

# **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,

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

CLASS ACTION

v.

CHOICE HEALTH INSURANCE  
LLC,

Defendant.

**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.<sup>1</sup>

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).

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<sup>1</sup> 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 22<sup>nd</sup> DAY OF APRIL, 2024 IN COLUMBUS, OHIO.

/s/ **Brian K. Murphy**

Brian K. Murphy