IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Robert Hossfeld, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 2:16-cv-02017-ACA
v.	)	
COMPASS BANK,	)	
Defendant.	)	

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

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After completion of discovery and numerous months of contentious litigation, the parties reached a proposed class settlement in this action, which alleges that Compass Bank made automated survey calls to cell phones of non-customers like Plaintiff, who received automated survey calls made by Defendant and its vendors to Plaintiff and class members on their cell phones; calls which Plaintiff asserted were made using an automatic telephone dialing system ("ATDS" or "autodialer") and which allegedly violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

The settlement calls for Compass Bank to pay a lump-sum of $1,150,000 into a common fund for the benefit of the class. Class members that submit claim forms will receive a *pro rata* portion of the settlement proceeds, after attorney fees and costs, class representative service award, and costs of notice and administration have been deducted. Given the number of valid claims received, counsel estimate that each claimant will receive between $100 and $350.[1]

The reaction of the class has been excellent: there have been zero objections, and one opt out.

[1] The settlement stipulates that claims are only valid if they are submitted with telephone numbers that are on the list of phone numbers that were called by MSR for Compass. The parties have a list of such numbers. Claimants that submitted claims with phone numbers that are not on the class list were sent letters asking them to resubmit their claims. Plaintiff provides a range of recovery here in order to account for the unexpected possibility that a large number of such persons will resubmit claims with phone numbers that are on the list. Valid claimant recovery is almost certainly going to be at the top of this range.

Pursuant to the Court-approved notice plan, notice of the Settlement was disseminated to the Settlement Class in the following ways: (i) sent directly to individuals (using postcards for all ascertained addresses and emails as outlined in the Settlement Agreement), (ii) through an internet publication notice campaign as outlined in the Settlement Agreement; and (iii) by establishing a Settlement Website, as more fully described in the Settlement Agreement. The notice plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

The Settlement is an excellent result for the Class, particularly in view of the risks and delays involved in continued litigation. Considering the overwhelmingly favorable support for the Settlement from the class members, Plaintiff respectfully requests that this Court finally approve the Settlement, approve Plaintiff's motion for attorneys' fees in its entirety, and enter a final judgment and order dismissing this case.

STRUCTURE OF THE SETTLEMENT

The Settlement provides relief to the following class of persons:

Settlement Class

All non-customers of Compass Bank whose cell phones Compass Bank had The MSR Group, LLC ("MSR") call for survey purposes,

> through use of a VOXCO dialer in predictive mode, where the call was made on or after December 14, 2012, until the date of execution of the Settlement Agreement (the "Settlement Period"), limited to calls to phone numbers in the final call data provided by MSR. Excluded from the Class are: (1) governmental agencies, entities, or judicial officers; and (2) any person or entity which properly executes and submits a timely request for exclusion from the Class.

Dkt. No. 97, at ¶ 4.

The Settlement Fund will be allocated as follows: first, Defendant will pay $1,150,000.00 into a non-reversionary common fund for the benefit of the Settlement Class. Discovery shows that there were 31,972 calls that Compass Bank's vendor, MSR Group, LLC ("MSR"), made and which were coded as ""no one in their household uses Compass Bank", although the number of call recipients who were truly noncustomers is likely lower than that. Class members who wish to receive a monetary benefit must self-identify by certifying that they were noncustomers at the time they received the call, plus their phone number must be a number that was called by Compass Bank's vendor. Next, qualified claimants will receive a *pro rata* distribution of the Settlement Fund, less costs of notice and administration, attorneys' fees and expenses, and incentive award.

CLAIMS ADMINISTRATION

On February 19, 2019, this Court granted preliminary approval to the

settlement. Dkt. No. 97. After a competitive bidding process to ensure that settlement administration would be accomplished in a cost-effective manner, the parties retained American Legal Claims Services, LLC ("ALCS") as settlement administrator and directed ALCS to implement a comprehensive notice plan for class members. *See id*. at ¶ 9 (ordering notice to class members).

Pursuant to this notice plan, ALCS mailed 58,774 Notice Packets. Ex. A, Declaration of Keith Salhab, at ¶ 8. Of those, 6,435 were returned as undeliverable. *Id.* at ¶10. Of the Notice Packets returned as undeliverable, 4,451 were returned by the U.S. Postal Service with a forwarding address, or an updated address was found using commercially reasonable means, and ALCS re-mailed those to the new address. *Id.* Of the re-mailed notice packets, 1,984 were ultimately deemed undeliverable. *Id*. As a result, at least 54,806 notices have, as best as the parties can determine, reached class members. That easily exceeds established due process requirements for class notice. *See* Federal Judicial Center, Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010), *available at* https://goo.gl/KTo1gB (instructing that notice should have an effective "reach" to its target audience of 70-95%.); *see also Swift v. Direct Buy, Inc.*, No. 2:11-cv-401-TLS, 2013 WL 5770633, at *3 (N.D. Ind. Oct. 24, 2013) ("The

Federal Judicial Center's checklist on class notice instructs that class notice should strive to reach between 70% and 95% of the class."). ALCS also sent notice to 517,917 emails addresses associated with 449,158 individuals. Ex. A at ¶ 11. In addition to the direct mailed notice and email notice, ALCS also established a website, www.BankSurveyTCPASettlement.com, which contained a long-form notice of the Settlement. *Id.* at ¶ 14. Finally, ALCS implemented a targeted internet advertising campaign, designed to capture Class Members who may not have viewed or received the mailed short-form notice or email notice. *Id.* at ¶ 15.

RESPONSE OF THE CLASS

Pursuant to the Court's preliminary approval order, class members had until June 24, 2019, to submit a claim under the settlement. Dkt. No. 97, at ¶ 21. As of the date of this motion, ALCS has received 4,552 claims from the Class. Declaration of Keith Salhab, at ¶ 19. This represents an extraordinarily high rate for class settlements of this type. Claims rates in large TCPA class actions against large financial institutions are often well under 10%. *Compare Cross v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-01270, Dkt. No. 86-1 (N.D. Ga.) (settlement approved with a claims rate of 6.7%) (Thrash, J.); *Bayat v. Bank of the West,* No. C-13-2376 EMC, 2015 WL 1744342, at *5 (N.D. Cal. Apr. 15, 2015) (claims rate

of 1.9% for monetary portion of settlement, and 1.1% for injunctive relief portion of settlement); *Wilkins v. HSBC Bank Nevada, N.A.*, No. 14-190, 2015 WL 890566, at *3 (N.D. Ill. Feb. 27, 2015) ("3.16% of the class[] filed a timely claim"); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (approving TCPA class action settlement with 2.5% claims rate); *Michel v. WM Healthcare Solutions, Inc.*, No. 1:10-CV-638, 2014 WL 497031, at *4 (S.D. Ohio Feb. 7, 2014) ("a total response rate of 3.6%"); *Arthur v. SLM Corp.*, No. C10–0198 JLR, Docket No. 249 at 2–3 (W.D. Wash. Aug. 8, 2012) (claims rate of approximately 2%); *Grannan v. Alliant Law Grp.*, P.C., No. C10-02803 HRL, 2012 WL 216522, at *3 (N.D. Cal. Jan. 24, 2012) (claims rate under 3%). Indeed, in the rare TCPA class settlement in which a claim rate like the one in the case at bar is reached, the courts find that such a rate strongly supports approval of the settlement. *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-CV-01156-LMM, 2017 WL 416425, at *4 & n.2 (N.D. Ga. Jan. 30, 2017) (noting that the claims rate there was 12% and stating that "the fact that so many Settlement Class Members have filed claims also suggests that this Settlement is fair and reasonable.").

Here, there was only one request to opt out, and not a single objection. Ex. A at ¶¶ 18, 20. This represents an overwhelmingly positive response to the class

settlement from the class of persons who stand to benefit.

ARGUMENT

I. The Settlement Meets All Requirements for Final Approval.

"Under Rule 23(e) of the Federal Rules of Civil Procedure, a class-action settlement may be approved if the settlement is 'fair, reasonable, and adequate.'" *Melanie K. v. Horton*, No. 14-710, 2015 WL 1799808, at *2 (N.D. Ga. Apr. 15, 2015) (quoting Fed. R. Civ. P. 23(e)(2)). "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Newberg on Class Actions, § 11:50.

Rule 23 – and particularly the portions thereof dealing with settlement – was amended in December 2018. The first step in the amended process is a preliminary fairness determination. After class notice, the second step in the process is a final fairness hearing. Fed. R. Civ. P. 23(e)(2) (2018); *also* Manual for Complex Litigation, § 21.633-34; *Hall v. Frederick J. Hanna & Assocs., P.C.*, No. 15-3948, 2016 WL 2866081 (N.D. Ga. May 10, 2016); *see also Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (explaining that once a district court finds a settlement proposal "within the range of possible approval, the second step in the review process is to conduct a fairness hearing"), *overruled*

on other grounds by Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1998). Where, as here, the proposed settlement would bind absent class members who are not formal parties to the case, it may only be approved after a final hearing and a finding that it is fair, reasonable, and adequate, based on the following factors:

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

Fed. R. Civ. P. 23(e)(2).

A. The Class Representative and Class Counsel have adequately represented the Classes.

"There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Ass'n For Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002); *accord In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public

policy strongly favors the pretrial settlement of class action lawsuits."). In that light, Courts should consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that "counsel had an adequate appreciation of the merits of the case before negotiating." *In re Checking Overdraft Litig.*, 830 F. Supp. 2d 1330, 1348 (S.D. Fla. 2011) (internal quotation marks omitted).

As set forth in more detail in Plaintiff's Memorandum in Support of Motion for Preliminary Approval, this case has been vigorously litigated for over two years. Class Counsel, on behalf of the Plaintiffs, has conducted extensive discovery and obtained critical evidence necessary to litigate and negotiate an informed settlement. *See* Declarations of Scott D. Owens ("Owens Decl.") and Alexander H. Burke ("Burke Decl."), attached hereto as Exhibits B and C, respectively. Finally, both parties extensively briefed and exchanged their respective litigation positions in the run-up to mediation, so the parties had a strong sense of the strengths and weaknesses of the case, and thus were in position to properly evaluate settlement. *Id*.

In light of this history, Plaintiff had a full and complete picture of the case, and did everything possible to get the best possible result for class members. On

the basis of these efforts, over two (2) years in total, the case was developed to a maximum reasonable degree.

In addition, a plaintiff and counsel are adequate if "counsel are qualified, experienced, and generally able to conduct the proposed litigation," and the "plaintiff[] [does not] have interests antagonistic to those of the rest of the class." *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987). "In a case where experienced counsel represent the class, the Court absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 691 (N.D. Ga. 2001) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); *see also In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 312-13 (N.D. Ga. 1993) ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel.").

Here, Plaintiff's claims are aligned with the claims of the other class members. He has every incentive to vigorously pursue the claims of the class, as he has done by remaining actively involved in this matter since its inception, participating in discovery, and remaining involved in the settlement process. In addition, Plaintiff retained the services of law firms with extensive experience in

litigating consumer class actions, and TCPA actions in particular. *See* Owens Decl. at ¶¶ 2-30; Burke Decl. at ¶¶ 2-11.

Here, Plaintiff and his counsel believe that the Settlement is fair, reasonable, and adequate, and in the best interests of the members of the class. Plaintiff also believes that the benefits of the parties' settlement far outweigh the delay and considerable risk of proceeding to a contested class certification and trial.

B. The settlement was negotiated at arm's-length by vigorous advocates, and there has been no fraud or collusion.

"A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." McLaughlin on Class Actions, § 6:7 (8th ed. 2011); *see also In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011) ("The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator[.]").[2]

[2] *See also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("[A] mediator[ ] helps to ensure that the proceedings were free of collusion and undue pressure."); *Johnson v. Brennan*, No. 10-4712, 2011 WL 1872405, at *1 (S.D.N.Y. May 17, 2011) (The participation of an experienced mediator "reinforces that the Settlement Agreement is non-collusive."); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("The assistance of an experienced mediator in the settlement process confirms that the

Here, the Settlement Agreement resulted from good faith, arms'-length settlement negotiations over many months, including an in-person mediation session before the Honorable Morton Denlow (Ret.) of JAMS. *See* Dkt. 96 at pp. 8-9. Plaintiff and Defendant submitted detailed mediation submissions to Judge Denlow and to one another, setting forth their respective views as to the strengths of their cases. *Id.* Accordingly, the parties negotiated their settlement at arm's-length, and absent any fraud or collusion. *See Wilson v. Everbank*, No. 14-22264, 2016 WL 457011, at *6 (S.D. Fla. Feb. 3, 2016) (finding no evidence of fraud or collusion where the settlement was negotiated at arms' length, and where the mediation was overseen by a nationally renowned mediator).

C. The Settlement provides substantial relief for the Classes.

The Settlement in this matter is fair, reasonable, and adequate, as demonstrated by the overwhelmingly positive response of class members.

1. Diverse and substantial legal and factual risks weigh in favor of settlement.

The Court must also consider "the costs, risks, and delay of trial and appeal" in considering approval of a proposed settlement. Fed. R. Civ. P. 23(e)(2)(C)(i).

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settlement is non-collusive."); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 WL 3345762, at *5 (D.N.J. Sept. 14, 2009) ("[T]he participation of an independent mediator in settlement negotiation virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.").

The Court must also consider "the likelihood and extent of any recovery from the defendants absent . . . settlement." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. at 314; *see also Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992) ("A Court is to consider the likelihood of the plaintiff's success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise.").

With this in mind, while Plaintiff strongly believes in his claims, Plaintiff understands that Defendant asserts a number of potentially case-dispositive defenses that pose considerable risk to Plaintiff's ability to certify a litigation class or ultimately obtain relief. For example, Defendant contends that it had prior express consent to call some or all of the class members, citing the various, disparate ways in which the phone numbers called were purportedly obtained. Defendant also argues that Plaintiff is not able to certify the class he defines in his complaint, contending that a litigation class is unascertainable and that individual issues predominate.

Further, the law relevant to the TCPA is under a state of flux, and there is no guarantee that it would not change drastically before trial. For example, the D.C. Circuit recently overturned part of a major FCC ruling on the TCPA in *ACA Int'l v.*

FCC, 885 F.3d 687 (D.C. Cir. 2018), and the FCC is currently weighing new interpretations of the statute in response—including as to the definition of an "automatic telephone dialing system."

Plaintiff disputes each of Defendant's defenses and opposition to certifiability of a litigation class, and strongly believes he would prevail. But it is obvious that his likelihood of success at class certification, summary judgment, or trial is far from certain. Accordingly, Plaintiff's decision to settle his claims, and the claims of the members of the class, is reasonable. *See Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982) (noting that the plaintiffs faced a "myriad of factual and legal problems" that led to "great uncertainty as to the fact and amount of damage," which made it "unwise [for the plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial"). The Settlement avoids these risks and provides immediate and certain relief. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.").

2. The monetary terms of this proposed settlement fall favorably within the range of prior TCPA class action settlements.

"In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Newberg on Class Actions, § 11:50. This is, in part, because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. at 319 ("In assessing the settlement, the Court must determine whether it falls within the range of reasonableness, not whether it is the most favorable possible result in the litigation.") (internal citation omitted).

The Settlement provides Class Members with real monetary relief – in the range of potentially *hundreds of dollars each* - despite the purely statutory damages at issue—damages that many courts have deemed too small to incentivize a significant number of individual actions. *See, e.g., Palm Beach Golf Center-Boca, Inc. v. Sarris*, 311 F.R.D. 688, 699 (S.D. Fla. 2015) (noting that the small potential recovery in individual TCPA actions reduced the likelihood that class members will bring suit); *St. Louis Heart Ctr., Inc. v. Vein Ctrs. for Excellence, Inc.*, No. 12-174, 2013 WL 6498245, at *11 (E.D. Mo. Dec. 11, 2013) (explaining

that because the statutory damages available to each individual class member are small, it is unlikely that class members have an interest in individually controlling the prosecution of separate actions); *Siding & Insulation Co. v. Beachwood Hair Clinic, Inc.*, 279 F.R.D. 442, 446 (N.D. Ohio 2012) (stating that, since each class member is unlikely to recover more than a small amount, they are unlikely to bring individual suits under the TCPA). In other words, the Settlement provides class members with monetary relief that the vast majority of them would never have pursued on their own.

More specifically, it is estimated that members of the Settlement Class will be receiving approximately $100.00 - $350.00.[3] This represents real monetary relief to class members as compensation for receiving telemarketing calls.

The parties' settlement, therefore, is well within "a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in a particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. at 323; *see also id.* at 326 (A court "should consider the vagaries of litigation and compare the significance of immediate recovery by way of the

[3] (Settlement Fund –notice and administration, service award, litigation costs and fees) ÷ (Total Number of Valid and Timely Claims) = Monetary Award

compromise to the mere probability of relief in the future, after protracted and expensive litigation."). Indeed, "it has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Id.* (internal citation omitted).

Moreover, the estimated recovery to each Class Member meets or exceeds that which has been approved in other cases. *E.g., Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) (approving TCPA settlement estimated at $52.50 per class member*); In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015) (approving TCPA settlement estimated at $34.60/claimant); *Estrada v. iYogi, Inc.*, No. 13-1989, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (preliminary approving TCPA settlement estimated at $40.00/class member); *Steinfeld v. Discover Fin. Servs.*, No. 12-01118, Dkt. No. 96 at ¶ 6 (N.D. Cal. Mar. 10, 2014) (claimants received $46.98 each); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 08-248, Dkt. No. 137 (S.D. Cal. Sept. 28, 2012) ($40.00 each)

D. The overwhelmingly positive reaction to the settlement supports final approval.

As a result of the notice campaign administered by ALCS, to date 4,552 members from the class submitted claims, and not a single one objected to it. *See* Exhibit A, ¶¶ 19-20. This overwhelmingly favorable reaction to the Settlement

supports its final approval. *See Garcia v. Gordon Trucking, Inc.*, No. 1:10- CV-0324 AWI SKO, 2012 WL 5364575, at *6 (E.D. Cal. Oct. 31, 2012) ("The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members."); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) ("The reaction of class members to the proposed settlement, or perhaps more accurately the absence of a negative reaction, strongly supports settlement."); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1381 (S.D. Fla. 2007) ("A low percentage of objections demonstrates the reasonableness of a settlement."); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members"); *Brotherton v. Cleveland*, 141 F. Supp. 894, 906 (S.D. Ohio 2001) ("[A] relatively small number of class members who object is an indication of a settlement's fairness."); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

Here, there were not "a few" objections to the settlement—there were no objections. But the critical fact is not that just there were no objections: it is that there were no objections, but at the same time, more than 4,500 claims were made. That demonstrates that this was not a case where the settlement "slipped under the radar" of class members. Class members responded in significantly higher than expected numbers, yet none of them objected to the settlement. This reveals a settlement that satisfied the persons that it sought to benefit. This is precisely how class action settlements are supposed to work.

II. The distribution of notice was consistent with due process requirements.

"Rule 23 requires that notice to class members be the 'best notice practicable under the circumstances[.]'" *Lopez v. Hayes Robertson Grp., Inc.*, No. 13-10004-CIV-MARTINEZ, 2015 WL 5726940, at *6 (S.D. Fla. Sept. 29, 2015) . But "even in Rule 23(b)(3) class actions, due process does not require that class members actually receive notice." *Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012) (collecting cases).

Here, the parties agreed to a robust notice program involving direct mail and email notice to Class Members after a reverse lookup, a dedicated settlement website, and a targeted internet notice campaign. Direct mail notice was

successfully delivered to 93.07% of all individuals for whom records were available. Ex. A, at ¶17. The notice program in this case far exceeds the minimum due process requirements. Moreover, the strength of the notice program can be seen in the claims rate—4,552 class members.

CONCLUSION

Plaintiff respectfully submits that the settlement in this matter is an excellent result for class members, and the positive response from the class members and lack of objections indicate they agree. For this and the foregoing reasons, Plaintiff respectfully requests that the Court approve the settlement and enter a final judgment and order.

July 29, 2019.

Respectfully submitted,

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Counsel for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on July 29, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this date via U.S. mail and/or some other authorized manner for those counsel of parties, if any, who are not authorized to receive electronically Notice of Electronic Filing.

By: */s/ Scott D. Owens*
Scott D. Owens, Esq.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Robert Hossfeld, *individually and on behalf of all others similarly situated,*	)	
Plaintiff,	)	
-v-	)	CASE NO. 2:16-CV-02017-ACA
COMPASS BANK,	)	
Defendant.	)	

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

I, Keith Salhab, declare as follows:

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

2. I am an employee of American Legal Claim Services, LLC ("ALCS"). ALCS was appointed by the Court to serve as the Settlement Administrator to administer the terms of the Settlement Agreement. I was principally responsible for overseeing the dissemination of notice to the Class; processing claims; processing requests for exclusion; processing requests for objection; and distributing the Settlement Funds.

CAFA Noticing

3. On February 21, 2019, ALCS mailed a Notice of Proposed Class Action Settlement Under 28 U.S.C. § 1715 ("CAFA Notice") to the attorneys general of 50 states plus the territory of Puerto Rico, the Attorney General of the United States, the District of Columbia's Corporate Counsel, the Attorney General for Guam, the Attorney General for American Samoa, the Attorney General for the US Virgin Islands, the Attorney General for the Northern Mariana Islands, the State Banking Department of the State of Alabama, the Federal Reserve Board, and the Consumer Financial Protection Bureau via certified mail through the US Postal Service. The CAFA Notice package contained a cover letter on behalf of the Defendants as well as a CD-ROM that included the following: (1) the Class Action Complaint; (2) First Amended Complaint; (3) Defendant's Answer and Affirmative Defenses to First Amended Complaint; (4) Defendant's Answer and Affirmative Defenses to Second Amended Complaint; (5) Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement; (6) Order Preliminarily Approving Settlement Agreement; and (7) Settlement Agreement.

Data Preparation & Analysis

4. Class Counsel provided ALCS with two spreadsheets representing the Settlement Class. The first spreadsheet contained 32,511 Code 15 Phone Numbers ("Code 15"). The second spreadsheet contained 320,943 Non-Code 15 MSR Group Phone Numbers ("MSR Group").

Reverse Phone Lookup & Append

5. Since the Code 15 list and MSR list only contained telephone numbers, ALCS incorporated a data fusion solution that focused on the reverse lookup function to locate names, addresses and email addresses that were associated with the telephone numbers during the Class Period. Through these efforts, ALCS was able to facilitate both direct and indirect notice to Class Members. ALCS partnered with a nationally recognized data fusion provider with decades of experience in the field to compare the two spreadsheets against its leading-edge, proprietary data repository to locate all respective names, addresses, and email addresses for the Code 15 list and the MSR Group list. Through this process, ALCS was able to identify 61,019 individuals associated with telephone numbers on the Code 15 List and 466,358 individuals associated with telephone numbers on the MSR List.

USPS Noticing Campaign

6. Per the Settlement Agreement, ALCS was to provide Court approved notices through direct means of the U.S. Postal Service ("USPS") and or email as applicable. Notices were served to the Code 15 list of known wrong numbers utilizing both USPS and email, while the MSR population was served by email.

7. Prior to mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the USPS. In addition, the addresses were also certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code, and verified through Delivery Point Validation (DPV) to verify the accuracy of the address.

8. On March 25, 2019, ALCS directed the approved Postcard Notice via USPS First Class mail to 58,774 individuals associated with the Code 15 List.

9. ALCS processed all mail returned by the USPS. Any Class Notice returned to ALCS as non-delivered was re-mailed to the forwarding address affixed thereto. If no forwarding information was provided by the USPS, ALCS utilized commercially reasonable means to obtain a current address and promptly re-mailed Class Notices where updated current addresses were found. If an updated address was not found or if the re-mailed package was returned by the USPS a second time it was not re-mailed a third time and was deemed undeliverable.

10. Of the Notices mailed, 6,435 Notices were returned by the USPS and processed by ALCS, as of the date of this declaration. Of those, 4,451 had forwarding information attached or an updated address was found using commercially reasonable means. ALCS re-mailed the Notice Packages to the updated address. 1,984 Class Notices were deemed undeliverable.

Email Noticing Campaign

11. Per the Settlement Agreement, on March 19, 2019, ALCS directed the Court approved Email Notice to be sent via email, to 517,917 email addresses associated with 449,158 individuals. As of the date of this declaration, 277,050 emails associated with 277,436 individuals were reported as delivered and 240,867 associated with 171,722 individuals were reported as not delivered.

12. As of the date of this declaration, these direct noticing efforts resulted in over 93% of the identified Code 15 list receiving a notice via the USPS with more than 43% receiving supplemental notice via email.

Internet & Social Media Campaign

13. As a supplement to the aforementioned direct noticing means, the Settlement Agreement outlined indirect notice means to reach Class Members who were not known or reached as part of the USPS and email efforts. These efforts incorporated a settlement website as well as an internet and social media advertising campaign.

14. Per the Settlement Agreement, on March 25, 2019, ALCS established a website at (www.BankSurveyTCPASettlement.com) which contained a set of frequently asked questions and the long-form Class Notice. This website also allowed for Class Members to view and download the Settlement Agreement, the Parties' operative pleadings, and motions relevant to the Settlement, as well as a claim form. This website also permitted Class Members who received a Postcard Notice to file a Claim Form electronically. Class Members were provided directions to access the website in Class Notices and through the telephone response unit.

15. On March 25, 2019, ALCS launched a social media campaign utilizing Facebook and Google AdWords. Since there were no identified unique qualities for which to derive a valuable demographic for Google Adwords, it was determined that Facebook and Instagram[1] provided a more effective means of reaching Class Members. ALCS created a unique focus group in Facebook based on 758,912 phone number and email combinations and served the court approved ads, attached to the Settlement Agreement as an Exhibit, to Facebook members who matched this criterion.

16. Upon conclusion of the internet and social media campaign, ALCS reached a total of 565,916 phone number and email combinations through its efforts. These impressions led to 13,549 direct clicks to the website, 3,039 indirect clicks from other sites, 1,321 clicks from Facebook, and 291 clicks from organic searches.

[1] According to a survey conducted by the Pew Research Group *Social Media Use in 2018* in January 2018, 68% of adults report using Facebook with 75% of those accessing it on a daily basis and 35% of adults report being Instagram users.

Noticing Campaign Summary

17. The following is a summary of the noticing, as of the date of this declaration:

Code 15 Group		
Description	**Volume (#)**	**Percentage of Class Members (%)**
Total Number of Unique Individuals	61,019	100.00%
Mail Notices		
Individuals to Whom Postcard Notice Was Attempted via USPS	58,774	
Individuals to Whom Postcard Notice Was Deemed Delivered	56,790	93.07%
Individuals to Whom Postcard Notice Was Deemed Undeliverable[2] or for Whom No Address Was Located	4,229	6.93%
E-Mail Notices		
Individuals to Whom Email Notice Was Attempted	56,799	
Individuals to Whom Email Notice Was Deemed Delivered	28,190	46.20%
Individuals to Whom Email Notice Was Deemed Undeliverable or for Whom No Email Address Was Located	32,829	53.80%

MSR Group		
Description	**Volume (#)**	**Percentage of Class Members (%)**
Total Number of Unique Individuals	466,358	100.00%
E-Mail Notices		
Individuals to Whom Email Notice Was Attempted	392,359	
Individuals to Whom Email Notice Was Deemed Delivered	249,246	53.45%
Individuals to Whom Email Notice Was Deemed Undeliverable or for Whom No Email Address Was Located	217,112	46.55%

Internet & Social Media		
Description	**Volume (#)**	**Percentage of Class Members (%)**
Total Number of Unique Phone & Email Combination in Focus Group	758,912	100.00%
Unique Phone & Email Combinations Reached via Social Media	565,916	74.57%

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

Request to Opt-Out

18. Per ¶ 12 of the Preliminary Approval Order, the Class Notice informed each respective Class Members that they may opt-out from the proposed class action settlement. It further states that Class Members who wish to exclude themselves must submit a written statement requesting exclusion. The postmark deadline for valid Requests for Exclusion is May 9, 2019. As of the date of this declaration, 1 Request for Exclusion was received and processed by ALCS.

Requests for Inclusion in the Settlement

19. Per ¶ 7 of the Preliminary Approval Order, the Class Notice informed Class Members that to qualify for benefit in the settlement they must not opt-out of the settlement, and they must submit a valid Claim Form with a qualifying phone number. The postmark deadline for valid Claim Forms is June 24, 2019. As of the date of this declaration, ALCS received and processed 6,380 phone number submissions submitted by Class Members. Of the 6,380 phone number submissions, 1387 phone numbers matched the Code 15 and non-Code 15 MSR Groups.

Claim Summary

Summary of Claim Forms Submitted		
Description	**Volume (#)**	**Percentage of Claim Forms Submitted**
Total Number of Claim Forms Received	4,552	100.00%
Claim Forms Downloaded from Website	1,082	23.77%
Claim Forms Returned from Postcard Notice	2,309	50.72%
Claim Forms Submitted Online via the Website	1,161	25.51%
Summary of Phone Numbers Represented in Claims		
Description	**Volume (#)**	**Percentage of Phone Numbers Submitted**
Total Number of Phone Numbers Submitted on Claim Forms	6,380	100.00%
Phone Numbers Matched Code 15 List	1,238[3]	19.40%
Phone Numbers Matched Non-Code 15 List	149	2.34%
Phone Number Did Not Match Either List	4,921	77.13%
Phone Numbers Missing on Claim/Signature Missing on Claim	55	0.86%
Phone Numbers Submitted More Than Once by Same Class Member	17	0.27%

[3] 1,238 phone numbers matching the Code 15 list of known wrong numbers represents 3.8% of the total population of phone numbers provided.

Request to Object

20. Per ¶ 15 of the Preliminary Approval Order, the Class Notice informed Class Members that if they wish to object to the Agreement they must provide a written statement to the Court and serve it upon Counsel for the Parties postmarked by May 9, 2019. As the date of this declaration, ALCS has not received any objections relating to the settlement and is not aware of any objection filed with Counsel or by the Court.

Telephone & Electronic Assistance Program

21. On March 1, 2019, ALCS established a dedicated toll-free phone number to provide answers to Class Member questions. The toll-free number provided a voice response unit listing of questions and answers to frequently asked questions during the hours of 9:00 AM to 5:00 PM EST. As of the date of this declaration, ALCS received 394 calls regarding the Settlement.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on July 29, 2019 at Jacksonville, Florida.

Keith Salhab

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ROBERT HOSSFELD, *individually and on behalf of all others similarly situated,*	)	
Plaintiff,	)	**Case No.: 2:16-CV-2017-ACA**
v.	)	
COMPASS BANK	)	
Defendant.	)	

DECLARATION OF SCOTT D. OWENS

I, Scott D. Owens, declare under penalty of perjury, as provided for by the laws of the United States, 28 U.S.C. § 1746, that the following statements are true:

1. I am the principal of the law firm operating under the name Scott D. Owens, P.A.; I am the co-lead attorney representing Plaintiff Robert Hossfeld and the Class in this matter.

2. I am currently a member in good standing of the bars of the following courts:

State of Florida
Tallahassee, Florida
Admitted: October 2, 2002

United States District Court for the Southern District of Florida
Miami, Florida
Admitted: October 10, 2008

United States District Court for the Middle District of Florida
Tampa, Florida
Admitted: June 23, 2009

United States District Court for the Northern District of Florida
Tampa, Florida
Admitted: February 12, 2019

Eleventh Circuit Court of Appeals
Atlanta, Georgia
Admitted: April 30, 2012

United States District Court for the Eastern District of Michigan
Detroit, Michigan
Admitted: January 9, 2014

Sixth Circuit Court of Appeals
Cincinnati, Ohio
Admitted: May 20, 2015

3. I am a 2000 graduate of the New England School of Law. After a short time working in a debt collection law firm, I began to represent persons in consumer rights litigation, both in State and Federal Court; currently, 100% percent of my workload consists of consumer protection litigation, which includes claims brought under the TCPA, FACTA as well as the FDCPA. Since 2007, I have been an active member of the National Association of Consumer Advocates (NACA).

4. My federal litigation practice was featured in the *Daily Business Review* on June 15, 2009 in an article entitled "Federal Law Used Against Abusive Debt Collectors."

5. At the specific request of Judge Myriam Lehr of Miami-Dade County, I was asked to conduct a Continue Legal Education (CLE) seminar on the basics of FDCPA litigation entitled "How to Defend Against Abusive Debt Collectors"; the event was sponsored by the Miami-Dade Consumer Advocate and held on October 30, 2009.

6. I was featured on WSVN News (Channel 7) on November 22, 2010 for my pro-consumer work in the area of the Fair Debt Collection Practices Act.

7. I was a Guest Lecturer at the National Consumer Law Center's "Fair Debt Collection Training Conference" held in Jacksonville, Florida on March 5-6, 2010.

8. I was Featured Guest Speaker at the request of the Miami-Dade Consumer Services Department during *National Consumer Protection Week* on March 11, 2011.

9. I instructed a CLE seminar for Legal Services of Greater Miami, Inc., dealing with consumer protection (May 2011).

10. I conducted a CLE on the topic of consumer protection at Florida International University (June 2012).

11. I conducted a webinar dealing with the TCPA and FDCPA at the request of the National Association of Consumer Advocates (December 2012).

12. I was invited by the Consumer Protection Law Committee to be a guest speaker at the Florida Bar's Annual Convention held in Orlando, Florida (June 25-28, 2014). My topics of discussion included the Telephone Consumer Protection Act.

13. I was a panelist at the 2016 Florida Bar's Annual Convention held in Orlando, Florida regarding the TCPA.

14. I regularly attend legal seminars hosted by the National Consumer Law Center (NCLC), including the following:

National Consumer Law Center, 17th Annual Consumer Rights Litigation Conference (2008)

National Consumer Law Center, Fair Debt Collection Training Conference (2009)

National Association of Consumer Advocates, Fair Credit Reporting Act Conference (2009)

National Consumer Law Center, 18th Annual Consumer Rights Litigation Conference (2009)

National Consumer Law Center, Fair Debt Collection Training Conference (2010)

National Consumer Law Center, 19th Annual Consumer Rights Litigation Conference (2010)

National Consumer Law Center, 20th Annual Consumer Rights Litigation Conference (2011)

National Consumer Law Center, 21st Annual Consumer Rights Litigation Conference (2012)

National Consumer Law Center 22nd Annual Consumer Rights Litigation Conference (2013)

National Consumer Law Center, Fair Debt Collection Training Conference (2014)

National Consumer Law Center 23rd Annual Consumer Rights Litigation Conference (2014)[1]

National Consumer Law Center, Fair Debt Collection Training Conference (2015)

National Consumer Law Center 24th Annual Consumer Rights Litigation Conference (2015)

National Consumer Law Center, Fair Debt Collection Training Conference (2016)

National Consumer Law Center 25th Annual Consumer Rights Litigation Conference (2016)[2]

National Consumer Law Center, Fair Debt Collection Training Conference (2017)

National Consumer Law Center 25th Annual Consumer Rights Litigation Conference (2017)

National Consumer Law Center, Fair Debt Collection Training Conference (2018)

National Consumer Law Center 27th Annual Consumer Rights Litigation Conference (2018)

National Consumer Law Center, Fair Debt Collection Training Conference (2019)

[1] I also served as the national co-chairperson for the aforementioned conference.
[2] I was also a guest lecturer on the TCPA at the 2016 conference in Los Angeles.

15. Of the aforesaid legal seminars, I have attended at least five intensive full-day seminars which have dealt exclusively with class action litigation; I am familiar with the ethical and professional guidelines governing class action litigation.

16. I am generally regarded by my peers as one of the leading authorities in the State of Florida with respect to both the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act. To the best of my knowledge, only one other attorney based in the entire State of Florida has litigated more class actions concerning violations of the Telephone Consumer Protection Act.

17. My law practice was featured on the cover of the Sun-Sentinel on September 11, 2011 in an article entitled *Ticked off at debt collectors calling their cellphones, Floridians are fighting back.* The article dealt specifically with the Telephone Consumer Protection Act.

18. Among my many positive published decisions are the following citations:

Capital One Bank v. Pincus,
15 Fla. L. Weekly Supp. 1119d (Fla. Palm Beach Co. Ct. 2008)

CACH, LLC v. Quartermaine,
15 Fla. L. Weekly Supp. 843b (Fla. Broward Co. Ct. 2008)

Discover Bank v. Keith,
16 Fla. L. Weekly Supp. 358a (Fla. Broward Co. Ct. 2009)

CACV of Colorado, LLC v. Adams,
16 Fla. L. Weekly Supp. 319a (Fla. 17th Cir. 2009)

Cavalry Portfolio Srvcs. v. Machado,
16 Fla. L. Weekly Supp. 777c (Fla. Broward Co. Ct. 2009)

Palisades Collection, LLC v. Knighten,
17 Fla. L. Weekly Supp. 469a (Fla. Miami-Dade Co. Ct. 2010)

MBNA America Bank, N.A. v. Dan,
18 Fla. L. Weekly Supp. 308a (Fla. Palm Beach Co. Ct. 2010)

Bank of America v. Evans,

948 So.2d 998 (Fla. 3d DCA 2007)

Patterson v. Consumer Debt Mgmt. and Educ., Inc.,
975 So.2d (Fla. 4th DCA 2008)

Whitney v. Aventura Chiropractic Care Center, Inc.,
21 So.3d 95 (Fla. 3d DCA 2009)

Pincus v. Law Offices of Erskine & Fleisher,
617 F.Supp.2d 1265 (S.D. Fla. May 21, 2009)

Sanz v. Fernandez,
633 F.Supp.2d 1356 (S.D. Fla. July 7, 2009)

Sands v. Wagner & Hunt, P.A.,
Slip Copy, 2009 WL 2730469 (S.D. Fla. Aug. 28, 2009)

Chalik v. Westport Recovery Corp., 677 F.Supp.2d 1322 (S.D. Fla. Oct. 30, 2009)

Deuel v. Santander Consumer USA, Inc.,
*F.Supp.2d —, 2010 WL 1253035, *3 (S.D. Fla. Apr. 1, 2010)*

Knighten v. Palisades Collections, LLC,
2010 WL 2696768 (S.D. Fla. July 6, 2010)

Buslepp v. Improv Miami, Inc.,
Slip Copy, 2012 WL 1560408 (S.D. Fla. May 04, 2012)

Breslow v. Wells Fargo Bank, N.A.,
--- F.Supp.2d ----, 2012 WL 1448444 (S.D. Fla. April 26, 2012)

Lusskin v. Seminole Comedy, Inc.,
Slip Copy, 2013 WL 3147339 (S.D. Fla. June 19, 2013)

Pimental v. Google, Inc.,
No. 11–2585, 2012 WL 691784 (N.D. Cal. Mar. 2, 2012)

Legg v. Voice Media Group, Inc.,
--- F.Supp.2d ----, 2014 WL 29594 (S.D. Fla. January 03, 2014)

Cooper v. Nelnet, Inc., No. 6:14-cv-00314-RBD-DAB, ECF No. 72 (M.D. Fla. Feb. 26, 2015)

Guarisma v. ADCAHB Medical Coverages, Inc., et al., No. 1:13-cv-21016 (S.D. Fla. June 24, 2015)

19. I was appointed as class counsel in the matter of *McMullen v. Jennings & Valancy, P.A.*, Case No. 10-CV-60050. In certifying me for class counsel, Judge Adalberto Jordan stated, "I find that Mr. Owens can fairly and adequately represent the interests of the class…" and "Mr. Owens has the requisite mastery in these type of claims." I also served as class counsel in the case of *Lithgow v. Eisinger, Brown, Lewis, Frankel, Chaiet & Krut, P.A.* Case No. 0-10-cv-61185-WJZ [See Order dated Dec. 9, 2010]. In March 2012, I was appointed class counsel in *Lee v. Greenspoon Marder*, Case No. 10-cv-61184-Lenard/O'Sullivan and I also served as class counsel in *Bummolo v. The Law Offices of Charles W. McKinnon, P.L.*, No. 2:11-cv-14408-KMM and served as class counsel in *Collins v. Erin Capital Management, LLC*, No. 1:12−cv−22839−CMA; *Rigney v. Livingston Financial, LLC*, No. 6:12-cv-00617-RBD-TBS; *Walker v. Greenspoon Marder, P.A.*, No. 13-CV-14487, 2015 WL 233472 (S.D. Fla. Jan. 5, 2015); and *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC, ECF No. 64 (S.D. Fla. June 10, 2015).

20. Of particular note, I was appointed local liaison counsel in the multidistrict litigation in the Middle District of Florida known as *In Re Enhanced Recovery Company, LLC Telephone Consumer Protection Act Litigation*, No. 6:13−md−02398−RBD−GJK.

21. I was also appointed joint interim lead counsel in the Southern District of Florida TCPA class action lawsuit, *Soto v. Gallup, Inc.*, No. 0:13-cv-61747-RSR, wherein Judge Robin S. Rosenbaum stated that "Scott D. Owens has vast experience in the area of consumer-protection litigation…" (emphasis added); I was later appointed co-lead counsel after the case was later certified ($12 million dollar common fund settlement).

22. I was appointed co-lead class counsel in the TCPA class action, *De Los Santos v. Millward Brown, Inc.*, No. 13-80670-CV, ECF No. 77 (S.D. Fla. Feb. 10, 2015). The case established an $11 million dollar common fund settlement.

23. I served as co-lead counsel in the TCPA class action, *Guarisma v. ADCAHB Medical Coverages, Inc., et al.*, No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) wherein my firm established a common fund of $4.5 million dollar common fund in settlement. My firm, along with co-counsel was awarded one-third of the common fund (plus costs) .

24. I also served as co-lead counsel in the TCPA class action, *Cooper v. Nelnet, Inc.*, No. 6:14-cv-00314-RBD-DAB, ECF No. 72 (M.D. Fla. Feb. 26, 2015) (establishing a common fund settlement worth $4.5 million dollars). In awarding fees this Court said: "Class Counsel is highly experienced in [TCPA] litigation; regularly engages in complex litigation involving consumer issues; lectures on the TCPA; and has been lead counsel in numerous TCPA cases." *Cooper*, ECF No. 81 (M.D. Fla. July 31, 2015).

25. I argued on behalf of the Appellee in the matter of *Wells Fargo Bank, N.A. v. Breslow*, No. 12-14564-D. It is one of only a handful of cases ever argued before the Eleventh Circuit dealing with the merits of a TCPA action. I was successful in the appeal as the lower court decision was affirmed.

26. I was appointed co-lead class counsel in the FACTA class action, *Legg v. Spirit Airlines, Inc.*, No. 0:14-cv-61978-JIC (S.D. Fla. Filed Aug, 29, 2014) (establishing a common fund settlement worth $7.5 million dollars).

27. I served as co-lead counsel in the FACTA class action, *Muransky v. Godiva Chocolatier, Inc.*, No. 0:15-cv-60716-WPD (S.D. Fla. Filed April 6, 2015) (establishing a common fund settlement worth $6.3 million dollars).

28. I served as co-lead counsel in the successful FACTA class action, *Legg v. Laboratory Corporation of America Holdings*, No. 14−61543-CIV (S.D. Fla. Filed July 6, 2014).

29. I served as co-lead counsel in the FACTA class action, *Flaum v. Doctor's Assoc., Inc.*, No. 16-cv-61198-CMA, ECF No. 175 (S.D. Fla. March 23, 2017) (granting final approval and establishing a common fund settlement worth $30.9 million dollars).

30. I represented the Appellant at the Eleventh Circuit in the matter of *Keim v. ADF MidAtlantic, LLC*, No. 13-13619 (Decided: December 1, 2014). I was successful in the appeal as the previous lower court decision, which held a pending class action could be mooted by an unaccepted Rule 68 offer, was reversed. I successfully appealed the same issue in *Barr v. Harvard Drug Group, LLC*, 591 Fed.Appx. 928 2015 WL 364363 (January 29, 2015). On December 4, 2018, Judge Marra certified *Keim v ADF Midatlantic, LLC* to proceed as a class action, with myself as one of the class counsel.

31. The instant suit has been pending since December 15, 2016, and my firm has spent significant time and effort in this matter. The discovery acquired from Defendant has been invaluable. Plaintiff's counsel unearthed significant information upon which to evaluate the proposed settlement, and came into settlement negotiations armed with the necessary information to evaluate the strengths and weaknesses of the case. I was in frequent communication with Plaintiff throughout the litigation regarding various matters, including responding to Defendant's discovery requests. Plaintiff also attended a deposition in Dallas, Texas which took approximately the full day. The Parties were able to reach the present settlement only after motion practice, discovery, and extensive settlement discussions, including an in-person mediation before Hon. Morton L. Denlow. Although the Parties were able to reach a settlement in-spirit before Judge Denlow. The final terms of the Settlement Agreement took several weeks to finalize.

32. As of the time of submitting this declaration, neither the U.S. Attorney General nor any state attorney general has objected to the proposed fee award despite having been sent the required CAFA notice of the Settlement Agreement.

33. In response to this lawsuit, Compass Bank ceased its predictively dialed survey campaign through its agent MSR.

34. Based on my experience handling numerous complex TCPA class action settlements, I believe the settlement to be fair and reasonable and provides an excellent recovery for the class.

35. Class Counsel expended resources researching and developing the legal claims at issue.

36. Time and resources were also dedicated to conducting formal discovery, motion practice, depositions, and trial preparation.

37. Settlement negotiations consumed further time and resources.

38. All told, Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement before the Court.

39. Class Counsel possess these attributes, and their participation added value to the representation of this Settlement Class.

40. Throughout the litigation, Defendant was represented by extremely capable counsel. They were worthy, highly competent adversaries.

41. The Settlement is particularly noteworthy given the combined litigation risks.

42. Prosecuting the Action was risky from the outset.

43. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of Defendant's defenses, and the challenging and unpredictable path of litigation Plaintiff and the certified class would have faced absent the Settlement.

44. In undertaking to prosecute this case on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment.

45. Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee.

46. The progress of the Action to date shows the inherent risk faced by Class.

47. My firm typically takes class action cases on a contingency fee basis ranging from 33-40% of total recovery. My retainer agreement with Plaintiff in this case permits counsel to seek up to one third (33 1/3%) of the total settlement proceeds in connection with the representation in this matter.

48. Counsel's requested fee of one-third (33.33%) of the Settlement Fund is well within the range of fees typically awarded in similar cases. *See* [ECF No. 98-1 at ¶ 5.02].

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Hollywood, Florida, on July 29, 2019.

By: */s/ Scott D. Owens*
Scott D. Owens

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Robert Hossfeld, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 2:16-cv-02017-ACA
v.	)	
COMPASS BANK,	)	
Defendant.	)	

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

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

1. I am Alexander H. Burke, manager of Burke Law Offices, LLC. I make this declaration in support of the Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, to set forth my qualifications to serve as class counsel and to state my opinion that the settlement represents an excellent result for the Settlement Class and merits final approval. I can competently testify as to the facts stated herein if called upon to do so.

2. My firm was involved in every stage of litigation in this case, from pre-trial investigation, analysis of Plaintiff's potential claims, drafting and researching the complaint and discovery work, review of documents and data,

discovery responses, motion practice, and general preparation for trial. I also additionally participated in settlement negotiations and strategy, participated in the mediation process, and contributed on preparing the proposed settlement agreement and approval motions.

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

4. I am regularly asked to speak regarding TCPA issues, on the national level. For example, I conducted a one-hour CLE on prosecuting TCPA autodialer and Do Not Call claims pursuant to the Telephone Consumer Protection Act for the National Association of Consumer Advocates in summer 2012, and spoke on similar subjects at the annual National Consumer Law Center ("NCLC") national

conferences in 2012, 2013, 2014, 2015, 2016, 2017 and 2018. I also spoke at a National Association of Consumer Advocates conference regarding TCPA issues in March 2015, and in May 2016, I spoke on a panel concerning TCPA issues at the 2016 Practicing Law Institute Consumer Financial Services meeting in Chicago, Illinois.

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

6. I make substantial efforts to remain current on the law, including class action issues. I attended the National Consumer Law Center's Consumer Rights Litigation Conference in 2006 through 2016, and was an active participant in the Consumer Class Action Intensive Symposium between 2006 and 2013, 2017 and 2018. In October 2009, I spoke on a panel of consumer class action attorneys welcoming newcomers to the conference. In addition to regularly attending Chicago Bar Association meetings and events, I was the vice-chair of the Chicago Bar Association's consumer protection section in 2009 and the chair in 2010. In November 2009, I moderated a panel of judges and attorneys discussing recent events and decisions concerning arbitration of consumer claims and class action bans in consumer contracts.

7. Some notable TCPA class actions and other cases that my firm has worked on include: *Leeb v. Charter Commc'ns, Inc.*, 2019 WL 1472587 (E.D. Mo. Apr. 3, 2019) (appointing Burke Law Offices as Fed.R.Civ.P. 23(g) interim lead class counsel), *earlier decision* 2019 WL 144132 (Jan. 19, 2019) (compelling class data in TCPA case); *Brown v. DirecTV, LLC*, 2019 WL 1434669, at *1 (C.D. Cal. Mar. 29, 2019) (granting class certification in TCPA case, appointing Burke Law Offices as class counsel); *Rodriguez v. Premier Bankcard, LLC*, No. 3:16-cv-02541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (defense summary judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, No. 1:17-cv-00335, 2018 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first impression, holding that "direct drop" voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*, No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying motion to dismiss on statutory standing and "mootness" grounds); *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 573 (N.D. Ill. 2018) (certifying contested telemarketing TCPA class); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL

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

was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc*., 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for $4.5 million nonreversionary TCPA settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014) (motion to dismiss denied in cutting edge vicarious liability case); *Markovic v. Appriss, Inc*., 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc*., 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (Denlow, J.) (certifying litigation class and appointing me as class counsel) (final approval granted for $7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for $15 million TCPA class settlement granted); *Martin v. CCH, Inc*., No. 1:10-cv-

3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for $2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co.*, 2011 WL 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*, 2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for $800,000 TCPA settlement in autodialer case against debt collection agency); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975 (N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

8. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc*., 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc*., 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc*., 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc*., 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp., C.A.* No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action settlement, and resulting in a $12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification

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

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

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

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

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

13. In my view, this settlement is fair and reasonable, and in the best interest of the class members.

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

Executed on July 29, 2019.

/*s/ Alexander H. Burke*