IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JUANITA WILLIAMS, on behalf of herself and others similarly situated,

Plaintiff,

v.

CHOICE HEALTH INSURANCE, LLC,

Defendant.

Case No. 1:23-cv-00292-RAH-KFP

CLASS ACTION

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

I. INTRODUCTION

As explained in Plaintiff's preliminary approval papers and further herein, Juanita Williams ("Representative Plaintiff") and Defendant Choice Health Insurance, LLC ("Defendant") (Representative Plaintiff and Defendant are collectively referred to as the "Parties") have entered into a Class Action Settlement Agreement ("Settlement Agreement" or "Agreement")[1] of this matter, including settlement funding of up to $7,000,000 for the benefit of the Settlement Class. Defendant has also agreed to terminate its relationship with the data provider that sold Defendant the Class Member data used to make the calls at issue. This meaningful remedial relief itself is valued at not less than $2,278,460

[1] All capitalized terms not defined herein have the meanings set forth in the Parties' Class Action Settlement Agreement (Doc. 35-1).

for the Settlement Class. (*See* Assessment of the Economic Benefit of Remedial Relief in Connection with the Class Action Settlement Agreement, prepared by Jon Haghayeghi, Ph.D. ("Haghayeghi Report"), attached hereto as Exhibit 1.) The total economic value of the relief to be provided by Defendant to Settlement Class Members pursuant to the Agreement is, therefore, $9,278,460.

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

On February 20, 2024, the Court preliminarily approved the Settlement. (Doc. 36.) Accordingly, Representative Plaintiff and Class Counsel hereby move the Court for entry of an order granting Class Counsel's attorneys' fees and reasonable expenses. Specifically, for the reasons set forth in this memorandum and in the papers previously submitted in support of preliminary approval, pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel respectfully requests that the Court enter an order approving Class Counsel's requested attorneys' fees of $2,100,000, equal to 30% of the Settlement Fund and less than 23% of the total value of the Settlement to the Settlement Class, and out-of-pocket litigation costs of $25,020.19. The requested amount is in line with amounts approved in similar Telephone Consumer Protection Act class action settlements in this Circuit and across the country. The amount also reflects the risk and

exceptional results corresponding to this case and was specifically included in the Notice documents to the Settlement Class.[2]

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

II. BACKGROUND

On July 28, 2023, Representative Plaintiff filed an Amended Complaint against Defendant in this action asserting that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. (Doc. 19.) On September 11, 2023, Defendant answered the First Amended Complaint, denying, among other things, that it had violated the TCPA. (Doc. 28.)

Since that time, the Parties engaged in informal discovery before participating in a mediation on December 7, 2023 with Hon. Sidney I. Schenkier (Ret.) of JAMS, during which the Parties tentatively agreed to a potential settlement of the Litigation. After follow-up negotiations, the key terms of the Settlement were memorialized in the Agreement.

[2] The Court-approved Notice documents advise Settlement Class Members that Class Counsel intends to request fees in an amount not to exceed one-third of the Settlement Sum, plus reimbursement of out-of-pocket Expenses incurred in the Litigation. (*See* Doc. 35-1 at Ex. B.)

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

Pursuant to the Settlement Agreement, Defendant will cause to be created a common fund in the amount of $7,000,000. (Agreement ¶ 1.1.39.) Moreover, as a result of the Litigation, Defendant has also agreed to terminate its relationship with the data provider who sold Defendant the Class Member data used to make the calls at issue. (*Id.* ¶ 4.4.) This remedial relief has a value of at least $2,278,460 for Settlement Class Members, bringing the Settlement's total value to $9,278,460. (Haghayeghi Report p. 11.)

Representative Plaintiff and Class Counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Litigation through class certification, trial, and any subsequent appeals. (Declaration of Brian K. Murphy ("Murphy Decl."), attached hereto as Exhibit 2, ¶ 9.) Class Counsel has taken into account the strength of Defendant's defenses, Defendant's denials of liability, difficulties in obtaining class certification and proving liability, the uncertain outcome and risk of the Litigation, especially in complex actions such as this one, the inherent delays in such litigation, and the risk of a change in the law. (*Id.*)

The Settlement confers substantial and immediate benefits upon the Settlement Class, whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Defendant's defenses, the uncertainties of contested litigation, Defendant's financial condition, and the everchanging

TCPA landscape, including district courts' ongoing scrutiny of the constitutionality of the TCPA. (*Id*.)

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

Pursuant to the Agreement, and as indicated in the Notice, consistent with recognized class action practice and procedure, Class Counsel respectfully requests an award of attorneys' fees of $2,100,000, which is equal to 30% of the Settlement Fund and less than 23% of the Settlement's total value to the Settlement Class. Class Counsel also respectfully requests reimbursement for reasonable out-of-pocket litigation expenses of $25,020.19. The Settlement is not contingent on the award of any Class Counsel fees or costs. (*Id*. ¶ 10.)

Rule 23 permits a court to award "reasonable attorney's fees … that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

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

appropriate, fair, and reasonable and respectfully requests that it be approved by the Court.

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

In the Eleventh Circuit, class counsel are awarded a percentage of the funds obtained through a settlement. In *Camden I*, 946 F.2d 768—the controlling

authority regarding attorneys' fees in settlement fund class actions—the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned …. Henceforth in this circuit, attorneys' fees awarded from a settlement fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Id.* at 774; *see also Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749-CIV-COHN/SELTZER, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (attorneys representing a class action are entitled to attorneys' fees based upon the total value of the benefits afforded to the class by the settlement).

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

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

(1) the time and labor required;
(2) the novelty and difficulty of the relevant questions involved;
(3) the skill requisite to perform the legal service properly;

(4) the preclusion of other employment by the attorney due to acceptance of the case;
(5) the customary fee;
(6) whether the fee is fixed or contingent;
(7) time limitations imposed by the clients or the circumstances;
(8) the amount involved and the results obtained;
(9) the experience, reputation, and ability of the attorneys;
(10) the "undesirability" of the case;
(11) the nature and the length of the professional relationship with the client;
(12) awards in similar cases.

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

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

A. The Claims Against Defendant Required Substantial Time and Labor.

Representative Plaintiff's and the Settlement Class's claims required substantial time and labor. Class Counsel devoted significant time and resources to investigating the claims against Defendant, researching and developing the legal claims at issue, preparing for and attending mediation, negotiating and drafting the

Settlement Agreement, drafting the preliminary approval documents, and attending to all actions required thereafter pursuant to the Preliminary Approval Order. (Murphy Decl. ¶ 13; Declaration of Anthony I. Paronich ("Paronich Decl."), attached hereto as Exhibit 3, ¶ 3.)

Furthermore, Class Counsel made substantial efforts to expend resources efficiently in representing Plaintiff and the Settlement Class. "The percentage-of-the-fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney's fees on an hourly basis." *DeWitt v. Darlington Cty.*, No. 4:11-cv-00740-RBH, 2013 U.S. Dist. LEXIS 172624, at *19 (D.S.C. Dec. 6, 2013). Moreover, the percentage-of-fund approach eliminates the burden on the court to engage in a detailed review and calculation of attorneys' hours and rates. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). "It is also viewed as the preferable method in cases such as this one, where the Plaintiffs agreed to pay counsel on a contingency fee basis." *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 09-0054, 2012 WL 5430841, at *2 (D.S.C. Nov. 7, 2012).

"'[O]ne purpose of the percentage method' of awarding fees — rather than the lodestar method, which arguably encourages lawyers to run up their billable

hours — 'is to encourage early settlements by not penalizing efficient counsel ....'" *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (quoting MANUAL FOR COMPLEX LITIG. (THIRD) § 24.121).

As many courts have endorsed, "[i]nstead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery ... [such that] it may be preferable 'to take the bird in the hand instead of the prospective flock in the bush.'" *In re Currency Conversion Fee Antitrust Litig.*, No. 1409, M 21-95, 2006 U.S. Dist. LEXIS 81440, at *16 (S.D.N.Y. Nov. 8, 2006) (citation omitted). Absent the settlement, it is "entirely possible that the class would have recovered nothing at all, or a range of recovery not far from what this bird-in-the-hand supplies." *In re ATI Techs., Inc. Secs. Litig.*, No. 01-cv-2541, 2003 U.S. Dist. LEXIS 7062, at *7 (E.D. Pa. Apr. 28, 2003).[4]

All told, Class Counsel's work resulted in an excellent result—the Settlement provides benefits to the Settlement Class valued at over $9,278,460,

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

including requiring Defendant to make monetary relief of $7,000,000 available for the Settlement Class and providing meaningful injunctive relief valued at not less than $2,278,460. Class Counsel's above-described efforts were essential to achieving the Settlement now before the Court.

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

Courts have long recognized that "particularly in class action suits, there is an overriding public interest in favor of settlement,' ... because ... 'class action suits have a well-deserved reputation as being most complex.'" *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). "Settlement 'has special importance in class actions with their notable uncertainty, difficulties of proof, and length.'" *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016).

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

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this matter required counsel trained in class action law and procedure as well as the specialized issues presented here. Class Counsel are particularly experienced in the litigation, certification, and settlement of nationwide class action cases, and their participation added value to the representation of this Settlement Class. (Murphy Decl. ¶¶ 20-28; Paronich Decl. ¶¶ 5-11.) And Defendant was ably represented by its capable counsel throughout the Litigation.

C. Class Counsel Achieved a Successful Result.

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

Given the significant litigation risks the Settlement Class faced, the Settlement represents a successful result. Rather than facing years of costly and

uncertain litigation, the Settlement makes available an immediate cash benefit of $7,000,000 to Settlement Class Members and provides meaningful remedial relief, with a total value to the Settlement Class of $9,278,460. (Murphy Decl. ¶ 7.)

And this conclusion is not changed by the claims-made structure of the settlement or the claims rate. The Eleventh Circuit and district courts in this Circuit have determined that the adequacy of a settlement's relief and class counsel's corresponding entitlement to fees should be evaluated based on the value of the benefits made available by the settlement and not the amount actually claimed. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999) (affirming fee award of one-third of total amount made available to class, and determining that attorney's fees may be determined based on the total benefits available, even where the actual payments to the class following a claims process are lower); *Holmes v. WCA Mgmt. Co., L.P.*, No. 6:20-cv-698-PGB-LRH, 2022 U.S. Dist. LEXIS 52756, at *5 (M.D. Fla. Jan. 13, 2022) (awarding one-third of the reversionary common fund in attorneys' fees without regard for the claims rate); *Saccoccio v. JP Morgan Chase Bank, NA*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) ("The attorneys' fees in a class action can be determined based upon the total fund, not just the actual payout to the class."); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007) (same); *Sunbeam*, 176 F. Supp. 2d at 1333 (same); *see also Poertner v. Gillette Co.*, 618 F. App'x 624, 626 (11th

Cir. 2015) (approving settlement class when less than 1% of class members filed claims); *Braynen v. Nationstar Mortg., LLC*, No. 14-CV-20726, 2015 U.S. Dist. LEXIS 151744, at *48-50 (S.D. Fla. Nov. 9, 2015) ("Courts in this Circuit have approved claims-made class settlements where the claims rate was low, including approving single-digit claims rates. … In addition, courts often grant final approval of class action settlements before the final claims deadline. … The question for the Court at the Final Fairness Hearing stage is whether the settlement provided to the class is 'fair, reasonable, and adequate,' not whether the class decides to actually take advantage of the opportunity provided.") (internal citations omitted).

To assign a dollar value to the injunctive relief provided to the Settlement Class, Dr. Haghayeghi was engaged to perform an economic assessment. Similar analyses have been accepted by courts for valuing injunctions and remedial relief in TCPA settlements. *See Taylor v. Cardinal Fin. Co., Ltd. P'ship*, No. 21-cv-2744-MSS-CPT, Doc. 55 (M.D. Fla. July 14, 2023) (granting final approval to a TCPA class settlement aided by Dr. Haghayeghi's valuation of the remedial relief); *Beiswinger v. West Shore Home LLC*, No. 3:20-cv-01286-HES-PDB, Doc. 36 (M.D. Fla. May 26, 2022) (same); *De Los Santos v. Milward Brown, Inc.*, No. 9:13-cv-80670, Docs. 82-3 and 84 (S.D. Fla. Sept. 11, 2015) (order granting final

approval to a TCPA class action settlement aided by Dr. Haghayeghi's late colleague J. Herbert Burkman, Ph.D.'s analysis of the future remedial relief).

The monetary relief alone is significant and is well within the range of similar settlements. (Murphy Decl. ¶ 8.) The per claiming Settlement Class Member recovery is expected to be $33.79. (*Id*.) This amount falls within the range of per claim payouts in the vast majority of TCPA class action settlements, including in cases involving direct liability against large companies. *See, e.g., In re Monitronics Int'l*, No. 1:13-MD-2493, Doc. 1214 (N.D.W. Va. June 12, 2018) (in a case with a certified adversarial class, granting final approval to $28 million TCPA settlement estimated to result in a payout of $38 per claim); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (in a direct liability case, granting final approval with a $39.66 payout per claim); *Rose v. Bank of Am. Corp.*, Nos. 5:11-CV-02390-EJD, 5:12-CV-04009-EJD, 2014 WL 4273358 at *10 (N.D. Cal. Aug. 29, 2014) (direct liability; $20-$40 per claimant); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (direct liability; $30 per claimant); *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-01156-LMM, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (direct liability; $24 per claimant; deemed an "excellent result"); *Goldschmidt v. Rack Room Shoes*, No. 18-21220-CIV, Doc. 86 (S.D. Fla. Jan. 16, 2020) (direct liability; $10 voucher and $5 in cash, less attorneys' fees, costs, notice and administration costs, and service award, per

claimant); *Halperin v. You Fit Health Clubs, LLC*, No. 18-61722, Doc. 44 (S.D. Fla. Nov. 1, 2019) (direct liability; $9, less attorneys' fees, costs, administration costs, and service award, per claimant); *Cabiness v. Educ. Fin. Sols., LLC*, No. 16-cv-01109-JST, 2019 U.S. Dist. LEXIS 50817, at *12 (N.D. Cal. Mar. 26, 2019) (direct liability; $33.36 per claimant). *See also Hamilton*, 2014 U.S. Dist. LEXIS 154762, at *20 (in claims-made settlements, the total value of the benefits made available by the settlement, and not the structure or claims rate, dictate the determination of "fairness, reasonableness, or adequacy" of the settlement and class counsel's requested attorneys' fees).

D. The Claims Presented Serious Risk.

As discussed in detail above, the Settlement is fair and reasonable given the extensive litigation risks. (Murphy Decl. ¶ 11.) Consideration of the "litigation risks" factor under *Camden I* "recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *Sunbeam*, 176 F. Supp. 2d at 1336.

The risk of no recovery here—and in complex cases of this type more generally—is real. In numerous hard-fought lawsuits, plaintiffs' attorneys (including the undersigned) have received little or no fee—despite *years* of

excellent, professional work—due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or a decision of a judge, jury, or court of appeals. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.,* 688 F.3d 713 (11th Cir. 2012) (affirming district court's ruling overturning jury verdict in favor of plaintiff class); *In re Oracle Corp. Secs. Litig.,* No. 01-cv-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd,* 627 F.3d 376 (9th Cir. 2010) (affirming summary judgment for defendants after eight years of litigation). Here, major hurdles remain in this Litigation, including class certification.

Class Counsel accepted substantial risk in taking this case given the possibility that this Court, the Eleventh Circuit, or the Supreme Court could take action that might extinguish Representative Plaintiff's claims.

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

The recovery achieved by this Settlement must be measured against the fact that any recovery by Representative Plaintiff and Settlement Class Members through continued litigation could only have been achieved if: (i) Representative

Plaintiff was able to certify a class and establish liability and damages at trial; (ii) the final judgment was affirmed on appeal; and (iii) Defendant was then able to satisfy the final judgment. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of Defendant's defenses and the challenging and unpredictable path of litigation Representative Plaintiff and any certified class would have faced absent the Settlement. (Murphy Decl. ¶ 11.)

Interpretations of the TCPA are ever-evolving and notoriously unpredictable, further injecting uncertainty into the outcome. Indeed, there is ongoing district court scrutiny regarding the constitutionality of the TCPA in light of the Supreme Court's decision in *Barr v. Am. Ass'n of Pol. Consultants*, 140 S. Ct. 2335 (2020). *See Timms v. USAA Fed. Sav. Bank*, No. 3:18-cv-01495-SAL, 2021 U.S. Dist. LEXIS 108083 (D.S.C. June 9, 2021) (finding that under the Supreme Court's ruling in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021), to be an autodialer, a system must randomly or sequentially generate the telephone numbers to be called); *Creasy v. Charter Commc'ns., Inc.*, 489 F. Supp. 3d 499 (E.D. La. 2020) (finding that TCPA claims based on calls preceding the Supreme Court's ruling in *Barr* are not actionable because the TCPA was unconstitutional until a 2015 amendment was severed in *Barr*); *United Res. Sys., Inc. v. Wilson*, No. 3:21-cv-00364-JFA (D.S.C.) (seeking declaratory and injunctive relief and arguing that the Anti-Spoofing Provision is in conflict with, and therefore preempted by,

the federal Truth in Caller ID Act of 2009, Public Law 111-331, 47 U.S.C. § 227(e), and that the Anti-Spoofing Provision is unconstitutional).

Despite Representative Plaintiff's confidence that this Court would certify the proposed class, she recognizes that class certification is far from automatic. *Compare Head v. Citibank, Inc.*, 340 F.R.D. 145 (D. Ariz. 2022) (certifying a TCPA class over objection) *with Revitch v. Citibank, N.A.*, No. C 17-06907 WHA, 2019 WL 1903247, at *2 (C.D. Cal. Apr. 28, 2019) (denying class certification); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 271-72 (M.D. Fla. 2019) (same). The risks of the Litigation, including the ever-changing TCPA landscape, the complexity of the issues involved, and the contingent nature of Class Counsel's representation, as discussed below, justify the requested fees. *See Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, at *19, *35 (N.D. Cal. Dec. 11, 2015) (awarding class counsel fees of one third of common fund based in part on the significant risks of litigation including potential changes in law and contingent nature of engagement).

If the case was certified, there was still a substantial risk to the claim. For example, if Choice Health had established written policies and procedures for complying with the Do Not Call Registry (it asserted that it did), it could prevail on its claim. *See Johansen v. EFinancial LLC,* No. 2:20-cv-01351-RAJ-BAT, 2021 U.S. Dist. LEXIS 251092, at *32-33 (W.D. Wash. June 11, 2021) (granting

summary judgment to a defendant in a TCPA case holding, "Efinancial has provided evidence that, as part of its routine business practice, it complies with the standards required by the safe harbor provision, *i.e.*, (1) 'written procedures to comply with the national do-not-call rules;' (2) training of personnel on those procedures; (3) maintenance of a list of phone numbers that the entity cannot contact; (4) the use of 'a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules;' and (5) the use of 'a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database.' 47 C.F.R. § 64.1200(c)(2)(i)(A)-(E)"); *see also Mattson v. New Penn Fin.*, No. 3:18-cv-00990-YY, 2020 U.S. Dist. LEXIS 197955, at *13 (D. Or. Oct. 25, 2020) (listing these requirements for establishing the safe harbor defense).

And even had Representative Plaintiff succeeded on the merits and prevailed on appeal, a reduction in statutory damages was possible. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (vacating "the district court's denial of the defendant's post-trial motion challenging the constitutionality of the statutory damages award to permit reassessment of that question guided by the applicable factors").

Underscoring the fairness of the compensation recovered for Settlement Class Members, the court in *Markos*, 2017 WL 416425, characterized a $24 per-claimant recovery in a TCPA class action—substantially less than what participating Settlement Class Members stand to receive here—as "an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter." *Id.* at *4. Here, Class Counsel has secured a result that exceeds the recovery in *Markos.*

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

"The importance of ensuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see Berry v. Wells Fargo & Co.*, No. 3:17-cv-00304-JFA, 2020 U.S. Dist. LEXIS 143893, at *35 (D.S.C. July 29, 2020) ("class counsel undertook to prosecute this action without any assurance of payment for their services. Counsel's entitlement to payment was entirely dependent upon achieving a good result for Plaintiff and the class. Contingency fee arrangements are customary in class action cases and such arrangements are usually one-third or higher. Therefore, this factor supports the reasonableness of the requested fee award." (internal citation omitted)). Indeed, "[a] contingency fee arrangement

often justifies an increase in the award of attorney's fees." *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988)); *see also Birch v. Office Depot Inc*., No. 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747, at *7 (S.D. Cal. Sept. 28, 2007) ("Class Counsel has proceeded on a contingency basis despite the uncertainty of any fee award. Class Counsel risked that it would not obtain any relief on behalf of Representative Plaintiff or the Class, and so no recovery of fees. In addition, Class Counsel was precluded from pursuing other potential sources of revenue due to its prosecution of the claims in this action.").

Because Class Counsel worked entirely on a contingency basis, only a successful result—at trial or by settlement—would result in any fees and recovery of costs. (Murphy Decl. ¶ 18.) Nevertheless, Class Counsel invested significant resources into this case to zealously promote the Class's interests. (*Id.* ¶ 12.) The contingent nature of Class Counsel's representation strongly favors approval of the requested fee.

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

Counsel's requested fee of $2,100,000, which is 30% of the Settlement Fund and less than 23% of the Settlement's value, is well within the range of fees typically awarded in similar cases. Numerous decisions within the Eleventh Circuit have found that a fee of one-third of a settlement's value is the benchmark

fee percentage under the factors listed by *Camden I*. *See, e.g., Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *16 (M.D. Fla. Apr. 23, 2020) (collecting cases and stating that "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund" and approving class counsel fees of more than one third of a TCPA settlement fund); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.") (citing Circuit case law and listing Southern and Middle District of Florida attorneys' fee awards).

Finally, Class Counsel's fee request also falls specifically within the range of awards in TCPA cases within this Circuit and elsewhere. *See Wright v. eXp Realty, LLC*, No. 6:18-cv-01851-PGB-EJK, Doc. 230 (M.D. Fla. Oct. 26, 2022) (granting fees and costs amounting to one-third of the $26.9 million monetary relief and less than one-third of the total settlement value when including other non-monetary benefits to class members); *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting fees and costs amounting to one-third of the $8,000,000 common fund and less than one-third of the total settlement value when including other non-monetary benefits to class members); *ABC Bartending Sch. of Miami, Inc. v. Am.*

Chems. & Equip., Inc., No. 15-CV-23142-KMV, Doc. 124 (S.D. Fla. April 11, 2017) (granting fees and costs amounting to one-third of the $1,550,000 settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 1:13-cv-21016, Doc. 95 (S.D. Fla. June 24, 2015) (granting fees and costs amounting to one-third of the $4,500,000 settlement fund); *Vandervort v. Balboa Cap. Corp*., 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of one-third on TCPA class action).

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

G. Class Counsel's Request for Expenses Is Reasonable.

Rule 23(h) also permits the Court to "award … nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Courts typically allow counsel to recover their reasonable out-of-pocket expenses. Indeed, courts normally grant expense requests in common fund cases as a matter of course." *Hanley*, 2020 U.S. Dist. LEXIS 89175, at *17 (collecting cases and approving cost award of approximately $27,000). The Settlement permits Class Counsel to seek reimbursement of their reasonable expenses.

Class Counsel has incurred expenses in the prosecution of this action totaling $25,020.19 for filing fees, service of process fees, expert fees, data processing fees, travel expenses, and mediation fees. (Murphy Decl. ¶ 15; Paronich Decl. ¶ 4.) These expenses were reasonable and necessary for the

prosecution of this action and are the types of expenses that would typically be billed to clients in non-contingency matters and, therefore, should be approved. (Murphy Decl. ¶ 16.)

IV. CONCLUSION

Representative Plaintiff and Class Counsel respectfully request that this Court award Class Counsel attorneys' fees in the amount of $2,100,000 and reasonable costs in the amount of $25,020.19.

Respectfully submitted,

/s/ Brian K. Murphy
Brian K. Murphy (admitted *pro hac vice*)
(OH 0070654)
Jonathan P. Misny (admitted *pro hac vice*)
(OH 0090673)
Murray Murphy Moul + Basil LLP
1114 Dublin Road
Columbus, OH 43215
Telephone: 614.488.0400
Facsimile: 614.488.0401
E-mail: murphy@mmmb.com
misny@mmmb.com

Anthony I. Paronich (admitted *pro hac vice*)
(MA 678437)
Paronich Law, P.C.
350 Lincoln Street, Suite 2400
Hingham, MA 02043
(508) 221-1510
anthony@paronichlaw.com

Joel Davidson Connally
Strength & Connally, LLC
7020 Fain Park Drive, Suite 3
Montgomery, AL 36117
jc@strengthconnally.com

Counsel for Representative Plaintiff and the Class

CERTIFICATE OF SERVICE

I, hereby certify that on April 22, 2024, I caused the foregoing to be filed via the Court CM/ECF filing system which will effect service on all counsel of record.

/s/ Brian K. Murphy
Brian K. Murphy

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JUANITA WILLIAMS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

Civil Action File No. CV-292-RAH-KFP

CHOICE HEALTH INSURANCE, LLC

Defendant.

Assessment of the Economic Benefit of Remedial Relief in Connection with the Class Action Settlement Agreement

Jon Haghayeghi, Ph.D.

April 13, 2024

J. Herbert Burkman & Associates
4026 Lemmon Ave
Suite 200
Dallas, TX 75219

jon@burkmaneconomics.com

ECONOMIC ASSESSMENT OF THE VALUE OF REMEDIAL RELIEF

I. INTRODUCTION

This class action lawsuit alleges that Choice Health Insurance LLC ("Choice Health", "Choice Insurance" or "Defendant") violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"). Subsequently, a class action settlement was reached on behalf of all persons in the United States, specifically, all users or subscribers to cellular telephone numbers that were contacted by Defendant from May 2, 2019, through the date of the entry of the Preliminary Approval Order after their numbers were provided by Digital Media Solutions LLC, excluding telephone numbers that Zeeto Group provided to Digital Media Solutions LLC and that Digital Media Solutions LLC then provided to Defendant, and where the telephone number received at least two calls in a 12-month period. As part of the Settlement, Defendant has agreed to remedial relief. Specifically, Choice Health has agreed to terminate its relationship with the lead aggregator, Digital Media Solutions LLC, that sold it the class member data used to make the calls at issue.[1]

The undersigned economist, Jon Haghayeghi, Ph.D., has been retained by class counsel to assess (the "Assessment") the benefits accruing to class members and to society from the remedial relief that the Settlement Agreement provides. The Assessment includes reviewing, analyzing, and evaluating the economic impact of the Settlement Agreement, and identifying the net benefits conferred on members of the class. Additionally, the Assessment identifies other positive externalities inuring to the favor of non-party beneficiaries and related parties. The Assessment measures the aggregate economic value of the Settlement to class members and society against the backdrop of conventionally accepted measurement methodologies extant within the discipline of economics and its sub-field, cost-benefit analysis (CBA).

It is noteworthy that the Assessment's quantitative analysis includes the monetized value of non-monetary remedial relief inherent in the Settlement Agreement. By agreeing to change its practices to avoid non-compliance with the TCPA, Defendant Choice Insurance has set in motion a series of positive benefits that may be readily valued for a broad swath of society. In summary, the undersigned economist believes the Settlement Agreement has far-reaching societal effects that bestow positive economic externalities to parties beyond the scope of the Settlement Agreement.

[1] See Settlement Agreement

II. QUALIFICATIONS

Dr. Haghayeghi's career commenced with his appointment to J. Herbert Burkman & Associates' economics consulting firm in 2009. He earned his bachelor's and master's degrees in Economics from Southern Methodist University, Dallas, Texas. In 2012, Dr. Haghayeghi represented the United States at the Institute for Studies on Economics and Employment, a conference hosted by Nobel Laureates in Economics in Iseo, Italy. He earned his Ph.D. in economics in 2017 from the Department of Economics, Claremont Graduate University, Claremont, California. Dr. Haghayeghi wrote his dissertation on weak-form efficiency in U.S. equity markets under the guidance of Dr. John Rutledge. Throughout his tenure in his doctoral program, he taught courses at California State Polytechnical University in the Department of Finance, Real Estate, and Law, Pomona, California.

Dr. Haghayeghi has an extensive professional background in economics, including a teaching appointment at Loyola Marymount University's Department of Economics in Los Angeles, California. Additionally, he has provided instruction on calculating economic damages through valuation seminars held in Las Vegas, San Diego, and Chicago in 2014, 2017, and 2021, respectively, to members of the American Rehabilitation Economics Association. From 2019 to 2022, Dr. Haghayeghi served as the Executive Director of the State of Alaska's Commercial Fisheries Entry Commission, an agency tasked with preserving the economic health of Alaska's fisheries. Currently, Dr. Haghayeghi holds the position of Executive Director of the State of Alaska's Commission on Aging, where he is responsible for drafting the State Plan for Senior Services: FFY2024-FFY2027.[2]

J. Herbert Burkman & Associates holds an extensive research portfolio in the field of economic assessment, particularly in evaluating the economics of class action settlement agreements. Dr. Haghayeghi has individually authored eight economic assessments in connection with TCPA settlement agreements since 2021, all of which have been accepted in State and Federal Courts. These reports represent a significant contribution to the legal community's understanding of the economic value of privacy, particularly within the context of telephone privacy.

[2] Alaska Statute § 47.45.230.

III. METHODOLOGICAL FRAMEWORK

The economic assessment of the Settlement Agreement's remedial relief utilizes a dual-method approach, combining empirical data from current market practices with theoretical insights drawn from established economic research. This fusion ensures a thorough analysis that is both grounded in real-world consumer behaviors and informed by predictive economic models.

Empirical data analysis focuses on market prices for subscription services that provide privacy protections, reflecting the actual expenditures consumers are willing to make to avoid unsolicited contacts. This data is instrumental in quantifying the immediate economic benefits derived from the settlement, offering a tangible measure of consumer value on privacy.

Theoretical insights, on the other hand, are sourced from a broad spectrum of economic literature, providing a framework for understanding the potential long-term impacts of the settlement. This includes predictive models on consumer satisfaction and privacy valuation in response to changes in telemarketing practices. Such theoretical models are vital for anticipating consumer behaviors that are not directly observable in the current market environment.

The integration of these two data sources enables a comprehensive analysis of the settlement's economic implications. Scenario analysis, a key component of this framework, utilizes both empirical and theoretical data to explore a range of potential consumer reactions based on different willingness-to-pay (WTP) price points. This approach allows for a detailed valuation of the settlement's non-monetary benefits, highlighting the variation in consumer preferences and the importance of adopting a wide-ranging perspective in economic evaluations.

By leveraging both market-derived data and academic research, this methodological framework ensures the assessment is robust, reliable, and reflective of both current market dynamics and broader economic theories on consumer behavior and privacy. This dual approach underlines the assessment's credibility and supports a deep understanding of the settlement's comprehensive economic benefits.

IV. ECONOMICS OF THE SETTLEMENT AGREEMENT

A. Assessing the Economic Value of the Settlement Agreement

The discipline of economics provides the theoretical framework and quantitative methods central to assessing the benefits accruing to all persons affected by the Settlement Agreement. With respect to the Settlement, review and analysis have identified the benefits inuring to the class and a broad spectrum of society.

1. Economic Benefits

The foremost economic advantage for consumers stems from the alteration in Choice Insurance's practices and the consequent modification in conduct. By implementing changes to discontinue the calling behavior, the Settlement Agreement ensures that both present and prospective targeted consumers will be safeguarded from infringements on their privacy due to unsolicited telemarketing calls made by agents of Choice Insurance.

In a legal context, the Settlement Agreement guarantees the protection of the public's privacy from telephonic communications on behalf of Choice Insurance while concurrently assuring the company that its revised telemarketing practices will not be subjected to future legal challenges by consumers. The beneficiaries of these practice amendments can be broadly classified into three categories: 1) targeted consumers, 2) Choice Insurance, and 3) society at large.

The modifications to Choice Insurance's practices provide privacy assurances to consumers and alleviate any related discontent. It is acknowledged that the status quo prior to the class action lawsuit has been irrevocably transformed. Future targeted consumers will no longer need to be apprehensive about potential encroachments on their privacy and well-being. As a result, society as a whole is likely to be spared the burden of addressing grievances from any future parties who may have suffered damages due to the previous practices.

2. Determining Willingness-to-Pay

In order to **accurately determine** a justifiable aggregate value of the relief resulting from the Settlement Agreement, economists employ methodologies and procedures grounded in the field of economics, specifically within the sub-domain of CBA. When evaluating benefits, cost-benefit analysts routinely utilize consumers' willingness-to-pay (WTP) as a means of understanding the

value they place on acquiring information or eliminating undesired features that adversely impact consumer satisfaction stemming from a transaction.

The willingness-to-pay approach facilitates a direct evaluation of a spectrum of rational alternatives, enabling economists to discern the value associated with each option. In conducting this analysis, both empirical data (such as subscription products available in the market) and theoretical data provide insights into individual willingness-to-pay with respect to telephone privacy. Empirical data, such as market observations and consumer surveys, offer tangible evidence of consumer behaviors and preferences, giving a concrete foundation to the WTP analysis. These real-world insights ensure that the analysis is deeply rooted in the actual market conditions and consumer valuation of privacy enhancements.

Conversely, theoretical data, incorporating models and assumptions about consumer behavior, complement empirical findings by allowing economists to explore WTP in a broader array of scenarios. This includes predictions on how consumers might value privacy in hypothetical situations where direct market evidence is scarce, thus broadening the scope of the analysis beyond current market conditions.

The integration of empirical and theoretical insights is crucial in painting a comprehensive picture of the economic value derived from the Settlement Agreement. It ensures that the evaluation of benefits is not only anchored in observable consumer actions and market trends but is also informed by a deeper understanding of the underlying economic principles that drive consumer behavior. This holistic approach enhances the accuracy and relevance of the analysis, providing a robust foundation for assessing the economic implications of the agreement.

3. Valuing Privacy and the Absence of Telemarketing Calls

In the realm of consumer decision-making pertaining to the expenditure on goods and services, individuals strive to optimize their satisfaction, or utility, through their acquisitions. Analogously, while choosing and procuring any product or service, consumers exhibit a willingness-to-pay for the exclusion of undesirable attributes. Cost-benefit analysis equips economists with the tools to quantify and assign value to the benefits that arise from the extent to which consumers are willing to pay for the absence of an unwanted feature – in the present case, the prohibition of unsolicited telemarketing calls.

In relation to the aforementioned practices of Choice Insurance, each unsolicited phone call signifies a loss of privacy and engenders displeasure for the consumer. The central question then becomes: What is the value that

consumers attribute to the absence of such undesirable action, and does a viable market exist for a product or service that addresses this demand?

Ad-blockers have become increasingly popular in recent years due to growing concerns about data privacy and security. From an economic perspective, the use of ad-blockers can be understood as a response to a market failure in the digital advertising industry, where the costs of privacy breaches and unwanted tracking are not fully borne by the companies that engage in these practices. Ad-blockers represent a mechanism for consumers to exert their preferences and push back against companies that fail to adequately protect their privacy. Additionally, the use of ad-blockers may also have implications for the revenue models of companies that rely on advertising for their business, as the prevalence of ad-blockers can limit the effectiveness of targeted advertising and force companies to explore alternative revenue streams.

4. Determining Value and Benefit

The value of the Settlement Agreement can be observed through the study of consumer behavior with respect to the TCPA. Willingness-to-pay reveals a range of reasonable values that represent the diversity of consumer preferences over varying periods of time. For example, products designed to stop unwanted telemarketing/spam calls that have been purchased by millions of Americans range in price from $1.99 to $3.99 per month. The Settlement Agreement, much like these products, assists in the removal of this specific undesired feature. The known market value of such products can be used to assess the economic benefit bestowed on each class member and society as a result of the Settlement Agreement.[3]

It is the opinion of the undersigned economist, developed with a reasonable degree of economic certainty, that the estimates in this report are conservatively low. It should be noted, this analysis follows the broad assessment guidelines established by applicable economic theory and empirical analysis in determining the economic value. As reviewed above, the broad foundations of microeconomic theory and cost-benefit analysis are drawn upon to assess the reasonable value of the reformed and modified business practices and initiatives acknowledged in the parties' Settlement Agreement.

B. Correcting Market Externalities

The TCPA is federal legislation enacted in 1991 to protect consumers from unsolicited and intrusive telemarketing practices. The TCPA impose restrictions on telemarketers, such as requiring their adherence to the Do Not

[3] Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007).

Call registry, limiting the use of automated dialing systems, and mandating the provision of identifying information during calls. Violations of the TCPA can result in penalties and legal consequences, including class-action lawsuits.[4]

In the context of the economic framework previously outlined, the TCPA plays a crucial role in safeguarding consumers' utility and allowing for the efficient allocation of resources. By regulating telemarketing practices and protecting consumer privacy, the TCPA directly address the undesirable attributes associated with unsolicited telemarketing calls. This, in turn, increases the value of the telecommunications market for consumers, as it ensures that their preferences are respected and their privacy is maintained.

Moreover, the TCPA contribute to the proper functioning of the labor and capital markets by promoting responsible marketing practices and encouraging businesses to invest in compliant communication service technologies. By deterring invasive and unwanted telemarketing practices, the TCPA fosters a more efficient market environment where resources can be allocated in accordance with consumer preferences and regulatory standards.

In assessing the value of a resource, economists rely on facts, assumptions, and forecasts. In those rare instances when the basic facts are known and generally agreed upon, economic assessment is often straightforward. When basic facts are subject to interpretation and conflict, analysis and review are critical. When forecasts become part of the equation, any number of conflicting interpretations may arise. Assessment proceeds with the recognition that underlying premises, assumptions, and expectations are often controversial. As a result, the undersigned economist is behooved to present associated benefits to society at several presently available price levels and over multiple time horizons.

1. Statutory Value of Privacy

In evaluating the reasonableness of price levels, it is important to consider the legislative history and statutory language of any public policy that may be relevant. With respect to the TCPA, the legislatures acknowledged the prospective gains in societal benefit by prohibiting non-consensual telephone solicitations and providing for the recovery of actual monetary loss or statutory damages in the amount of $500 for each violation, whichever is greater. In the case of willful violations, the court may, in its discretion, increase the award to an amount equal to not more than three times $500, or $1,500.[5] Certainly, there

[4] Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (1991).
[5] 47 U.S.C. § 227

are members of the class who value such protection in the amount of $500 or more.

2. Basis for Assessed Value of Benefit to Society

In this assessment, a conservative, market-based approach utilizing common price points for products available to consumers is relied on. The value of such public good was recognized in the Federal Trade Commission's contest aimed at promoting technologies to block and defeat the scourge of automated telemarketing systems in 2015, when Harvard University students won a grand prize.[6] The recipients of this award developed the most widely adopted application for blocking unwanted telephone calls in the United States and the product retails for $3.99 per month. With more than 12 million downloads and $600 million in losses prevented,[7] RoboKiller is a leading independent spam call and text blocker. Subscriptions to other products, such as Verizon Call Filter, ATT Call Protect, and Hiya App cost $2.99 per month and are used by millions of customers in the United States. The prevalence of unwanted telemarketing calls has demonstrated there is a clear willingness-to-pay for services that eliminate undesired, unsolicited telemarketing calls.[8]

3. Value of the Benefit to Society

a. Change in Choice Insurance Practices

Choice Insurance has also agreed to terminate its relationship with the lead aggregator that sold it the class member data used to make the calls at issue. These changes are expected to reduce the number of unsolicited calls that are transmitted annually by Choice Insurance. In determining the economic value of the benefits to society, the undersigned economist recognizes the role the Settlement Agreement plays in deterring future TCPA violations for both members of the class and for society at large.

b. Estimating Average Call Frequency and Volume

Traditionally, evaluating the economic benefits of Settlement Agreements in cases involving unsolicited calls relies on a meticulous, bottom-up analysis. This method entails a detailed review of individual call logs to understand patterns, frequencies, and classifications of calls—information critical to quantifying damages and benefits with precision. Such an analysis allows for

[6] https://www.ftc.gov/news-events/news/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks-illegal-robocalls

[7] https://www.bloomberg.com/press-releases/2023-04-04/both-robotexts-and-robocalls-increased-in-march-according-to-robokiller-insights

[8] https://www.pcmag.com/how-to/block-robocalls-and-spam-calls

the granular assessment of call data, ensuring that each aspect of the calling activity is accounted for in the economic evaluation of the settlement's impact.

However, in this particular matter, the typical evaluation process has been notably adapted due to the unique circumstances presented by the defendant's provision of class size data. Specifically, the defendant has supplied information indicating that the Settlement Class comprises approximately 276,177 individuals furnished by Digital Media Solutions, LLC other than those from Zeeto Group for use by Choice Insurance. This direct provision of class size data marks a departure from the traditional bottom-up approach, where such figures would otherwise be derived through the analysis of call records.

This adjustment to the evaluation methodology leverages the class size information to present a more streamlined and precise presentation of potential economic benefits for the Settlement Class. This approach not only enhances the efficiency of the evaluation process but also ensures that the assessment is rooted in concrete data provided by the defendant.

The provision of class size thus allows for a focused examination of the Settlement Agreement's implications, ensuring a clear and quantifiable understanding of its economic benefits. This adaptation highlights our commitment to accurately representing the interests of the class members and ensuring that the evaluation of the Settlement Agreement is both thorough and precise, reflecting the specific realities of the case at hand.

d. *Annual Willingness-to-Pay to Avoid Telemarking Calls*

The average price of many products presented in Appendix 1 are available to consumers. Utilizing market prices of $8.25/year, $1.99/month, and $2.99/month, as referenced in academic research and documentation by the Federal Communications Commission (FCC), is fundamental to our approach in conservatively estimating the value that consumers place on evading unsolicited calls. The FCC plays a critical role in the implementation and enforcement of the TCPA, working to protect consumers from unwanted telemarketing practices while providing guidance to business on compliance with the law. The observed prices anchor our model within a realistic range that reflects the expenses consumers might be willing to undertake to block or limit such interruptions. This methodological choice is driven by a commitment to conservative estimation, ensuring that our conclusions are both pragmatic and aligned with observed market behaviors. It should be noted that the median price for the observed products in the marketplace is $3.99, further emphasizing the conservative nature of the analysis.

The adoption of these price points serves to ground our analysis in a realistic context, offering a cautious perspective on the economic benefit attributed to the avoidance of unwanted calls. This stratagem avoids the pitfalls of overestimation, ensuring our analysis speaks accurately to a diverse range of consumer experiences. It's an approach that situates the potential outlay for call avoidance measures within a believable financial spectrum, capturing the variance in consumer willingness to pay without defaulting to an inflated price marker.

Moreover, the conservative nature of these price estimates lends credibility to our model, providing a solid foundation for stakeholders evaluating the economic ramifications of unsolicited calls and the efficacy of countermeasures. By relying on these measured price points drawn from FCC insights, our methodology emphasizes a deliberate and cautious estimation process, enhancing the utility and relevance of our findings.

e. *Estimating the Value of the Benefit to Society*

Based on the calculations in the preceding section, we can infer the value of the benefit to society using willingness to pay price points ranging from $.69 per month to $3.99 per month. The implied willingness to pay:

- At an $8.25 per year price point, the estimated benefit to the settlement class over the next year is $2,278,460 and $10,753,107 over the next five years.

- At a $1.99 price point, the estimated benefit to the settlement class over the next year is $6,595,107 and $31,126,394 over the next five years.

- At a $2.99 price point, the estimated benefit to the settlement class over the next year is $9,909,231 and $46,767,799 over the next five years.

Table 1 in Appendix 2 summarizes these products ranging in annual cost from a minimum of $0.55 to a maximum of $372.00.[9] Each value represents a willingness-to-pay for the benefit of not receiving unwanted cell phone calls. Values in this table are used to derive our best estimate of the present value of the post-settlement remedial relief, using the most commonly observed willing-buyer-price-points. With the recognition that there are short-term and long-term benefits associated with remedial relief delivered by the Settlement Agreement,

[9] The sources of all values are provided in Appendix 2.

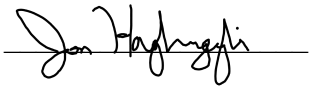
the undersigned economist has calculated annual values for the next five years at three price levels referenced in Appendix 2.

V. CONCLUSION

By accounting for the anticipated changes to Choice Insurance's practices aimed at curbing telemarketing law violations, and the range of consumer willingness-to-pay price points to avoid telemarketing calls, we are able to estimate on an annual basis the total value of the benefit to society resulting from the Settlement Agreement. As reviewed herein, it is my opinion—held with reasonable economic certainty—that the economic value of the benefits bestowed on society are proportional to or exceed the value of the settlement agreement**.**

In closing this report, the undersigned economist is available to respond to any question raised about the methods and procedures used in reaching the conclusions herein.

The above-cited appendices follow.



Jon Haghayeghi, Ph.D.

APPENDIX 1

SUPPORTING TABLES

TABLE 1

SUMMARY TABLE

PRESENT VALUE OF REMEDIAL RELIEF FOR INDIVIDUALS IMPACTED BY CHOICE INSURANCE
2025 TO 2029

JUANITA WILLIAMS, individually, and on behalf of all others similarly situated,
v.
CHOICE HEALTH INSURANCE, LLC

Civil Action File No. CV-292-RAH-KFP, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Number of unique phone numbers			Aggregate Present Value of Remedial Relief from Non-Consensual Telemarketing Calls with Market Based Market Based Willingness-to-Pay Methodology and Prices Ranging from $8.25 to $35.88 annually					
			$8.25 / year (Png 2007)		**$23.88 / year** ($1.99 /month)		**$35.88 / year** ($2.99 / month)	
1 year expected value of non consensual telemarketing calls avoided	276,177		$2,278,460	[1]	$6,595,107	[2]	$9,909,231	[3]
5 years (2025 to 2029), expected value of non consensual telemarketing calls avoided	1,380,885		$10,753,465		$31,126,394		$46,767,799	

[1] See Table 1.A., Column 7.
[2] See Table 1.B., Column 7.
[3] See Table 1.C., Column 7.

For a complete review of willingness-to-pay methodology, see Anthony E. Boardman, David H. Greenberg, Aidan R. Vining, and David L. Weimer, **Cost-Benefit Analysis, Concepts and Practice**, Prentice Hall, 4th Edition, Boston, 2011, pages 81-99.

TABLE 2.A

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 1: VALUE OF AVOIDING UNWANTED TELEMARKETING PHONE CALLS

JUANITA WILLIAMS, individually, and on behalf of all others similarly situated,
v.
CHOICE HEALTH INSURANCE, LLC

Civil Action File No. CV-292-RAH-KFP, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

	COL 1 YEAR	COL 2 NUMBER OF UNIQUE TELEPHONE NUMBERS		COL 3 ANNUAL VALUE OF BENEFIT OF AVOIDING CALL ($8.25 per year)		COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR		COL 6 PRESENT VALUE OF EXPECTED BENEFIT COL 5 / COL 6	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT
		(#)		($)		($)	($)		($)	($)
0	2025	276,177	[1]	8.25	[3]	2,278,460	1.000	[4]	2,278,460	2,278,460
1	2026	276,177		8.25		2,278,460	1.034		2,204,606	4,483,066
2	2027	276,177		8.25		2,278,460	1.063		2,142,672	6,625,738
3	2028	276,177		8.25		2,278,460	1.091		2,087,545	8,713,283
4	2029	276,177	[2]	8.25		2,278,460	1.117		2,040,182	10,753,465
	Total	1,380,885				11,392,301			10,753,465	

[1] This model assumes that 276,177 class members. The start date of this analysis is January of 2025.

[2] This model terminates in December of 2029, or after five years.

[3]This model assumes that the annual willingness-to-pay to avoid an undesired call is approximately $8.25. See Appendix 1.

[4] Factors in this column are based on investment grade municipal bonds as of April 3, 2024.

TABLE 2.B

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 2: VALUE OF AVOIDING UNWANTED TELEMARKETING PHONE CALLS

JUANITA WILLIAMS, individually, and on behalf of all others similarly situated,
v.
CHOICE HEALTH INSURANCE, LLC

Civil Action File No. CV-292-RAH-KFP, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

	COL 1 YEAR	COL 2 NUMBER OF UNIQUE TELEPHONE NUMBERS		COL 3 VALUE OF BENEFIT OF AVOIDING CALL ($1.99 per month)		COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR		COL 6 PRESENT VALUE OF EXPECTED BENEFIT COL 5 / COL 6	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT
		(#)		($)		($)	($)		($)	($)
0	2025	276,177	[1]	23.88	[3]	6,595,107	1.000	[4]	6,595,107	6,595,107
1	2026	276,177		23.88		6,595,107	1.034		6,381,332	12,976,439
2	2027	276,177		23.88		6,595,107	1.063		6,202,061	19,178,500
3	2028	276,177		23.88		6,595,107	1.091		6,042,494	25,220,994
4	2029	276,177	[2]	23.88		6,595,107	1.117		5,905,401	31,126,394
	Total	1,380,885				32,975,534			31,126,394	

[1] This model assumes that 276,177 class members. The start date of this analysis is January of 2025.

[2] This model terminates in December of 2029, or after five years.

[3]This model assumes that the annual willingness-to-pay to avoid an undesired call is approximately $23.88. See Appendix 1.

[4] Factors in this column are based on investment grade municipal bonds as of April 3, 2024.

TABLE 2.C

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 3: VALUE OF AVOIDING UNWANTED TELEMARKETING PHONE CALLS

JUANITA WILLIAMS, individually, and on behalf of all others similarly situated,
v.
CHOICE HEALTH INSURANCE, LLC

Civil Action File No. CV-292-RAH-KFP, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

	COL 1 YEAR	COL 2 NUMBER OF UNIQUE TELEPHONE NUMBERS		COL 3 ANNUAL VALUE OF BENEFIT OF AVOIDING CALL ($2.99 per month)		COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR		COL 6 PRESENT VALUE OF EXPECTED BENEFIT COL 5 / COL 6	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT
		(#)		($)		($)	($)		($)	($)
0	2025	276,177	[1]	35.88	[3]	9,909,231	1.000	[4]	9,909,231	9,909,231
1	2026	276,177		35.88		9,909,231	1.034		9,588,032	19,497,262
2	2027	276,177		35.88		9,909,231	1.063		9,318,674	28,815,937
3	2028	276,177		35.88		9,909,231	1.091		9,078,923	37,894,860
4	2029	276,177	[2]	35.88		9,909,231	1.117		8,872,939	46,767,799
	Total	1,380,885				49,546,154			46,767,799	

[1] This model assumes that 276,177 class members. The start date of this analysis is January of 2025.

[2] This model terminates in December of 2029, or after five years.

[3]This model assumes that the annual willingness-to-pay to avoid an undesired call is approximately $35.88. See Appendix 1.

[4] Factors in this column are based on investment grade municipal bonds as of April 3, 2024.

APPENDIX 2

SUPPORTING DOCUMENTS FOR VALUING WILLINGNESS-TO-PAY

TABLE 1

VALUE OF PROTECTION FROM NON-CONSENSUAL SURVEY CALLS: WILLING BUYER'S PRICE POINTS

PRICE PER YEAR	SOURCE / SUPPORT	FCC*
$0.55	Varian et al.'s (2004) estimate ranged from $60 million to $3.6 billion a year. With 108.4 million households, this was equivalent to a range of **$0.55** to $33.21 per household per year.	
$8.25	Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007). Available at SSRN: https://ssrn.com/abstract=1000533 or http://dx.doi.org/10.2139/ssrn.1000533	
$23.88	Nomorobo app charges **$1.99 to $3.99** per month for Robocall Blocking.	**YES**
$33.21	Varian et al.'s (2004) estimate ranged from $60 million to $3.6 billion a year. With 108.4 million households, this was equivalent to a range of $0.55 to **$33.21** per household per year.	
$35.88	Hiya Charges Users **$2.99** per month to block calls via iOS app. https://blog.hiya.com/hiya-premium-providing-more-value-to-the-phone-experience/	**YES**
$35.88	Verizon charges **$2.99** per month for its Call Filter. https://www.verizon.com/solutions-and-services/call-filter/	**YES**
$47.88	AT&T ActiveArmor Advanced is offered at **$3.99** per month for blocking spam calls.	**YES**
$47.88	U.S. Cellular offers CallGuardian at **$3.99** per month for blocking spam calls.	**YES**
$48.00	T-Mobile and Sprint offer Scam Shield Premium at **$4.00** per month for blocking spam calls.	**YES**
$59.40	TrapCall's **$4.95** per moth iOS and Android app stops spam callers from wasting your time by automatically blocking spam, telemarketing, and robocalls from over 100,000 numbers through our constantly updated global spam list.	
$59.88	Robokiller - Robocall Blocker charges **$4.99** per month to block spam calls. https://play.google.com/store/apps/details?id=com.robokiller.app&hl=en_US	
$143.88	YouMail is priced at **$11.99** per month. YouMail is an Irvine, CA-based developer of a visual voicemail and Robocall blocking service for mobile phones, available in the US and the UK.	**YES**
$372.00	First Orion Basic is priced at **$31.00** per month. First Orion specializes in providing phone call and communication protection solutions. It offers services and technologies designed to help businesses and consumers combat scams, fraud, and other types of unwanted communication.	**YES**

Central Tendency of Derived from Willingness-To-Pay Research:

Mean:	**$14.00**
Median:	**$8.25**

Central Tendency of Non-FCC Resource Call Blocking Applications:

Mean:	**$70.51**
Median:	**$47.88**

Measures of Central Tendency from FCC Call Blocking Applications Resource:

Mean:	**$94.41**
Median:	**$47.88**

* Denotes product listed by Federal Communication Commission, "Call Blocking and Resources." See https://www.fcc.gov/sites/default/files/call_blocking_tools_and_resources.pdf

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JUANITA WILLIAMS, on behalf of herself and others similarly situated,

Plaintiff,

v.

CHOICE HEALTH INSURANCE LLC,

Defendant.

Case No. 1:23-cv-00292-RAH-KFP

CLASS ACTION

DECLARATION OF BRIAN K. MURPHY IN SUPPORT OF CLASS COUNSEL'S MOTION FOR CLASS COUNSEL FEES AND EXPENSES

I, Brian K. Murphy, declare under penalty of perjury as follows:

1. I submit this declaration in support of Class Counsel's Motion for Class Counsel Fees and Expenses.

2. I am an attorney duly admitted to practice in Ohio and Illinois, I am over 18 years of age, I am competent to testify, and I make this declaration on personal knowledge.

3. In light of the risks inherent in class action litigation, as well as my experience litigating dozens of Telephone Consumer Protection Act, 47 U.S.C. §

227 ("TCPA") action settlements, it is my opinion that the Settlement is an excellent result for consumers and members of the Class.[1]

4. The Settlement provides significant and immediate monetary relief for Settlement Class Members where their recovery, if any, would otherwise be uncertain, especially in light of the risks of litigation and the ever-changing TCPA landscape.

5. On July 28, 2023, Plaintiff Juanita Williams ("Representative Plaintiff") filed an Amended Complaint against Defendant in this action asserting that Defendant Choice Health Insurance, LLC ("Defendant") violated the TCPA by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. (Doc. 19.) On September 11, 2023, Defendant answered the First Amended Complaint, denying, among other things, that it had violated the TCPA. (Doc. 28.)

6. Since that time, the Parties engaged in informal discovery before participating in a mediation on December 7, 2023 with Hon. Sidney I. Schenkier (Ret.) of JAMS, during which the Parties tentatively agreed to a potential settlement of the Litigation. After follow up negotiations, the key terms of the Settlement were memorialized in the Agreement (Doc. 35-1).

[1] All capitalized terms not defined herein have the meanings set forth in the Parties' Class Action Settlement Agreement (Doc. 35-1, the "Agreement").

7. Pursuant to the Settlement Agreement, Defendant will cause to be created a common fund in the amount of $7,000,000. (Agreement ¶ 1.1.38.) Moreover, as a result of the Litigation, Defendant has also agreed to terminate its relationship with the data provider who sold Defendant the Class Member data used to make the calls at issue. (*Id.* ¶ 4.4.) This remedial relief has a value of at least $2,278,460 for Settlement Class Members, bringing the Settlement's total value to $9,278,460.

8. The monetary relief on a per Class Member basis and the remedial relief agreed to by Defendant place the Settlement well within the range of similar settlements. The total Settlement Sum available to the Class to resolve this matter is $7,000,000, and Class Members submitting Approved Claims will receive up to $33.79.

9. By the time the Parties finalized an agreement, they were well aware of the strengths and weaknesses of their respective positions and of the risks associated with pursuing the case through trial. Representative Plaintiff and Class Counsel believe that the claims asserted in the Action have merit. Defendant denies any liability and is willing to litigate vigorously. Representative Plaintiff and Class Counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Litigation through class certification, trial, and any subsequent appeals. Representative Plaintiff's counsel has taken into

account the strength of Defendant's defenses, difficulties in obtaining class certification and proving liability, the uncertain outcome and risk of the Litigation, especially in complex actions such as this one, the inherent delays in such litigation, and, in particular, the risk of a change in the law. Representative Plaintiff's counsel believes that the Settlement confers substantial and immediate monetary and non-monetary benefits upon the Settlement Class, whereas continued and protracted litigation, even if successful, may have ultimately delivered none given the risks presented by Defendant's defenses, the uncertainties of contested litigation, Defendant's financial condition, and the everchanging TCPA landscape, including district courts' ongoing scrutiny of the constitutionality of the TCPA.

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

11. The Settlement is a fair and reasonable recovery given the extensive litigation risks in light of Defendant's defenses and the challenging and unpredictable path of litigation Representative Plaintiff and any certified class would have faced absent the Settlement.

12. In this Litigation, my firm, Murray Murphy Moul + Basil LLP, co-counseled with Anthony I. Paronich of Paronich Law, P.C. My firm and my co-counsel have dedicated substantial resources to the Litigation's prosecution, and we intend to continue doing so through the duration of the Litigation.

13. My firm devoted significant time and resources to investigating the claims against Defendant, researching and developing the legal claims at issue, preparing for and attending mediation, negotiating and drafting the Settlement Agreement, drafting the preliminary approval documents, and attending to all actions required thereafter pursuant to the Preliminary Approval Order.

14. The time and resources devoted to this Litigation readily justify the requested fee.

15. My firm's expenses are $10,722.19. These costs include filing fees, service of process fees, expert fees, data processing fees, travel expenses, and mediation fees.

16. These expenses were reasonable and necessary for the prosecution of this Litigation and are the types of expenses that would typically be billed to clients in non-contingency matters.

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

18. Class Counsel represented Representative Plaintiff and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out-of-pocket expenses invested into this

contentious case. The risk of non-payment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

19. Class Counsel assumed significant risk of non-payment in initiating and expending attorney hours in this case given the complex legal issues involved, the changing TCPA legal landscape, and Defendant's vigorous defense of Representative Plaintiff's and the Class's claims.

Qualifications of Counsel

20. I and my firm are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

21. I have been a partner with Murray Murphy Moul + Basil LLP since 1999. I am a 1994 graduate of The Ohio State University College of Law. In 1994, I was admitted to the Bar of Illinois. In 1999, I was admitted to the Bar of Ohio. Since then, I have been admitted to practice before numerous federal district and appellate courts and the United States Supreme Court. From time to time, I have appeared in other state and federal district courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

22. Jonathan P. Misny is a 2013 graduate of The Ohio State University College of Law. He was admitted to the Bar of Ohio in 2013 and has worked at Murray Murphy Moul + Basil LLP since 2015. A substantial portion of his work at the firm involves prosecuting TCPA class claims. He has been admitted to

practice before numerous federal district courts and the United States Court of Appeals for the Sixth Circuit and Seventh Circuit. From time to time, he has appeared in other state and federal district courts *pro hac vice*. He is in good standing in every court to which he is admitted to practice.

23. A sampling of class actions in which my firm and I have participated are as follows:

Securities Litigation

24. Murray Murphy Moul + Basil LLP has developed into one of the most experienced securities litigation firms in the State of Ohio. Since 2011, the firm has been a member of the Ohio Attorney General's Securities Panel, providing ongoing advice to the office related to potential securities claims affecting Ohio's public pension funds. The firm has represented numerous public pension funds for the State of Ohio under both Republican and Democratic administration since 2006. The firm has also prosecuted matters on behalf of other large pension funds. The following is a short summary of a representative sampling of the securities cases the firm has been involved with over the years:

> In re Cardinal Health Securities Litigation
> (United States District Court for the Southern District of Ohio)
>
> Murray Murphy Moul + Basil LLP was co-counsel in this matter, which resulted in a $600 million settlement for the class—the largest securities class action settlement in the history of the Sixth Circuit. The settlement was approved by Judge Marbley on November 14, 2007. The Complaint alleged that Cardinal, and certain of its officers and directors, issued

materially false statements concerning the Company's financial condition. The Complaint was on behalf of all persons who purchased the publicly traded securities of Cardinal Health, Inc. between October 24, 2000 and June 30, 2004 inclusive. After a review of in excess of six million documents and extensive depositions and interviews, and a lengthy and extensive mediation process, the parties entered into the settlement agreement pursuant to which the $600 million settlement fund was created.

In re Marsh & McLennan Cos., Inc. Securities Litigation
(United States District Court for the Southern District of New York)

Murray Murphy Moul + Basil LLP was appointed by former Attorney General Jim Petro as co-counsel in this matter in which the Public Employees' Retirement System of Ohio, State Teachers' Retirement System of Ohio, and Ohio Bureau of Workers' Compensation were appointed as co-Lead Plaintiffs. The case was settled at the end of 2009 for $400 million.

In re Abercrombie & Fitch Securities Litigation
(United States District Court for the Southern District of Ohio)

Murray Murphy Moul + Basil LLP was co-counsel in this PSLRA case which alleged that Abercrombie (a) carried out a scheme to deceive the investing public; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Abercrombie securities. The Court certified the class, and a settlement was eventually reached in the amount of $12 million in the middle of 2010.

Ohio Board of Deferred Compensation v. Pilgrim Baxter
(United States District Court for the District of Maryland)

Murray Murphy Moul + Basil LLP assisted in the prosecution of this securities class action brought on behalf of purchasers and holders of Pilgrim Baxter mutual funds from November 1, 1998 to November 13, 2003 who were harmed by a pattern of market timing trading practices.

The Ohio Board of Deferred Compensation was appointed as the lead Plaintiff in this litigation, and Murray Murphy Moul + Basil served as co-counsel. The case was settled for $31,538,600 in 2010.

In Re Bank of New York Mellon Foreign Currency Transaction Litigation
(United States District Court for the Southern District of New York)

Murray Murphy Moul + Basil LLP represented the co-Lead Plaintiffs, the Schools Employees Retirement System of Ohio and the Ohio Police and Fire Pension Fund, in a class action brought against the Bank of New York Mellon by customers who had utilized the Bank's foreign currency exchange services and who were charged inaccurate exchange rates. The case settled for in excess of $500 million in 2015.

Anthony Basile, et al v. Valeant Pharmaceuticals, et al
(United States District Court for the Central District of California)

Murray Murphy Moul + Basil LLP represented the co-Lead Plaintiff, the State Teachers Retirement System of Ohio, in a class action brought against Valeant Pharmaceuticals and hedge fund manager Bill Ackman alleging massive insider trading violations related to Valeant's attempted hostile tender offer for Allergan. The case settled in 2018 for $250 million, representing the largest settlement ever for a case based on insider trading allegations.

Shenk v. Mallinckrodt PLC
(United States District Court for the District of Columbia)

Murray Murphy Moul + Basil LLP represents the Lead Plaintiff, the State Teachers Retirement System of Ohio, in a class action brought against pharmaceutical manufacturer Mallinckrodt PLC related to securities violations engaged in by the company and its management. The case is currently pending.

Other Class Litigation Experience

25. Murray Murphy Moul + Basil LLP has served as Lead Class Counsel in prosecuting other large class actions, including Violette, et al v. P.A. Days, Inc.

(S.D. Ohio 2004) and Adkins v. Ricart Properties, et al., (S. D. Ohio 2004), two certified class actions that included over 100,000 class members. Similarly, Murray Murphy Moul + Basil LLP served as Co-Lead Counsel in the certified class action of Mick v. Level Propane Gases, Inc., 203 F.R.D. 324 (S.D. Ohio 2001). The firm has also appeared in the United States Supreme Court in a putative class action arising in the Southern District of Ohio. Household Credit Servs., et al v. Pfennig, 124 S.Ct 1741 (2004).

26. Murray Murphy Moul + Basil LLP has also served as Defense Counsel in two putative class actions asserting claims against Ohio state agencies. Murray Murphy Moul + Basil LLP was trial counsel in the matter of S.H and all other similarly situated, et al v. Taft et al, Case Number: 2:04-cv-1206 and co-counsel in J.P. and all others similarly situated et al v. Taft et al, Case Number: 2:04-cv-692.

27. Murray Murphy Moul + Basil LLP also served as Lead Counsel in class litigation that have been resolved in favor of the Classes: Downes v. Ameritech Corp., et al., Case No. 99 CH 11356 (Cook County, IL), Bellile v. Ameritech Corp., et al., Case No. 99-925403-CP (Wayne County, MI), Gary Phillips & Assoc. v. Ameritech Corp., 144 Ohio App. 3d 149, 759 N.E.2d 833 (Franklin County, OH) and Prestemon, et al v. Echostar Communication and WebTV Networks, Case No. 2002-053014 (Alameda Cty, California Sup. Court).

28. The firm was also successful in bringing about one of the largest class settlements ever at the time for a class of consumers besieged by telemarketing prerecord robocalls in Desai v. ADT Security Systems, Case No. 11-cv-01925 (N.D. Illinois). The firm was Co-Lead Counsel on behalf of nationwide class that received $15,000,000 in 2013.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 22nd DAY OF APRIL, 2024 IN COLUMBUS, OHIO.

/s/ Brian K. Murphy
Brian K. Murphy

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JUANITA WILLIAMS, on behalf of herself and others similarly situated,

Plaintiff,

v.

CHOICE HEALTH INSURANCE LLC,

Defendant.

Case No. 1:23-cv-00292-RAH-KFP

CLASS ACTION

DECLARATION OF ANTHONY I. PARONICH IN SUPPORT OF CLASS COUNSEL'S MOTION FOR CLASS COUNSEL FEES AND EXPENSES

I, Anthony I. Paronich, declare under penalty of perjury as follows:

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

2. Class Counsel zealously represented Plaintiff and the Settlement Class Members' interests throughout the litigation and will continue to do so.

3. I devoted significant time and resources to investigating the claims against Defendant, researching and developing the legal claims at issue, preparing for and attending mediation, negotiating and drafting the Settlement Agreement,

drafting the preliminary approval documents, and attending to all actions required thereafter pursuant to the Preliminary Approval Order.

4. My firm's expenses are $14,298.00. These costs include filing fees, service of process fees, expert fees, data processing fees, travel expenses, and mediation fees.

5. I have extensive experience and expertise prosecuting complex class actions and am particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

6. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, and I am competent to testify and make this declaration on personal knowledge. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the TCPA.

7. I am a 2010 graduate of Suffolk Law School. In 2010, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the Federal District Court for the District of Massachusetts, the Northern District of Illinois, the Eastern District of Michigan, the Western District of Wisconsin, the Southern District of Indiana, the First Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and the Ninth Circuit Court of Appeals. From

time to time, I have appeared in other State and Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

8. I was an associate at Broderick Law, P.C. in Boston, Massachusetts from 2010 through 2016.

9. I was a partner at Broderick & Paronich, P.C. in Boston, Massachusetts from 2016 through 2019.

10. In 2019, I started Paronich Law, P.C., focused on protecting consumers in class action lawsuits.

11. I have been appointed class counsel in more than 45 TCPA cases, including the following:

i. Desai and Charvat v. ADT Security Services, Inc., USDC, N.D. Ill., 11-CV-1925, a TCPA class settlement of $15,000,000 granted final approval on June 21, 2013.

ii. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. Md., 13-cv-00662, a TCPA class settlement of $8,500,000 granted final approval on April 15, 2015.

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

iv. Bull v. US Coachways, Inc., USDC, N.D. Ill., 1:14-cv-05789, a TCPA class settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of $49,932,375 and an assignment of rights against defendant's insurance carrier.

v. Smith v. State Farm Mut. Auto. Ins. Co., et. al., USDC, N.D. Ill., 1:13-cv-02018, a TCPA class settlement of $7,000,000.00 granted final approval on December 8, 2016.

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

vii. Heidarpour v. Central Payment Co., USDC, M.D. Ga., 15-cv-139, a TCPA class settlement of $6,500,000 granted final approval on May 4, 2017.

viii. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC, N.D. Ga., 1:15-CV-03562-AT, a TCPA class settlement of $12,000,000 granted final approval on December 14, 2017.

ix. Abante Rooter and Plumbing, Inc. v. Pivotal Payments, Inc., USDC, N.D. Ca., 3:16-cv-05486-JCS, a TCPA class settlement of $9,000,000 granted final approval on October 15, 2018.

x. In re Monitronics International, Inc., USDC, N.D.W. Va., 1:13-md-02493-JPB-JES, a TCPA class settlement of $28,000,0000 granted final approval on June 12, 2018.

xi. Thomas Krakauer v. Dish Network, L.L.C., USDC, M.D.N.C., 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of $20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of $61,339,200. (Dkt. No. 338). The Fourth Circuit Court of Appeals unanimously affirmed the judgment in May of 2019. *Krakauer v. Dish Network, L.L.C.,* 925 F.3d 643 (4th Cir. 2019). The United States Supreme Court rejected *certiorari* of this matter in December of 2019. *See DISH Network L.L.C. v. Krakauer,* 140 S. Ct. 676 (2019).

xii. Abante Rooter and Plumbing, Inc. v. Alarm.com Incorporated, et. al., USDC, ND. CA., 4:15-cv-06314-YGR, a TCPA class settlement of $28,000,000 granted final approval on August 13, 2019.

xiii. Charvat v. Carnival Corporation & PLC, et. al., USDC, ND. Ill., 1:13-cv-00042, a TCPA class settlement of $12,500,000 granted final approval in April of 2020.

xiv. Loftus v. Sunrun, Inc., USDC, N.D. Ca.., 3:19-cv-1608, a TCPA class settlement of $5,500,000 granted final approval on May 11, 2021.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 22nd DAY OF APRIL, 2024 IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Anthony I. Paronich
Anthony I. Paronich