all Released Claims. The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

66. The Final Approval Order shall dismiss the Action with prejudice and shall incorporate the terms of this release.

## **XII. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL**

67. Class Counsel shall apply to the Court for the entry of an order requesting the following relief:

- A. Preliminarily approving the Settlement;
- B. Conditionally certifying the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;
- C. Approving the form and content of the proposed Notice, and plan for its distribution;

- D. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;
- E. Formally appointing Class Counsel as class counsel;
- F. Approving Plaintiff as Settlement Class Representative;
- G. Approving the Settlement Administrator; and
- H. Setting the Notice Deadline and Opt-Out/Objection Period.

### **XIII. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

68. By the Notice Deadline, or as otherwise ordered by the Court, Plaintiff will file a motion in support of Class Counsel's application for Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment.
69. Within 21 days of the end of the Opt-Out/Objection Period, or as otherwise ordered by the Court, Plaintiff will file (i) a Motion and memorandum in support of final approval, including a proposed Final Approval Order in substantially the form attached hereto as Exhibit 3, as well as proof of class notice; and (ii) a Response to any objections.

### **XIV. MUTUAL FULL COOPERATION**

70. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may be needed to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the reasonable assistance and cooperation of Defendant and its counsel, take all reasonable and necessary steps to secure the Court's Final Approval Order.

### **XV. CONDITIONS FOR TERMINATING THE AGREEMENT**

71. In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement. However, the parties may agree to seek approval of an amended version of the Settlement.

### **XVI. SIGNATORIES' AUTHORITY**

72. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

## **XVII. NO PRIOR ASSIGNMENTS**

73. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

## **XVIII. NOTICES**

74. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

### **A. To the Class:**

Keith J. Keogh  
Timothy J. Sostrin  
Keogh Law, LTD.  
55 W. Monroe St., Ste. 3390  
Chicago, IL 60603  
keith@keoghlaw.com  
tsostrin@keoghlaw.com

### **B. To Defendant**

Alan E. Littmann  
Sarah Kinter  
Goldman Ismail Tomaselli Brennan & Baum, LLP  
200 South Wacker Drive  
22<sup>nd</sup> Floor  
Chicago, IL 60606  
alittmann@goldmanismail.com  
skinter@goldmanismail.com

## **XIX. MISCELLANEOUS PROVISIONS**

75. **Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting it.

76. **Captions and Interpretations.** Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

77. **Modification.** This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties. Any such modification is subject to Court approval.

78. **Integration Clause.** This Agreement, the exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

79. **Binding on Assigns.** This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

80. **Counterparts.** This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

81. **Disagreements.** The Parties agree the Court shall resolve any disagreements over the meaning or implementation of this Agreement or the Settlement.

82. **Applicable Law.** This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions.

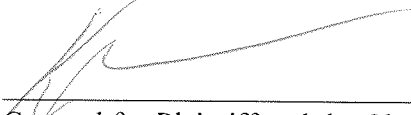
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ACCEPTED AND AGREED:

Colin Lateano  
\_\_\_\_\_  
Colin Lateano

Jan 26, 2024  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Counsel for Plaintiff and the Class  
Keith J. Keogh  
KEOGH LAW, LTD.

1-31-24  
\_\_\_\_\_  
Date



ACCEPTED AND AGREED:

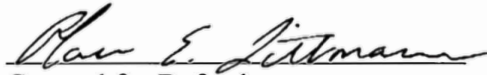


Chicago Cubs Baseball Club, LLC  
By: *Brett Scharback*  
Title: *SVP, General Counsel*

*1/30/24*

\_\_\_\_\_  
Date

APPROVED AS TO FORM:



Counsel for Defendant  
Alan E. Littmann  
GOLDMAN ISMAIL TOMASELLI  
BRENNAN & BAUM LLP

1/30/2024

\_\_\_\_\_  
Date

**EXHIBIT 1**

**NOTICE**

***Lateano v. Chicago Cubs Baseball Club, LLC,***  
United States District Court for the Northern District of Illinois  
Case No. 23-cv-02757

**If you received two or more marketing text messages from the Cubs after making a stop request, you may be entitled to receive compensation as part of a proposed settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- A proposed settlement will provide \$1,225,000.00 (the “Settlement Funds”) to fully settle and release claims of the Settlement Class, which is defined as:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12-month period (3) promoting its goods for sale (4) at least 30 days after receipt of a “stop” reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

- The Defendant denies Plaintiff’s allegations and any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiff’s claims. By entering into the settlement, the Defendant has not conceded the truth or validity of any of the claims against it.
- The Settlement Funds shall be used to pay amounts related to the settlement, including awards to Settlement Class Members, attorneys’ fees and costs to attorneys representing Plaintiff and the Settlement Class (“Class Counsel”), any service award for Plaintiff, and the costs of notice and administration of the settlement. Class Counsel estimate that Settlement Class members will each receive, on average, approximately \$300[**which may vary depending on how many text messages were received**]. Any monies remaining in the Settlement Fund after a second distribution from uncashed checks to the class members who cashed their checks will be distributed to **\_\_\_\_\_** as cy pres subject to court approval.
- Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully. Please refer to the Settlement Agreement, which contains defined terms used herein.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS (This chart only summarizes your rights and options; please see below for further information)	
STAY IN THE CLASS AND RECEIVE PAYMENT	<p>You do not need to do anything to stay in the class. If you stay in the class, you will be eligible to receive payment but you will be bound by the settlement terms and will lose your right to file your own lawsuit regarding the conduct at issue.</p> <p>You may select how you will receive payment and update your address by visiting <a href="http://www.cubstcpasettlement.com">www.cubstcpasettlement.com</a>. Otherwise, if you received notice in the mail, a paper check will be mailed to you at the same address, and if you received notice via e-mail, an electronic payment will be made using that e-mail address.</p>
EXCLUDE YOURSELF OR “OPT-OUT” OF THE SETTLEMENT	<p>If you ask to be excluded from the class, you will not receive a payment. This is the only option that allows you to pursue your own claims for the conduct at issue. The deadline for excluding yourself from the class is [REDACTED] and you must follow the instructions below.</p>
OBJECT TO THE SETTLEMENT	<p>If you wish to object to the Settlement, you must write to the Court explaining why you believe the Settlement is unfair. You can object only if you do not exclude yourself from the class. The deadline for objecting is [REDACTED] and you must follow the instructions below.</p>
GO TO THE FINAL APPROVAL HEARING	<p>You may attend the Final Approval Hearing. At the Final Approval Hearing you may ask to speak in Court about the fairness of the settlement only if you do not exclude yourself from the class. To speak at the Final Approval Hearing, you must file with the Court a document which includes your name, address, telephone number, your signature, and your intention to appear at the Final Approval Hearing. This must be filed no later than _____.</p>

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be disbursed if the Court approves the settlement and after any appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. What is the purpose of this Notice?

The purpose of this notice is to inform you that a proposed settlement has been reached in the class action lawsuit entitled *Lateano v. Chicago Cubs Baseball Club, LLC*, filed in the United States District Court for the Northern District of Illinois, case no. 23-cv-02757. **It is extremely important that you read this notice carefully** because your rights will be affected by this settlement. This notice summarizes the settlement and your rights under it.

### 2. What does it mean if I received an email or mailing about this settlement?

If you received an email or mailing describing this settlement, it is because the text message records compiled in this case indicate that you may be a member of the Settlement Class.

### 3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff, Colin Lateano) sues on behalf of people who have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff claims the Cubs violated the Telephone Consumer Protection Act (“TCPA”) by continuing to send marketing text messages after a person made a stop request. The defendant denies these allegations and any wrongdoing. The Court has conditionally certified a class action for settlement purposes only. The Honorable Joan B. Gottschall is the judge in charge of this action.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or the Cubs. Instead, the parties agreed to this settlement. This way, the parties avoid the risk, uncertainty and cost of a trial, and the Settlement Class members will receive compensation. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

## WHO IS IN THE SETTLEMENT CLASS?

### 5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. The Settlement Class is defined as:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12-month period (3) promoting

its goods for sale (4) at least 30 days after receipt of a “stop” reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

The class members were identified by text message records compiled in the litigation. If you received notice of the settlement via mail or email, you appear to be a member of the class. If you are not sure whether you are included, you can visit other sections of the Settlement Website, [www.cubstcpasettlement.com](http://www.cubstcpasettlement.com), you may contact Class Counsel at 866.726.1092 or [CubsTCPA@Keoghlaw.com](mailto:CubsTCPA@Keoghlaw.com).

## THE LAWYERS REPRESENTING YOU

### 6. Do I have lawyers in this case?

The Court has appointed Keith J. Keogh and Timothy Sostrin from the law firm of Keogh Law, Ltd. as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

### 7. How will Class Counsel be paid?

Class Counsel will be paid from the Settlement Fund. Class Counsel will ask the Court to approve payment of attorneys’ fees of up to [REDACTED] % of the Settlement Fund after class administration costs, which is \$ [REDACTED], as well as payment of reasonable expenses incurred in the litigation. Class Counsel also will ask the Court to approve payment of \$ [REDACTED] to Plaintiff for his services as Class Representative. The Court may award less than these requested amounts.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 8. What does the settlement provide?

**Settlement Fund.** The Cubs will make a one-time, all-inclusive payment of \$1,225,000 into a fund (the “Settlement Fund”), which will cover: (1) cash payments to Settlement Class Members; (2) an award of attorneys’ fees and expenses to Class Counsel, plus expenses, as approved by the Court; (3) service award to the Plaintiff, Colin Lateano, in an amount approved by the Court; and (4) the costs of notice and administration of the Settlement.

### 9. How much will my payment be?

Class Counsel estimates that the amount of the cash award to each class member will be **approximately \$300, on average. This is an estimate only, and may vary depending on how many text messages were received.** The final cash payment amount will also depend on the final cost of notice and administration, and the amounts awarded for attorneys' fees, expenses, and any incentive award.

#### 10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be a Settlement Class Member and will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue, the Cubs or other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders and rulings will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release the Cubs and all other Released Parties from any and all of the Released Claims, as defined in the Settlement Agreement.

In summary, the Plaintiff and all Settlement Class Members, other than those who submit timely and proper Out-Out Requests, and their heirs, executors, personal representatives, administrators, agents, attorneys, predecessors, successors, and assigns, will release the Cubs and "MLB Entities," which shall mean MLB Advanced Media, L.P., the Office of the Commissioner of Baseball ("BOC"), its Bureaus, Committees, Subcommittees and Councils, the Major League Baseball Clubs and Professional Development League Clubs ("Clubs"), Major League Baseball Properties, Inc., The MLB Network, LLC, each of their parent, subsidiary, affiliated and related entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Clubs or the BOC and the owners, general and limited partners, shareholders, directors, officers, employees and agents of the foregoing entities, from all claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, liens, actions and/or causes of action relating to the text messages sent to them.

If you have any questions about the Release or what it means, you may contact Class Counsel at 866.726.1092 or CubsTCPA@Keoghlaw.com. Or, you may talk to your own lawyer at your own expense.

### HOW TO OBTAIN A PAYMENT

#### 11. How can I get a payment?

You may select how you will receive payment and update your address by visiting [www.cubstcpasettlement.com](http://www.cubstcpasettlement.com). Otherwise, if you received notice in the mail, a paper check will be mailed to you at the same address, and if you received notice via e-mail, an electronic payment will be made using that e-mail address.

### WHEN WILL I RECEIVE MY PAYMENT?

**12. When will I receive a settlement payment?**

Payments will be made only after the Court finally approves the settlement and any appeals are resolved. The Court will hold a hearing on [REDACTED] to decide whether to finally approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether appeals will be made, and if so, when they may be resolved. To stay informed of the progress of the settlement, please check the Settlement Website at [www.cubstcpsettlement.com](http://www.cubstcpsettlement.com). Please be patient.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**13. How do I get out of the settlement?**

If you want to keep the right to sue, or continue to sue the Cubs or a Released Party, as defined in the Settlement Agreement, then you must take steps to exclude yourself from or “opt out” of the Settlement.

Persons in the Settlement Class may request exclusion from the Settlement by sending a written request to the Settlement Administrator at [REDACTED] no later than [REDACTED]. Exclusion requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the name and address of the person in the Settlement Class requesting exclusion; and (iii) include a statement or words to the effect of the following: “I request to be excluded from the settlement in the Lateano v. Chicago Cubs action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement.”

No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

**To be valid, you must mail your exclusion request postmarked no later than [REDACTED], and sent to the settlement administrator at [REDACTED].**

**14. If I do not exclude myself, can I sue the Cubs for the text messages later?**

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) the Cubs or any Released Parties for the claims that this Settlement resolves.

**15. If I exclude myself, can I get a benefit from this settlement?**

No. If you exclude yourself, you will not be able to receive a payment from the Settlement Fund and you cannot object to the Settlement.



## OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class and do-not request exclusion, you can object to the Settlement or any part of the Settlement that you think the Court should reject, and the Court will consider your views.

To object, the Settlement Class Member must make the objection in writing, sign the objection, and both file it with the Court and mail it to the attorneys in the action as set forth below by \_\_\_\_\_.

An objection must contain the following information: (i) class member ID, full name, current address, current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position.

**To be considered, you must file your objections with the Court and mail your objections to the addresses below no later than \_\_\_\_\_.**

For Plaintiff:

Keith J. Keogh, Esq.  
Keogh Law, Ltd.  
55 Monroe St., Ste. 3390  
Chicago, IL 60603

For Defendant:

Alan E. Littmann  
Goldman Ismail Tomaselli Brennan &  
Baum, LLP  
200 South Wacker Drive, 22<sup>nd</sup> Floor  
Chicago, IL 60606

Any Settlement Class Member who fails to comply with the provisions set forth above shall waive and forfeit any and all rights to appear separately and/or to object, and shall be bound by all the terms of this Settlement, and by all proceedings, orders, and judgments in the litigation.

### 17. What is the difference between objecting and excluding yourself?

Excluding yourself means that you do not want to be a Settlement Class Member and participate in the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you do not like something about the Settlement. You can object only if you do not exclude yourself from the Settlement.

## THE FINAL APPROVAL HEARING

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at \_\_\_\_:00 a.m. on \_\_\_\_\_, in Courtroom \_\_\_\_\_, at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, which may be conducted by remote or electronic means. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

### 19. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class Members. But, you are welcome to come, or have your own lawyer appear, at your own expense.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. You cannot speak at the hearing if you exclude yourself from the settlement.

In order to speak at the hearing regarding an objection, you must file with the Court, and serve on all counsel a notice of intention to appear by \_\_\_\_\_. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting you will present to the Court. Unless otherwise ordered by the Court, if you do not timely provide a notice of intention to appear in conformance with these requirements you may be barred from presenting any views at the Final Approval Hearing.

## GETTING MORE INFORMATION

### 21. How do I get more information?

This notice is only a summary of the proposed settlement. You can get a copy of the settlement agreement by visiting the Settlement Website, [www.cubstcpasettlement.com](http://www.cubstcpasettlement.com), or you may contact Class Counsel at 866.726.1092 or [CubsTCPA@Keoghlaw.com](mailto:CubsTCPA@Keoghlaw.com)

**DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, THE CUBS, OR THE CUBS' COUNSEL ABOUT THE SETTLEMENT.**

**EXHIBIT 2**

**PRELIMINARY APPROVAL ORDER**

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

COLIN LATEANO, Individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No. 23-cv-02757
	)	
v.	)	Hon. Joan B. Gottschall
	)	
CHICAGO CUBS BASEBALL CLUB, LLC	)	
	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER (1) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, (2) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, (3) APPROVING NOTICE PLAN AND (4) SETTING FINAL APPROVAL HEARING**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of the proposed class action settlement (the "Settlement"). The Action was brought by Plaintiff Colin Lateano ("Plaintiff", "Lateano", or "Settlement Class Representative"), individually and on behalf of all others similarly situated, against defendant Chicago Cubs Baseball Club, LLC ("The Cubs" and, together with Plaintiffs, the "Parties"). Based on this Court's review of the Parties' Settlement Agreement and Release (the "Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, and the arguments of counsel and good cause having been shown, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.

2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties, and all persons in the Settlement Class.

3. Scope of Settlement. The Agreement resolves claims that arise out of or relate to the Cubs or anyone allegedly acting on its behalf sending marketing text messages to the Settlement Class Members after they made a stop request.

4. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair, reasonable and adequate, and within the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12-month period (3) promoting its goods for sale (4) at least 30 days after receipt of a “stop” reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

6. In connection with this conditional certification, the Court makes the following preliminary findings:

(a) The Settlement Class consists of 2,486 natural persons and is so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact arising under the TCPA common to the Settlement Class for purposes of determining whether the Settlement should be approved;

(c) Plaintiff’s claims appear to be typical of the claims being resolved through the Settlement;

(d) Plaintiff appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;

(e) For purposes of determining whether the Agreement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual persons in the Settlement Class. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of the Settlement, certification of the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

7. Class Representative. The Court appoints Colin Lateano to act as the representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Class Counsel. The Court appoints Keogh Law, Ltd., as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Final Approval Hearing. At \_\_\_\_\_ .m. (central) on \_\_\_\_\_, in Room \_\_\_\_\_, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Agreement and to determine whether (a) final approval of the Settlement embodied by the Agreement should be granted, and (b) Class Counsel's application for attorneys' fees and expenses, and service award to Plaintiff, should be granted, and in what amount. No later than the Notice Deadline set forth below, Plaintiff must file papers in support of Class Counsel's application for attorneys' fees and expenses and the service award to the Plaintiff. No later than \_\_\_\_\_(21 days from opt-out objection deadline)\_\_\_\_\_, Plaintiff must file papers in support of final approval of the Settlement, proof of class notice, a list of all persons who requested exclusion (to be filed under seal), and response to any written objections.

10. Settlement Administrator. American Legal Claims Services is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator, as set forth in the Agreement and this Order.

11. Class Notice. The Court approves the proposed plan for giving notice to the Settlement Class by directly mailing notice where mailing addresses are available, and emailing



notice where e-mail addresses are available but no mailing address is available, combined with a Settlement Website, as more fully described in Plaintiff's Motion and the Agreement ("Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than \_\_\_\_\_(21 days from prelim approval order)\_\_\_\_\_, ("Notice Deadline").

12. Opt-Out/Objection Period. Persons in the Settlement Class who wish to either object to the Settlement or request exclusion from the Settlement Class must do so by \_\_\_\_\_ which is sixty (60) calendar days after the Notice Deadline. Persons in the Settlement Class may not both object and opt-out. If a person both requests to opt out and objects, the request to opt out will control.

13. Exclusion from the Settlement Class. To request exclusion from the Settlement Class, a person in the Settlement Class must send a written request to the Settlement Administrator at the address designated in the Class Notice no later than the last day of the Opt-Out/Objection Period. Exclusion requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the name and address of the person in the Settlement Class requesting exclusion; and (iii) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Lateano v. Chicago Cubs action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in

the Settlement Class from the Settlement Class. The Settlement Administrator must retain a copy of all requests for exclusion.

If a timely and valid exclusion request is made by a person in the Settlement Class, then the Agreement and any determinations and judgments concerning the Settlement will not bind the excluded person.

14. Binding Effect. All Settlement Class Members will be bound by all determinations and judgments concerning the Settlement.

15. Objections to the Settlement. To object to the Settlement, Class Members must follow the directions below and in the Class Notice and sign and file a written objection with the Court no later than the last day of the Opt-Out/Objection Period. The objection must also be mailed to each of the following, postmarked no later than the last day to file the objection: (i) Class Counsel – Keogh Law, Ltd., 55 W. Monroe, Ste. 3390, Chicago, Illinois 60603; and (ii) Alan E. Littmann, Goldman Ismail Tomaselli Brennan & Baum, LLP 200 South Wacker Drive, 22nd Floor, Chicago, IL 60606.

An objection must provide: (i) class member ID, full name, current address, current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position, and (v) state whether the objector intends to appear at the final approval hearing, and if so, include all evidence the objector intends to present at the hearing. Any Settlement Class Member who fails to comply with these requirements will not be permitted to object to the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have

waived his, her or its objections, and will be forever barred from making any objections in the Action or any other related action or proceeding. All Settlement Class Members will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

For any objection filed, the Clerk of the Court is ordered to redact any social security number, the street address, telephone number and last name except first letter of last name in order to protect the objector's privacy. The objector's first name and city, state and zip code, as well as the objection, will not be redacted.

16. Stay of Other Proceedings. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed.

Pending the final determination of whether the Settlement should be approved or until a class member validly excludes themselves from the Settlement Class, Plaintiff and all persons in the Settlement Class are hereby stayed and enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum, against any of the Released Parties. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated. Nothing herein will prevent any person in the Settlement Classes, or any person actually or purportedly acting on behalf of any such person(s), from taking any actions to stay or dismiss any Released Claim(s). This injunction is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Agreement and to enter judgment when

appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments. This injunction does not apply to any person who requests exclusion from the Settlement.

17. Return to Status Quo if No Settlement Effective Date. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court, the certification of the Settlement Class shall be void and the Parties and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion seeking class certification, any motion seeking to compel arbitration or otherwise asserted at any other stage of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any person in the proposed Settlement Class, Defendant or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

In the event that the Settlement is not approved, or is terminated, canceled or fails to become effective for any reason, the money remaining in the Settlement Fund (including accrued interest), less reasonable administrative expenses incurred or due and owing and payable from the Settlement Fund in accordance with the Agreement, shall be returned to Defendant within 15 days of the event that causes the Agreement to not become effective.

18. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way,

whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

19. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

20. Schedule of Future Events. Accordingly, the following are the deadlines by which certain events must occur:

<u>          </u> , 202 <u>  </u> [21 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
<u>          </u> , 202 <u>  </u> [21 days after the date of this order]	Deadline for filing of Plaintiff’s Motion for Attorneys’ Fees and Costs and Service Award
<u>          </u> , 2024 [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out/Objection Deadline)
<u>          </u> , 2024 [21 days after the Opt-Out/Objection Deadline]	Deadline for Plaintiff to file the following: (1) List of persons who made timely and proper requests for exclusion (under seal); (2) Proof of Class Notice; and (3) Motion and memorandum in support of final approval, including responses to any objections.
<u>          </u> , 2024 at <u>          </u> .m. [No earlier than 116 days from the entry of this Order]	Final Approval Hearing

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Joan B. Gottschall  
United States District Judge

**EXHIBIT 3**

**FINAL APPROVAL ORDER**

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

COLIN LATEANO, Individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No. 23-cv-02757
	)	
v.	)	Hon. Joan B. Gottschall
	)	
CHICAGO CUBS BASEBALL CLUB, LLC	)	
	)	
Defendant.	)	

**[PROPOSED] FORM OF ORDER GRANTING FINAL APPROVAL**



The Court having held a Final Approval Hearing on [REDACTED], 2024, notice of the hearing having been duly given in accordance with this Court's Order (1) Preliminarily Approving Class Action Settlement, (2) Conditionally Certifying a Settlement Class, (3) Approving Notice Plan and (4) Setting Final Approval Hearing (the "Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and Release between Plaintiff Colin Lateano ("Plaintiff") and Chicago Cubs Baseball Club, LLC ("Defendant") dated [REDACTED], 2023, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (Dkt. No. [REDACTED]) are also incorporated by reference into this Final Approval Order.

2. This Court has jurisdiction over the subject matter of the Action and over the Parties, including all Settlement Class Members with respect to the Settlement Class certified for settlement purposes in this Court's Preliminary Approval Order, as follows:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12-month period (3) promoting its goods for sale (4) at least 30 days after receipt of a "stop" reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

3. The Court hereby finds that the Agreement is the product of arm's length settlement negotiations between Plaintiff and Defendant that resulted from a mediation on October 12, 2023,

before Judge Rakowski (Ret.) of JAMS, who has extensive experience mediating class actions including those brought pursuant to the TCPA.

4. The Court hereby finds and concludes that Class Notice was disseminated to persons in the Settlement Class consistent and in accordance with the terms of the Agreement and that the Class Notice and its dissemination were in compliance with this Court's Preliminary Approval Order.

5. The Court further finds and concludes that the Class Notice procedures set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Final Approval Order.

6. There were no objections to the Agreement *or* [For the reasons stated on the record, as well as the reasons set forth in Plaintiff's and Defendant's respective pleadings, the Court overrules all objections to the Agreement.]

7. [If Applicable] [The Court finds that \_\_\_\_\_ is/are not class members and have no standing to object to the Settlement Agreement.]

8. The Court hereby fully and finally approves the Agreement and finds that the terms constitute, in all respects, a fair, reasonable and adequate settlement as to all Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure.

9. The Court hereby fully and finally certifies the Settlement Class for settlement purposes. The Court finds for settlement purposes that the Action satisfies all the requirements of Rule 23 of the Federal Rules of Civil Procedure.

10. The Court hereby approves the plan of distribution for the Settlement Fund as set forth in the Agreement. The Settlement Administrator is hereby ordered to comply with the terms of the Agreement with respect to distribution of Settlement Awards and disposition of any remaining funds thereafter. Should any funds be remaining after any second distribution, the Court hereby approves [REDACTED] as the *cy pres* recipient(s) who shall receive an equal distribution. The Court finds this/these organization(s) is/are closely aligned with the class's interests.

11. This Court hereby dismisses this Action, with prejudice, without costs to any party, except as expressly provided for in the Agreement.

12. As of the Settlement Effective Date, the Plaintiff and each and every one of the Settlement Class Members unconditionally, fully and finally release and forever discharge the Released Parties from the Released Claims as fully set forth in the Agreement.

13. The Agreement (including any and all exhibits attached thereto) and any and all negotiations, documents, and discussions associated with it are subject to Rule 408 of the Federal Rules of Evidence and will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, the Preliminary Approval Order and/or this Final Approval Order.

14. If for any reason whatsoever this Settlement fails to become effective for any reason, the certification of the Settlement Class shall be void and the Parties and the Action will return to the status quo as it existed prior to the Agreement. The Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement shall be vacated. However, any payments made to the

Settlement Administrator for services rendered to the date of termination shall not be refunded by Defendant.

15. Moreover, in the event that the Settlement fails to become effective for any reason, the money remaining in the Settlement Fund (including accrued interest), less reasonable expenses incurred or due and owing and payable from the Settlement Fund in accordance with the Agreement, shall be returned to Defendant within 15 days of the event that causes the Agreement to not become effective.

16. In the event that any provision of the Agreement or this Final Approval Order is asserted by Defendant as a defense in whole or in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Agreement, this Final Approval Order and this Court's authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

17. Class Counsel have moved pursuant to FED. R. CIV. P. 23(h) for an award of attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3), this Court makes the following findings of fact and conclusions of law:

(a) that the Class Settlement confers substantial benefits on the Settlement Class Members;

(b) that the value conferred on the Settlement Class is immediate and readily quantifiable upon this Judgment becoming Final (as defined in the Agreement), Settlement Class Members will receive cash payments that represent a significant portion of the damages that would be available to them were they to prevail in an individual action under the Telephone Consumer Protections Act (“TCPA”);

(c) that Class Counsel vigorously and effectively pursued the Settlement Class Members’ claims before this Court in this complex case;

(d) that the Class Settlement was obtained as a direct result of Class Counsel’s advocacy;

(e) that the Class Settlement was reached following extensive negotiation between Class Counsel and Counsel for Defendant and was negotiated in good-faith and in the absence of collusion;

(f) that Settlement Class Members were advised in the Class Notice approved by the Court that Class Counsel intended to apply for an award of attorneys’ fees in the amount in an amount of up to \$ [REDACTED] and expenses in the amount of up to \$ [REDACTED] incurred in the prosecution of the Litigation, to be paid from the Settlement Fund;

(g) that [REDACTED] member(s) of the Settlement Class has (have) submitted written objection(s) to the award of attorneys’ fees and expenses;

(h) that counsel who recover a common benefit for persons other than himself or his client is entitled to a reasonable attorneys’ fee from the Settlement Fund as a whole. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (“the attorneys for the class petition the court for compensation from the settlement or common fund created for the class’s benefit”); and accordingly, Class Counsel are hereby

awarded \$ [REDACTED] for attorneys' fees and \$ [REDACTED] for reimbursed expenses from the Settlement Fund, which the Court finds to be fair and reasonable, and which amount shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Agreement.

14. The Class Representative, as identified in the Preliminary Approval Order, is hereby compensated in the amount of \$ [REDACTED] for his efforts in this case. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *In re Synthroid Mkt. Litig. (“Synthroid I”)*, 264 F.3d 722, (7th Cir. 2001) (“Incentive awards are justified when necessary to induce individuals to become named representatives.”).

**IT IS SO ORDERED,  
ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Joan B. Gottschall

# APPENDIX B

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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COLIN LATEANO, individually and on behalf of others similarly situated,	)	
	)	
Plaintiff,	)	Case No.: 1:23-cv-02757
	)	
v.	)	
	)	Honorable Joan B. Gottschall
CHICAGO CUBS BASEBALL CLUB,	)	
LLC,	)	
Defendants.	)	
	)	

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**AMENDED DECLARATION OF KEITH J. KEOGH**

Keith J. Keogh declares under penalty of perjury, that the following statements are true:

1. I am a member in good standing of the Illinois State Bar, and the founder and managing partner of Keogh Law, Ltd.. I am one of the lawyers primarily responsible for prosecuting Plaintiff Colin Lateano (“Plaintiff”) and the putative class members’ claims under the Telephone Consumer Protection Act (“TCPA”) in this case.

2. I submit this declaration in support of *Plaintiff’s Motion for Preliminary Approval of Class Action Settlement*. I am over the age of eighteen and am fully competent to make this declaration. This declaration is based upon my personal knowledge and if called upon to testify to the matters stated herein, I could and would do so competently.

3. As shown below, my firm has regularly engaged in major complex litigation and consumer class actions involving the TCPA and other statutory privacy claims. For example, I was class counsel in some of the largest TCPA settlements in the country. *See Hageman v. AT&T Mobility LLC, et al.*, No. 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) (Final Approval Granted February 11, 2015 providing for a \$45 million settlement for a class of 16,000 persons) and *Capital One Telephone Consumer Protection Act Litigation, et al.*, No. 12-cv-10064 (N.D. Ill. Judge



Holderman) (Liaison Counsel and additional Class Counsel) (Final Approval Granted February 12, 2015 for a \$75 million settlement). My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

### **This Litigation**

4. The Parties' settlement agreement in this case was reached after substantial written discovery and a full-day, in-person mediation before the Honorable Judge Thomas Rakowski (Ret.) on October 12, 2023.

5. Before the mediation, the Parties exchanged detailed mediation briefs setting forth their respective legal and factual arguments, and during the mediation, the Parties vigorously presented their respective positions on the strength of their cases, and the potential relief for the proposed Settlement Class.

6. After reaching an agreement in principle on the material terms, the parties spent the next two months negotiating the finer points of the formal agreement, which culminated in the Settlement Agreement executed on December 14, 2023.

7. At all times, the settlement negotiations were arm's-length, non-collusive, and the parties have not entered into any side-deals or separate agreements in connection with the Settlement Agreement.

8. Under the Agreement, Defendant will pay One Million, Two Hundred Twenty Five Thousand Dollars (\$1,225,000.00) into a non-reversionary Settlement Fund. All Settlement Class Members will receive a *pro rata* share, after payment of the costs of notice and administration and the court-approved attorneys' fee and class representative incentive award.

9. None of the Settlement Fund will revert back to Defendant.

10. The Settlement Class is comprised of the subscribers to 2,486 unique cellular telephone numbers (including Plaintiff's number) that received cubs marketing text messages after making a stop request, according to the text message records produced in discovery.

11. Those records show that the class members received a total of 12,175 text messages that could trigger liability under the statute, which prohibits two or more text messages within a 12 month period after a stop request.

12. While there is some variation in the number of text messages received per class member, the mean, mode, and median number of qualifying text messages received per class member are all 5 text messages.

13. At the extreme end, only 1% of the class received more than 9 text messages, with the most received being 29.

14. The Settlement reached in this case was the product of well-informed judgments about the adequacy of the relief provided to the proposed Settlement Class. Class Counsel are intimately familiar with the relative strengths and weaknesses of the claims and defenses in this case, as well as the corresponding legal and factual issues. This knowledge—which was obtained through party and non-party discovery, as well as Class Counsel's extensive experience, legal research and pre-suit investigation—was sufficient to make an informed recommendation about the value of the claims at issue, the costs, risks, and delays of protracted litigation, discovery, and appeals, and the adequacy of the class relief secured through the Settlement.

15. While I am confident in the strength of the claims alleged in this case and that Plaintiff would ultimately prevail at trial, Defendant denied all of Plaintiff's material allegations and raised numerous legal and factual issues that, if successful, could preclude any recovery for the Settlement Class, including an arbitration defense, and a defense that it maintained the procedures required by the TCPA.

16. Given the risks and delays posed by further litigation, as well as my considerable experience doing plaintiffs' consumer protection work, I believe the settlement is more than fair, adequate, and reasonable, and is in the best interest of the Settlement Class. Instead of facing the uncertainty of a potential award in their favor years from now, the Settlement allows Plaintiff and Settlement Class Members to receive immediate and certain relief.

17. Plaintiff played a key role in prosecuting this case and securing the proposed Settlement on behalf of the proposed Settlement Class. Specifically, Plaintiff retained experienced counsel class action litigators to bring this action, assisted his attorneys in investigating the Settlement Class's TCPA claims, reviewed and approved each of the Class Action Complaint prior to filing, answered written discovery, engaged in extensive efforts to search for and obtain necessary documents, regularly conferred with his attorneys throughout the litigation and during mediation, and reviewed and approved the Settlement Agreement prior to signing it.

#### **Class Counsel's Experience**

18. Keogh Law, Ltd. consists of six attorneys and focuses on consumer-protection class actions. I am a shareholder of the firm and member of the bars of the United States Supreme Court and Court of Appeals for the First, Second, Third, Seventh, Ninth and Eleventh Circuits, Eastern District of Wisconsin, Northern District of Illinois, Central District of Illinois, Southern District of Indiana, District of Colorado, Middle District of Florida, Southern District of Florida, the Illinois State Bar, and the Florida State Bar, as well as several bar associations and the National Association of Consumer Advocates.

19. In 2015, the National Association of Consumer Advocates honored me as the Consumer Attorney of the Year for my work in courts and with the FCC insuring the safeguards of the TCPA were maintained.

20. In addition to the record settlements under the TCPA, my firm was class counsel in

the largest class action settlements involving an anti-identity theft law that aims to protect the privacy of personal information, called the Fair and Accurate Credit Transactions Act. *Flaum v Doctors Associates*, 16-CV-61198-CMA (S.D. Fla.) (\$30.9 million dollars); *Martin v Safeway*, 2020 CH 5480 (\$20 million dollar common fund); *Legg v. Laboratory Corporation of America Holdings*, No. 14-cv-61543-RLR (S.D. Fla., filed July 6, 2014) (\$11 million dollars); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC (S.D. Fla., filed Aug. 29, 2014) (\$7.5 million dollars); *Muransky v. Godiva Chocolatier, Inc.*, 15-cv-60716-WPD (S.D. Fla., filed Apr. 6, 2015) (\$6.3 million dollars) (on appeal).;

21. I was also lead or class counsel in the following class settlements many of which involve the TCPA: *Breda v. Verizon* 16-cv-11512-DJC (D.Ma. 2022) (TCPA); *Braver v. Northstar Alarm Services, LLC*, No. 5:17-cv-00383-F (W.D. Okla. Nov. 3, 2020) (TCPA); *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct. Cook Cty. Jun. 8, 2020) (Ill. Security Deposit Return Act, Ill. Security Deposit Interest Act, Ill. Tenant Utility Payment Disclosure Act); *Cook v. Wal-Mart Stores, Inc., et al.*, No. 3:16-cv-673-BRD-JRK (M.D. Fla. Jun. 4, 2020) (TCPA); *Cranor v. The Zack Group, Inc., et al.*, No. 4:18-cv-00628-FJG (W.D. Mo. May 18, 2020) (TCPA); *Keim v. ADF MidAtlantic, LLC*, 2018 U.S. Dist. LEXIS 204548 (S.D. Fla. Mar. 20, 2020) (TCPA); *Guarisma v. Alpargatas USA, Inc. d/b/a Havaianas*, Case No. 1:18-cv-24351-JEM (S.D. Fla. Feb. 27, 2020) (FACTA) (preliminary approval); *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al.*, 4:17-cv-00872-BCW (W.D. Mo. Aug. 8, 2019) (Missouri Merchandising Practices Act, Missouri Security Deposit Statute); *Detter v. KeyBank, N.A.*, No. 1616-cv-10036 (Jackson Cty., Mo. July 12, 2019) (FCRA); *Leung v XPO Logistics, Inc.*, 15 CV 03877 (N.D. Ill. 2018) (TCPA); *Martinez v Medcredit*, 4:16CV01138 ERW (E.D. Mo. 2018) (TCPA); *Martin v. Wells Fargo Bank, N.A.*, 16-cv-09483 (N.D. Ill. 2018) (FCRA); *Town & Country Jewelers, LLC v. Meadowbrook Insurance Group, Inc., et al*, 15-CV-02419-PGS-LHG

(D. NJ. 2018) (TCPA); *Legg v. AEO*, 14-cv-02440-VEC (TCPA) (on appeal after final approval from professional objector); *Markos v Wells Fargo*, 15-cv-01156-LMM (N.D. Ga.) (TCPA); *Ossola v. Amex*, 1:13-cv-04836 (N.D. Ill. 2016) (TCPA); *Luster v. Wells Fargo*, 15-1058-TWT (N.D. Ga.) (TCPA); *Prather v Wells Fargo*, 15-CV-04231-SCJ (ND. Ga) (TCPA); *Joseph et al. v. TrueBlue, Inc. et al.*, Case No. 3:14-cv-05963 (D. Wa.) (TCPA case, \$5 million for 1,948 class members); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty. Sept. 14, 2017) (landlord/tenant under Chicago RLTO); *Tripp v. Berman & Rabin, P.A.*, 2017 U.S. Dist. LEXIS 3971 (D. Kan. Jan. 9, 2017); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS; *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *De Los Santos v Millword Brown, Inc.*, 9:13-cv-80670-DPG (S.D. Fl) (TCPA); *Allen v. JPMorgan Chase Bank, N.A.* 13-cv-08285 (N.D. Ill. Judge Pallmeyer) (TCPA); *Cooper v NelNet*, 6:14-cv-314-Orl-37DAB (M.D. Fl.) (TCPA); *Thomas v Backgroundchecks.com*, 3:13-CV-029-REP (E.D. Va.) (additional class counsel); *Carrero v. LVNV Funding, LLC*, 11-CV-62439-KMW (S.D. Fl. 2016) (Unlicensed debt collector under Fl. law); *Lopera v RMS*, 12-c-9649 (N.D. Ill. Judge Wood), *Kubacki v Peapod*, 13-cv-729 (N.D. Ill. Judge Mason); *Wojcik v. Buffalo Bills, Inc.*, 8:12 CV 2414-SDM-TBM (M.D. Fla.) (TCPA); *Curnal v LVNV Funding, LLC.*, 10 CV 1667 (Wyandotte County, KS 2014) (Unlicensed debt collector under KS law); *Cummings v Sallie Mae*, 12 C-9984 (N.D. Ill. Judge Gottschall) (TCPA) (co-lead); *Brian J. Wanca, J.D., P.C. v. L.A. Fitness International, LLC*, Case No. 11-CV-4131 (Lake County, Il. Judge Berrones) (TCPA); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, L.L.C., et al*, 12-cv-3671 (N.D. Ill. 2013 Judge Gottschall) (TCPA); *Saf-T-Gard v. TSI*, 10-c-7671, (N.D. Ill. Judge Rowland) (TCPA); *Cain v Consumer Portfolio Services, Inc.* 10-cv-02697 (N.D. Ill. Judge Keys) (TCPA); *Iverson v Rick*

*Levin & Associates*, 08 CH 42955 Circuit Court Cook County (Judge Cohen) (TCPA); *Saf-T-Gard v Seiko*, 09 C 776 (N.D. Ill. Judge Bucklo) (TCPA); *Jones v. Furniture Bargains, LLC*, 09 C 1070 (N.D. Ill) (FLSA collective action); *Saf-T-Gard v. Metrolift*, 07 CH 1266 Circuit Court Cook County (Judge Rochford) (Co-Lead) (TCPA); *Bilek v Countrywide*, 08 C 498 (N.D. Ill. Judge Gottschall); *Pacer v Rothenback*, 07 C 5173 (N.D. Ill. Judge Cole); *Overlord Enterprises v. Wheaton Winfield Dental Associates*, 04 CH 01613, Circuit Court Cook County (Judge McGann) (TCPA); *Whiting v. SunGard*, 03 CH 21135, Circuit Court Cook County (Judge McGann) (TCPA); *Whiting v. GoIndustry*, 03 CH 21136, Circuit Court Cook County (Judge McGann) (TCPA).

22. I was the attorney primarily responsible for the following class settlements: *Wollert v. Client Services*, 2000 U.S. Dist. LEXIS 6485 (N.D. Ill. 2000); *Rentas v. Vacation Break USA*, 98 CH 2782, Circuit Court of Cook County (Judge Billik); *McDonald v. Washington Mutual Bank*, supra; *Wright v. Bank One Credit Corp.*, 99 C 7124 (N.D. Ill. Judge Guzman); *Arriaga v. Columbia Mortgage*, 01 C 2509 (N.D. Ill. Judge Lindberg); *Frazier v. Provident Mortgage*, 00 C 5464 (N.D. Ill. Judge Coar); *Largosa v. Universal Lenders*, 99 C 5049 (N.D. Ill. Judge Leinenweber); *Arriaga v. GNMortgage*, (N.D. Ill. Judge Holderman); *Williams v. Mercantile Mortgage*, 00 C 6441 (N.D. Ill. Judge Pallmeyer); *Reid v. First American Title*, 00 C 4000 (N.D. Ill. Magistrate Judge Ashman); *Fabricant v. Old Kent*, 99 C 6846 (N.D. Ill. Magistrate Judge Bobrick); *Mendelovits v. Sears*, 99 C 4730 (N.D. Ill. Magistrate Judge Brown); *Leon v. Washington Mutual*, 01 C 1645 (N.D. Ill. Judge Alesia).

23. The individual class members' recovery in some of these settlements was substantial. For example, in one of the cases against a major bank the class members' recovery was 100% of their actual damages resulting in a payout of \$1,000 to \$9,000 per class member. In another case against a major lender regarding mortgage servicing responses, each class member who submitted a claim form received \$1,431. *McDonald v. Washington Mutual Bank*.

24. In addition, to the above settlements, I was appointed class counsel in: *Keim v. ADF MidAtlantic, LLC*, 2018 U.S. Dist. LEXIS 204548 (S.D. Fla., Dec. 3, 2018) (TCPA); *Braver v. Northstar Alarm Services, LLC*, No. 5:17-cv-00383-F (W.D. Ok 2018) (TCPA); *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *Stahl v. RMK Mgmt. Corp.*, 2015-CH-13459 (Cir. Ct. Cook Cty.) (landlord/tenant under Chicago RLTO); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Galvan v. NCO Fin. Sys.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Pesce v First Credit Services*, 11-cv-01379 (N.D. Ill. December 19 2011) (TCPA Class); *Smith v Greytstone Alliance*, 09 CV 5585 (N.D. Ill. 2010); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D. Ill. 2008) (Co-Lead Counsel for FACTA class); *Harris v. Best Buy Co.*, 07 C 2559,2008 U.S. Dist. LEXIS 22166 (N.D. Ill. March 20, 2008) (FACTA class); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FACTA class); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FACTA class); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596,2008 WL 400862 (N.D. Ill. 2008) (FACTA class); *Pacer v. Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008) (FACTA class).

25. My firm has also litigated dozens of putative class actions for violations of BIPA. *Quarles v. Pret A Manger (USA) Ltd.*, No. 20 CV 7179, 2021 U.S. Dist. LEXIS 79053, at \*1 (N.D. Ill. Apr. 26, 2021); *Sherman v. Brandt Indus. USA*, 500 F. Supp. 3d 728, 730 (C.D. Ill. 2020); *Svoboda v. Amazon.com, Inc., et al.*, 1:21-cv-05336 (N.D. Ill.); *Hanlon ex rel. G.T. v. Samsung Elecs. Am., Inc.*, 1:21-cv-04976 (N.D. Ill.); *Svoboda v. Frames for America, Inc.*, 1:21-cv-05509 (N.D. Ill.); *Steinberg v. Charles Indus., L.L.C.*, 2021 CH 01793 (Cir. Ct. Cook Cnty.); *Ortega v. The Expediting Co., Inc.*, 2021 CH 00969 (Cir. Ct. Cook Cnty.); *Fells v. Carl Buddig & Co.*, 2021 CH 00508 (Cir. Ct. Cook Cnty.); *Mathews v. Brightstar US, LLC*, 2021 CH 00167 (Cir. Ct. Lake

Cnty.); *Roberts v. Graphic Packaging Int'l, LLC*, 3:21-cv-00750 (S.D. Ill.); *Willem v. Karpinske Enters., L.L.C.*, 2021 CH 00031 (Cir. Ct. Jo Daviess Cnty., Ill.); *Shafer v. Rodebrad Mgmt. Co., Inc.*, 2021 CH 00008 (Cir. Ct. Montgomery Cnty., Ill.); *Roberts v. TDS Servs., Inc.*, 2021 CH 00005 (Cir. Ct. Washington Cnty., Ill.); *Jenkins v. Regal Cinemas, Inc.*, 1:20-cv-03782 (N.D. Ill.); *Turner v. Crothall Healthcare, Inc.*, 1:20-cv-03026 (N.D. Ill.); *McFerren, et al. v. World Class Distribution, Inc.*, 1:20-cv-02912 (N.D. Ill.); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.); *Barton v. Swan Surfaces, LLC*, 3:20-cv-00499-SPM (S.D. Ill.); *Wells v. Medieval Times U.S.A., Inc.*, 2020 CH 06658 (Cir. Ct. Cook Cnty.); *Young v. Van Ru Credit Corp.*, 2020 CH 04303 (Cir. Ct. Cook Cnty.); *Marquez v. Bobak Sausage Co.*, 2020 CH 04259 (Cir. Ct. Cook Cnty.); *Isychko v. Jidd Motors, Inc.*, 2020 CH 04244 (Cir. Ct. Cook Cnty.); *Heidelberg v. Forman Mills Inc.*, 2020 CH 04079 (Cir. Ct. Cook Cnty.); *Hirmer v. Elite Med. Transp., LLC*, 2020 CH 04069 (Cir. Ct. Cook Cnty.); *Magner v. SMS-NA, LLC*, 2020 CH 00520 (Cir. Ct. Cook Cnty.); *Gumm v. Vonachen Servs., Inc.*, 2020 CH 00139 (Cir. Ct. Peoria Cnty., Ill.); *Bayeg v. The Admiral at the Lake*, 2019 CH 08828 (Cir. Ct. Cook Cnty.); *Bayeg v. Eden Mgmt., LLC*, 2019 CH 08821 (Cir. Ct. Cook Cnty.); *Tran v. Simple Labs., LLC*, 2019 CH 07937 (Cir. Ct. Cook Cnty.).

26. Some reported cases of mine involving consumer protection include: *Cranor v. 5 Star Nutrition, LLC*, 998 F.3d 686 (5th Cir. 2021); *Breda v. Cellco P'ship*, 934 F.3d 1 (1st Cir. 2019); *Evans v. Portfolio Recovery Assocs.*, 889 F.3d 337 (7th Cir. 2018); *Susinno v. Work Out World Inc.*, 862 F.3d 346, 351 (3rd Cir. 2017) (finding a "nuisance and invasion of privacy resulting from a single prerecorded telephone call"); *Franklin v. Parking Revenue Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Galvan v. NCO Portfolio Mgmt. Inc.*, 794 F.3d 716, 721 (7th Cir. 2015); *Leeb v. Nationwide Credit Corp.*, 806 F.3d 895 (7th Cir. 2015); *Smith v Greystone*, 772 F.3d 448 (7th Cir. 2014); *Clark v Absolute Collection Agency*, 741 F.3d 487 (4th Cir. 2014); *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012); *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir.



Ill. 2012); *Catalan v. GMAC Mortgage Corp.*, No. 09-2182 (7th Cir. 2011) ; *Gburek v Litton Loan*, 614 F.3d 380 (7th Cir. 2010); *Sawyer v. Ensurance Insurance Services* consolidated with *Killingsworth v. HSBC Bank Nev., NA.*, 507 F3d 614, 617 (7th Cir. 2007), *Echevarria et al. v. Chicago Title and Trust Co.*, 256 F3d 623 (7th Cir. 2001); *Demitro v. GMAC*, 388 Ill. App. 3d 15, 16 (1st Dist. 2009); *Hill v. St. Paul Bank*, 329 Ill. App. 3d 7051, 1768 N.E.2d 322 (1st Dist. 2002); *In re Mercedes-Benz Tele Aid Contract Litig.*, 2009 U.S. Dist. LEXIS 35595 (D.N.J. 2009); *Catalan v. RBC Mortg. Co.*, 2009 U.S. Dist. LEXIS 26963 (N.D. Ill. 2009); *Elkins v. Equifax, Inc.*, 2009 U.S. Dist. LEXIS 18522 (N.D. Ill. 2009); *Harris v. DirecTV Group, Inc.*, 2008 U.S. Dist. LEXIS 8240 (N.D. Ill. 2008); *In re TJX Cos., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 2008 U.S. Dist. LEXIS 38258 (D. Kan. 2008); *Martin v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 89715 (N.D. Ill. 2007); *Elkins v. Ocwen Fed. Sav. Bank Experian Info. Solutions, Inc.*, 2007 U.S. Dist. LEXIS 84556 (N.D. Ill. 2007); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. 2007); *Stegvilas v. Evergreen Motors, Inc.*, 2007 U.S. Dist. LEXIS 35303 (N.D. Ill. 2007); *Cook v. River Oaks Hyundai, Inc.*, 2006 U.S. Dist. LEXIS 21646 (N. D. Ill. 2006); *Gonzalez v. W. Suburban Imps., Inc.*, 411 F. Supp. 2d 970 (N.D. Ill. 2006); *Eromon v. GrandAuto Sales, Inc.*, 333 F. Supp. 2d 702 (N.D. Ill. 2004); *Williams v. Precision Recovery, Inc.*, 2004 U.S. Dist. LEXIS 6190 (N.D. Ill. 2004); *Doe v. Templeton*, 2003 U.S. Dist. LEXIS 24471 (N.D. Ill. 2003); *Ayala v. Sonnenschein Fin. Servs.*, 2003 U.S. Dist. LEXIS 20148 (N.D. Ill. 2003); *Gallegos v. Rizza Chevrolet, Inc.*, 2003 U.S. Dist. LEXIS 18060 (N.D. Ill. 2003); *Szwebel v. Pap's Auto Sales, Inc.*, 2003 U.S. Dist. LEXIS 13044 (N.D. Ill. 2003); *Johnstone v. Bank of America*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon v. Washington Mutual Bank*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Ploog v. HomeSide Lending*, 2001 WL 987889 (N.D. Ill. 2001); *Christakos v. Intercounty Title*, 196 F.R.D. 496 (N.D. Ill. 2000); *Batten v. Bank One*, 2000 WL 1364408 (N.D. Ill. 2000); *McDonald v. Washington Mutual Bank*, 2000 WL 875416 (N.D. Ill.

2000); and *Williamson v. Advanta Mtge Corp.*, 1999 U.S. Dist. LEXIS 16374 (N.D. Ill. 1999). The *Christakos* case significantly broadened title and mortgage companies' liability under Real Estate Settlement Procedures Act ("RESPA") and *McDonald* is the first reported decision to certify a class regarding mortgage servicing issues under the Cranston-Gonzales Amendment of RESPA.

27. I have argued before the First, Fifth, Seventh, Eleventh Circuits, the First District of Illinois and the MultiLitigation Panel in various cases including *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. 2012); *Catalan v GMACM* (7th Cir. 2010); *Gburek v. Litton Loan Servicing* (7th Cir. 2009); *Sawyer v Esurance* (7th Cir. 2007), *Echevarria, et al. v. Chicago Title and Trust Co.* (7th Cir. 2001); *Morris v Bob Watson*, (1st. Dist. 2009); *Iverson v. Gold Coast Motors Inc.*, (1st. Dist. 2009); *Demitro v. GMAC* (1st Dist. 2008), *Hill v. St. Paul Bank* (1st Dist. 2002), and *In Re: Sears, Roebuck & Company Debt Redemption Agreements Litigation* (MDL Docket No. 1389). *Echevarria* was part of a group of several cases that resulted in a nine million dollar settlement with Chicago Title.

28. My published works include co-authoring and co-editing the 1997 supplement to *Lane's Goldstein Trial Practice Guide* and *Lane's Medical Litigation Guide*.

29. I have lectured extensively on consumer litigation, including extensively on class actions and the TCPA. For example, I:

- a. Presented at the National Consumer Law Center 2018 annual conference on the TCPA.
- b. Presented at the 2018 Fair Debt Collection Training Conference for two sessions on the TCPA.
- c. Presented at the National Consumer Law Center 2017 annual conference on the TCPA.
- d. Presented at the National Consumer Law Center 2016 annual conference on the TCPA.
- e. Presented at the 2016 Fair Debt Collection Training Conference for a session on TCPA Developments.

- f. Presented for the National Association of Consumer Advocates November 2015 webinar titled Developments and Anticipated Impact of Recent FCC TCPA Rules.
- g. Presented at the National Consumer Law Center 2015 annual conference in San Antonio, Tx. on the TCPA.
- h. Presented at the 2015 Fair Debt Collection Training Conference for three sessions on the TCPA.
- i. Presented at the National Consumer Law Center 2014 annual conference in Tampa Fl. for two sessions on the TCPA.
- j. Panelist for the December 2013 Strafford CLE Webinar titled TCPA Class Actions: Pursuing or Defending Claims Over Phone, Text and Fax Solicitations.
- k. Panelist for the December 2014 Chicago Bar Association Class Action Seminar titled “Class Action Settlements in the Seventh Circuit: Navigating Turbulent Waters.”
- l. Presented at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- m. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPI lectured at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- n. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology.
- o. Presented for the National Association of Consumer Advocates November 2013 webinar titled Current Telephone Consumer Protection Act Issues Regarding Cell Phones.
- p. Presenter for the November 2013 Chicago Bar Association Class Action Committee presentation titled Future of TCPA Class Actions.

- q. Speaker at the Social Security Administration's Chicago office in August 2013 on a presentation on identity theft, which included consumers' rights under the Fair Credit Reporting Act.
- r. Panelist for the May 14, 2013 Chicago Bar Association Class Action Seminar titled "The Shifting Landscape of Class Litigation" as well as for the March 20, 2013 Strafford CLE webinar titled "Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology."
- s. Lectured at the June 6, 2013 Consumer Law Committee of the Chicago Bar Association on the topic "Employment Background Reports under the Fair Credit Reporting Act: Improper consent forms to failure to provide background report prior to adverse action."
- t. Lectured at the 2013 Fair Debt Collection Training Conference for three sessions on the TCPA.
- u. Presented at the 2012 National Consumer Law Center annual conference for a session on the TCPA.
- v. Presented at the 2012 Fair Debt Collection Training Conference for a session on the TCPA.
- w. Panelist for Solutions for Employee Classification & Wage/Hour Issues at the 2011 Annual Employment Law Conference hosted by Law Bulletin Seminars.
- x. Lectured at the 2011 National Consumer Law Center conference for a session titled Telephone Consumer Protection Act: Claims, Scope, Remedies as well as lectured at the same 2011 National Consumer Law Center conference for a double session titled ABC's of Class Actions.
- y. Taught *Defenses to Foreclosures* for Lorman Education Services, which was approved for CLE credit, in 2008 and 2010.

z. Guest lecturer on privacy issues at University of Illinois at Urbana-Champaign School of Law. In March 2010.

aa. Guest speaker for the Legal Services Office of The Graduate School and Kellogg MBA Program at Northwestern University for its seminar titled: “Financial Survival Guide: Legal Strategies for Graduate Students During A Period of Economic Uncertainty.”

30. I was selected as an Illinois Super Lawyer from 2014 through 2022 and an Illinois Super Lawyer Rising Star each year from 2008 through 2013, and my cases have been featured in local newspapers such as the Chicago Tribune, Chicago Sun-Times, The Naperville Sun, Daily Herald and RedEye.

31. Timothy J. Sostrin is a partner in the firm joining in 2011. He is a member in good standing of the Illinois bar, the U.S. District Court District of Colorado, U.S. District Court Northern District of Illinois, U.S. District Court Northern and Southern Districts of Indiana, U.S. District Court Eastern and Western Districts of Michigan, U.S. District Court Eastern District of Missouri, U.S. District Court Southern District of Texas and U.S. District Court Eastern and Western Districts of Wisconsin.

32. Timothy J. Sostrin has zealously represented consumers in Illinois and in federal litigation nationwide against creditors, debt collectors, retailers, and other businesses engaging in unlawful practices. Tim has extensive experience with consumer claims brought under the Fair Debt Collection Practices Act, The Telephone Consumer Protection Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and Illinois law.

33. Tim was appointed lead or co-class counsel in the following TCPA cases: *Lee v. Global Tel\*Link Corporation*, 2018 U.S. Dist. LEXIS 163410 (C.D. Cal. 2018); *Braver v. Northstar Alarm Service, LLC*, 329 F.R.D. 320 (W.D. Okla. 2018); *Susinno v. Work Out World, Inc.*, 333 F.R.D. 354 (D. N.J. 2019); *Johnson v. Yahoo!, Inc.*, 2016 U.S. Dist. LEXIS 256 (N.D.

Ill. 2016); *Leung v. XPO Logistics*, 326 F.R.D. 185 (N.D. Ill. 2018); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS (D. New Mexico); *Martinez v. Medcredit, Inc.*, 2018 U.S. Dist. LEXIS 81818 (E.D. Mo. 2018); *Saf T-Gard International, Inc. v. Vanguard Energy Services, LLC*, (2012 U.S. Dist. LEXIS 174222 (N.D. Ill. December 6, 2012); *Saf-T-Gard v Transworld Systems, Inc.*, 10-c-7671, (N.D. Ill., final approval granted September 17, 2013).

34. Tim was also appointed lead or co-class counsel in the following consumer protection class actions: *Hill v. Asset Acceptance, LLC*, 2014 U.S. Dist. LEXIS 91190 (S.D. Cal. 2014); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012); *Galvan v. NCO Financial Systems, Inc.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012).

35. Tim is a member of the National Association of Consumer Advocates and ISBA. He received his Juris Doctorate, *cum laude*, from Tulane University Law School in 2006.

36. In 2014, Michael Hilicki joined the firm. He has spent nearly all of his more-than 20-year legal career helping individuals subjected to unfair and deceptive business practices, and violations of their state and federal rights. He is experienced in a variety of areas including, but not limited to, the Illinois Biometric Information Privacy Act, the Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud & Deceptive Business Practices Act, Telephone Consumer Protection Act, Fair Labor Standards Act, the Illinois Security Deposit Interest Act, Illinois Security Deposit Return Act, Chicago Residential Landlord Tenant Ordinance (RLTO), and the Illinois Wage & Hour Law. He is experienced in all aspects of litigation, including arbitrations, trials, and appeals. He was selected as an Illinois Super Lawyer for 2021 and 2022.

37. Examples of the numerous certified class actions in which Michael has represented consumers or workers include: *Guarisma v. Alpargatas USA, Inc. d/b/a Havaianas*, 2020 CH 7426 (Cir. Ct. Cook Cty.); *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct.

Cook Cty.); *Muransky v. Godiva Chocolatier, Inc.*, No. 15-cv-60716-WPD (S.D. Fla.); *Guarisma v. Microsoft Corp.*, No. 15-cv-24326-CMA (S.D. Fla.); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty.); *Altman v. White House Black Market, Inc.*, 15-cv-2451-SCJ (N.D. Ga.); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-CIV-JIC (S.D. Fla.); *Legg v. Laboratory Corporation of America, Holdings, Inc.*, No. 14-cv-61543-RLR (S.D. Fla.); *Joseph v. TrueBlue, Inc.*, 14-cv-5963-BHS (W.D. Wash.); *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Lanteri v. Credit Protection Ass'n, L.P.*, 2018 U.S. Dist. LEXIS 166345 (S.D. Ind. Sept. 26, 2018); *Eibert v. Jaburg & Wilk, P.C.*, 13-cv-301 (D. Minn.); *Kraskey v. Shapiro & Zielke, LLP*, 11-cv-3307 (D. Minn.); *Short v. Anastasi & Associates, P.A.*, 11-cv-1612 SRN/JSM (D. Minn.); *Kimball v. Frederick J. Hanna & Associates, P.C.*, 10-cv-130 MJD/JJG (D. Minn.); *Murphy v. Capital One Bank*, 08 C 801 (N.D. Ill.); *Nettles v. Allstate Ins. Co.*, 02 CH 14426 (Cir. Ct. Cook Cty.); *Sanders v. OSI Educ. Servs., Inc.*, 01 C 2081 (N.D. Ill.); *Kort v. Diversified Collection Servs., Inc.*, 01 C 0689 (N.D. Ill.); *Hamid v. Blatt Hasenmiller, et al.*, 00 C 4511 (N.D. Ill.); *Durkin v. Equifax Check Servs., Inc.*, 00 C 4832 (N.D. Ill.); *Torres v. Diversified Collection Services, et al.*, 99-cv-00535 (RL-APR) (N.D. Ind.); *Morris v. Trauner Cohen & Thomas*, 98 C 3428 (N.D. Ill.), *Mitchell v. Schumann*, 97 C 240 (N.D. Ill.); *Pandolfi, et al. v. Viking Office Prods., Inc.*, 97 CH 8875 (Cir. Ct. Cook Cty.); *Trull v. Microsoft Corp.*, 97 CH 3140 (Cir. Ct. Cook Cty.); *Deatherage v. Steven T. Rosso, P.A.*, 97 C 0024 (N.D. Ill.); *Young v. Meyer & Njus, P.A.*, 96 C 4809 (N.D. Ill.); *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 96 C 3233 (N.D. Ill.); *Holman v. Red River Collections, Inc.*, 96 C 2302 (N.D. Ill.); *Farrell v. Frederick J. Hanna*, 96 C 2268 (N.D. Ill.); *Blum v. Fisher and Fisher*, 96 C 2194 (N.D. Ill.); *Riter v. Moss & Bloomberg, Ltd.*, 96 C 2001 (N.D. Ill.); *Clayton v. Cr Sciences Inc.*, 96 C 1401 (N.D. Ill.); *Thomas v. MAC/TCS Inc., Ltd.*, 96 C 1519 (N.D. Ill.); *Young v. Bowman, et al.*, 96 C 1767 (N.D.

Ill.); *Depcik v. Mid-Continent Agencies, Inc.*, 96 C 8627 (N.D. Ill.); and *Dumetz v. Alkade, Inc.*, 96 C 4002 (N.D. Ill.).

38. Michael also has successfully argued a number of appeals, including *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (*vacated for rehearing en banc*); *Evans v. Portfolio Recovery Assocs., LLC*, 889 F.3d 337 (7th Cir. 2018); *Franklin v. Parking Rev. Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Smith v. Greystone Alliance, LLC*, 772 F.3d 448 (7th Cir. 2014); *Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004); and *Weizeorick v. ABN AMRO Mortg. Group, Inc.*, 337 F.3d 827 (7th Cir. 2003).

39. Michael has lectured on consumer law issues at Upper Iowa University, the Chicago Bar Association, and the National Consumer Law Center. He is a member of the Trial Bar of the United States District Court for the Northern District of Illinois, and he has represented consumers in state and federal courts around the country on a *pro hac vice* basis.

40. Michael's published work includes "*AND THE SURVEY SAYS...*" *When Is Evidence of Actual Consumer Confusion Required to Win a Case Under Section 1692g of the Fair Debt Collection Practices Act in the Seventh Circuit?*, 13 Loy. Consumer L. Rev. 224 (2001).

41. In March 2018, Theodore H. Kuyper joined the firm. Ted is currently a member in good standing of the Illinois State Bar, the United States District Court for the Northern District of Illinois, and the Seventh Circuit Court of Appeals, and has been admitted to practice *pro hac vice* in several additional United States District Courts.

42. Ted has diverse experience prosecuting and defending class action and other large-scale litigation in trial and appellate courts under a variety of substantive laws, including without limitation the Illinois Biometric Information Privacy Act, the Telephone Consumer Protection Act, the Racketeer Influenced & Corrupt Organizations Act (RICO), the Fair Credit Reporting Act, the Illinois Consumer Fraud & Deceptive Business Practices Act, and the Real Estate Settlement



Procedures Act, as well as Illinois and other state statutory and common law.

43. Since joining the firm, Ted has represented consumers as counsel of record or otherwise in the following putative class actions: *Gebka v. Allstate Ins. Co.*, No. 1:19-cv-06662 (N.D. Ill.) (TCPA); *Cranor v. The Zack Group, Inc., et al.*, No. 4:18-cv-00628-FJG (W.D. Mo. May 18, 2020) (TCPA); *Svoboda v. Amazon.com, Inc., et al.*, 1:21-cv-05336 (N.D. Ill.) (BIPA); *Hanlon ex rel. G.T. v. Samsung Elecs. Am., Inc.*, 1:21-cv-04976 (N.D. Ill.) (BIPA); *Svoboda v. Frames for America, Inc.*, 1:21-cv-05509 (N.D. Ill.) (BIPA); *Jenkins v. Regal Cinemas, Inc.*, 1:20-cv-03782 (N.D. Ill.) (BIPA); *McFerren, et al. v. World Class Distribution, Inc.*, 1:20-cv-02912 (N.D. Ill.) (BIPA); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.) (BIPA); *Gumm v. Vonachen Servs., Inc.*, 2020 CH 00139 (Cir. Ct. Peoria Cnty., Ill.) (BIPA); *Detter v. KeyBank, N.A.*, No. 1616-cv10036 (Jackson Cty., Mo. July 12, 2019) (FCRA); *Cranor v. Skyline Metrics, LLC*, No. 4:18-cv-00621-DGK (W.D. Mo.) (TCPA); *Cranor v. Classified Advertising Ventures, LLC, et al.*, No. 4:18-cv-00651-HFS (W.D. Mo.) (TCPA); *Morgan v. Adventist Health System/Sunbelt, Inc.*, No. 6:18-cv-01342-PGB-DCI (M.D. Fla.) (TCPA); *Burke v. Credit One Bank, N.A., et al.*, No. 8:18-cv-00728-EAK-TGW (M.D. Fla.) (TCPA); *Morgan v. Orlando Health, Inc., et al.*, No. 6:17-cv-01972-CEM-GJK (M.D. Fla.) (TCPA); *Motiwala v. Mark D. Guidubaldi & Associates, LLC*, No. 1:17-cv-02445 (N.D. Ill.) (TCPA); and *Buja v. Novation Capital, LLC*, No. 9:15-cv-81002-KAM (S.D. Fla.) (TCPA).

44. Immediately prior to joining Keogh Law, Ted worked at a boutique Chicago law firm where he represented clients in a range of complex commercial and other litigation, including contract, tort, professional liability, premises and products liability, bad faith and class action. Previously, he was an associate at a nationally-renowned class action law firm, where he focused on complex commercial, consumer, class action and other large-scale, high-stakes litigation.

45. Ted earned his Juris Doctorate from Washington University School of Law in St.

Louis in 2007. During law school, he worked as a Summer Extern for Magistrate Judge Morton Denlow (Ret.) of the United States District Court for the Northern District of Illinois, served as primary editor and executive board member of the Global Studies Law Review, and authored a student note that was published in 2007. Ted also earned a number of scholarships and other academic accolades, including the Honors Scholar Award (top 10% for academic year) and repeated appearances on the Dean's List.

46. Gregg Barbakoff joined the firm in October 2019. Gregg is a civil litigator who focuses his practice on consumer law, with extensive experience litigating individual and class claims arising under the Illinois Biometric Information Privacy Act, Telephone Consumer Protection Act, Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud and Deceptive Practices Act, Magnuson-Moss Warranty Act, and various consumer protection statutes.

47. Gregg graduated magna cum laude from the Chicago-Kent College of Law, where he was elected to the Order of the Coif. While in law school, Gregg received the Class of 1976 Honors Scholarship, competed as a senior member of the Chicago-Kent Moot Court Team, and served as an editor for The Seventh Circuit Review, in which he was also published. Gregg earned his undergraduate degree from the University of Colorado at Boulder.

48. Gregg was selected as an Illinois Super Lawyer in 2022 and an Illinois Super Lawyer Rising Star from 2015 through 2021. In addition, Gregg was named an Associate Fellow by the Litigation Counsel of America. He is licensed to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the Seventh Circuit.

49. Prior to joining Keogh Law, Gregg worked at a mid-size litigation firm that specialized in consumer litigation, and leading plaintiff's firm that focused on commercial disputes

and consumer class actions.

50. The following are representative class actions in which Gregg has served as counsel of record or otherwise: *Roberts v. TIAA, FSB* (Case No. 2019 CH 04089, Cook County, Ill.); *Corrigan v. Seterus* (Case No. 17-cv-02348); *Gentleman v. Mass. Higher Ed. Corp., et al* (Case No. 16-cv-3096, N.D. Ill.); *Cibula v. Seterus* (Case No. 2015CA010910, Palm Beach County, Fla.); *Ciolini v. Seterus* (Case No. 15-cv-09427, N.D. Ill.); *Mednick v. Precor Inc.* (Case No. 14-cv-03624, N.D. Ill.); *Illinois Nut & Candy Home of Fantasia Confections, LLC v. Grubhub, Inc., et al.* (Case No. 14-cv-00949, N.D. Ill.); *Dr. William P. Gress et al. v. Premier Healthcare Exchange West, Inc.* (Case No. 14-cv-501, N.D. Ill.); *Stephan Zouras LLP v. American Registry LLC* (Case No. 14-cv-943, N.D. Ill.); *Mullins v. Direct Digital* (Case No. 13-cv-01829, N.D. Ill.); *In Re Prescription Pads TCPA Litigation* (Case No. 13-cv-06897, N.D. Ill.); *Townsend v. Sterling* (Case No. 13-cv-3903, N.D. Ill.); *Windows Plus, Incorporated v. Door Control Services, Inc.* (Case No. 13-cv-07072, N.D. Ill.); *In re Energizer Sunscreen Litigation* (Case No. 13-cv-00131, N.D. Ill.); *Padilla v. DISH Network LLC* (Case No. 12-cv-07350, N.D. Ill.); *Lloyd v. Employment Crossing* (Case No. BC491068 (Los Angeles County, Cal.)); *In re Southwest Airlines Voucher Litigation* (Case No. 11-cv-8176, N.D. Ill.).

51. William Sweetnam joined the firm in 2020 as of counsel. Mr. Sweetnam concentrates his practice on class action and complex litigation and appeals, having prosecuted hundreds of consumer, shareholder and antitrust class action in federal and state courts across the country. In addition to representing both plaintiffs and defendants in a wide variety of cases involving both economic and non-economic injuries, Mr. Sweetnam has acted as lead counsel, co-lead counsel and has been a member of the executive and steering committees in consumer, antitrust and other class action, complex and multidistrict litigation matters.

52. Notably, Mr. Sweetnam was appointed sole lead counsel in *Kelly v. Old National Bank*, 82C01-1012-CT-627 (Cir. Ct Vanderburgh Cty., Ind.), in which he obtained a settlement valued at more than 90% of the class' damages incurred as a result of the unlawful overdraft fee scheme alleged therein, far exceeding the results obtained by much larger firms against some the countries' largest banks, resulting in individual consumers receiving several thousand dollars in refunded overdraft fees.

53. Additionally, Mr. Sweetnam has numerous published, class action decisions including *Jett v. Warrantech Corp.*, ---F.Supp.3d---, 2020 WL 525045 (S.D. Ill. 2020); *Old Nat. Bank v. Kelly*, 31 N.E.3d 522 (Ind. App. 2014); *Nava v. Sears, Roebuck & Co.*, 995 N.E.2d 303 (1st Dist. 2013); *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118 (11th Cir. 2010); *Pella Corp. v. Saltzman*, 606 F.3d 391 (7th Cir. 2010); *In re Digitek Prod. Liab. Litig.*, 264 F.R.D. 249 (S.D. W. Va. 2010); *Aleman v. Park West Galleries, Inc.*, 655 F. Supp. 2d 1378 (J.P.M.L. 2009); *In re Park West Galleries, Inc. Mktg. & Sales Practices Litig.*, 645 F. Supp. 2d 1358 (J.P.M.L. 2009); *In re Digitek Prod. Liab. Litig.*, 648 F. Supp. 2d 795 (S.D. W. Va. 2009); *Vernon v. Qwest Communs. Int'l, Inc.*, 643 F. Supp. 2d 1256 (W.D. Wash. 2009); *Stachurski v. DirecTV, Inc.*, 642 F. Supp. 2d 758 (N.D. Ohio 2009); *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 626 F. Supp. 2d 1353 (J.P.M.L. 2009); *In re Refrigerant Compressors Antitrust Litig.*, 626 F. Supp. 2d 1320 (J.P.M.L. 2009); *Saltzman v. Pella Corp.*, 257 F.R.D. 471 (N.D. Ill. 2009); *Coneff v. AT&T Corp.*, 620 F. Supp. 2d 1248 (W.D. Wash. 2009); *Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555 (E.D. Mich. 2009); *In re Nissan N. Am., Inc. Odometer Litig.*, 664 F. Supp. 2d 873 (M.D. Tenn. 2009); *Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555 (E.D. Mich. 2009); *In re Digitek Prods. Liab. Litig.*, 571 F. Supp. 2d 1376 (J.P.M.L. 2008); *In re BP Prods. N. Am., Inc.*, 560 F. Supp. 2d 1377 (J.P.M.L. 2008); *Hoving v. Transnation Title Ins. Co.*, 545 F. Supp. 2d 662 (E.D. Mich. 2008); *In re Nissan N. Am., Inc. Odometer Litig.*, 542 F. Supp. 2d 1367 (J.P.M.L. 2008); *Berry v. Budget*

*Rent a Car Sys.*, 497 F. Supp. 2d 1361 (S.D. Fla. 2007); *Cook v. Home Depot U.S.A., Inc.*, 62 U.C.C. Rep. Serv. 2d (Callaghan) 197 (S.D. Ohio 2007); *Womack v. Nissan N. Am., Inc.*, 550 F. Supp. 2d 630 (E.D. Tex. 2007); *Knudsen v. Liberty Mut. Ins. Co.*, 435 F.3d 755 (7th Cir. 2006); *Knudsen v. Liberty Mut. Ins. Co.*, 411 F.3d 805 (7th Cir. 2005); *Knudsen v. Liberty Mut. Ins. Co.*, 405 F. Supp. 2d 916 (N.D. Ill. 2005); *Enzenbacher v. Browning-Ferris Indus. of Ill.*, 774 N.E.2d 858 (Ill. App. 2002); *In re Nat'l Life Ins. Co.*, 247 F. Supp. 2d 486 (D. Vt. 2002); *Kaskel v. N. Trust Co.*, 45 U.C.C. Rep. Serv. 2d (Callaghan) 827 (N.D. Ill. 2001); *Wardrop v. Amway Asia Pac. Ltd.*, Fed. Sec. L. Rep. (CCH) P91,346 (S.D.N.Y. Mar. 20, 2001); and *Grove v. Principal Mut. Life Ins. Co.*, 14 F. Supp. 2d 1101 (S.D. Iowa 1998).

54. Before joining Keogh Law, Ltd., Mr. Sweetnam began his career as a lawyer representing plaintiffs in catastrophic injury cases in 1994. In 1995, he began defending corporate, insurance industry and insurance policyholder clients and ran a successful class action litigation boutique, Sweetnam LLC, established in 2008.

55. Prior to that, Mr. Sweetnam was a partner at a Chicago class action litigation boutique, where he perfected his skills representing victims of consumer fraud and deceptive and anti-competitive practices. Mr. Sweetnam has extensive litigation experience in a variety of nationwide class actions in state and federal courts alleging violations of consumer fraud and deceptive trade practices statutes, breach of warranty and violations of federal securities laws, shareholder derivative suits and appeals.

56. Mr. Sweetnam began his career as a class action and complex litigation practitioner with what is now known as Kessler Topaz Meltzer & Check, LLP, one of the largest class action law firms in the United States, where he was part of a team of lawyers involved in prosecuting class actions challenging abusive marketing practices in several areas involving life insurance and annuities. These cases led to class settlements valued at hundreds of millions of dollars, and

sometimes even billions of dollars, with such major life insurance companies as Prudential, Met Life, John Hancock, New York Life, State Farm, American Express/IDS, Transamerica, and many others, as well as to numerous changes in industry sales practices.

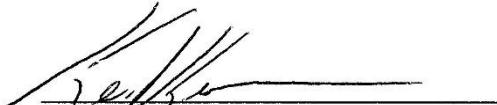
57. Mr. Sweetnam continued his career at one of Chicago's oldest and most respected class action litigation firms, Krislov & Associates, Ltd., where he represented consumers and investors engaged in an array of nationwide class actions in state and federal courts involving everything from consumer fraud to breach of warranty and securities and shareholder derivative lawsuits and appeals.

58. Additionally, Ms. Sweetnam is also a member of a number of associations, including The Federal Bar Associations, Chicago Chapter, The Chicago Bar Association, and The Catholic Lawyers Guild of Chicago.

59. Mr. Sweetnam received his bachelor's degree at The University of Michigan, Ann Arbor, Michigan in 1990. And later received his juris doctorate degree at the University of Michigan and the De Paul University College of Law where he received the American Jurisprudence Award in Constitutional Law and was a member of the Journal of Art and Entertainment Law. He has written and lectured on class actions and class action litigation reform.

60. Mr. Sweetnam has lectured on and lectured on such topics as the following: (a) *Law of Remedies: Damages, Equity and Restitution*, at Chicago-Kent College of Law (2019); (b) *Law of Remedies: Class Actions and Complex Litigation*, at Chicago-Kent College of Law (2018); (c) *The Class Action Fairness Act of 2005: Selecting a Forum and Keeping It*, at the Illinois Institute for Continuing Legal Education in Chicago, Illinois (2008); (d) *Federalization of Consumer Class Action Litigation: The Class Action Fairness Act of 2005*, at the John Marshall Law School in Chicago, Illinois (2006).

Executed at Chicago, Illinois, on January 31, 2024.



Keith J. Keogh

## **APPENDIX C**



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

COLIN LATEANO, Individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No. 23-cv-02757
	)	
v.	)	Hon. Joan B. Gottschall
	)	
CHICAGO CUBS BASEBALL CLUB, LLC)	)	
	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER (1) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, (2) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, (3) APPROVING NOTICE PLAN AND (4) SETTING FINAL APPROVAL HEARING**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of the proposed class action settlement (the "Settlement"). The Action was brought by Plaintiff Colin Lateano ("Plaintiff", "Lateano", or "Settlement Class Representative"), individually and on behalf of all others similarly situated, against defendant Chicago Cubs Baseball Club, LLC ("The Cubs" and, together with Plaintiffs, the "Parties"). Based on this Court's review of the Parties' Settlement Agreement and Release (the "Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, and the arguments of counsel and good cause having been shown, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.

2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties, and all persons in the Settlement Class.

3. Scope of Settlement. The Agreement resolves claims that arise out of or relate to the Cubs or anyone allegedly acting on its behalf sending marketing text messages to the Settlement Class Members after they made a stop request.

4. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair, reasonable and adequate, and within the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

The 2,486 persons (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12-month period (3) promoting its goods for sale (4) at least 30 days after receipt of a “stop” reply (5) within four years of the date of the Complaint.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

6. In connection with this conditional certification, the Court makes the following preliminary findings:

(a) The Settlement Class consists of 2,486 natural persons and is so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact arising under the TCPA common to the Settlement Class for purposes of determining whether the Settlement should be approved;

(c) Plaintiff’s claims appear to be typical of the claims being resolved through the Settlement;

(d) Plaintiff appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;

(e) For purposes of determining whether the Agreement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual persons in the Settlement Class. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of the Settlement, certification of the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

7. Class Representative. The Court appoints Colin Lateano to act as the representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Class Counsel. The Court appoints Keogh Law, Ltd., as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Final Approval Hearing. At \_\_\_\_\_ .m. (central) on \_\_\_\_\_, in Room \_\_\_\_\_, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Agreement and to determine whether (a) final approval of the Settlement embodied by the Agreement should be granted, and (b) Class Counsel's application for attorneys' fees and expenses, and service award to Plaintiff, should be granted, and in what amount. No later than the Notice Deadline set forth below, Plaintiff must file papers in support of Class Counsel's application for attorneys' fees and expenses and the service award to the Plaintiff. No later than \_\_\_\_\_(21 days from opt-out objection deadline)\_\_\_\_\_, Plaintiff must file papers in support of final approval of the Settlement, proof of class notice, a list of all persons who requested exclusion (to be filed under seal), and response to any written objections.

10. Settlement Administrator. American Legal Claims Services is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator, as set forth in the Agreement and this Order.

11. Class Notice. The Court approves the proposed plan for giving notice to the Settlement Class by directly mailing notice where mailing addresses are available, and emailing

notice where e-mail addresses are available but no mailing address is available, combined with a Settlement Website, as more fully described in Plaintiff's Motion and the Agreement ("Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than \_\_\_\_\_(21 days from prelim approval order)\_\_\_\_\_, ("Notice Deadline").

12. Opt-Out/Objection Period. Persons in the Settlement Class who wish to either object to the Settlement or request exclusion from the Settlement Class must do so by \_\_\_\_\_ which is sixty (60) calendar days after the Notice Deadline. Persons in the Settlement Class may not both object and opt-out. If a person both requests to opt out and objects, the request to opt out will control.

13. Exclusion from the Settlement Class. To request exclusion from the Settlement Class, a person in the Settlement Class must send a written request to the Settlement Administrator at the address designated in the Class Notice no later than the last day of the Opt-Out/Objection Period. Exclusion requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the name and address of the person in the Settlement Class requesting exclusion; and (iii) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Lateano v. Chicago Cubs action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in

the Settlement Class from the Settlement Class. The Settlement Administrator must retain a copy of all requests for exclusion.

If a timely and valid exclusion request is made by a person in the Settlement Class, then the Agreement and any determinations and judgments concerning the Settlement will not bind the excluded person.

14. Binding Effect. All Settlement Class Members will be bound by all determinations and judgments concerning the Settlement.

15. Objections to the Settlement. To object to the Settlement, Class Members must follow the directions below and in the Class Notice and sign and file a written objection with the Court no later than the last day of the Opt-Out/Objection Period. The objection must also be mailed to each of the following, postmarked no later than the last day to file the objection: (i) Class Counsel – Keogh Law, Ltd., 55 W. Monroe, Ste. 3390, Chicago, Illinois 60603; and (ii) Alan E. Littmann, Goldman Ismail Tomaselli Brennan & Baum, LLP 200 South Wacker Drive, 22nd Floor, Chicago, IL 60606.

An objection must provide: (i) class member ID, full name, current address, current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position, and (v) state whether the objector intends to appear at the final approval hearing, and if so, include all evidence the objector intends to present at the hearing. Any Settlement Class Member who fails to comply with these requirements will not be permitted to object to the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have

waived his, her or its objections, and will be forever barred from making any objections in the Action or any other related action or proceeding. All Settlement Class Members will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

For any objection filed, the Clerk of the Court is ordered to redact any social security number, the street address, telephone number and last name except first letter of last name in order to protect the objector's privacy. The objector's first name and city, state and zip code, as well as the objection, will not be redacted.

16. Stay of Other Proceedings. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed.

Pending the final determination of whether the Settlement should be approved or until a class member validly excludes themselves from the Settlement Class, Plaintiff and all persons in the Settlement Class are hereby stayed and enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum, against any of the Released Parties. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated. Nothing herein will prevent any person in the Settlement Classes, or any person actually or purportedly acting on behalf of any such person(s), from taking any actions to stay or dismiss any Released Claim(s). This injunction is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Agreement and to enter judgment when

appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments. This injunction does not apply to any person who requests exclusion from the Settlement.

17. Return to Status Quo if No Settlement Effective Date. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court, the certification of the Settlement Class shall be void and the Parties and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion seeking class certification, any motion seeking to compel arbitration or otherwise asserted at any other stage of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any person in the proposed Settlement Class, Defendant or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

In the event that the Settlement is not approved, or is terminated, canceled or fails to become effective for any reason, the money remaining in the Settlement Fund (including accrued interest), less reasonable administrative expenses incurred or due and owing and payable from the Settlement Fund in accordance with the Agreement, shall be returned to Defendant within 15 days of the event that causes the Agreement to not become effective.

18. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way,



whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

19. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

20. Schedule of Future Events. Accordingly, the following are the deadlines by which certain events must occur:

<u>          </u> , 202 <u>  </u> [21 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
<u>          </u> , 202 <u>  </u> [21 days after the date of this order]	Deadline for filing of Plaintiff's Motion for Attorneys' Fees and Costs and Service Award
<u>          </u> , 2024 [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out/Objection Deadline)
<u>          </u> , 2024 [21 days after the Opt-Out/Objection Deadline]	Deadline for Plaintiff to file the following: (1) List of persons who made timely and proper requests for exclusion (under seal); (2) Proof of Class Notice; and (3) Motion and memorandum in support of final approval, including responses to any objections.
<u>          </u> , 2024 at <u>          </u> .m. [No earlier than 116 days from the entry of this Order]	Final Approval Hearing

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Joan B. Gottschall  
United States District Judge