

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

ROBIN TAYLOR, on behalf of herself :
and others similarly situated, : CASE NO. 21-cv-2744-MSS-CPT
:
Plaintiff, :
:
v. :
:
CARDINAL FINANCIAL :
COMPANY, LIMITED :
PARTNERSHIP :
:
Defendant. :

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

I. INTRODUCTION

Representative Plaintiff Robin Taylor and Defendant Cardinal Financial Company, Limited Partnership have reached a class action settlement agreement (“Settlement Agreement” or “Agreement”)¹ resulting in a \$7,200,000 Settlement for the benefit of the Class. Defendant 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. This meaningful remedial relief itself is valued at \$4,201,204 for the Settlement Class. *See* Economic Assessment of Remedial Relief in Class Action Settlement Agreement, prepared by Jon Haghayeghi, Ph.D., attached hereto as Exhibit 1 (“Haghayeghi Report”). The total economic value of the relief to be provided by Defendant to Settlement Class members pursuant to the Agreement is therefore \$11.4 million.

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 23, 2023, the Court preliminarily approved the Settlement. ECF 47. Accordingly, 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 approval, pursuant to Federal Rule of Civil

¹ The Settlement Agreement can be found at ECF 46-1. All capitalized terms used herein have the same definitions as those defined in the Agreement.

Procedure 23(h), Class Counsel respectfully request that the Court enter an order approving Class Counsel's requested attorneys' fees of \$2,400,000, equal to one third of the Settlement Fund and approximately 21% of the total value of the Settlement, and out-of-pocket litigation costs of \$50,455.93. 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 Class.²

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

II. BACKGROUND

On November 23, 2021, Plaintiff Robin Taylor filed the complaint against Defendant in this action asserting that Cardinal Financial violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, *et seq.* and the Florida Telephone Solicitations Act, Fla. Stat. § 501.059, ("FTSA") by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. On January 18, 2022, Defendant answered the complaint. ECF 11.

Since that time, the case has involved extensive discovery leading up to class

² The Court-approved Notice documents advise class members that Class Counsel intend to request fees in an amount not to exceed one-third of the Settlement Sum, plus reimbursement of out-of-pocket Expenses incurred in the litigation. *See* ECF 46-1 at Exhibit B.

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

certification. There have been tens of thousands of pages of documents exchanged in discovery as well as documents produced in response to multiple subpoenas sent to Cardinal Financial's vendors, including its lead provider and dialer provider. Declaration of Avi Kaufman, attached as Exhibit 2, at ¶ 4. As a result of a discovery dispute, Plaintiff filed a motion to compel against Cardinal Financial, who refused to produce their records of automated calls. ECF 21. At the hearing on Plaintiff's motion, Cardinal Financial agreed to produce such documents. ECF 31. Plaintiff then engaged in extensive expert analysis of the call and consent records that were produced, and, on October 3, 2022, served the expert report of Plaintiff's telephone expert Aaron Woolfson on Defendant.

On August 29, 2022, the Parties attended a full day mediation with Samuel Heller of Upchurch Watson White & Max. On November 9, 2022, the Parties attended a second day long mediation with Jill Sperber of Judicate West.

The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Kaufman Decl. ¶ 7. Class Counsel have considered the strength of Defendant's defenses, including specifically Defendant's consent defense, Defendant's consistent 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, in particular, the risk that a change in the law, including a ruling by this Court concerning the constitutionality of the TCPA, could nullify some or all of Plaintiff's

claims, *see id.*; *Creasy v. Charter Communs., Inc.*, 2020 U.S. Dist. LEXIS 177798 (E.D. La. Sep. 28, 2020) (finding that TCPA claims based on calls preceding the Supreme Court’s ruling in *Barr v. Am. Assn. of Political Consultants, Inc.*, 140 S. Ct. 2335, 591 U.S. ___, (July 6, 2020), are not actionable because the TCPA was unconstitutional until a 2015 amendment was severed in *Barr*). Plaintiff’s counsel believes that the proposed Settlement confers substantial and immediate benefits upon the Settlement Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. Kaufman Decl. ¶ 7. Based on their evaluation of all these factors, Plaintiff and Plaintiff’s counsel determined that the Settlement is in the best interests of Plaintiff and the Settlement Class. *Id.*

Pursuant to the Settlement Agreement, upon preliminary approval, Defendant caused to be created a common fund in the amount of \$7,200,000. Agreement at ¶ 1.1.38. Moreover, as a result of this litigation, Defendant 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. Agreement at ¶ 1.1.9. This remedial relief has a value of \$4,201,204 over five years for Settlement Class members and the public at large, bringing the Settlement’s total value to \$11,401,204. Haghayeghi Report at pg. 6.

The Settlement confers substantial and immediate benefits upon the Settlement Class and society whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Defendant’s defenses, including specifically its consent defense, 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 and the scope of the FTSA. See Kaufman Decl. ¶ 9.

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

Pursuant to the Agreement, and as indicated in the Notices, consistent with recognized class action practice and procedure, Class Counsel respectfully request an award of attorneys’ fees of \$2,400,000, which is equal to 21% of the Settlement’s total value and one third of the Settlement Fund. Class Counsel also respectfully request that they be reimbursed for their reasonable out of pocket litigation expenses of \$50,455.93. The Settlement is not contingent on the award of any Class Counsel fees or costs. Kaufman Decl. ¶ 11.

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 submit that the requested fee is appropriate, fair, and reasonable and respectfully request that it be approved by the Court.

The common benefit doctrine is an exception to the general rule that each party

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

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

*20 (S.D. Fla. Oct. 24, 2014) (attorneys representing a class action are entitled to attorneys' fees based upon the total value of the benefits afforded to the class by the settlement).

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

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

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of her acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the Clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). "Other

pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Camden I*, 946 F.2d at 775.

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

1. The Claims Against Defendant Required Substantial Time and Labor

Plaintiff and the class’s claims demanded considerable time and labor, making this fee request reasonable. Kaufman Decl. ¶¶ 3-6, 19-30; Declaration of Anthony Paronich, attached as Exhibit 3, at ¶¶ 14-19. Class Counsel devoted substantial time to investigating the claims against Defendant. Kaufman Decl. ¶ 26; Paronich Decl. ¶ 15. Class Counsel also expended resources researching and developing the legal claims at issue. Kaufman Decl. ¶¶ 26-28; Paronich Decl. ¶ 15. Time and resources were also dedicated to conducting extensive formal discovery, which included discovery to Defendant, numerous meet and confers ultimately resulting in Plaintiff’s motion to compel documents and other disputes that were resolved without Court intervention, subpoenas to non-party vendors of Defendant, review of over ten thousand pages of electronic documents relating to Defendant’s calling practices and defenses, including specifically its consent defense. Kaufman Decl. ¶ 27-28; Paronich Decl. ¶ 16-17. Class Counsel also expended time and resources working with Plaintiff’s expert Aaron Woolfson to distill the information in the call records gained through discovery. Kaufman Decl. ¶ 27; Paronich Decl. ¶ 16. Class

Counsel was also in the midst of preparations for Plaintiff’s and Defendant’s depositions when settlement was reached.

Settlement negotiations, including preparing for and attending two mediation sessions with different mediators, consumed further time and resources. Kaufman Decl. ¶ 29; Paronich Decl. ¶ 18. Finally, significant time was devoted to negotiating and drafting of the Agreement and the preliminary approval process, and to all actions required thereafter pursuant to the preliminary approval order. Kaufman Decl. ¶¶ 28-30; Paronich Decl. ¶¶ 17-19.

All told, Class Counsel’s work resulted in an excellent result—the Settlement provides benefits to the Settlement Class valued at over \$11.4 million, including requiring Defendant to make monetary relief of \$7.2 million available for the Class and providing meaningful injunctive relief valued at \$4.2 million. Each of the above-described efforts was essential to achieving the Settlement now before the Court. The time and resources devoted to this Action readily justify the requested fee. Kaufman Decl. ¶ 34.

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

Courts have long recognized that “particularly in class action suits, there is an overriding public interest in favor of settlement,’ ... because ... ‘class action suits have a well-deserved reputation as being most complex.’” *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). “Settlement ‘has special importance in class actions with their notable uncertainty, difficulties of proof, and length.’”

Montoya v. PNC Bank, N.A., No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016).

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

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel trained in class action law and procedure as well as the specialized issues presented here. Class Counsel 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. Kaufman Decl. ¶¶ 12-17; Paronich Decl. ¶¶ 3-9. To date, not including this Settlement, Class Counsel have recovered over \$100 million through TCPA class action settlements for the benefit of consumers. Kaufman Decl. ¶ 13.

In evaluating the quality of representation by Class Counsel, the Court should also consider opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). Throughout the litigation, Defendant was represented by capable counsel, initially by Goodman Law P.C. and Fields Howell and subsequently by Carlton Fields and top TCPA defense counsel

Eric Troutman, of the Troutman Firm, *see* www.TCPAworld.com. They were worthy, highly competent adversaries. Kaufman Decl. ¶ 12.

3. Class Counsel Achieved a Successful Result

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

Given the significant litigation risks the Class faced, the Settlement represents a successful result. Rather than facing years of costly and uncertain litigation, the Settlement makes available an immediate cash benefit of \$7,200,000 to Settlement Class Members and provides meaningful remedial relief, with a total value to the Settlement Class and the society of \$11,401,204. Kaufman Decl. ¶¶ 9-11.

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*, 2022 U.S. Dist. LEXIS 52756, at *5 (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); *In re Sunbeam Sec. Litig.*, 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 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 Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-

HES-PDB, ECF 36 (M.D. Fla. May 26, 2022) (Schlesinger, J.) (granting final approval to a TCPA class settlement aided by Dr. Haghayeghi's valuation of the remedial relief); *De Los Santos v. Milward Brown, Inc.*, Civil Action No. 9:13-cv-80670, ECF 82-3 and 84 (S.D. Fla., Sep. 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. Kaufman Decl. ¶ 10. The per claiming Settlement Class Member recovery is expected to be approximately \$33. *Id.* This amount is greater than the per claim payouts in the vast majority of TCPA class action settlements, including in cases involving direct liability against companies larger than Defendant. *See, e.g., Rose v. Bank of Am. Corp.*, 2014 WL 4273358 at *10 (N.D. Cal. Aug. 29, 2014) (direct liability; \$20-\$40 per claimant); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493-94 (N.D. Ill. 2015) (direct liability; \$30 per claimant); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (direct liability; \$24 per claimant; deemed an "excellent result"); *Goldschmidt v. Rack Room Shoes*, No. 18-21220-CIV, ECF 86 (S.D. Fla. Jan. 16, 2020) (direct liability; \$10 voucher and \$5 in cash, less attorneys' fees, costs, notice and administration costs, and service award, per claimant); *Halperin v. You Fit Health Clubs, LLC*, No. 18-61722, ECF 44 (S.D. Fla. Nov. 1, 2019) (direct liability; \$9, less attorneys' fees, costs, administration costs, and service award, per claimant). *See also Hamilton v. SunTrust Mortg. Inc.*, No. 13-cv-60749, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (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).

4. The Claims Presented Serious Risk

As discussed in detail above, the Settlement is fair and reasonable given the extensive litigation risks. Kaufman Decl. ¶¶ 7-11. 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 and summary judgment.

Class Counsel accepted substantial risk in taking this case given the possibility that this Court, the Eleventh Circuit, or the Supreme Court could take action that might extinguish 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, 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 Plaintiff and Settlement Class Members through continued litigation could only have been achieved if: (i) 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, including specifically its consent defense, and the challenging and unpredictable path of litigation Plaintiff and any certified class would have faced absent the Settlement. Kaufman Decl. ¶¶ 7-11.

Despite 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.).

Interpretations of the TCPA are ever-evolving and notoriously unpredictable, and the FTSA was only recently passed and remains mostly untested, further injecting uncertainty into the outcome. And even had 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 v. Wells Fargo Bank, N.A.* characterized a \$24 per-claimant recovery in a TCPA class action—less than what participating Settlement Class Members stand to receive here—as “an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter.” No. 15-1156, 2017

WL 416425, at *4 (N.D. Ga. Jan. 30, 2017). Here, Plaintiff's counsel have secured a result that exceeds the recovery in *Markos*.

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

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

In addition, Class Counsel was precluded from pursuing other potential sources of revenue due to its prosecution of the claims in this action.”).

Because Class Counsel were working entirely on a contingency basis, only a successful result – at trial or by settlement – would result in any fees and recovery of costs. Kaufman Decl. at ¶¶ 33-34. Nevertheless, Class Counsel spent over 1000 hours and more than \$50,000 to zealously promote the Class’s interests. Kaufman Decl. at ¶ 33. The contingent nature of Class Counsel’s representation strongly favors approval of the requested fee.

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

Counsel’s requested fee of \$2,400,000, which is 21% of the Settlement’s value and one third of the Settlement Fund, is well within the range of fees typically awarded in similar cases. Numerous decisions within and outside of the Middle District of Florida and the Eleventh Circuit have found that a fee of one-third of a settlement’s value is the benchmark fee percentage under the factors listed by the *Camden I. Hanley v. Tampa Bay Sports & Entm’t Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *16 (M.D. Fla. Apr. 23, 2020) (collecting cases and stating that “district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund” and approving Class Counsel fees of more than one third of a TCPA settlement fund); *Wolff v. Cash 4 Titles*, No. 03-22778- CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.”) (citing Circuit case law and listing Southern and

Middle District of Florida attorneys' fee awards).

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

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

7. Class Counsel's Request for Expenses Is Reasonable

Rule 23(h) also permits the Court to "award . . . nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Courts

typically allow counsel to recover their reasonable out-of-pocket expenses. Indeed, courts normally grant expense requests in common fund cases as a matter of course.” *Hanley*, 2020 U.S. Dist. LEXIS 89175, at *17 (collecting cases and approving cost award of approximately \$27,000). The Settlement permits Class Counsel to seek reimbursement of their reasonable expenses.

Class Counsel have incurred expenses in the prosecution of this action totaling \$50,455.93 for filing fees, service of process fees, expert fees, and mediation fees. Kaufman Decl. ¶ 31; Paronich Decl. ¶ 20. These expenses were reasonable and necessary for the prosecution of this action and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. *Id.*

IV. CONCLUSION

Plaintiff and Class Counsel respectfully request that this Court award Class Counsel attorneys’ fees in the amount of \$2,400,000 and reasonable costs in the amount of \$50,455.93.

Local Rule 3.01(g) Certification

I certify that on April 21, 2023 counsel for Plaintiff met and conferred with counsel for Defendant, by phone, and Defendant does not oppose Class Counsel’s fee and cost requests, while reserving all rights.

DATED April 21, 2023

Respectfully submitted,

/s/ Avi R. Kaufman

Avi R. Kaufman

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*Attorneys for Representative Plaintiff and
the Class*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and it is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Avi R. Kaufman

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

ROBIN TAYLOR, individually, and on behalf
of all others similarly situated,

Plaintiff,

Civil Action File No. 21-cv-2744

v.

**CARDINAL FINANCIAL COMPANY,
LIMITED PARTNERSHIP**

Defendant.

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

Jon Haghayeghi, Ph.D.

April 21, 2023

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ECONOMIC ASSESSMENT OF THE VALUE OF REMEDIAL RELIEF

I. INTRODUCTION

This class action lawsuit alleges that Cardinal Financial Company, Limited Partnership, (“Cardinal Financial” or “Defendant”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) and the Florida Telephone Solicitations Action Act, Fla. Sta. § 501.059 (the “FTSA”). 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 November 23, 2017 through November 9, 2022 after having been supplied by iLeads.¹ As part of the Settlement, Defendant has agreed to remedial relief. Specifically, Cardinal Financial has agreed to terminate its relationship with the lead aggregator that sold it the class member data used to make the calls at issue.²

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 and FTSA, Defendant Cardinal Financial 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 Settlement Agreement, Page 4.

² Settlement Agreement, Page 16.

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-FFY2027.³

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 seven economic assessments in connection with TCPA settlement agreements since 2021, all of which have been accepted in both 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.

³ Alaska Statute § 47.45.230.

III. 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 Cardinal Financial'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 Cardinal Financial.

In a legal context, the Settlement Agreement guarantees the protection of the public's privacy from telephonic communications on behalf of Cardinal Financial 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) Cardinal Financial, and 3) society at large.

The modifications to Cardinal Financial'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 ascertain 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.

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 Cardinal Financial, 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 and similar state telemarketing laws like the FTSA. 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 \$7.99 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.⁴

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 Telephone Consumer Protection Act (TCPA) is a federal legislation enacted in 1991 to protect consumers from unsolicited and intrusive telemarketing practices. The TCPA and FTSA impose restrictions on telemarketers, such as requiring their adherence to the Do Not Call registry, limiting the use of automated dialing systems, and mandating the provision of identifying information during calls. Violations of the TCPA and FTSA can result in penalties and legal consequences, including class-action lawsuits.⁵ In 2021, the Florida legislature passed Senate Bill 1120 (the 'Florida Robocall Bill') in an effort to protect consumers by broadening the scope of existing telemarketing laws, including requiring prior express written consent for calls to be made by automated systems for the selection or dialing of telephone numbers.⁶

In the context of the economic framework previously outlined, the TCPA and FTSA play 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 and FTSA 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.

⁴ Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007).

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

⁶ Senate Bill 1120 (<https://www.flsenate.gov/Session/Bill/2021/1120/BillText/er/PDF>)

Moreover, the TCPA and FTSA 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 and FTSA foster 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 and FTSA, 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 \$1,500.⁷ Certainly, there are members of the class who value such protection in the amount of \$500 or more. Assuming that members of the Settlement Agreement place the maximum statutory value on their privacy, one would conclude that the statutory value greatly exceeds the value of the settlement agreement.

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

⁷ 47 U.S.C. § 227

prize.⁸ 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,⁹ 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.¹⁰

3. Value of the Benefit to Society

a. Change in Cardinal Financial practices

Cardinal Financial 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 Cardinal Financial. In determining the economic value of the benefits to society, the undersigned economist recognizes the role the Settlement Agreement plays in deterring future TCPA and FTSA violations.

b. Estimating Average Call Frequency and Volume

Essential to determining the economic benefits of the Settlement Agreement is understanding the call statistics during the class period. To develop this understanding, call logs during the class period were reviewed and standardized for purposes of making calculations. Analysis of 2,455,655 calls during the class period indicate that 1,630,072 outbound calls were connected to phone numbers in the Florida Auto-Dial and Do-Not-Call classes.¹¹ In determining which (a) were connected calls, (b) were made on or after a certain date or within a certain time from other calls, (c) were made to or from Florida numbers, (d) were made to a residential landline, mobile, or residential mobile numbers, (e) were made to numbers on the National Do Not Call list for more than a certain amount of time, and/or (f) were made prior to any inbound calls to Defendant, the following conclusions were drawn:

⁸ <https://www.ftc.gov/news-events/news/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks-illegal-robocalls>

⁹ <https://www.bloomberg.com/press-releases/2023-04-04/both-robotexts-and-robocalls-increased-in-march-according-to-robokiller-insights>

¹⁰ <https://www.pcmag.com/how-to/block-robocalls-and-spam-calls>

¹¹ See Declaration of Aaron Woolfson dated October 3, 2022.

- Florida (Auto-Dial) Class contained an index of 126,898 calls connected to 30,429 unique numbers from July 2021 to April 2022.
 - On average, each unique number of the Florida (Auto-Dial) Class received 4.2 calls. The annualized number of calls made to prospective members of the Florida (Auto-Dial) Class is 152,277 per year.
- Florida (Do-Not-Call) Class contained an index of 55,931 calls connected to 10,276 unique numbers from July 2021 to April 2022.
 - On average, each unique number of the Florida (Do-Not-Call) Class received 5.4 calls. The annualized number of calls made to prospective members of the Florida (Do-Not-Call) Class is 67,117 per year.
- National (Do-Not-Call) Class contained an index of 818,605 calls connected to 123,771 unique numbers from April 2019 to April 2022.
 - On average, each unique number of the Florida (Do-Not-Call) Class received 6.6 calls. The annualized number of calls made to prospective members of the National (Do-Not-Call) Class is 272,868 per year.

In addition to these calls to class members, from April 2019 to April 2022, Cardinal Financial made an additional 1,454,231 calls to consumers whose telephone numbers it obtained from the same lead aggregator that sold it the class member data. Notably, according to call records, the number of calls made by Cardinal Financial increased over time, with Cardinal Financial making 165,106 calls to 33,944 unique numbers in December 2021, at the time this class action case was filed. This represents an annual calling rate by Cardinal Financial of 1,981,272 calls to 407,328 unique numbers, even assuming that the number of calls would remain static as opposed to increasing as it had done over the sample period.

d. *Estimating Willingness-to-Pay to Avoid One Call*

The average price of the products presented in Appendix 1 available to consumers seeking to prevent telemarketing calls was \$4.99 per month. According to the December 2021 Nationwide Robocall Data – from robocall tracker Robocall Index, the number of robocalls received per person in the

United States was 10.9 during the month of December of 2021.¹² Therefore, for the various consumer products available, the implied price paid to avoid one call could be calculated as follows:

$$\text{Implied Price Per Call Avoided} = \frac{\$2.99}{10.9} = \$0.274 \text{ per call}$$

$$\text{Implied Price Per Call Avoided} = \frac{\$3.99}{10.9} = \$0.366 \text{ per call}$$

$$\text{Implied Price Per Call Avoided} = \frac{\$7.99}{10.9} = \$0.733 \text{ per call}$$

The average consumer received an average of five violative calls per individual, and as a result, the settlement agreement bestows an economic benefit equivalent to the value of a product that would eliminate the inconvenience of receiving such undesired telemarketing calls. This value can be observed in readily available markets for such services as mentioned above and as listed in Appendix 2.

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 \$2.99 per month to \$4.99 per month. The implied willingness to pay

- At a \$2.99 price point, the estimated benefit to the settlement class over the next year is \$543,487 and \$2,517,405 over the next five years.
- At a \$3.99 price point, the estimated benefit to the settlement class over the next year is \$725,255 and \$3,359,347 over the next five years.
- At a \$7.99 price point, the estimated benefit to the settlement class over the next year is \$1,452,272 and \$6,726,861 over the next five years.

Table 1 in Appendix 2 summarizes these values range from a minimum of \$0.55 to a maximum of \$95.88.¹³ Each value represents a willingness-to-pay

¹² “Youmail Robocall Index: December 2021 Nationwide Robocall Data.” *Robocall Index* | YouMail, <https://robocallindex.com/>.

¹³ The sources of all values are provided in Appendix 2.

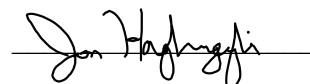
for the benefit of not receiving unwanted cell phone calls. Values in this table are used to derive our best estimate of the present value of the post-settlement remedial relief, using the most commonly observed willing-buyer-price-points. With the recognition that there are short-term and long-term benefits associated with remedial relief delivered by the Settlement Agreement, the undersigned economist has calculated annual values for the next five years at three price levels referenced in Appendix 2. The central measure presented in the scenario analysis Table 1 shows an average benefit of \$4,201,204 over the next five years at an average willingness-to-pay of \$4.99 per month.

IV. CONCLUSION

By accounting for the anticipated changes to Cardinal Financial'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 central measure of the economic value of the benefits bestowed on society is **\$4,201,204** over the next five years.

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.

A handwritten signature in black ink, appearing to read "Jon Haghayeghi", is written over a horizontal line.

Jon Haghayeghi, Ph.D.

APPENDICES

APPENDIX 1

VALUING REMEDIAL RELIEF

TABLE 1

SUMMARY TABLE

PRESENT VALUE OF REMEDIAL RELIEF FOR INDIVIDUALS IMPACTED BY CARDINAL FINANCIAL
2023 TO 2027

ROBIN TAYLOR, individually, and on behalf of all others similarly situated,

v.

CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP

CASE NO. 21-cv-2744, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Number of telemarketing calls		Aggregate Present Value of Remedial Relief from Non-Consensual Telemarketing Calls with Market Based Market Based Willingness-to-Pay Methodology and Prices Ranging from \$35.88 to \$95.88 annually					
		\$35.88 / year \$2.99 / month		\$47.88 / year \$3.99 / month		\$95.88 / year \$7.99 / month	Average (\$4.99 / month)
1 year (2023), expected value of non consensual telemarketing calls avoided	1,981,272	\$543,487	[1]	\$725,255	[2]	\$1,452,272	[3] \$907,005
5 years (2023 to 2027), expected value of non consensual telemarketing calls avoided	9,906,360	\$2,517,405		\$3,359,347		\$6,726,861	\$4,201,204

[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 TELEMARKETER PHONE CALLS

ROBIN TAYLOR, individually, and on behalf of all others similarly situated,

v.

CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP

CASE NO. 21-cv-2744, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT	
	(#)	(\$)	(\$)	(#)	COL 5 / COL 6 (\$)	(\$)	
0	2023	1,981,272 [1]	0.274 [3]	543,487	1.000 [4]	543,487	543,487
1	2024	1,981,272	0.274	543,487	1.048	518,743	1,062,229
2	2025	1,981,272	0.274	543,487	1.085	501,134	1,563,363
3	2026	1,981,272	0.274	543,487	1.121	484,974	2,048,337
4	2027	1,981,272	0.274	543,487	1.159	469,069	2,517,405
	Total	9,906,360		2,717,433		2,517,405	

[1] This model assumes that 1,981,272 calls will be made per year.

[2] This model terminates in 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.274.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of April 20, 2023.

TABLE 2.B

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 2: VALUE OF AVOIDING UNWANTED TELEMARKETER PHONE CALLS

ROBIN TAYLOR, individually, and on behalf of all others similarly situated,

v.

CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP

CASE NO. 21-cv-2744, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

COL 1 YEAR	COL 2 NUMBER OF UNIQUE TELEPHONE NUMBERS	COL 3 VALUE OF BENEFIT OF AVOIDING CALL (\$3.99 per month)	COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR	COL 6 PRESENT VALUE OF EXPECTED BENEFIT	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT				
	(#)	(\$)	(\$)	(#)	(\$)	(\$)				
0	2023	1,981,272	[1]	0.366	[3]	725,255	1.000	[4]	725,255	725,255
1	2024	1,981,272		0.366		725,255	1.048		692,235	1,417,490
2	2025	1,981,272		0.366		725,255	1.085		668,737	2,086,227
3	2026	1,981,272		0.366		725,255	1.121		647,173	2,733,399
4	2027	1,981,272		0.366		725,255	1.159		625,948	3,359,347
	Total	9,906,360				3,626,273			3,359,347	

[1] This model assumes that 1,981,272 calls will be made per year.

[2] This model terminates in 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.366.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of April 20, 2023.

TABLE 2.C

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 3: VALUE OF AVOIDING UNWANTED TELEMARKETER PHONE CALLS

ROBIN TAYLOR, individually, and on behalf of all others similarly situated,

v.

CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP

CASE NO. 21-cv-2744, IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

COL 1	COL 2	COL 3	COL 4	COL 5	COL 6	COL 7	
YEAR	NUMBER OF UNIQUE TELEPHONE NUMBERS	ANNUAL VALUE OF BENEFIT OF AVOIDING CALL (\$7.99 per month)	EXPECTED VALUE OF BENEFIT TO CONSUMERS	DISCOUNT FACTOR	PRESENT VALUE OF EXPECTED BENEFIT	CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT	
	(#)	(\$)	(\$)	(#)	(\$)	(\$)	
					COL 5 / COL 6		
0	2023	1,981,272 [1]	0.733 [3]	1,452,272	1.000 [4]	1,452,272	1,452,272
1	2024	1,981,272	0.733	1,452,272	1.048	1,386,153	2,838,425
2	2025	1,981,272	0.733	1,452,272	1.085	1,339,100	4,177,525
3	2026	1,981,272	0.733	1,452,272	1.121	1,295,918	5,473,443
4	2027	1,981,272	0.733	1,452,272	1.159	1,253,417	6,726,861
	Total	9,906,360		7,261,362		6,726,861	

[1] This model assumes that 1,981,272 calls will be made per year.

[2] This model terminates in 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.733.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of April 20, 2023.

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
\$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 per month for Robocall Blocking. https://play.google.com/store/apps/details?id=com.nomorobo&hl=en
\$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/
\$35.88	Verizon charges \$2.99 per month for its Call Filter. https://www.verizon.com/solutions-and-services/call-filter/
\$47.88	ATT Call Protect is offered at \$3.99 per month for blocking spam calls.
\$59.40	TrapCall's \$4.95 per moth iOS and Android app stops spam callers from wasting consumer 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
\$95.88	YouMail is priced at \$7.99 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.

Measures of Central Tendency:

Mean:	\$40.07
Median:	\$35.88

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

ROBIN TAYLOR, on behalf of herself	:	
and others similarly situated,	:	CASE NO. 21-cv-2744-MSS-CPT
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CARDINAL FINANCIAL	:	
COMPANY, LIMITED	:	
PARTNERSHIP	:	
	:	
Defendant.	:	

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

Avi R. Kaufman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Cardinal Financial Company, LP.¹ I submit this declaration in support of Plaintiff and Class Counsel’s Motion for Class Counsel Fees and Expenses. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Plaintiff Robin Taylor and Defendant Cardinal Financial Company, Limited Partnership have reached a class action settlement agreement resulting in a

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

\$7,200,000 Settlement for the benefit of the Class. Defendant 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. This meaningful remedial relief itself is valued at \$4,201,204 for the Settlement Class. The total economic value of the relief to be provided by Defendant to Settlement Class members pursuant to the Agreement is therefore \$11.4 million. This is an excellent result.

3. On November 23, 2021, Plaintiff Robin Taylor filed the complaint against Defendant in this action asserting that Cardinal Financial violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* and the Florida Telephone Solicitations Act, Fla. Stat. § 501.059, (“FTSA”) by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. On January 18, 2022, Defendant answered the complaint. ECF 11.

4. Since that time, the case has involved extensive discovery leading up to class certification. There have been tens of thousands of pages of documents exchanged in discovery as well as documents produced in response to multiple subpoenas sent to Cardinal Financial’s vendors, including its lead provider and dialer provider.

5. As a result of a discovery dispute, Plaintiff filed a motion to compel against Cardinal Financial, who refused to produce their records of automated calls. ECF 21. At the hearing on Plaintiff’s motion, Cardinal Financial agreed to produce such documents. ECF 31. Plaintiff then engaged in extensive expert analysis of the

call and consent records that were produced, and, on October 3, 2022, served the expert report of Plaintiff's telephone expert Aaron Woolfson on Defendant.

6. On August 29, 2022, the Parties attended a full day mediation with Samuel Heller of Upchurch Watson White & Max. On November 9, 2022, the Parties attended a second day long mediation with Jill Sperber of Judicate West.

7. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel have considered the strength of Defendant's defenses, including specifically Defendant's consent defense, Defendant's consistent 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, in particular, the risk that a change in the law, including a ruling by this Court concerning the constitutionality of the TCPA, could nullify some or all of Plaintiff's claims. Plaintiff's counsel believes that the proposed Settlement confers substantial and immediate benefits upon the Settlement Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. Based on their evaluation of all these factors, Plaintiff and Plaintiff's counsel determined that the Settlement is in the best interests of Plaintiff and the Settlement Class.

8. Pursuant to the Settlement Agreement, upon preliminary approval, Defendant caused to be created a common fund in the amount of \$7,200,000. Agreement at ¶ 1.1.38. Moreover, as a result of this litigation, Defendant 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. Agreement at ¶ 1.1.9. This remedial relief has a value of \$4,201,204 over five years for Settlement Class members and the public at large, bringing the Settlement's total value to \$11,401,204.

9. The Settlement confers substantial and immediate benefits upon the Settlement Class and society whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Defendant's defenses, including specifically its consent defense, 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 and the scope of the FTSA.

10. 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 possible approval. The total Settlement Sum available to the class to resolve this matter is \$7,200,000, which is equal to \$51 per Class Member. This is an extraordinary result. The per claiming Settlement Class Member recovery is expected to be approximately \$33. This amount is greater than the per claim payouts in the vast majority of TCPA class action settlements, including in cases involving direct liability against companies larger than Defendant.

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

12. Class Counsel have extensive experience and expertise prosecuting complex class actions, and are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases. Throughout the litigation, Defendant was represented by capable counsel, initially by Goodman Law P.C. and Fields Howell and subsequently by Carlton Fields and top TCPA defense counsel Eric Troutman, of the Troutman Firm, see www.TCPAworld.com. They were worthy, highly competent adversaries.

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

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

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

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

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

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

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

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

- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$5.16 million class wide settlement.
- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Bumpus, et al. v. Realty Brokerage Group LLC* (N.D. Cal. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act

class action, ultimately resulting in a \$26.91 million class wide settlement.

- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$738,375 class wide settlement.
- *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,950,000 class wide settlement.
- *Lomas et al. v. Health Insurance Associates LLC* (M.D. Fla. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$990,000 class wide settlement. (Final approval hearing scheduled for June 2023).

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

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

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

settlement; and (e) case and settlement management.

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

22. In total, Kaufman P.A. devoted 643 hours to this litigation, as of April 21, 2023, and Paronich Law, P.C. devoted 407 hours to this litigation, as of April 20, 2022.² A breakdown of the Kaufman P.A. hours devoted to this matter per attorney is provided below.

23. Class Counsel has been awarded attorneys' fees as a percentage of the fund in TCPA class actions based on lodestar cross-checks using Mr. Kaufman's hourly rate of \$800 and Ms. Kaufman's hourly rate of \$730. *See Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022); *Wright, et al. v. eXp Realty, LLC*, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct. 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11, 2021); *Izor v. Abacus Data Sys.*, No.

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

19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020). Courts in this district have found similar rates reasonable in similar class action settlements involving similarly specialized and successful class counsel. *Junior v. Infinity Ins. Co.*, No. 6:18-cv-1598-WWB-EJK, 2021 U.S. Dist. LEXIS 58354, at *10 (M.D. Fla. Mar. 25, 2021) (approving fee award based, in part, on the reasonableness of the lodestar cross-check, where counsel's hourly rates were \$850 and \$800), recommendation and order adopted and approved at ECF 72 (Apr. 29, 2021).

24. Based on the hourly rates of \$730 for Ms. Kaufman and Mr. Paronich and \$800 for Mr. Kaufman, the total lodestar amount for Class Counsel's time expended to date in this action is \$794,045. Accordingly, the lodestar amount is a 3.0 times multiplier of the requested fee—a multiplier well within the range approved in similar cases. In fact, a multiplier of 2.5-4 times lodestar is typically awarded in class actions in this Circuit to compensate for contingency risk. *E.g.*, *In re Health Ins. Innovs. Sec. Litig.*, No. 8:17-cv-2186-TPB-SPF, 2021 U.S. Dist. LEXIS 61051, at *39-40 (M.D. Fla. Mar. 23, 2021); *Jimenez v. Pizzerias, LLC*, No. 1:16-CV-22035-KMM, 2017 U.S. Dist. LEXIS 129820, at *14 (S.D. Fla. Aug. 14, 2017); *Martin v. Glob. Mktg. Resch. Servs.*, No. 6:14-cv-1290-Orl-31KRS, 2016 U.S. Dist. LEXIS 164770, at *5 (M.D. Fla. Nov. 30, 2016).

25. Moreover, the estimated lodestar does not include additional time that will be expended by Kaufman P.A. Based on my experience in prior class-wide

litigation, I conservatively anticipate that Kaufman P.A. will expend an additional 50 hours, on top of the below-itemized time, in drafting a motion for final approval, preparing for, traveling to, and attending the final fairness hearing, continuing to oversee the notice program, overseeing the claims process for the settlement, and responding to Settlement Class members' inquiries.

Pre-filing Investigation and Pleadings

26. Before filing the Action, Kaufman P.A. conducted a thorough investigation into the facts of the case, including by investigating Plaintiff's relationship and experiences with Defendant, if any, as well as researching the potential claims Plaintiff and the Class had against the Defendant. This phase also involved revising the Complaint and other initiating documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	26.5	\$21,200
Rachel E. Kaufman	\$730	9.5	\$6,935
	Total	36	\$28,135

Post-filing Investigation and Discovery

27. In this phase of litigation the work performed by Kaufman P.A. included, but was not limited to communicating with Plaintiff regarding the facts pertinent to her claims and the progress of the case; preparing a discovery plan; preparing multiple third party subpoenas; revising discovery requests to Defendant; revising discovery responses to Defendant's discovery requests; engaging in meet

and confers with opposing counsel and Defendant's vendors regarding Defendant's discovery responses and subpoena responses; preparing for Plaintiff's deposition; reviewing and analyzing over ten thousand pages of electronic documents; extensive consulting, and working with Plaintiff's telephony expert; revising telephony expert's report; and consulting and working with economist to prepare assessment of remedial relief.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	149.5	\$119,600
Rachel E. Kaufman	\$730	107.5	\$78,475
	Total	257	\$198,075

Law and Motion Practice

28. During this phase of the litigation, the work performed by Kaufman P.A. included, but was not limited to, analyzing Defendant's Answer to the Complaint; meeting and conferring with opposing counsel and preparing a joint Rule 26 report; preparing a motion to compel Defendant's production of documents; meeting and conferring regarding and preparing a status update regarding the motion to compel; preparing for and attending the hearing on Plaintiff's motion to compel; meeting and conferring with opposing counsel regarding mediation, settlement, and other case management issues; researching and briefing the motions for preliminary approval and for Class Counsel fees and expenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	98.5	\$78,800

Rachel E. Kaufman	\$730	86	\$62,780
	Total	184.5	\$141,580

Settlement

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

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	89	\$71,200
Rachel E. Kaufman	\$730	32.5	\$23,725
	Total	121.5	\$94,925

Case and Settlement Management

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

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	30	\$24,000
Rachel E. Kaufman	\$730	14	\$10,220
	Total	44	\$34,220

Reasonable Expenses

31. The costs incurred by Kaufman P.A. total \$28,277.71, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Filing fees	\$702
Process server fees	\$358.86
Mediation fees	\$808.25
Expert fees	\$26,408.60
Total	\$28,277.71

32. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from receipts, check

records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

33. Class Counsel spent over 1000 hours and more than \$50,000 to zealously promote the Class's interests. Class Counsel represented 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. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

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

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

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

Dated: April 21, 2023

/s/ Avi R. Kaufman
Avi R. Kaufman

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

ROBIN TAYLOR, on behalf of herself and others similarly situated,	:	
	:	CASE NO. 21-cv-2744-MSS-CPT
Plaintiff,	:	
	:	
v.	:	
	:	
CARDINAL FINANCIAL COMPANY, LIMITED PARTNERSHIP	:	
	:	
Defendant.	:	

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

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

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Cardinal Financial Company, LP.¹ I submit this declaration in support of Plaintiff and Class Counsel’s Motion for Class Counsel Fees and Expenses. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. The Parties’ proposed Settlement is exceedingly fair and achieved an excellent result.

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

3. In this Action, my office co-counseled with Kaufman P.A. Both my firm and the Kaufman firm have dedicated substantial resources to the Action's prosecution, and we intend to continue doing so through the duration of the Action.

4. Class Counsel are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

Qualifications of Counsel

5. 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. 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.

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

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

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

9. I have been appointed class counsel in more than 30 TCPA cases, including the following:

- i. Desai and Charvat v. ADT Security Services, Inc., USDC, ND. Ill., Civil Action No. 11-CV-1925, 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., Civil Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
- iii. Charvat v. AEP Energy, Inc., USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.
 - iv. Bull v. US Coachways, Inc., USDC, ND. Ill., 1:14-cv-05789, 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, ND. Ill., 1:13-cv-02018, TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
 - vi. Mey v. Frontier Communications Corporation, USDC, D. Ct., 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, MD. Ga., 15-cv-139, a TCPA class settlement of \$6,500,000 granted final approval on May 4, 2017.
 - viii. Thomas Krakauer v. Dish Network, L.L.C., USDC, MD. NC., Civil Action No. 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).
 - ix. Charvat v. Carnival Corporation & PLC, et. al., USDC, ND. Ill., 1:13-cv-00042, a TCPA class settlement of \$12,500,000 granted preliminary approval on July 6, 2017.
 - x. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC, ND Ga., 1:15-CV-03562-AT, a TCPA class settlement of \$12,000,000 granted final approval on December 14, 2017.

- xi. Abante Rooter and Plumbing, Inc. v. Pivotal Payments, Inc., USDC, ND. Ca., 3:16-cv-05486-JCS, a TCPA class settlement of \$9,000,000 granted final approval on October 15, 2018.
- xii. In re Monitronics International, Inc., USDC, ND. WV., 1:13-md-02493-JPB-JES, a TCPA class settlement of \$28,000,000 granted final approval on June 12, 2018.

10. Class Counsel zealously represented Plaintiff and the Settlement Class's best interests throughout this litigation, and will continue to do so.

Summary of Work Performed

11. Below, I set forth the nature of the work Paronich Law, P.C. performed in the Action to demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

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

13. I am the attorney who oversaw the day-to-day activities in this Action and have reviewed my time records in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time entries, as well as the necessity for, and reasonableness of, the time and expenses committed to this Action. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In

addition, I believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

14. In total, Paronich Law, P.C. devoted 407 hours to this litigation, as of April 20, 2022.² A breakdown of my lodestar is provided below. The total lodestar amount for my time is based on the hourly rate of \$730.

Pre-filing Investigation and Pleadings

15. Before filing the Action, I conducted a thorough investigation into the facts of the case, including by investigating Plaintiff's relationship and experiences with Defendant as well as researching the potential claims Plaintiff and the Class had against Defendant. This phase also involved drafting and revising the pleadings.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Anthony Paronich	\$730	43	\$31,390

Post-filing Investigation and Discovery

16. In this phase of litigation my work included, but was not limited to, communicating regularly with Plaintiff regarding the facts pertinent to her claims and the progress of the case; revising a discovery plan; preparing multiple third party subpoenas; preparing discovery requests to Defendant; preparing discovery responses to Defendant's discovery requests; engaging in meet and confers with opposing counsel and Defendant's vendors regarding Defendant's discovery responses and subpoena responses; extensively investigating Defendant, the claims, and the contours of the class; preparing for Plaintiff's deposition; reviewing and

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

analyzing over ten thousand pages of electronic documents; consulting, and working with Plaintiff's telephony expert; revising telephony expert's report; and consulting and working with economist to prepare assessment of remedial relief.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Anthony Paronich	\$730	158	\$115,340

Law and Motion Practice

17. During this phase of the litigation, my work included, but was not limited to, analyzing Defendant's Answer to the Complaint; meeting and conferring with opposing counsel and preparing a joint Rule 26 report; researching and briefing Plaintiff's motion to compel Defendant's production of documents; meeting and conferring regarding and preparing a status update regarding the motion to compel; preparing for the hearing on Plaintiff's motion to compel; meeting and conferring with opposing counsel regarding mediation, settlement, and other case management issues; researching and briefing the motions for preliminary approval and for Class Counsel fees and expenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Anthony Paronich	\$730	91	\$66,430

Settlement

18. During this phase of the litigation, I was engaged in all aspects of settlement with opposing counsel and the mediators, including, but not limited to, engaging in negotiations with opposing counsel; strategizing regarding negotiations; participating in pre-mediation calls with Plaintiff and the mediator; revising a

mediation report; participating in two separate mediations; participating in settlement calls with Plaintiff; and drafting and revising various iterations of the settlement agreement and associated documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Anthony Paronich	\$730	92	\$67,160

Case and Settlement Management

19. During this phase of the litigation, my work included negotiating, drafting, and editing various notices; researching and engaging settlement administrator; coordinating with the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website; and responding to settlement class members' inquiries.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Anthony Paronich	\$730	23	\$16,790

Reasonable Expenses

20. The costs incurred by Paronich Law, P.C. total \$22,178.22, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Mediation fees	\$8,375.00
Expert fees	\$13,803.22
Total	\$22,178.22

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

22. Class Counsel spent over 1000 hours and more than \$20,000 to zealously promote the Class's interests. Class Counsel represented 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. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

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

* * *

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT EXECUTED THIS THIS 21st DAY OF APRIL, 2023 IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Anthony I. Paronich
Anthony I. Paronich