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

GEORGE MOORE, individually and on behalf of others similarly situated, Plaintiff,	)	Case No. 1:20-cv-07666
v.	)	Hon. Judge Matthew F. Kennelly
	)	Hon. Mag. Judge Gabriel A. Fuentes
TRIBUNE PUBLISHING COMPANY, Defendant.	)	

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff George Moore respectfully requests that the Court finally approve his class action settlement with Tribune Publishing Company ("Tribune") in this Telephone Consumer Protection Act, Do Not Call Registry case. Tribune has agreed to pay $1,700,000 to establish a non-reversionary settlement fund that will be distributed *pro rata* to settlement class members who do not opt out.

Individual notice via either email or United States Mail was sent to all available names and addresses for the telephone numbers referenced in the class definition, which accomplished a notice delivery "reach" of 97.17%. The reaction of the Settlement Class has been very positive: There have been zero objections, and three exclusions, plus one exclusion received from a non-class member. If the Court finally approves the settlement as proposed, each class member who did not opt out should receive approximately $31.44, which exceeds the $30 estimate provided in the class notice.

All of the factors that courts consider support granting final approval of the settlement. The relief provided by the settlement is significant, and the settlement terms are straightforward and raise no red flags. The settlement ensures that class members are compensated without delay and

eliminates the risk of loss on class certification, at trial, or on appeal. Class counsel fully support the settlement.

Plaintiff requests that the Court finally certify the settlement class, approve the settlement as fair, reasonable and adequate, and approve payment of attorney's fees and costs, a service award, and administrative fees.

I. BACKGROUND

A. Nature of the Case.

The Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, was enacted in response to widespread public outrage over the proliferation of intrusive, nuisance calling practices. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012). Relevant here, the TCPA prohibits initiating telephone solicitations to cellular or residential telephone numbers that are registered with the National Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2), (e). Exceptions exist, however, where for example the subscriber gave prior express invitation or permission for the calls, or where the violations were made in error despite compliant business practices. 47 C.F.R. § 64.1200(c)(2)(i)-(ii). Further, the TCPA defines "telephone solicitation" to exclude calls that occur subject to an established business relationship ("EBR")—i.e., where the calling occurs within 3 months of an inquiry or 18 months of a purchase or transaction by the subscriber. 47 C.F.R. §§ 64.1200(f)(5), (f)(15). The TCPA affords consumers a private right of action for damages and injunctive relief to consumers who incurred at least two such violations in a 12-month period. 47 U.S.C. § 227(c)(5).

Defendant Tribune is a large newspaper publisher. To increase subscriptions, Tribune used a third-party telemarketer, Customer Engagement Services, LLC ("CES"), to call former customers for purposes of trying to get them to renew their subscriptions. But while Tribune

provided CES with dates reflecting the last day of a purported EBR with each call recipient, sometimes this date reflected the end date of an unsolicited promotion of free newspapers, rather than the date the consumer terminated the relationship.[1]

Plaintiff's theory of the case is that Tribune's act of sending unsolicited newspapers to former customers does not constitute a "voluntary two-way communication" or a "purchase or transaction," and is therefore meaningless for purposes of EBR calculations. Tribune's and CES's records identify 28,412 unique phone numbers, including Plaintiff's, that, despite being on the National Do Not Call Registry, CES called on Tribune's behalf at least twice in a 12-month period after the 18-month EBR period had lapsed (i.e., the "Class List").

Plaintiff George Moore filed this lawsuit on December 22, 2020, after receiving repeated, unsolicited telemarketing calls for Tribune after he terminated the relationship and asked not to be called. Plaintiff's complaint alleges violations of the TCPA arising from telemarketing calls he and others received despite their phone numbers' registration with the National Do Not Call Registry, as well as for violations of the TCPA's internal do-not-call rules. Compl. ¶¶ 31, 40-58.

B. Notice and Claims.

American Legal Claim Services, LLC ("ALCS") substantially implemented the notice plan approved by the Court, resulting in an approximately 97.17% delivery rate. Exhibit A, Salhab Decl. at ¶13. Tribune's records contained 35,998 available names, valid emails and mailing addresses for the 28,412 phone numbers referenced in the class definition. Salhab Decl. at ¶ 6. ALCS first attempted to send notice by email to class members where there was a valid email address. Salhab Decl. at ¶¶8-9. ALCS then followed up with United States Mail for emails

[1] For example, although Plaintiff cancelled his Chicago Tribune subscription on September 23, 2018, CES continued calling him on Tribune's behalf outside of the permissible 18-months window, based on an unsolicited, free "sample" paper Tribune sent him on November 29, 2018.

addresses that did not report as delivered, and for records that did not have a valid email address. Salhab Decl. at ¶10.

In total, ALCS attempted email notice to a total of 6,110 unique email addresses. Email addresses that were associated with multiple names in Tribune's records received an email for each such name. Salhab Decl. at ¶ 8-9. Emails were successfully delivered to 5,819 of the 6,110 unique email addresses. *Id.* ALCS also sent notice by United States Mail to 29,569 addresses associated with phone numbers Tribune called, which did not have a valid email or for which all email attempts bounced back. Salhab Decl. at ¶¶10-12. Although ALCS took measures to resend notices to updated addresses, 1,688 of the 29,569 mailed notices were eventually determined to be undeliverable. Salhab Decl. at ¶12.

In total, 805 of the 28,412 phone numbers referenced in the class definition – 2.83% – did not receive individual notice. Salhab Decl. at ¶13. Said another way, notice was successfully delivered to individuals associated with 97.17% of the phone numbers referenced in the settlement class definition. Although the parties had originally anticipated notice being sent by *both* email and United States Mail to *all* available addresses, the process that ALCS used had a fantastic result, which easily exceeds minimum due process requirements. *See In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 603 (N.D. Ill. 2016) (citing Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide at 3 (Federal Judicial Center 2010), for finding notice reaching "70% to 95% to be reasonable").

In addition to individual notice, and in accordance with the terms set forth in the settlement agreement, ALCS established a website at www.tribunetcpasettlement.com, that contained settlement information and related documents. Salhab Decl. at ¶14. The website allowed for Class Members to view frequently asked questions, and view and download the Settlement Agreement,

Preliminary Approval Order, Fee Petition and the long form notice. *Id*. The long form notice and frequently asked questions were also posted and downloadable in Spanish. *Id*. ALCS also established a dedicated toll-free phone number to provide answers to Class Member frequently asked questions ("FAQs"). Salhab Decl. at ¶15.

The deadline for Settlement Class Members to exclude themselves or object was February 7, 2022. Dkt. 45 at ¶ 10. In all, ALC received 4 exclusions (one of which was submitted by a non-class member) and 0 objections. Salhab Decl. at ¶¶ 16-17. Moreover, ALCS now estimates its total fee will be $65,000, rather than its originally-projected $70,000. Salhab Decl. at ¶¶ 16-17.

II. AUTHORITY AND ARGUMENT

A district court may approve a proposed settlement of a class action only after it directs notice in a reasonable manner to all class members who would be bound and finds, after a hearing, that the proposed settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2). In making the latter determination, courts in this circuit consider the following factors: "(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) the stage of the proceedings and the amount of discovery completed.... The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863–64 (7th Cir. 2014) (internal quotation marks and citations omitted). Rule 23(e)(2) also includes a list of points a court must consider in determining that a proposed class settlement is fair, reasonable, and adequate, including whether:

- the class representatives and class counsel have adequately represented the class;

- the proposal was negotiated at arm's length;
- the relief provided by the settlement is adequate, taking into consideration the costs, risks, and delay of trial and appeal; the effectiveness of the proposed method of distributing relief; the terms of any proposed award of attorneys' fees; any agreements made in connection with the proposed settlement.
- it treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2)(A)-(D).

A. The Settlement should be approved as fair, reasonable, and adequate.

1. Fed. R. Civ. P. 23(e)(2)(A): Plaintiff and Class Counsel have Adequately Represented the Settlement Class and Support the Settlement.

In granting preliminary approval of the settlement, the Court preliminarily found Plaintiff George Moore appeared to be an adequate class representative. Mr. Moore committed significant time to this case through active participation, including by gathering information and materials, responding to discovery requests, staying apprised of the proceedings, and considering and ultimately entering into the settlement. Exhibit B, Burke Decl. at ¶17. There is no indication that Plaintiff has a conflict with any Class Member; his interests in obtaining redress for Tribune's TCPA violations are fully aligned with the Class.

Additionally, class counsel, who have a good deal of experience litigating and settling TCPA class action cases, Burke Decl. at ¶ 6, wholeheartedly support the settlement. Burke Decl. ¶17; *see Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) ("[T]he district court was entitled to give consideration to the opinion of competent counsel that the settlement was fair, reasonable and adequate."). These considerations support approval.

2. Fed. R. Civ. P. 23(e)(2)(B): The Settlement was Negotiated at Arm's Length.

The settlement was negotiated at arm's length. The parties sparred as to the merits of the case through multiple heated conferrals, and began settlement discussions in a professional but highly adversarial manner among themselves. When those discussions failed, the parties attended a full-day mediation with JAMS mediator, Morton Denlow, where they were finally able to agree on material terms. "A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 McLaughlin on Class Actions, § 6:7 (8th ed. 2011).

The parties have no side agreements, and there is no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and no other terms that should raise any red flags. Burke Decl. at ¶16; *Wong*, 773 F.3d at 864 (settlement approved absent "suspicious circumstances"). This factor supports approval.

3. Fed. R. Civ. P. 23(e)(2)(C): <u>The relief provided to the Settlement Class is adequate.</u>

a. *Further litigation would have been complex, lengthy, and expensive*.

While Plaintiff believes he would ultimately prevail in this action, Tribune asserts several potentially case-dispositive defenses that pose considerable risk. For example, Tribune contends that it is not liable for violations by its vendor, CES, and that Plaintiff would be unable to establish vicarious liability on an adversarial basis. Tribune also thinks that, on an adversarial basis, it would be able to poke holes into Plaintiff's adequacy or typicality, based on Plaintiff recording some of the illegal calls at issue in alleged violation of CES's privacy rights, and that CES continued to call him despite a do-not-call request notwithstanding Tribune's TCPA policies to the contrary. Tribune also contends that Plaintiff would be unable to certify a non-settlement class due to purported manageability issues in identifying class members and individualized inquiries based on consent, EBR, and identifying cellular or residential landline numbers applicable to a do-not-call claim. Plaintiff could, in the end, simply lose if the Court were to find the TCPA's catch-all

defense that the defendant had "reasonable practices and procedures" applicable. 47 U.S.C. § 227(c)(5). Relatedly, Tribune would argue to the jury that it should award damages on the low end of the $0-$500 spectrum for claims brought pursuant to 47 U.S.C. § 227(c)(5), which provides for damages of "up to" $500 available for each violation.

Although Plaintiff feels confident he would prevail, success at class certification, summary judgment, or trial is far from certain. Litigation would continue to be lengthy and expensive if this action were to proceed. Although the Parties have conducted discovery applicable to the settlement class, absent approval of the Parties' Settlement, substantial additional work—including further adversarial class and merits discovery, class certification briefing, summary judgment briefing, and trial—would remain. A Rule 23(f) appeal would almost certainly follow any adversarial certification ruling, which would further delay any judgment in favor of the class. Absent settlement, this case could conceivably drag on for another year or more, all without any guarantee that the class will obtain *any* recovery at all. The settlement avoids these risks and provides immediate and certain relief. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.").[2]

Further, even if Plaintiff were ultimately successful at trial, at least some courts view awards of aggregate statutory damages with skepticism, and there is a real risk that any such award could be reduced on due process grounds, either in this Court or on appeal. *Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 963 (8th Cir. 2019) (affirming District Court's reduction of jury's $1.6 billion class damages verdict in class TCPA case to $10 per call, or $32,424,930).

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[2] *See McCue v. MB Fin., Inc.*, 2015 WL 4522564, at *4 (N.D. Ill. July 23, 2015) (noting courts "encourage parties to settle class actions early, without expending unnecessary resources," and citing *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *5 (S.D.N.Y. Oct. 2, 2013), for finding "early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere").

Given the costs, risks, and delay of further litigation, the settlement is reasonable. *See Gulbankian v. MW Mfrs., Inc.*, 2014 WL 7384075, at *3 (D. Mass. Dec. 29, 2014) ("Plaintiffs face difficult issues of proof, including maintenance of class status throughout trial, despite substantial individualized ... issues that would be raised at trial in defense.... Settlement thus avoids substantial risks and costs for both sides, giving a certain positive outcome in the face of a costly and uncertain one."); *Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982) (noting that the plaintiffs faced a "myriad of factual and legal problems" that led to "great uncertainty as to the fact and amount of damage," which made it "unwise [for the plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial"). This factor also supports approval.

b. *The Proposed Distribution of Funds is Effective.*

The settlement calls for issuing a check to each individual associated with a phone number on the class list who does not exclude themself; no claim form is necessary. Money left over from uncashed checks will be redistributed in subsequent rounds of check-issuances to the class members in the previous round who deposited their recoveries, until checks become so small that it is administratively infeasible to perform additional distributions. Dkt. 39-1 at ¶ 4.3.5. Only after direct distributions to class members become infeasible will funds be provided as *cy pres* to the National Consumer Law Center, or other non-profit the Court orders. *Id*.

c. *The Requested Attorney's Fees are Reasonable.*

Fed.R.Civ.P. 23(e)(2)(C)(iii) requires the Court to consider "the terms of any proposed award of attorney's fees, including timing of payment." At preliminary approval, the Court considered the projected fee and found that – at least at the preliminary approval stage – the request seemed reasonable. Since then, class counsel filed a formal Motion for Attorney's Fees, Expenses, and Incentive Award, which explains in detail why the Court should award one-third of

the gross settlement, or $566,666.66, in fees. Dkt. 46. Class counsel timely and publicly filed their fee petition on January 7, 2022, one month before the February 7, 2022, objection and exclusion deadline, and posted the document on the settlement website. This process ensured that the class members were afforded ample opportunity to review the fee request and voice any concerns.

Timing for payment of fees under the settlement raises no red flags, either. The settlement calls for Tribune to fund the entire settlement within five days when the settlement becomes final, Dkt. 39-1 at ¶4.3.2, and specifies that the class must be paid within 45 days of when the settlement becomes final, Dkt. 39-1 at ¶13.3. Attorney's fees and any service award, however, are not required to be paid until 60 days after the settlement becomes final. Dkt. 39-1 at ¶¶ 14.1.1; 14.1.2.

d. *No Side Agreements.*

Fed.R.Civ.P. 23(e)(2)(C)(iv) and 23(e)(3), require that the parties identify any "agreement made in connection with the proposal." Here, all agreements among the parties are embodied in the formal settlement agreement that has already been presented to the Court. Dkt. 39-1. There are no side agreements to disclose. Burke Decl. at ¶ 17. This factor supports approval.

e. *The reaction of the Settlement Class was overwhelmingly positive.*

No class member has objected to the Settlement, no attorney general or other government agency has contacted Plaintiff's counsel or the administrator with regard to the settlement or CAFA notice and only three class members have requested exclusion. This positive response to the settlement by the class further supports final approval. *See, e.g., In re Sw. Airlines Voucher Litig.*, No. 11 C 8176, 2013 WL 4510197, at *7 (N.D. Ill. Aug. 26, 2013), *aff'd as modified*, 799 F.3d 701 (7th Cir. 2015) (less than 0.01% objecting or opting out supports reasonableness of settlement); *In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (holding that the fact

that more than "99.9% of class members have neither opted out nor filed objections ... is strong circumstantial evidence in favor of the settlement").

f. *The extent of discovery completed and stage of proceedings favor approval*.

The Parties entered into the settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with continued litigation. Before mediating, the Parties exchanged first-party discovery, Tribune agreed to submit additional information identifying the extent and nature of the calling at issue, and the Parties exchanged pre-mediation briefs presenting the strengths and weaknesses of their respective positions. Burke Decl. at ¶¶ 15-16. Tribune also submitted to confirmatory discovery, and agreed to a "true up" of the settlement fund amount in the event additional Class Members were identified. *Id.* at ¶ 16.

As such, the Parties conducted enough discovery to be able to determine the probability of their success on the merits, the possible range of recovery, and the likely expense and duration of the litigation before negotiating the settlement. *See In re TikTok, Inc., Consumer Priv. Litig.*, 2021 WL 4478403, at *9 (N.D. Ill. Sept. 30, 2021) (noting presumption in several circuits "that a class action settlement reached through 'arm's-length negotiations between experienced, capable counsel after meaningful discovery' is fair, reasonable, and adequate") (citing cases).

g. *Strength of the case compared with the settlement offer*.

"The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong*, 773 F.3d at 863–64 (citation omitted). First, the settlement recovery runs on the very high end of the market spectrum for TCPA cases. For example, *Snyder v. Ocwen Loan Servicing, LLC*, No. 1:14-cv-08461 (N.D. Ill.), had a $21.5 million TCPA class settlement that afforded monetary relief on a per-claim basis. The claim rate in *Snyder* was approximately 16%, and each claimant

ultimately received around $70 per claim. *Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at *7 (N.D. Ill. May 14, 2019). If the parties had structured this settlement to require claim submissions like *Ocwen* did, with a 16% claim rate and 33⅓% attorney's fees, claimants would receive approximately $230 apiece. Indeed, the proposed claimant recovery here of about $31 is in line with many other TCPA cases that *did* require claim form submissions. *See, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) ($34.60 per claimant); *Kolinek*, 311 F.R.D. at 494 (roughly $30 per claimant); *Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at *8 (N.D. Ill. Oct. 28, 2019) ($22.17 per claim); *Rose v. Bank of Am. Corp.*, No. 11 Civ. 02390, 12 Civ. 04009, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (discussing range of acceptable TCPA settlements and approving settlement that paid $20 to $40 per claimant). As "[t]his Court has noted previously, valuing hypothetical continued litigation is necessarily somewhat speculative and not an exact science." *Aranda*, 2017 WL 818854, at *3 (citing *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015).

Moreover, cases brought under the Do Not Call Registry rules enjoy a less-concrete damages provision than the above comparables brought pursuant the TCPA's autodialer / prerecorded message-to-cell provisions. While autodialer/prerecorded message-to-cell cases command an *automatic minimum* of $500 in damages per violation, 47 U.S.C. §227(b)(3), a Do Not Call Registry claim is worth "up to $500 in damages for each" violation. 47 U.S.C. §227(c)(5). This difference is material: juries have awarded less than the maximum damages per violation in even the most egregious Do Not Call Registry cases. *Krakauer v. Dish Network, LLC*, 925 F.3d 643, 651 (4th Cir. 2019) (jury awarded $400 per call in Do Not Call Registry case, which the Court trebled[3]).

[3] Treble damages are available under both sections 227(b)(3) and 227(c)(5), which means this comparison remains apples-to-apples even though the judge in the *Krakauer* case ordered treble damages.

Here, the amount offered to the class is substantial given the risks in proceeding through class certification and to trial. Among other risks, Tribune would have argued that Plaintiff was unlike other class members because, although Tribune applied the contested EBR timing to his account, Plaintiff additionally demanded that calls cease. Tribune also would have argued that determining who was in the class was individualized issue that requires a customer-by-customer analysis. Next, Plaintiff risked losing on the merits on his claims if the Court found that Tribune's EBR calculation complied with the TCPA, or that Tribune should not be held vicariously liable for calls made by its vendor, CES. *See Aranda v. Carribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 818854, at *3 (N.D. Ill. Mar. 2, 2017), *aff'd but criticized sub nom. Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792 (7th Cir. 2018) (granting final approval where "a key issue at trial would be the factually and legally complicated question of whether [defendants] could be held vicariously liable for the calls…."). The settlement avoids all these risks.

4. Fed. R. Civ. P. 23(e)(2)(D): <u>The Settlement Class Members are Treated Equitably</u>.

The settlement treats all class members the same. Each of the class members that did not opt out is entitled to the same amount of money. Moreover, class members were not required to submit any claim form at all. The equal distribution to all class members who filed valid claims "is reasonably equitable" and favors approval. *Snyder*, 2019 WL 2103379, at *5 (even if some class members received more unwanted calls than others, the ability to opt out provides a safety valve). For all of these reasons, Plaintiff respectfully requests that the Court approve the settlement as fair, reasonable, and adequate.

B. The Settlement Class should be finally certified for settlement purposes.

The Court conditionally certified the settlement class for settlement purposes when it granted preliminary approval of the Settlement. Dkt. 45 at ¶ 6. The Court concluded that the Settlement Class satisfies numerosity because it includes persons associated with the 28,412 phone

numbers CES called on Tribune's behalf. *Id*. at ¶¶ 5-6. Commonality is satisfied because whether Tribune's EBR calculations were correct, and whether Tribune should be held vicariously liable for calls made by CES is a common question. Typicality is satisfied because Plaintiff's and the class members' claims arise from the same course of alleged conduct. And the settlement class satisfies adequacy because Plaintiff does not have any conflicts with settlement class members, has demonstrated his commitment to the settlement class, and has retained qualified counsel. Predominance is satisfied because the central (and common) issue is whether Tribune's EBR policy comports with the TCPA, 47 C.F.R. § 64.1200(c) & (f)(4). Superiority is satisfied because resolution of thousands of the relatively small-value claims in this one action is far preferable to a multitude of individual lawsuits and promotes consistency and efficiency of adjudication. For these reasons, the Court should finally certify the settlement class for settlement purposes.

C. The notice program complied with Rule 23 and due process.

The notice program implemented by ALCS satisfied the requirements of Rule 23 and due process. Rule 23 provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). The notice must be the "best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). To comply with constitutional due process standards, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950).

Individual notice is the gold standard for class action settlements, and must be used if feasible. Fed.R.Civ.P. 23(c)(2)(B); *Hughes v. Kore of Indiana Enterprise, Inc.*, 731 F.3d 672, 676 (7th Cir. 2013). The individual notice plan here was sent to class members via email or United

States Mail, and was successful in reaching 97% of the class. This notice was thus was "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" and described "the action and the plaintiffs' rights in it." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)).

The notices were written in plain language and available on the settlement website in both English and Spanish, and included the dates for class members to respond and the final approval hearing. Salhab Decl. at ¶15; Dkt. 39-1 at ECF pp. 32 (mailed notice), 36 (email notice) and 39 (long form notice). Additionally, the website address was printed on all notices. *Id*. Located at www.tribunetcpasettlement.com, the website lists important dates—including the new dates to submit claims, objections, and exclusion requests and for the final approval hearing—and settlement class members' rights and options, includes frequently asked questions and key documents from the case like the settlement agreement and motion for attorneys' fees. Salhab Decl. at ¶15. The website (and notices) also provided a toll-free number that class members could call to reach an automated phone system with recorded answers to frequently asked questions. Salhab Decl. at ¶14.

Again, this notice campaign was highly successful, having reached 97.17% of the class through individual notice. The fact that notice thus comports with both Rule 23 and Due Process also supports entry of final approval.

II. CONCLUSION

WHEREFORE, Plaintiff and class counsel respectfully requests that the Court finally certify the settlement class, grant class counsel's Motion for Attorney's Fees and Costs and Service Award, and finally approve this Settlement as fair, reasonable, and adequate.

A proposed order finally approving the settlement and granting the fee petition is attached as Exhibit C, and a proposed final judgment is attached as Exhibit D. These documents will also be

emailed to the Court's proposed order inbox.

Respectfully submitted,

/s/Alexander H. Burke

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

GEORGE MOORE, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	Case No. 1:20-cv-07666
-v-	)	
TRIBUNE PUBLISHING COMPANY,	)	
Defendant.	)	

DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC
DUE DILIGENCE IN SETTLEMENT ADMINISTRATION

I, Keith Salhab, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.

2. I am Director of Operations at American Legal Claim Services, LLC ("ALCS"). ALCS was appointed by the Court to serve as the Settlement Administrator in the above-captioned matter and administer the terms of the Settlement Agreement. I was principally responsible for overseeing the dissemination of notice to the Class (the "Class Notice"); processing requests for exclusion; and processing requests for objection. Upon final approval, ALCS will be principally responsible for distributing the Settlement Funds.

CAFA Notice

3. On December 1, 2021, ALCS mailed, via certified mail, a Notice of Proposed Class Action Settlement pursuant to 28 U.S.C. § 1715 (the "CAFA Notice") to the Attorneys General of the 50 states and the territory of Puerto Rico, the Attorney General of the United States, the District of Columbia's Corporate Counsel, the Attorney General for Guam, the Attorney General for American Samoa, the Attorney General for the United States Virgin Islands, and the Attorney General for the Northern Mariana Islands. The CAFA Notice package contained a cover letter on behalf of the Defendant Tribune Publishing Company, as well as a CD-ROM that included the following exhibits: (1) Class Action Complaint; (2) Answer to Class Action Complaint; (3) Settlement Agreement; (4) Unopposed Motion for Preliminary Approval of Class Action Settlement; (5) Estimated Class List; and (6) Preliminary Approval Order.

4. As of the date of this declaration, ALCS has not received any objections from any government agency regarding the Settlement and is not aware of any objections by these agencies filed with the Court.

Data Preparation & Analysis

5. Counsel for Defendant provided ALCS with (1) a Microsoft Excel file containing 28,412 phone numbers ("Class List"), and (2) a Microsoft Excel file containing the 28,412 phone numbers associated with 40,860 records containing contact information, where available, related to the 28,412 telephone numbers. In review of the files, ALCS identified 111 phone number missing contact information. For 111 phone numbers missing contact information to send notice, ALCS performed a reverse append to supplement this missing information. While creating the mailing list, ALCS identified duplicative records based on phone number, exact name, and address.

6. ALCS removed any exact duplicate records from the mailing list, which resulted in a final mailing list that contained 35,998 records associated with the 28,412 telephone numbers. These 35,998 records are referred to hereinafter as the "Notice Records".

7. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate addresses. These methods included National Change of Address through the United States Postal Service ("USPS"), skip-tracing, and manual updates from class members and class counsel.

Email Notice Campaign

8. ALCS analyzed any email address in the Notice Records to determine which emails had a high probability of delivery and to eliminate any invalid or deficient emails that would adversely affect the email campaign. This process included three stages: (1) a syntax check, (2) domain check and (3) toxic email check. The syntax check verifies that an email address is spelled correctly, has no spaces, commas, and all the @s, dots and domain extensions are in the right place. The domain check validates that the domain name associated with the email address where hosted exists, is registered and working properly. The toxic email check analyzes the emails for spam traps, complainers, and other variables that would negatively impact the overall deliverability of the campaign. ALCS processed the email addresses received from Tribune through this validation process, which resulted in 6,110 valid email addresses to be sent Email Notice.

9. On December 23, 2021, ALCS sent the court-approved Class Notice via email to those 6,110 validated email addresses. Email addresses within this population that were associated with more than one name in Tribune's records, were sent one email per name. At least one email was reported delivered for 5,819 of the 6,110 email addresses.

USPS Campaign

10. For any phone numbers on the Class List where a Notice Record's email was not available or the Class Notice email bounced back, Class Notice was sent via USPS first class mail.

11. ALCS processed the mail returned by the USPS. Any Class Notice returned to ALCS as non-delivered that contained a forwarding address was re-mailed to that forwarding address. If the returned mail did not contain forwarding information from the USPS, ALCS utilized a nationally recognized address locator service to search for a current address for the Class Member and promptly re-mailed Class Notices. when updated current addresses were identified through the date of the response deadline of February 7. 2022. If an updated address was not identified for a returned Class Notice, the Class Notice was not re-mailed and was deemed undeliverable. If a re-mailed package was returned by the USPS a second time, it was not re-mailed a third time and was deemed undeliverable.

12. ALCS sent a total of 29,568 notices by USPS, and 1,688 were returned undeliverable.

Notice Campaign Summary

13. The following is a summary of notice campaign as of the date of this declaration, with reference to the 28,412 telephone numbers referenced in the class definition. As indicated above, there were multiple names and addresses associated with several thousand of these phone numbers. This table counts notice as having been completed if one or more notices were delivered to an address associated with any one of those 28,412 telephone numbers.

Description	Volume (#)	Percentage of Class Members
Total Number of Telephone Numbers (each telephone phone number is referred to herein as a "Class Member")	28,412	100.00%
Both Email and Mailed Notice Delivered	1,601	5.63%
Email Only Delivered	4,296	15.12%
Mailed Notice Only Delivered	21,710	76.41%
Total Class Members to Whom Individual Notice was Delivered	**27,607**	**97.17%**
Class Members who did not receive individual notice.[1]	805	2.83%

After the notice campaign was completed, ALCS performed another round of deduping to prevent multiple settlement checks from going to the same person. For example, records were consolidated if there were two records with the same last name, same address and same phone number, one with the first name "Margaret" and another with first name "Peggy." This resulted in a final list of 33,103 class members who whould receive settlement checks.

Telephonic Assistance Program

14. On or before December 23, 2021, ALCS established a dedicated toll-free phone number to provide answers to frequently asked questions ("FAQs"). This toll-free line is still active.

Website

15. In addition to individual notice, and accordance with the terms set forth in the Settlement Agreement, on or before December 23, 2021, ALCS established a website at (www.tribunetcpasettlement.com), that contained settlement information and related documents. The website allowed for Class Members to view frequently asked questions, and view and download the Settlement Agreement, Preliminary Approval Order, Fee Petition and the long form notice. The long form notice and frequently asked questions were also posted in Spanish.

Exclusions

16. The Class Notice informed Class Members that they could exclude themselves from the settlement by sending a letter meeting specific requirements, via mail or email, postmarked no later

[1] ALCS continues to receive and process mail, for which no forwarding address is available. The number of pieces of this type of mail will likely increase and the presumed delivery rate will be reduced as processing continues.

than February 7, 2022. As of the date of this declaration, ALCS has received 3 valid Requests for Exclusion and 1 invalid Request for Exclusion that was submitted by a non-Class Member. The Class Members who requested to be removed from the Settlement is (1) BARBARA BOPP, (2) DAVID E BOPP, and (3) BERNADINE MUDRA. The non-Class Member who requested to be removed from the Settlement is (4) MARY NASSAR.

Objections

17. The Class Notice informed Class Members that if they wished to object to the Agreement they must provide a written statement, postmarked no later than February 7, 2022, and file the objection with the Court. As the date of this declaration, ALCS has not received any objections relating to the settlement and is not aware of any objection filed with Counsel or by the Court.

Settlement Administration Costs

18. As of the date of this declaration, administration costs and fees are $33,299.00, consisting of printing and postage costs, the cost of disseminating email notice, data processing, providing telephone support and administrating the settlement website. I anticipate the remaining administration costs to be $31,701.00, for a total estimated administration expense of $65,000.00. If there is a legitimate reason that administration costs are expected to exceed $65,000.00, ALCS will notify the Parties of the projected overage in advance of incurring the additional costs.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on March 3, 2022 at Jacksonville, Florida.

Keith Salhab

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

GEORGE MOORE, individually and on behalf of others similarly situated, Plaintiff,	)	Case No. 1:20-cv-07666
v.	)	
TRIBUNE PUBLISHING COMPANY, Defendant.	)	Hon. Judge Matthew F. Kennelly Hon. Mag. Judge Gabriel A. Fuentes

DECLARATION OF ALEXANDER H. BURKE
IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, Alexander H. Burke, hereby declare as follows:

1. I am the manager and owner of Burke Law Offices, LLC. I have been appointed class counsel for the settlement in this matter, and I submit this declaration in support of final approval of the class action settlement in this case. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I opened Burke Law Offices, LLC in September 2008. The firm concentrates on consumer class action and consumer work on the plaintiff side. Since the firm began, it has focused on prosecuting cases pursuant to the Telephone Consumer Protection Act, although the firm accepts the occasional action pursuant to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, Electronic Funds Transfer Act, Illinois Consumer Fraud Act, Truth in Lending Act and the Fair Labor Standards Act, among others. The firm also sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis.

3. I have been regularly asked to speak regarding TCPA issues, on the national level. For example, I conducted a one-hour CLE on prosecuting TCPA autodialer and Do Not Call claims pursuant to the Telephone Consumer Protection Act for the National Association of Consumer Advocates in summer 2012, and spoke on similar subjects at the annual National Consumer Law Center ("NCLC") national conferences in 2012, 2013, 2014, 2015, 2016, 2017 and 2018. I also spoke at a National Association of Consumer Advocates conference regarding TCPA issues in March 2015, and in May 2016, I spoke on a panel concerning TCPA issues at the 2016 Practicing Law Institute Consumer Financial Services meeting in Chicago, Illinois.

4. I also am actively engaged in policymaking as to TCPA issues, and have had *ex parte* meetings with various decision makers and staffers at the Federal Communications Commission.

5. I make substantial efforts to remain current on the law, including class action issues. I attended the National Consumer Law Center's Consumer Rights Litigation Conference in 2006 through 2021 (not including 2020), and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013, 2017 and 2018. In October 2009, I spoke on a panel of consumer class action attorneys welcoming newcomers to the conference. In addition to regularly attending Chicago Bar Association meetings and events, I was the vice-chair of the Chicago Bar Association's consumer protection section in 2009 and the chair in 2010. In November 2009, I moderated a panel of judges and attorneys discussing recent events and decisions concerning arbitration of consumer claims and class action bans in consumer contracts.

6. My efforts have yielded hundreds of millions of dollars for consumers' benefit. Some notable TCPA class actions and other cases that my firm has worked on include: *Hossfeld*

v. Allstate Insurance Company, 2021 WL 4819498 (N.D.Ill. Oct. 15, 2021) (compelling defendant's internal do not call list); *Marshall v. Grubhub Inc.*, 2021 WL 4401496, at *1 (N.D.Ill. Sept. 27, 2021) (motion to dismiss and strike class allegations denied in TCPA robocall case); *Bilek v. Federal Insurance Company*, 8 F.4th 581 (7th Cir. 2021) (reversing dismissal in a case of first impression, holding that allegations of agency may support personal jurisdiction); *Kyle v. Charter Commc'ns, Inc.*, 2020 WL 2028269 (W.D. Mo. Apr. 27, 2020) (motion to dismiss or stay TCPA case denied); *Gurzi v. Penn Credit, Corp.*, 2020 WL 1501893 (M.D. Fla. Mar. 30, 2020) (finding VoApps calls to be covered by the TCPA); *Hoagland v. Axos Bank*, 2020 WL 583974 (S.D. Cal. Feb. 6, 2020) (motion to dismiss or stay TCPA case denied); *Charvat v. Valente*, 2019 WL 5576932 (N.D. Ill. Oct. 28, 2019) ($12.5M TCPA settlement finally approved); *Brown v. DirecTV, LLC*, 2019 WL 6604879 (C.D. Cal. Aug. 5, 2019) (certifying TCPA litigation class), *class summary judgment on liability entered*, __ F.Supp.3d__, 2021 WL 5755044 (C.D.Cal. Dec. 1, 2021); *Leeb v. Charter Commc'ns, Inc.*, 2019 WL 1472587 (E.D. Mo. Apr. 3, 2019) (appointing Burke Law Offices as Fed.R.Civ.P. 23(g) interim lead class counsel), *earlier decision* 2019 WL 144132 (Jan. 19, 2019) (compelling class data in TCPA case); *Brown v. DirecTV, LLC*, 2019 WL 1434669, at *1 (C.D. Cal. Mar. 29, 2019) (granting class certification in TCPA case, appointing Burke Law Offices as class counsel); *Rodriguez v. Premier Bankcard, LLC*, No. 3:16-cv-02541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (defense summary judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, No. 1:17-cv-00335, 2018 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first impression, holding that "direct drop" voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*, No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying motion to dismiss on statutory standing grounds); *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 573 (N.D. Ill. 2018)

(certifying contested telemarketing TCPA class); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D.Ga.) (final approval granted for $16M class settlement where I was lead counsel); *Tillman v. The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016) (motion to compel TCPA class case into arbitration denied); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016); (motion to compel arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No. 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction motion denied); *Bell v. PNC Bank, Nat'. Ass'n.*, 800 F.3d 360 (7th Cir. 2015) (class certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting plaintiff's motion to compel vicarious liability/agency discovery in TCPA case); *Lees v. Anthem Ins. Cos. Inc.*, 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA case on primary jurisdiction grounds); *In re Capital One TCPA Litig.*, No. 11-5886, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc.*, 2015 WL

897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for $4.5 million nonreversionary TCPA settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge TCPA vicarious liability case); *Markovic v. Appriss, Inc*., 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc*., 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (Denlow, J.) (certifying litigation class and appointing me as class counsel) (final approval granted for $7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for $15 million TCPA class settlement granted); *Martin v. CCH, Inc*., No. 1:10-cv-3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for $2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co*., 2011 WL 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*,

2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for $800,000 TCPA settlement in autodialer case against debt collection agency); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975 (N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

7. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp., C.A.* No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action

settlement, and resulting in a $12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification granted); *Nichols v. Northland Groups, Inc.*, Nos. 05 C 2701, 05 C 5523, 06 C 43, 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification granted for concurrent classes against same defendant for ongoing violations); *Lucas v. GC Services, L.P.*, No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004) (compelling discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186, 2005 WL 1323364 (N.D. Ill. May 5, 2006) (Report and Recommendation granting class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy Receivables, Inc.*, No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying motion to dismiss in class case against debt collector for suing on time-barred debts).

8. I graduated from Colgate University in 1997 (B.A. Int'l Relations), and from Loyola University Chicago School of Law in 2003 (J.D.). During law school I served as an extern to the Honorable Robert W. Gettleman of the District Court for the Northern District of Illinois, and as a law clerk for the Honorable Nancy Jo Arnold, Chancery Division, Circuit Court of Cook County. I also served as an extern for the United States Attorney for the Northern District of Illinois, and was a research assistant to adjunct professor Hon. Michael J. Howlett, Jr.

9. I was the Feature Articles Editor of the Loyola Consumer Law Review and Executive Editor of the International Law Forum. My published work includes International Harvesting on the Internet: A Consumer's Perspective on 2001 Proposed Legislation Restricting the Use of Cookies and Information Sharing, 14 Loy. Consumer L. Rev. 125 (2002).

10. I became licensed to practice law in the State of Illinois in 2003 and the State of Wisconsin in March 2011, and am a member of the bar of the United States Court of Appeals for the First, Second, Seventh, Eighth, and Eleventh Circuits, as well as the Northern, Central, and Southern Districts of Illinois, Eastern and Western Districts of Wisconsin, Northern and Southern Districts of Indiana, the District of Nebraska, Western District of New York, Eastern District of Missouri, and District of Colorado. I am also a member of the Illinois State Bar Association, the Chicago Bar Association, the Seventh Circuit Bar Association, and the American Bar Association, as well as the National Association of Consumer Advocates

11. The firm has one associate, Daniel J. Marovitch. Mr. Marovitch is a 2010 graduate of Loyola University Chicago School of Law, and is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois and District of Colorado, and the Seventh Circuit Court of Appeals.

12. When Burke Law Offices, LLC loses cases, my firm takes in no money whatsoever, regardless of how hard I worked and regardless of how much money I spent on depositions, experts and other out-of-pocket costs. This happens. For example, I lost *Greene v. DirecTV, Inc.*, 2010 WL 4628734 (N.D. Ill. 2010), *Elkins v. Medco Health Solutions, Inc.*, 2014 WL 1663406 (E.D. Mo. Apr. 25, 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each hard-fought litigations that I took on a contingency basis. My firm put substantial time and money into these; resources that could have been allocated to other cases, and which hit hard given the firm's small size and finite resources. I believed that the plaintiff/class would prevail in these cases when I accepted them for representation, but in the end I was incorrect. As with other lawyers, sometimes I think I should have won cases or motions that I eventually lose. The difference is that while most lawyers (including my

adversaries) receive remuneration regardless of whether they win or lose, I do not. These are not the only cases I have lost, but they illustrate the risks associated with this kind of contingency practice.

13. The contracts I typically draft and negotiate with my clients, including Plaintiff Moore here, call for the client to pay, on a contingency basis, 40% of the total amount of any judgment or settlement in fees after costs had been deducted. When the firm began taking TCPA cases, its agreement with clients called for fees in the amount of one-third after expenses. However, because I had focused on TCPA cases for quite some time and believed the market would bear such, in around 2011, I raised my contingency fee to 40%, after expenses. I have not had any potential clients balk a 40% fee—indeed, even former clients who returned with new cases agreed to this higher fee; ostensibly because they believed I deserved such. Based upon conversations with other TCPA lawyers in Chicago and around the country, I am confident that the market rate for plaintiff contingency representation for this kind of case is between one-third and 40%.

14. My firm pursued this case on an entirely contingent-fee basis, devoting time and resources without any guarantee of payment. Indeed, we took on considerable risk of non-payment, especially where we took on this case without knowing the extent and scope of the calling at issue for Plaintiff and others like him, and (based on past experience) anticipating discovery disputes and heavy data work that proved to be the case. We also assumed the risk that the Court might ultimately decline to certify a class in this case based on perceived individualized issues in relation to anticipated consent, established business relationship, or other defenses, or that Plaintiff might ultimately lose on the merits, whether due to being unable to

establish Tribune's vicarious liability for the violative calls, because the Court found policies sufficient to avoid liability under 47 U.S.C. § 227(c)(5)'s "due care" exception, or otherwise.

15. My firm zealously advocated on behalf of the Class in this case. We engaged in pre-suit investigation and, after filing, pursued extensive discovery from Tribune and applicable third parties. We worked with Plaintiff Moore to respond to Tribune's discovery requests, successfully defended against a motion to compel filed by Tribune in all but "one limited respect," Dkt. 32, Tr. p. 4, and briefed Plaintiff's own motion to compel discovery from Tribune. In addition to written discovery responses and substantive documents as to Plaintiff and Tribune's policies, practices, and procedures, my firm analyzed hundreds of millions of rows of call and consumer data Tribune and its vendor CES produced pertinent to class discovery. Our review of these records helped identify Tribune's practice of having CES perform telemarketing on its behalf without properly calculating when such calls could properly be made pursuant to an existing business relationship. It was this discovery, and my insistence on further refinement from Tribune in advance of mediation, that ultimately led to the proposed class-wide resolution of this case for the narrow set of consumers affected by such practices.

16. On October 4, 2021, the Parties participated in an all-day mediation with the Hon. Morton Denlow (Ret.) of JAMS, a well-known mediator with experience in resolving class actions, including under the TCPA. Dkt. 39-1, Agr. ¶ 1.2. In advance of this mediation, I insisted that Tribune produce information and records relevant to the size and nature of the Class. The Parties conducted extensive settlement discussions, with Class Counsel preparing and serving a detailed mediation brief on Tribune beforehand. Though a general term sheet was agreed to at the mediation, for several weeks thereafter, the Parties negotiated the specific terms of the Settlement and completed confirmatory discovery. After we prepared and filed a motion for

preliminary approval with the Settlement Agreement and ancillary papers, the Court preliminarily approved the Settlement on November 23, 2021. Dkt. 45. The entire agreement among the parties is embodied in the settlement agreement; there are no "side deals" or other agreements between the parties.

17. Mr. Moore spent considerable time pursuing this case on behalf of the class. In particular, he assisted my firm in its pre-suit investigation, participated in the discovery process, including responding to interrogatories and production requests, communicated with us to keep apprised of this matter, submitted to scrutiny of his own actions in standing up for himself and other class members,[1] and ultimately approved and executed the Settlement Agreement. I am aware of no interests that Mr. Moore has that are not aligned with those of the class.

18. In my view, the Settlement is fair and reasonable, and in the best interest of the Class. I also respectfully believe that the fees requested here are reasonable and fair, reflect the market rate for my firm's services, and are in line with other analogous TCPA class cases, especially given the quality of work and outcome, resources expended to the exclusion of other cases, and the risks my firm undertook in pursuing these claims on a purely contingent-fee basis.

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

Executed on March 3, 2022.

/s/ Alexander H. Burke

[1] Tribune argued in these proceedings that Plaintiff violated an Illinois eavesdropping law by recording the illegal calls he received from its vendor. Plaintiff viewed this as a baseless attempt to deter him from continuing to pursue this action. *See* Dkt. 29 p. 6. Nonetheless, Plaintiff's resolve to zealously prosecute this action on behalf of himself and the class remained firm, without which this terrific class settlement would not have been possible.