

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANDICE BURNETT , <i>individually and on</i>	§	
<i>behalf of all others similarly situated,</i>	§	Civil Action No.: 4:21-cv-03176
	§	
<i>Plaintiff,</i>	§	
v.	§	Hon. Keith P. Ellison
	§	
CALLCORE MEDIA, INC. ,	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

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**PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Candice Burnett (“Plaintiff” or “Burnett”) submits this brief in support of her unopposed motion for preliminary approval of a class action settlement reached with Defendant CallCore Media, LLC (“Defendant” or “CallCore”).

I. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING.

Burnett initiated this class-action lawsuit against CallCore in September 2021, alleging the receipt of unlawful telemarketing calls in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) and Chapter 302 of the Texas Business and Commerce Code (“TBCC”). ECF No. 1. After a lengthy period of class-wide discovery, on December 11, 2023, Burnett filed a motion for class certification seeking to certify a nationwide class under the TCPA and statewide Texas under the TBCC. ECF No. 26.

While the motion for class certification was pending, on December 19, 2023, the parties, their respective counsel and CallCore’s insurance carrier appeared before the Honorable Jeff Kaplan (Ret.) in Dallas for an all-day in-person mediation. By the time mediation occurred, the Parties had the benefit of almost two years of extensive discovery, including depositions, subpoenas and voluminous document production - which included records of over seven million phone calls. Accordingly, the Parties were able to carefully evaluate their positions and make informed decisions about the strengths and weaknesses of their respective cases. Further, with Plaintiff’s motion for class certification pending, the Parties had a clear view of the composition of the classes and the potential value of the case. With Judge Kaplan’s helpful facilitation, at the end of the day on December 19, 2023, the Parties entered into an arms-length settlement

agreement. The agreement provides that CallCore’s liability insurance carrier will pay two million dollars (\$2,000,000.00) to a non-reversionary fixed-fund, distributed to class members who submit valid claims, on a *pro rata* basis. Based on historical claims rates, it is estimated claimants would receive at least \$120, with an additional 10% for persons with Texas area codes and/or addresses. Burnett seeks to be appointed as the Class Representative and her counsel Christopher E. Roberts of Butsch Roberts & Associates, LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. seek to be appointed as Class Counsel. The parties have also requested that the Court appoint Atticus Administration, LLC to serve as the settlement administrator.

After the essential terms of a settlement were reached at mediation, the parties stipulated to stay deadlines related to class certification for Burnett to file this unopposed motion for preliminary approval of class settlement. ECF No. 29. For the reasons stated in this brief, Burnett respectfully requests the Court certify the proposed classes for settlement purposes, appoint Burnett as class representative, appoint her attorneys as class counsel and provide preliminary approval of the classwide settlement agreement. The Settlement Agreement (“Agreement”) is attached as Exhibit 1.

While CallCore has approved the proposed Order, signed the settlement agreement, and does not oppose this Motion, it does not admit the facts, allegations or interpretation of evidence set forth in this Motion, or as alleged in the Complaint. This Motion was drafted by Plaintiff’s counsel. As set forth in the Settlement Agreement, CallCore continues to deny the claims and allegations of its liability. CallCore’s non-opposition to this Motion for settlement purposes only.

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II. STATEMENT OF THE ISSUES TO BE RULED UPON BY THE COURT AND STANDARD OF REVIEW

1. Are the requirements of Federal Rule of Civil Procedure 23(a), (b)(3) and (e) satisfied for settlement purposes, to warrant preliminary approval of the settlement classes?
2. Does the classwide settlement entered into, after over two years of litigation, extensive negotiations and a full-day in-person mediation before Judge Jeff Kaplan (Ret.) warrant this Court's preliminary approval?

Primary authority: FED. R. CIV. P. 23.

Standard of review: The Court's class certification and preliminary approval of class settlement decisions are reviewed under the abuse of discretion standard on appeal. *See generally O'Sullivan v. Countrywide Home Loans, Inc.*, 319 F.3d 732, 737 (5th Cir. 2003).

III. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. CallCore's lead generation relationship with PHBC.

CallCore Media is a telemarketing and call center services firm that operates various campaigns throughout the United States. *See* ECF No. 26-3, Lauer Dep. Transcript, 7/24/2023, at 24:20-25:15. In connection with its debt consolidation/resolution campaign, CallCore operated under the fictitious name "Simple Life Debt Solutions." *See* ECF No. 26-3, pp. 38:20-39:1. To market its debt settlement business, CallCore contracted with PHBC, a digital lead generator, through an agreement where PHBC would sell "leads" of persons whose data was transmitted on websites operated by PHBC. *See* ECF No. 26-1, pp. 56-62, Lee Dep. Ex. 1, PHBC-CallCore contract. Under that contract, CallCore would pay PHBC \$0.04 for every "lead" (name and phone number) submitted on its websites. ECF No. 26-3, Lauer Dep. Transcript, p. 88:21-24. PHBC operated the "debtreliefhelpusa.com" website, which purportedly solicited "consent" to receive telemarketing from listed "partners" identified on the website. *Id.*, pp. 64:25-65:11.

B. CallCore’s telemarketing contract with Yodel.

CallCore contracted with the now-bankrupt Yodel Technologies, LLC (“Yodel”) to place calls on its behalf to PHBC leads *See* ECF No. 26-3. at 109:25-110:11, 111:15-20 (Lee Dep. Ex. 5, CallCore-Yodel Agreement (“Yodel Agreement”)); Ex. 3, Deposition of Jonathan Lauer (“Lauer Dep.”), 14:15-24, 48:19-22. The Yodel Agreement provides that CallCore has audit rights over Yodel and can dictate the terms of its advertising campaign. *See* ECF No. 26-1, Ex. 5, CallCore_000190-191. Yodel used “soundboard” technologies in its calls to communicate with consumers. This technology operates in a manner that is interactive and plays clips of voice messages in response to human prompts. ECF No. 26-3, Lauer Dep., 14:25-15:3; ECF No. 26-1, Lee Dep., 45:7-46:17, 58:20-24.

When Yodel placed the calls on CallCore’s behalf, it used CallCore phone numbers, so recipients of those calls would see a CallCore phone number rather than a number associated with Yodel. Lauer Dep., 37:4-9. CallCore also provided Yodel with scripts to use when calling CallCore’s potential customers with its pre-recorded voice technology. Lee Dep., 45:7- 46:17. In short, CallCore had complete control over who Yodel called and the voice technology script. CallCore hired Yodel to place such place calls to consumers whose data was transmitted to CallCore from PHBC websites for CallCore’s “debt settlement” campaign. Lee Dep., 185:8-11. During the class period, Yodel placed prerecorded voice calls to over 67,000 calls to PHBC leads who were transferred to CallCore. Lauer Dep., 52:14-21, 53:8-18, 54:10-15, 55:8-16, 56:11-20, 57:10-58:2 (Lauer Dep. Ex. 17 – Call Log, filed via USB drive). The call records show the phone number called, the date of the call, and the name/address of the person called. *Id.* at 58:22-24, 59:23-60:4, 64:15-19.

C. Candice Burnett receives calls from CallCore and files suit.

Candice Burnett is a mother of four who has resided in Missouri City, Texas since 2001. Burnett Dec., ¶¶ 8-9. Burnett works in commercial operations for Weatherford International Oil & Gas, where she has worked since 1997. *Id.* at ¶ 7. Burnett was the owner and sole user of a cell phone, the number for which was (713)-xxx-4446. Burnett had been irritated by unsolicited telemarketing calls for years. *Id.* at ¶¶ 13-15.

In January and February of 2021, Burnett received a series of calls from (713) 903-8921 — a number she now knows was used by CallCore. *Id.* at ¶ 25. In February 2021, Burnett answered several of the calls and interacted with a software-based voice, purporting to be a woman named “Lindsey” with “Simple Life Debt Solutions.” *Id.* at ¶¶ 13-14. Burnett later learned that Simple Life Debt Solutions was a registered fictitious name for CallCore. *Id.*, at ¶ 14.

Burnett filed this class-action lawsuit in September 2021 against CallCore alleging violations of the TCPA for making calls to her cell phone, which utilized a pre-recorded voice, without her express consent, as well as a claim under Chapter 302 of the TBCC for calling Texas residents for solicitation purposes without registering as a “telephone solicitor” with the Texas Secretary of State. ECF No. 1. In the course of discovery, Burnett learned that her phone number was transmitted to CallCore through a lead-generation website soliciting consumer “consent” operated by PHBC. *See* Ex. 2, Declaration of Christopher. E. Roberts, ¶¶ 14-15. CallCore could not demonstrate that it was listed as a “trusted partner” on the PHBC website. *See* ECF No. 26-1, Ex. 1, at 106:1-106:6, 106:16-107:1; 108:7-11. While over seven million calls were made by or on behalf of CallCore from 2018-2021, there were approximately 67,000 calls that were transferred to CallCore, by vendors including Yodel, whose information was obtained through the PHBC website. *See* ECF No. 27, Excel spreadsheet of PHBC leads transferred to CallCore. It was also

confirmed that CallCore did not register as a “telephone solicitor” in the State of Texas and called approximately 9,000 persons with Texas area codes and/or addresses. *Id.*

In the course of the document-intensive discovery, counsel for the Parties reached impasses at times, but were able to cooperate and work together as collegial adversaries at arms-length. *See* Roberts Dec., ¶¶ 12-18; *see* Ex. 3, Declaration of Jacob U. Ginsburg, ¶¶ 20-24. Ms. Burnett was deposed in an all-day contentious deposition in Houston. *See* Ex. 4, Declaration of Candice Burnett, ¶ 18. CallCore’s corporate designees were also deposed during depositions which took an entire day collectively, in Florida. *See* Roberts Dec. ¶ 16. Counsel for both Parties issued various subpoenas and devoted substantial time toward third-party discovery. *Id.* at ¶¶ 13-16. Burnett filed her motion for class certification on December 11, 2023. *See* ECF No. 26.

After the Parties had a clear sense of the makeup of the proposed classes and the strengths and weaknesses of their respective positions on the merits, the Parties and CallCore’s liability insurance carrier appeared before retired Judge Jeffrey Kaplan in Dallas. Roberts Dec. ¶¶ 19-20; Burnett Dec., ¶ 25. Through the facilitation of Judge Kaplan, the Parties reached a settlement where CallCore’s carrier would pay \$2,000,000.00 (the policy cap for a term) to the settlement classes to be distributed from a fixed and non-reversionary fund on a *pro rata* basis to claimants who submit valid claims. Based on historic claims rates, class counsel estimates each claimant will receive at least \$120 with Texas-based claimants receiving a 10% additur. Ex. 1, Settlement Agreement, Section 7.

D. The proposed Settlement Classes

The two classes of individuals settling claims with CallCore have been defined by the Parties as follows:

TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore; and,

Texas Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed on or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

See Settlement Agreement, Section 3. These two classes are collectively referred to as the “Settlement Classes”.

E. Class Notice and Claims Administration

After learning the general details of the case, including class size, Atticus Administration, LLC sent counsel for all parties a detailed estimate for the approximate cost of administration, of \$91,473.00. See Roberts Dec., ¶ 26, Dec. Ex. A (Atticus estimate for the cost of administration).

As part of the settlement administration, CallCore has provided Atticus the last known names, addresses, and phone numbers and emails of the members of the Settlement Classes. Ex. 1, Settlement Agreement, Sections 5, 6 and 9. Atticus will then mail the postcard Class Notice to each member of the Settlement Class. See *id.* If a notice is returned as undeliverable, Atticus will then run the address through the National Change of Address database to determine if there is an updated address for the person and send to the new address (if available) accordingly. See *id.* In addition, Atticus will also send the Class Notice to each e-mail address provided to them by CallCore. See *id.* The specifics of the notice plan are further detailed in the Roberts Declaration. Roberts Dec., ¶¶ 27-30.

Atticus will also maintain a settlement website. *Id.* The settlement website will contain information about the case, relevant documents (including the settlement agreement, operative complaint and any pertinent orders from the Court), a copy of the long form notice and a copy of the claim form. *Id.* Class members will have the ability to submit claims by mail, by uploading the claim form to the settlement website, or making a claim through the settlement website. *Id.*

IV. SUMMARY OF THE ARGUMENT.

The elements of Rule 23(a), (b)(3) and (e) are readily satisfied. Where there are more than 67,000 members of the Settlement Classes, numerosity is easily satisfied under Rule 23(a)(1). Further, there are common issues of fact and law among the class members that can be answered in a single stroke. Those questions include: whether Yodel voice technology constitutes a “pre-recorded voice” under 47 U.S.C. § 227(b)(1); whether there is an agency relationship between CallCore and Yodel; whether CallCore “ratified” any alleged violation of Yodel; whether the PHBC website was a valid form of “consent” as defined by the TCPA; and whether CallCore obtained the proper certificate to be a “telephone solicitor” in the State of Texas. Those common questions predominate over individualized inquiries, and common proofs and evidence would be used to answer such questions, as opposed to individualized proofs. Accordingly, commonality and preponderance are satisfied under Rule 23(a)(2) and 23(b)(3). In addition, Burnett’s claims are typical of the claims of the two Settlement Classes. Burnett has actively participated through the course of this litigation and has no interest adverse to either of the Settlement Classes and hired competent and experienced counsel. Accordingly, typicality and adequacy are satisfied under Rule 23(a)(3) and 23(a)(4). The Settlement Classes should therefore be conditionally certified for settlement purposes, Burnett should be appointed Class Representative, Christopher E. Roberts and Jacob U. Ginsburg should be appointed Class Counsel and Atticus Administration should be appointed Class Administrator.

Furthermore, the Settlement Agreement is fair and adequate and therefore warrants approval. The Parties reached this settlement after over two years of litigation, months of negotiations and conclusion of an all-day in-person mediation before a distinguished mediator. The settlement has all the hallmarks of an arms-length settlement with no collusion between

counsel. Further, the Parties have litigated this case for over two years, conducted depositions and Burnett has moved for Class Certification. The Parties were therefore able to carefully and prudently evaluate the strengths and weaknesses of their respective cases before entering into a settlement. Moreover, in the absence of approval of this settlement, protracted litigation is likely and a successful outcome is uncertain. Where Burnett and Class Counsel strongly recommend approval and absent class members will have the opportunity to opt-out and/or object, the Court should afford preliminary approval. Finally, where the per claimant recovery is at or above most other TCPA class settlements, the settlement is fair and adequate. As such, preliminary approval is warranted.

V. ARGUMENT

A. This Court Should Certify the Class for Settlement Purposes.

The proposed settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a “settlement class.” As such, this Court must first ensure that the proposed class certification meets the requirements of Rule 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* William B. Rubenstein, 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:18 (6th ed. June 2022 Update) (hereafter “NEWBERG”); Wright and Miller, 7B FEDERAL PRAC. AND PROC. § 1797.2 (3d ed.) (Apr. 2020 Update).

When analyzing a proposed settlement class, the Court must first ensure that the proposed class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* NEWBERG ON CLASS ACTIONS § 13:12 (5th ed.) (Dec. 2021

Update). The Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). As set forth below, the class certification requirements are readily satisfied for the proposed settlement class.

1. The class meets the numerosity requirement of Rule 23(a)(1).

Rule 23(a) requires that the number of class members be “so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a). Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is impracticable.” To satisfy the numerosity prong, “a plaintiff must ordinarily demonstrate some evidence or reasonable estimate of the number of purported class members.” *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012) (affirming class certification where numerosity was challenged, finding “over 100 class members” to be sufficient). While “there is no magic number, a class of more than 100 members generally satisfies the numerosity requirement.” *Mullen v. Treasure Chest Casino LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (finding that class of 100 and 150 satisfies numerosity requirement).

Here, there can be no serious challenge to numerosity for any of the classes. Based on the class data provided by CallCore, the pre-recorded class consists of 67,113 persons. Likewise, the Texas class consists of over 9,000 individuals. Numerosity is satisfied.

2. The classes meet the commonality requirement of Rule 23(a)(2) and the preponderance requirement of Rule 23(b)(3).

Because of the overlap of the 23(a)(2) commonality and Rule 23(b)(3) predominance analyses, Plaintiff addresses the two inquiries in tandem below.

a. The settlement classes satisfy commonality under Rule 23(a)(2).

Commonality only requires that “there are questions of law or fact common to the class.” FED. R. CIV. P. 23(a)(2). “[T]he commonality requirement is not usually a contentious one ... and

is easily met in most cases.” NEWBERG §13:18. To demonstrate commonality, plaintiff’s “claims must depend upon a common contention...that is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350. The Fifth Circuit has recognized that ‘even a single common question will do.’” *In re Deepwater Horizon*, 739 F.3d 790, at 811(5th Cir. 2014); *see also Heartland Payment Sys.*, 851 F. Supp. 2d at 1052 (no requirement that “all questions of law and fact be common,” or that “each class member have ‘suffered a violation of the same provision of law.’”)

Here, there are numerous questions common to all members of the class. Some of those questions include whether:

- (1) Yodel’s voice technology calls qualify as pre-recorded voice calls under 47 U.S.C. § 227(b)(1). *See Braver v. Northstar Alarm Servs., LLC*, 329 F.R.D. 320, 328 (W.D. Okla. 2018) (whether soundboard/avatar calls made by Yodel qualify as a “prerecorded voice” under the TCPA is a common question); *Head v. Citibank*, 340 F.R.D. 145, 151 (D. Ariz. 2022) (same);
- (2) The contract between Yodel and CallCore was sufficient to create an agency relationship for purposes of vicarious liability. *Braver., LLC*, 329 F.R.D. 320, 328 (question of “whether Northstar is liable for calls placed on its behalf through Yodel's system” establishes commonality); *Hand v. Beach Entm't KC, LLC*, 456 F. Supp. 3d 1099, 1141 (W.D. Mo. 2020) (whether vicarious liability can be imputed against the principal for its telemarketing vendor’s text messages is “a question capable of classwide resolution”);
- (3) CallCore ratified purported violations by Yodel. *Valle v. Glob. Exch. Vacation Club*, 320 F.R.D. 50, 61 (C.D. Cal. 2017) (common question is whether the defendants ratified agents’ conduct by accepting customers the agents sent);
- (4) The PHBC website was a valid mechanism of CallCore obtaining consumer “consent” to place calls with pre-recorded messages. *See McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 169 (S.D. Cal. 2019) (“whether Royal's lead generation program is a valid means of obtaining consent for calls by a third-party concerning Royal's services and whether the leads constitute consent are common questions whose answers are apt to drive resolution of the case”);
- (5) whether CallCore obtained the requisite certificate to make telephone solicitations to citizens of the State of Texas.

The commonality requirement of Rule 23(a)(2) is met.

b. Common issues and evidence predominate over individual issues and evidence.

Before certifying a class under Rule 23(b)(3), a court must determine that “the questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). “In order to ‘predominate,’ common issues must constitute a significant part of the individual cases.” *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986). Rule 23(b)(3) “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). Predominance requires consideration of “how a trial on the merits would be conducted if a class were certified.” *Gene And Gene LLC v. BioPay LLC*, 541 F.3d at 318, 326 (5th Cir. 2008). A “plaintiff need not show they will prevail on predominantly common issues; only that they can offer common evidence to prove their claims.” *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013).

Here, each of the issues identified in the commonality section are classwide questions that could not be subsumed with individualized inquiries. *See Kimble v. First Am. Home Warranty Corp.*, No. 23-10037, 2024 WL 220369 2024 U.S. Dist. LEXIS 9741, at *15 (E.D. Mich. Jan. 19, 2024) (“the common questions about the defendants' liability under the TCPA predominate over any individual issues in the case”). Just as common issues predominate, common evidence and proofs will predominate over individualized proofs. *Id.* (“these issues do not require proof as to any individual member.”) As to the issue of agency and vicarious liability, the Court and/or the jury would review the contract(s) between CallCore and Yodel, as well as CallCore’s testimony about the business relationship between the two companies. There is nothing specific to Burnett involved in that inquiry. Likewise, on the question of ratification, the Court and/or jury would review the PHBC website to assess whether CallCore should have known it was not a “marketing

partner” and can also listen to the testimony of CallCore about complaints of TCPA violations. Because those questions predominate over individual issues, Rule 23(b)(3) is satisfied.

3. Plaintiff satisfies the typicality requirement of Rule 23(a)(3).

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class[.]” The threshold for ... typicality under Rule 23(a) [is] not high.” *Gene And Gene LLC*, 541 F.3d at 325; *see also Shipes v. Trinity Indus.*, 987 F.2d 311, 316 (5th Cir. 1993). Typicality “does not require a complete identity of claims.” *James v. City of Dallas*, 254 F.3d 551, at 571 (5th Cir. 2001). Rather, “the critical inquiry is whether the class representative’s claims have the same essential characteristics of those of the putative class.” *Id.* The “analysis focuses on whether the named representative's claims are typical, not whether the representative is.” *Hordge v. First Nat'l Collection Bureau, Inc.*, No. 4:15-CV-1695, 2018 U.S. Dist. LEXIS 218823, at *13-14 (S.D. Tex. July 5, 2018) (Ellison, J.) (*citing Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002)).

Here, Plaintiff’s claims are typical of the claims of all class members. Burnett asserts she received calls placed on CallCore’s behalf to her cell phone, where the calls used Yodel’s pre-recorded voice technologies. The success of the affirmative elements of her claim will turn on whether Yodel was acting as an agent of CallCore, whether CallCore had reason to know of Yodel’s violations, and whether Yodel’s “soundboard” voice technologies constitute a “pre-recorded voice” as defined by the TCPA. Whether CallCore can prevail on its affirmative defense of express written consent turns on whether CallCore can demonstrate it was a listed “partner” on the PHBC website and the question of whether express written consent can be effectuated by a third-party lead generator.

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4. Plaintiff and her counsel satisfy the adequacy requirement of Rule 23(a)(4).

Rule 23(a)(4) requires “the representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). Adequate representation invokes two inquiries: (1) whether the class counsel are “qualified, experienced and generally able to conduct the litigation” and (2) whether the named plaintiffs have interests that are “antagonistic” to the other class members. The adequacy inquiry can be broken up into three subcategories: (1) “the zeal and competence of the representative[s] counsel”; (2) “the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees”; and (3) the risk of “conflicts of interest between the named plaintiffs and the class they seek to represent.” *Slade v. Progressive Sec. Ins. Co.*, 856 F.3d 408, 412 (5th Cir. 2017). To meet the adequacy requirement, “the court must find that class representatives, their counsel, and the relationship between the two are adequate to protect the interests of absent class members.” *Unger v. Amedisys Inc.*, 401 F.3d 316, 321 (5th Cir. 2005).

Here, Plaintiff has retained counsel experienced in class-actions and consumer litigation- especially the TCPA. Roberts Dec., ¶¶ 4-10; Ginsburg Dec. ¶¶ 6-16. Plaintiff and her counsel vigorously prosecuted this case and efficiently and effectively reached a settlement on behalf of the class, that exceeds the per claimant recovery in most TCPA class settlements. *See infra* § V(B)(1). Plaintiff and her counsel’s interests are not antagonistic to the members of the Settlement Class. Moreover, Plaintiff’s meticulous record keeping, and her consistent communication with her counsel, and active participation in the case make her an excellent class representative. *See* Burnett Dec. ¶¶ 17-25; Ginsburg Dec. ¶¶ 26-27; Roberts Dec. ¶ 17.

B. This Settlement Should Be Preliminarily Approved

Courts preliminarily consider the Rule 23(e) factors when determining whether to preliminarily approve a class action settlement. *See id.*; *see* FED. R. CIV. P. 23(e)(1)-(2). In the context of preliminary approval, Rule 23(e) directs putative class counsel to provide the Court with information sufficient to enable the court to determine that the settlement is fair, reasonable and adequate, and that notice is justified because the Court will likely grant final approval to the settlement. *See id.*

Before class notice can issue, the putative class representatives must demonstrate “that the Court will likely be able to” approve the settlement under Rule 23(e)(2); and (ii) “certify the class for purposes of judgment” arising from the settlement. FED. R. CIV. P. 23(e)(1)(B). Under Rule 23(e)(2), a court may only approve a settlement based on a finding that the proposed settlement is “fair, reasonable and adequate” after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and,
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2).

Judicial and public policy favor settlement and of class actions. *Wal-Mart Stores, Inc.* 396 F.3d at 116. The Fifth Circuit has identified six factors that a court should consider when considering whether a proposed settlement is fair, reasonable, and adequate:

(1) whether the settlement was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the factual and legal obstacles prevailing on the merits; (5) the possible range of recovery and the certainty of damages; and (6) the respective opinions of the participants, including class counsel, class representative, and the absent class members.

Reed v. General Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983). Those six items have been referred to as the “*Reed* factors.” As set forth below, the agreement reached between the putative classes and CallCore satisfy each of the *Reed* factors.

1. There was no fraud or collusion in this arms length settlement.

The “Court may presume that no fraud or collusion occurred between counsel, in the absence of any evidence to the contrary.” *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010). When a class settlement is reached through arm’s-length negotiations after meaningful discovery, a “presumption of fairness, adequacy, and reasonableness may attach.” *Wal-Mart Stores, Inc.*, 396 F.3d at 116; 4 NEWBERG ON CLASS ACTIONS § 13:45 (5th ed.). Where settlement is reached before a neutral mediator, that is suggestive of an arms-length settlement devoid of fraud or collusion. *See Cole v. Collier*, No. 4:14-cv-1698, 2018 U.S. Dist. LEXIS 97110, at *16-17 (S.D. Tex. June 8, 2018).

Here, the Parties engaged in substantial discovery, in a process which took a year and a half. The Parties worked at arms-length through records involving over seven million calls. The Parties held numerous conferences (several of them contentious) regarding CallCore’s document production and records. Burnett’s counsel took an all-day deposition of CallCore’s corporate designees and CallCore’s counsel took an all-day deposition of Burnett, which was contentious and at times, adversarial. *See Roberts* Dec. ¶ 16; *Burnett* Dec. ¶¶ 18-23. In July of 2023, almost two years after suit was filed, Plaintiff had enough information to make an initial classwide

settlement demand, and to mediate the case. Roberts Dec. ¶¶ 12-19. The Parties agreed to mediate in Dallas before the Honorable Jeff Kaplan (ret.) At the end of an all-day mediation in Dallas, the Parties agreed on a two-million-dollar *pro rata* classwide settlement. *See id.* at ¶ 19-23.

Furthermore, the result of this settlement demonstrates it was not the result of collusion. The two million dollar class fund distributed on a *pro rata* basis to claimants is expected to result in a recovery of at least \$120 per claimant, which is in line or above typical TCPA settlements. *See Bowman v. Art Van Furniture, Inc.*, 2018 WL 6444514, at *2, 5 (E.D. Mich. Dec. 10, 2018) (approximately \$99 per claimant); *Boger v. Citrix Sys., Inc.*, 2023 WL 3763974, at *11 (D. Md. June 1, 2023) (“the expected settlement payment for each Class Member is \$44.14, which exceeds the typical value of claims in similar settlements and the likely statutory damages for TCPA claims”); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (recovery of \$34.60 per claimant “falls within the range of recoveries in other TCPA actions”); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (recovery of \$24 per claimant “an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter”).

The process and the resolution and the outcome have all the hallmarks of an arms-length settlement and no indicia of fraud or collusion.

2. The complexity, expense and potential duration of litigation favor approval of the settlement.

Risks of protracted litigation and delay favor approval of settlement. *See Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004). *In re Heartland Payment System, Inc. Customer Data Security Breach Litigation*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (“When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened.”)

TCPA class actions can be immensely challenging and can result in protracted litigation. For instance, the case *Krakauer v. Dish Network L.L.C.*, was filed in 2014 and received final approval in 2023. *See Krakauer*, No. 1:14-CV-333, 2023 WL 5237091 (M.D.N.C. Aug. 15, 2023). Similarly, the TCPA class-action *Williams v. Pisa Grp., Inc.*, No. 18-4752, 2023 WL 2227697 (E.D. Pa. Feb. 24, 2023) was filed in 2018, certified in 2023, and litigation remains ongoing. Here, it took two-and-a-half years to get to the point where the classes, the Defendant and the insurer felt comfortable entering to a universally beneficial settlement. If settlement is denied, years of additional protracted litigation would likely follow. The complexity, expense and potential duration of litigation favor approval of the settlement

3. The stage of litigation and available discovery favor approval of the settlement

Completion of discovery and significant litigation weigh in favor of a finding that the Settlement is fair, reasonable, and adequate. When discovery has been completed and legal issues decided, the parties and the court have sufficient information with which to evaluate the merits of their positions. *Cole*, No. 4:14-CV-1698, 2018 WL 2766028, at *5 (citing *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004)). Here, the parties completed the pleadings stage and expansive and voluminous discovery. The Parties reviewed records of over seven million calls. Burnett and representatives from CallCore were deposed, and both Parties served at least three subpoenas to third parties. After a year and a half of discovery, Burnett filed her motion for class certification. *See* ECF No. 26. Accordingly, the Parties and CallCore's insurance carrier, were all able to thoroughly evaluate their positions on settlement when negotiating, and a third-party neutral was able to bring the parties to a resolution.

4. The probability of success on the merits favor approval.

The probability of the Plaintiff's success on the merits is the most important factor for courts to consider when evaluating a class action settlement. *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). "A district court faced with a proposed settlement must compare its terms with the likely rewards the class would have received following a successful trial of the case." *Cole v. Collier*, No. 4:14-cv-1698, 2018 WL 2766028 2018 U.S. Dist. LEXIS 97110, at *19 (S.D. Tex. June 8, 2018).

Here, while Burnett is confident in the merits of her case, success is far from a certainty. CallCore did not directly place the calls at issue to Burnett or the putative classes. Rather, Burnett's now-bankrupt vendor Yodel Technologies did. TCPA claims asserted under theories of vicarious liability are notoriously unpredictable. *See Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 656 (4th Cir. 2019) (affirming jury verdict in favor of class-plaintiffs against Dish Network for TCPA violations under various theories of vicarious liability); *contra Keating v. Peterson's Nelnet, LLC*, 615 Fed. App'x. 365, 374-75 (6th Cir. 2015) (affirming the district court's order of summary judgment in favor of the TCPA defendants, as to the plaintiff's vicarious liability claims).

Furthermore, uncertainty surrounding future deference to regulatory agencies favor settlement. The TCPA is promulgated by rules enacted by the FCC. *See generally*, 47 U.S.C. § 227, *et seq*; 47 C.F.R. § 64.1200, *et seq*. While the Fifth Circuit continues to afford a degree of deference to regulatory agencies, there is a heightened standard applied to whether the agency rulings are enforceable and there has been a general trend away from judicial deference to regulatory agencies. *See All. for Fair Bd. Recruitment v. SEC*, 85 F.4th 226 (5th Cir. 2023); *but see Consumers' Rsch. v. FCC*, 63 F.4th 441 (5th Cir. 2023) (agency must prove its authority

through intelligible delegation to enact rules).¹ If the settlement is not approved, issues in the TCPA currently seen as settled-law, like the definition of “pre-recorded voice”, what factors warrant the imposition of vicarious liability, and which phones are subject to 227(b) protection, could be called into question by the time this case is ripe for trial. In short, the uncertainty of Burnett’s claims and potential changes in the legal landscape favor approval of settlement.

5. The range of recovery and certainty of damages favor approval.

Even if the Classes prevailed on the merits, there is no guarantee of actual *recovery*. Here, while defending under a reservation of rights, CallCore’s liability insurance carrier agreed to pay the cost of the class settlement. *See* Ex. 1, Agreement. However, in certain declaratory actions, TCPA liability was rendered outside the scope of covered claims for liability insurance *See Nationwide Mut. Ins. Co. v. David Randall Assocs., Inc.*, 551 F. App’x 638, 639 (3d Cir. 2014). Accordingly, if approval is denied, even if every contested issue on class certification, summary judgment and and/or trial went in favor of Burnett and the classes, as a practical matter, they could wind up empty-handed. The range and certainty of actual recovery favor approval of the class settlement.

6. The Settlement is endorsed by the class representative and class counsel.

When “assessing the fairness of a settlement, the Court must look to the opinions of Class Counsel, the Class Representatives, and absent Class members.” *Cole*, No. 4:14-CV-1698, 2018 WL 2766028, at *5. The “endorsement of class counsel is entitled to deference, especially in light of class counsel’s significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims.” *Id.*, (quoting *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292

¹ *Consumers’ Research* was recently argued *en banc*. 5th Cir. Case No. 22-60008.

(W.D. Tex. 2007)). Here, Burnett and her counsel endorse the settlement entered into at mediation. Burnett is the sole class representative and participated vigilantly for two and a half years. *See generally*, Burnett Dec. ¶¶ 16-25. Given that the expected per claimant recovery is in line or above typical TCPA class settlements, the settlement is also endorsed by her counsel. Roberts Dec., ¶¶ 4-10; Ex. 3, Ginsburg Dec. ¶¶ 6-16. Absent class members will have the opportunity to participate in the settlement, opt-out or object. *See* Notice Plan. Accordingly, the sixth *Reed* factor favors approval.

C. Plaintiff will request attorneys' fees, costs and a class representative service award that are fair and reasonable.

If preliminary approval is granted, after notices have been sent and claims returned, Plaintiff's counsel will seek attorneys' fees of up to 33.3% of the settlement fund, or \$666,666.67 of the \$2,000,000.00 common fund. Roberts Dec. ¶ 32. In addition, Burnett will also seek an amount up to \$12,000.00, as a representative service award. *See id.*

The 33% attorney fee is in line or below many class settlements within the Fifth Circuit and other TCPA class-action settlements nationwide. *See Wolfe v. Anchor Drilling Fluids USA Inc.*, 2015 U.S. Dist. LEXIS 182835, 2015 WL 12778393, *3 (S.D. Tex. Dec. 7, 2015 (awarding 40% of the common fund as attorneys' fees); *Frost v. Oil States Energy Servs., L.L.C.*, 2015 U.S. Dist. LEXIS 183104, 2015 WL 12780763, *2 (S.D. Tex. Nov. 19, 2015) (one-third of common fund as attorneys' fees); *Campton v. Ignite Restaurant Group, Inc.*, 2015 U.S. Dist. LEXIS 182828, 2015 WL 12766537, *3 (S.D. Tex. June 5, 2015) (one-third); *Al's Pals Pet Care v. Woodforest Nat'l Bank*, No. 4:17-CV-3852, 2019 WL 387409, at *10 (S.D. Tex. Jan. 30, 2019) (one third) *See Blackmon v. Zachary Holdings, Inc.*, 2022 WL 3142362 2022 U.S. Dist. LEXIS 139417, at *13 (W.D. Tex. Aug. 5, 2022) (one-third); *Jones v. JGC Dallas LLC*, No. 3:11-CV-2743-O, 2014 U.S. Dist. LEXIS 177472, 2014 WL 7332551, at *6-7 (N.D. Tex. Nov. 12, 2014)

(approving fee award of 40% of common fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (36% of fund in TCPA class settlement); *Boger v. Citrix Sys., Inc.*, 2023 WL 3763974, at *12 (D. Md. June 1, 2023) (33% of fund in TCPA class settlement); *Gergetz v. Telenav, Inc.*, 2018 WL 4691169, at *7 (N.D. Cal. Sep. 27, 2018) (30% of fund in TCPA class settlement).

In the two and a half years this case has been pending, counsel worked diligently and efficiently, traveled from St. Louis and Philadelphia to Houston, Dallas and Daytona Beach, navigated challenges on discovery, sorted through records of millions of phone calls, took and defended depositions, issued various subpoenas, briefed a motion for class certification and worked assiduously to prepare for an all-day mediation and arrived at a satisfactory class settlement an efficient manner. The attorney fee of 33% of the common fund is fair and reasonable compensation for the work performed and result obtained.

The proposed class representative incentive award is also reasonable and within the range of what has been approved in the Fifth Circuit, and for TCPA class actions nationwide. In *Lee v. Metrocare Servs.*, 2015 U.S. Dist. LEXIS 194001, at *24-25 (N.D. Tex. July 1, 2015), the Court noted that class incentive awards are generally at or less than 1% of the common fund. *Id.* although 1% of the common fund is not a formal ceiling on service awards in the Fifth Circuit, evaluating service awards in light of the size of the common fund is nonetheless sensible and consistent with district court precedent within the Fifth Circuit. *Purdie v. Ace Cash Express, Inc.*, CIV.A. 301CV1754L, 2003 U.S. Dist. LEXIS 22547, 2003 WL 22976611, at *7 (N.D. Tex. Dec. 11, 2003) (approving \$16,665 incentive award to named plaintiffs for actively participating in the lawsuit); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (approving awards of up to \$10,000 per class representative in 1999). The \$12,000.00 service

award Burnett seeks is also in line with other TCPA class settlements nationwide. *See Charvat v. Valente*, 2019 WL 55769322019, 2019 U.S. Dist. LEXIS 187225, at *33 (N.D. Ill. Oct. 28, 2019) (\$25,000 award); *Johansen v. One Planet Ops, Inc.*, 2020 WL 7062806, at *5 (S.D. Ohio Mar. 25, 2020) (\$10,000 award). Here, Plaintiff fought for the classes dutifully, and actively stayed involved in and participated in the case (including attending an all-day mediation). Burnett Dec. ¶¶ 18-22. An incentive award of \$12,000.00 incentive award is fair and reasonable.

Finally, Plaintiff cannot yet advise the Court of the response from class members. Under the Settlement Agreement, and pursuant to FED. R. CIV. P. 23(e), Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiff's counsel will then file a motion for fees and expenses pursuant to both the Settlement Agreement and FED. R. CIV. P. 23. In turn, this Court will then award the attorneys' fees, costs, and service awards, if any, that it determines appropriate assuming the Settlement is finally approved.

D. The Court should approve the class notice and administration plan.

When granting preliminary approval of a class settlement, the Court must determine that the notice and mailing plan satisfies due process and the requirements set forth in Federal Rule of Civil Procedure 23(c)(2)(B). *Jallo v. Resurgent Capital Servs., L.P.*, 2016 WL 6610322, 2016 U.S. Dist. LEXIS 192270, at *6 (E.D. Tex. Nov. 8, 2016). The Parties have retained the highly experienced firm, Atticus, to issue the notice and administer the class. The proposed Notice is attached as Exhibit 1 to the Settlement Agreement. The Notice Plan is described at length in the Agreement and the Roberts Declaration. Class Members will receive notice by mail and email (where e-mail addresses available), have access to a user-friendly website and have 90 days to

submit a claim or 60 days to opt-out or object to the settlement. The Notice and Notice Plan satisfy the requirements of due process and Fed. R. Civ. P. 23(c)(2)(B).

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court: (1) conditionally certify the two Settlement Classes under Fed. R. Civ. P. 23(a) and (b) for settlement purposes; (2) approve the proposed class Settlement Agreement; (3) appoint Plaintiff Candice Burnett to serve as the class representative; (4) approve Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg to serve as Class Counsel; (5) approve Atticus Administration LLC to serve as the settlement administrator; (6) direct that notice be issued by the Administrator; and, (7) to schedule a hearing for final approval of the settlement.

Respectfully submitted,

/s/ Christopher E. Roberts
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2024, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Jacob U. Ginsburg

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Plaintiff Candice Burnett (“Plaintiff”), on behalf of herself and two putative classes of persons (identified and defined below as the “Settlement Classes”) on the one hand, and Defendant CallCore Media, Inc. (“Defendant” or “CallCore”) on the other, subject to court approval. Plaintiff and Defendant are collectively referred to as the “Parties.”

WHEREAS Plaintiff filed a class action in the Southern District of Texas, styled *Burnett v. CallCore Media, Inc.*, No. 4:21-cv-03176, under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* and Section 302 of the Texas Business and Commerce Code (“Texas Solicitation Act”) against Defendant. Plaintiff alleged Defendant violated the TCPA by placing prerecorded/artificial voice calls to Plaintiff and the members of the Settlement Classes without the requisite consent to place such calls. Plaintiff alleged Defendant violated the Texas Solicitation Act by placing such calls to persons with Texas area codes despite not first obtaining the required registration from the State of Texas to place such calls. The action is referred to as “the Lawsuit.”;

WHEREAS the Parties completed classwide discovery including written discovery, the issuance of third-party subpoenas, and various depositions in the Lawsuit;

WHEREAS Plaintiff filed a motion for class certification in the Lawsuit;

WHEREAS the Parties conducted a mediation before the Honorable Jeff Kaplan (Ret.), and, were able to reach the essential terms of a settlement after an all-day mediation and extensive arm’s length negotiations;

WHEREAS, Defendant denies and continues to deny the claims asserted by Plaintiff, denies Plaintiff and/or the Settlement Classes are entitled to damages and maintains that they have meritorious defenses to the claims alleged in the Lawsuit;

WHEREAS, while denying all liability and without admitting or conceding fault or liability or the validity of Plaintiff' claims, or that Plaintiff or any individual in the Settlement Classes is entitled to any relief as a result of Defendant's conduct, Defendant has agreed to settle the claims that are the subject of the Lawsuit as set forth in this Agreement;

WHEREAS, the Settlement Classes include approximately 67,113 persons to whom calls were placed;

WHEREFORE, the Parties stipulate and agree that the claims of Plaintiff and the Settlement Classes should be and are hereby compromised and settled, subject to approval by the trial court, upon the following terms and conditions:

1. Recitals. The above-described recitals are incorporated into this Agreement.
2. For Settlement Only. This Agreement is entered into for purposes of resolving the disputes between Defendant on one hand, and Plaintiff and the Settlement Classes on the other, concerning certain claims asserted in the Lawsuit. The Parties desire and intend to seek the District Court's approval of the settlement and a final judgment approving the settlement between the Parties concerning the claims of Plaintiff and the Members of the Settlement Classes as set forth in this Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the Agreement, to secure the district court's approval of the Agreement, and to oppose any interventions and objections to the Agreement. If the trial court does not finally approve the Agreement, the Parties expressly agree that this Agreement is a nullity as described in Section 16.
3. Certification of the Settlement Classes. For settlement purposes only, the Parties hereby stipulate to seek certification of the following settlement classes defined as follows: (1) TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore; and, (2) Texas

Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed on or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore. These two classes are collectively referred to as the “Settlement Classes”. Where the individual classes are referenced, said classes will be referred to as the “TCPA Class” or the “Texas Class.” The class members bound by the class definition are those with the phone numbers included on the data produced by Defendant as of the date said calls were placed.

“Settlement Class Member” means any person included in the Settlement Classes who does not timely and properly opt out of this settlement. Defendant does not oppose and hereby agrees to certification of the Settlement Classes for settlement purposes only, but that will not be deemed a concession that certification of any class in the Lawsuit is, or was, appropriate, nor would Defendant be precluded from challenging class certification in any other action or in further proceedings in the Lawsuit if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Classes resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant.

4. Representation of the Settlement Classes. Plaintiff will request to be appointed as the “Class Representative.” Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. will request to be appointed as “Class Counsel.” Defendant will not oppose these requests.

5. Notice Information: To the extent Defendant can reasonably determine from its records, Defendant will provide the Settlement Administrator (defined in section 11) with the last known phone number, name, address and e-mail of each Settlement Class Member. This information is referred to as the “Notice Information.” Defendant will provide a declaration

attesting to the authenticity of the Notice Information provided to the Settlement Administrator. Defendant will provide the Notice Information to the Settlement Administrator within seven days of the Parties executing the Agreement.

6. Preliminary Approval. Plaintiff will file a motion with the District Court for preliminary approval of the Settlement on or before January 31, 2024. The motion for preliminary approval will seek an order that: (a) preliminarily approves the settlement of the Lawsuit; (b) certifies the Settlement Classes as defined in Section 3 above; (c) approves and appoints Plaintiff as representative of the Settlement Classes; (d) approves and appoints attorneys Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. as Class Counsel; (e) approves the forms prepared by the Parties for giving notice of the settlement to the members of the Settlement Classes, copies of which are attached to this Agreement; (f) approves the methods agreed to by the Parties for giving notice of the settlement to the Settlement Classes; and, (g) sets deadlines for: (i) providing notice to the members of the Settlement Classes; (ii) members of the Settlement Classes to submit requests for exclusion/opt-out and objections to the proposed settlement; and, (iii) members of the Settlement Classes to submit claims. The Parties will then seek final approval of the settlement and entry of a “Final Approval Order and Judgment” (as defined in section 12).

7. The Relief. Defendant, through itself and its insurer, will make available a settlement fund totaling Two-Million Dollars (\$2,000,000.00)(“Settlement Fund”) to pay the claims of the members of the Settlement Classes, the cost of settlement administration, a class representative service award, and Class Counsel’s attorneys’ fees and litigation expenses. No unclaimed amounts will revert to Defendant. Defendant shall provide the upfront costs referenced in Section 11 below to the Settlement Administrator within 30 days of the Court granting

preliminary approval of the settlement. The remainder of the Settlement Fund will be paid to the Settlement Administrator within fourteen (14) days of the Court entering its Final Approval Order and Judgment.

Each member of the Settlement Classes who submits a valid claim shall be entitled to receive a *pro rata* share of the fund dependent on the number of claimants after accounting for the cost of settlement administration, the representative service award, and attorneys' fees and expenses. Class members with Texas addresses and/or area codes will receive an additional 10% payment of the pro rata share. Payments shall be made by check or electronic payment from the Settlement Administrator to each member of the Settlement Classes who submits a valid claim.

The amount of all checks uncashed within 120 days of distribution by the settlement administrator shall be distributed by the Settlement Administrator in accordance with the escheatment requirements of the state in which the Settlement Class Member is located.

8. Notice to Settlement Class. In the event the District Court enters an order granting preliminary approval of the settlement as described in Section 6, notice of the settlement will be mailed to the individuals in the Settlement Classes within fourteen days after such order. The Settlement Administrator will send the class notice by first class U.S. mail to members of the Settlement Classes at such persons last known address, as listed in the Notice Information, and will also send the notice by e-mail to all members of the Settlement Classes for whom Defendant has an e-mail address. Prior to mailing the notice, the Settlement Administrator will update the address information provided by Defendant through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service and shall run a search to determine and/or confirm the names and addresses of the members of the Settlement Classes as of the date said phone number received a call on the date specified by Defendant's records. Any mailed notice returned to the

Settlement Administrator with a new forwarding address will be re-mailed one time to the individual at the new forwarding address. The mail notice to the Settlement Classes will contain a summary description of the Agreement, include a claim form, identify the Settlement Administrator, and direct recipients to the website, from which information about the settlement can also be obtained and through which claim forms may be uploaded (in addition to being mailed). The Settlement Administrator will provide a declaration to be filed with the District Court, as part of the final approval papers, stating that these notice procedures were followed.

The Settlement Administrator shall set up a dedicated website to advise persons of the settlement and through which members of the Settlement Classes may submit claims. Members of the Settlement Classes will have ninety (90) days from the date the Settlement Administrator sends notice of the settlement to submit claims electronically or by mail. The content and format of the website will be agreed upon by the Parties, and the website will be operational on the date the notice is mailed to the Settlement Class Members.

Members of the Settlement Classes shall be able to opt-out and exclude themselves from the settlement or object to the settlement. Such election to opt-out or object must be made within sixty (60) days after the notice is first sent. For an objection to be valid, the objection shall state: (a) the name, address, and phone number of the objector, (b) the specific bases for the objection, and (c) whether they intend to appear at the final approval hearing. Counsel shall also have the option to take the deposition of the objector within 21 days of receiving the objection.

The parties agree that the Class Notice to be sent will be substantially similar to that attached as Exhibit 1. The parties agree that the Long Form Class Notice, which will only appear on the settlement website, will be substantially similar to that attached as Exhibit 2.

9. Claims Process: Any member of the Settlement Classes who wish to receive a cash payment shall submit a valid claim form within ninety (90) days after the Settlement Administrator sends notice. To be valid, the claim form must be signed physically or digitally by the class member. The parties agree that the Claim Form will be substantially similar to that attached to this Agreement as Exhibit 3.

10. Incentive Award and Attorneys' Fees. Class Counsel will apply for an award of up to 33 1/3% of the settlement fund (\$666,666.67) for their attorneys' fees and reasonable litigation expenses. Class Counsel will also request an incentive award for Plaintiff of up to \$12,000.00 for her service in the Lawsuit. Defendant will not oppose these amounts. The incentive award and attorney fee award will be set forth in the Final Approval Order and Judgment and is within the Court's sole discretion to award.

11. Settlement Administration and Expenses. Plaintiffs, with approval of Defendant, shall select a settlement administrator for purposes of issuing notice to the members of the Settlement Classes and administering the settlement ("Settlement Administrator"). Defendant's approval of the settlement administrator shall not be unreasonably withheld. Defendant shall pay the administrator's costs and expenses. As provided in Section 7 above, the administrator's costs and expenses shall be paid from the Settlement Fund. The Parties will consult with the Settlement Administrator to design a notice campaign that satisfies due process. The Settlement Administrator shall also comply with all notice requirements set forth in this Agreement.

12. Final Approval. The preliminary approval order described in Section 6 will set a date for a Final Approval Hearing, at which the Parties will request that the District Court enter a Final Approval Order and Judgment, consistent with this Agreement and the Parties' efforts to consummate the settlement. With the exception of up-front costs required by the Settlement

Administrator, Defendant shall not be obligated to pay any amount from the Settlement Sum pursuant to this Agreement except after the “Effective Date”, as described in Section 13.

13. Effective Date. If there are no objections to the settlement, the “Effective Date” of this Agreement shall be the fourteen calendar days after the trial court has signed the Final Approval Order and Judgment as applied to Plaintiff and the Members of the Settlement Classes. If there are objections to the settlement, the Effective Date shall be fourteen days after all of the following conditions have occurred and been satisfied:

(a) The District Court has entered: (i) a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23; and (ii) a final judgment granting the relief and releases described in this Agreement, including that in Sections 7 and 15; and

(b) The time for appeal or to seek permission to appeal from the District Court’s approval of this Agreement and entry of final judgment described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Agreement and any final judgment have been affirmed by the court of last resort to which such appeal can be taken, and such affirmance has become no longer subject to further appeal or review.

14. Payments. Within thirty (30) days after the Effective Date, the Settlement Administrator shall distribute to members of the Settlement Classes who have submitted valid claims the payments described in Section 7 and in addition, shall distribute the attorney’s fees and incentive awards described in Section 10, consistent with the Final Approval Order and Judgment.

15. Release. Upon entry of Final Approval and Judgment, Plaintiff and each member of the Settlement Classes that do not opt out or otherwise exclude themselves from the settlement will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, Defendant and its insurers, attorneys, owners, officers, directors, partners, members,

managers, agents, employees, related entities, assumed names, and representatives from any and all claims, actions, causes of action, demands, rights, damages, costs of whatsoever nature presently known or unknown which arise from and/or relate in any way to the calls referred to in the definitions of the Settlement Classes (as described in Section 3 above) that they had, have, or may have had as of December 21, 2023 (defined as the “Released Claims”).

16. Effect of Trial Court’s Denial of Preliminary or Final Approval. If the District Court does not preliminarily approve the settlement in substantially the same form as set forth in this Agreement, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth in this Agreement, this Agreement shall be null and void. In such event, and upon the trial court entering an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved in substantially the same form as set forth in this Agreement, then: (a) this Agreement is terminated and is of no force and effect, and no party shall be bound by any of its terms, except for Defendant’s reimbursement of the Settlement Administrator’s expenses that it has incurred; (b) to the extent applicable, any preliminary order approving the settlement, certifying the Settlement Classes, approving the notice or notice procedure, and providing notice to the Settlement Classes shall be vacated; (c) the Agreement and all of its provisions and all negotiations, statements, and proceedings shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Agreement was fully executed; and, (e) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in this Lawsuit, or discoverable or admissible in any other action for any purpose whatsoever.

17. Requests by Individuals in Settlement Classes. Requests for exclusion, objections to the settlement, and all other notices regarding the settlement, to the extent received by either Party, shall be sent to the Settlement Administrator, who in turn will provide same to Defendant.

18. No Admission of Liability. This Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendant of any liability of any kind. Defendant denies any liability in connection with any claims made in the Lawsuit. Defendant enters into this Agreement merely to avoid the further expenditure of attorneys' fees, litigation and appellate expenses, and the disruption of ongoing business obligations and activities that would result from the continuation of the Lawsuit.

19. Confirmatory Discovery. Prior to class notice being sent, Defendant's representative(s) shall provide Plaintiff's counsel a declaration attesting to the fact that the spreadsheet previously produced in discovery as part of the Lawsuit to Plaintiff's counsel identifies: (1) the complete names and other contact information that Defendant has for the Settlement Classes; and, (2) that the spreadsheet identifies all of the potential 67,113 members of the Settlement Classes.

20. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

21. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

22. Warranties. The Parties further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the claims released in this Agreement, and that they have received legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each Party represents such party has not assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action asserted in the Lawsuit. Each of the Parties executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party for which he or she is signing.

23. Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective insurers, successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

24. Further Cooperation. The Parties agree to execute such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Agreement and shall in good faith undertake all reasonable acts to effectuate the provisions of this Agreement.

25. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Texas, without regard to its conflict of laws or choice of law provisions. Any suit to enforce this Agreement shall be brought in the United States District Court for the Southern District of Texas, Houston Division.

26. Mutual Interpretation. The Parties agree and stipulate that the settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. The Agreement has been drafted jointly by Class Counsel and Defendant’s counsel. Accordingly, this Agreement

UUGW0111 ENVELOPE ID: 30394F03-003A-4ED0-9BD7-7A20F22A93D0

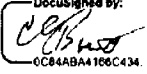
is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties. This Agreement was prepared after an agreement in principle to resolve the case was reached after an all-day mediation with the Honorable. Jeff Kaplan (Ret).

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and such counterparts together shall constitute one instrument. Electronically scanned signatures are acceptable for the execution of this Agreement.

28. Severability. Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Agreement is held to be illegal or unenforceable, the remaining terms of this Agreement shall be binding and enforceable.

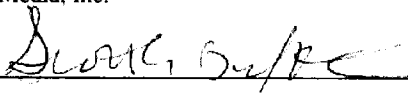
IN WITNESS WHEREOF, the Parties and CallCore's insurer have executed this Agreement on the date(s) set forth below.

Dated: 1/24/2024

DocuSigned by:

0C84ABA4166C434

Candice Burnett

Dated: _____

CallCore Media, Inc.
By: 
Printed Name: SCOTT A. BUFFEN
Title: CO-OWNER

Dated: 1/25/2024

First Community Insurance Company

By: DocuSigned by:
Walter Sykes
ID#6CA27BB27461...

Printed Name: walter sykes

Title: President

**SETTLEMENT
AGREEMENT EXHIBIT 1**

Business v. CallCore Media, Inc.
United States District Court for the Southern District of
Texas, Case No. 4:21-cv-03176

**IMPORTANT LEGAL NOTICE - This Notice was
authorized by the Court. It is not a solicitation from
an attorney.**

**IF YOU RECEIVED A PRERECORDED VOICE
CALL FROM OR ON BEHALF OF CALLCORE
MEDIA, INC., YOU MAY BE ELIGIBLE FOR A
SETTLEMENT PAYMENT.**

A proposed Settlement has been reached in a class
action lawsuit that may affect your rights. The lawsuit
alleges that CallCore Media, Inc. ("CallCore") violated
the Telephone Consumer Protection Act and the Texas
Business and Commerce Code by placing prerecorded
voice calls to persons.

- CallCore's records indicate that you are a potential
settlement class member. You may be eligible for a
payment of approximately **\$120 (plus an additional
10% if you resided in Texas or had a Texas area
code at the time CallCore's records reflect a call
was placed to you).**

CALLCORE SETTLEMENT
C/O ATTICUS ADMINISTRATION
PO BOX 64053
SAINT PAUL MN 55164

Presorted First-
Class Mail
U.S. Postage
PAID
Twin Cities MN
Permit #XXX

<<barcode>>

<<barcode>>

CLAIMANT ID: <<Unique ID>>
<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS 1>> <<ADDRESS 2>>
<<CITY>> <<ST>> <<ZIP>>

To receive a payment from this Settlement you **must** submit a completed Claim Form by **[90 days after notice]**.

To complete a Claim Form, please do one of the following by:

1. Scan the QR Code at the right to complete and submit an online Claim Form.
2. Go to www.prerecordedsettlement.com and use your Claimant ID to submit an online Claim Form.
3. Go to www.prerecordedsettlement.com to print a paper Claim Form to submit by mail.



Opt-Out Option: If you do not wish to participate in the Settlement, you **must** mail an “Opt-Out” Request to the Settlement Administrator postmarked no later than **[60 days after notice is sent]** or submit your opt-out request online at www.prerecordedsettlement.com. If you “opt-out”, you will not be legally bound by anything that happens in this lawsuit, but you will not be eligible to receive a Settlement payment. If you do not “opt-out,” and the Court grants final approval of the Settlement, you will release the claims asserted in the lawsuit against CallCore and others as detailed in the Settlement Agreement, available at www.prerecordedsettlement.com

Objection Option: If you do not “opt-out” and wish to object to the Settlement, you must inform the Court through a written objection of why you do not like the settlement. The objection must contain specific information that can be found in the full Class Notice on the settlement website and must be mailed to the Settlement Administrator by **[60 days after notice]**. The Court will consider objections at the Final Approval Hearing. If you object and wish to speak at the hearing, you may file a Notice of Intent to Appear with the Court through your own attorney and at your own expense.

The Court appointed the law firms of Butsch Roberts & Associates LLC and Kimmel & Silverman, P.C. as Class Counsel to represent the interests of the Settlement Class. The Court will hold a **Final Approval Hearing** on **[hearing date]** at **[hearing time]** in the United States District Court for the Southern District of Texas, 515 Rusk Street, Room 3716, Houston, TX 77002.

To review the complete Class Notice and for more information about the Settlement, including details on how to File a Claim, “Opt-Out” or submit an Objection, please visit the Settlement Website at www.prerecordedsettlement.com. You may also call or email the Settlement Administrator at **1-800-XXX-XXXX** or prerecordedsettlement@atticusadmin.com with any questions or to have the full Class Notice mailed or e-mailed to you.

**SETTLEMENT
AGREEMENT EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANDICE BURNETT, *individually and on behalf of all others similarly situated,*

Plaintiff,

v.

CALLCORE MEDIA, INC.,

Defendant.

§
§ Civil Action No.: 4:21-cv-03176
§
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§
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§
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§
§
§

NOTICE OF CLASS ACTION SETTLEMENT

The District Court has authorized this Notice. This is **NOT** a solicitation from a lawyer. Please read this Notice carefully as it may affect your legal rights. **Do not be alarmed. You have not been sued; nor have you “filed” a lawsuit.**

This notice is being sent to you because you may be among a group or “class” of persons who received a prerecorded voice call from or on behalf of CallCore Media, Inc. (“Defendant” or “CallCore”) as identified by CallCore’s records

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CASE

These rights and options and the deadlines to exercise them are explained below.

<p>IF YOU WANT TO PARTICIPATE FULLY IN THIS CASE</p>	<p>If you want to be included in this case, <u>then you must submit a valid claim form, a copy of which is included with this notice. If you submit a valid claim, you are expected to receive approximately \$120 (plus an additional 10% if you resided in Texas or had a Texas area code at the time CallCore’s records reflect a call was placed to you).</u></p> <p>If you do not submit a claim form you will not receive any payment and will give up claims against Defendant regarding the claims in the lawsuit including claims under the Telephone Consumer Protection Act and Texas Business and Commerce Code. You must submit a claim by [90 days after notice is mailed]</p> <p>The relief afforded to you is described in Section 7 below and in the settlement agreement available on the settlement website, <u>www.prerecordedsettlement.com.</u></p>
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<p>IF YOU DO NOT WANT TO PARTICIPATE IN THIS CASE AT ALL</p>	<p>If you do not want to participate or be included in this case, then you must send written notice by mail that you wish to exclude yourself from the settlement, postmarked or uploaded to www.prerecordedsettlement.com no later than [60 days after notice is mailed]. Instructions for doing so are in Section 8 below.</p> <p>If you choose not to participate in this case, you give up the possibility of getting money or benefits that may come from the settlement of this case. You keep any rights to sue CallCore about certain legal claims arising from communications directed to you, but the statute of limitations (the deadline for you to file your potential claims) continues to run.</p>
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Your options are explained in this Notice.

1. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Candice Burnett (“Plaintiff”) filed a civil lawsuit against Defendant. Plaintiff filed the lawsuit on behalf of herself and as a class action on behalf of the group or “class” of persons who were placed prerecorded voice/artificial voice calls by or on behalf of Defendant. Plaintiff alleges Defendant violated the Telephone Consumer Protection Act (“TCPA”) by placing these calls without first obtaining the recipients’ prior express written consent. Plaintiff also alleges Defendant violated the Texas Business and Commerce Code (“Texas Solicitation Act”) by placing these prerecorded/artificial voice calls to persons with Texas area codes without first obtaining the required certificate from the State of Texas to place said calls. Defendant denies these allegations.

2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action case, one or more persons sue on behalf of other people who have similar claims. The person who sues is called the named Plaintiff or the named Plaintiffs. The named Plaintiff represents all similarly situated people in the court. The named Plaintiff in this lawsuit is Candice Burnett.

3. WHY DID I RECEIVE THIS NOTICE?

This notice is being made available to you because Defendant’s records reflect that a prerecorded voice/artificial voice call may have been placed to you. If this is the case, you may be a member of the “class.”

Do not be alarmed. **You have not been sued; nor have you “filed” a lawsuit.** This Notice simply informs you of the named Plaintiffs’ lawsuit and lets you know that you have been

identified as a potential member of the Class and to advise you of your rights and options as a Class member.

4. HAS THE JUDGE DECIDED WHO IS RIGHT?

No. By certifying the Class and issuing this Notice, the judge is not suggesting that the named Plaintiff or the Class would have won or lost the case.

5. HOW DO I KNOW IF I AM A MEMBER OF THE CLASS?

By Order dated **XXXXXX**, the Court certified the following classes of persons in the Lawsuit, for settlement purposes:

TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC Marketing, LLC and the calls were transferred to CallCore.

Texas Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed on or behalf of CallCore, whose information was obtained from PHBC Marketing, LLC and the calls were transferred to CallCore.

If you are not sure whether you are a member of the Class, you should contact the lawyers representing the class, who are listed in Section 6 below.

6. WHO IS CLASS COUNSEL?

The Court appointed the named Plaintiff's attorneys in the Lawsuit as Counsel for the Class ("Class Counsel"). Class Counsel are Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. You are not required to hire your own lawyer because Class Counsel will be working on your behalf as a member of the Class. If you want to hire your own lawyer you are permitted to do so at your own expense.

7. WHAT WILL I RECEIVE AS PART OF THE SETTLEMENT?

If you submit a valid claim form, counsel estimates you will receive a payment of approximately \$120 (plus an additional 10% if you resided in Texas or had a Texas area code at the time CallCore's records reflect a call was placed to you). The payment amount is an estimated based on past claims rates and may be more or less depending on the number of valid claims submitted.

Defendant will pay \$2,000,000.00 to pay class members' claims, the cost of settlement administration, class representative service awards and Class Counsel's attorneys' fees and expenses. Each class member who submits a valid claim will receive a pro rata share of the remaining amount after accounting for the cost of settlement administration, a representative service award and attorneys' fees and litigation expenses.

8. WHAT DO I NEED TO DO TO RECEIVE THE BENEFIT OF THE SETTLEMENT?

If you wish to receive the settlement benefits, you **must submit a valid claim form, a copy of which is included with this notice, and which is also available at www.prerecordedsettlement.com**. You may submit a completed claim form at **www.prerecordedsettlement.com** or send to:

CallCore TCPA Settlement
c/o Atticus Administration, LLC
1250 Northland Drive, Suite 240
Mendota Heights, Minnesota 55120

Your claim must be submitted at www.prerecordedsettlement.com by [90 days after notice is mailed] or postmarked by [90 days after notice is mailed].

Failing to make a claim, will mean you will not receive compensation and will give up certain TCPA claims, Texas Business and Commerce Code claims and claims concerning these calls against Defendant. However, you have a choice. You also have the right to exclude yourself from the Lawsuit and the Class or object to the settlement. Each of these choices has consequences that you should understand before making your decision.

A. If you want to participate as a member of the Class.

You must submit a valid claim form to receive the financial benefit of this settlement. Your rights and claims against Defendant, if any, concerning the prerecorded/artificial voice calls Defendant placed to you, will be determined in the Lawsuit.

If you do not exclude yourself from the settlement:

1. The named Plaintiff and Class Counsel will represent you in the Lawsuit. By joining this case, you designate the named Plaintiff, to the fullest extent possible, to make decisions on your behalf concerning the case, the method and manner of conducting the case, the entering of an agreement with Class Counsel regarding payment of attorney's fees and litigation costs, the approval of settlements and all other matters pertaining to this case. These decisions and agreements made and entered into will be binding on you if you do not opt out of the case. You will also release certain claims against Defendant regarding communications placed to you by Defendant or those acting on their behalf as detailed more thoroughly in the settlement agreement available on the settlement website **www.prerecordedsettlement.com**.
2. As a member of the Class, you will be entitled to share in any monetary recovery that the named Plaintiff obtains for the Class. You will also receive the benefit of any other relief that the Court may award the Class.

3. Your ability to recover from Defendant will depend on the results of the Lawsuit. It is important to understand that as a member of the Class in this case **you will be bound by any judgment entered by the Court, whether favorable or unfavorable.**

B. If you want to exclude yourself from the Class or object to the Settlement.

If you do not want to be a member of the Class and participate in this Lawsuit, you can ask the Court to exclude you from the Lawsuit and allow you to “opt out” by sending such correspondence in writing to:

CallCore TCPA Settlement
c/o Atticus Administration, LLC
1250 Northland Drive, Suite 240
Mendota Heights, Minnesota 55120

To be effective, the request to exclude yourself to the settlement must be completed, signed and postmarked by [60 days from the date notice is mailed].

If you choose to be excluded from the Class:

1. Your claims against Defendant, if any, will not be decided in the Lawsuit and you will not share in any recovery that the named Plaintiffs obtain for the Class.
2. You will not be bound by any determinations or any judgment that the Court makes or enters in the Lawsuit, whether favorable or unfavorable.
3. You will not be entitled to any further notice with regard to the Lawsuit.
4. You may pursue any claims you have against Defendant at your own expense and risk by filing your own separate lawsuit, should you choose to do so, and assuming you have a claim and the applicable statute of limitations to file a case has not run.
5. Be aware that any claims that you have or may have against Defendant are limited by the applicable statute of limitations and declining to participate in this case by opting out, or by proceeding separately, may result in some or all of your claims expiring as a matter of law.

Any Class Member who wishes to object to the settlement or wishes to appear at the Final Approval Hearing and show cause, if any, why the same should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered thereon, must serve and file written objections. The objection must contain the objector’s full name, telephone number, and current address; must declare that the objector is a member of the Class; and must provide a detailed statement of the objector’s specific objections to any matter before the Court and the grounds of the objection. Said objections must be mailed to:

CallCore TCPA Settlement
c/o Atticus Administration, LLC
1250 Northland Drive, Suite 240

Mendota Heights, Minnesota 55120

To be effective, the request to object to the settlement must be completed, signed and postmarked by **[60 days from the date notice is mailed]**.

9. HOW WILL CLASS COUNSEL AND THE CLASS REPRESENTATIVE BE PAID?

Class Counsel will seek an award of attorney's fees and expenses of up to 33 1/3% of the settlement fund (\$666,666.67). The Court will determine the amount of fees and expenses that should be awarded to class counsel. Plaintiff will seek an award of up to \$12,000.00 for her service as class representative.

10. WHAT IF I HAVE QUESTIONS?

You **should not** contact the Clerk of The Court, Judge, or Defendant's Counsel with questions about this case. Instead, if you have any questions about your claim or rights or would like more information, you should call Class Counsel Christopher E. Roberts of Butsch Roberts & Associates LLC at 314-863-5700 or Jacob U. Ginsburg of Kimmel & Silverman, P.C. at 267-468-5374. You can also speak with your own attorney.

You can review and obtain copies of the Lawsuit, The Court's Order granting Preliminary Approval of the Settlement and any other pleadings and filings in the Lawsuit directly from Class Counsel, by contacting Class Counsel at the number above. You can also review and obtain copies of these papers at your own expense at the Clerk of the Court for the United States District Court for the Southern District of Texas.

11. IMPORTANT DEADLINES AND DATES TO REMEMBER

[90 days after notice is mailed] is the deadline to submit your claim form. **[60 days after notice is mailed]** is the deadline to exclude yourself from the settlement or object to the settlement.

The Final Approval Hearing will take place on **XXXXXXXX, 2024 at XX:00 a.m.** before Judge Keith P. Ellison, Courtroom 3716, of the United States District Court for the Southern District of Texas, 515 Rusk Avenue, Room 3716, Houston, Texas 77002.

Dated: _____, 2024

This Notice is being made available pursuant to Federal Rule of Civil Procedure 23 and by Order of the Court.

**SETTLEMENT
AGREEMENT EXHIBIT 3**

CLAIM FORM

Please select whether you want to receive your payment as a check or as an electronic payment. Please note that if you select payment by check, the check will expire 120 days after the date of issuance to you and said amount will be provided in accordance with the escheatment laws of the state in which you are located.

All information provided is subject to verification by the Claims Administrator. The Parties have the right to seek discovery to further verify the accuracy of the information contained on this claim form.

This form must be postmarked or received by **[90 days after mailing]** or else your claim will not be considered timely. You can submit this electronically at **www.prerecordedsettlement.com** or via mail by sending to **CallCore TCPA Settlement, c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164.**

Required Information

I wish to receive: **Electronic Payment** or **Check**

Name: **[pre-populated from CallCore's records]**
Current Address: **[pre-populated from CallCore's records]**
Phone number: **[pre-populated from CallCore's records]**
Date contacted: **[pre-populated from CallCore's records]**

If your name and/or address information has changed, is different from above, or your name and address is different from above, **AND YOU WERE THE USER OR SUBSCRIBER OF THE LISTED PHONE NUMBER ON THE DATE CONTACTED LISTED ABOVE** please provide your correct name and address below:

Name:
Current Address:

I certify that the above-information is true to the best of my knowledge.

Printed name: _____

Signature: _____

Date: _____

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANDICE BURNETT, individually and on
behalf of all others similarly situated,

Case No. 4:21-cv-03176

Plaintiff,

District Judge Keith P. Ellison

v.

CALLCORE MEDIA INC.,

Defendant.

**DECLARATION OF CHRISTOPHER E. ROBERTS IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I, Christopher E. Roberts, hereby declare, pursuant to 28 U.S.C. § 1746:

1. This Declaration is submitted in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement.

2. I am over the age of 18 years, am of sound mind and am otherwise competent to make this declaration. I have personal knowledge of the matters asserted in this Declaration.

3. I represent Plaintiff Candice Burnett in the above-captioned matter. I am not related to Ms. Burnett. As relevant here, this matter concerns whether Defendant violated the Telephone Consumer Protection Act ("TCPA") and the Texas Solicitation Act ("TSA") for placing prerecorded voice calls to Plaintiff and a putative class of people whose phone numbers were apparently provided as leads by a company called PHBC to Defendant.

Biographical Information

4. I am a partner with the firm of Butsch Roberts & Associates LLC. I submit this declaration in support of Plaintiff's motion for preliminary approval of settlement in the above-captioned action. I am a member in good standing of the Illinois, Missouri and Kansas Bars, and I have never been the subject of any disciplinary proceeding. Furthermore, I am admitted to practice before this Court, The United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Tenth Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Southern District of Illinois, the United States District Court for the Eastern District of Missouri, the United States District Court for the Western District of Missouri, the United States District Court for the District of Kansas, the United States District Court for the Southern District of Texas, the United States District Court for the Northern District of Texas and the United States District Court for the District of Colorado.

5. I am a 2009 graduate of the University of Missouri-Kansas City School of Law, where I received my Juris Doctor degree. I was admitted to the Missouri Bar in 2009, the Illinois Bar in 2010 and the Kansas Bar in 2010.

6. I frequently speak to members of the Missouri Bar on class action practice and consumer law-related issues. I spoke most recently in 2022 at the Solo and Small Firm Conference sponsored by The Missouri Bar about class action practice and procedure.

7. In addition, I am a frequent contributor to the American Bar Association on class action-related issues. I am the author of a chapter in the 2018, 2020, 2021, 2022 and 2023 books published by the American Bar Association about class action law from each Circuit Court of Appeals. The chapter I authored in each publication focuses on class action jurisprudence in the

Eighth Circuit Court of Appeals. I have also written multiple articles on class action-related issues that have been published by the American Bar Association.

8. I have been appointed to serve as class counsel in numerous cases, including, but not limited to: *Ruby v. Build-A-Bear, Inc.*, Case No. 4:21-cv-01152-JAR (E.D. Mo. 2023) (TCPA case); *Staunton Lodge No. 177, A.F. & A.M. v. Pekin Insurance Company*, Case No. 2020-L-001297, Circuit Court of Madison County, Illinois; *Smith v. Leif Johnson Ford, Inc.*, Case No. 19SL-CC01942, Circuit Court of St. Louis County, Missouri (TCPA case); *Martin v. Wakefield & Associates, Inc.*, Case No. 19SL-AC12801-01, Circuit Court of St. Louis County; *Harding and Moore v. Wakefield & Associates, Inc.*, Case No. 18SL-AC26348-01, Circuit Court of St. Louis County; *Maierhoffer v. Blitt & Gaines, P.C.*, Case No. 17SL-CC04297, Circuit Court of St. Louis County; *Harris v. Wakefield & Associates, Inc.*, Case No. 1722-CC11907, Circuit Court of the City of St. Louis; *Moore v. Family Dollar Stores, Inc.*, No. 14-01542-JAR (E.D. Mo. 2016) (TCPA case); *Wallach v. Federal Financial Group LLC*, Circuit Court of St. Louis County, No. 15SL-CC01040-01 (TCPA case); *Kissel v. Liberty Acquisitions Servicing, LLC*, Case No. 1411-CC00504, Circuit Court of St. Charles County; *Lewis v. Spinnaker Resorts, Inc.*, Circuit Court of Christian County, No. 14AF-CC00413-01; *Harbison v. Litow & Pech, P.C.*, Circuit Court of St. Louis County, No. 12SL-CC03776-01; *Lemay v. Rocket Lawyer, Inc.*, Circuit Court of St. Louis County, No. 11SL-CC04557. In addition, I performed substantial work on *In re: Life Time Fitness Telephone Consumer Protection Act (TCPA) Litigation*, No. 14-MD-2564, 2015 WL 77337334 (D. Minn. 2015) affirmed by *In re: Life Time Fitness, Inc., Tel. Consumer Protection Act (TCPA) Litig.*, 847 F.3d 619 (8th Cir. 2017) (TCPA Case). My law partner, David T. Butsch, was named as the class counsel from our firm in the *Life Time Fitness* case.

9. Butsch Roberts & Associates LLC is an AV rated law firm which began operating under my law partner, David T. Butsch, on November 1, 2008. The firm specializes in complex civil litigation, with an emphasis on consumer class litigation. The two members of the firm, David T. Butsch and Christopher E. Roberts, have a combined litigation experience of more than 40 years.

10. My firm is familiar with the laws and rules applicable to this case. My firm is prepared to prosecute this case on behalf of the plaintiff and the putative class. My firm has participated in numerous cases involving the TCPA.

11. This Declaration sets forth a brief summary of the litigation and settlement negotiations that ultimately led to the proposed settlement and the bases upon which Plaintiff's counsel recommend that the Court preliminarily approve the settlement. The following recitation is not all-inclusive, but rather, it is intended to give an overview of the settlement, and the analysis that Plaintiff's counsel incorporated in agreeing to a settlement on behalf of the putative class members. I believe that these facts demonstrate that the settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

Litigation History

12. This case was filed on September 30, 2021. Since that time the parties have extensively litigated this case. This section provides a brief overview of the history of the litigation in this matter.

13. Throughout the case the parties have engaged in extensive discovery. The parties have exchanged written discovery. Through the written discovery and extensive discovery

conferences over the course of months, counsel were produced records of over 7 million calls that CallCore had placed.

14. To focus the scope of the class and the case, the parties through extensive discovery conferences, were eventually able to identify the phone numbers to whom calls were placed in which CallCore received the lead source from a lead generation company called PHBC. PHBC is the company through which CallCore claimed to have obtained the lead associated with Ms. Burnett's phone number. The parties identified over 67,000 unique numbers from PHBC leads to which calls were placed by or on behalf of CallCore and connected to a CallCore representative. This data was produced to Plaintiff's counsel in spreadsheet form and identifies all of the potential class members phone numbers in this case.

15. In addition, the parties issued various third-party subpoenas. Throughout the case, CallCore asserted that Ms. Burnett provided consent to be contacted by CallCore on a PHBC website and identified the IP address associated with this lead. Plaintiff's counsel therefore issued a subpoena to an internet service provider in Wyoming that was associated with the IP address. In addition, Plaintiff's counsel issued a subpoena to PHBC for various records. Defendant issued subpoenas to Ms. Burnett's phone provider, Ms. Burnett's employer and to an individual potentially associated with the lead CallCore obtained from PHBC for Ms. Burnett.

16. The parties also completed depositions. I travelled to CallCore's headquarters in Florida and deposed CallCore's representatives over the course of approximately seven hours. In addition, Ms. Burnett was deposed for many hours by Jason Jobe in Houston, Texas. My co-counsel, Mr. Ginsburg, appeared in-person to defend the deposition and I appeared via Zoom.

17. Ms. Burnett has been incredibly helpful and cooperative throughout this case. She attended multiple meetings over the course of many hours with counsel, responded to written

discovery, obtained various records, sat for her deposition and appeared at mediation. Ms. Burnett has stayed actively involved in the case throughout the entirety of the case.

18. After class-wide discovery was obtained, Plaintiff then filed a motion for class certification. As discussed below, the parties agreed to mediate the case while that motion was pending.

Settlement Negotiations

19. After Plaintiff moved for class certification, the parties agreed to mediate the case with Judge Jeff Kaplan (Ret.). Prior to the mediation, I held conference calls with Judge Kaplan to discuss the case. In addition, I prepared and provided to Judge Kaplan an extensive mediation statement. Prior to mediation, Plaintiff's counsel also made a class-wide settlement demand after receiving the necessary classwide information from opposing counsel.

20. The parties mediated the case before Judge Kaplan on December 21, 2023 in Dallas, Texas. My co-counsel Jacob Ginsburg and I appeared in person for the mediation. Ms. Burnett also appeared for the mediation via video conferencing. The parties had hard-fought and extensive settlement discussions throughout the day. The parties reached the essential terms of a settlement after mediating the case the entire day.

21. After mediation, the parties began drafting the more comprehensive settlement agreement and negotiating certain terms. Ultimately, the parties entered into a final settlement agreement, a copy of which will be provided to the Court as part of Plaintiff's Motion for Preliminary Approval of Class Settlement.

The Settlement Terms, Notice Plan and Estimated Payments

22. There are two settlement classes in this case, for purposes of settlement:

TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

Texas Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed by or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

23. Each member of the Settlement Class who submits a valid claim will receive significant relief under the terms of the settlement. Defendant, through the settlement administrator Atticus Administration, LLC (discussed further below), will create a settlement fund of \$2,000,000.00. No amount of this fund will revert to Defendant. Each class member who submits a valid claim will receive a *pro rata* share of the remaining fund after accounting for the cost of settlement administration, a representative service award and Plaintiff's counsel's attorneys' fees and reasonable litigation expenses. Persons with Texas area codes and/or addresses will receive an additional 10% payment on top of their *pro rata* share. This is because such persons also have potential claims under Section 302 of the TSA.

24. The Settlement Class members who do not opt out of the settlement will release Defendant (and those acting on their behalf) from certain past claims regarding the calls at issue in this case that they may have had through December 21, 2023. The specific terms of the release are contained in Section 15 of the parties' settlement agreement.

25. The parties' counsel have agreed to use Atticus Administration LLC ("Atticus") to serve as the settlement administrator in this matter. I have used Atticus to administer over 10 class action settlements, including cases brought under the TCPA. I also understand Atticus has also served as the settlement administrator in well over 100 class action cases. I find Atticus to be responsive, efficient and diligent in their duties as a class action settlement administrator.

26. Atticus prepared a bid for approximately \$91,473.00 to administer the settlement as to the over 67,000 class members. A copy of Atticus's bid is attached to this declaration as Exhibit A. I understand this bid is an approximate of the cost to administer the settlement and may be slightly higher or lower depending on the work needed to be undertaken by Atticus in administering this settlement.

27. Counsel have worked with Atticus to develop a robust notice program with the goal of receiving as many claims as possible. This process includes mailing the postcard class notice to the last known address of each putative class member, running the address through a national change of address database if the notice is undeliverable and resending the notice to the new address, to the extent such an address is available. In addition, the class notice will also be e-mailed to the last known e-mail address in Defendant's records. In other words, many class members may receive notice in two forms so as to ensure they are notified of this settlement.

28. Notably, the postcard notice includes a link to the settlement through which the class member can submit a claim. Additionally, the class member may scan the QR code which will take them directly to the claim form.

29. Atticus will also create and maintain a settlement website. The settlement website will include a copy of the operative complaint, settlement agreement, long form class notice, claim form and other documents relevant to the settlement. In addition, the settlement will contain important dates and deadlines and will also provide answers to common questions regarding the settlement. The website will also include contact information for Plaintiff's counsel and the settlement administrator. The website will have a section through which class members may submit claims and an e-mail address to which class members can e-mail their claim form.

30. In addition, counsel have developed a claim process that is simple for the members of the settlement class. The class member simply needs to sign the claim form and verify their name, address, and the phone number at which they received the calls at issue. The claim form can also be submitted in a variety of ways – by mail, being uploaded through the settlement website, submitting via e-mail or by submitting a claim directly on the settlement website.

31. I have been in direct contact with Chris Longley, the CEO of Atticus. Atticus has served as the settlement administrator for numerous class action settlements, including TCPA cases. Mr. Longley has advised me that an average claim rate in a TCPA case is 7-8% with a typical range of 5-10%. This is consistent with my own personal experience as well as with my review of certain TCPA cases. *See Vasco v. Power Home Remodeling Grp. LLC*, 2016 WL 5930876, at *12 (E.D. Pa. Oct. 12, 2016) (9% claim rate); *Lee v. Glob. Tel*Link Corp.*, 2018 WL 4625677, at *7 (C.D. Cal. Sep. 24, 2018) (1.8% claim rate); *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1044 (S.D. Cal. 2015) (7.7% claim rate).

32. Given this robust notice plan and the ease for claim submissions, I hope that the claims rate exceeds the typical claims rate in TCPA cases of 5-10%. Counsel may seek up to \$666,666.67 for their attorneys' fees and reasonable litigation expenses. In addition, Ms. Burnett may seek up to \$12,000.00 for her service in this case. Again, Atticus has also agreed to administer the settlement for approximately \$91,773.00.

33. The total of these amounts is \$770,439.67. After subtracting this amount from the \$2,000,000 settlement fund, this leaves a total of \$1,229,560.33 to pay class members' claims.

34. There are 67,113 potential members of the settlement classed. At a claims rate of 20% (13,433 claims), each class member who submits a valid claim would receive a payment of approximately \$91.53. At a claims rate of 15% (10,067 claims), each class member who submits

a valid claim would receive a payment of approximately \$122.14. At a claims rate of 10% (6,711 claims), each class member who submits a valid claim would receive a payment of approximately \$183.21.

35. Given the robust notice plan, the ease of submitting claims, and the significant relief afforded, I am hopeful that the claim rate will exceed the average rate. As such, in the class notice we have advised that we estimate the payment for each person who submits a valid claim will be approximately \$120 (between 10% and 15% claim rate). Of course, that amount may be more or less depending on the number of claims submitted.

36. Plaintiff's counsel strongly believes this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Factors Supporting Approval of the Settlement

37. The risk of continuing to pursue this case and not reaching a settlement was and remains substantial. The law is quickly-evolving in TCPA cases and courts often reach conflicting rulings regarding the issues presented in this case. Some of these risks are identified below.

38. For example, Defendant provided information (albeit disputed) that Plaintiff and the putative class members each provided the requisite form of consent to be contacted. *See generally Herrick v. QLess, Inc.*, 216 F. Supp. 3d 816, 818 (E.D. Mich. 2016) (noting that under the TCPA, advertising calls may be placed upon obtaining the recipient's prior express written consent to receive such calls). Had Defendant established consent, Plaintiff and the class members may not have received any recovery.

39. Relatedly, class certification was not a certainty in light of the consent-related information produced in the case. *See Gordon v. Caribbean Cruise Line, Inc.*, 2019 WL 498937,

at *10 (N.D. Ill. Feb. 8, 2019) (different proofs for different purported “consent” information creates various “mini-trials”).

40. Moreover, there was no guarantee that Plaintiff would be able to establish Defendant was vicariously liable for the calls placed by its vendor. Courts have reached different results as to applicability of vicarious liability in TCPA cases. *Compare Williams v. PillPack LLC*, 644 F. Supp.3d 845, 851-56 (W.D. Wash. 2022) (genuine issue of material fact exists as to vicarious liability in TCPA case) *with Reo v. Caribbean Cruise Line, Inc.*, 2016 WL 1109042, at *5 (N.D. Ohio Mar. 18, 2016) (insufficient allegations of vicarious liability in TCPA case).

41. Finally, Defendant retained experienced and effective counsel in Jason Jobe and Yesha Patel of Thompson Coe. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification.

42. Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and damages.


43. This settlement was not reached until Plaintiff’s counsel had conducted extensive analysis and investigation, thoroughly researched the law and facts, and assessed the risks of prevailing at both the district court and appellate levels, and the time and expense of doing so.

44. Plaintiff’s counsels’ analysis leads to the conclusion that the proposed settlement is a fair and reasonable result for the putative class. In the end, the risk assessment process conducted by counsel resulted in the conclusion that the proposed settlement is the best result for the class. This is true for several reasons, including the risk of losing at the class certification, liability, or damages stages, including on appeal.

45. Based upon these and other factors and considerations, I believe the settlement warrants preliminary approval.

As provided by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2024

DocuSigned by:

8A4D3EA6C6DA463.....
Christopher E. Roberts
croberts@butschroberts.com

DECLARATION EXHIBIT A

Atticus Administration, LLC
Chris Longley - CEO

CallCore Settlement

Prepared for

Christopher E. Roberts | Attorney
croberts@butschroberts.com
P: 314.863.5700

Butsch Roberts & Associates LLC
231 S. Bemiston Avenue, Suite 260
Clayton, MO 63105



ATTICUS

SMART | ACCOUNTABLE | BETTER

Class Action Administration

Estimate E2023-12-E25
CallCore Settlement

Prepared on December 19, 2023
By Chris Longley – CEO | Atticus Administration LLC

Estimate Summary

Atticus Services & Cost Description

NOTICE MAILING-POSTCARD (Mailing First Class)	\$46,964
<i>Initial Notice – postcard w/ QR code</i>	Included
<i>Undeliverables catalogued and skip-traced</i>	Included
<i>Remails</i>	Included
<i>English only</i>	Included
PROJECT MANAGEMENT/ADMIN FEES/Technical	\$9,180
CLAIMS - including cures	\$13,135
COMMUNICATIONS	\$5,408
<i>PO Box rental</i>	Included
<i>IVR and 800#, Live phone operators (claims period)</i>	Included
<i>Correspondence including call backs, Opt-Outs, Exclusions</i>	Included
<i>Website – claims filing capability & court documents</i>	Included
FUND, TAX, EMPLOYMENT REPORTING	\$1,560
<i>setup QSF, file annual tax returns</i>	included
DISTRIBUTION	\$15,226
<i>Digital disbursements and check printing (or vouchers), payment calculation & verification, bank fees, check reissues</i>	included

TOTAL: \$91,473

Key Assumptions

- Class Size: **67,100 class members.**
- Notices in English only – postcard (with QR code for web-based claim-filing)
- Data review, cleansing and preparing file for mailing; including NCOA,
- Undeliverable mail skip-traced and remailed for new address 'hits'.
- Communications includes PO box rental and correspondence. Also includes dedicated 800# with IVR (excludes live phone operators).
- Case website to host all court documents including long-form notice. Website will also have claims filing functionality.
- Live operator phone coverage through claims period.
- Distribution sent to all class members that file a valid claim.

Options

- Substitute long-form notice, **adds \$33,000.**
- Adding a reminder postcard, **adds \$33,800.**

PRINT NAME

ROLE

Client Signature

Date

By signing above, I understand and agree to the pricing terms and services to be provided by Atticus Administration for the stated project.

Payment Terms:

40% at Notice
Final 60% at Distribution

PLEASE NOTE: This estimate and pricing is for the services stated herein and is valid for 30 days from the date of the estimate. If the Settlement Agreement or other service scope document(s) require additional services not included or priced in this estimate, we will separately price those scope changes and submit an updated quote prior to proceeding with the work.



Detailed Budget

Atticus Services & Cost Description

DESCRIPTION	UNITS	SUBTOTAL
NOTICE MAILING (Data Cleansing & Analysis) Mailed First Class	67,100 Class Mbrs	\$46,964
<i>Class Data List - Cleaning & Processing</i>	36.00 Hrs	\$4,446
<i>Class Notice Review - Proof/Finalize/Print Set-Up</i>	5.00 Hrs	\$618
<i>PRINTING Class Notice postcard (QR Code)</i>	67,100 postcards	\$7,415
<i>Postage Stamp (within 1 ounce max weight)</i>	67,100 ct to mail	\$26,421
<i>Undeliverable/ NCOA /Return Mail Processing & Remail (7%)</i>	4,697 7% of class	\$3,473
<i>Notice Request Re-Mailing</i>	2,013 3% of class	\$4,592
PROJECT MANAGEMENT	65 hrs	\$8,775
TECHNICAL SET UP (includes project kick-off)	3 hrs	\$405
CLAIMS (including cures)	6,710 10%	\$13,135
COMMUNICATIONS - English only		\$5,408
<i>Telephone - Set-Up + Monthly Fee</i>	6 Months	\$285
<i>Website (informational only)</i>	6 Months	\$2,500
<i>Telephone - Messages/IVR (no live operators)</i>	6 Months	\$479
<i>PO Box - Setup & Monthly Fee</i>	6 Months	\$100
<i>Correspondence - Mail Telephone call backs</i>	various	\$2,044
FUND, TREASURY & TAX Reporting		\$1,560
<i>Set-Up QSF</i>	4.00 Hrs	\$520
<i>Prepare/File Annual Fund Return</i>	8.00 Hrs	\$1,040
DISTRIBUTION, Payment Calculations & Reporting		\$15,226
<i>Cover Letter & Check - Design/Review/Finalize</i>	4.00 Hrs	\$494
<i>Payment Data - Calculate & Verify Payments</i>	14.00 Hrs	\$1,729
<i>Prepare Payment Reports + check reissues</i>	12.00 Hrs	\$1,482
<i>Check - Print Set-up/Printing/Mail Prep + replacements</i>	6,710 checks	\$3,619
<i>Check Mailing Postage (will be 1x mailings)</i>	6,710 mailed	\$3,875
<i>Check - Undeliverable/ NCOA /Return Mail Processing & Remail</i>	671 10.0% est	\$2,684
<i>Bank Fees (Account Set-Up & Monthly Fee)</i>	9 months	\$1,343
DATA STORAGE	n/a	\$0
	TOTAL	\$91,473

Operating Assumptions

- Class Size: **67,100 - class members.**
- Class Notice via postcard, includes a QR code for website claim filing.
- Claims rate anticipated at 10%.
- Notice in English only.
- Data review, cleansing, NCOA and preparing file for mailing. Returned or undeliverable mail will be skip-traced.
- Communications includes, PO BOX, Mail Correspondence. Also includes dedicated 800# and IVR. Excludes live phone operator coverage.
- Project management assumes 68 hours at a blended rate of \$135 per hour. Includes summary reporting on a weekly basis.
- Qualified Settlement fund assumes 6 months. Price includes tax reporting both state and federal returns. All bank fees are included in pricing.
- Disbursement includes positive pay "anti-fraud" features.
- Digital payments options available upon request.



Thank you



Chris Longley – CEO

612-315-9007 (Direct)
651-755-2552 (Cell)
clongley@atticusadmin.com

1295 Northland Drive Suite 160
St. Paul MN 55120

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>CANDICE BURNETT, <i>individually and on behalf of all others similarly situated,</i></p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>CALLCORE MEDIA, INC.,</p> <p style="text-align: center;"><i>Defendant.</i></p> <hr style="width: 40%; margin-left: 0;"/>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Civil Action No.: 4:21-cv-03176</p> <p>Hon. Keith P. Ellison</p> <p>DECLARATION OF JACOB U. GINSBURG, ESQ.</p>
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**DECLARATION OF JACOB U. GINSBURG, ESQ. IN SUPPORT OF MOTION
FOR CLASS CERTIFICATION**

I, Jacob U. Ginsburg, Esq., hereby declare as follows:

1. I am an adult resident of the Commonwealth of Pennsylvania.
2. I have personal knowledge of the statements made in this declaration.
3. I am of sound mind and am otherwise competent to make this declaration.
4. I am counsel for the Plaintiff, Candice Burnett, in this matter.
5. I submit this Declaration in support of Plaintiff’s unopposed motion for preliminary approval of class settlement.

Professional Background

6. I am a 2011 graduate of Temple University School of Law, where I was a Deans’ List student and Articles Editor of the Temple International and Comparative Law Journal.

7. I have been licensed to practice law before the Supreme Court of Pennsylvania since 2011, the Supreme Court of New Jersey since 2011 and the Supreme Court of Michigan since 2020. I am a member in good standing in each of those jurisdictions.

8. I have been admitted to practice law in the United States District Court for the Eastern District of Pennsylvania since 2011; the U.S. District Court for the District of New Jersey since 2011; the U.S. District Court for the Western District of Pennsylvania since 2011; the U.S. District Court for the District of New Jersey since 2011; the U.S. District Court for the Middle District of Pennsylvania since 2016; the U.S. District Court for the Eastern District of Michigan since 2018; the U.S. District Court for the Northern District of Ohio since 2019; the U.S. District Court for the Eastern District of Texas since 2020; the U.S. District Court for the Eastern District of Wisconsin since 2021; the U.S. District Court for the Northern District of Texas since 2021; the U.S. District Court for the Southern District of Texas since 2021; the U.S. District Court for the Southern District of Indiana since 2021; the U.S. District Court for the Eastern District of Arkansas since 2021; the U.S. District Court for the Western District of Arkansas since 2021; the U.S. District Court for the Northern District of Illinois since 2021; the U.S. District Court for the Western District of Texas since 2021; the Ninth Circuit Court of Appeals since 2022; the Third Circuit Court of Appeals since 2022 and the U.S. District Court for the District of Colorado since 2023.

9. I have never had my license suspended or been subject to any disciplinary proceedings.

10. For most of the time I have been an attorney, my practice has consisted of representing consumers in various types of consumer protection litigation.

11. I have argued, arbitrated and tried cases to verdict under various state consumer protection statutes, the Fair Debt Collection Practices, the Magnuson-Moss Warranty Improvement Act, and the Telephone Consumer Protection Act (“TCPA”).

12. I have represented hundreds of plaintiffs in claims asserted under the TCPA in federal court and private arbitration.

13. I have TCPA class-action experience and have been approved as class-counsel in the TCPA class-actions *Kimble v. First American Home Warranty*, 2024 WL 220369, Case Number 2:23-cv-10037-DML (E.D. Mich. Jan. 19, 2024) and *Giancristofaro, et al v. Ima Pizza, LLC d/b/a & Pizza*, 23SL-CC04108, Missouri Circuit Court (St. Louis Cnty. Nov. 28, 2023).

14. Several recent notable TCPA decisions on matters I have argued, tried and/or briefed in the past year are listed below below:

- Successfully appealed a district court’s dismissal of a TCPA claim for lack of standing, to the Ninth Circuit, where a 3-0 panel expanded Article III standing to subscribers who are not the “customary user” of a given phone registered on the Do-Not-Call Registry. *Hall v. Smosh Dot Com, Inc.*, 72 F.4th 983 (9th Cir. 2023);
- Obtained a unanimous jury verdict for a plaintiff with claims under the federal do-not-call rules, despite the fact he used his phone for business purposes. *Noviello v. Adam Wines Consulting, LLC*, 3:22-cv-52-BN (ECF 74); *See also Noviello v. Holloway Funding Grp., No. 3:22-cv-52-BN*, 2023 WL 128395 2023 U.S. Dist. LEXIS 3060 (N.D. Tex. Jan. 9, 2023) (overcoming summary judgment earlier in same case); and,
- Successfully argued that text messages offering to buy a home could constitute the “solicitations” as defined by the TCPA, even though the texting party was offering to buy, rather than sell property. *Pepper v. GVG Capital LLC*, No. H-22-2912, 2023 U.S. Dist. LEXIS 100425, ___ F.Supp.3d ___, 2023 WL 3914291 (S.D. Tex. June 9, 2023).

15. I am a member in good standing of National Association of Consumer Advocates.

16. In August 2016, I taught a seminar with the National Business Institute on the FDCPA, the Truth-in-Lending Act and Consumer Financial Protection Bureau’s regulations as they relate to mortgage foreclosures. NATIONAL BUSINESS INSTITUTE, Foreclosure Bootcamp: *FDCPA, TILA and CFPB Regulations as to Foreclosures* (Sonesta Hotel, Philadelphia, PA, (Aug. 2, 2016).

The Burnett Litigation

17. I am counsel of record for Plaintiff, Candice Burnett, along with my co-counsel Chris Roberts of Butsch Roberts & Associates.

18. I caused the complaint to be filed on September 30, 2021.

19. Along with me co-counsel, I have been involved in all aspects of this case from inception through the date of the filing of this motion for preliminary approval.

20. In the course of discovery in this case, my co-counsel and I reviewed records of over seven million calls in order to identify the two classes for which we moved to certify and ultimately settled.

21. In addition to multiple sets of written discovery, we issued various subpoenas for documents to third-parties, including to PHBC Marketing and the State of Wyoming.

22. We had numerous Zoom and phone conferences with defense counsel regarding the phone records and discovery in the course of this litigation.

23. I traveled to Houston to defend Candice Burnett's deposition, which took place in the Houston office of Thompson Coe on October 3, 2023.

24. Burnett's deposition lasted the entirety of the day.

25. I flew to Dallas for the mediation, which took place at the JAMS Dallas office on December 19, 2023.

26. Ms. Burnett was an active participant in the case from the pre-litigation stage, through discovery, mediation and the filing of this motion.

27. Ms. Burnett kept meticulous records and conferred regularly with my co-counsel and I.

28. We seek approval of this class settlement after almost two and a half years of litigation, extensive discovery and depositions, the briefing of class certification, and months of careful deliberation on the settlement value of the case.

29. I believe this settlement is fair and adequate and respectfully request the Court preliminarily approve the class settlement agreement.

I Jacob U. Ginsburg hereby declare the foregoing is true and correct subject to the penalties of perjury.


A handwritten signature in blue ink, appearing to read 'Jacob U. Ginsburg', is written over a horizontal line. Below the line, the name 'JACOB U. GINSBURG' is printed in a bold, black, sans-serif font.

Dated: January 26, 2024

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANDICE BURNETT, *individually and on behalf of all others similarly situated,*

Plaintiff,

v.

CALLCORE MEDIA, INC.,

Defendant.

§
§ Civil Action No.: 4:21-cv-03176
§
§
§ Hon. Keith P. Ellison
§
§
§
§
§
§
§
§

DECLARATION OF CANDICE BURNETT

I, Candice Burnett, hereby declare and certify as follows, pursuant to 28 U.S.C. § 1746:

1. I am over the age of eighteen and am fully competent to make this declaration.
2. I have personal knowledge of all statements contained in this declaration.
3. I am the plaintiff and putative class-representative in the above-captioned lawsuit.
4. I am not related to either of my counsel, and to my knowledge, I am not related to any person associated with CallCore Media, Inc. (“CallCore”).
5. I graduated from West Los Angeles Baptist High School in Los Angeles, California in 1991.
6. I have lived in the State of Texas since 1992.
7. I currently work as a commercial operations specialist for Weatherford International Oil & Gas Co. I have worked in this capacity for Weatherford since 1997.
8. I reside in Missouri City, Texas, where I have lived since 2001.
9. I am a mother of four children.
10. I have never been charged for any crime, nor have I ever been arrested.

11. From around the year 2000 until early 2023, I was the owner and user of a cell phone, the number for which was (713) XXX-4446.

12. Between January 11, 2021 and February 5, 2021, I received at least sixteen (16) calls from (713) 903-8921 to my cell phone.

13. On three instances in February 2021, I remained on the line to ascertain and prove the identity of the calling party and heard what I perceived to be a robotic and pre-recorded voice purporting to be a woman named “Lindsey” from “Simple Life Debt Solutions.” While I was not interested in the services being sold to me, I wanted to obtain as much information as possible about who was calling me so I could confirm the correct identity of the calling party and get them to stop calling.

14. I later learned from the Florida Secretary of State website that “Simple Life Debt Solutions” was a fictitious name associated with CallCore - the Defendant in this lawsuit.

15. Because I have long been irritated by unwanted telemarketing calls, I retained Chris Roberts and Jake Ginsburg to be my counsel for a class-action lawsuit to be filed under the Telephone Consumer Protection Act.

16. My counsel filed this lawsuit on behalf in September of 2021- almost two and a half years ago.

17. In the course of this litigation, I have frequently communicated with my attorneys, provided my counsel with documentation and records, responded to discovery requests, sat for my deposition, participated in mediation and submitted a declaration for the motion for class certification.

18. I sat for an all-day in-person deposition on October 3, 2023 at the Houston office of Thompson Coe.

19. This was the first time I was ever deposed. My counsel Jake Ginsburg was present with me in-person and my counsel Chris Roberts was present by phone.

20. The deposition took all day and was, at times, contentious and adversarial.

21. There were questions that were personal and others that I took to be attacks on my character.

22. Nonetheless, I kept my composure throughout the entire day.

23. While the deposition was unpleasant, it strengthened my resolve to represent classes of consumers who received unwanted telemarketing calls.

24. On December 11, 2023, my counsel filed a motion for class certification on my behalf, for which I submitted a supporting declaration. *See* ECF No. 26.

25. On December 19, 2023, I appeared via Zoom at a mediation before Judge Jeffrey Kaplan (retired) in Dallas.

26. After a full day of negotiations, I accepted a class-wide settlement of \$2,000,000.00 for the two classes of individuals, to be distributed on a *pro rata* basis from a fixed fund to members that submit valid claim forms, on behalf of classes consisting of: (1) approximately 67,000 persons who received calls on behalf of CallCore, whose information was provided to CallCore from a PHBC lead generation website; and (2) approximately 9,000 persons who resided in Texas and/or had Texas area codes who were called on behalf of CallCore.

27. I accepted the settlement upon the recommendation of my counsel and the Mediator. I perceive the settlement to be a great recovery that would benefit the people who were affected by the telemarketing calls, who wish to file a claim and participate.

28. Also weighing on my decision to accept the settlement, is the a risk of a lesser recovery, or no recovery for the classes, if we did not settle.

29. I believe that CallCore will change its telemarketing practices as a result of this litigation and settlement.

30. On behalf of the settlement classes, I respectfully request this Honorable Court approve the class settlement with CallCore.

I, Candice Burnett, hereby declare the foregoing is true and correct subject to the penalty of perjury.

Dated: 1/25/2024

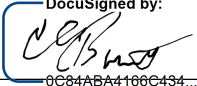
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CANDICE BURNETT

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE BURNETT, <i>individually and on</i>	§	
<i>behalf of all others similarly situated,</i>	§	Civil Action No.: 4:21-cv-03176
	§	
<i>Plaintiff,</i>	§	
v.	§	Hon. Keith P. Ellison
	§	
	§	
CALLCORE MEDIA, INC.,	§	
	§	
<i>Defendant.</i>	§	

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASSES, DIRECTING CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING

Upon review and consideration of the Unopposed Motion for Preliminary Approval of Class Action Settlement filed by Plaintiff Candice Burnett, (the “Representative Plaintiff”), the Settlement Agreement entered between Representative Plaintiff and Defendant CallCore Media, Inc. (“Defendant” or “CallCore”) (Representative Plaintiff and Defendant are collectively referred to as the “Parties) that is attached as Exhibit 1, to the Motion for Preliminary Approval (the “Agreement”), and all corresponding exhibits, the Court hereby orders as follows:

1. Settlement

The Parties have negotiated a proposed settlement of the Representative Plaintiff’s claims in this action, individually, and on behalf of two classes of persons to whom calls were placed by or on behalf of Defendant whose information was obtained by CallCore through a lead generation company called PHBC Marketing. These persons are described below as members of the Settlement Classes. The Parties entered into the Agreement, after an all-day mediation session by Judge Jeffrey Kaplan (Ret.) to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the claims set forth in the Agreement. The Court has reviewed the Agreement, and

the proceedings to date in this matter. The terms and conditions in the Agreement are incorporated herein as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. Preliminary Approval

The Agreement entered into, by and among the Parties, was negotiated at arm's length and a settlement was achieved after an all-day mediation session with Judge Jeffrey Kaplan (Ret.). The Agreement is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

3. Settlement Class Relief

Defendant, consistent with the terms of the Agreement, shall make available a settlement fund totaling \$2,000,000.00 to pay class members' claims, Class Counsel's (defined below) attorneys' fees and litigation expenses, settlement administration and a representative service award. Each class member who submits a valid claim shall receive a *pro rata* cash payment (by check or electronically) of the gross fund, less attorneys' fees and litigation expenses, settlement administration and a representative service award. Class Counsel estimates that each class member who submits a valid claim will receive at least \$120, based on historical claims rates. In accordance with the terms of the Agreement, the members of the Settlement Classes in exchange agree to release Defendant from all claims related to or arising from the calls made to them that are the subject of this litigation (*See* Agreement, Section 15).

4. Preliminary Certification of Settlement Classes

For settlement purposes only, the Court certifies the following classes:

TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

Texas Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed by or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

These persons are referred to as members of the “Settlement Classes.” The class members bound by the class definitions are those persons with phone numbers included on the spreadsheet data produced by Defendant.

The Court makes the following determinations as to certification of the Settlement Classes:

a. The Court preliminarily certifies the Settlement Class for purposes of settlement, under Federal Rule of Civil Procedure 23;

b. The Settlement Classes are so numerous that joinder of all members is impracticable, as the number of settlement class members is 67,113 in the TCPA Class and over 5,000 for the Texas Class;

c. There are questions of law or fact common to the members of the Settlement Classes, namely, whether the prerecorded voice calls placed to the members of the Settlement Classes violate the Telephone Consumer Protection Act (“TCPA”) and/or Section 302 of the Texas Business and Commerce Code (“Texas Solicitation Act”) and such common questions predominate over any questions affecting only individual members;

d. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Classes;

e. The Representative Plaintiff’s counsel is capable of fairly and adequately protecting the interests of the members of the Settlement Classes; and,

f. The class action is an appropriate method for the fair and efficient adjudication of this controversy.

5. Designation of Class Representative

The Representative Plaintiff, Candice Burnett, is designated as the representative of the Settlement Classes for the purpose of seeking approval of and administering the Agreement.

6. Designation of Class Counsel

The Court finds that the Representative Plaintiff's counsel are qualified to serve as Class Counsel in this case. Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. are designated as Class Counsel for the Settlement Classes for the sole purpose of the Settlement.

7. Final Approval Hearing

A hearing regarding final approval of the Settlement ("Final Approval Hearing") will be held at :00 __.m. on _____ 2024, in the United States District Court for the Southern District of Texas before the Honorable Keith P. Ellison, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiff's and the members of the Settlement Classes against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the members of the Settlement Classes should be bound by the terms of the Agreement; and (iii) whether the application of Class Counsel for an award of attorneys' fees and expenses, and for a proposed service award to the Representative Plaintiff, should be approved and in what amount.

8. Class Notice

The Court approves the Class Notice and Claim Form and directs the Administrator (defined below) to send out the Class Notice and Claim Form within 21 days of the entry of this Order. The settlement website detailed in the Agreement shall also be fully operable as of the date the Administrator sends out the Class Notice and Claim Form. The Class Notice and Claim Form shall be sent to the last known mailing address for each member of the Settlement Classes. If the

Class Notice and Claim Form are returned as undeliverable, the Administrator shall run the address against the National Change of Address Database and send another Class Notice and Claim Form to the newly obtained address, if any. If the Administrator has received a valid e-mail address, then the Administrator shall also send the Class Notice and Claim Form to the class member's e-mail address.

Claim forms may be sent via mail or e-mail to the Administrator. In addition, the settlement website shall have an option for a member of the Settlement Classes to upload their claim form on the settlement website and to also submit a claim directly through the settlement website.

9. Administrator

The Court approves and authorizes the retention of Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail and e-mail the Class Notice and the Claim Form; (b) establish the settlement website; (c) receive and process Claim Forms; (d) respond to class members' questions and inquiries; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. Claims, Exclusions and Objections

Members of the Settlement Classes shall have 90 days from the date the Administrator sends the Class Notice and Claim Form to submit their respective Claim Forms. If a Claim Form is mailed, said Claim Form must be postmarked within 90 days of the date the Administrator sends the Class Notice and Claim Form. If a Claim Form is submitted through the settlement website, then said Claim Form shall be uploaded or submitted through the settlement website within 90 days of the Administrator sending the Class Notice and Claim Form.

Any Class Member who wishes to be excluded from the Settlement Class(es) must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than [60 days after notice is sent].

Any member of the Settlement Classes may object to this Settlement and ask the Court to deny approval. Any written objection and supporting papers must be filed with the Clerk of the Court no later than [60 days after notice is sent] (“Objection Deadline”), and must include the person's name, street address, all attorneys who assisted in the preparation and filing of the objection, a list of all other class actions in which that person or counsel have filed objections to settlements, and a statement of the reasons why the Court should find that the settlement is not in the best interests of the Settlement Classes. The objector may also appear in person or through his or her attorney at the Final Approval Hearing. Copies of any objection must also be served on Class Counsel and Counsel for Defendant as required by the Federal Rules of Civil Procedure.

11. Attorneys’ Fees and Expenses, and Case Contribution Awards

Class Counsel shall not seek an award of attorneys’ fees in a total amount that exceeds \$666,666.67 for their attorneys’ fees and reasonable litigation expenses. Class Counsel and the Representative Plaintiff agree not to seek a service award that exceeds \$12,000.00 to the Representative Plaintiff for her work and assistance in this action.

12. Service of Papers

Class Counsel and the Defendant’s Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court’s docket.

13. Termination of Settlement

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, the Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement, shall be without prejudice to the rights and contentions of the Parties and any members of the Settlement Classes and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

14. Stay

All proceedings in this action are stayed, except as necessary to effectuate the terms of the Agreement.

15. Necessary Steps

The Court hereby preliminarily approves the Agreement entered into between the Parties. The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the terms of the Agreement.

So Ordered: _____
Hon. Keith P. Ellison
United States District Court Judge

Date: _____