IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VINCENT LEUNG, on behalf of himself and all others similarly situated,

Plaintiff,

v.

XPO LOGISTICS, INC.,
Defendant.

No. 15 CV 03877

Judge Edmond E. Chang

MOTION FOR AND MEMORANDUM IN SUPPORT OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

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I. INTRODUCTION

On October 19, 2017, this Court preliminarily approved a proposed class action settlement between Plaintiff Vincent Leung and Defendant XPO Logistics, Inc. ("XPO"). This Settlement creates a $7,000,000, non-reversionary common fund for the benefit of nearly 313,000[1] consumers for whom XPO placed a pre-recorded post-delivery survey call after May 1, 2011 relating to an IKEA delivery in alleged violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. Class Counsel zealously prosecuted Plaintiff's claims for over two and half years, achieving the settlement only after extensive first and third-party discovery; contested motion practice, and over a year of arms-length negotiations that involved three mediations at JAMS with two different mediators and additional negotiations.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move the Court for an award of attorneys' fees of $2,333,334 which represents one-third of the total settlement fund, plus $52,458.90 of counsel's out-of-pocket costs[2]. This request should be approved because (1) it represents the market rate for this type of settlement and is in line with the Seventh Circuit's directive in *Pearson*, and (2) represents a reasonable and appropriate amount in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case. Class Counsel also respectfully move the Court for a service award of $10,000 to Plaintiff Leung for his work on behalf of the Class, which includes his deposition, written discovery, and settlement efforts. Such an award is routine and proper.

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[1] Plaintiff estimated 325,000 but found 312,966 unique cell phone numbers called after deduplication procedures.

[2] The expenses exclude any internal costs such as copying costs, legal research or telephone costs. *Keogh Decl.* at ¶ 21.

II. BACKGROUND AND SETTLEMENT

A. Procedural Background

On May 1, 2015, Mr. Leung filed a Complaint in the United States District Court for the Northern District of Illinois alleging that XPO violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA") by making prerecorded survey calls to cell phones without the prior express consent of Leung or the putative class members.

On May 28, 2015, XPO moved to stay this action pending the Supreme Court's ruling in *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.). Dkt. 15. On August 12, 2015, after briefing, this Court denied the motion to stay pending *Spokeo* but invited XPO to file a motion to "dismiss for lack of subject matter jurisdiction directed to Leung's allegations of actual injury." Dkt. 27. On December 9, 2015 and after full briefing, this Court denied XPO's motion to dismiss. Dkt. 41.

After the first mediation resulted in an impasse, XPO moved to bifurcate discovery so that it could move forward with summary judgment as to the consent issue. In doing so, it set forth its arguments on summary judgment in a 15 page memorandum with 35 pages of exhibits setting out the survey questions, its case law, and its theory of consent. Dkt. 52. On March 24, 2016, this Court denied XPO's motion to bifurcate. Dkt. 55.

B. Discovery

The Parties engaged in extensive discovery and conducted numerous status conferences with the focus on discovery. *See* Dkt. Nos. 64, 71, 83, 86, 101, 104, 113, 116, 121, and 132. Class Counsel deposed XPO's expert witness, three separate Rule 30b(6) corporate designees, as well as individual XPO employees. In addition, Class Counsel filed motions to compel production of

discovery against both XPO (Dkt. Nos. 69 and 117) as well as against third parties. Dkt. Nos. 105, 123, and 125.

Throughout the discovery process, Counsel held numerous discovery conferences with counsel related to discovery and other issues, as well as with third party counsels. The discussions were thorough and, at many points, contentious, as the parties addressed all facets of discovery as well as their respective views on class certification and Plaintiff's class TCPA claims.[3]

C. The Parties' Mediation

The parties mediated before the Honorable Wayne Andersen ("Judge Andersen") of Judicial Arbitration and Mediation Services, Inc. ("JAMS") on March 16, 2016, and again on May 23, 2016. A third private mediation was held before the Honorable James Holderman ("Judge Holderman") of JAMS on June 23, 2017, as well as follow-up in person meetings and negotiations between Counsel and officers of XPO before reaching a resolution in principle on August 25, 2017. Prior to each mediation, the parties submitted detailed mediation briefs to the mediators setting forth their respective views on the strengths of their cases.[4] At mediation, the parties discussed their relative views of the law and the facts and potential relief for the proposed Class.[5]

Counsel exchanged counterproposals on key aspects of the Settlement. At all times, the settlement negotiations were highly adversarial, non-collusive, and at arm's length.[6]

D. The Settlement

The Settlement provides that XPO will pay $7,000,000 into a common fund for the Settlement Class, which is defined as follows:

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[3] *See* Declarations of Keith J. Keogh ("*Keogh Decl.*") attached as Exhibit 1, ¶ 5.
[4] *Id.* ¶ 7
[5] *Id.*
[6] *Id.* ¶ 7-8.

> The parties whose cellular telephone numbers are identified in the call data produced in this litigation bearing the litigation production numbers XPOLG024550 and XPOLG024553 where XPO or its subsidiary placed a pre-recorded post-delivery survey call after May 1, 2011 relating to an IKEA delivery.

Agreement § 2.25.[7] Based on Plaintiff's expert's analysis, the class is comprised of approximately 313,000 persons. *Exhibit 1* Keogh Decl., ¶ 6.

The Settlement is completely non-reversionary—all unclaimed or undistributed amounts remaining in the Settlement Fund after all payments under the Settlement Agreement will, to the extent administratively feasible, be redistributed to the Settlement Class or, if not administratively feasible, to a Court-approved *cy pres* recipient. Notice and administration costs through Kurtzman Carson Consultants LLC ("KCC") are projected at $157,000 to $197,000 assuming a 5% - 10% claim filing rate, but those costs will also be impacted if there is a direct mail reminder notice. Yet, even at the higher end of the projected costs, the bid obtained is very competitive and Plaintiff will provide the updated administration costs in his motion for final approval. Settlement Class Members who submit a valid Claim are expected to receive Settlement Awards of $263 assuming a 5% claim rate and $131 assuming a 10% claim rate. *Keogh Decl.* at ¶ 18. This is a terrific outcome given that the non-fee-shifting TCPA generally provides for $500 in damages per violation. 47 U.S.C. § 227(b)(3).

Plaintiff respectfully requests that the Court approve attorneys' fees of $2,333,334 which represents one-third of the total settlement fund[8], plus $52,458.90 of counsel's out-of-pocket costs, and a $10,000 service award for Plaintiff Leung. As explained below, the requested fee award is

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[7] Excluded from the Settlement Class are the Judge to whom the Action is assigned and any member of the Court's staff and immediate family (to the extent they received a listed call) and all persons who have opted-out of the Settlement Class pursuant to the requirements set forth in Section 13.1 of this Agreement. *Id.*

[8] The requested fee is 34.3% of the fund if the $197,000 in estimated costs of notice and administration is excluded.

in line with the market rate for similar attorney services in this jurisdiction, and fairly reflects the result achieved. Similarly, the requested service award is comparable to other TCPA cases, and should be approved.

III. LEGAL STANDARD FOR ATTORNEYS' FEE DECISIONS

The Seventh Circuit and other federal courts have long recognized that when counsel's efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, counsel have a right to be compensated from that fund for their successful efforts in creating it. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("lawyer who recovers a common fund … is entitled to a reasonable attorneys' fee from the fund as a whole"); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) ("the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit").

In common fund cases, courts have discretion to use one of two methods to determine whether the request is reasonable: (1) percentage of the fund; or (2) lodestar. *Americana Art China, Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). However, "the approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 379 (N.D. Ill. 2011).

IV. ARGUMENT

A. The Court Should Calculate Fees as a Percentage of the Fund

The Court should use the percentage of the fund approach to determine fees in this case. Courts look to *In re Synthroid Marketing Litig.* ("*Synthroid II*"), 325 F.3d 974, 980 (7th Cir. 2003), to assist in determining fees, and have nearly uniformly held that the percentage of the fund reflects the "market rate" for consumer class actions because "given the opportunity … class members and

Plaintiff's counsel would have bargained for" such. *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-4462, 2015 WL 1399367, at *5 (N.D. Ill. Mar. 23, 2015); *In re Capital One Tel. Consumer Prot. Act Litig.* ("*In re Capital One*"), 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (percentage of the fund method is "more likely to yield an accurate approximation of the market rate" in TCPA case, and that, "had an arm's length negotiation been feasible, the court believes that the class would have negotiated a fee arrangement based on a percentage of the recovery, consistent with the normal practice in consumer class actions").

One of the advantages that the percentage of the fund has over lodestar, and a substantial reason why percentage of the fund more accurately represents the "market rate," is that "the lodestar method [would] require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a class of nine million lightly-injured plaintiffs likely would not be interested in doing." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015)(Discussing fee award in TCPA class action). Indeed, "there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994). As one seminal case found:

> The percentage method is bereft of largely judgmental and time-wasting computations of lodestars and multipliers. These latter computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They do not guarantee a more fair result or a more expeditious disposition of litigation.

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig., 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to establish market based contingency fee percentages than to "hassle over every item or category of hours and expense and what multiple to fix and so forth"); *Gaskill v. Gordon*, 942 F.

Supp. 382, 386 (N.D. Ill. 1996) (percentage of fund method "provides a more effective way of determining whether the hours expended were reasonable."), *aff'd*, 160 F.3d 361 (7th Cir. 1998).

B. Counsel's Request Is Within the Market Rate

The Court is also tasked with determining what percentage of the settlement fund is appropriately allocated as attorney's fees. The Seventh Circuit has held that "attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7th Cir. 2013). Further, the court held that there should be a "presumption" that fees in any given settlement should not "exceed a third or at most a *half* of the total amount of money going to class members and their counsel." *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014) (emphasis added). Although *Pearson* establishes that courts must also consider the value of the settlement exclusive of administrative costs, it does not purport to alter the "market rate" analysis or lower the market rate for attorneys' fees in consumer class actions.

Here, Plaintiff's request falls squarely within the *Pearson* presumption. Plaintiff respectfully requests that the Court approve $$2,333,334 in attorney's fees. This request amounts to one-third of the entire $7,000,000 Settlement Fund, or 34.3% of the fund remaining after notice and administration costs[9] and the requested service award are excluded. The Seventh Circuit has elucidated 'benchmarks' that can assist courts in estimating the market rate, including "the fee contract between the plaintiff and counsel, data from similar cases, and information from class-counsel auctions," *Kolinek*, 311 F.R.D. at 501 (citing *In re Synthroid Mkt. Litig.* ("*Synthroid I*"), 264 F.3d 712, 719 (7th Cir. 2001)). Other factors are relevant, as well, including the risk counsel

[9] The percentage is based on the higher end of the projected administration costs of $197,000.

undertook in accepting the case, the quality of performance and the stakes of the case. *Synthroid I*, 264 F.3d at 721. As explained below, each of these factors supports the requested fee.

1. The Requested Fee Comports with the Contracts Between Plaintiff and Counsel.

The requested fee award is not only supported by the fee awards deemed reasonable in similar class cases; it is in line with representation agreements commonly entered into in this District, including between Plaintiff and his counsel. In addition to analyzing the market price for legal services from analogous cases, courts also may examine "actual fee contracts that were negotiated for private litigation." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *see also Stumpf v. PYOD*, 12-4688, 2013 WL 6123156, at *2 (N.D. Ill. Nov. 20, 2013) ("The named plaintiff's agreement to a floor of 33.33% of any net recovery supports the claim that 30% of the net recovery is tied to the market."); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (requiring weight be given to the judgment of the parties and their counsel where, as here, the fees were agreed to through arm's length negotiations after the parties agreed on the other key deal terms).

The customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40% and affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled prior to trial); *Retsky Family Ltd. P'ship v. Price Waterhouse, LLP*, Case No. 97-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (recognizing that a customary contingent fee is "between 33 1/3% and 40%" and awarding counsel one-third of the common fund).

Here, Plaintiff entered into a retainer agreement with Class Counsel that reflects or exceeds this fee range, as is normal in consumer TCPA cases in this District. Such evidence supports a finding that the requested fee reflects the amount Class Counsel would have received had they negotiated their fee *ex ante*.

2. The Requested Fee Reflects the Fees Awarded in Other Settlements.

a. Pre-Pearson Percentage of the Fund Settlements.

Awards of one-third of the entire settlement fund were commonplace before *Pearson*. Some TCPA cases where this happened are as follows: *Martin v. Dun & Bradstreet, Inc.*, 12-215 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 63) (one-third of total payout); *Hanley v. Fifth Third Bank*, No. 12-1612 (N.D. Ill.) (Dkt. No. 87) (awarding attorneys' fees of one-third of total settlement fund); *Cummings v. Sallie Mae*, 12-9984 (N.D. Ill. May 30, 2014) (Dkt. No. 91) (one-third of common fund); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925 (N.D. Ill. June 21, 2013) (Dkt. No. 243) (one-third of the settlement fund); *Paldo Sign & Display Co. v. Topsail Sportswear, Inc.*, No. 08-5959 (N.D. Ill. Dec. 21, 2011) (Dkt. No. 116) (fees equal to one-third of the settlement fund plus expenses); *CE Design Ltd. v. CV's Crab House North, Inc.*, No. 07-5456 (N.D. Ill. Oct. 27, 2011) (Dkt. No. 424) (fees equal to one-third of settlement plus expenses); *Saf-T-Gard Int'l, Inc. v. Seiko Corp. of Am.*, No. 09-776 (N.D. Ill. Jan. 14, 2011) (Dkt. No. 100) (fees and expenses equal to 33% of the settlement fund); *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07-5953 (N.D. Ill. Nov. 1, 2010) (Dkt. No. 146) (fees of one-third of settlement plus expenses); *Hinman v. M&M Rentals, Inc.*, No. 06-1156 (N.D. Ill. Oct. 6, 2009) (Dkt. No. 225) (fees and expenses equal to 33% of the fund); *Holtzman v. CCH*, No. 07-7033 (N.D. Ill. Sept. 30, 2009) (Dkt. No. 33) (same); *CE Design, Ltd. v. Exterior Sys., Inc.*, No. 07-66 (N.D. Ill. Dec. 6, 2007) (Dkt. No. 39) (same).

Some other, non-TCPA cases where one-third of the entire fund was awarded, include: *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (noting counsel had submitted a table of thirteen cases in the Northern District of Illinois where counsel was awarded fees amounting to 30–39% of the settlement fund); *In re Ky. Grilled Chicken*, 280 F.R.D. at 380–81 (citing cases, and describing a fee of 32.7% of the common fund as "well within the market rate and facially reasonable"); *City of Greenville v. Syngenta Corp Prot., Inc.*, 904 F. Supp. 2d 902, 908–09 (S.D. Ill. 2012) (approving a one-third fee because a "contingent fee of one-third of any recovery after the reimbursement of costs and expenses reflects the market price" and citing cases); *Will v. Gen. Dynamics Corp.*, Civil No. 06-698-GPM, 2010 WL 4818174, *3 (S.D. Ill. Nov. 22, 2010) (finding "the market rate for complex plaintiffs' attorney work in this case and similar cases is a contingency fee" and agreeing "a one-third fee is consistent with the market rate"); *In re Bankcorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of 36% of the settlement fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of attorneys' fees equal to 33.33% of the total recovery); *Greene v. Emersons Ltd.*, No. 76 Civ. 2178 (CSH), 1987 WL 11558, *8 (S.D.N.Y. May 20, 1987) (awarding attorneys' fees and expenses in excess of 46% of the settlement fund); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1131–32 (W.D. La. 1997) (awarding attorneys' fees equal to 36% of the common fund); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 503 (D.D.C. 1981) (awarding attorneys' fees in excess of 40% of the settlement fund); *Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.*, 480 F. Supp. 1195, 1198–99 (S.D.N.Y. 1979) (awarding fees in excess of 50% of the settlement fund); *Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 420 (S.D.N.Y. 1981) (awarding fees of 36% of fund).

While it is true that Judge Holderman did an extensive empirical analysis of TCPA settlements around the country in *In re Capital One*, 80 F. Supp. 3d at 795, his ultimate analysis

included cases from the Ninth Circuit, where the "benchmark" for attorney's fees in class actions is 25%. *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 942 (9th Cir.2011); *cf. Kolinek*, 311 F.R.D. at 501 (making similar observation that the analysis failed to account that the benchmark was lower in the Ninth Circuit=). In addition, the percentage of the fund did not control for administration costs from the amount of the fund, which, if it had, would have dramatically increased the percentages.

b. Post-Pearson: The Pearson Presumption Did Not Alter the Market Rate for Fees.

The 34.3% fee – after deducting administration costs and any service award, which is 33% of the total fund, represents the post-*Pearson* market price, and is therefore reasonable. That the rate is within the market is reflected in the following fees approved by judges in this District in TCPA cases since *Pearson*:

- 36% of total fund: *In re Capital One*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (36% of the first $10 million of the settlement) (Holderman, J.).
- 38% of total fund: *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015), transcript of proceedings, Exhibit 2 (Shah, J.).
- 36% of the fund minus notice/admin costs: *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.).
- 33% of fund minus notice/admin costs: *Allen v. JPMorgan Chase Bank, NA*, No. 13-8285 (N.D. Ill. Oct. 21, 2015) (Dkt. No. 93 at 6) (Pallmeyer, J.).
- 33% of total fund or 35.4% of the fund after notice costs. *Ossola v American Express*, 13-cv-04836 (N.D. Il. December 2, 2016) (Dkt. 379 at 5)(Lee, J.)

Class Counsel's requested fee also reflects post-*Pearson* fees approved by other courts in non-TCPA cases in this Circuit. *Spano v. The Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D.Ill. March 31, 2016) (awarding 33 1/3% of the monetary settlement); *McCue v. MB Fin., Inc.*, No. 15-988, 2015 WL 4522564 (N.D. Ill. July 23, 2015) (awarding 33.33% of the fund plus costs); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475 (N.D. Ill. July 17, 2015) (awarding

33.33% of the fund plus costs); *Zolkos v. Scriptfleet, Inc.*, No. 12-8230, 2015 WL 4275540 (N.D. Ill. July 13, 2015) (awarding 33.33% of the fund plus expenses); *Prena v. BMO Fin. Corp.*, No. 15-09175, 2015 WL 2344949 (N.D. Ill. May 15, 2015) (awarding 33.5% of the fund after deducting notice costs); *Bickel v. Sheriff of Whitley Cnty*, No. 08-102, 2015 WL 1402018 (N.D. Ind. March 26, 2015) (awarding 43.7% of the fund); *In re Dairy Farmers of Am., Inc.*, MDL No. 2031, 2015 WL 753946 (N.D. Ill. Feb. 20, 2015) (awarding 33.33% of the fund).[10] Consequently, the requested fee award falls in line with numerous other settlements approved as reasonable in this Circuit.

3. Other Factors Support the Requested Fee.

Beyond comparisons to similar fee awards and agreements, the market price for legal fees "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Sutton*, 504 F.3d at 693 (quotation and internal marks omitted). Given the outstanding result achieved for the benefit of the Settlement Class in this case, considering the risk of nonpayment to Class Counsel, and extensive resources expended over the years this litigation has been pending, Class Counsel respectfully submit that their requested fee is reasonable and appropriate under the totality of circumstances, and should be approved.

a. Risk of Nonpayment

As set forth in the motion for preliminary approval, this action involves sharply opposing positions on many issues. For example, the parties disagreed whether there was consent for these

[10] *Synthroid I* also says that District Courts may look to any data from pre-suit negotiations and class-counsel auctions but such information is basically non-existent" in the TCPA context. *Kolinek*, 311 F.R.D. 501.

calls. XPO contended under applicable FCC guidance and governing case law, the context and purpose of XPO's calls fall within the boundaries of the scope of the customers' consent given for calls made in connection with the deliveries. *E.g.*, *Blow v. Bijora*, 855 F.3d 793 (7th Cir. 2017); *Lamont v. Furniture N.*, LLC, 2014 WL 1453750 (D.N.H. Apr. 15, 2014) (holding that when plaintiff provided her phone number at the point of sale to effectuate a furniture delivery, she gave prior express consent to receive a pre-delivery call and a post-delivery survey call). Plaintiff contended that *Blow* supported his position as it held: "providing one's phone number does not constitute carte blanche consent to receive automated marketing messages of any kind". *Id*. at *26-27. Thus, "the scope of a consumer's consent depends on its context and the purpose for which it is given. Consent for one purpose does not equate to consent for all purposes." *Kolinek v. Walgreen Co.*, 2014 U.S. Dist. LEXIS 91554, *11 (N.D. Ill. 2014).

The parties also disagree as to whether a class can be certified. As such, Class Counsel faced substantial risk and uncertainty at the outset of this action that they would receive no compensation despite investing the time and resources necessary to adequately prosecute this case. This risk supports the requested fee award.

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citing *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)). Thus, the risk of non-payment is a key consideration in assessing the reasonableness of a requested fee, and must be incorporated into any ultimate fee award. *See Florin*, 34 F.3d at 565 ("[A] risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel had no sure source of compensation for their services.... [T]he need for such an adjustment is particularly acute in class action suits. The lawyers

for the class receive no fee if the suit fails, so their entitlement to fees is inescapably contingent.") (quotations and citations omitted); *Sutton*, 504 F.3d at 694 (finding abuse of discretion where court refused to account for the risk of loss on basis that "class actions rarely go to trial and that they all settle[,]" noting that "there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit[;] ... [b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel … was undercompensated").

Class Counsel agreed to pursue this action on a contingent fee basis without the benefit of discovery regarding the size or ascertainability of the asserted class. Class Counsel accepted the case despite that extensive class discovery would likely be required, with not only XPO, but also then-unknown third-party retailers.

Moreover, even assuming sufficient discovery would be obtained, Class Counsel accepted the risk that the Court might ultimately deny certification or grant certification along with summary judgment for XPO. *Compare Jamison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action) and *Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, 527 (E.D. Wis. 2014) (same), with *Saf-T-Gard Int'l v. Vanguard Energy Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized) and *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same).

And then there were the overhanging *Spokeo* case before the Supreme Court affecting standing, which was briefed in this case. [11] Dkt. 15 and 27.

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[11] *See generally Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016).

Success, especially at the outset of this action, was by no means assured. The Court must "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)." *Synthroid I*, 264 F.3d at 718. That is so because "[t]he best time to determine this rate is the beginning of the case, not the end (when hindsight alters of the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets." *Id.* Thus, because this case was filed on in May 2015, the Court must look at the risks associated with the case on that date.

Class Counsel accepted that litigating these and other issues risked recovering nothing for the class, Plaintiff, or counsel, and would have required significant expenditure of time, money, and resources — including potentially substantial expert expenses — for which Class Counsel would receive absolutely no compensation upon losing at summary judgment, class certification, or trial. S*ee In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1035-35 (N.D. Ill. 2011) (finding significant risk of nonpayment where, among other reasons, counsel would have to overcome case dispositive defenses and certify a class); *Jamison*, 290 F.R.D. at 102–09 (denying class certification in part because a class-wide determination of consent would require "a series of mini-trials"); *Green v. DirecTV, Inc.*, No. 10-117, 2010 WL 4628734, at *5 (N.D. Ill. Nov. 8, 2010) (granting summary judgment against TCPA plaintiff). The risk was real. As detailed in the accompanying declaration of counsel, plaintiff's lawyers lose TCPA cases all the time, both through summary judgment and through denial of class certification. *See, e.g.*, *Donaca v. Dish Network, LLC.*, 303 F.R.D. 390, 396-402 (D. Colo. 2014) (denying class certification in TCPA action); (Keogh Decl. ¶ 10).

One of the primary battles in every TCPA action involves class plaintiffs' attempts to determine the size and scope of the class. Those facts are not (and cannot be) known by plaintiff's counsel *ex ante*, and typically require contentious discovery and litigation before ever becoming known. This case is no different; the Parties engaged in extensive discovery and conducted numerous status conferences with the focus on discovery. *See* Dkt. Nos. 64, 71, 83, 86, 101, 104, 113, 116, 121, and 132. In addition, Plaintiff filed motions to compel production of discovery against both XPO (Dkt. Nos. 69 and 117) as well as against third parties. Dkt. Nos. 105, 123, and 125.

TCPA plaintiffs sometimes lose such motions and are unable to proceed on a class basis as a result. *See, e.g., Gusman v. Comcast Corp.*, 298 F.R.D. 592, 596–97 (S.D. Cal. 2014) (denying motion to compel production of call data).

Plaintiff also faced challenges at class certification. Although Plaintiff believes that consent in this case is a classwide issue, Courts are divided as to whether consent issues predominate over common questions in TCPA cases, depending on the circumstances of the case. *Compare Jamison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action) and *Balschmiter v. TD Auto Fin., LLC*, No. 13-1186, 2014 WL 6611008, at *19–20 (E.D. Wis. Nov. 20, 2014) (same); *with Saf-T-Gard Int'l v. Vanguard Energy Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized) and *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same).

Litigating these issues would have risked recovering nothing for the class, and would have required significant additional expenditure of time, money, and resources — for which Class

Counsel would not be compensated should they lose on summary judgment or fail to certify a class. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1035–35 (N.D. Ill. 2011) (finding class counsel incurred significant risk of nonpayment where, among other reasons, class counsel would have to overcome case dispositive defenses and certify a class); *Jamison*, 290 F.R.D. at 102–09 (denying class certification in part because a class-wide determination of consent would require "a series of mini-trials"); *Green v. DirecTV, Inc.*, 10 C 117, 2010 WL 4628734, at *5 (N.D. Ill. Nov. 8, 2010) (granting summary judgment against TCPA plaintiff).

Of course, the facts and circumstances of every case are different and must be individually considered and separately analyzed, but it bears noting that Class Counsel have lost a number of TCPA class actions without any recovery for the class or receiving any compensation for their fees or costs. (Keogh Decl. ¶ 10). In light of the considerable risk undertaken by Class Counsel in prosecuting this action on a purely contingent fee basis, the requested fee award is reasonable and should be granted. *In re Capital One*, 80 F. Supp. 3d at 805 (awarding 6% risk premium on top of 30% in TCPA class settlement).

b. Quality of Performance and Work Invested

The quality of Class Counsel's performance and time invested in fighting through years of contested motion practice, substantial discovery, and adversarial negotiations to achieve a $7,000,000, non-reversionary settlement fund for the benefit of the Settlement Class further supports the requested fee award. *Sutton*, 504 F.3d at 693. In addition to accepting considerable risk in litigating this action, Class Counsel committed their time and resources to this case without any guarantee of compensation, whatsoever, only achieving the Settlement after over two-and-a-half years of litigation. Class Counsel successfully overcame numerous hurdles, from adversarial

motion practice to contentious first and third-party discovery requiring multiple motions to compel. *See* Dkt. Nos. 64, 71, 83, 86, 101, 104, 113, 116, 121, and 132 (Status hearings on discovery) and motions to compel production of discovery against both XPO (Dkt. Nos. 69 and 117) as well as against third parties. Dkt. Nos. 105, 123, and 125.

In addition to their substantial litigation efforts, Class Counsel devoted numerous hours to negotiating the settlement, as well, which included preparing their clients' mediation submissions, attending three separate mediation sessions, and months of continued negotiations including face to face meetings with Class Counsel and officers of XPO. (Keogh Decl. ¶ 7 - 8) And Class Counsel spent substantial time preparing the settlement papers and notice documents, working with the independent notice provider, and drafting the motion for preliminary approval.

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. (Keogh Decl. ¶¶ 22-48) Moreover, because they were proceeding on a contingent fee basis, Class Counsel "had a strong incentive to keep expenses at a reasonable level[.]" *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)). Given the outstanding $7,000,000 settlement obtained for the class, Class Counsel respectfully submit that their experience and the quality and amount of work invested in this action for the benefit of the class supports the requested fee award.

c. Stakes of the Case

The stakes of the case further support the requested fee award. This case involves hundreds of thousands of Settlement Class Members who allegedly received unsolicited survey calls from XPO. The amount each Settlement Class Member is individually eligible to recover is low (between $500 and $1,500 per call), and thus individuals are unlikely to file individual lawsuits, especially as here each class member only received a small number – usually one – of these survey calls. Indeed, individual litigants likely would have to provide proof of calls well beyond what is

required here to submit a claim and call records may not be available going back to when the class period begins, making it even less likely that people would file individual lawsuits. A class action is realistically the only way that many individuals would receive any relief. In light of the number of Settlement Class Members and the fact that they likely would not have received any relief without the assistance of Class Counsel, the requested fee is reasonable and should be granted.

C. The Requested Service Award for Mr. Leung Should Be Approved.

Class Counsel also respectfully request that the Court grant a service award of $10,000 to Plaintiff Vincent Leung for his efforts on behalf of the class. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *Synthroid I*, 264 F.3d at 722 ("Incentive awards are justified when necessary to induce individuals to become named representatives.").

Plaintiff answered discovery, was deposed, and fully participated in this litigation. Mr. Leung also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement. (Keogh Decl. ¶ 4.)

Moreover, the amount requested here, $10,000, is comparable to or less than other awards approved by federal courts in Illinois and elsewhere. *See, e.g., Allen v. JPMorgan Chase Bank, NA*, No. 13-8285 (N.D. Ill. Oct. 21, 2015) (Dkt. No. 93 at 6) (Approving $25,000 service award in TCPA class settlement); *Desai v. ADT Security Servs., Inc.*, No. 11-1925, DE 243 ¶ 20 (N.D. Ill. Feb. 27, 2013) (awarding $30,000 service awards in TCPA class settlement); *Landsman & Funk,*

P.C. v. Skinder-Strauss Assocs., No. 08CV3610 CLW, 2015 WL 2383358, at *9 (D.N.J. May 18, 2015), *aff'd*, 639 F. App'x 880 (3d Cir. 2016) (awarding $10,000 to class representative in junk fax case); *Lees v. Anthem Ins. Companies Inc.*, No. 4:13CV1411 SNLJ, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (awarding $10,000 to class representative in case involving nonconsensual calls to cell phones); *Am. Copper & Brass, Inc. v. Lake City Indus. Prod., Inc.*, No. 1:09-CV-1162, 2016 WL 6272094, at *3 (W.D. Mich. Mar. 1, 2016) (approving a $10,000 service award where Plaintiff was deposed, reviewed documents, and assisted counsel); *Ikuseghan v. Multicare Health Sys.*, No. C14-5539 BHS, 2016 WL 4363198, at *3 (W.D. Wash. Aug. 16, 2016) (finding an service award of $15,000 to be reasonable); *Hageman v. AT & T Mobility* LLC, No. CV 13-50-BLG-RWA, 2015 WL 9855925, at *4 (D. Mont. Feb. 11, 2015) (approving $20,000 service award in TCPA class settlement); *Cook*, 142 F.3d at 1016 (affirming $25,000 service award to plaintiff); *Heekin v. Anthem, Inc.*, No. 05-01908, 2012 WL 5878032, *1 (S.D. Ind. Nov. 20, 2012) (approving $25,000 service award to lead class plaintiff over objection); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, *4 (S.D. Ill. Nov. 22, 2010) (awarding $25,000 each to three named plaintiffs); *Benzion v. Vivint, Inc.*, No. 12-61826, DE 201 (S.D. Fla. Feb. 23, 2015) (awarding $20,000 service award in TCPA class settlement). The requested service award of $10,000 for Plaintiff is reasonable and should be approved.

V. CONCLUSION

WHEREFORE, Class Counsel respectfully request that the Court grant this motion and award Class Counsel $2,333,334 which represents one-third of the total settlement fund, plus $52,458.90 of counsel's out-of-pocket costs. Class Counsel further requests that the Court approve a service award to Plaintiff Leung in the amount of $10,000.

Dated: December 1, 2017

Respectfully Submitted,

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EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NICHOLAS M. MARTIN, on behalf of himself and others similarly situated, Plaintiff, vs. JTH TAX, INC., doing business as Liberty Tax Service, Defendant.	)	No. 13 C 6923 Chicago, Illinois September 16, 2015 12:30 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS -
Final Approval Hearing
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

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Also Present: Mr. Nicholas M. Martin, Plaintiff
Ms. Kelly Kratz, Dahl Administration

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(Proceedings heard in open court:)

THE CLERK: 13 C 6923, Martin versus JTH Tax.

MS. HANSON: Good afternoon, Your Honor. Rebecca Hanson on behalf of the defendant.

MR. BURKE: Good afternoon, Judge. Alexander Burke for the plaintiff.

MR. MAROVITCH: Good morning. Dan Marovitch for the plaintiff.

MR. BURKE: And also with us today, we have Nicholas Martin, the plaintiff, is here. And in the gallery, Your Honor, is Kelly Kratz, who's a representative from our class administrator, Dahl Administration, to answer any questions Your Honor may have.

THE COURT: Okay. Good afternoon. We're here for a final approval hearing on the proposed settlement.

I have the plaintiff's motion for final approval; I have the motion for attorneys' fees; I have the objections of Mr. Taishoff, T-a-i-s-h-o-f-f, Ms. Exum, E-x-u-m, Ms. Russell; the letter potentially objecting/potentially excluding Mr. Yoder; and then the recent correspondence, both from Mr. Taishoff and Ms. Exum.

Are there any other materials that I have and should acknowledge that I have and have reviewed?

MR. BURKE: Judge, there is a fee petition that the plaintiff filed --

THE COURT: Right.

MR. BURKE: -- some time ago. And I believe that is all.

THE COURT: Okay.

MR. BURKE: I did have some correspondence with Ms. Exum over the last few days, but I am not intending to submit that for the record unless I need to.

THE COURT: Okay. Okay. No. And I did have the fee petition as well. So I do believe I have reviewed everything.

We're also here for a hearing. No other participants have appeared today, so there are no objectors present, although this is the opportunity for any objectors to present additional objections or arguments.

I did notice in the e-mail correspondence between counsel and Mr. Taishoff where he ultimately sent the affidavit, his supplemental affidavit. I think counsel told him that the hearing was set for 11:00 a.m. Central time, but the hearing is actually at 12:30 p.m. Central time.

MR. BURKE: Yes.

THE COURT: Luckily, Mr. Taishoff said he didn't have anything further that he wanted to say, so there was no harm done there in the communication about the time. I find that he knows full well that this hearing is happening and has had abundant opportunity to have his views expressed.

Do the parties want to present any additional

evidence other than what's in the papers? And is there any update on the number of claims that we should talk about now?

MR. BURKE: We have updates on numbers, and I do have one suggestion or request.

I did -- I should notify the Court that the mailings to the three objectors were sent late. It was my fault. I filed the brief on a Friday evening and did not remember to mail those documents. So when I realized that -- when I received Ms. Exum's submission on Monday, I got on the phone and I called all three. I called Mr. Yoder as well, although I didn't reach him. I reached Mr. Taishoff, Ms. Exum, and Ms. Russell.

Both Ms. Exum and Mr. Taishoff indicated that -- I offered to ask for extra time for them to submit anything they wanted to. There's nothing allowed in the prior orders for a reply brief or anything like that, but I thought that it was equitable to at least suggest this.

Two class members indicated they did not want extra time. Ms. Russell requested that I ask for an extra two weeks for her to submit something, and so the date that we came up with was September 28th.

I have conferred with defense counsel, and defense counsel does not oppose this request, and I do not oppose the request. Again, there was no allotment in the preliminary approval papers for a reply brief, but I thought that it was

the right thing to do to suggest this, and so I am making the suggestion or the request.

THE COURT: Did Ms. Russell indicate in any way what her reply was going to be? Her objection itself was not a particularly substantive objection.

MR. BURKE: I received an e-mail from her, because I inquired again this morning as to whether she intended to submit something, and she said to me, "I need extra time because I'm not in agreement with the settlement amount to be paid out to me of $36. September 28th is good timing."

THE COURT: Okay. Well, before I address that --

MR. BURKE: May I say one more thing --

THE COURT: Yeah, go ahead.

MR. BURKE: -- about that? I would say that the final approval papers were posted to the settlement website, which is publicly available, the day after we filed it. So September 1st, the papers were publicly available and I believe were properly served on the class in that manner.

I am not aware of any case law that requires me to mail these papers to the objectors, but I again thought it was the right thing to do.

THE COURT: Okay. Well, let me say what I was going to say up top.

MR. BURKE: Okay.

THE COURT: Because it was going to lead me to ask

whether I should keep going or whether people want more time, which is this, that I do intend to find that the proposed settlement is fair, reasonable, and adequate with the exception of the incentive award for reasons that I will explain.

I intend to find that a $20,000 incentive award is disproportionate under the circumstances of this case and that $10,000 is an appropriate award.

With that observation up-front, is there any reason for me not to proceed with my findings with respect to the remainder of the issues on the table?

I think I have the authority, even consistent with the terms of the settlement agreement, to adjust the incentive award and still approve the settlement agreement, but I wanted to pause --

MR. BURKE: Yes.

THE COURT: -- at this moment to see what the parties wanted to do.

MR. BURKE: Of course, Your Honor has that discretion, and I -- what comes to my mind is whether it would be constructive or whether Your Honor would like to hear a couple comments from me on the incentive award issue.

I have been working with Mr. Martin as his lawyer with respect to TCPA claims for quite some time. He -- I would frame him as a sort of champion of TCPA rights. In front of Judge Martin, we obtained a certified class, and class members

in that settlement received over $600 each.

He perseveres in these cases despite real pressure from the defendant and probably from -- internally from himself to settle individually for a premium, and he does not generally do that and he did not do that in this case. Instead, he pushed through for the class.

Mr. Martin and I speak on the phone regularly about what's happening in the case, and we did in this case. There were a lot of difficult turns with discovery in this one, with the Philippines-based entity, the -- there was the auto-dialer company, the New York entity that was uncooperative with producing subpoena responses.

I would also say that Mr. -- I would note that Mr. Martin attended the mediation at JAMS and contributed materially at that mediation.

For those reasons, we would urge Your Honor to accept the proposed $20,000 as an incentive award.

THE COURT: Okay. Assuming I am not persuaded, is there any reason I shouldn't continue in evaluating the settlement and entering an order? And I'll state more reasons about the incentive award as we get to it.

MR. BURKE: Understood. Some of the numbers immaterially changed. We've got, with some cures -- we sent out cure letters to 438 class members. So the number of timely claims is 39,381 as of today. It is possible that we may get

other timely postmarked cures in the future.

There is an issue of deficient claim forms, and those numbers, as identified in the papers, have also altered.

The total number of deficient claims forms as of -- well, I think this is as of Monday, is 5,597. The same -- I believe the same number as before, 5,251, were submitted by class members, but they have the wrong phone number on them. 438 were submitted by someone who appeared to be associated with a class member but had something wrong with it, like it was unsigned. And then 134 were received that had no apparent relationship to any class member.

I think that the -- you know, and so those are the change in the numbers.

THE COURT: The difference between the 5,251 and the 5,597 is -- I guess is the 5,251 a subset of the 5,597 or are those two separate pools of deficient claims?

MR. BURKE: Subset.

THE COURT: Okay. And then is the difference -- what's the difference like in terms of quality of deficiency or the reason for deficiency or --

MR. BURKE: Right. So the best but deficient claims are the 5251. Those are -- appear to have come from class members but have the wrong phone number. Then -- and, Judge, I haven't added these up. We were just going over them today. But 438 were unsigned. 134 appear to have no relationship to

the -- to any class member.

And I should say there is some float here because we have 346 that were cured of the unsigned. So we sent -- oh, gosh. We sent 572 cure letters. So these are -- we sent cure letters to all of the deficient claimants except for the 5251.

THE COURT: Okay. So the -- I am -- what I am trying to do is make sure I understand who would remain in the deficient category and not get a claim approved if I were to agree with the parties' proposal, which is that we should include the 5251 in the claims. And so we would be talking about some group of people whose claims were deficient and are not associated with a phone number that's been identified as being in the class.

MR. BURKE: So we sent out 572 cure letters and 226 remain not responded to. Additionally, there are 426 late claims. That 426 is not included in the deficient numbers that I've been -- 426 late claims.

THE COURT: Okay. Well, I conclude that the 426 late claims should be allowed and the 5,251 deficient claims that are nevertheless associated reliably with a class member should also be allowed. Any other remaining claims that are deficient are deficient and won't be able to be compensated.

MR. BURKE: Perhaps other -- unless we receive a cure?

THE COURT: Unless a cure is received.

MR. BURKE: Very well.

THE COURT: And the claims administration process can take care of that.

MR. BURKE: Yes.

THE COURT: All right. Okay. So with those numbers in mind, I don't think that changes roughly our participation rates or our -- the overall benefit to individual claimants who are going to be receiving some compensation.

MR. BURKE: It --

THE COURT: Is that --

MR. BURKE: It will modify things a little bit, but people will receive $36, roughly, and it bumps our participation rate a few percentage points.

THE COURT: Okay. Okay. Well, with those initial comments and findings and updates from the parties, is there anything the defense wants to submit or add other than what's in the papers?

MS. HANSON: No, Your Honor.

THE COURT: Okay. The notice, I find, was effective and advised the class of its rights and provided plain instructions. It reached over 90% of the individual members individually and was available online and more than adequately comported with the rule and due process in notifying the class.

The class should be certified under Rule 23. It's a numerous class, over 290,000 phone numbers.

There are common issues particularly concerning whether there was an ATDS involved or not. The class members' claims are typical. It's all about whether they got the message without consent, and that makes each claim typical.

The plaintiff is an adequate representative. There's no reason to think that his claim is any different than any other class members. And class counsel has adequately represented the interests of the class. There's absolutely no indication here that there's any antagonistic issue between the class and class counsel or the class and the named plaintiff.

There are sufficient issues that predominate, namely, whether an ATDS was used. I think that that would predominate the case. And that class treatment is not only appropriate, but really the best way to have these kinds of claims litigated to resolution. And certainly resolving it as a class is better than having 291,000 separate claims.

My evaluation of the settlement is that it was and is a fair and reasonable and adequate settlement. There was risk in this case, and compromise makes sense here. Vicarious liability in a TCPA case is not without some risk. There is also significant third-party complexity here, the Philippines-based entity, as counsel mentioned earlier. Continued litigation would be costly. And, as we're about to see, the recovery for the class here through settlement is meaningful without having to endure protracted litigation, and

that has real value.

I do conclude from the response rates and what we've seen that the feedback from the class can and should be considered favorable toward the settlement. Given the number of people who bothered to take any step whatsoever, one way or the other, the number that were actually opposed is incredibly small, and I view that as a sign that there is little opposition amongst the class to this resolution.

The best assessment of the fairness of the settlement is to look at the outcome to the class. And in a case involving what I would conclude to be *de minimis* actual damages to any individual class member, 36 or 37 dollars is a good outcome. There are better outcomes that could be had, too, in a TCPA class action to individual class members. It's significantly less than statutory damages to any individual claimant, and I acknowledge that and appreciate that, but as a compromise, it is real money to each individual claimant that they would not have seen without this case that was brought by Mr. Martin. Given the nature of the claim and the violation, I think the outcome to each individual claimant is quite fair.

Let me address the objections. Ms. Russell's objection and her request for additional time to respond is -- the objection is overruled and her request for additional time is denied.

I do find, like all members of the class, that she

had adequate notice of what was happening in the case. And if she had a substantive objection that was supported by something other than a feeling that what she's getting is not enough, she could have made that substantive objection in a more timely manner. And a reply is not required to be afforded to an objector and, in this particular objection's case, I think would not be useful to my evaluation of the overall settlement.

Her objection is that she wishes and wants more than what her individual claim is worth, and I understand that objection, and -- but it's overruled because it does not have the benefit of what I have the benefit of, which is an overall picture of the case as a whole. The benefit to the class as a whole, the elements of litigation, risk assessment, compromise, and the nature of a TCPA claim are all aspects that I think Ms. Russell and her objection don't adequately take into account. So for those reasons, her objection is overruled.

I also find that Ms. Exum has an unreasonable view of the individual value of her claim and a misunderstanding of the nature of class action such that her objection is also overruled.

She was given the option to exclude herself. And if she believes she has $20,000 or more in damages, she has every incentive to pursue it, and she has chosen instead to object and not exclude herself, and her objection is overruled.

As I said before, I have the benefit of seeing the

overall picture of the case and the benefit to the class from this settlement, and the size of the class, and the nature of the violation, all of which leads me to conclude that Ms. Exum's evaluation of the settlement is not a reasonable one, and so her objection is overruled.

I also overrule her objection to the extent she's asking for a delay so that her complaint to the postmaster can be resolved. I find that she received the materials. She had sufficient time to voice her objection. I find that class counsel did not engage in any deception but to the contrary, actually reached out to her, spoke to her about her options, all in an appropriate manner, and advising her appropriately and consistently with counsel's responsibility to the class.

That she didn't like the option of exclusion is not evidence that class counsel is taking any step contrary to the interests of the class. And so accepting her description of events, I conclude that counsel has conducted himself appropriately.

She filed a document that has been docketed as a motion to object. So her motion to object is granted to the extent that her objection is made a part of the record. Her objection itself is overruled.

Mr. Taishoff -- is that how we pronounce it?

MR. BURKE: I believe so.

THE COURT: Okay. Mr. Taishoff has a similar

objection to the others, which I would call a small P political objection to class actions and the legal profession, or what has become of the legal profession as he has observed it over the years. And I appreciate those views, but they do not persuade me that this particular settlement is unfair or unreasonable or inadequate.

He does make an objection to the incentive award, and so I will talk about that in a moment. But other than that, his -- and his objection about the tax consequences not being adequately explained is also overruled. Those circumstances are available to all class members, and the class notice was sufficient and apprised the class of what the class needed to know.

The fee petition is approved, and the motion for the attorneys' fee award is granted.

The percentage recovery is reasonable. Percentage recovery is a reasonable fee in this type of case. Class counsel did take on the risk on the front end. The percentage here as a percentage of the overall benefit to the class is around 38%. That is more than a third, which is a benchmark in these types of cases. But this case did involve some additional risk or labor than the typical TCPA case because of the third parties involved.

There was a motion to dismiss which was not a particularly time-consuming motion to litigate as I look on the

docket, but there was also a mediation, all of which suggests that class counsel in no way colluded with the defense to sell out the class and obtain a big payday of the recovery. Instead, I find that class counsel provided a good, fair outcome for the class and fairly vindicated the class' rights under the TCPA. And under those circumstances, the percentage is an appropriate value and compensation for class counsel.

And so that does take me to the incentive award. And I absolutely appreciate the need to have an incentive award that creates exactly what it says it is, which is an incentive, an incentive to bring these types of actions to champion the rights of the consumer, but what that doesn't do for me is distinguish this case from many other similar TCPA cases where smaller incentive awards have been awarded.

The amount of effort that Mr. Martin has put into this case is what I would characterize to be as standard and expected but not over and above the kinds of rigors that a named plaintiff who brings these kinds of cases should be expected to endure. What's been presented to me does not include any rigorous discovery that he had to defend against or sit through a contentious deposition or have his life scrutinized in a way that some named plaintiffs find.

The fact that he has been a plaintiff in other cases and has received an incentive award is noteworthy to me. It ultimately for me cuts a little bit in another way, which is

that I don't know that Mr. Martin needs additional incentive to bring these kinds of cases. And if he has the strength of character and resolve to be the champion that he is, he doesn't need the money to continue to be that standard bearer.

And at bottom, what I look at is the proportion of the incentive award to the overall benefit to the class. And the cases where $20,000 or $25,000 have been the award, where that is discussed and where -- it's not just a settlement where there are no objections and it was approved, but where some rigor was looked at in assessing the incentive award, those cases involving an award of that amount generally involve more money for the class or more effort or hurdles that the named plaintiff had to experience.

And there are some studies about the proportion of the fee incentive award to the class, and I think this is cited in Judge St. Eve's case, *Craftwood Lumber*, where the mean incentive fee award granted in consumer class actions is .08% of the total recovery.

An incentive award of $20,000 here would be 1% of what the class gets, roughly, or .6% of the $3 million, and that's significantly higher than the mean incentive award in consumer class actions. And there are some cases that talk about 1% being an amount that ought to be very heavily scrutinized.

And I flagged this issue at the preliminary approval

hearing, and what I have received in response, including the comments today, doesn't persuade me that $20,000 is an appropriate award when viewed in proportion to what the class is getting and the efforts that Mr. Martin went through.

So I do conclude that $10,000 is an appropriate incentive award. You know, obviously, if counsel wants to address that on his end, that's sort of up to you, but in terms of the incentive award that I am awarding, it's $10,000.

I think I've covered everything that I need to cover in granting final approval, but if I am missing something, please tell me.

I should also add that the change in the incentive award does not, in my view, materially change the benefit to the class or the terms of what this settlement involves such that any additional notice or anything like that is necessary to the class. It really -- the class was well aware that the incentive award was subject to Court approval and would be considered. So what from the class' perspective would end up being a modest change in what they end up seeing is one that they had fair notice of potentially occurring, and so no additional notice would need to occur as a result of this modification.

That, I think, covers everything that I ought to cover.

MR. BURKE: I think so, too, Judge. Your comment

about -- at the end of what -- your comments about the incentive award --

THE COURT: We can -- any musings on my end that are not material to my decision on final approval are just that, musings. I mean, my decision on final approval is that the fee award is an appropriate fee award; that the appropriate incentive award is $10,000; that the overall settlement of $3 million is a fair, adequate, and reasonable settlement for the class; that the class has adequate notice of the case and the terms of the settlement; that objections have been heard and ruled upon; and anything else I said was not material to the approval decision.

MR. BURKE: Very well. Thank you very much.

THE COURT: I think you sent a proposed order. Do you want to send another one?

MR. BURKE: I will, Judge. I looked at it before the hearing, and there are some things that need to be filled in that happened here, for example, who showed up. So we'll get that put together and we'll try to get it to you this afternoon, if not tomorrow.

THE COURT: Okay. When that comes in, I'll review it and likely enter it.

MR. BURKE: Thank you very much.

THE COURT: Okay. Thank you.

MR. MAROVITCH: Thank you, Your Honor.

MS. HANSON: Thank you.

(Proceedings concluded.)

C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the HONORABLE MANISH S. SHAH, one of the Judges of said Court, at Chicago, Illinois, on September 16, 2015.

/s/ Colleen M. Conway, CSR,RMR,CRR — *08/24/16*

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VINCENT LEUNG, on behalf of himself and all others similarly situated,

Plaintiff,

v.

XPO LOGISTICS, INC.,
Defendant.

No. 15 CV 03877

Judge Edmond E. Chang

DECLARATION OF KEITH J. KEOGH

Keith J. Keogh declares under penalty of perjury, that the following statements are true:

1. I am over the age of eighteen and I am fully competent to make this declaration. This declaration is based upon my personal knowledge and if called upon to testify to the matters stated herein, I could and would do so competently.

2. The litigation was robust and involved novel legal issues that were shifting as a result of both cases before the Supreme Court and matters in front of the FCC.

3. The Parties engaged in extensive discovery and conducted numerous status conferences with the focus on discovery. *See* Dkt. Nos. 64, 71, 83, 86, 101, 104, 113, 116, 121, and 132. In addition, Plaintiff filed motions to compel production of discovery against both XPO (Dkt. Nos. 69 and 117) as well as against third parties. Dkt. Nos. 105 (Amazon), 123 (Lowes), and 125 (Home Depot).

4. Plaintiff answered discovery, was deposed, and fully participated in this litigation. Mr. Leung also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement.

5. Throughout the discovery process, myself and/or Timothy Sostrin held numerous discovery conferences with counsel related to discovery and other issues, as well as with third party counsels. The discussions were thorough and, at many points, contentious, as the parties addressed all facets of discovery as well as their respective views on class certification and of Plaintiff's class TCPA claims.

6. Based on an analysis of the data produced through discovery, Plaintiff's Expert determined the class to be comprised of approximately 313,000 persons.

7. Throughout this process the parties engaged in extensive arms-length settlement negotiations with the hope of resolving the Litigation. The parties mediated before the Honorable Wayne Andersen ("Judge Andersen") of Judicial Arbitration and Mediation Services, Inc. ("JAMS") on March 16, 2016, and again on May 23, 2016. A third private mediation was held before the Honorable James Holderman ("Judge Holderman") of JAMS on June 23, 2017. Prior to each mediation the submitted detailed mediation briefs to the Mediators setting forth their respective views on the strengths and weaknesses of their cases.

8. After the third mediation resulted in an impasse, I continued to negotiate with in-house counsel and officers of XPO, including in person meetings continuing the negotiations from the mediations.

9. I am confident in the strength of the claims alleged in this action and that Plaintiff would ultimately prevail at trial. Notwithstanding the foregoing, litigation is inherently unpredictable, and the outcome of a trial is never guaranteed. Thus, I concede that Plaintiff would face significant risk in taking this case to trial.

10. Some examples of the risks of this case is that there is the possibility that the Court would deny class certification. *See e.g. Warnick v. Dish Network, LLC*, 304 F.R.D. 303 (D.

Colo. 2014) (denying class certification in a TCPA case); *see also Jamison v. First Credit Services, Inc.*, 2013 U.S. Dist. LEXIS 105352 (N.D. Ill. 2013) (denying class certification in a TCPA case).

11. Additional, it was a risk that either this Court or the Seventh Circuit would agree with XPO Logistics' argument that the context and purpose of XPO's calls fall within the boundaries of the scope of the customers' consent given for calls made in connection with the deliveries. E.g., *Blow v. Bijora*, 855 F.3d 793 (7th Cir. 2017); *Lamont v. Furniture N.*, LLC, 2014 WL 1453750 (D.N.H. Apr. 15, 2014) (holding that when plaintiff provided her phone number at the point of sale to effectuate a furniture delivery, she gave prior express consent to receive a pre-delivery call and a post-delivery survey call). Of course, Plaintiff contended that *Blow* supported his position as it held: "providing one's phone number does not constitute carte blanche consent to receive automated marketing messages of any kind". *Id*. at *26-27.

12. The Settlement factored in the above risks based and counsels extensive experience in TCPA class actions.

13. The TCPA is a technologically focused statute. In my experience, I have learned that in order to successfully litigate TCPA class actions, attorneys must understand the mechanics of automatic telephone dialing systems and must understand how computer databases store and organize call records.

14. In addition, attorneys must closely track pending petitions before the FCC on TCPA issues, as the FCC is very active on TCPA issues and continues to clarify its regulations.

15. My experience in the TCPA is substantial. I am class counsel in some of the largest Telephone Consumer Protection Act ("TCPA") settlements in the country. *See Hageman v. AT&T Mobility LLC, et al.*, Case 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) (Final

Approval Granted February 11, 2015 providing for a $45 million settlement for a class of 16,000 persons) and *Capital One Telephone Consumer Protection Act Litigation*, et al., 12-cv-10064 (N.D. Ill. Judge Holderman) (Liaison Counsel and additional Class Counsel) (Final Approval Granted February 12, 2015 for a $75 million settlement).

16. In 2015, the National Association of Consumer Advocates honored me as the Consumer Attorney of the Year for my work in courts and with the FCC insuring the safeguards of the TCPA were maintained. Additional experience is set out in detail below.

17. Based on my experience handling Plaintiffs' consumer protection work, including TCPA cases, I believe that the settlement is a terrific result, and in the best interest of the class. The settlement provides real monetary recovery for class members, and will act as a deterrent for future misconduct by actors considering activities proscribed by the TCPA.

18. Based on the estimated costs of notice and administration from KCC, Settlement Class Members who submit a valid Claim are expected to receive Settlement Awards of $263 assuming a 5% claim rate and $131 assuming a 10% claim rate.

19. Given the strength of this settlement, the undersigned does not expect significant opposition to the settlement by any of the class members.

20. In this matter, my firm represented Plaintiff and the Class on a contingency-fee basis. Plaintiff entered into a retainer agreement with Class Counsel that reflects the requested fee, as is normal in consumer TCPA cases in this District. In taking this case, my firm risked extensive expert costs, a potentially expensive trial, and lost opportunity costs due to the time needed to brief dispositive motions.

21. In addition, my firm has incurred $52,498 to date in out-of-pocket expenses in prosecuting this case and expect an additional $453 in travel costs related to the final approval

hearing, but we are not seeking separate reimbursement of these costs as Class Counsel is seeking one third for fees inclusive of expenses. Below is a detailed report of itemized expenses where copying, legal research and the like have been excluded:

Date	Description	Amount	
5/1/2015	Filing Fee	$ 400.00	
5/7/2015	Service Fee	$ 50.00	
2/10/2016	JAMS Invoice for Mediation	$ 5,000.00	
3/16/2016	KJK Parking for JAMS Mediation	$ 36.00	
3/31/2016	Invoice for JAMS Mediation	$ 4,575.00	
5/23/2016	Invoice for 3.24 Hearing Transcript	$ 68.25	
4/28/2016	Invoice from JAMS	$ 3,575.00	
5/31/2016	Invoice from JAMS	$ 850.00	
6/14/2016	Certified Mail for Five Subpoenas	$ 32.40	
6/30/2016	Invoice from JAMS for f/u calls	$ 200.00	
7/29/2016	Invoice for Transcript of 6.8 Hearing	$ 30.00	
8/26/2016	Invoice for Transcript of 8.24 Hearing	$ 15.30	
12/5/2016	Certified Mail for Five Subpoenas	$ 32.30	
1/19/2017	Invoice for Colom Dep Transcript	$ 667.05	
1/27/2017	Invoice for Turner Dep Transcript	$ 709.80	
2/16/2017	Invoice for 1.27 Transcript	$ 830.75	
2/20/2017	Invoice for 2.2 Dep	$ 443.40	
3/16/2017	TJS Expenses for ATL Deps	$ 946.06	
3/16/2017	TJS Expenses for NJ Deps	$ 782.78	
4/10/2017	Invoice of Garcia Dep	$ 654.70	
4/20/2017	Invoice of Ferris Dep	$ 1,167.40	
4/17/2017	Invoice for Libby Dep	$ 1,036.26	
5/23/2017	JAMS Invoice for Mediation	$ 10,275.00	
8/15/2017	Invoice for Jindal Dep	$ 1,081.45	
	Biggerstaff Expert work and report	$ 19,000.00	
		$ 52,458.90	Total Expenses

Class Counsel's Experience

22. As shown above as well as below, my firm has regularly engaged in major complex litigation, that involves, among other consumer protection issues, the Telephone Consumer Protection Act 47 U.S.C. § 227.

23. My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

24. Keogh Law, Ltd. consists of five attorneys and focuses on consumer protection cases almost exclusively as class actions. I am a shareholder of the firm and member of the bars of the United States Court of Appeals for the Seventh Circuit, Eastern District of Wisconsin, Northern District of Illinois, Southern District of Indiana, District of Colorado and Illinois State Bar as well as several bar associations and the National Association of Consumer Advocates.

25. My firm was also class counsel in the four largest all cash FACTA class action settlements: *Flaum v Doctors Associates,* 16-CV-61198-CMA (S.D. Fla. Pending Final Approval)($30.9 million dollars); *Legg v. Laboratory Corporation of America Holdings*, No. 14-cv-61543-RLR (S.D. Fla., filed July 6, 2014) ($11 million dollars); *Legg v. Spirit Airlines, Inc*., No. 14-cv-61978-JIC (S.D. Fla., filed Aug. 29, 2014) ($7.5 million dollars); and *Muransky v. Godiva Chocolatier, Inc*., 15-cv-60716-WPD (S.D. Fla., filed Apr. 6, 2015) ($6.3 million dollars)(on appeal by professional objectors).

26. In addition to the above, I was lead or class counsel in the following class settlements, many of which involve claims under the TCPA: *See Legg v AEO*, 14-cv-02440-VEC (TCPA)(on appeal from professional objector); *Markos v Wells Fargo*, 15-cv-01156-LMM (N.D. Ga. (TCPA); *Ossola v Amex* 1:13-cv-04836 (N.D. Ill. 2016)(TCPA); *Luster v. Wells Fargo*, 15-1058-TWT (N.D. Ga.)(TCPA); *Prather v Wells Fargo*, 15-CV-04231-SCJ (ND. Ga)(TCPA); *Joseph et al. v. TrueBlue, Inc. et al.*, Case No. 3:14-cv-05963 (D. Wa.) (TCPA); *Guarisma v Microsoft*, 15-cv-24326-Atlonaga/O'Sullivan, (S.D. Fl.); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015) (statutory claim class action settled after contested certification);

Willett, et al. v. Redflex Traffic Systems, Inc., et al., Case No. 13-cv-01241-JCH-RHS (TCPA); *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Co-Lead) (TCPA); *De Los Santos v Millword Brown, Inc.*, 9:13-cv-80670-DPG (S.D. Fl) (TCPA); *Allen v. JPMorgan Chase Bank, N.A.* 13-cv-08285 (N.D. Ill. Judge Pallmeyer) (TCPA); *Cooper v NelNet*, 6:14-cv-314-Orl-37DAB (M.D. Fl.) (TCPA); *Thomas v Bacgroundchecks*.com, 3:13-CV-029-REP (E.D. Va.)(additional class counsel FCRA); *Lopera v RMS*, 12-c-9649 (N.D. Ill. Judge Wood)(TCPA), *Kubacki v Peapod*, 13-cv-729 (N.D. Ill. Judge Mason)(TCPA); *Wojcik v. Buffalo Bills, Inc.*, 8:12 CV 2414-SDM-TBM (M.D. Fl. Judge Merryday) (TCPA); *Curnal v LVNV Funding, LLC.*, 10 CV 1667 (Wyandotte County, KS 2014) (Unlicensed debt collector under KS law); *Cummings v Sallie Mae*, 12 C-9984 (N.D. Ill. Judge Gottschall) (TCPA) (co-lead); *Brian J. Wanca, J.D., P.C. v. L.A. Fitness International, LLC*, Case No. 11-CV-4131 (Lake County, Il. Judge Berrones) (TCPA); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, L.L.C., et al*, 12-cv-3671 (N.D. Ill. 2013 Judge Gottschall) (TCPA); *Saf-T-Gard v TSI*, 10-c-7671, (N.D. Ill. Judge Rowland) (TCPA); *Cain v Consumer Portfolio Services, Inc.* 10-cv-02697 (N.D. Ill. Judge Keys) (TCPA); *Iverson v Rick Levin & Associates*, 08 CH 42955 Circuit Court Cook County (Judge Cohen) (TCPA); *Saf-T-Gard v Seiko*, 09 C 776 (N.D. Ill. Judge Bucklo) (TCPA); *Jones v. Furniture Bargains*, LLC, 09 C 1070 (N.D. Ill) (FLSA collective action); *Saf-T-Gard v Metrolift*, 07 CH 1266 Circuit Court Cook County (Judge Rochford) (Co-Lead) (TCPA); *Bilek* v *Countrywide*, 08 C 498 (N.D. Ill. Judge Gottschell); *Pacer* v *Rochenback*, 07 C 5173 (N.D. Ill. Judge Cole); *Overlord Enterprises* v. *Wheaton Winfield Dental Associates*, 04 CH 01613, Circuit Court Cook County (Judge McGann) (TCPA); *Whiting* v *SunGard*, 03 CH 21135, Circuit Court

Cook County (Judge McGann) (TCPA); *Whiting* v. *Golndustry,03* CH 21136, Circuit Court Cook County (Judge McGann) (TCPA).

27. I was the attorney primarily responsible for the following class settlements: *Wollert* v. *Client Services,* 2000 U.S. Dist. LEXIS 6485 (N.D. Ill. 2000); *Rentas* v. *Vacation Break USA,* 98 CH 2782, Circuit Court of Cook County (Judge Billik); *McDonald* v. *Washington Mutual Bank,* supra; *Wright* v. *Bank One Credit Corp.,* 99 C 7124 (N.D. Ill. Judge Guzman); *Arriaga* v. *Columbia Mortgage,* 01 C 2509 (N.D. Ill. Judge Lindberg); *Frazier* v. *Provident Mortgage,* 00 C 5464 (N.D. Ill. Judge Coar); *Largosa* v. *Universal Lenders,* 99 C 5049 (N.D. Ill. Judge Leinenweber); *Arriaga* v. *GNMortgage,* (N.D. Ill. Judge Holderman); *Williams* v. *Mercantile Mortgage,* 00 C 6441 (N.D. Ill. Judge Pallmeyer); *Reid* v. *First American Title,* 00 C 4000 (N.D. Ill. Magistrate Judge Ashman); *Fabricant* v. *Old Kent, 99* C 6846 (N.D. Ill. Magistrate Judge Bobrick); *Mendelovits* v. *Sears,* 99 C 4730 (N.D. Ill. Magistrate Judge Brown); *Leon* v. *Washington Mutual,* 01 C 1645 (N.D. Ill. Judge Alesia).

28. The individual class members' recovery in some of these settlements was substantial. For example, in one of the cases against a major bank the class members' recovery was 100% of their actual damages resulting in a payout of $l,000.00 to $9,000.00 per class member. Similarly, in a case against a major lender regarding mortgage servicing responses, each class member who submitted a claim form received $1,431.00. *McDonald v. Washington Mutual Bank.*

29. In addition, to the above settlements, I was appointed class counsel in *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation,* Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *Galvan v. NCO Fin. Sys.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist.

LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class)*; Pesce v First Credit Services*, 11-cv-01379 (N.D. Ill. December 19 2011) (TCPA Class); *Smith v Greytsone Alliance*, 09 CV 5585 (N.D. Ill. 2010); *Cicilline* v. *Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D.Ill. 2008)(Co-Lead Counsel for FACTA class); *Harris* v. *Best Buy Co.*, 07 C 2559,2008 U.S. Dist. LEXIS 22166 (N.D.Ill. March 20, 2008)(FACTA class); *Matthews* v. *United Retail, Inc.*, 248 F.R.D. 210 (N.D.Ill. 2008)(FACTA class); *Redmon* v. *Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D.Ill. 2008)(FACTA class); *Harris* v. *Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596,2008 WL 400862 (N.D. Ill. 2008)(FACTA class); *Pacer* v *Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008)(FACTA class).

30. Some of my reported cases involving consumer protection include: *Galvan v. NCO Portfolio Mgmt. Inc.*, 794 F.3d 716, 721 (7th Cir. 2015); *Leeb v. Nationwide Credit Corp.*, 806 F.3d 895 (7th Cir. 2015); S*mith v Greystone*, 772 F.3d 448 (7th Cir. 2014); *Clark v Absolute Collection Agency*, 741 F.3d 487 (4th 2014); *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012);*Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v. GMAC Mortgage Corp.*, No. 09-2182 (7th Cir. 2011) ; *Gburek v Litton Loan*, 614 F.3d 380 (7th Cir. 2010); *Sawyer v. Ensurance Insurance Services* consolidated with *Killingsworth* v. *HSBC Bank Nev., NA.*, 507 F3d 614, 617 (7th Cir. 2007), *Echevarria et al.* v. *Chicago Title and Trust Co.*, 256 F3d 623 (7th Cir. 2001*); Demitro* v. *GMAC*, 388 Ill. App. 3d 15, 16 (lst Dist. 2009); *Hill* v. *St. Paul Bank*, 329 Ill. App. 3d 7051, 1768 N.E.2d 322 (lst Dist. 2002); *In re Mercedes-Benz Tele Aid Contract Litig., 2009* U.S. Dist. LEXIS 35595 (D.N.J. 2009); *Catalan v. RBC Mortg. Co.*, 2009 U.S. Dist. LEXIS 26963 (N.D. Ill. 2009); *Elkins v. Equifax, Inc.*, 2009 U.S. Dist. LEXIS 18522 (N.D. Ill. 2009*); Harris* v. *DirecTV Group, Inc.*, 2008 U.S. Dist. LEXIS 8240 (N.D. Ill. 2008); *In re TJX Cos., Inc., Fair* & *Accurate Credit Transactions Act* (FACTA) Litig.,

2008 U.S. Dist. LEXIS 38258 (D. Kan. 2008); *Martin* v. *Wal- Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 89715 (N.D. Ill. 2007); *Elkins* v. *Ocwen Fed. Sav. Bank Experian Info. Solutions, Inc.*, 2007 U.S. Dist. LEXIS 84556 (N.D. Ill. 2007); *Harris* v. *Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. *2007); Stegvilas* v. *Evergreen Motors, Inc.*, 2007 U.S. Dist. LEXIS 35303 (N.D. Ill. 2007); *Cook* v. *River Oaks Hyundai, Inc.*, 2006 U.S. Dist. LEXIS 21646 (N. D. Ill. 2006); *Gonzalez* v. *W. Suburban Imps.*, Inc., 411 F. Supp. 2d 970 (N.D. Ill. 2006); *Eromon* v. *GrandAuto Sales, Inc.*, 333 F. Supp. 2d 702 (N.D. Ill. 2004); *Williams* v. *Precision Recovery, Inc.*, 2004 U.S. Dist. LEXIS 6190 (N.D. Ill. 2004); *Doe* v. *Templeton*, 2003 U.S. Dist. LEXIS 24471 (N.D. Ill. 2003); *Ayala* v. *Sonnenschein Fin. Servs.*, 2003 U.S. Dist. LEXIS 20148 (N.D. Ill. 2003); *Gallegos* v. *Rizza Chevrolet, Inc., 2003* U.S. Dist. LEXIS 18060 (N.D. Ill. 2003); *Szwebel* v. *Pap's Auto Sales, Inc.*, 2003 U.S. Dist. LEXIS 13044 (N.D. Ill. 2003); *Johnstone* v. *Bank of America*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon* v. *Washington Mutual Bank*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Ploog v. HomeSide Lending*, 2001 WL 987889 (N.D. Ill. 2001); *Christakos* v. *Intercounty Title*, 196 F.R.D. 496 (N.D. Ill. 2000); *Batten* v. *Bank One*, 2000 WL 1364408 (N.D. Ill. 2000); *McDonald* v. *Washington Mutual Bank*, 2000 WL 875416 (N.D. Ill. 2000); and *Williamson* v. *Advanta Mtge Corp.*, 1999 U.S. Dist. LEXIS 16374 (N.D. Ill. 1999). The *Christakos* case significantly broadened title and mortgage companies' liability under Real Estate Settlement Procedures Act ("RESPA") and *McDonald* is the first reported decision to certify a class regarding mortgage servicing issues under the Cranston-Gonzales Amendment of RESPA.

31. I have argued before the Seventh Circuit, the First District of Illinois and the MultiLitigation Panel in *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012)*; Catalan* v *GMACM* (7th Cir. 2010); *Gburek* v *Litton Loan Servicing* (7th Cir. 2009); *Sawyer* v

Esurance (7th Cir. 2007), *Echevarria, et al.* v. *Chicago Title and Trust Co.* (7th Cir. 2001); *Morris* v *Bob Watson,* (lst. Dist. 2009); *Iverson* v *Gold Coast Motors Inc.,* (lst. Dist. 2009); *Demitro* v. *GMAC* (lst Dist. 2008), *Hill v. St. Paul Bank* (lst Dist. 2002), and *In Re: Sears, Roebuck* & *Company Debt Redemption Agreements Litigation* (MDL Docket No. 1389.) *Echevarria* was part of a group of several cases that resulted in a nine million dollar settlement with Chicago Title.

32. My published works include co-authoring and co-editing the 1997 supplement to *Lane's Goldstein Trial Practice Guide* and *Lane's Medical Litigation Guide.*

33. I have lectured extensively on consumer litigation, including extensively on class actions and the TCPA. For example, I:

a. Presented at the National Consumer Law Center 2016 and 2017 annual conferences on the TCPA.

b. Presented at the 2016 Fair Debt Collection Training Conference for a session on TCPA Developments.

c. Presented for the National Association of Consumer Advocates November 2015 webinar titled Developments and Anticipated Impact of Recent FCC TCPA Rules.

d. Presented at the National Consumer Law Center 2015 annual conference in San Antonio, Texas on the TCPA.

e. Presented at the 2015 Fair Debt Collection Training Conference for three sessions on the TCPA.

f. Presented at the National Consumer Law Center 2014 annual conference in Tampa Fl. for two sessions on the TCPA.

g. Panelist for the December 2013 Strafford CLE Webinar titled TCPA Class Actions: Pursuing or Defending Claims Over Phone, Text and Fax Solicitations.

h. Panelist for the December 2014 Chicago Bar Association Class Action Seminar titled "Class Action Settlements in the Seventh Circuit: Navigating Turbulent Waters."

i. Presented at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.

j. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPI lectured at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.

k. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology.

l. Presented for the National Association of Consumer Advocates November 2013 webinar titled Current Telephone Consumer Protection Act Issues Regarding Cell Phones.

m. Presenter for the November 2013 Chicago Bar Association Class Action Committee presentation titled Future of TCPA Class Actions.

n. Speaker at the Social Security Administration's Chicago office in August 2013 on a presentation on identity theft, which included consumers' rights under the Fair Credit Reporting Act.

o. Panelist for the May 14, 2013 Chicago Bar Association Class Action Seminar titled "The Shifting Landscape of Class Litigation" as well as for the March 20, 2013 Strafford CLE webinar titled "Class Actions for Telephone and Fax Solicitation and Advertising Post-

Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology."

p. Lectured at the June 6, 2013 Consumer Law Committee of the Chicago Bar Association on the topic "Employment Background Reports under the Fair Credit Reporting Act: Improper consent forms to failure to provide background report prior to adverse action."

q. Lectured at the 2013 Fair Debt Collection Training Conference for three sessions on the TCPA.

r. Presented at the 2012 National Consumer Law Center annual conference for a session on the TCPA.

s. Presented at the 2012 Fair Debt Collection Training Conference for a session on the TCPA.

t. Panelist for Solutions for Employee Classification & Wage/Hour Issues at the 2011 Annual Employment Law Conference hosted by Law Bulletin Seminars.

u. Lectured at the 2011 National Consumer Law Center conference for a session titled Telephone Consumer Protection Act: Claims, Scope, Remedies as well as lectured at the same 2011 National Consumer Law Center conference for a double session titled ABC's of Class Actions.

v. Taught *Defenses to Foreclosures* for Lorman Education Services, which was approved for CLE credit, in 2008 and 2010.

w. Guest lecturer on privacy issues at University of Illinois at Urbana-Champaign School of Law. In March 2010.

x. Guest speaker for the Legal Services Office of The Graduate School and Kellogg MBA Program at Northwestern University for its seminar titled: "Financial Survival Guide: Legal Strategies for Graduate Students During A Period of Economic Uncertainty."

34. I was selected as an Illinois Super Lawyer in 2014-17, and an Illinois Super Lawyer Rising Star each year from 2008 through 2013. Moreover, my cases have been featured in local newspapers such as the Chicago Tribune, Chicago Sun-Times, The Naperville Sun, Daily Herald and RedEye.

35. In April 2011, Timothy J. Sostrin joined the firm. He is a member in good standing of the Illinois bar, the U.S. District Court District of Colorado, U.S. District Court Northern District of Illinois, U.S. District Court Northern and Southern Districts of Indiana, U.S. District Court Eastern and Western Districts of Michigan, U.S. District Court Eastern District of Missouri, U.S. District Court Southern District of Texas and U.S. District Court Eastern and Western Districts of Wisconsin.

36. Timothy J. Sostrin has zealously represented consumers in Illinois and in federal litigation nationwide against creditors, debt collectors, retailers, and other businesses engaging in unlawful practices. Mr. Sostrin has extensive experience with consumer claims brought under the Fair Debt Collection Practices Act, The Telephone Consumer Protection Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and Illinois law. Some of Mr. Sostrin's representative cases include: *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (granting class certification*); Galvan v. NCO Financial Systems, Inc.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012)(granting class certification); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, LLC*, (2012 U.S. Dist. LEXIS 174222 (N.D. Ill. December 6, 2012)(granting class certification); *Jelinek v. The Kroger Co.*, 2013 U.S. Dist.

LEXIS 53389 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Hanson v. Experian Information Solutions, Inc.*, 2012 U.S. Dist. LEXIS 11450 (N.D. Ill. January 27, 2012)(denying defendant's motion for summary judgment); *Warnick v. DISH Network, LLC*, 2013 U.S. Dist. LEXIS 38549 (D. Colo. 2013)(denying defendant's motion to dismiss);*Torres v. Nat'l Enter. Sys.*, 2013 U.S. Dist. LEXIS 31238 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Griffith v. Consumer Portfolio Serv.*, 838 F. Supp. 2d 723 (N.D. Ill. 2011)(denying defendant's motion for summary judgment); *Frydman et al v. Portfolio Recovery Associates, LLC*, 2011 U.S. Dist. LEXIS 69502 (N.D. Ill 2011)(denying defendant's motion to dismiss); *Rosen Family Chiropractic S.C. v. Chi-Town Pizza*, 2013 U.S. Dist. LEXIS 6385 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Sengenberger v. Credit Control Services, Inc.*, 2010 U.S. Dist. LEXIS 43874 (N.D. Ill. May 5, 2010) (granting summary judgment on TCPA claim);

37. Mr. Sostrin is a member of the National Association of Consumer Advocates and ISBA. He received his Juris Doctorate, *cum laude*, from Tulane University Law School in 2006.

38. In 2014, Michael Hilicki joined the firm. Mr. Hilicki has spent nearly all of his approximate 20-year legal career helping consumers and workers subjected to unfair and deceptive business practices, and unpaid wage practices. He is experienced in a variety of consumer and wage-related areas including, but not limited to, the Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud & Deceptive Business Practices Act, Telephone Consumer Protection Act, Fair Labor Standards Act and the Illinois Wage & Hour Law. He is experienced in all aspects of consumer and wage litigation, including arbitrations, trials and appeals.

39. Some of the numerous certified class actions in which Mr. Hilicki has represented consumers or workers include: *Legg v. Spirit Airlines, Inc.*, No. 14-61978-Civ (S.D. Fla.); *Eibert*

v. Jaburg & Wilk, P.C., 13-cv-301 (D. Minn.); *Brinkley v. Zwicker & Associates, P.C.*, 13 C 1555 (N.D. Ill.); *Kraskey v. Shapiro & Zielke, LLP*, 11-cv-3307 (D. Minn.); *Short v. Anastasi & Associates, P.A.*, 11-cv-1612 SRN/JSM (D. Minn.); *Kimball v. Frederick J. Hanna & Associates, P.C.*, 10-cv-130 MJD/JJG (D. Minn.); *Murphy v. Capital One Bank*, 08 C 801 (N.D. Ill.); *In re American Family Mut. Ins. Co. Overtime Pay Litig.*, 06-cv-17430 WYD/CBS (D. Colo.); *Nettles v. Allstate Ins. Co.*, 02 CH 14426 (Cir. Ct. Cook Cty.); *Sanders v. OSI Educ. Servs., Inc.*, 01 C 2081 (N.D. Ill.); *Kort v. Diversified Collection Servs., Inc.*, 01 C 0689 (N.D. Ill.); *Hamid v. Blatt Hasenmiller, et al.*, 00 C 4511 (N.D. Ill.); *Durkin v. Equifax Check Servs., Inc.*, 00 C 4832 (N.D. Ill.); *Torres v. Diversified Collection Services, et al.*, 99-cv-00535 (RL-APR) (N.D. Ind.); *Morris v. Trauner Cohen & Thomas*, 98 C 3428 (N.D. Ill.), *Mitchell v. Schumann*, 97 C 240 (N.D. Ill.); *Pandolfi, et al. v. Viking Office Prods., Inc.*, 97 CH 8875 (Cir. Ct. Cook Cty.); *Trull v. Microsoft Corp.*, 97 CH 3140 (Cir. Ct. Cook Cty.); *Deatherage v. Steven T. Rosso, P.A.*, 97 C 0024 (N.D. Ill.); *Young v. Meyer & Njus, P.A.*, 96 C 4809 (N.D. Ill.); *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 96 C 3233 (N.D. Ill.); *Holman v. Red River Collections, Inc.*, 96 C 2302 (N.D. Ill.); *Farrell v. Frederick J. Hanna*, 96 C 2268 (N.D. Ill.); *Blum v. Fisher and Fisher*, 96 C 2194 (N.D. Ill.); *Riter v. Moss & Bloomberg, Ltd.*, 96 C 2001 (N.D. Ill.); *Clayton v. Cr Sciences Inc.*, 96 C 1401 (N.D. Ill.); *Thomas v. MAC/TCS Inc., Ltd.*, 96 C 1519 (N.D. Ill.); *Young v. Bowman, et al.*, 96 C 1767 (N.D. Ill.); *Depcik v. Mid-Continent Agencies, Inc.*, 96 C 8627 (N.D. Ill.); and *Dumetz v. Alkade, Inc.*, 96 C 4002 (N.D. Ill.)

40. Mr. Hilicki has lectured on consumer law issues at Upper Iowa University and the Chicago Bar Association. He is a member of the Trial Bar of the United States District Court for the Northern District of Illinois, and has represented consumers in state and federal courts around the country on a *pro hac vice* basis.

41. Mr. Hilicki's published works include: *"AND THE SURVEY SAYS…" When Is Evidence of Actual Consumer Confusion Required to Win a Case Under Section 1692g of the Fair Debt Collection Practices Act in the Seventh Circuit?*, 13 Loy. Consumer L. Rev. 224 (2001).

42. In 2015, Amy Wells joined the firm. Ms. Wells brings a wealth of consumer litigation experience. In 2014, she was installed as the President of the Miami Valley Trial Lawyers Association (MVTLA), which is an association of attorneys throughout Ohio's Miami Valley (Montgomery, Miami, Darke, Preble, Clark, Greene, Warren, Champaign, and Butler Counties). Their members are dedicated to the advancement of fair trials and free access of individuals to the courts of this state, and represent injured persons, criminal defendants, consumers and families in the areas of negligence, criminal law, consumer protection, workers' compensation, professional malpractice, products liability, family law, insurance law, employment, and civil rights law.

43. The Ohio Association for Justice named Ms. Wells as recipient of the 2012 President's Award. Ms. Wells was honored by the Ohio Association for Justice at the Annual Convention, where she received her award from President Denise Houston at the Association's flagship President's Dinner on May 3, 2012. The dinner was attended by over 400 attorneys and their guests at the Hilton at Easton Town Center in Columbus, Ohio.

44. Ms. Wells received the highest possible Attorney rating (Superb) by Avvo, Inc., which ranks attorneys according to a variety of criteria, including feedback from clients and peers.

45. In 2011, Ms. Wells was selected to serve on Ohio Attorney General Mike DeWine's Advisory Committee. This panel was assembled by the OAG to review Ohio's

primary consumer protection law, the Consumer Sales Practices Act (R.C. 1345 et seq.). She is the only consumer protection attorney in private practice selected for this committee. Ms. Wells has repeatedly been named by Super Lawyers Magazine as a Rising Star. Only 2.5 percent of the attorneys in the state are selected to the Rising Stars list. Super Lawyers, a Thomson Reuters business, is a rating service of attorneys from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The annual selections are made using a statewide survey of attorneys, independent research evaluation of candidates, and peer reviews by practice area. The Super Lawyers lists are published nationwide in Super Lawyers magazines and in leading city and regional magazines across the country.

Education

46. Ms. Wells graduated from the University of Dayton School of Law joint-degree program, earning a Juris Doctorate and Masters of Business Administration. She was the only student in her graduating class to receive this dual degree. During law school, Ms. Wells was a member of the Moot Court Team and Moot Court Board. Ms. Wells was Vice President of the UDSL Women's Caucus and also served as a teaching assistant in the legal research and writing program. Amy was a summer associate at a Dayton law firm in the litigation section. She also clerked in-house at NCR's world headquarters throughout law school, acting as the lead intern during her final year. Amy earned her undergraduate degree in business administration from Ohio University in Athens.

47. Some of Ms. Wells published works include:

a. 2008 article - *The Price of Identity Theft for Ohio Consumers,* published in Ohio Trial Magazine, Volume 18, Issue 1.

b. In April 2009 her article, *Protecting Consumers from a "New Breed" of Debt Collector*, was published in the Dayton Bar Association's Bar Briefs magazine.

c. In 2011 the article titled, *Proposed Deconstruction of Ohio's UDAP Law, a National Trend?,* was published by the National Association of Consumer Advocate's publication, The Consumer Advocate, Volume 17, No. 4.

d. Ms. Wells wrote Ohio's Consumer Protection Law, which was published in the October 2011 issue of the Advisory.

e. In November 2011, *HB 275 – The Undoing of Ohio's Consumer Protection Law*, was published in the Dayton Bar Briefs, Vol. 61, No.3.

f. Ms. Wells is a featured blogger on Neighborhood Housing Services Consumer Law Center Blog

g. Ms. Wells authored a chapter in the Consumer Law Basics book while serving as faculty of the Practicing Law Institute.

h. Ms. Wells is a contributing freelance author for NOLO.com (2015-present)

48. Speaking Engagements for Ms. Wells include:

a. Ms. Wells is regularly invited to speak to attorneys and consumers on a state and national basis regarding consumer advocacy issues and laws. Recent presentations include:

b. 2010 National Consumer Law Center Fair Debt Collection Training Conference, Jacksonville, FL, "FDCP Fundamentals: The Care and Feeding of Your FDCP Case."

c. CORT Consumer Law Training 2010, Ann Arbor, MI, "Bringing Claims Under the FCRA and FACTA."

d. 2010 Ohio Association for Justice Annual Convention, Columbus, OH, "Appraisal Litigation: Critical Evidence in an Inflated Appraisal Case & Eminent Domain: Friend or Foe?"

e. 2011 Ohio Association for Justice Insurance Law CLE, Columbus & Dayton, OH, "Protect Thy Consumer, Today's Consumer Law Issues."

f. 2011 Ohio Association for Justice Annual Convention, Columbus, OH, Moderator for the Consumer Law Continuing Legal Education panel.

g. 2012 Ohio Association for Justice Annual Convention, Columbus, OH, "How to Practice Under the New Ohio Consumer Law."

h. 2012 American Bankruptcy Law Forum, Dayton, OH, "Consumer Law for Bankruptcy Attorneys"

i. 2013 Served as faculty for CLE about Representing the Pro Bono Client, Consumer Law Basics in San Francisco, CA. My presentation was entitled "Introduction to the Fair Credit Reporting Act."

j. 2015 Ohio State Bar Association Consumer Law CLE, Columbus, OH, "The Basics of the FCRA Including Recent Changes/Oversight from the CFPB"

49. Ms. Wells has been featured in the following media:

a. Ms. Wells has been interviewed by various media outlets, including the following pieces.

b. ALEC Leads the Legal War Against Consumers, A Lawyers.com Series, Posted May 3, 2012.

c. Right-to-cure bill seen powering its way to approval, Business First, Dec. 16, 2011.

d. 2012, Guest on Americas Workforce Radio, topic: consumer credit reporting.

50. Finally, Ms. Wells served on the Board of Trustees of the Ohio Association for Justice and chaired the Consumer Law Section from 2009-2014. She also served on the Association's Legislative Committee. Ms. Wells is an active member of the National Association of Consumer Advocates and is currently a state chair for the organization. Ms. Wells currently sits on the board of the Miami Valley Trial Lawyers Association, and will served as the Association's President from 2014-2015. Ms. Wells is a member of the American Association for Justice, Illinois Bar Association, Lake County Bar Association, Ohio State Bar Association, and the Dayton Bar Association, Carl D. Kessler Inn of Court, and serves on the DBA Certified Grievance Committee.

51. In 2015, Michael Karnuth joined the firm. His practice focuses on Securities Fraud and Shareholder litigation, as well as consumer protection and other complex litigation matters.

52. In the Securities Fraud area, Mr. Karnuth has extensive experience in prosecuting claims under the federal securities laws, and has actively litigated cases at all levels up to trial, and has obtained significant recoveries for investors. Representative cases and reported decisions include:

In re DVI, Inc. Sec. Litig., 2:03-cv-5336 (E.D. Pa.). Mr. Karnuth has been instrumental in representing equity and debt investors in case raising 10b-5 and 20(a) claims involving a failed healthcare financing company which misrepresented financial statements for several

years. To-date, the firm has recovered over $21 million for investors from ten different defendants, and has achieved important legal victories in the case, including prevailing on numerous motions to dismiss, In re DVI Inc. Sec. Litig., 2005 WL 1307959 (E.D. Pa. May 31, 2005); obtaining class certification, 249 F.R.D. 196 (E.D. Pa. 2008), aff'd, 639 F.3d 623 (3d Cir. 2011),*petition for rehearing and en banc denied* (June 24, 2011), and in prevailing on motions for summary judgment, 2010 WL 352086 (E.D. Pa. Sept. 3, 2010), and 2010 WL 3522090 (E.D. Pa. Sept. 3, 2010). Mike presented oral argument to the Third Circuit Court of Appeals and prevailed on an auditor defendant's challenges to market efficiency, loss causation and the adequacy of an institutional investor to be class representative based on its trading strategies and access to company management.

In re Safety-Kleen Corp. Rollins Shareholder Litigation, No. 3:00-1343-17 (D.S.C.). Mr. Karnuth was also instrumental in the firm's extensive representation of Rollins Environmental Services shareholders in a Section 14(a) proxy case, involving the reverse acquisition of Rollins by Laidlaw Environmental Services, Inc., predecessor of Safety Kleen Corp. The firm obtained a $3.15 million recovery for the class on the eve of trial, after overcoming numerous legal challenges. The class recovery represented a large percentage of the class's estimated damages in the case.

In re BankAmerica Corp. Sec. Litig., 228 F.Supp.2d 1061 (E.D. Mo. 2002). Mr. Karnuth assisted in the firm's role as Executive Committee Member of the BankAmerica shareholder class, which challenged the 1998 merger of BankAmerica and Nationsbank. His involvement included reviewing discovery, taking depositions and drafting pleadings. The claims of the BankAmerica class settled for over $160 million.

53. Mr. Karnuth also has extensive experience in consumer protection and other complex litigation. Representative cases and reported decisions include:

Empire Healthchoice Assur., Inc. v. McVeigh, 547 U.S. 677 (2006), where Mike filed an amicus brief in support of both respondents and the firm's pending certiorari petition on behalf of injured FEHBA-plan insureds, which prevailed in a 5 to 4 ruling that then led to the favorable Supreme Court decision in the firm's case of Cruz v. Blue Cross and Blue Shield of Illinois, 548 U.S. 901 (2006). On remand to the Seventh Circuit, Mike successfully argued that federal preemption and creation of federal common law should not trump state law, which ultimately resulted in the case settling for $1.5 million in the pending state court case and the class obtaining full recovery of their losses. *See* Blue Cross Blue Shield v. Cruz, 495 F.3d 510 (7th Cir. 2007). Other notable and reported decisions in this case that Mike was integral in achieving include Blue Cross Blue Shield of Illinois v. Cruz, 2003 WL 22715815 (N.D. Ill. Nov. 17, 2003) (dismissing Blue Cross's federal action attacking plaintiff's state court rights); Doyle v. Blue Cross Blue Shield of Illinois, 149 F.Supp.2d 427 (N.D. Ill. 2001) (remanding insured's complaint to state court); and obtaining class certification and summary judgment for the named plaintiff in the state court class action, despite numerous challenges including a brief and oral argument submitted by the U.S. Department of Justice advocating for federal law trumping plaintiff's state law claims. An illustration of his commitment and tenacity to class members' interests is shown in his further representation of a Blue Cross FEHBA-plan class member, a member of the military, who was denied a right to participate in the settlement because her claim form was submitted late. After a rigorous briefing and oral argument process, Mr. Karnuth prevailed in having her claim allowed, which resulted in an individual payment to her of over $30,000. See, March 23, 2011 Order allowing Taylor Claim.

Doyle v. Blue Cross Blue Shield of Illinois, 00 CH 14182 (Cir. Ct. Cook County, Ill., Chancery Division) (firm was co-counsel on behalf of ERISA-plan insureds and achieved a $6.95 million settlement and injunctive relief in 2004 for the class, representing near full recovery of estimated losses; case involved Blue Cross's alleged practice of liening against third-party recoveries obtained by their insureds in excess of what they were entitled to recover).

Primax Recoveries Inc. v. Sevilla, 324 F.3d 544 (7th Cir. 2003). Mr. Karnuth successfully argued to the Seventh Circuit that federal law did not preempt health insured's state law claims seeking application of Illinois' common fund doctrine to insurer's reimbursement lien asserted against insured's third-party recoveries, and that insurer's strategic waiver in state court barred its claims in federal court. *See also* Primax Recoveries, Inc. v. Sevilla, 2002 WL 58816 (N.D. Ill. Jan. 15, 2002) (granting motion to dismiss); Health Cost Controls v. Sevilla, 365 Ill.App.3d 795 (1st Dist. 2006) (reversing denial of class certification). In 2011, after 15 years of litigation, he was integral in the firm obtaining full recovery for the class, plus pre- and post-judgment interest, and attorneys' fees from the insurer.

LVNV Funding, Inc. v. Trice, 2011 Ill. App. (1st) 092,773 (Mr. Karnuth was integral in obtaining a modified decision which denied a debt collector's petition for rehearing of an order voiding a default judgment obtained by an unlicensed debt collector; and in having LVNV's petition for leave to appeal to the Illinois Supreme Court denied (Nov. 30, 2011)).

Citibank v. Busuioc, No. 09 CH 49196 (Cir. Ct. Cook County, Ill.) (Mr. Karnuth successfully and extensively briefed and argued a case brought on behalf of homeowners/borrowers who had a mortgage foreclosure pursued against them by an entity who purportedly acquired ownership of the loan through a fraudulent assignment prepared by Lender Processing Services and/or its

subsidiary DocX and who lacked standing to pursue the foreclosure; he prevailed on Citibank's motion to dismiss the case pursuant to Illinois' Citizens Participation Act and in getting the petition for leave to appeal voluntarily dismissed).

Stinette v. Fisher & Shapiro, et al., No. 09 CH 19758 (Cir. Ct. Cook County, Ill.) (Mr. Karnuth successfully briefed and argued objections to a competing class's proposed settlement on behalf of debtors against a debt collector brought in federal court solely seeking relatively nominal relief under the FDCPA, but which released all viable non-FDCPA claims.

Activities/Honors/Publications/Memberships

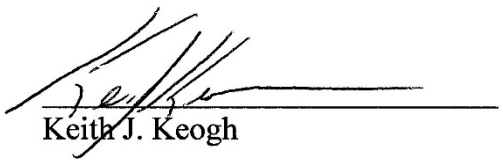
- September 2014 – article published in ISBA's Business & Securities Law Forum Newsletter titled "*Dodd-Frank provides incentives and enhanced protections to blow its new, shiny "whistle," but Sarbanes-Oxley's old whistleblower protections may have more luster in certain situations.*"
- November 2013 – article published in ISBA's Business & Securities Law Forum Newsletter titled "*Amgen eases securities fraud plaintiffs' burden at class certification, but the dissent invites challenges to the long-standing 'fraud-on-the-market' theory.*"
- 2012 – Speaker at the 7th Annual Illinois Public Employee Retirement Systems Summit on the topic of Securities Litigation (Identifying and Pursuing Recoverable Losses).
- 2010 – Speaker and Panelist at Chicago Bar Association Seminar “Defending Federal Securities Class Actions” (May 12, 2010)
- 2009 and 2008 – selected as an Illinois Rising Star by Super Lawyer's Magazine
- 2008 – Speaker and Panelist at Best Practices Forum regarding litigation against accounting firms (September 3, 2008)
- 2006 to Present – Pro bono attorney for the Center for Disability and Elder Law; volunteer attorney to low income, disabled and elderly individuals on various legal issues
- 2010 to Present – Pro bono attorney for Chicago Volunteer Legal Services; providing assistance to homeowners facing foreclosure
- Member of CBA, ISBA, ABA, AICPA and ICPAS; member of ISBA's Business & Securities Law Section (June 2012 to present).

Education

Mr. Karnuth earned his Juris Doctorate in December 1998, from Chicago-Kent College of Law where he graduated with Honors and received Merit Scholarships, was a Deans List recipient and received a CALI Award in Advanced Research – Securities. Mr. Karnuth interned

for the United States District Court Judge, Blanche Manning, of the Northern District of Illinois in Spring of 1998. In addition to obtaining his law degree, Mr. Karnuth is a Certified Public Accountant since 1991, where he passed the entire exam on his first try.

Executed at Chicago, Illinois, on December 1, 2017.



Keith J. Keogh