

1 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
2 Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
3 Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
4 Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
5 250 Hudson Street, 8th Floor
New York, NY 10013
6 Telephone: (212) 355-9500
Facsimile: (212) 355-9592

MEYER WILSON CO., LPA
Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066

7 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
8 Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
9 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
10 Telephone: (415) 956-1000
11 Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted
pro hac vice)
ABurke@BurkeLawLLC.com
909 Davis Street, Suite 500
Evanston, IL 60201
Telephone: (312)729-5288
Facsimile: (312) 729-5289

12 *Attorneys for Plaintiffs Jenny Brown, Carmen*
Montijo and the Class
13 *[Additional Counsel Appear on Signature Page]*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 JENNY BROWN and CARMEN
MONTIJO, on behalf of themselves
18 and all others similarly situated,

19 Plaintiffs,

20 v.

21 DIRECTV, LLC,

22 Defendant.

Case No. 2:13-cv-01170-DMG-E

**PLAINTIFF’S AND CLASS
COUNSEL’S NOTICE OF MOTION
AND MOTION FOR AN AWARD OF
ATTORNEYS’ FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFF SERVICE AWARD**

Date: February 24, 2023
Time: 10:00 A.M.
Place: Courtroom 8C

Hon. Dolly M. Gee

1 PLEASE TAKE NOTICE that on February 24, 2023, at 10:00 a.m., or as
2 soon thereafter as the matter may be heard, before the Honorable Dolly M. Gee in
3 Courtroom 8C of the United States District Court, Central District of California,
4 Western Division, located at 350 West 1st Street, Los Angeles, CA, 90012, Plaintiff
5 Jenny Brown and Class Counsel Lieff Cabraser Heimann & Bernstein, LLP, Meyer
6 Wilson Co., LPA, and Burke Law Offices LLC will and hereby do move this Court
7 pursuant to Federal Rule of Civil Procedure 23 for an Award of Attorneys' Fees,
8 Reimbursement of Litigation Expenses, and Plaintiff Service Award.

9 Pursuant to Local Rule 7-3, Plaintiff and DIRECTV also conferred, up to and
10 including October 11, 2022 and October 14, 2022, to discuss the contents of this
11 Motion. DIRECTV informed Plaintiff that it does not oppose the relief sought.

12 Plaintiff's motion is based upon this Notice of Motion and Motion; the
13 Memorandum of Points and Authorities in support of this Motion; the Declaration
14 of Daniel M. Hutchinson; the Declaration of Matthew R. Wilson; the Declaration of
15 Alexander H. Burke; the pleadings, records, and files in this action; and such other
16 and further evidence and argument as may be presented at the time of the hearing.

17
18 Dated: October 14, 2022

Respectfully submitted,

19 By: /s/ Daniel M. Hutchinson
20 Daniel M. Hutchinson

21 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
22 Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
23 Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
24 Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
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Facsimile: (212) 355-9592

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28 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP

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Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
275 Battery Street, 29th Floor
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Telephone: (415) 956-1000
Facsimile: (415) 956-1008

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Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
Jared W. Connors (admitted *pro hac vice*)
jconnors@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted *pro hac vice*)
aburke@BurkeLawLLC.com
909 Davis Street, Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288

Attorneys for Plaintiff Jenny Brown and the Class

1 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
2 Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
3 Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
4 Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
5 250 Hudson Street, 8th Floor
New York, NY 10013
6 Telephone: (212) 355-9500

MEYER WILSON CO., LPA
Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
Jared W. Connors (admitted
pro hac vice)
jconnors@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000

7 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
8 Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
9 275 Battery Street, 29th Floor
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10 Telephone: (415) 956-1000

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted
pro hac vice)
ABurke@BurkeLawLLC.com
909 Davis St., Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288

11 *Attorneys for Plaintiff Jenny Brown and the Class*
12 *[Additional Counsel Appear on Signature Page]*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 JENNY BROWN and CARMEN
MONTIJO, on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

19 DIRECTV, LLC,

20 Defendant.

Case No. 2:13-cv-01170-DMG-E

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S AND CLASS
COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFF SERVICE AWARD**

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Hon. Dolly M. Gee

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1 **I. INTRODUCTION**

2 This Court is well-familiar with the decade-long history of this case during
3 which Class Counsel engaged in exhaustive and vigorously contested litigation
4 against DIRECTV, LLC (“DIRECTV”) on behalf of non-customers who received
5 calls from DIRECTV’s agents. Class Counsel survived a motion to dismiss,
6 obtained a certified class, conducted extensive discovery and expert work, twice
7 moved for—and won, in large part—summary judgment, survived a motion for
8 decertification, and litigated this case to the eve of trial. In so doing, Class Counsel
9 worked on a purely contingent basis and advanced \$869,303.55 in out-of-pocket
10 litigation expenses, and, so far, devoted approximately 13,036.7 hours for a lodestar
11 of \$8,734,304.25. The result is the proposed class action settlement (“Settlement”)
12 the Court preliminarily approved on August 19, 2022. *See* Dkts. 523, 527. Class
13 Counsel believe that this Settlement—an all-cash, non-reversionary sum of
14 \$17,000,000 (the “Settlement Fund”)—represents an outstanding result for the
15 Settlement Class. *See generally* Dkt. 516 (preliminary approval brief).

16 Class Counsel seek a fee award of \$5,666,666.66 (one-third of the Settlement
17 Fund), reimbursement of \$869,303.55 in reasonable and actual litigation expenses,
18 and a service award of \$10,000 from the Settlement Fund for Plaintiff Jenny
19 Brown. Class Counsel’s requested one-third fee is less than their lodestar and
20 represents a “negative” (or more accurately, fractional) multiplier of 0.65. Thus, an
21 upward adjustment from the Ninth Circuit’s benchmark of 25% under the
22 percentage-of-the-recovery method is appropriate based on the factors detailed
23 below, particularly based on the results obtained for the Settlement Class Members,
24 many of whom could receive *more than their statutory damages*, depending on the
25 number of valid claims. Ms. Brown and Class Counsel respectfully request that the
26 Court grant their motion.

27 **II. BACKGROUND**

28 Class Counsel spent ten years vigorously litigating this nationwide class

1 action, overcoming a motion to dismiss, certifying a nationwide class, and
2 obtaining key party and third-party discovery. They marshalled this evidence to
3 build a factual record for their summary judgment motions and fully prepare for
4 trial. Class Counsel overcame numerous hurdles through significant effort and
5 expertise to achieve a non-reversionary cash settlement of \$17 million for a narrow
6 class of non-customers who received calls denoted as wrong numbers in
7 DIRECTV's agents' call records.

8 As further described below, and as detailed in the Declaration of Daniel M.
9 Hutchinson filed in support of Ms. Brown's preliminary approval motion, Dkt. 517
10 ("Hutchinson PA Decl."), Class Counsel litigated a motion to dismiss, a motion to
11 strike class allegations, class certification, a Rule 23(f) appeal, a motion to compel
12 arbitration, motions to compel discovery, motions to quash subpoenas served on
13 third parties, two affirmative summary judgment motions, DIRECTV's motions for
14 summary judgment and to decertify the class, *Daubert* motions, pre-trial filings,
15 and numerous motions in limine. *Id.* at ¶¶ 26-109. Discovery in this case was
16 laborious, requiring Class Counsel to: (i) seek call data, documents, and affidavits
17 from a myriad of DIRECTV's debt collection agencies, many of whom had
18 changed corporate forms or were no longer in business, (ii) obtain cell phone
19 ownership records from the leading cell phone providers, (iii) obtain expert analysis
20 of complicated call data, (iv) depose each witness that DIRECTV listed on its Rule
21 26(a) disclosures and its litigation expert, (v) defend depositions of Plaintiff's
22 experts, Ms. Brown, and former plaintiff Carmen Montijo, (vi) engage in extensive
23 meet and confers with DIRECTV to obtain call data for purposes of the litigation
24 and class notice, and (vii) seek archived DCI call data from numerous sources in
25 advance of trial. *Id.* at ¶¶ 53-87; Dkt. 484 at 6-10 (Class Counsel's efforts to obtain
26 DCI call data).

27 The following is a brief summary of Class Counsel's considerable efforts in
28 obtaining the \$17 million cash settlement. Without these efforts, there would be no

1 Settlement, much less the \$17 million in compensation that is likely to provide
2 many Settlement Class Members with more than their statutory damages. That the
3 Settlement was shortly before trial demonstrates the value of Class Counsel’s work.

4 **A. Pleadings and Motion to Dismiss**

5 On May 9, 2012, former plaintiff Cheryl Swope filed a class action in the
6 Eastern District of Missouri against Credit Management, LP (“CMI”). *Swope v.*
7 *Credit Management, LP*, No. 4:12-cv-832 (E.D. Mo.). Dkt. 1. On November 21,
8 2012, Plaintiff Jenny Brown joined that action as an additional named plaintiff.
9 Dkt. 48.

10 On February 19, 2013, Ms. Brown’s claims against CMI were severed from
11 the *Swope* action and transferred to this Court. No. 2:13-cv-1170 (C.D. Cal.), Dkt.
12 71. On October 1, 2013, Ms. Brown filed a Fourth Amended Complaint adding
13 DIRECTV as a Defendant. Dkt. 122. It alleged that DIRECTV violated the TCPA
14 by using a prerecorded voice to call cell phones, without the prior express consent
15 of Ms. Brown and the proposed class members. *Id.* On May 27, 2014, the Court
16 denied DIRECTV’s motion to strike portions of Ms. Brown’s complaint. Dkt. 153.

17 **B. Motion for Class Certification**

18 After surviving DIRECTV’s motion to strike, DIRECTV successfully
19 obtained a stay in late 2014 pending resolution of two petitions before the FCC.
20 Dkt. 198. At the same time, Magistrate Judge Eick denied Ms. Brown’s motion to
21 compel class discovery. Dkt. 196. The effect of this denial meant that Ms. Brown
22 did not obtain contemporaneous call records in 2014 from DIRECTV and its debt-
23 collection agents. When the Court lifted the stay on April 27, 2018, Dkt. 220, Ms.
24 Brown moved for class certification without the benefit of class discovery. Dkt.
25 222. Nevertheless, after full briefing and a hearing, on March 29, 2019, the Court
26 certified a class, as well as a subclass defined as, “[a]ll persons residing within the
27 United States who, within four years prior to and after the filing of this action,
28 received a non-emergency telephone call(s) from DIRECTV and/or its third-party

1 debt collectors regarding a debt originally owed to DIRECTV, to a cellular
2 telephone through the use of an artificial or prerecorded voice and who were never
3 DIRECTV customers.” Dkt. 275.

4 On June 3, 2019, the Ninth Circuit denied DIRECTV’s Rule 23(f) petition
5 for permission to appeal the class certification order.

6 As part of its class certification order, the Court ordered the parties to brief
7 DIRECTV’s motion to compel arbitration. DIRECTV argued that its current or
8 former customers, “authorized users,” and any class members who had cellular
9 service with AT&T Mobility were obligated to arbitrate their TCPA claims. Dkt.
10 276-1. Ms. Brown opposed, and on August 5, 2019, the Court held that certain
11 current or former DIRECTV customers were obligated to arbitrate their TCPA
12 claims, but rejected DIRECTV’s attempt to compel arbitration of authorized users
13 and AT&T Mobility customers. Dkt. 287. This ruling focused the litigation on the
14 claims of non-customers. On December 18, 2019, the Court ordered a revised class
15 definition of: “All persons residing within the United States who, within four years
16 prior to and after the filing of this action, received a non-emergency telephone
17 call(s) from DIRECTV and/or its third-party debt collectors regarding a debt
18 allegedly owed to DIRECTV, to a cellular phone through the use of an artificial or
19 prerecorded voice, and who has not been a DIRECTV customer at any time since
20 October 1, 2004.” Dkt. 300.

21 **C. The Scope of Discovery and Class Notice**

22 From late 2019 through the Settlement being reached in May 2022, Class
23 Counsel undertook a massive effort to obtain relevant call data and documents,
24 provide class notice, and, ultimately, build a factual record that would provide the
25 basis for Ms. Brown’s summary judgment motions and trial presentation.

26 *Class Notice.* Beginning in late 2019, the parties vigorously negotiated the
27 parameters of class notice under Rule 23(c)(2). As of late 2019, DIRECTV had not
28 obtained any call data from its debt collection agencies. Hutchinson PA Decl. ¶ 66.

1 The Court ordered DIRECTV to provide this data to Class Counsel to “assist in
2 identifying those who may be members of the certified class.” Dkt. 302. In the
3 spring of 2020, DIRECTV produced some call data from certain debt collection
4 agencies, produced declarations from others stating that they had never placed
5 prerecorded calls, or informed Class Counsel that DIRECTV could not locate call
6 data or even get in touch with certain of its former debt collectors. Hutchinson PA
7 Decl. ¶ 67. This process took months of meet and confers to address holes in
8 production, understand what DIRECTV had produced, and sift through *hundreds of*
9 *millions of rows of call data* to identify TCPA-violative calls. *Id.* at ¶¶ 68-69. In
10 June 2020, those efforts resulted in a compromise between the parties about
11 whether DIRECTV could be held responsible for incomplete call data. Dkt. 312, at
12 3. The parties agreed that Ms. Brown “will not seek a negative inference against
13 DIRECTV for any lost or missing call records, unless DIRECTV argues, with
14 respect to the merits or class certification, the impossibility or impracticability of
15 identifying recipients of calls not reflected in full or in part in the produced call
16 records. In addition, DIRECTV will pay for notice costs to class members of up to
17 \$350,000.” *Id.* at 4. DIRECTV did in fact pay the full \$350,000 in notice costs.
18 Hutchinson PA Decl. ¶ 72. Thus, Class Counsel’s efforts already ensured that Class
19 Members received the benefit of a \$350,000 payment separate from, and in addition
20 to, the proposed \$17 million settlement.

21 Then, the parties, aided by their respective experts, negotiated a set of
22 agreed-upon wrong number call disposition codes for purposes of class notice and
23 provided Court-approved notice in early 2021. *See* Dkt. 331 (describing details of
24 class notice).

25 *Party Discovery.* Class Counsel painstakingly pursued discovery from
26 DIRECTV, including six sets of requests for production, two sets of requests for
27 admissions, and four sets of interrogatories. Hutchinson PA Decl. ¶ 55. Much of
28 this discovery was issued after the Court lifted the stay in April 2018. After

1 agreeing upon document custodians and search terms, DIRECTV made numerous
2 productions totaling 217,338 pages. *Id.*, *see also id.* at ¶ 73. Additionally,
3 DIRECTV produced call data from its RMS database (related to “third-party”
4 collections) and CACS database (related to its “first-party” collections). Class
5 Counsel thoroughly analyzed these documents and call data to build their case that
6 DIRECTV was vicariously liable for its debt collection agencies’ prerecorded calls
7 to non-customers.

8 Class Counsel also took six targeted depositions of each witness on
9 DIRECTV’s Rule 26(a) disclosures, including two Rule 30(b)(6) witnesses. *Id.* at
10 ¶ 82. Class Counsel quoted extensively from these focused depositions throughout
11 Ms. Brown’s summary judgment motions. To prepare for trial, Class Counsel also
12 entered into a series of stipulations with DIRECTV regarding the authenticity of
13 productions made by DIRECTV’s debt collection agents and negotiated that
14 DIRECTV would produce its complete customer database in the event of settlement
15 (which it did as part of the Settlement Agreement). Dkts. 357-63, 408-09, 411-13.

16 Class Counsel also prepared responses to requests for production and
17 interrogatories, and defended the depositions of Ms. Brown and former plaintiff
18 Carmen Montijo. Hutchinson PA Decl. ¶¶ 74, 77.

19 *Third-Party Discovery.* A key disputed issue throughout the litigation,
20 including as part of the potential trial, was whether DIRECTV was vicariously
21 liable for its debt collection agencies’ TCPA violations. Throughout the litigation,
22 DIRECTV took the position that it was not responsible for obtaining discovery
23 from the dozens of debt collection agencies that it contracted with during the class
24 period. Accordingly, Class Counsel undertook their own efforts to obtain third-
25 party discovery. First, beginning in 2014, Ms. Brown served subpoenas on each
26 relevant debt collection agency. *Id.* at ¶ 37. After the Court certified the class in
27 2019, Ms. Brown served subpoenas on all debt collection agencies that DIRECTV
28 had newly identified and sent follow-up document preservation letters to those

1 entities who had received subpoenas in 2014. *Id.* at ¶¶ 57-58. In total, Class
2 Counsel served 32 subpoenas.

3 Class Counsel engaged in an extensive meet-and-confer process with counsel
4 for each debt collection agency, many of whom resisted any effort to comply with
5 their subpoenas or claimed that they did not have relevant call data. The task of
6 separating the wheat from the chaff for each debt collection agency required
7 extensive resources, meet and confers, and analysis of call records. This included
8 finding former employees on LinkedIn and calling former counsel and bankruptcy
9 counsel, and dialing company entities that may have had archived call data. All
10 told, Ms. Brown received 29 productions from third parties. *Id.* at ¶ 64.

11 Certain debt collection agencies' refusal to produce documents led to third-
12 party litigation in separate actions. In 2019, Prince Parker & Associates filed a
13 motion in the Western District of North Carolina to quash Ms. Brown's subpoena,
14 which Class Counsel fully briefed. Through further negotiation, Class Counsel
15 resolved Prince Parker's motion without the Court ruling and it produced
16 documents. *Id.* at ¶ 62. Additionally, in 2021, Enhanced Recovery Company, LLC
17 ("ERC"), after initially appearing cooperative, refused to produce call data until
18 Class Counsel moved to enforce their subpoena in the Middle District of Florida.
19 *See Jenny Brown and Carmen Montijo v. Enhanced Recovery Company LLC*, Misc.
20 Case No. 3:21-mc-39-TJC-JBT (M.D. Fla.). ERC produced the call data that Class
21 Counsel relied on for Ms. Brown's second motion for summary judgment. *See* Dkt.
22 415-7 (listing specific ERC calls).

23 Class Counsel also secured declarations from many of DIRECTV's debt
24 collectors and a deposition of AFNI, Inc. ("AFNI").¹ These declarations and
25 deposition testimony supported Ms. Brown's motions for summary judgment. *See*

26 _____
27 ¹ *See* Dkts. 365-14 (iQor); 365-16 (CMI); 365-17 (Alorica); 365-18 (CBE); 365-19
28 (ERC); 365-20 (Decl. of Rafal Leszczynski on behalf of DCI); *see also* Dkt. 373-3
(Dep. of James Hess, Director of Business Development for AFNI).

1 generally Dkt. 414-1.

2 Separately, Class Counsel doggedly pursued wireless carrier records from
3 AT&T, Verizon, and T-Mobile to ascertain who owned the cell phones that
4 DIRECTV and its debt-collection agents called. Hutchinson PA Decl. ¶ 75. Class
5 Counsel’s discovery efforts, the result of months of work negotiating the
6 parameters of the document production, resulted in Ms. Brown having evidence of
7 who owned and subscribed to the at-issue cellular telephone numbers during the
8 class period. *Id.* These records provided Ms. Brown with a direct source to
9 determine whether Class Members received calls and were part of the Settlement
10 Administrator’s efforts to determine Settlement Class Membership. *See* Dkt. 516-2
11 (Settlement Agmt.), at § 5.01(a)(ii).

12 **D. The Parties’ Summary Judgment Motions and DIRECTV’s**
13 **Motion for Decertification**

14 Class Counsel focused their discovery efforts on procuring classwide merits
15 evidence in support of Ms. Brown’s TCPA claims. Because of these focused
16 efforts, Class Counsel were well prepared to file affirmative summary judgment
17 motions and go to trial. This work required extensive consultation with Ms.
18 Brown’s experts, Christina Peters-Stasiewicz, who aided by identifying cellular
19 telephones, Anya Verkhovskaya, who rebutted DIRECTV’s expert, Dr. Debra
20 Aron, both of Class Experts Group, LLC, and David Vladeck of Georgetown
21 University.

22 Class Counsel identified two debt collection agencies—CMI and iQor, Inc.
23 (“iQor”)—for their first motion for summary judgment. On August 27, 2021,
24 Ms. Brown moved for affirmative summary judgment motion for calls made by
25 CMI and iQor. Dkt. 364. The statement of undisputed facts contained 187 facts,
26 144 of which DIRECTV did not meaningfully dispute. Dkt. 364-2. Ms. Brown,
27 through an expert declaration of Ms. Peters-Stasiewicz, identified the specific
28 phone numbers that received calls coded by CMI and iQor as wrong numbers. Dkts.

1 375-1 (CMI) & 375-2 (iQor). In further support of her motion, Ms. Brown filed 82
2 exhibits, including expert reports, as part of the factual record. *See generally* Dkt.
3 365.

4 DIRECTV thereafter moved itself for summary judgment and to decertify the
5 class. Dkts. 373 & 377. On December 1, 2021, after a hearing on all three motions,
6 the Court issued an omnibus order that: (1) denied DIRECTV’s decertification
7 motion; (2) granted DIRECTV’s summary judgment motion as to (i) calls prior to
8 August 14, 2009; (ii) third-party collections calls after December 4, 2015; (iii) calls
9 made by ERC prior to August 6, 2014, by Convergent from October 26, 2008 to
10 May 10, 2016 and November 11, 2016 to February 25, 2019, and by NCO Financial
11 Systems from January 16, 2009 to August 31, 2016; (3) granted Ms. Brown’s
12 summary judgment motion as to (i) third-party calls made by iQor and/or CMI from
13 August 14, 2009 to December 4, 2015; (ii) first-party calls made by iQor after
14 August 14, 2009; and (4) denied as moot Ms. Brown’s motion to exclude
15 DIRECTV’s expert report. Dkt. 401. The Court further found that it would enter
16 judgment with regard to claims based on iQor and CMI calls following the
17 completion of a claims administration process. *Id.*

18 While Class Counsel hoped that the rulings on Ms. Brown’s first summary
19 judgment motion would streamline the case for settlement or trial, the parties’
20 subsequent mediation proved unsuccessful.

21 Therefore, bolstered by the Court’s first summary judgment order, Class
22 Counsel moved for summary judgment as to the calls of three additional third-party
23 debt collection agencies—AFNI, ERC, and Diversified Consultants Inc. (“DCI”).
24 Each entity operated under substantively identical contracts as the one between
25 DIRECTV and CMI. Class Counsel again compiled a comprehensive factual
26 record, the efforts of her first- and third-party discovery, to move for summary
27 judgment on December 22, 2021. Dkt. 414. In support of Ms. Brown’s motion,
28 Class Counsel included an additional 62 uncontroverted facts, Dkt. 414-2, and an

1 additional 14 exhibits, including another expert declaration from Ms. Peters-
2 Stasiewicz listing the specific telephone numbers that received calls. *See* Dkt. 415.

3 On March 31, 2022, the Court granted in part Ms. Brown's motion for
4 summary judgment. It held that calls made by AFNI and ERC violated the TCPA
5 and that Ms. Brown had established that DCI was DIRECTV's agent. Dkt. 436. The
6 remaining issues for Ms. Brown to prove at trial were: (1) whether specific DCI
7 calls were made with a prerecorded voice; (2) whether DIRECTV was vicariously
8 liable for AFNI and ERC's calls; and (3) willfulness under the TCPA. *Id.*

9 **E. Trial Preparation Work**

10 As part of its second summary judgment order on March 31, 2022, the Court
11 set a trial date of June 14, 2022 and a post-trial briefing schedule to determine the
12 claims administration process. Dkt. 437. Under this two-month timeline, Class
13 Counsel were tasked with filing all pre-trial motions, jury instructions, exhibits
14 lists, and motions in limine. Additionally, Class Counsel sought production of
15 months of call data from third-party dialing company LiveVox, Inc. to show that
16 DCI placed prerecorded calls. The parties also briefed, on an *ex parte* and
17 emergency basis, whether Ms. Brown could depose Rafal Leszczynski, a former
18 DCI employee, who had previously submitted a sworn affidavit. Dkts. 441-48.
19 During this two-month sprint to trial, the parties conferred on a nearly daily basis
20 about dozens of motions, filings, and trial-related items, including an in-person
21 meeting in defense counsel's offices. Class Counsel also their trial strategy,
22 identifying key witnesses and exhibits, preparing witnesses, and conferring on a
23 trial strategy that would resonate with a jury. *See* Dkts. 441-45, 448-78, 481-98.

24 On May 17, 2022, the Court held its Final Pretrial Conference. Dkt. 502. On
25 May 19, 2022, the Court entered an omnibus order addressing the parties' motions
26 in limine and *Daubert* motions. Dkt. 503. Therein, the Court narrowed the class to
27 exclude DCI, amending the definition to only include: "[a]ll persons residing within
28 the United States who, within four years prior to and after the filing of this action,

1 received a non-emergency telephone call(s) from DIRECTV and/or iQor, Inc.,
2 Credit Management, LP, AFNI, Inc, or Enhanced Recovery Company, Inc.
3 regarding a debt allegedly owed to DIRECTV, to a cellular telephone through the
4 use of an artificial or prerecorded voice, and who not been a DIRECTV customer at
5 any time since October 1, 2004.” *Id.* at 15. By virtue of this Order, named Plaintiff
6 Carmen Montijo was no longer a member of the class, but the Court held that she
7 could pursue her individual claims. *Id.* at 9, n.16; *see also* Aug. 19, 2022 Hr’g Tr. at
8 21:17-22:6 (detailing Ms. Montijo’s individual settlement).

9 Separate from the trial, the parameters of the claims administration process, a
10 matter the Court had not yet ruled on, presented a key risk that Ms. Brown faced in
11 obtaining class member recovery. DIRECTV argued that any claims process would
12 require class members to undergo “mini-trials” before receiving payment. Class
13 Counsel consulted with an expert claims administrator, BrownGreer PLC, now the
14 Settlement Administrator, to ascertain class membership without mini-trials. Using
15 that information, Class Counsel prepared a claims administration brief that they
16 were ready to file the day that the Settlement was reached. The undetermined
17 administration process would have meaningfully altered the ability of class
18 members to receive damages payments—and the potential value of the case overall.
19 On May 15, 2022, to address this uncertainty, Ms. Brown requested that the Court
20 reverse the order of trial and the claims process briefing to streamline the trial. Dkt.
21 499. In its final pretrial order, the Court clarified, that, contrary to DIRECTV’s
22 position, trial would not include “the affirmative defense of consent” and permitted
23 the parties to brief the issue of the claims administration process prior to trial. Dkt.
24 503, at 14. The Court set a claims administration briefing schedule such that Ms.
25 Brown’s motion was due on May 27, 2022. Dkt. 505.

26 **F. Settlement Negotiations**

27 There is a substantial history of settlement negotiations, all conducted at
28 arm’s-length with the assistance of three experienced professional mediators. The

1 parties first mediated for a full day in person with Hon. Irma E. Gonzalez (Ret.) on
2 September 23, 2015, at JAMS Los Angeles. Hutchinson PA Decl. ¶¶ 46, 97.

3 The parties mediated a second time after class certification and the Court’s
4 first summary judgment order with Hon. Morton Denlow (ret.) of JAMS Chicago
5 via Zoom on December 6, 2021, but again did not reach resolution. *Id.* at ¶ 98.

6 The parties mediated a third time with Robert A. Meyer in person at JAMS
7 Los Angeles on Saturday, May 14, 2022, three days before the final pre-trial
8 conference, and *again* did not reach agreement. *Id.* at ¶¶ 100, 105. However, Mr.
9 Meyer continued discussions in the ensuing weeks and the parties reached a
10 settlement in principle late on the Friday of Memorial Day weekend, May 27, 2022.
11 *Id.* at ¶¶ 111-12. This settlement in principle was reached hours before Ms. Brown
12 would have filed her motion for a claims administration process. Dkt. 509. The
13 Court granted preliminary approval on August 19, 2022 and set a schedule for the
14 instant motion and Ms. Brown’s motion for final approval. Dkts. 523, 527.

15 **G. The Relief Obtained for the Class**

16 As detailed in Ms. Brown’s motion for preliminary approval, the Settlement
17 requires DIRECTV to pay an all-cash, non-reversionary sum of \$17,000,000. S.A.
18 § 4.01. Out of this Settlement Fund, Settlement Class Members who file a valid and
19 timely claim will receive a Cash Award. *Id.* § 5.02. Cash Awards will be distributed
20 *pro rata*—Settlement Class Members who received calls from iQor and CMI will
21 get two shares of the *pro rata* distribution and Settlement Class Members who
22 received calls from AFNI and ERC will get one *pro rata* share. *Id.* §§ 2.06, 5.04.
23 The Settlement Fund also covers (i) all fees and costs incurred by the Claims
24 Administrator; (ii) Class Counsel/Additional Counsel’s Court-approved attorneys’
25 fees and reimbursement of reasonable costs; and (iii) any Court-approved service
26 award paid to Ms. Brown. *Id.* §§ 2.32, 4.01-04, 6.02-03. Further, under the
27 Settlement, DIRECTV will add the phone numbers of Settlement Class Members
28 who submit an Approved Claim to its internal do-not-call database. *Id.* § 4.05.

1 **III. ARGUMENT**

2 Class Counsel seek attorneys’ fees in the amount of one-third of the
3 Settlement Fund, plus reimbursement of their out-of-pocket litigation expenses, and
4 a Service Award for Ms. Brown of \$10,000. As discussed below, the circumstances
5 warrant Class Counsel’s fee request, particularly given the outstanding relief they
6 obtained for the Class. Similarly, Class Counsel’s expenses were necessary to
7 litigate this action, and the service award properly compensates Ms. Brown for her
8 diligent participation throughout this decade-long case.

9 **A. Class Counsel’s Requested Fee is Fair and Reasonable**

10 Attorneys’ fee awards in class action cases are governed by Federal Rule of
11 Civil Procedure 23(h), which provides that after a class has been certified, the Court
12 may award reasonable attorneys’ fees and costs. The Court must “‘carefully assess’
13 the reasonableness of the fee award.” *Brown v. CVS Pharmacy, Inc.*, 2017 WL
14 3494297, at *5 (C.D. Cal. Apr. 24, 2017) (quoting *Stanton v. Boeing Co.*, 327 F.3d
15 938, 963 (9th Cir. 2003)). “When calculating an attorney’s fee award, a district
16 court can employ one of two methods—the lodestar or a percentage of the
17 recovery.” *In re Apple Device Performance Litig.*, -- F.4th --, 2022 WL 4492078, at
18 *10 (9th Cir. Sept. 28, 2022). While there is “no presumption in favor” of either
19 method, *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th
20 Cir. 1994), the percentage-of-recovery method may be used when “the benefit to
21 the class is easily quantified.” *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d
22 539, 571 (9th Cir. 2019). The percentage-of-recovery method “often ensures that
23 the interests of class counsel and the class are properly aligned, given that it allows
24 class counsel directly to benefit from increasing the size of the class fund and from
25 working efficiently.” *Bentley v. United of Omaha Life Ins. Co.*, 2020 WL 3978090
26 (C.D. Cal. Mar. 13, 2020).

27 “The benchmark percentage is 25%, but, similar to the lodestar, the
28 benchmark percentage ‘can be adjusted upward or downward, depending on the

1 circumstances.” *Apple*, 2022 WL 4490278, at *10 (quoting *Hyundai*, 926 F.3d at
2 570). It is “not uncommon for courts to award one-third of the gross settlement
3 fund as attorneys’ fees where the circumstances warrant it.” *Sevilla v. Aaron’s Inc.*,
4 2020 WL 10573205, at *2 (C.D. Cal. May 15, 2020) (Gee, J.); *see also In re Banc*
5 *of Cal. Secs. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (Gee, J.)
6 (awarding fee of \$6,517,500, representing 33% of the settlement); *Hyundai*, 926
7 F.3d at 571 (“We have affirmed fee awards totaling a far greater percentage of the
8 class recovery than the [25%] fees here.”). In selecting an appropriate percentage,
9 above or below the benchmark, courts consider the following non-exhaustive
10 factors: “(1) result obtained for the class; (2) effort expended by counsel; (3)
11 counsel’s experience; (4) counsel’s skill; (5) complexity of issues; (6) risks of
12 nonpayment assumed by counsel; and (7) comparison with counsel’s lodestar.”
13 *Bentley*, 2020 WL 3978090.

14 As detailed below and in the accompanying declaration from Daniel M.
15 Hutchinson (“Hutchinson Fee Decl.”), each of these factors strongly supports Class
16 Counsel’s one-third fee request. Additionally, and as demonstrated by the lodestar
17 cross-check, the requested award would not be a windfall to Class Counsel. The
18 requested fee would constitute a fractional lodestar multiplier of 0.65, a figure that
19 will decrease as Class Counsel continues to oversee the administration of the
20 Settlement.

21 **1. Result Achieved**

22 The benefit Class Counsel secured for the Class is “generally considered to
23 be the most important factor in determining the appropriate fee award in a common
24 fund case.” *Spencer-Ruper v. Scientiae, LLC*, 2021 WL 4895740, at *1 (C.D. Cal.
25 Sept. 24, 2021). It is appropriate to provide for an award of “one-third of the gross
26 settlement fund as attorneys’ fees where the circumstances warrant it.” *Sevilla*,
27 2020 WL 10573205, at *2.

28 This is precisely the case here. The \$17 million non-reversionary cash fund

1 provides outstanding relief results for the Settlement Class Members. Class Counsel
2 secured a huge percentage of the Class’s maximum potential statutory damages
3 under the TCPA. As the Court noted in the preliminary approval hearing, “the
4 amount offered in settlement is substantial relative to the nature of the claims and
5 likely to result in significant recovery for class members depending on the response
6 rate.” Aug. 19, 2022 Hr’g Tr. at 27:7-9.

7 The Settlement Class encompassed, at most, 220,510 unique telephone
8 numbers—those that were listed as part of Ms. Brown’s summary judgment
9 motions. *See* Settlement Agmt. § 2.27 (defining parameters of Settlement Class).
10 The Settlement Administrator removed 29,151 unique telephone numbers when it
11 matched the individuals found as part of the potential Settlement Class Member
12 identification process, *id.* at § 5.01, against DIRECTV’s customer database. *Id.* at
13 § 5.02(b)(ii); Declaration of BrownGreer.² This leaves 191,359 unique numbers
14 belonging to Settlement Class Members. *Id.* Ignoring the difference in *pro rata*
15 shares between individuals called by iQor and CMI on the one hand, and ERC and
16 AFNI on the other, simple arithmetic provides that if each Class Member made a
17 claim they would get \$88.84 prior to accounting for Settlement costs and attorneys’
18 fees (\$17,000,000/191,359).

19 To use another example, assuming that \$7 million of the \$17 million
20 Settlement Fund is spent on attorneys’ fees, reimbursement of expenses, and
21 Settlement Administrator costs, and 10% of Settlement Class Members, 19,153
22 individuals, file a valid claim, with 9,576 claimants from the CMI/iQor group and
23 9,577 claimants from the AFNI/ERC group, each pro-rata share will be worth
24 **\$348.08**. Thus, each CMI and iQor Class Member will be entitled to **\$696.16** per
25 call and each ERC and AFNI Class Member will be entitled to **\$348.08** per call.
26 Those amounts are significantly above CMI and iQor Class Members’ statutory
27

28 ² This declaration will be provided as part of the forthcoming interim report on
class notice that the Court requested in its preliminary approval order. Dkt. 527.

1 damages and roughly the damages amount that would be left for AFNI and ERC
2 Class Members after costs and fees were deducted. Courts have repeatedly
3 approved percentage fees at or near one-third when counsel achieved similarly
4 strong results. *See, e.g., In re Heritage Bond Litig.*, 2005 WL 1594389, at *8 (C.D.
5 Cal. June 10, 2005) (awarding 33.33% of \$27.8 million to counsel that recovered
6 36% of the class’s total net loss); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at
7 *9-12 (C.D. Cal. Nov. 18, 2014) (awarding one-third in fees when common fund
8 represented 36% of damages); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998,
9 1021, 1023 (E.D. Cal. 2019) (awarding 33.3% of a \$40 million common fund that
10 represented 48% of damages); *Syed v. M-I, L.L.C.*, 2017 WL 3190341, at *4, *6-8
11 (E.D. Cal. July 27, 2017) (awarding one-third in fees where common fund
12 represented 35% of damages); *Andrews v. Plains All Am. Pipeline L.P.*, 2022 WL
13 4453864, at *1 (C.D. Cal. Sept. 20, 2022) (awarding 32% of \$230 million common
14 fund). Likewise, other courts have approved one-third in fees in TCPA settlements
15 providing for similar class member recoveries. *See, e.g., Dakota Med., Inc. v.*
16 *RehabCare Grp., Inc.*, 2017 WL 4180497, at *8 (E.D. Cal. Sept. 21, 2017)
17 (approving 33.3% for TCPA settlement providing \$7.00 per fax to each class
18 member); *Hageman v. AT&T Mobility LLC*, 2015 WL 9855925, at *3 (D. Mont.
19 Feb. 11, 2015) (same, where claimants received up to \$500 per call); *Vandervort v.*
20 *Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (same, between
21 \$175 and \$500 per fax).³

22 These cases demonstrate that the Court would be well within its discretion to
23 award the requested one-third fee. This result is all the more impressive in light of

24 _____
25 ³ *See also Krakauer v. Dish Network, LLC*, 2018 WL 6305785, at *3 (M.D.N.C.
26 Dec. 3, 2018) (awarding 33% following TCPA trial and noting that other courts
27 have awarded similar amounts in cases that “necessarily required less work and risk
28 as well as lower recoveries”); *Jenkins v. Nat’l Grid USA Serv. Co.*, 2022 WL
2301668, at *5 (E.D.N.Y. June 24, 2022) (awarding 33% plus costs in TCPA
settlement).

1 the extraordinary difficulty of litigating this case, obtaining the necessary discovery
2 to prove Ms. Brown’s claims, the risks of trial, and, perhaps most importantly, the
3 uncertainty of the claims administration process. *Andrews* is instructive. There, the
4 Court considered the fact that Class Counsel “secured significant percentages of the
5 Classes’ maximum potential compensatory damages” and focused on the fact that
6 Class Counsel litigated for seven years, obtained certified classes, and moved for
7 summary judgment. 2022 WL 4453864, at *1-2. Achieving a settlement of \$17
8 million is a tremendous result, particularly when accounting for the risks Class
9 Counsel faced.

10 **2. Class Counsel’s efforts**

11 Class Counsel spent 13,036.7 hours litigating this case for a decade. As
12 detailed above, this included significant motion practice up to the eve of trial. *See*
13 *supra*; Hutchinson Fee Decl. ¶ 51. “[S]everal courts have awarded attorneys’ fees
14 of one-third of a common fund under similar circumstances.” *In re Heritage Bond*
15 *Litig.*, 2005 WL 1594389, at *9 (C.D. Cal. June 10, 2005) (awarding fee of one-
16 third of common fund and collecting cases doing the same). Additionally, Class
17 Counsel will continue to work with the Settlement Administrator, review and
18 respond to any objections, move for final approval, handle any appeals, and oversee
19 the final administration of benefits to Settlement Class Members. *See Pfeiffer v.*
20 *RadNet, Inc.*, 2022 WL 2189533, at *3 (C.D. Cal. Feb. 15, 2022) (noting that future
21 work supports granting fee under this factor).

22 **3. Class Counsel’s experience**

23 “The experience of counsel is also a factor in determining the appropriate fee
24 award.” *In re Heritage Bond Litig.*, 2005 WL 1594389, at *12. The Court, facing
25 no objection from DIRECTV, already found in its Class Certification Order that
26 Class Counsel were adequate. Dkt. 275, at 9. Class Counsel have decades of
27 experience litigating complex class actions and TCPA lawsuits. Hutchinson Fee
28 Decl. ¶¶ 3-29; Declaration of Matthew R. Wilson (“Wilson Decl.”), ¶¶ 2-10;

1 Declaration of Alexander H. Burke (“Burke Decl.”), ¶¶ 2-7.

2 Moreover, Class Counsel used that experience to obtain two summary
3 judgment orders and prepare fully for trial. *See also* Aug. 19, 2022 Hr’g Tr. at
4 26:17-18 (wherein the Court observed that Class Counsel “vigorously litigated this
5 action for nearly ten years,” as the Court “well know[s].”).

6 This factor supports granting the motion.

7 **4. Class Counsel’s skill**

8 The prosecution and management of a complex class action requires unique
9 legal skills and abilities. *See Spencer-Ruper*, 2021 WL 4895740, at *2. As detailed
10 above, Class Counsel are experienced TCPA class-action litigators who effectively
11 litigated this case for over a decade until the eve of trial. Class Counsel: (1) filed
12 numerous complaints; (2) survived a motion to dismiss; (3) successfully moved for
13 class certification; (4) obtained a denial, in part, of DIRECTV’s motion to compel
14 arbitration; (5) obtained discovery from DIRECTV and third-parties, including
15 sworn declarations; (6) deposed DIRECTV’s witnesses and experts, a third-party,
16 and defended their own named plaintiff depositions and expert depositions; (7)
17 prepared and disseminated class notice; (8) successfully moved twice, in part, for
18 summary judgment and opposed DIRECTV’s motion for summary judgment and
19 decertification; (9) prepared key pre-trial filings, including jury instructions,
20 witness and exhibit lists, a statement of the case, and motions in limine; (10)
21 prepared to brief the complex and novel claims administration process issue; (11)
22 mediated multiple times with leading mediators while litigating the case; and (12)
23 oversaw all aspects of the Settlement, from drafting the Settlement Agreement, to
24 moving for preliminary approval, to overseeing the Settlement Administrator’s
25 work to date and going forward. Hutchinson PA Decl. ¶¶ 25-112. These efforts
26 played a significant role in the parties’ reaching the Settlement and support the
27 requested fees. *Spencer-Ruper*, 2021 WL 4895740, at *2 (similar facts supporting
28 approving fees under this factor); *Andrews*, 2022 WL 4453864, at *3 (certification,

1 extensive technical fact and expert discovery, multiple summary judgment motions,
2 trial preparation, and multiple mediations “underscores the skill and effort needed
3 to achieve” the settlement).

4 **5. The Complexity of issues**

5 The complexity of issues that Class Counsel faced at every turn of this
6 litigation supports granting the fee request.

7 First, the factual issues in this case were complex due in large part to the
8 overwhelming task of obtaining and analyzing call records that dated back more
9 than a decade. These efforts were further complicated by the fact that the case was
10 stayed from 2014 to 2018. When the stay was lifted and class discovery began in
11 earnest, many debt collection agencies had incomplete and/or missing data, while
12 others changed corporate forms, no longer were in touch with DIRECTV, or filed
13 for bankruptcy. As described above, Class Counsel’s thorough discovery efforts
14 stretched over a decade of intense work. In addition, the fact-heavy task of proving
15 vicarious liability is a complex undertaking. Class Counsel had to evaluate and
16 marshal hundreds of facts into a compelling summary judgment brief to establish
17 DIRECTV’s vicarious liability as to several of its debt collection agencies.

18 Finally, even after Ms. Brown established liability for all iQor and CMI calls,
19 the daunting task of identifying and paying these Class Members remained. This
20 rarely litigated issue involved extensive expert work to identify cell phone owners
21 dating back more than a decade and then to compare that to DIRECTV’s customer
22 database to determine whether there was a match. This data-heavy undertaking,
23 which DIRECTV’s expert was sure to oppose, was at the crux of determining the
24 size of the case, notwithstanding the complexities and uncertainties of a jury trial.
25 The “unusual complexity of this case” is a “reflection of Class Counsel’s skillful
26 prosecution of the action” and weighs in favor of granting Class Counsel’s fee
27 award. *In re Heritage Bond Litig.*, 2005 WL 1594389, at *14.

28

1 **6. Risk of Litigation**

2 “Class actions are inherently risky.” *Bentley*, 2020 WL 3978090. This is
3 particularly true here, where Class Counsel took this case on for a decade on a
4 purely contingent basis with no guarantee of recovery. *See In re Apollo Grp. Inc.*
5 *Sec. Litig.*, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (“An upward
6 departure from the 25% benchmark figure is warranted in this case because an
7 exceptional result was achieved and it was extremely risky for Class Counsel to
8 pursue this case through seven years of litigation.”). At every turn, DIRECTV,
9 through three different law firms, demonstrated its “willingness to mount a
10 vigorous defense.” *Spencer-Ruper*, 2021 WL 4895740, at *2.

11 The length and novelty of this litigation magnifies the risk taken on by Class
12 Counsel. Plaintiffs in TCPA class actions rarely move for affirmative summary
13 judgment and rarely make it to trial. Moreover, as this Court acknowledged, “while
14 plaintiffs’ case was strong, many of the easier issues for plaintiff were already
15 resolved with only her most difficult claims left for trial. Trial would have been
16 complex and expensive with a substantial risk that plaintiff would not prevail.”
17 Aug. 19, 2022 Hr’g Tr. at 26:22-27:1. Even had Ms. Brown prevailed at trial, the
18 unknown resolution of the claim administration process could have dramatically
19 reshaped the litigation to impose requirements on claimants to obtain payment not
20 present in the Settlement. Additionally, Ms. Brown faced appeal risk. *See Andrews*,
21 2022 WL 4453864, at *3 (noting risks of loss at trial or on appeal).

22 Given the substantial risks borne by Class Counsel for ten years in pursuing
23 this class action, this favor weighs in favor of Class Counsel’s requested fee.

24 **7. Lodestar Cross-Check**

25 The lodestar method allows the Court to crosscheck the reasonableness of a
26 fee award. “The lodestar amount is calculated by multiplying the number of hours
27 reasonably expended by a reasonable hourly rate.” *Bentley*, 2020 WL 3978090. “A
28 cross-check is discretionary, but we encourage one when utilizing the percentage-

1 of-recovery method.” *Apple*, 2022 WL 4492078, at *10. The crosscheck “need [not]
2 entail neither mathematical precision nor bean-counting as it is simply a means to
3 verify the reasonableness of a percentage-of-recovery request.” *Bentley*, 2020 WL
4 39788090 (internal quotation omitted). Judge Gutierrez recently opted against
5 conducting a lodestar cross-check “due to the exceptional circumstances of this case
6 and the Court’s extensive involvement in supervising the last seven years of
7 litigation,” and the “reasonableness of the requested award using the lodestar
8 method.” *Andrews*, 2022 WL 4453864, at *2. In the Ninth Circuit, a multiplier
9 ranging from 1.0 to 4.0 is considered “presumptively acceptable.” *Dyer v. Wells*
10 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014).

11 **a. Reasonableness of Class Counsel’s Hourly Rates**

12 Class Counsel’s hourly rates are consistent with market rates. Hutchinson
13 Fee Decl. ¶ 39; Wilson Decl. ¶ 21; Burke Decl. ¶¶ 27-28; *see also Dickey v.*
14 *Advanced Micro Devices, Inc.*, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020)
15 (approving rates between \$275 and \$1,000 for attorneys); *Bentley*, 2020 WL
16 39788090 (approving hourly rates and citing cases where courts approved partner
17 rates ranging from \$420 to \$975). Other courts have recently affirmed Class
18 Counsel’s rates. Hutchinson Fee Decl. ¶ 38; Wilson Decl. ¶ 18; Burke Decl. ¶¶ 27-
19 28. Class Counsel’s rates are largely in line with the *2021 Real Rate Report: The*
20 *Industry’s Leading Analysis of Law Firm Rates, Trends, and Practices* (“Real Rate
21 Report”). The Real Rate Report provides Los Angeles⁴ rates of \$412 to \$841 for
22 associates, \$527 to \$1,145 for partners, and a median rate of \$255 for paralegals.
23 Real Rate Report at 10, 26, 32.

24 **b. Reasonableness of Hours Expended**

25 “In determining the appropriate lodestar amount, the district court may
26 exclude from the fee request any hours that are excessive, redundant, or otherwise
27

28 ⁴ The relevant community is that in which the Court sits. *See Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995).

1 unnecessary.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007)
2 (quotation omitted). Class Counsel have devoted a total of approximately 13,036.7
3 hours to this litigation. Hutchinson Fee Decl. ¶ 51. These submitted hours do not
4 include every hour reported, even by Class Counsel. They do not include
5 timekeepers from Class Counsel’s firms who billed fewer than 10 total hours. *Id.*
6 They also do not include additional time that Class Counsel will accrue in seeking
7 approval of and overseeing the Settlement. *Id.* at ¶ 51, n.4. If there are objections to
8 the Settlement and subsequent appeals, those commitments and responsibilities may
9 extend for several more years.

10 Class Counsel were careful and thorough in litigating this action, but also
11 coordinated to gain efficiencies. *Id.* at ¶ 30; Wilson Decl. ¶¶ 12-15; Burke Decl. ¶¶
12 15-17. The considerable efforts were necessary to manage this broad litigation, with
13 numerous third parties, and critical motions related to class certification, summary
14 judgment, and trial. Class Counsel coordinated on a weekly basis to determine
15 which law firm and attorney would be primarily responsible for a task, such as
16 working with experts, preparing witnesses for depositions, taking depositions, and
17 drafting motions, who would attend which calls, hearings, and depositions, and who
18 would coordinate with each respective third party. Hutchinson Fee Decl. ¶¶ 30, 35;
19 Wilson Decl. ¶¶ 12-15, 20; Burke Decl. ¶¶ 15-17.

20 c. **Class Counsel’s Lodestar Multiplier is Presumptively**
21 **Acceptable**

22 In total, Class Counsel expended 13,036.7 hours for a total lodestar of
23 \$8,734,304.25. This yields a negative, or fractional, multiplier of 0.65. This lodestar
24 multiplier is *below* the Ninth Circuit’s “presumptively acceptable range of 1.0-4.0”
25 and strongly favors granting Class Counsel’s fee request. *Dyer*, 303 F.R.D. at 334.

26 **B. The Requested Reimbursement of Expenses is Reasonable and**
27 **Appropriate**

28 Class Counsel are also entitled to reimbursement of reasonable out-of-pocket

1 costs advanced for the Class. *See* Fed. R. Civ. P. 23(h); *In re Media Vision Tech.*
2 *Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (“Reasonable costs and
3 expenses incurred by an attorney who creates or preserves a common fund are
4 reimbursed proportionately by those class members who benefit by the
5 settlement.”).

6 Class Counsel incurred out-of-pocket expenses of \$869,303.55 in the decade
7 of this litigation. Hutchinson Fee Decl. ¶ 52. The bulk of these expenses comprise
8 necessary fees for Class Counsel’s experts, mediation costs (including travel to and
9 from the mediations), deposition-related costs, and other customary litigation
10 expenses such as travel to and from hearings and mediations (including scheduling
11 conferences, a class certification hearing, a summary judgment hearing, and a final
12 pretrial conference), database fees for housing and processing the electronic data at
13 issue in this case, legal research fees, and filing fees. *Id.* (itemizing each category of
14 costs). In particular, given that simply processing the call data from numerous third
15 parties, all in differing formats, required extensive expertise, the expert-related
16 costs are particularly appropriate in this TCPA litigation. These costs are
17 “reasonable and relevant to the litigation.” *Bentley*, 2020 WL 3978090.

18 While this lengthy and highly technical case was expensive to prosecute,
19 “Class Counsel had a strong incentive to keep expenses at a reasonable level due to
20 the high risk of no recovery when the fee is contingent.” *Beesley v. Int’l Paper Co.*,
21 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). Given the risk and ten years of
22 litigation, Class Counsel expended just those expenses necessary to advance the
23 Class’s interests (and were able to effectively save the Class \$350,000 in notice
24 costs). The requested costs are reasonable and should be reimbursed.

25 **C. The Requested Service Award is Reasonable and Appropriate**

26 Class Counsel seeks a service award of \$10,000 for Plaintiff Jenny Brown to
27 compensate her for the time and effort she spent in bringing this lawsuit on behalf
28 of the Class. Courts have discretion to approve service awards based on the amount

1 of time and effort spent, the duration of the litigation, and the personal benefit (or
2 lack thereof) as a result of the litigation. *See, e.g., Apple*, 2022 WL 4492078, at *12
3 (district courts should consider “the amount of time and effort the plaintiff
4 expended in pursuing the litigation”). Ms. Brown diligently pursued this litigation
5 for over a decade. She was deposed, responded to discovery requests, provided
6 declarations in support of class certification and preliminary approval, and prepared
7 with counsel to serve as a key trial witness and to appear in person for the entire
8 trial. *See* Dkt. 521 (Declaration of Jenny Brown) (detailing Ms. Brown’s
9 involvement). Ms. Brown was the sole remaining named plaintiff and the face of
10 this litigation for over a decade. Simply put, the Class would have never received
11 any recovery without her efforts.

12 A service award of \$10,000 is fairly typical in class action cases. *See, e.g., In*
13 *re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017
14 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017) *aff’d*, 768 F. App’x 651 (9th Cir.
15 2019) (awarding \$20,000 service awards to four class representatives); *Garner v.*
16 *State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22,
17 2010) (collecting Ninth Circuit cases with awards of \$20,000 or more); *Sevilla*,
18 2020 WL 10573205, at *2 (awarding incentive award of \$15,000). Moreover, a
19 \$10,000 service award is less than 0.058% of the gross Settlement amount, a figure
20 which is well within the range the Ninth Circuit has found reasonable. Ms. Brown
21 respectfully submits that a \$10,000 service award is appropriate and should be
22 approved here.

23 CONCLUSION

24 For the foregoing reasons, Class Counsel and Ms. Brown respectfully request
25 that the Court grant this motion in its entirety, and award (1) attorneys’ fees to
26 Class Counsel in the amount of \$5,666,666.66; (2) reimbursement of litigation
27 expenses of \$869,303.55; and (3) a service award to Plaintiff Jenny Brown of
28 \$10,000.

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Dated: October 14, 2022

Respectfully submitted,

By: /s/ Daniel M. Hutchinson
Daniel M. Hutchinson

LIEFF CABRASER, HEIMANN &
BERNSTEIN, LLP

Jonathan D. Selbin (SBN 170222)

jselbin@lchb.com

Douglas I. Cuthbertson

(admitted *pro hac vice*)

dcuthbertson@lchb.com

Sean A. Petterson

(admitted *pro hac vice*)

spetterson@lchb.com

250 Hudson Street, 8th Floor

New York, NY 10013

Telephone: (212) 355-9500

Facsimile: (212) 355-9592

LIEFF CABRASER, HEIMANN &
BERNSTEIN, LLP

Daniel M. Hutchinson (SBN 239458)

dhutchinson@lchb.com

275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

Telephone: (415) 956-1000

Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC

Alexander H. Burke (admitted *pro hac vice*)

ABurke@BurkeLawLLC.com

909 Davis Street, Suite 500

Evanston, IL 60201

Telephone: (312) 729-5288

MEYER WILSON CO., LPA

Matthew R. Wilson (SBN 290473)

mwilson@meyerwilson.com

Michael J. Boyle, Jr. (SBN 258560)

mboyle@meyerwilson.com

Jared W. Connors (admitted *pro hac vice*)

jconnors@meyerwilson.com

305 W. Nationwide Blvd

Columbus, OH 43215

Telephone: (614) 224-6000

Facsimile: (614) 224-6066

KING & SIEGEL LLP

Elliot Siegel (286798)

Elliot@kingsiegel.com

724 South Spring St. Suite 201

Los Angeles, CA 90014

Telephone: (213) 465-4802

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28

Facsimile: (213) 465-4803

HEALEY LAW, LLC
Robert T. Healey (admitted *pro hac vice*)
bob@healeylawllc.com
640 Cepi Drive, Suite A
Chesterfield, MO 63005
Telephone: (636) 536-5175
Facsimile: (636) 590-2882

Attorneys for Plaintiff Jenny Brown and the Class

1 LIEFF CABRASER HEIMANN
 & BERNSTEIN LLP
 2 Jonathan D. Selbin (State Bar No. 170222)
 jselbin@lchb.com
 3 Douglas I. Cuthbertson (admitted *pro hac vice*)
 dcuthbertson@lchb.com
 4 Sean A. Petterson (admitted *pro hac vice*)
 spetterson@lchb.com
 5 250 Hudson Street, 8th Floor
 New York, NY 10013
 6 Telephone: (212) 355-9500
 Facsimile: (212) 355-9592

MEYER WILSON CO., LPA
 Matthew R. Wilson
 (State Bar No. 290473)
 mwilson@meyerwilson.com
 Michael J. Boyle, Jr.
 (State Bar No. 258560)
 mboyle@meyerwilson.com
 305 W. Nationwide Blvd
 Columbus, OH 43215
 Telephone: (614) 224-6000
 Facsimile: (614) 224-6066

7 LIEFF CABRASER HEIMANN
 & BERNSTEIN LLP
 8 Daniel M. Hutchinson (State Bar No. 239458)
 dhutchinson@lchb.com
 9 275 Battery Street, 29th Floor
 San Francisco, CA 94111-3339
 10 Telephone: (415) 956-1000
 11 Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC
 Alexander H. Burke (admitted
pro hac vice)
 ABurke@BurkeLawLLC.com
 909 Davis St., Suite 500
 Evanston, IL 60201
 Telephone: (312) 729-5288

12 *Attorneys for Plaintiff Jenny Brown and the Class*
 13 *[Additional Counsel Appear on Signature Page]*

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**
 16 **WESTERN DIVISION**

17 JENNY BROWN and CARMEN
 MONTIJO, on behalf of themselves
 and all others similarly situated,

18 Plaintiffs,

19 v.

20 DIRECTV, LLC,

21 Defendant.

Case No. 2:13-cv-01170-DMG-E

**DECLARATION OF DANIEL M.
 HUTCHINSON IN SUPPORT OF
 PLAINTIFF'S AND CLASS
 COUNSEL'S MOTION FOR AN
 AWARD OF ATTORNEYS' FEES,
 REIMBURSEMENT OF
 LITIGATION EXPENSES, AND
 PLAINTIFF SERVICE AWARD**

1 I, Daniel M. Hutchinson, declare:

2 1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein,
3 LLP (“LCHB”), Class Counsel¹ in this Action. I have personal knowledge of the
4 facts set forth in this Declaration based on my day-to-day participation in the
5 prosecution and settlement of this case, and, if called as a witness, could and would
6 testify competently to them.

7 2. I submit this declaration in support of Plaintiff’s and Class Counsel’s
8 Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses,
9 and Plaintiff Service Award.

10 **LCHB BACKGROUND AND EXPERIENCE**

11 3. LCHB is a national law firm with offices in San Francisco, New York,
12 Nashville, and Munich, Germany. LCHB’s practice focuses on complex and class
13 action litigation involving consumer protection, employment, financial fraud,
14 securities, product liability, environmental, and personal injury matters. Attached
15 hereto as **Exhibit A** is a true and correct copy of LCHB’s current firm resume,
16 showing some of the firm’s experience in complex and class action litigation. This
17 resume is not a complete listing of all cases in which LCHB has been class counsel
18 or otherwise counsel of record.

19 4. I graduated from Brown University in 1999. I served as a judicial
20 extern to the Honorable Martin J. Jenkins, U.S. District Court, Northern District of
21 California, in 2004. I graduated from the University of California, Berkeley, School
22 of Law (Berkeley Law) in 2005.

23 5. Since 2005, I have practiced with LCHB, where I became a partner in
24 January 2011. At LCHB, I have focused on representing plaintiffs in employment
25 litigation (including discrimination and ERISA disputes), and financial and
26 consumer fraud cases.

27
28

¹ Capitalized terms are defined in the Settlement Agreement.

1 6. In January 2021, I became the Chair of LCHB’s Employment Practice
2 Group.

3 Consumer Protection Class Actions

4 7. As an LCHB partner, my practice has focused on a number of
5 nationwide consumer protection class actions.

6 a. I, along with other attorneys from my firm, served as chair of
7 the Plaintiffs Executive Committee in *In re: Bank of Am. Credit Protection Mktg. &*
8 *Sales Practices Litig.*, 3:11-md-02269-TEH (N.D. Cal.), multi-district litigation
9 (“MDL”) against Bank of America and FIA Card Services, challenging the
10 imposition of charges for so-called “payment protection” or “credit protection”
11 programs. In January 2013, the Court approved a \$20 million settlement including
12 required practice changes.

13 b. I, along with other attorneys from my firm, served as co-lead
14 counsel in a series of groundbreaking nationwide class actions under the Telephone
15 Consumer Protection Act (“TCPA”) and have prosecuted complex class action
16 litigation of similar size, scope, and complexity to the instant case. LCHB has the
17 resources necessary to conduct litigation of this nature efficiently and effectively.
18 The TCPA is a technologically focused statute. In my experience, successful TCPA
19 class actions require attorneys to understand the mechanics of automatic telephone
20 dialing systems and complex computer databases that store and organize call
21 records. In addition, attorneys must closely track relevant orders, rulemakings, and
22 petitions from the Federal Communications Commission, as the FCC has been very
23 active on TCPA issues.

24 c. In September 2012, the court approved a \$24.15 million class
25 settlement against Sallie Mae, the then-largest monetary settlement in the history of
26 the TCPA. *See Arthur v. Sallie Mae, Inc.*, No. C10-0198 JLR, 2012 WL 40752238
27 (W.D. Wash. Sept. 17, 2012).

28

1 d. I, along with other attorneys from my firm and co-counsel,
2 served as counsel in *Rose v. Bank of Am. Corp.*, 5:11-cv-02390-EJD (N.D. Cal.),
3 and *Duke v. Bank of Am., N.A.*, 5:12-cv-04009-EJD (N.D. Cal.). On August 29,
4 2014, the Court approved a \$32,083,905 class settlement, which surpassed the
5 *Sallie Mae* settlement as the largest monetary settlement in the history of the TCPA.

6 e. I, along with other attorneys from my firm and co-counsel,
7 served as counsel in *In re Capital One Telephone Consumer Protection Act*
8 *Litigation*, Master Docket No. 1:12-cv-10064 (N.D. Ill.). On February 12, 2015, the
9 court approved a \$75,455,098.74 class settlement.

10 f. I, along with other attorneys from my firm and co-counsel,
11 served as counsel in a series of TCPA class action lawsuits against Wells Fargo.
12 Court-approved nationwide class settlements in six actions total over \$95 million.
13 *Cross v. Wells Fargo Bank N.A.*, Case No. 1:15-cv-01270-RWS (N.D. Ga. Feb. 13,
14 2017) (\$30,446,022.75); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-
15 01156 (N.D. Ga. Jan. 30, 2017) (\$16,417,496.70); *Luster v. Wells Fargo Bank,*
16 *N.A.*, Case No. 1:15-cv-01058 (N.D. Ga. Nov. 8, 2017) (\$14,834,058); *Franklin v.*
17 *Wells Fargo Bank N.A.*, Case No.14-cv-2349 (S.D. Cal. Jan. 29, 2016)
18 (\$13,859,103.80); *Prather v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-04231
19 (N.D. Ga. Aug. 31, 2017) (\$2,075,071.80); *Dunn v. Wells Fargo Bank, N.A.*, Case
20 No. 1:17-cv-00481 (N.D. Ill. Dec. 10, 2019) (\$17,850,000).

21 g. I, along with other attorneys from my firm and co-counsel,
22 served as counsel in *Wilkins v. HSBC Bank Nev., N.A.*, Case No. 14-cv-190 (N.D.
23 Ill.). On February 27, 2015, the court approved a \$39,975,000 class settlement. In
24 approving the settlement Judge James F. Holderman commented on “the excellent
25 work” and “professionalism” of LCHB and its co-counsel in securing a \$39.975
26 million non-reversionary cash settlement in that TCPA class action.

27 h. I, along with other attorneys from my firm and co-counsel,
28 served as counsel in *Jenkins v. National Grid USA, et al.*, Case No. 2:15-cv-01219-

1 JS-GRB (E.D.N.Y.). On June 24, 2022, the court approved a \$38.5 million cash
2 settlement with significant and extensive policies and procedures designed to make
3 it easier for National Grid’s new, current, and former customers to prevent National
4 Grid from robocalling them.

5 i. I, along with other attorneys from my firm and co-counsel,
6 served as counsel in *Buchanan v. Sirius XM Radio, Inc.*, Case 3:17-cv-00728-D
7 (N.D. Tex.). On January 28, 2020, the court approved class settlement comprising
8 of a \$25 million common fund and non-monetary relief worth approximately \$6.5
9 million.

10 j. I, along with other attorneys from my firm and co-counsel,
11 served as counsel in *Connor v. JPMorgan Chase Bank*, Case No. 10 CV 1284 DMS
12 BGS (S.D. Cal. Mar. 12, 2012), a nationwide TCPA class action. On February 5,
13 2015, the court approved a \$11,665,592.09 cash settlement.

14 k. I, along with other attorneys from my firm and co-counsel,
15 served as counsel in *Thomas v. Dun & Bradstreet Credibility Corp.*, Case No. 2:15-
16 cv-03194-BRO-GJS (C.D. Cal.). On March 22, 2017, the court approved a \$10.5
17 million cash settlement for a class of small business owners who received
18 telemarketing calls.

19 l. I, along with other attorneys from my firm and co-counsel,
20 served as counsel in the nationwide TCPA class actions *Bradley v. Discover*
21 *Financial Services*, Case No. 4:11-cv-5746-YGR (N.D. Cal.), and *Steinfeld v.*
22 *Discover Financial Services*, Case No. 3:12-cv-01118-JSW (N.D. Cal.). In March
23 2014, the court approved an \$8.7 million class settlement.

24 m. I, along with other attorneys from my firm and co-counsel,
25 served as counsel in *Ossola v. American Express Co., et al.*, Case No. 1:13-CV-
26 4836 (N.D. Ill.). On December 2, 2016, the court approved two separate class
27 settlements of \$8.25 million and \$1 million each.

28

1 n. I, along with other attorneys from my firm and co-counsel,
2 served as counsel in *Smith v. State Farm Mutual Auto. Ins. Co., et al.*, Case No.
3 1:13-cv-02018 (N.D. Ill.). On December 8, 2016, the court approved a \$7 million
4 settlement.

5 o. I, along with other attorneys from my firm and co-counsel,
6 served as counsel in *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL
7 3108884 (N.D. Ill. June 25, 2018) (certifying nationwide class). On August 8, 2019,
8 the court approved a \$6.5 million settlement.

9 p. I, along with other attorneys from my firm and co-counsel,
10 served as counsel in *Pine v. A Place For Mom, Inc.*, Case No. Case 2:17-cv-01826-
11 TSZ (W.D. Wash.). On January 11, 2021, the court approved a \$6 million
12 settlement.

13 q. I, along with other attorneys from my firm and co-counsel,
14 served as counsel in *Rice-Redding v. Nationwide Mutual Automobile Ins. Co.*, Case
15 No. 1:16-cv-03634 (N.D. Ga.). On August 1, 2019, the court approved a \$5 million
16 settlement.

17 r. I, along with other attorneys from my firm and co-counsel,
18 served as counsel in *Bayat v. Bank of the West*, Case 3:13-cv-02376-EMC (N.D.
19 Cal.). On April 15, 2015, the court approved a \$3,354,745.98 settlement.

20 s. I, along with other attorneys from my firm and co-counsel,
21 served as counsel in *Grogan v. Aaron's Inc.*, Case No. 1:18-cv-02821-AT (N.D.
22 Ga.). On October 8, 2020, the court approved a \$2.175 million settlement.

23 t. I, along with other attorneys from my firm and co-counsel,
24 served as counsel in *Woodrow v. Sagent Auto LLC*, Case No. 2:18-cv-01054-JPS
25 (E.D. Wis.). On Nov. 19, 2019, the court approved a \$1.75 million settlement.

26 u. I, along with other attorneys from my firm and co-counsel,
27 served as counsel in *Wannemacher v. Carrington Mortgage Services LLC*, Case
28

1 No. 8:12-cv-02016-FMO-AN (C.D. Cal.). On December 22, 2014, the court
2 approved a \$1.035 million settlement.

3 v. I was co-lead counsel in *Yarger v. ING Bank, fsb*, Civil Action
4 No. 1:11-cv-00154-LPS (D. Del.), representing consumers who charge that ING
5 Direct breached its promise to allow them to refinance their home mortgages for a
6 fixed flat fee of \$500 or \$750, and instead charged a higher fee of one-monthly
7 mortgage payment for refinancing. In 2012, the court certified a class of consumers
8 in ten states who purchased or retained an ING mortgage during the class period.
9 On October 7, 2014, the court approved a \$20,350,000 class settlement.

10 8. Prior to my elevation to partner, I participated in successful litigation
11 of a wide variety of other complex federal and state consumer class actions during
12 my professional career. Class action cases I have successfully prosecuted to
13 judgment or settlement, in addition to the foregoing, include: *Sutter Health*
14 *Uninsured Pricing Cases*, Case No. J.C.C.P. 4388 (Sacramento Super. Ct.) (lead
15 class counsel in consumer class action that resulted in over \$275 million settlement
16 and comprehensive pricing and collections policy changes for uninsured patients
17 across all Sutter hospitals); *Catholic Healthcare West Cases*, Case No. J.C.C.P.
18 4453 (San Francisco County Super. Ct.) (lead class counsel in consumer class
19 action that resulted in over \$423 million settlement and pricing and collections
20 policy changes for uninsured patients across all CHW hospitals); *Scripps Health*
21 *Cases*, Case No. IC859468 (S.D. Super. Ct.) (lead class counsel in consumer class
22 action that resulted in over \$73 million settlement and pricing and collections
23 policy changes for uninsured patients at Scripps hospitals); *John Muir Uninsured*
24 *Healthcare Cases*, Case No. J.C.C.P. 4494) (Contra Costa County Super. Ct.) (lead
25 class counsel in consumer class action that resulted in over \$113 million settlement
26 and pricing and collections policy changes for uninsured patients at John Muir
27 hospitals); *Cincotta v. California Emergency Physicians Medical Group*, No.
28 07359096 (Cal. Super. Ct.) (lead class counsel in consumer class action that

1 resulted in over \$27 million settlement and pricing and collections policy changes,
2 including complete debt elimination—100% cancellation of the bill, for nearly
3 100,000 uninsured patients who alleged they were charged excessive and unfair
4 rates for emergency room service across 55 hospitals throughout California).

5 9. As an LCHB partner, I have gained extensive experience in the
6 litigation, trial, and settlement of complex employment class actions as Class
7 Counsel in several cases.

8 a. I served as co-lead counsel in *Vedachalam v. Tata Am. Int’l*
9 *Corp.*, Case No. 3:06-cv-00963-CW (N.D. Cal.), a case on behalf of a certified
10 class of over 13,000 foreign nationals working in the United States who were
11 denied promised wages and benefits. In July 2013, the court approved a \$29.75
12 million nationwide class settlement.

13 b. I served as co-lead counsel in *Strauch v. Computer Sciences*
14 *Corporation*, Case No. 2:14-cv-00956 (D. Conn.), a collective and class action
15 lawsuit alleging that CSC misclassified information technology support workers as
16 exempt from overtime pay in violation of the federal Fair Labor Standards Act
17 (“FLSA”), and California and Connecticut law. On December 20, 2017 following a
18 three-week trial, a jury found that CSC wrongly and willfully denied overtime pay.
19 On August 12, 2019, the court entered judgment in favor of the plaintiffs in the
20 amount of \$18,755,016.46. Following appeals to the Second Circuit, the parties
21 reached a settlement for a total payment of \$17,600,000.

22 c. I served as co-lead counsel in *Martin v. Bohemian Club*, Case
23 No. SCV-258731 (Sonoma Super. Ct.) and *Ulucan v. Bohemian Club*, Case No.
24 SCV-268056 (Sonoma Super. Ct.), wage-and-hour cases on behalf of seasonal
25 workers. On September 28, 2016 and October 20, 2021, the Court approved two
26 class settlements totaling \$10,535,000.

27 d. I served as co-lead counsel in *Ellis v. Costco Wholesale Corp.*,
28 No. 04-03341-EMC (N.D. Cal.), a case on behalf of two certified classes of female

1 employees charging that Costco discriminates against women in promotions to
2 management positions. In May 2014, the Court approved a class settlement
3 requiring changes to Costco's promotion process and establishing an \$8 million
4 settlement fund.

5 e. I, along with other attorneys from my firm and co-counsel,
6 represented plaintiffs who contracted with MHN Government Services, Inc., to
7 provide counseling services through the Department of Defense to military
8 members and their families. The case was venued in the United States District
9 Court for the Northern District of California. In April 2016, an arbitrator approved a
10 class settlement in the matter, which resulted in payment of \$7,433,109.19 to class
11 members.

12 f. I served as co-lead counsel in *Le v. Walgreen Co.*, Case No.
13 8:18-cv-01548 DOC (ADSx) (C.D. Cal.), a wage-and-hour case alleging that
14 Walgreens failed to provide off-duty rest breaks. On July 21, 2021, the Court
15 approved a class settlement totaling \$6,800,000.

16 g. I, along with other attorneys from my firm and co-counsel,
17 served as co-lead counsel in *Holloway v. Best Buy*, No. C05-5056-PJH (N.D. Cal.),
18 representing a class of current employees of Best Buy that alleged Best Buy stores
19 nationwide discriminated against women, African Americans, and Latinos. In
20 November 2011, the Court approved a settlement of the class action in which Best
21 Buy agreed to changes to its personnel policies and procedures that have enhanced
22 the equal employment opportunities of the tens of thousands of women, African
23 Americans, and Latinos employed by Best Buy nationwide.

24 10. In addition to the foregoing, prior to my elevation to partner I
25 participated in successful litigation of a wide variety of other complex federal and
26 state employment class actions during my professional career.

27 a. I, along with other attorneys from my firm and co-counsel,
28 served as co-lead counsel in *Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo*

1 *Bank, et al.*, No. 01-0892-CRB (N.D. Cal.), representing Mexican workers and
2 laborers, known as Braceros (“strong arms”), who came from Mexico to the United
3 States pursuant to bilateral agreements from 1942 through 1946 to aid American
4 farms and industries hurt by employee shortages during World War II in the
5 agricultural, railroad, and other industries. A settlement required the Mexican
6 government to provide a payment of approximately \$3,500 to Braceros, or their
7 surviving spouses or children. In approving the settlement in February 2009, U.S.
8 District Court Judge Charles Breyer stated:

9 I’ve never seen such litigation in eleven years on the bench
10 that was more difficult than this one... Notwithstanding all
11 of these issues that kept surfacing ... over the years, the
12 plaintiffs persisted...And, in fact, they achieved a
13 settlement of the case, which I find remarkable under all of
14 these circumstances.

15 b. I, along with other attorneys from my firm and co-counsel,
16 served as co-lead counsel in *Barnett v. Wal-Mart Stores, Inc.*, Case No.
17 01-2-24553-8 SEA (Sup. Ct. Wash.), a certified statewide wage and hour class
18 action filed on behalf of hourly employees challenging the company’s failure to
19 compensate its hourly employees for missed rest and meal breaks and off-the-clock
20 work in stores throughout Washington state. This case settled for \$35 million, as
21 well as injunctive relief governing company policies.

22 c. I, along with other attorneys from my firm and co-counsel,
23 served as one of plaintiffs’ lead counsel in *Amochaev v. Citigroup d/b/a Smith*
24 *Barney*, Civ. No. 05-1298-PJH (N.D. Cal.), a gender discrimination class action on
25 behalf of female Financial Advisors employed by Smith Barney that resulted in a
26 settlement involving comprehensive injunctive relief and over \$33 million in
27 monetary relief.
28

1 Antitrust and Securities Actions

2 11. I have also served as Class Counsel in several antitrust and other
3 financial fraud actions.

4 a. I served, with my co-counsel, as Lead Counsel in *Haley Paint*
5 *Co. v. E.I. Dupont De Nemours and Co. et al.*, No. 10-cv-00318-RDB (D. Md.),
6 a certified nationwide class action lawsuit on behalf of direct purchasers of titanium
7 dioxide charging that defendants conspired to fix, raise, and maintain the price of
8 titanium dioxide in the United States. In November 2013, the court approved class
9 settlements with four defendants totaling \$163.5 million.

10 12. As an LCHB associate, I played a significant role in several antitrust
11 and securities actions, including:

12 a. I, along with other attorneys from my firm and co-counsel,
13 served as Plaintiffs' counsel in *Quantegy Recording Solutions, LLC, et al. v. Toda*
14 *Kogyo Corp., et al.*, No. C-02-1611 (PJH), antitrust litigation against
15 manufacturers, producers, and distributors of magnetic iron oxide ("MIO"). In
16 August 2006 and January 2009, the Court approved settlements totaling
17 \$6.35 million.

18 b. I have also successfully litigated complex individual actions,
19 including *Alaska State Dept. of Revenue v. America Online*, No. 1JU-04-503
20 (Alaska Super. Ct.) (co-counsel in securities fraud action brought by the Alaska
21 State Department of Revenue, Alaska State Pension Investment Board and Alaska
22 Permanent Fund Corporation that settled for \$50 million in December 2006).

23 13. Together, the cases described above have resulted in court-approved
24 class action settlements, with a combined total recovery for class members
25 exceeding well over \$800 million in cash, plus other relief. The TCPA class
26 settlements described in paragraph 8 above (but excluding the proposed Settlement
27 in this action), total over \$420 million. LCHB's experience in these cases, and my
28 experience in particular, has provided LCHB and me with expertise in the legal,

1 factual, management, notice, and administration issues that characterize these types
2 of class actions.

3 Other Experience and Awards

4 14. I have received several awards and honors for my litigation efforts.

5 15. In 2016, I was named as one of the Daily Journal's Top 40 Under 40
6 leading lawyers in California.

7 16. In 2014, Law360 recognized me as one of six of the nation's top
8 employment lawyers under 40. *See Daniel Siegal, Rising Star: Lieff Cabraser's*
9 *Daniel Hutchinson* (Apr. 22, 2014), available at
10 <http://www.law360.com/employment/articles/530612>; *Law360 Names Top*
11 *Attorneys Under 40* (Apr. 11, 2014), available at
12 <http://www.law360.com/employment/articles/525943>.

13 17. In 2012, The Recorder named me as one of "50 Lawyers on the Fast
14 Track."

15 18. In 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, I was
16 recognized as a Northern California Super Lawyer and, from 2009 to 2012, was
17 named as a Northern California Super Lawyer Rising Star.

18 19. In addition to being an active litigator, I have long been involved in
19 many educational and legal groups, including the Lawyers' Committee for Civil
20 Rights of the San Francisco Bay Area (Board Chair, 2015; Board Chair-elect, 2014;
21 Board Secretary, 2011-2013; Member of the Board of Directors, 2009-2018); Bar
22 Association of San Francisco Cybersecurity and Privacy Law Section (vice chair,
23 2015-2018); American Bar Association (Section of Labor & Employment Law
24 Leadership Development Program); Association of Business Trial Lawyers
25 (Leadership Development Committee, 2008-2010); National Employment Lawyers
26 Association; Bar Association of San Francisco; Consumer Attorneys of California;
27 and National Bar Association.
28

1 20. I am a frequent speaker on class action and employment law topics,
2 including at events sponsored by the American Bar Association’s Section of Labor
3 and Employment Law, the Consumer Attorneys of California, the Mason Judicial
4 Education Program, the Impact Fund, the National Employment Lawyers
5 Association, the Practising Law Institute, and the UCLA School of Law. In March
6 2014, I provided a CLE presentation on arbitration and class actions to
7 approximately 75 California state and federal court judges through the Judicial
8 Education Program provided by the Law & Economics Center at George Mason
9 University School of Law.

10 21. I have published and presented papers on race and gender class actions
11 under Title VII, including “Ten Points from *Dukes v. Wal-Mart Stores, Inc.*,” 20(3)
12 CADS Report 1 (Spring 2010); “Pleading an Employment Discrimination Class
13 Action” and “EEO Litigation: From Complaint to the Courthouse Steps,” ABA
14 Section of Labor and Employment Law Second Annual CLE Conference (2008);
15 and “Rule 23 Basics in Employment Cases,” Strategic Conference on Employment
16 Discrimination Class Actions (2008).

17 22. Throughout the litigation, Lieff Cabraser partners, associates, staff
18 attorneys, paralegals, and litigation support made significant and important
19 contributions to litigating this case.

20 23. In particular, Douglas Cuthbertson, now a partner at Lieff Cabraser,
21 played an essential role in this litigation. Mr. Cuthbertson was instrumental in the
22 beginning of the case in drafting pleadings, early discovery efforts including a Rule
23 26(f) conference and subpoenaing DIRECTV’s debt collection agencies, and
24 defending the motion to dismiss. Mr. Cuthbertson graduated from the Fordham
25 University School of Law in 2007. From 2007 to 2009, he served as a judicial clerk
26 to the Honorable Andrew J. Peck. From 2009 to 2012, he practiced at Debevoise &
27 Plimpton, LLP. He has been at LCHB since 2012 and a partner since 2016. At
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1 LCHB, he has successfully represented plaintiffs in financial, consumer fraud, and
2 privacy cases, including numerous successful TCPA class actions.

3 24. Sean Petterson, an associate at LCHB, played a key role in this
4 litigation. Mr. Petterson assisted in the 2018 class certification briefing and in
5 numerous discovery efforts, including conferring with several of DIRECTV's debt
6 collection agencies. Mr. Petterson also worked closely with Angeion Group on
7 class notice and with Plaintiffs' experts at Class Experts Group to analyze the call
8 data, prepare them for their depositions, and obtain expert declarations in support of
9 summary judgment. Mr. Petterson took the deposition of DIRECTV's former
10 employee, Mr. Enrico Topazio, oversaw the document review of DIRECTV's
11 productions, and was the primary drafter of the summary judgment statement of
12 facts. Mr. Petterson also assisted with pre-trial filings, including drafting motions in
13 limine, jury instructions, and oppositions to DIRECTV's motions in limine. He was
14 an active participant in 2021 mediation sessions. Mr. Petterson graduated from the
15 New York University School of Law in 2015. Prior to joining LCHB in 2018, he
16 was an associate at Boies Schiller Flexner LLP. At LCHB, he has successfully
17 represented plaintiffs in derivative cases, consumer fraud, and privacy cases.

18 25. I was also assisted by Lieff Cabraser's staff attorneys Roger Geissler,
19 Scott Miloro, Jae Park, and Yun Swenson. Each staff attorney was responsible for
20 providing first-level review of DIRECTV's documents, searching for hot
21 documents in preparation for summary judgment and depositions, and presented
22 summaries of their document review on weekly calls led by Mr. Petterson. Mr.
23 Geissler is a 2012 graduate of the University of California College of the Law, San
24 Francisco and is admitted to practice in the State of California. Mr. Miloro is a
25 2006 graduate of the Benjamin N. Cardozo School of Law and was admitted to
26 practice in the State of New York in 2007. Ms. Park is a 2005 graduate of the
27 University of Pennsylvania Law School and was admitted to practice in the State of
28

1 California in 2006. Ms. Swenson is a 2003 graduate of Cornell Law School and was
2 admitted to practice in the State of California in 2018.

3 26. On key high-level tasks, including in mediation and settlement of the
4 case, I worked closely with my partner Jonathan Selbin. In particular, Mr. Selbin
5 was responsible for liaising with defense counsel and Robert Meyer (JAMS) in
6 finalizing the settlement. Mr. Selbin is the chair emeritus of Lief Cabraser's
7 Economic Injury Product Defect Practice Group and a member of LCHB's
8 Executive Committee. In that role, Mr. Selbin developed and implemented the legal
9 strategy responsible for court-approved class action settlements with a combined
10 total recovery for class members of well over \$3.4 billion in non-reversionary cash
11 paid out, plus other relief such as enhanced and extended warranties. Mr. Selbin is a
12 1993 graduate of Harvard Law School.

13 27. Appropriate tasks were also assigned to Lief Cabraser paralegals, in
14 particular Ms. Jenny Rudnick. Ms. Rudnick has been a paralegal with Lief
15 Cabraser since 2007. Ms. Rudnick provided critical factual research, case tracking,
16 assistance with discovery, and cite checking of every key filing throughout the case.
17 She also assisted in preparing filing materials and tracking case deadlines and
18 schedules. Ms. Rudnick is a graduate of Syracuse University with a degree in
19 English and Political Science.

20 28. I was also assisted by Lief Cabraser's litigation support and research
21 staff. These individuals were tasked with uploading, filtering, and hosting all party
22 and third-party productions to Relativity, a document hosting platform. They were
23 also critical in preparing exhibits and demonstratives for the potential trial.

24 29. In reviewing time records, LCHB exercised billing discretion to
25 remove the time for all attorneys who worked fewer than 10 hours on this matter
26 and several other entries. None of this excluded time is included in the above
27 number, nor is the additional time that LCHB will have to spend working on this
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1 matter going forward, including in connection with seeking final approval of the
2 settlement, overseeing the Settlement Administrator, and any appeals.

3 **LITIGATION OF THIS CASE**

4 30. Lieff Cabraser has been deeply involved in all aspects of the case.
5 Although all work in this case has been a collaborative effort, LCHB attorneys were
6 particularly instrumental in undertaking the following tasks:

- 7 a. Drafting the initial amended complaint and motion to dismiss
8 briefing;
- 9 b. Liaising with most third parties to obtain discovery, including to
10 obtain draft declarations;
- 11 c. Defending the depositions of Plaintiff's experts Anya
12 Verkhovskaya and David Vladeck and taking the depositions of DIRECTV's two
13 Rule 30(b)(6) witnesses and Enrico Topazio;
- 14 d. Preparing materials related to class notice;
- 15 e. Arguing before the Court at numerous hearings, including for
16 class certification, summary judgment (twice), and the pretrial conference (along
17 with Michael Boyle of Meyer Wilson);
- 18 f. Drafting the class certification brief, opposing DIRECTV's
19 motion for decertification, drafting pretrial filings, moving for and opposing
20 DIRECTV's motions in limine and *Daubert* motions, and drafting the claims
21 administration briefing; and
- 22 g. Negotiating the resolution of the case, including through
23 mediations with Judge Irma E. Gonzalez (ret.), Judge Morton Denlow (ret.), and
24 Robert Meyer.

25 **LCHB's Lodestar and Billing Rates**

26 31. During the time that this litigation has been pending, LCHB lawyers,
27 paralegals, and staff have spent considerable time working on this litigation that
28 could have been spent on other fee-generating matters.

1 32. The time that LCHB has spent on this litigation has been completely
2 contingent on the outcome. LCHB has not been paid for any of its time spent on
3 this litigation, nor has it been reimbursed for any of its expenses incurred in this
4 litigation.

5 33. While Class Counsel request attorneys' fees as a percentage of the
6 common fund, for the Court's reference, I report LCHB's summary time, lodestar,
7 and costs incurred in this litigation and for the benefit of the Settlement Class.

8 34. All LCHB time-keepers are required to contemporaneously record
9 their time in 6-minute increments. Attorneys working under my direction and
10 supervision audited my firm's time records to confirm their accuracy. These figures
11 do not include time incurred after September 30, 2022.

12 35. LCHB allocated work to maximize efficiency. To the extent
13 practicable, senior attorneys did not perform work that could be accomplished by
14 more junior attorneys, and attorneys did not perform work that could be completed
15 by paralegals.

16 36. The hourly rates charged by LCHB fall within the range of market
17 rates charged by attorneys of equivalent experience, skill, and expertise. LCHB's
18 rates reflect the market rates in the markets within which LCHB's primary offices
19 are located and from which this matter has been handled—namely, San Francisco
20 and New York. Except in rare circumstances, LCHB does not bill at different rates
21 for different clients or different types of cases.

22 37. As of September 30, 2022, the attorneys and staff timekeepers at
23 LCHB have billed more than 6,271.10 hours, for a total lodestar, during that time,
24 of \$4,117,149.50. This information is derived directly from LCHB's time records,
25 which are prepared contemporaneously and maintained by LCHB in the ordinary
26 course of business. None of this excluded time is included in the above number, nor
27 is the additional time that LCHB will have to spend working on this matter going
28 forward, including in connection with seeking final approval of the Settlement,

1 overseeing the Settlement Administrator, communicating with Settlement Class
 2 Members, and with any appeal.

3 38. LCHB’s rates have been specifically approved by courts through the
 4 country, including in this Court and Circuit. *See, e.g., Cottle, et al. v. Plaid Inc.*,
 5 No. 4:20-cv-03056-DMR, Dkt. 184 at *18-19 (N.D. Cal. July 20, 2022); *In re The*
 6 *Boeing Co. Derivative Litig.*, No. Consol. C.A. No. 2019-0907-MTZ, at *10 (Del.
 7 Ch. Mar. 22, 2022); *Stewart v. Kaiser Foundation Health Plan, Inc. et al.*, CGC-21-
 8 590966 (Cal. Sup. Ct. Mar. 10, 2022); *Jenkins, et al. v. Nat’l Grid USA Service*
 9 *Company, Inc., et al.*, No. 2:15-cv-01219-JS-ARL, Dkt. 760, at *9-10 (E.D.N.Y.
 10 June 24, 2022); *Pulmonary Assocs. of Charleston PLLC, et al. v. Greenway Health,*
 11 *LLC, et al.*, No. 3:19-cv00167-TCB, Dkt. 137, at *5-8 (N.D. Ga., Dec. 2, 2021); *In*
 12 *re Intuit Data Litig.*, No. 15-CV1778-EJD-SVK, 2019 WL 2166236, at *1 (N.D.
 13 Cal. May 15, 2019); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-
 14 LHK, 2018 WL 3960068, at *17 (N.D. Cal. Aug. 17, 2018).

15 39. Below is a summary listing each timekeeper for which LCHB is
 16 seeking compensation for legal services in connection with this litigation, the hours
 17 each individual has expended as of this writing, and the hourly rate at which
 18 compensation is sought for each individual.

20 NAME	21 TITLE	22 HOURLY RATE	23 TOTAL HOURS	24 TOTAL
25 Jonathan Selbin	26 Partner	\$1,120	161.5	\$180,880
27 Daniel Hutchinson	28 Partner	\$865	2,131.5	\$1,843,747.5
Douglas Cuthbertson	Partner ²	\$765 (partner)/ \$490 (associate)	610.2	\$322,125.5

² Mr. Cuthbertson was an associate until 2016. The number above reflects Mr. Cuthbertson’s time as an associate and partner. Mr. Cuthbertson’s hourly rate as an associate reflects his hourly rate at the time he was promoted to partner.

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Sean A. Petterson	Associate	\$580	1,696	\$983,680
Roger Geissler	Staff Attorney	\$475	157	\$74,575
Scott Miloro	Staff Attorney	\$475	10.2	\$4,845
Jae Park	Staff Attorney	\$475	293.5	\$139,412.50
Yun Swenson	Staff Attorney	\$475	361.8	\$171,855
Todd Carnam	Senior Paralegal	\$465	10	\$4,650
Jennifer Rudnick	Senior Paralegal	\$465	637.1	\$296,251.50
Dan Schuman	Paralegal	\$305 ³	16.6	\$5,063
Richard Anthony	Litigation Support	\$485	65.4	\$31,719
Margie Calangian	Litigation Support	\$485	28.9	\$14,016.50
Anthony Grant	Litigation Support	\$485	36	\$17,460
Fawad Rahimi	Litigation Support	\$485	26	\$12,610
Major Mugrage	Litigation Support	\$485	29.4	\$14,259
TOTAL			6,271.1	\$4,117,149.50

40. I have reviewed the time reported for the attorneys listed in the schedules set forth above. I have reduced or eliminated time entries to ensure that there was no unnecessary duplication of efforts. The lodestar reported in this declaration is reasonable, particularly given the need to match the thorough and high-quality work performed by DIRECTV’s sophisticated counsel.

41. Upon request by the Court, I will submit LCHB’s contemporaneous

³ This reflects Mr. Schuman’s hourly rate prior to his departure from LCHB.

1 billing records from this action *in camera*.

2 **LCHB's Costs**

3 42. LCHB maintains contemporaneous costs expended on each case in the
4 ordinary course of business, which book and records are prepared from expense
5 vouchers and check and credit card reports. I have reviewed the costs expended in
6 this matter.

7 43. The following is a breakdown of the expenses for which LCHB seeks
8 reimbursement in this matter:

Expense	Amount
In-House Copies	\$155.80
Postage	\$1,043.35
Print	\$7,976.60
Telephone	\$3,025.84
Computer Research	\$20,995.86
Deposition/Transcripts	\$40,604.40
Electronic Database	\$41,850
Experts/Consultants	\$304,565.73
Federal Express/ Messenger	\$3,708.48
Filing Fees	\$1,703.75
Mediation Expenses	\$36,241.34
Outside Copy Service	\$761.74
Process Service	\$19,588.17
Travel	\$37,701.27
TOTAL	\$519,922.33

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25 44. Upon request by the Court, I will submit receipts documenting all of
26 the above expenses *in camera*.

27 45. These costs reflect both the length and complexity of this 10-year case.
28 Specifically, the expert-related costs reflect the fact that Plaintiff's experts

1 submitted reports and rebuttal reports, were deposed, filed supplemental reports,
2 and filed expert declarations in support of Plaintiff's motions for summary
3 judgment. Plaintiff's experts at Class Experts Group were also tasked with
4 formatting at least hundreds of millions of rows of call data that came from myriad
5 debt collection agencies into a usable format. The expenses also reflect the parties'
6 three mediations, the costs of nearly ten depositions, and travel to and from
7 hearings and mediations through the case, including scheduling conferences, a class
8 certification hearing, three mediations (Class Counsel gathered in San Francisco in
9 advance of their December 2021 Zoom mediation), one summary judgment
10 hearing, and the final pretrial conference.

11 **SUMMARY OF CLASS COUNSEL AND ADDITIONAL COUNSEL'S TIME**

12 46. The tables below reflect the lodestar and costs that have been provided
13 to me by Class Counsel and counsel at Parisi & Havens, counsel at Healey Law
14 LLC, and counsel at King and Siegel LLP (collectively referred to as "Additional
15 Counsel"). Other than the time submitted on behalf of LCHB, I have not personally
16 reviewed the lodestar and expenses of the other firms.

17 47. As permitted by the Settlement Agreement, Class Counsel move the
18 Court for an award of attorneys' fees in a total amount of one-third of the
19 Settlement Fund, or \$5,666,666.66. All of Class Counsel's significant time and
20 resources spent on this matter were performed on a contingent basis, without any
21 guarantee of payment.

22 48. Class Counsel have also moved the Court for reimbursement of out-of-
23 pocket expenses of \$869,303.55, which Class Counsel advanced with no guarantee
24 of recovery.

25 49. Lastly, Plaintiff and Class Counsel request a service award to Plaintiff
26 Jenny Brown of \$10,000 for her contributions to the case.

27
28

1 50. All Court-approved payments of attorneys’ fees, reimbursement of
 2 expenses, and Ms. Brown’s service award will be paid from the \$17 million
 3 common Settlement Fund.

4 51. As confirmed in their individual firm declarations and above, Class
 5 Counsel and Additional Counsel expended a total of 13,036.7 hours in this
 6 litigation, with a total lodestar of \$8,734,304.25 as follows:⁴

Firm:	Lodestar:	Hours Expended:
Lieff Cabraser	\$4,117,149.50	6,271.1
Meyer Wilson, LLP	\$3,628,939.75	5,415.50
Burke Law Offices	\$970,895	1,317.8
Parisi and Havens LLP	\$12,005	17.3
King and Siegel LLP	\$1,895	7.4
Healey Law LLC	\$3,420	7.6
Totals:	<u>\$8,734,304.25</u>	<u>13,036.7</u>

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 16 52. As confirmed in their individual firm declarations and above, Class
 17 Counsel and Additional Counsel expended a total of \$869,303.55 in collective out-
 18 of-pocket expenses based on the following categories:

Expense Category	Amount
In-House Copies	\$390.40
Postage	\$1,052.96
Print	\$7,976.60
Telephone	\$3,184.57

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 26 ⁴ Not included in these figures are the hours that will be and has been expended by
 27 Class Counsel going forward, including briefing in connection with final Settlement
 28 approval, responding to inquiries from Settlement Class Members and any
 objections to the Settlement, overseeing the Settlement Administrator, and
 attendance at the Final Approval Hearing scheduled for February 23, 2022.

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Computer Research	\$28,849.26
Deposition/Transcripts	\$48,934.43
Electronic Database	\$41,850
Experts/Consultants	\$546,282.20
Federal Express/Messenger	\$4,119.75
Filing Fees	\$4,372.33
Mediation Expenses	\$60,141.34
Outside Copy Service	\$761.74
Process Service	\$24,782.67
Travel	\$67,153.36
Data and Notice-Related Expenses	\$15,915.94
Subpoena Costs	\$13,536
Totals:	<u>\$869,303.55</u>

SERVICE AWARD TO PLAINTIFF JENNY BROWN

53. Ms. Brown has served as a Class Representative and worked closely with Class Counsel throughout the litigation.

54. As detailed in her declaration in support of Preliminary Approval, Dkt. 521, Ms. Brown actively assisted Class Counsel throughout the litigation, including by submitting a declaration in support of Plaintiff's motion for class certification, producing documents and responding to written interrogatories, being deposed, and preparing to be a trial witness for the class.

55. For her time and efforts, which have resulted in a \$17 million Settlement Fund, Class Counsel are requesting that Ms. Brown receive a service award of \$10,000.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. Executed on October 14, 2022 in San Francisco,
3 California.

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5 By: /s/ Daniel M. Hutchinson
6 Daniel M. Hutchinson
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LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: (212) 355-9500
Facsimile: (212) 355-9592

MEYER WILSON CO., LPA
Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066

LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted
pro hac vice)
ABurke@BurkeLawLLC.com
909 Davis St., Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288

Attorneys for Plaintiff Jenny Brown and the Class
[Additional Counsel Appear on Signature Page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY BROWN and CARMEN
MONTIJO, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No. 2:13-cv-01170-DMG-E

**DECLARATION OF MATTHEW R.
WILSON IN SUPPORT OF
PLAINTIFF'S AND CLASS
COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFF SERVICE AWARD**

1 I, Matthew R. Wilson, declare as follows:

2 I am a principal attorney with the AV-rated law firm Meyer Wilson Co., LPA
3 (“Meyer Wilson”), one of the Court-designated Class Counsel. I have personal
4 knowledge of the facts set forth in this Declaration based on my day-to-day
5 participation in the prosecution and settlement of this case, and, if called as a
6 witness, could and would testify competently to them.

7 1. I submit this declaration in support of Plaintiff’s and Class Counsel’s
8 Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses,
9 and Plaintiff Service Award.

10 **Background and Experience**

11 2. Meyer Wilson is a plaintiffs’ law firm with its primary office in
12 Columbus, Ohio. With co-counsel, Meyer Wilson handles cases across the county.
13 In addition to its practice on behalf of individual and institutional investors in
14 arbitrations before the Financial Industry Regulatory Authority (“FINRA”) and a
15 practice representing patients who have suffered from defective drugs and medical
16 devices, Meyer Wilson has a robust complex litigation and class action practice
17 involving consumer, employment, financial, and securities matters. I lead that
18 practice.

19 3. I graduated from Denison University, magna cum laude, in Philosophy
20 in 1997, before graduating from the University of Virginia School of Law in 2000. I
21 came to Meyer Wilson (then called Meyer & Associates Co., LPA) in 2006 as an
22 associate and was promoted to named principal of the firm in 2012. Prior to coming
23 to Meyer Wilson, I worked as an attorney at Jones Day in its Columbus office,
24 where I defended class actions and litigated other complex civil cases. I was the
25 chair of the Class Action Committee of the Central Ohio Association for Justice
26 from 2007 until 2018. I was recognized this year and for the last several years as an
27 Ohio “Super Lawyer.” I have been a member of the Class Action Preservation
28 Project with Public Justice. In addition to the California, Ohio, and Georgia state

1 bars, I am also admitted to the Sixth, Seventh, Ninth, and Eleventh Circuit Courts
2 of Appeals; the Central, Eastern, Northern, and Southern Districts of California; the
3 Northern and Southern Districts of Ohio; the Central and Northern Districts of
4 Illinois; the Eastern and Western Districts of Wisconsin; and the Northern District
5 of Georgia. As set forth below, I have significant experience litigating consumer
6 class actions.

7 4. Meyer Wilson’s experience in these cases, and my experience in
8 particular, has provided me with expertise in the legal, factual, management,
9 settlement, notice, and administration issues that characterize complex class
10 actions.

11 5. In many of these matters, including this one, my primary assistant was
12 Michael J. Boyle, Jr., Special Counsel at Meyer Wilson. Mr. Boyle graduated cum
13 laude from the University of Pennsylvania School of Law in 2008. Mr. Boyle
14 clerked for the Honorable R. Guy Cole, Jr., of the United States Court of Appeals
15 for the Sixth Circuit and worked at the international law firm Covington & Burling,
16 LLP, prior to coming to work at Meyer Wilson in early 2013. In 2019, 2020, 2021,
17 and 2022, Mr. Boyle was recognized as an Ohio “Super Lawyer,” and as a Rising
18 Star in 2014, 2016 and 2017. Mr. Boyle is admitted to the bars of California and
19 Ohio, as well as to the Sixth, Seventh, Ninth, and Eleventh Circuit Courts of
20 Appeals, the Northern, Eastern, Central, and Southern Districts of California, the
21 Southern District of Ohio, the Central District of Illinois, and the Eastern and
22 Western Districts of Wisconsin.

23 6. Recently, I was also assisted by Meyer Wilson’s newest attorney,
24 Jared Connors. Mr. Connors graduated from the Moritz College of Law at The
25 Ohio State University in 2021 and was admitted to practice in the State of Ohio in
26 that year. Prior to being admitted to the Bar, Mr. Connors worked as a law clerk at
27 Meyer Wilson.
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1 7. On key tasks, especially relating to the mediation and settlement of the
2 case, I worked closely with founding partner David Meyer. Mr. Meyer has been
3 recognized as one of the top litigation attorneys in Ohio. Thomson Reuters named
4 him one of the Top 100 lawyers in Ohio in 2012. He is also listed in Best Lawyers
5 in America® in multiple categories and the American Trial Lawyers Association
6 selected him as one of the Top 100 Trial Attorneys in Ohio. Mr. Meyer has the
7 honor of winning what was then the largest jury verdict in Ohio history; a \$261
8 million class action verdict against Prudential Securities.

9 8. At key stages in the case, Nathan Forb and Bryan VanDyne provided
10 additional attorney assistance. Mr. Forb and Mr. VanDyne are Of Counsel to
11 Meyer Wilson. Mr. Forb graduated from Capital University Law School in 2014,
12 and has been Of Counsel to Meyer Wilson since graduating. Mr. VanDyne also
13 graduated from Capital University Law School in 2014.

14 9. Appropriate tasks were also assigned to Meyer Wilson paralegals
15 Aaron Porterfield and Danielle Aldach. Aaron Porterfield has worked for over 25
16 years as a paralegal in all aspects of legal practice. Danielle Aldach is a graduate of
17 Simpson College with a Bachelor of Music and has a Master's Degree from the
18 University of Southern Illinois in Carbondale; she has worked as a paralegal at
19 Meyer Wilson for the past 18 months.

20 10. Because this case has been pending for a significant period of time,
21 several individuals contributed to this case who are no longer employed by Meyer
22 Wilson. Marnie Lambert was an attorney here from 2005 to 2014, and was a 1992
23 graduate of Pepperdine University School of Law. Chad Kohler was an attorney at
24 Meyer Wilson through 2021, graduating from Case Western Reserve University
25 School of Law in 2001. Bridget Wasson was an associate attorney at Meyer
26 Wilson until 2013, graduating from the University of Dayton School of Law in
27 2008. Finally, Isaac Beller was a Law Clerk at Meyer Wilson from 2019 to 2020
28

1 who graduated from the Moritz College of Law at The Ohio State University in
2 2020.

3 **Litigation of the Case**

4 11. Meyer Wilson was counsel in *Joshua Brown v. DIRECTV, LLC et al.*,
5 Case No 2:12-cv-08382, at the time of filing, which was eventually consolidated
6 with this matter.

7 12. Meyer Wilson has been deeply involved in all aspects of the case.
8 Although all briefing in this case has been a true team effort, Meyer Wilson
9 attorneys were particularly instrumental in drafting the Motions for Summary
10 Judgment, which the Court ultimately granted in part. These motions, and their
11 outcome, were critical to achieving the results for class members embodied in the
12 settlement. In addition, Meyer Wilson drafted several of the motions in limine
13 prior to trial. In addition to these specific filings, Meyer Wilson was involved in
14 reviewing, revising, and preparing all of the filings in the case. More specifically:

15 a. Meyer Wilson attorney Jared Connors completed the initial draft
16 of both motions for summary judgment, with substantial assistance from Meyer
17 Wilson attorney Michael Boyle and extensive review by me. This same team also
18 was the primary drafters and preparers of the reply briefs in support of those
19 motions.

20 b. Mr. Boyle was the primary drafter of the opposition to
21 DIRECTV's motion to decertify the class, with extensive review and contributions
22 from Mr. Connors and me. Mr. Connors drafted the motion to exclude the expert
23 testimony of Dr. Debra Aron, with review and contributions from me.

24 c. Mr. Connors was the primary drafter of the Motion in Limine to
25 exclude Dr. Aron (Motion No. 1). Mr. Boyle was the primary drafter of the Motion
26 in Limine to exclude customer consent evidence (Motion No. 2). Mr. Boyle argued
27 that motion at the final pre-trial conference before the Court.
28

1 d. I was actively involved in revising and reviewing essentially all
2 of the motions filed in the case, including those drafted by other members of the
3 Plaintiff's counsel team. In particular, I did a significant amount of work in support
4 of the motion for class certification, which was granted by the Court.

5 13. In addition, Meyer Wilson was actively involved in all aspects of
6 discovery in this case. Meyer Wilson took approximately half of the depositions of
7 DIRECTV personnel and defended the deposition of one of the class
8 representatives, former Plaintiff Carmen Montijo. Meyer Wilson personnel were
9 also consistently involved in the review of the extensive documents in the case, as
10 well as obtaining documents and declarations from the many third-party debt
11 collectors and other entities that had relevant information that was critical in
12 developing the case. More specifically:

13 a. I took the deposition of former DIRECTV employee Gail
14 Husman, whose testimony was extensively cited in the motions for summary
15 judgment. Mr. Boyle and Mr. Connors assisted me in preparing for that deposition,
16 along with paralegal Danielle Aldach.

17 b. Mr. Boyle took the deposition of current DIRECTV employee
18 Tamara Simone, whose testimony was extensively cited in the motions for
19 summary judgment. Ms. Aldach and I assisted Mr. Boyle in preparing for the
20 deposition.

21 c. Former Meyer Wilson attorney Chad Kohler took the deposition
22 of DIRECTV employee Joni Hixson.

23 d. I defended the deposition of former plaintiff Carmen Montijo,
24 one of the class representatives. Mr. Boyle assisted me in preparing for that
25 deposition.

26 e. Mr. Boyle took the deposition of James Hess, the designated
27 representative of AFNI, Inc. Ms. Aldach and I assisted Mr. Boyle in preparing for
28 the deposition.

1 f. Mr. Boyle was primarily responsible for obtaining data and
2 declarations from Enhanced Recovery Company, Inc. (“ERC”). This included
3 filing a motion to compel production in the Middle District of Florida. *See Brown et*
4 *al. v. Enhanced Recovery Company, Inc.*, Case No. 3:21-mc-000039-TJC-JBT
5 (M.D. Fla.).

6 g. Mr. Boyle was also responsible for obtaining declarations from
7 other third-party vendors FNCB, TSI, and NCO. This process made it clear that
8 Plaintiffs would not be able to proceed with regard to the calls made by those
9 vendors, substantially streamlining the action.

10 h. Nathan Forb and Bryan VanDyne took the lead in reviewing
11 documents on behalf of Meyer Wilson, working with co-counsel. Other Meyer
12 Wilson attorneys engaged in extensive document review in preparation for motion
13 practice and depositions, in addition to preparing general case strategy.

14 14. A critical piece of developing Plaintiff’s case strategy involved work
15 with retained experts. Meyer Wilson was actively involved in retaining and
16 working with consulting and proposed testifying experts. These experts allowed
17 Plaintiff to identify class members from out of the call data set provided by
18 DIRECTV’s third-party debt collectors, which was a key component in Plaintiff’s
19 motions for summary judgment. More specifically:

20 a. I was heavily involved in the selection and retention of Class
21 Experts Group and BrownGreer, the two primarily consulting and testifying experts
22 in the case. I participated in weekly meetings and consultations with those experts,
23 and was joined on many occasions by Mr. Boyle and/or Mr. Connors.

24 b. Mr. Boyle defended the depositions of Plaintiffs’ experts
25 Christina Peters-Stasiewicz and Anya Verkhovskaya. I assisted in the preparation
26 of those depositions, along with assistance from Ms. Aldach.

27 15. Finally, Meyer Wilson attorneys were involved in each of the
28 mediations and the negotiations that led to the settlement that is before the Court.

1 After reaching an agreement with Defendant, Meyer Wilson did the initial drafting
2 of the settlement agreement and the motion for preliminary approval. More
3 specifically:

4 a. I participated in each of the three mediations in this case—
5 September 2015, December 2021, and May 2022. Mr. Boyle and David Meyer,
6 founding principal of Meyer Wilson, attended the second mediation in December
7 2021. Mr. Meyer and I also attended the third mediation in May 2022.

8 b. Mr. Boyle was the initial drafter of the mediation briefs for the
9 September 2015 and December 2021 mediations. I extensively reviewed and
10 revised those mediation statements, as well as the mediation statement for the May
11 2022 mediation.

12 c. Mr. Boyle and Mr. Connors did the initial drafting of the
13 Settlement Agreement and motion for preliminary approval. I revised both of those
14 documents.

15 **Meyer Wilson's Lodestar and Billing Rates**

16 16. All of the work that Meyer Wilson undertakes is on a contingency fee
17 basis. Meyer Wilson expended significant costs, and a great deal of time that could
18 have been spent on other fee-generating matters, in litigating this action.
19 Throughout the case, Meyer Wilson ran the risk of not realizing any monetary gain
20 in the event of an adverse result. There was nothing theoretical about this risk.
21 Class actions are challenging cases and plaintiffs frequently lose them outright.
22 Meyer Wilson's experience has been no different.

23 17. While Meyer Wilson has achieved notable successes in its class action
24 cases, we have also been involved in many cases in which we have not been able to
25 obtain any relief for class members and no fees for ourselves. In contingency fee
26 cases, such an outcome means that all of the time and resources expended by us
27 goes uncompensated. Examples of such cases in the TCPA class action context
28 alone include: *Cayanan v. Citi Holdings, Inc.*, 928 F. Supp. 2d 1182, 1208 (S.D.

1 Cal. 2013); *Delgado v. US Bankcorp*, 2:12-cv-10313-SJO-AJW (C.D. Cal. Jan. 17,
 2 2013) (dismissing case); *Evans v. Aetna Inc.*, Case No. 2:13-cv-01039-LA (E.D.
 3 Wisc. Nov. 20, 2013) (dismissing case); *Balschmiter v. TD Auto Fin. LLC*, 303
 4 F.R.D. 508, 530 (E.D. Wis. 2014); (denying class certification on eve of trial);
 5 *Levin v. National Rifle Assoc. of Am.*, Case 1:14-cv-24163-JEM (S.D. Fla. Feb. 6,
 6 2015) (dismissing case); *Charvat v. The Allstate Corp.*, Case No. 1:13-cv-07104
 7 (N.D. Ill. Feb. 20, 2015) (terminating case); *Ineman v. Kohl's Corp.*, Case No. Case
 8 3:14-cv-00398-wmc (W.D. Wis. Mar. 26, 2015) (compelling claims to arbitration
 9 on an individual basis); *Aghdasi v. Mercury Ins. Grp., Inc.*, Case No. 2:15-cv-
 10 04030-R-AGR (C.D. Cal. Mar. 16, 2016) (dismissing case after denial of class
 11 certification); and *Wolf v. Lyft, Inc.*, Case 4:15-cv-01441-JSW (N.D. Cal. Mar. 28,
 12 2016) (dismissing case).

13 18. Meyer Wilson sets its rates for attorneys and staff members based on a
 14 variety of factors, including, among others: the experience, skill, and sophistication
 15 required for the types of legal services typically performed; the rates customarily
 16 charged in similar matters; and the experience, reputation, and ability of the
 17 attorneys and staff members. Meyer Wilson's then-current rates have been
 18 specifically approved by courts throughout the country on multiple occasions over
 19 many years. *See, e.g., Doe et al. v. CVS Health Corp. et al.*, Case No. 2:18-cv-
 20 00238-EAS (S.D. Ohio Feb. 11, 2020) (approving class counsel's rates as "justified
 21 and earned and reasonable"); *Yarger, et al. v. ING Bank FSB*, Case No. 1:11-cv-
 22 00154-LPS (D. Del. Oct. 7, 2014) (approving class counsel's rates as a "reasonable
 23 reward"); *Steinfeld v. Discover Fin. Servs., et al.*, 3:12-cv-01118-JSW (N.D. Cal.)
 24 (N.D. Cal. Mar. 31, 2014) (approving 3.5 multiplier lodestar cross-check in
 25 common fund settlement and finding that "[c]lass counsel have submitted
 26 declarations that show the hourly rates that they have requested are reasonable ...").

27 19. Meyer Wilson has maintained contemporaneous time records since its
 28 initial involvement in this matter, in six-minute increments. Meyer Wilson

1 attorneys and staff have worked a total of 5,415.50 hours in this action, for a total
 2 lodestar of \$3,628,939.75. I have eliminated the time of all time-keepers with
 3 fewer than 10 hours of total time, which is therefore not included in the above
 4 calculation. This number does not include time spent from this day forward in
 5 continued support of the implementation and approval of the settlement.

6 20. Although I was the main attorney at Meyer Wilson to work on this
 7 case, as discussed in detail above, much of the day-to-day tasks of running the case
 8 were performed by Mr. Boyle, an experienced and skilled class action practitioner.
 9 Finally, some tasks were assigned to Jared Connors, first as a law clerk and then as
 10 an associate attorney. Finally, where appropriate, work was done by other Meyer
 11 Wilson lawyers or paralegals. The work I delegated was work that required
 12 sufficient knowledge of legal concepts that I would have had to perform, absent
 13 such assistance. I made every effort to litigate this efficiently, but in a small
 14 plaintiffs' firm such as Meyer Wilson, there is no army of first- and second-year
 15 associates who are available to perform necessary legal tasks.

16 21. The following chart details the time each of these attorneys and law
 17 clerks worked on this case and their contribution to Meyer Wilson's total lodestar:

Name	Title	Total Hours	Hourly Rate	Total
David Meyer	Principal	162.0	\$975.00	\$157,950.00
Matthew Wilson	Principal	2,312.2	\$825.00	\$1,907,565.00
Michael Boyle	Special Counsel	1,529.8	\$645.00	\$986,721.00
Jared Connors	Associate	579.4	\$395.00	\$228,863.00
Nathan Forb	Of Counsel	277.6	\$445.00	\$123,532.00
Bryan VanDyne	Of Counsel	202.5	\$350.00	\$70,875.00
Aaron Porterfield	Paralegal	12.9	\$345.00	\$4,450.50
Danielle Aldach	Paralegal	91.6	\$295.00	\$27,022.00

1 formatting the hundreds of millions of rows of call data that came from myriad debt
 2 collection agencies into a usable format. The expenses also reflect the parties’ three
 3 mediations, the costs of nearly ten depositions, and travel to and from hearings and
 4 mediations through the case, including scheduling conferences, a class certification
 5 hearing, three mediations (Class Counsel gathered in San Francisco in advance of
 6 their December 2021 Zoom deposition), one summary judgment hearing, and the
 7 final pretrial conference.

8 25. Specifically, the costs in question break down as follows:

<u>Nature of the Cost</u>	<u>Amount</u>
Photocopies	\$234.60
Postage	\$9.61
Messenger Services/Fed Ex	\$411.27
Computer Research	\$169.40
Process Service/Investigations	\$5,008.50
Travel Expenses	\$24,585.05
Mediation Expenses	\$23,900.00
Filing Fees	\$1,960.00
Deposition Services	\$6,539.80
Expert Fees	\$241,716.47
Data and Notice-Related Expenses	\$15,915.94
Conference Call/Phone Charges	\$158.73
Total	\$320,609.37

25 26. Upon request by the Court, I will submit receipts documenting all of
 26 the above expenses in camera.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on October 12, 2022 in Columbus, Ohio.

By: /s/ Matthew R. Wilson
Matthew R. Wilson

1 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
2 Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
3 Douglas I. Cuthbertson (admitted *pro hac vice*)
dcuthbertson@lchb.com
4 Sean A. Petterson (admitted *pro hac vice*)
spetterson@lchb.com
5 250 Hudson Street, 8th Floor
New York, NY 10013
6 Telephone: (212) 355-9500
Facsimile: (212) 355-9592

MEYER WILSON CO., LPA
Matthew R. Wilson
(State Bar No. 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr.
(State Bar No. 258560)
mboyle@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066

7 LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
8 Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
9 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
10 Telephone: (415) 956-1000
11 Facsimile: (415) 956-1008

BURKE LAW OFFICES, LLC
Alexander H. Burke (admitted
pro hac vice)
ABurke@BurkeLawLLC.com
909 Davis St., Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288

12 *Attorneys for Plaintiffs Jenny Brown, Carmen*
Montijo and the Class
13 *[Additional Counsel Appear on Signature Page]*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 JENNY BROWN and CARMEN
18 MONTIJO, on behalf of themselves
19 and all others similarly situated,

20 Plaintiffs,

21 v.

22 DIRECTV, LLC,

23 Defendant.
24

Case No. 2:13-cv-01170-DMG-E

**DECLARATION OF
ALEXANDER H. BURKE IN
SUPPORT OF PLAINTIFF'S AND
CLASS COUNSEL'S MOTION FOR
AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFF SERVICE AWARD**

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

2 1. I am the manager and owner of Burke Law Offices, LLC. I represent
3 the Plaintiff Jenny Brown in this matter, and I submit this declaration in support of
4 Plaintiff's Motion for Attorneys' Fees, Expenses, and Incentive Award in this
5 action. Except as otherwise noted, I have personal knowledge of the facts set forth
6 in this declaration, and could testify competently to them if called upon to do so.

7 **BURKE LAW BACKGROUND AND EXPERIENCE**

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

18 3. I have been regularly asked to speak regarding TCPA issues, on the
19 national level. For example, I conducted a one-hour CLE on prosecuting TCPA
20 autodialer and Do Not Call claims pursuant to the Telephone Consumer Protection
21 Act for the National Association of Consumer Advocates in summer 2012, and
22 spoke on similar subjects at the annual National Consumer Law Center ("NCLC")
23 national conferences in 2012, 2013, 2014, 2015, 2016, 2017 and 2018 and have
24 agreed to speak again in 2022. I also spoke at a National Association of Consumer
25 Advocates conference regarding TCPA issues in March 2015, and in May 2016, I
26 spoke on a panel concerning TCPA issues at the 2016 Practising Law Institute
27 Consumer Financial Services meeting in Chicago, Illinois.

28 4. I also am actively engaged in policymaking as to TCPA issues, and

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1 have had *ex parte* meetings with various decision makers and staffers at the Federal
2 Communications Commission.

3 5. I make substantial efforts to remain current on the law, including class
4 action issues. I attended the National Consumer Law Center's Consumer Rights
5 Litigation Conference in 2006 through 2019 and plan to attend in 2022, and was an
6 active participant in the Consumer Class Action Intensive Symposium between
7 2006 and 2013, 2017 and 2018. In October 2009, I spoke on a panel of consumer
8 class action attorneys welcoming newcomers to the conference. In addition to
9 regularly attending Chicago Bar Association meetings and events, I was the vice-
10 chair of the Chicago Bar Association's consumer protection section in 2009 and the
11 chair in 2010. In November 2009, I moderated a panel of judges and attorneys
12 discussing recent events and decisions concerning arbitration of consumer claims
13 and class action bans in consumer contracts.

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

17 a. Federal: *Bilek v. Federal Ins. Co.*, 2022 WL 4298187 (N.D. Ill.
18 Sept. 12, 2022) (motion to dismiss internal do-not-call claims denied); *Bradley v.*
19 *DentalPlans.com*, __ F. Supp. 3d __, 2022 WL 2973979 (D. Md. Jul 27, 2022)
20 (motion to dismiss denied); *Hossfeld v. Allstate Ins. Co.*, 2021 WL 4819498 (N.D.
21 Ill. Oct. 15, 2021) (compelling disclosure of Defendant's internal do-not-call list);
22 *Marshall v. Grubhub Inc.*, 2021 WL 4401496 (N.D. Ill. Sept. 27, 2021) (motion to
23 dismiss denied); *Bilek v. Federal Ins. Co.*, 8 F.4th 581, 584 (7th Cir. 2021)
24 (reversing dismissal of TCPA complaint; holding that vicarious liability allegations
25 may form basis for personal jurisdiction); *Kyle v. Federal Trade Comm'n*, 2021
26 WL 1407960 (W.D. Mo. Apr. 14, 2021) (subpoena enforcement action compelling
27 in part production of national do-not-call registry); *Kyle v. Charter Commc'ns, Inc.*,
28 2020 WL 2028269 (W.D. Mo. Apr. 27, 2020) (motion to dismiss or stay TCPA

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1 case denied); *Gurzi v. Penn Credit, Corp.*, 2020 WL 1501893 (M.D. Fla. Mar. 30,
2 2020) (finding VoApps calls to be covered by the TCPA); *Hoagland v. Axos Bank*,
3 2020 WL 583974 (S.D. Cal. Feb. 6, 2020) (motion to dismiss or stay TCPA case
4 denied); *Charvat v. Valente*, 2019 WL 5576932 (N.D. Ill. Oct. 28, 2019) (\$12.5M
5 TCPA settlement finally approved); *Leeb v. Charter Commc'ns, Inc.*, 2019 WL
6 1472587 (E.D. Mo. Apr. 3, 2019) (appointing Burke Law Offices as Fed.R.Civ.P.
7 23(g) interim lead class counsel), *earlier decision* 2019 WL 144132 (Jan. 19, 2019)
8 (compelling class data in TCPA case); *Rodriguez v. Premier Bankcard, LLC*, No.
9 3:16-cv-02541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (defense summary
10 judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, No. 1:17-cv-00335, 2018
11 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first impression, holding
12 that “direct drop” voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*,
13 No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying
14 motion to dismiss on statutory standing grounds); *Toney v. Quality Res., Inc.*, 323
15 F.R.D. 567, 573 (N.D. Ill. 2018) (certifying contested telemarketing TCPA class);
16 *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Dkt. 103 (Feb. 10, 2017 N.D. Ga.) (final
17 approval granted for \$30M class settlement where I was lead counsel); *Lowe v. CVS*
18 *Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal
19 jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*,
20 Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (N.D. Ga. Jan. 30, 2017) (final
21 approval granted for \$16M class settlement where I was lead counsel); *Tillman v.*
22 *The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016)
23 (motion to compel TCPA class case into arbitration denied); *Hurst v. Monitronics*
24 *Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016);
25 (motion to compel arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No.
26 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction
27 motion denied); *Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360 (7th Cir. 2015) (class
28 certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL

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1 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative
2 discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting
3 plaintiff's motion to compel vicarious liability/agency discovery in TCPA case);
4 *Lees v. Anthem Ins. Cos. Inc.*, 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally
5 approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony*
6 *Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA
7 case on primary jurisdiction grounds); *In re Capital One TCPA Litig.*, No. 11-5886,
8 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class
9 settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.*, 2015
10 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class
11 settlement where I was class counsel); *Hossfeld v. Govt. Employees Ins. Co.*, 88 F.
12 Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action);
13 *Legg v. Quicken Loans, Inc.*, 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying
14 motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612
15 (N.D. Ill. Dec. 27, 2013) (final approval for \$4.5 million nonreversionary TCPA
16 settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D. Ill.
17 Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison
18 counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923
19 (Aug. 11, 2014) (motion to dismiss denied in cutting edge TCPA vicarious liability
20 case); *Markovic v. Appriss, Inc.*, 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013)
21 (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL
22 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case);
23 *Gold v. YouMail, Inc.*, 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested
24 motion for leave to amend granted to permit cutting-edge vicarious liability theory
25 allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21,
26 2012) (Denlow, J.) (certifying litigation class and appointing me as class counsel)
27 (final approval granted for \$7.5 million class settlement granted January 16, 2014);
28 *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for

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1 \$15 million TCPA class settlement granted); *Martin v. CCH, Inc.*, No. 1:10-cv-
2 3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for \$2 million class
3 settlement in TCPA autodialer case); *Martin v. Leading Edge Recovery Solutions,*
4 *LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss
5 TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co.*, 2011 WL
6 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA
7 defendant's summary judgment motion denied. My participation was limited to
8 litigation in the lower court.); *D.G. ex rel. Tang v. William W. Siegel & Assocs.,*
9 *Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. June 14, 2011); *Martin v.*
10 *Bureau of Collection Recovery*, 2011 WL 2311869 (N.D. Ill. June 13, 2011)
11 (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt.,*
12 *Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's
13 "failure to mitigate" defense stricken for failure to state a defense upon which relief
14 may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010)
15 (final approval granted for \$800,000 TCPA settlement in autodialer case against
16 debt collection agency); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500 (N.D. Ill.
17 Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975
18 (N.D. Ill. Jan. 13, 2010) (novel class action and TCPA discovery issues decided
19 favorably to class).

20 7. Before I opened Burke Law Offices, LLC, I worked at two different
21 plaintiff boutique law firms doing mostly class action work, almost exclusively for
22 consumers. Some decisions that I was actively involved in obtaining while at those
23 law firms include: *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D.
24 Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008)
25 (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No.
26 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class
27 certification granted); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill.
28 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc.*, 249

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1 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit*
 2 *City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7,
 3 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008);
 4 *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10,
 5 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston*
 6 *Fin. Corp.*, C.A. No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug.
 7 22, 2006) (appeal bond required for potentially frivolous objection to large class
 8 action settlement, and resulting in a \$12.5 million settlement for Massachusetts
 9 consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C
 10 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. Mar. 30, 2006) (class certification
 11 granted); *Nichols v. Northland Groups, Inc.*, Nos. 05 C 2701, 05 C 5523, 06 C 43,
 12 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification
 13 granted for concurrent classes against same defendant for ongoing violations);
 14 *Lucas v. GC Services, L.P.*, No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004)
 15 (compelling discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class
 16 certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186,
 17 2005 WL 1323364 (N.D. Ill. May 5, 2006) (Report and Recommendation granting
 18 class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy*
 19 *Receivables, Inc.*, No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16,
 20 2006) (denying motion to dismiss in class case against debt collector for suing on
 21 time-barred debts).

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

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

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

16 11. The firm has one associate, Daniel J. Marovitch. Mr. Marovitch is a
17 2010 graduate of Loyola University Chicago School of Law, and is admitted to
18 practice in the State of Illinois, the United States District Court for the Northern
19 District of Illinois and District of Colorado, and the Seventh Circuit Court of
20 Appeals.

21 12. When Burke Law Offices, LLC loses cases, my firm takes in no
22 money whatsoever, regardless of how hard I worked and regardless of how much
23 money I spent on depositions, experts and other out-of-pocket costs. This happens.
24 For example, I lost *Greene v. DirecTV, Inc.*, 2010 WL 4628734 (N.D. Ill. 2010),
25 *Elkins v. Medco Health Solutions, Inc.*, 2014 WL 1663406 (E.D. Mo. Apr. 25,
26 2014), and *Fitzhenry v. ADT*, 2014 WL 6663379 (S.D. Fla. Nov. 3, 2014), each
27 hard-fought litigations that I took on a contingency basis. My firm put substantial
28 time and money into these; resources that could have been allocated to other cases,

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1 and which hit hard given the firm's small size and finite resources. I believed that
2 the plaintiff/class would prevail in these cases when I accepted them for
3 representation, but in the end I was incorrect. As with other lawyers, sometimes I
4 think I should have won cases or motions that I eventually lose. The difference is
5 that while most lawyers (including my adversaries) receive remuneration regardless
6 of whether they win or lose, I do not. These are not the only cases I have lost, but
7 they illustrate the risks associated with this kind of contingency practice.

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

20 14. This firm pursued this case on an entirely contingent-fee basis,
21 devoting time and resources without any guarantee of payment. Indeed, we took on
22 considerable risk of non-payment, especially where we took on this case without
23 knowing the extent and scope of the calling at issue for Plaintiff and others like her,
24 and (based on past experience) anticipating discovery disputes and heavy data work
25 that proved to be the case. We also assumed the risk that the Court might ultimately
26 decline to certify a class in this case based on perceived individualized issues in
27 relation to anticipated vicarious liability, arbitration, or other defenses, or that
28 Plaintiff might ultimately lose on the merits.

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LITIGATION OF THIS CASE

1
2 15. My firm zealously advocated on behalf of the Class in this case from
3 the very start. This action began in the Eastern District of Missouri, as *Swope v.*
4 *Credit Management, LP*, 2:13-cv-832-CDP (E.D. Mo.). Along with St. Louis-based
5 attorney Robert Healey, I was the original lawyer on this file representing Jenny
6 Brown. Before Ms. Brown was added as a plaintiff, we prevailed on a motion to
7 dismiss in that case that held, as a matter of first impression among district courts in
8 the Eighth Circuit, that the recipient of a “wrong number” prerecorded call has
9 statutory standing to bring a TCPA claim. *Swope v. Credit Management, LP*, 2013
10 WL 607830, at *2 (E.D. Mo. Feb. 19, 2013). Ms. Brown was added as an additional
11 plaintiff while the motion to dismiss was pending, and after the motion to dismiss
12 was decided the case was transferred to this Court on February 19, 2013. *Swope v.*
13 *Credit Management, LP*, 2013 WL 1150072 (E.D. Mo. Feb. 19, 2013).

14 16. Mr. Healey and I then collaborated with our existing co-counsel Lieff
15 Cabraser Heimann & Bernstein LLP and Meyer Wilson to jointly prosecute this
16 action against DirecTV – the creditor for the debts that CMI was collecting – for the
17 next nine years. Throughout litigation of this case, I engaged my substantial
18 experience litigating under both the Fair Debt Collection Practices Act and the
19 Telephone Consumer Protection Act to bring insight into the inner workings of debt
20 collectors like CMI and creditors like DirecTV typically function.

21 17. What is more, I had litigated against many of the specific debt
22 collection vendors that DirecTV hired, during the time period of the calls at issue in
23 this case, which provided special insight into some of the vendors’ processes, the
24 meaning of their data and their compliance shortcomings. Burke Law took the
25 laboring oar in obtaining call records from the cellular carriers (AT&T, Verizon and
26 T-Mobile/Sprint), and was the primary contact with LiveVox.

27 18. Upon request by the Court, I will submit Burke Law’s billing records
28 from this action *in camera*.

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Burke Law’s Costs

19. Burke Law maintains contemporaneous costs expended on each case in the ordinary course of business, which books and records are prepared from expense vouchers and check and credit card reports. I have reviewed the costs expended in this matter.

20. The following is a breakdown of the expenses for which Burke Law seeks reimbursement in this matter:

Expense	Amount
Subpoena Costs	\$13,536.00
Process Service	\$186.00
Court Reporter	\$1,790.23
Computer Research	\$7,684.00
Travel Expenses	\$4,867.04
TOTAL	\$28,063.27

21. Upon request by the Court, I will submit documentation of the above expenses *in camera*.

22. These expenses were necessary to prosecute a litigation of this size and complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in large-scale class actions, based on my experience.

BURKE LAW’S LODESTAR AND BILLING RATES

23. During the time that this litigation was pending, Mr. Marovitch and I have spent considerable time working on this litigation that could have been spent on other fee-generating matters.

24. The time that Burke Law has spent on this litigation has been completely contingent on the outcome. Burke Law has not been paid for any of its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.

1 25. While Class Counsel request attorneys’ fees as a percentage of the
2 common fund, for the Court’s reference, I report Burke Law’s summary time,
3 lodestar, and costs incurred in this litigation and for the benefit of the Settlement
4 Class.

5 26. As of September 30, 2022, Burke Law’s records indicate that I spent
6 1,173.8 hours and my associate Daniel J. Marovitch spent 144 hours, during the
7 duration of this ten-year-old case, resulting in a total lodestar of \$970,895. None of
8 this excluded time is included in the above number, nor is the additional time that
9 Burke Law will have to spend working on this matter going forward, including in
10 connection with seeking final approval of the Settlement, overseeing the Settlement
11 Administrator, communicating with Settlement Class Members, and with any
12 appeal.

13 27. My rates and Mr. Marovitch’s are reasonable. The following data
14 supports an hourly rate of at least \$775 for my work:

15 a. In *Guidry v. Penn Credit Corp.*, 6:19-cv-1936-GAP-LRH, Dkt.
16 67 (M.D. Fla. Sept. 22, 2021), the Court approved the Plaintiff lawyers’ request for
17 30% of the settlement fund, including my fee. The Court did not object to my
18 proffered hourly rate of \$650/hour in conducting its lodestar cross-check analysis.

19 b. In *Kondash v. Citizens Bank, N.A.*, 2020 WL 7641785, at *2
20 (D.R.I. Dec. 23, 2020), the District Judge referred the discrete issue of determining
21 an appropriate fee award for a class TCPA settlement to the Magistrate Judge. As
22 part of a lodestar cross-check, the Magistrate Judge found my proposed hourly rate
23 of \$600 per hour to be “well within the realm of reasonable for attorneys of their
24 experience in a case of this type,” and approved fees on a percentage of the fund.
25 The District Judge adopted this opinion, *in toto*. *Kondash*, 2021 WL 63409, at *1
26 (D.R.I. Jan. 7, 2021).

27 c. In *Leeb v. Charter Commc’ns, Inc.*, No. 4:17-cv-02780, Dkt.
28 139 (E.D. Mo. Sept. 26, 2019), the defendant agreed to pay – and the Court

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1 approved – \$550 per hour as a result of a discovery motion. This was a reduced
2 hourly rate, which was the result of a “compromise to informally resolve the fee
3 issue.” *Id.*

4 d. In *Lowe v. CVS Pharmacy, Inc.*, 1:14-cv-3687, Dkt. 431 (Jan.
5 30, 2020), I submitted a fee petition with an hourly rate of \$650 as part of the fee
6 petition in that matter, to support the lodestar cross-check. The Court approved fees
7 at 1/3 of the settlement fund as “appropriate, fair, and reasonable.” *Id.*

8 e. In *Toney v. Quality Resources, Inc.*, No. 13-42 (N.D. Ill. final
9 approval Sept. 25, 2018), I requested \$575 per hour as part of a lodestar cross-
10 check. While the Court appears to have decided attorneys’ fees based upon a
11 percentage of the fund, the Court did not take issue with the \$575/hour rate. *See*
12 Dkt. 415.

13 f. In *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018
14 (N.D. Ill. Dec. 8, 2016), I submitted my lodestar at a rate of \$550 an hour in support
15 of class counsel’s request for a fee award amounting to one-third of the fund less
16 notice and administration costs. The court granted class counsel’s full fee request.
17 Dkts. 337-38.

18 g. In *In re Capital One Telephone Consumer Protection Act Litig.*,
19 80 F. Supp. 3d 781, 784 (N.D. Ill. 2015) I requested an hourly rate of \$550 per hour
20 as part of the Plaintiff team’s submission for fees. Although the final approval order
21 does not mention hourly rates, at the final approval hearing, Judge Holderman
22 found that the hourly rates requested by counsel, on a blended basis, were on the
23 whole reasonable.

24 h. In *Rose v. Bank of America*, No. 11-2390, 2014 WL 4273358
25 (N.D. Cal. Aug. 29, 2014) (Davila, J.), I submitted my time records and requested
26 an hourly rate of \$575. The Court approved all rates requested by all counsel as
27 generally reasonable, although the opinion does not specifically mention me. *See*
28 *Id.* at *8.

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1 i. In *O'Hagan v. Blue Ribbon Taxi Association, Inc.*, No. 1:11-cv-
2 5269 (N.D. Ill. Sept. 20, 2013), final approval of a Fair Credit Reporting Act class
3 action settlement was granted. Although fees were capped as part of the settlement,
4 Magistrate Judge Rowland considered and approved all aspects of the settlement.
5 My fee petition in that case requested an hourly rate of \$550 per hour.

6 j. In *Ahmed v. Oxford Collection Services, Inc.*, No. 1:11-cv-1938
7 (N.D. Ill. Apr. 19, 2011), the Court entered a judgment against the defendant
8 including attorney's fees for my work at a rate of \$340 per hour in an individual
9 TCPA case where the defendant reneged on a settlement agreement.

10 k. In *Fike v. The Bureaus, Inc.*, No. 1:09-cv-2558 (N.D. Ill. Dec. 3,
11 2010), the Court approved a common fund attorney's fee award based at least in
12 part upon counsel's lodestar, which was calculated at \$340 per hour.

13 l. When I worked as an associate at another firm, in *Catalan v.*
14 *RBC Mortg. Co.*, 2009 WL 2986122 (N.D. Ill. Sept. 16, 2009), Judge Dow
15 approved my hourly rate at \$285 per hour while I was an associate arising out of a
16 contested fee petition. Although the total fee award was reduced, hourly rates were
17 not reduced.

18 m. I was also an associate at another firm when Magistrate Judge
19 Jeffrey Cole approved my hourly rate at \$288 more than ten years ago in *Pacer v.*
20 *Rockenbach Chevrolet*, 1:07-cv-5173 (N.D. Ill. Jan. 15, 2009).

21 28. The firm seeks \$425 per hour for Mr. Marovitch's work on the case.
22 This hourly rate per hour is justified because of Mr. Marovitch's experience in
23 litigating TCPA actions. Among other cases, in the \$7 million TCPA class
24 settlement in *Smith v. State Farm Mutual Auto. Ins. Co.*, No. 13-2018 (N.D. Ill.
25 final approval Dec. 8, 2016), Mr. Marovitch submitted a fee request based on a rate
26 of \$340 an hour, although the court ultimately approved fees on a percentage-of-
27 the-fund basis. In the \$1.8 million TCPA class settlement in *Beecroft v. Altisource*
28 *Bus. Sols. Pvt. Ltd.*, No. 15-2184 (D. Minn. final approval Mar. 16, 2018), he

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1 submitted a fee request based on a rate of \$350 an hour, with the court likewise
2 ultimately approving fees on a percentage-of-the-fund basis. He was also appointed
3 co-class counsel in the \$3.3 million TCPA class settlement in *Toney v. Quality*
4 *Resources, Inc.*, No. 13-42 (N.D. Ill. final approval Sept. 25, 2018), in which he
5 submitted a fee request based on a rate of \$375 an hour, although the court again
6 ultimately approved fees on a percentage-of-the-fund basis. While these courts'
7 orders approving settlement did not address these rates directly, they did not find it
8 to be unreasonable. Likewise, Mr. Marovitch's billable rate is reasonably consistent
9 with (and, indeed, below) the \$429 average hourly rate for a 6-10 year practicing
10 consumer law attorney in Chicago, according to Ronald L. Burdge, United States
11 Consumer Law Attorney Fee Survey Report, at 224 (2015-2016).

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

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

19

20 Executed on October 14, 2022 in Evanston, Illinois.

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/s/ Alexander H. Burke

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JENNY BROWN, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No. 2:13-cv-01170-DMG-E

Hon. Dolly M. Gee

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S AND CLASS
COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
PLAINTIFF SERVICE AWARD**

1 This matter having come before the Court on Plaintiff’s and Class Counsel’s
2 motion for an award of attorneys’ fees, reimbursement of litigation expenses, and
3 plaintiff service award. Having considered the motion, all exhibits and attachments
4 thereto, the record in this matter, the brief and arguments of counsel, and the brief
5 and arguments of any objectors to the motion, **IT IS HEREBY ORDERED** as
6 follows:

7 **I. ATTORNEYS’ FEES**

8 1. The Court finds that Class Counsel are entitled to reasonable
9 attorneys’ fees. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
10 1300 (9th Cir. 1994).

11 2. The Court finds that the percentage-of-recovery method of
12 determining reasonable attorneys’ fees is appropriate here, where the settlement
13 creates a common fund. *See In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d
14 539, 570 (9th Cir. 2019). Class Counsel’s fee request of \$5,666,666.66 is one-third
15 of the Settlement Fund. The Court finds that this fee is appropriate, given the
16 circumstances of the case. *In re Apple Inc. Device Performance Litig.*, -- F.4th --,
17 2022 WL 4492078, at *10 (9th Cir. Sept. 28, 2022); *Sevilla v. Aaron’s Inc.*, 2020
18 WL 10573205, at *2 (C.D. Cal. May 15, 2020) (Gee, J.) (it is “not uncommon for
19 courts to award one-third of the gross settlement fund as attorneys’ fees where the
20 circumstances warrant it.”); *In re Banc of Cal. Secs. Litig.*, 2020 WL 1283486, at
21 *1 (C.D. Cal. Mar. 16, 2020) (Gee, J.) (awarding fee of \$6,517,500, representing
22 33% of the settlement); *Hyundai*, 926 F.3d at 571 (“We have affirmed fee awards
23 totaling a far greater percentage of the class recovery than the [25%] fees here.”).

24 3. The Court has analyzed the reasonableness of Class Counsel’s fee
25 request, including by applying the following non-exhaustive factors: “(1) result
26 obtained for the class; (2) effort expended by counsel; (3) counsel’s experience; (4)
27 counsel’s skill; (5) complexity of issues; (6) risks of nonpayment assumed by
28 counsel; and (7) comparison with counsel’s lodestar.” *Bentley v. United of Omaha*

1 *Life Ins. Co.*, 2020 WL 3978090 (C.D. Cal. Mar. 13, 2020). *First*, the overall result
2 and benefit to the Settlement Class from the Settlement supports the requested fee
3 because the amount of monetary relief provided to the Settlement Class is
4 significant, including as a percentage of Settlement Class Members’ potential
5 statutory damages under the Telephone Consumer Protection Act. *Second*, Class
6 Counsel’s efforts in litigating this case for a decade up to the eve of trial support the
7 reasonableness of their fee. Additionally, Class Counsel will continue to work with
8 the Settlement Administrator, review and respond to any objections, move for final
9 approval, handle any appeals, and oversee the final administration of benefits to
10 Settlement Class Members. *Third*, Class Counsel are experienced class action and
11 TCPA attorneys who, as the Court previously noted, “vigorously litigated this
12 action for nearly ten years.” Aug. 19, 2022 Hr’g Tr. at 26:17-18. *Fourth*, Class
13 Counsel’s skills handling this complex legal and factual case support the
14 reasonableness of their fee award. Among other things, Class Counsel: (1) filed
15 numerous complaints; (2) survived a motion to dismiss; (3) successfully moved for
16 class certification; (4) obtained a denial, in part, of DIRECTV’s motion to compel
17 arbitration; (5) obtained discovery from DIRECTV and third-parties, including
18 sworn declarations; (6) deposed DIRECTV’s witnesses and experts, a third-party,
19 and defended their own named plaintiff depositions and expert depositions; (7)
20 prepared and disseminated class notice; (8) successfully moved twice, in part, for
21 summary judgment and opposed DIRECTV’s motion for summary judgment and
22 decertification; (9) prepared key pre-trial filings, including jury instructions,
23 witness and exhibit lists, a statement of the case, and motions in limine; (10)
24 prepared to brief the complex and novel claims administration process issue; (11)
25 mediated multiple times with leading mediators while litigating the case; and (12)
26 oversaw all aspects of the Settlement, from drafting the Settlement Agreement, to
27 moving for preliminary approval, to overseeing the Settlement Administrator’s
28 work to date (and going forward). *Fifth*, the complexity of issues that Class Counsel

1 faced, including obtaining and analyzing call records and proving the complicated
2 set of facts necessary to show that DIRECTV was vicariously liable for its debt
3 collection agencies supports the reasonableness of the fee. *Sixth*, this case entailed
4 significant risks, including risks related to trial and the claims administrator
5 process. Moreover, as this Court acknowledged, “while plaintiffs’ case was strong,
6 many of the easier issues for plaintiff were already resolved with only her most
7 difficult claims left for trial. Trial would have been complex and expensive with a
8 substantial risk that plaintiff would not prevail.” Aug. 19, 2022 Hr’g Tr. at 26:22-
9 27:1.

10 4. A lodestar cross-check further confirms that the requested fee is
11 reasonable. “The lodestar amount is calculated by multiplying the number of hours
12 reasonably expended by a reasonable hourly rate.” *Bentley*, 2020 WL 3978090. “A
13 cross-check is discretionary, but we encourage one when utilizing the percentage-
14 of-recovery method.” *Apple*, 2022 WL 4492078, at *10. Class Counsel’s lodestar
15 for work in this case through the filing of their motion is \$8,734,304.25,
16 representing 13,036.7 hours of attorney and law firm staff time. The Court also
17 finds that the time Class Counsel dedicated to prosecuting this action is reasonable,
18 and that Class Counsel’s hourly rates are reasonable and in line with those
19 prevailing in this District for similar services by lawyers of reasonably comparable
20 skill, experience, and reputation.

21 5. The Court finds that Class Counsel’s fee request results in an
22 acceptable multiplier of Class Counsel’s lodestar. The one-third fee requested by
23 Class Counsel reflects a multiplier of 0.65, a so-called “negative,” or fractional
24 multiplier, which “falls within the Ninth Circuit’s presumptively acceptable range”
25 of multipliers routinely approved in the Ninth Circuit and elsewhere. *Dyer v. Wells*
26 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014). Thus, the application of
27 the lodestar multiplier cross-check supports the reasonableness of Class Counsel’s
28 requested fee.

1 6. For the reasons discussed above, the Court concludes that the
2 requested fee award is reasonable, and GRANTS attorneys' fees to Class Counsel
3 in the amount of \$5,666,666.66.

4 **II. Litigation Expenses**

5 7. Class Counsel are also entitled to reimbursement of reasonable out-of-
6 pocket costs advanced for the Class. *See* Fed. R. Civ. P. 23(h); *In re Media Vision*
7 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (“Reasonable costs and
8 expenses incurred by an attorney who creates or preserves a common fund are
9 reimbursed proportionately by those class members who benefit by the
10 settlement.”). The Court finds that the expenses incurred in this litigation were
11 reasonable and necessary to the effective representation of the Class.

12 8. Accordingly, the Court GRANTS Plaintiff's request for
13 reimbursement of litigation expenses in the amount of \$869,303.55.

14 **III. Service Award for Plaintiff Jenny Brown**

15 9. Service awards are “intended to compensate class representatives for
16 work done on behalf of the class [and] make up for financial or reputational risk
17 undertaken in bringing the action.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948,
18 958 (9th Cir. 2009). Courts have discretion to approve service awards based on the
19 amount of time and effort spent, the duration of the litigation, and the personal
20 benefit (or lack thereof) as a result of the litigation. *See Apple*, 2022 WL 4492078,
21 at *12 (district courts should consider “the amount of time and effort the plaintiff
22 expended in pursuing the litigation”).

23 10. The Court finds that the requested service award of \$10,000 to
24 Plaintiff Jenny Brown is reasonable and appropriate. Ms. Brown diligently pursued
25 this litigation for over a decade. She sat for a deposition, responded to discovery
26 requests, provided declarations in support of class certification and preliminary
27 approval, and prepared with counsel to serve as a key trial witness and appear in
28 person for the entire trial. *See* Dkt. 521 (Declaration of Jenny Brown) (detailing

1 Ms. Brown's involvement).

2 11. The Court therefore concludes that the requested service award is
3 reasonable and GRANTS the requested award of \$10,000 to Plaintiff Jenny Brown.

4

5 SO ORDERED.

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8 DATED: __, 2023

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HON. DOLLY M. GEE

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