IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

CHRISTOPHER MORGAN, on behalf of himself and a class of others similarly situated,

Plaintiff,

v.

Civil Action No.: 3:17-cv-00045
Judge Norman K. Moon

ON DECK CAPITAL, INC.,

Defendant.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

After more than three years of hard-fought litigation, including multiple dispositive motions and depositions from New York to Nevada, the Court has preliminarily approved a Settlement Agreement that will pay Class Members as much as $573 each—a result that ranks in the top 10% of consumer class action settlements nationwide. For this extraordinary result, Class Counsel now seek an ordinary fee: one-third of the settlement value, plus reasonable costs advanced.

The requested fee should be approved. A one-third fee has been deemed presumptively reasonable and routinely approved by courts within the Fourth Circuit and across the country. *See, e.g., Krakauer v. Dish Network, L.L.C.*, No. 14-333, 2018 WL 6305785, at *3 (M.D.N.C. Dec. 3, 2018), *aff'd* 925 F.3d 623 (4th Cir. 2019) (concluding that fee awards of one-third of the settlement value are "typical" in TCPA settlements). It will not only compensate Class Counsel for the excellent result achieved, but also the risks they faced in obtaining that result and the substantial amount of time and money invested on behalf of the Class. For these reasons and those discussed in greater detail below, Class Counsel's motion should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

Class Counsel's work on behalf of the Class commenced more than three years ago, when Class Counsel began investigating Plaintiff Christopher Morgan's claim that he had received unsolicited telemarketing calls from Defendant On Deck Capital, Inc.[1] That investigation ultimately led to the filing of a Complaint alleging that On Deck used an "automatic telephone dialing system" ("ATDS" or "autodialer") to place illegal calls to Mr. Morgan's cellular telephone and tens of thousands of others.

Although On Deck did not move to dismiss the Complaint, it filed an early motion for summary judgment contending that the equipment it used to call Mr. Morgan (which included popular software produced by industry leader Five9) did not violate the TCPA because it was not an autodialer. (ECF No. 35). Mr. Morgan responded under Rule 56(d), arguing that more discovery was needed. (ECF No. 38). The Court agreed with Mr. Morgan and deferred consideration of On Deck's motion. (ECF No. 57).

Thereafter, the parties engaged in thorough written discovery, responding to interrogatories and exchanging thousands of pages of documents. They also conducted depositions from New York to Nevada, including multiple fact witnesses, a Rule 30(b)(6) representative, and technical experts from both sides. Throughout, the parties fought tooth-and-nail concerning the scope of discovery, resulting in multiple motions to compel and hearings before Magistrate Judge Hoppe.

After the close of discovery, On Deck renewed its motion for summary judgment and moved to strike Mr. Morgan's expert. Again, On Deck focused its motions on the equipment issue, contending that the particular dialing mode used to place the call to Mr. Morgan did not qualify as

[1] Unless otherwise stated, all capitalized terms have the same meaning as in the Settlement Agreement.

an autodialer. In response, Mr. Morgan explained that the TCPA regulates dialing *systems*, not merely dialing *modes*, and argued that the equipment used to make the calls at issue was just one aspect of a larger system capable of automatic dialing. (ECF No. 74). As On Deck pointed out in its reply, similar arguments about similar systems had been unsuccessful. (ECF No. 75). In a groundbreaking decision, however, the Court agreed with Mr. Morgan and denied On Deck's motion for summary judgment, concluding that there was sufficient evidence for a jury to conclude that On Deck's dialing system, as a whole, was an autodialer. (ECF No. 83).

Within days of the Court's opinion, On Deck filed a motion to reconsider, and the parties once again sparred in briefs about whether On Deck's dialing system could be considered an ATDS. (ECF Nos. 85, 86 & 90). But, cognizant of the mounting risks, they also agreed to engage in formal mediation. On December 3, 2019, and again on January 6, 2020, the parties met in Chicago for mediations conducted by a retired federal district judge, the Hon. Wayne R. Andersen. Following the second mediation, the parties executed a term sheet outlining the basic tenets of a class-wide settlement. Shortly thereafter, however, the global pandemic sent On Deck's stock price into a tailspin. To save the settlement, Class Counsel engaged in days of additional direct negotiations with On Deck's lawyers and executives. Those negotiations resulted in the Settlement Agreement, pursuant to which On Deck agreed to create a $3,090,000 common fund for the benefit of the class.

On May 29, 2020, the Settlement Administrator issued Notice of the proposed Settlement via email, U.S. Mail, and the Class Website. The Notice informed Class Members that Class Counsel would request an attorney fee of up to one-third of the common fund, plus reasonable expenses. As of July 24, 2020, the Notice has reached more than 94% of the Class, and 3,382

valid claims have been made. So far, the Settlement Agreement has the overwhelming support of the Class—not a single opt out or objection has been filed.

ARGUMENT

I. The requested attorneys' fees are reasonable and appropriate.

A. Class Counsel are entitled to a reasonable percentage of the $3,090,000 common fund obtained for the benefit of the Class.

Within the Fourth Circuit, as in the majority of all federal district courts, the percentage-of-recovery method is the "preferred approach" to calculating attorneys' fees in common fund settlements. *Savani v. URS Prof'l Sols. LLC*, 121 F. Supp. 3d 564, 568 (D.S.C. 2015); *see also Decohen v. Abbasi*, *LLC*, 299 F.R.D. 469, 481 (D. Md. 2014) ("District courts in the Fourth Circuit, and the majority of courts in other jurisdictions, use the percentage of recovery method in common fund cases"); *Krakauer v. Dish Network, L.L.C.,* No. 14-333, 2018 WL 6305785, at *2 (M.D.N.C. Dec. 3, 2018); *Hatzey v. Divurgent, LLC*, No. 18-191, 2018 WL 5624300, at *4 (E.D. Va. Oct. 9, 2018).

As compared to the alternative "lodestar" method (discussed below), the percentage-of-recovery approach "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 461 (S.D. W. Va. 2010). It provides a strong incentive to plaintiffs' counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances, by removing the incentive, present under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. *See Jones v. Dominion Res. Servs. Inc.*, 601 F. Supp. 2d 756, 759 (S.D. W. Va. 2009); *see also Teague v. Bakker*, 213 F. Supp. 2d 571, 584 (W.D.N.C. 2002) ("[A]n award of attorneys' fees from a common fund depends on whether the attorneys' specific services

benefited the fund—whether they tended to create, increase, protect or preserve the fund."). Further, the percentage-of-recovery approach eliminates the burden on courts to engage in a detailed review and calculation of attorneys' hours and rates. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). And finally, "it is also viewed as the preferable method in cases such as this one, where the Plaintiff[] agreed to pay counsel on a contingency fee basis." *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 09-0054, 2012 WL 5430841, at *2 (D.S.C. Nov. 7, 2012).

B. One-third of the common fund is a reasonable fee.

An award of attorneys' fees in a class action must be "reasonable." Fed. R. Civ. P. 23(h). For several reasons, the Court should conclude that Class Counsel's request for a one-third attorneys' fee in this case meets that requirement.

1. A one-third fee is a reasonable market rate that has been routinely approved in TCPA class actions.

As an initial matter, a one-third attorneys' fee is standard in private, tort-based litigation of all kinds, and therefore represents a reasonable market rate for Class Counsel's services in this case. *See, e.g., Williams v. Old HB, Inc.,* No. 13-00464, 2015 WL 127862, at *6 (W.D. Va. Jan. 8, 2015) (concluding that one-third contingency fee was "customary" and "reasonable" for tort cases in Western District of Virginia). More specifically, a district court within this circuit recently surveyed cases and found that fee awards of one-third of the settlement value are "typical" in TCPA class action settlements. *See Krakauer,* 2018 WL 6305785 at *3.[2] And indeed, Class

[2] The *Krakauer* court cited *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, No. 11-02467, ECF No. 105-1 at ¶ 5, ECF No. 110 at ¶ 13 (D. Md. Oct 21, 2014 and Feb. 12, 2015) (approving fee award of one-third of $4.5 million TCPA settlement); *Hageman v. AT&T Mobility, LLC*, No. 13-00050, ECF No. 68 at ¶ 14 (D. Mont. Feb. 11, 2015) (awarding attorney's fees equal to one-third of TCPA settlement fund); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07-05953, ECF No. 146 at ¶¶ 9, 11 (N.D. Ill. Nov. 1, 2010) (same); and *Saf-T-Gard Int'l,*

Counsel and their co-counsel in this case have routinely been awarded attorneys' fees of one-third of the value of the settlements or judgments they have obtained on behalf of class members. *See, e.g., id.* at *6 (awarding one-third of $61 million judgment after trial); *Mey v. Venture Data*, No. 14-123, ECF No. 313 (N.D. W. Va. Sept. 6, 2018) (awarding one-third of $2.1 million class settlement); *Mey v. Patriot Payment Grp.*, No. 15-27, ECF No. 127 (N.D. W. Va. July 26, 2017) (awarding one-third of $3.7 million class settlement).

2. The Fourth Circuit's *Barber* factors also support the requested fee.

In addition, the particular circumstances of this case merit the requested fee. Although the Fourth Circuit has not yet established a method for assessing the reasonableness of attorneys' fees in common fund class action lawsuits, it has approved a set of factors[3] identified and employed by the Fifth Circuit to assess the reasonableness of attorneys' fees in any case where such determination is necessary. *See Barber v. Kimbrell's, Inc*., 577 F.2d 216, 226 & n.28 (4th Cir. 1978); *Krakauer,* 2018 WL 6305785, at *3 (applying *Barber* factors in TCPA class action). At

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Inc., v. Seiko Corp. of Am., No. 09-00776, ECF No. 98-2 at 7, ECF No. 100 at ¶ 8 (N.D. Ill. Jan. 7, 14, 2011) (same).

For other recent examples, see *Gonzalez v. TCR Sports Broad. Holding, LLP*, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) ("[C]ourts in this district regularly base fee awards on the market rate of one-third of the common fund in TCPA class action settlements."); *Kolinek v. Walgreen Co*., 311 F.R.D. 483, 502–03 (N.D. Ill. 2015) (36% fee award); *Lees v. Anthem Ins. Cos*., No. 4:13cv1411, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (34% award); and *Vandervort v. Balboa Capital Corp*., 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (33% award).

[3] These factors include: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. *Barber*, 577 F.2d at n.28.

bottom, the *Barber* factors focus the Court's analysis on three main issues: (1) the value of counsel's work and the results obtained; (2) the risks and obstacles counsel faced; and (3) quantitative inputs like time and labor expended, the customary fee for like work, and other awards in similar cases.[4]

Of course, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *In re Abrams & Abrams, P.A.*, 605 F.3d at 247 (cleaned up). If that is true, Class Counsel's fee request is plainly reasonable, as Class Members will be receiving individual payments that stand out among TCPA class action settlements. Based on current participation rates, each Class Member who makes a valid claim will receive roughly $573[5]— an amount that likely ranks in the top 10% of consumer class action settlements, according to the FTC.[6] And while all successful TCPA cases have a deterrent effect that extends beyond the class, the effect of this case has been particularly wide-reaching, calling into question the legality of one of the telemarketing industry's most popular mass dialers. *See, e.g.,* Eric Troutman, *Things Just Went Nuclear: Court Holds Five9's Popular Cloud-Based Manual Dialing Solution May Still*

[4] Recognizing that *Barber* is not a common fund case, some district courts have instead looked to the seven-factor test adopted by the Third Circuit in *In re Cendant Corp. Prides Litigation* to determine the amount of a reasonable percentage award. *See In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183, at *3–4 (W.D.N.C. Oct. 24, 2011) (citing cases). Under either set of factors, however, the Court's reasonableness analysis would focus on the three broad categories described above, and the result would be the same.

[5] This updated estimate is based on the following assumptions: (i) 59,478 Class Members; (ii) a 5.68% claims rate as of July 24, 2020; (iii) a fee award equal to one-third of the Settlement Fund, and reimbursement of $30,929.48 in costs advanced; (iv) a $15,000 incentive award to the Class Representative; and (v) $76,000 to the Settlement Administrator for Settlement Administration Expenses.

[6] *See* Federal Trade Commission, *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, at 21 (2019), available at https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf.

Have "Capacity" to Dial Randomly or Sequentially – And It's Just as Bad as It Sounds, TCPAWORLD.COM (Aug. 30, 2019) ("So yes, a district court just held that *your* cloud-based manual process may be an ATDS . . ."). [7] In this way, Class Counsel's efforts have not only resulted in an extraordinary payment for Class Members, but likely reduced the number of invasive, unwanted telemarketing calls nationwide.

As to the risks and obstacles that Class Counsel faced—the second set of *Barber* factors—there were many. Mr. Morgan's entire case rested on a novel legal theory: that telemarketing calls made with a dialer's "manual" mode could nonetheless violate the TCPA if the mode was part of a larger "system" capable of autodialing. Similar arguments had been rejected by other courts; if Class Counsel had not succeeded on this score, the Class would have received nothing and Class Counsel's significant investment of time and money would have been lost. Moreover, Class Counsel, led by a seven-lawyer firm, was pitted against the resources of a publicly traded corporation and its well-heeled counsel at Troutman Pepper, a nationwide mega-firm with more than 1,100 attorneys. And because telemarketing is critical to its business model, On Deck and its attorneys viewed this suit as a substantial threat and litigated accordingly. Indeed, On Deck refused to even consider a class-wide settlement until Mr. Morgan had prevailed on summary judgment.

Finally, the third set of *Barber* factors—which considers quantitative inputs like time and labor expended—likewise counsel in favor of awarding Class Counsel the requested fee. As discussed more fully below, Class Counsel and its co-counsel have invested nearly 650 hours and advanced more than $30,000 to prosecute this case. *See* Exhibit A, Decl. of Ryan M. Donovan.

[7] Mr. Troutman is the editor of a website dedicated to defending telemarketing industry clients in TCPA suits, so his dim view of the Court's opinion is not surprising. On the other hand, consumer advocacy groups have noted the opinion's important role in discouraging TCPA "evasions." *See* National Consumer Law Center, *Federal Deception Law*, § 6.3.2.5, "Preview Dialing and Other Evasions" (3d ed. Supp. 2020)

C. Although a lodestar crosscheck is unnecessary, it further justifies the requested fee.

As stated earlier, the percentage-of-recovery method is the "preferred" approach in the Fourth Circuit and comports with class action practice nationwide, where the "vast majority" of courts now direct or permit district courts to award a percentage from the common fund. *See* Manual for Complex Litig., § 14.121 (4th ed. 2004). Despite the advantages and popularity of the percentage-of-recovery method, however, some courts employ what is known as a "lodestar crosscheck"—analyzing the value of counsel's work in relation to their hours and hourly billing rates—to confirm the reasonableness of the percentage award. Although such analysis is not required by the Fourth Circuit and is, in many respects, problematic,[8] a lodestar crosscheck in this case only provides further support for Class Counsel's requested fee.

The extent to which requested fee exceeds the lodestar amount is known as the "lodestar multiplier." A reasonable lodestar multiplier rewards counsel for the risks inherent in contingent litigation, the value of the time and money invested on behalf of the class, and the result achieved. *See In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions,* 148 F.3d 283, 340 (3d Cir. 1998). Put another way:

> [C]ontingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal

[8] In many respects, the lodestar crosscheck reintroduces the same bad policy and perverse incentives that the increasingly popular percentage-of-fund method has overcome. If class counsel believe that courts will limit their fee to some multiple of their lodestar, then they will have the same imperfect incentives they would if courts used the lodestar method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff work in order to run up their lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2002) ("The lodestar method is merely a crosscheck on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee . . . ."). The lodestar crosscheck also caps the amount of compensation class counsel can receive, thereby misaligning their incentives from those of class, and reducing their rational incentive to achieve the largest possible award for the class.

> services he renders but for the loan of those services. The interest rate on such a loan is high because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is so much higher than that of conventional loans.

Richard A. Posner, *Economic Analysis of Law* § 21.9, at 534–35 (2d ed. 1984); *accord In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 746 (7th Cir. 2011) (Posner, J.). "Courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee." *Krakauer,* 2018 WL 6305785 at *5 (cleaned up); *see also Singleton v. Domino's Pizza, LLC,* 976 F.Supp.2d 665, 689 (D. Md. 2013) (noting that the lodestar multipliers "on large and complicated class actions have ranged from at least 2.26 to 4.5").

As of July 28, 2020, Class Counsel and their co-counsel have devoted more than 640 hours to the class claims, for a total lodestar of $319,060. *See* Exhibit A ¶ 2.[9] But Class Counsels' work in this matter continues, and Class Counsel estimates that they will devote an additional 60 hours of time through final approval and disbursement.[10] Assuming an estimated total lodestar of approximately $351,060, Class Counsels' fee request for $1,030,000 yields a lodestar multiplier of just 2.93—well within the range approved by courts within this circuit and elsewhere. Applying the lodestar crosscheck thus confirms that the requested fee is reasonable.

[9] To err on the side of a conservative calculation, the rates employed here are less than those approved by other district courts within the Fourth Circuit for Class Counsel's work in similar TCPA class actions. *See* Exhibit A ¶¶ 4-6.

[10] This anticipated future work includes, but is not limited to: responding to inquiries from class members; working with the Settlement Administrator; drafting the motion for final approval; handling potential objections and opt-outs; preparing for, traveling to, and attending the final approval hearing; and administering the disbursement of class payments. *See* Exhibit A ¶ 3.

II. Class Counsel's litigation costs are reasonable and appropriate.

The Settlement Agreement provides that Class Counsel may seek to recover out-of-pocket expenses incurred in the prosecution of this case, to be paid from the Settlement Amount. Total fees expended by Class Counsel and their co-counsel in this matter are $30,929.48, which includes expenses for expert services, mediation services, deposition costs, travel, and other reasonable and necessary expenses. *See* Exhibit A ¶ 7.

III. The Class Representative's proposed Incentive Award is well-deserved.

The Settlement Agreement also provides that the Class Representative, Christopher Morgan, may apply for an Incentive Award of $15,000 in recognition of his efforts on behalf of the Class. Incentive awards are "routinely approved" in class actions to "encourage socially beneficial litigation by compensating named plaintiffs for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." *Kay Co.*, 749 F. Supp. 2d at 472. Serving as a class representative "is a burdensome task and it is true that without class representatives, the entire class would receive nothing." *Id*. at 473.

Mr. Morgan's participation has been critical to the success of this case. Mr. Morgan worked closely with Class Counsel to develop the facts alleged in the Complaint, and remained actively involved throughout discovery, providing insight and evidence necessary to further the Class claims. Perhaps most importantly, Mr. Morgan repeatedly placed the interests of the Class above his own by rejecting multiple offers of individual settlements that would have far exceeded the amount of the proposed Incentive Award.

The proposed Incentive Award is consistent with comparable awards in other TCPA cases around the country. *See, Fairway Med. Ctr., LLC, v. McGowan Enters., Inc.,* No. 16-3782, 2018

WL 1479222, at *3 (E.D. La. Mar. 20, 2018) (awarding $75,000 incentive payment)*;Leung v. XPO Logistics, Inc.,* 326 F.R.D. 185, 205 (N.D. Ill. 2018) (awarding $10,000)*; Craftwood Lumber Co. v. B.E. Atlas Co.,* No. 16-07865, 2018 WL 2077729 (N.D. Ill. Mar. 30, 2018) (awarding $15,000)*; Dakota Med., Inc. v. RehabCare Grp., Inc.,* 2017 WL 4180497 at *3 (E.D. Cal. Sept. 21, 2017) (awarding $15,000)*; Mey v. Patriot Payment Group, LLC,* No. 15-00027 (N.D. W. Va. July 26, 2017) (awarding $20,000); *Aranda v. Caribbean Cruise Line, Inc.,* No. 12-4069, 2017 WL 1369741 at *1 (N.D. Ill. Apr. 10, 2017) (awarding $10,000)*; Hashw v. Dep't Stores Nat'l Bank,* 182 F. Supp. 3d 935, 952 (D. Minn. 2016) (awarding $15,000*); Prater v. Medicredit, Inc.,* No. 4:14-cv-00159, 2015 WL 8331602 at *4 (E.D. Mo. Dec. 7, 2015) (approving $20,000 incentive award); *Martin v. Dun & Bradstreet, Inc.,* No. 12-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (awarding $20,000). Ultimately, it amounts to pennies per class member, whose rights Mr. Morgan helped vindicate.

CONCLUSION

For the foregoing reasons, this Court should (i) award Class Counsel its attorneys' fees in the amount of $1,030,000; (ii) award Class Counsel its litigation costs in the amount of $30,929.48; (iii) award the Class Representative $15,000 in recognition of his efforts on behalf of the Class; and (iv) award such other relief that this Court deems appropriate.

Respectfully submitted,
CHRISTOPHER MORGAN

By Class Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2020, I served a true and correct copy of the foregoing via the Court's ECF system.

/s/Michael B. Hissam
Michael B. Hissam

IN THE UNITED STATES DISTRICT COURT
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CHRISTOPHER MORGAN, on behalf of himself and a class of others similarly situated,

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Judge Norman K. Moon

ON DECK CAPITAL, INC.,

Defendant.

DECLARATION OF RYAN MCCUNE DONOVAN

1. I am supplying this declaration in support of Class Counsel's Motion for Attorneys' Fees and Costs and have personal knowledge of the contents of this declaration.

2. As summarized below, my firm and our co-counsel[1] have invested over 640 hours or $319,060 worth of time prosecuting the class claims:

Timekeeper	Rate	Hours	Fee
HFDR Partner	$600	341.5	204,900
HFDR Associate	$400	175.3	70,120
Bailey & Glasser Partner	$600	26.1	$15,660
Bailey & Glasser Associate	$400	40.9	$16,360
HFDR Paralegal	$200	38	$7,600
Bailey & Glasser Paralegal	$200	22.1	$4,420
TOTAL		**643.9**	**$319,060**

[1] This case followed me from my prior law firm, Bailey & Glasser, LLP, to my current law firm, Hissam Forman Donovan Ritchie PLLC. Bailey & Glasser has remained involved and will share in any attorney fee awarded by the Court.

3. In addition to the above hours, I anticipate that my firm will invest another 60 hours (40 partner hours and 20 associate hours, or approx. $32,000 worth of time) through final approval and disbursement. This anticipated work includes, but is not limited to: responding to inquiries from class members; working with the Settlement Administrator; drafting the motion for final approval; handling potential objections and opt-outs; preparing for, traveling to, and attending the final approval hearing; and administering the disbursement of class payments.

4. The hourly rates reflected above are reasonable for TCPA litigation within the Fourth Circuit and are consistent with hourly rates of attorneys and paralegals of similar background and experience.[2] Indeed, the rates are consistent with those approved in several recent TCPA class actions in which I was appointed class counsel.

5. For example, I represented a class of consumer plaintiffs in *Krakauer v. DISH Network, LLC,* No. 14-cv-333 (M.D.N.C.), a ground-breaking TCPA class action case resulting in a more than $61 million jury verdict. As an associate at my prior law firm, my court-approved rate in *Krakauer* was $490 per hour. Court-approved rates for partner-level attorneys in that case ranged between $550 and $760 per hour.

6. The requested rates are also consistent with rates approved in several recent TCPA class actions settlements. For example: *In re Monitronics TCPA Litigation*, MDL No. 2493 (N.D. W. Va.) ($700 per hour for partners, $450 for associates, $200 for paralegals, and $100 for legal assistants); *Mey v. Frontier Communications Corp*., No. 3:13-01191 (D. Conn.) ($700 for partners, and $450 for associates); *Mey v.Interstate National Dealer Services, Inc*., No. 14-01846 (N.D. Ga.)

[2] Class Counsel's background and experience is discussed in greater detail in the *Declaration of Ryan McCune Donovan in Support of Motion for Preliminary Approval* [ECF 100-7].

(same); *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, No. 13-cv-00662 (D. Md.) ($700 for partners, and $425 for associates); *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners*, LLC, No. 11-02467 (D. Md.) (same).

7. In additional to attorneys' fees, Class Counsel seeks reimbursement for out-of-pocket expenses reasonably necessary to the prosecution of this case. Total costs advanced by my firm and our co-counsel in this matter are $30,929.48, which includes expenses for filing fees and service of process, expert witnesses, mediation services, deposition costs, travel, and other reasonable and necessary expenses.

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

7/28/2020
Dated

/s/ Ryan M. Donovan
Ryan McCune Donovan