

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD
OF NORTH CAROLINA, a North
Carolina not for profit corporation, and
CHANGE HEALTHCARE
RESOURCES, LLC, a Delaware
registered company,

Defendants.

Case No. 1:23-cv-00022-CCE-LPA

**PLAINTIFF'S UNOPPOSED MOTION FOR
CLASS COUNSEL FEES AND COSTS**

Plaintiff Alexandra Stark, on behalf of herself and the Settlement Class, with the consent of Defendants, hereby moves the Court for entry of an order granting Class Counsel's attorneys' fees and costs. The grounds for this Motion are set forth with particularity and in more detail in the accompanying Memorandum in Support, which is incorporated herein by reference. A proposed order granting the Motion will be submitted with the motion for final approval.

Dated: November 29, 2024

Respectfully submitted,

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Class*

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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS COUNSEL FEES AND COSTS**

I. INTRODUCTION

Plaintiff Alexandra Stark (“Plaintiff”) and Defendants Blue Cross and Blue Shield of North Carolina (“BCBSNC”) and Change Healthcare Resources, LLC (“Change Healthcare”) have reached a Class Action Settlement Agreement and Release in this proposed class action brought under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 (the “Agreement” or “Settlement”) arising primarily from robocalls calls made by Change Healthcare that were intended for BCBSNC insureds but, due to the transient nature of cellular telephone numbers,

were in fact made to consumers who were not BCBSNC insureds – *i.e.*, “wrong number” calls. *See* Declaration of Avi Kaufman, attached as Exhibit 1, ¶ 2.

The Agreement,¹ which is subject to this Court’s final approval, creates a non-reversionary common fund of \$1,670,000.00 for the benefit of Plaintiff and proposed class members who received pre-recorded or artificial voice calls from Change Healthcare on BCBSNC’s behalf despite (1) not being BCBSNC insureds or (2) having opted out of such calls. This amounts to more than \$1,190 for each of the 1,401 potential Identifiable Settlement Class Members.

Notably, all Identifiable Settlement Class Members who do not opt out and for whom all mailed notices are not returned as undeliverable will automatically receive a payment without being required to file a claim. To date, mailed notice has been successfully delivered to more than 900 Identifiable Settlement Class Members, resulting in a 65% effective claims rate. *Id.* ¶ 5. And not a single class member has opted out of or objected to the Settlement. *Id.* ¶ 5.

The parties reached the Settlement after more than a year of contentious litigation, which included multiple dispositive motions, significant written fact discovery, expert analysis, and Defendants’ corporate representatives’ depositions. *Id.* ¶ 6. By the time the parties finalized an agreement, they were well aware of the

¹ The Agreement can be found at 63-1 and revised claim form and notice at 65-2 and 65-3, respectively. Capitalized terms used herein, unless otherwise defined, have the same definitions as those terms in the Agreement.

strengths and weaknesses of their respective positions and the risks associated with pursuing TCPA “wrong number” cases through class certification and trial. *Id.* ¶ 7; *see, e.g., Davis v. Capital One, N.A.*, No. 1:22-cv-00903, 2023 U.S. Dist. LEXIS 189255, at *34-36 (E.D. Va. Oct. 20, 2023) (“Davis has also cited ‘wrong-number’ cases where class certification was granted, but there were findings in those cases, not present here, and in some of those cases, reserved on whether the issue of consent would justify de-certification. . . . Capital One, by contrast, has pointed to numerous district court decisions where a ‘wrong-number’ class was not certified for class treatment. Courts in these cases generally all found that class certification was inappropriate because of a lack of ascertainability and the predominance of individualized issues over common issues.”).

In addition, to discuss settlement, the parties engaged in a full-day mediation session and subsequent negotiations with the able assistance of a retired federal court magistrate judge, Hon. David E. Jones (Ret). Kaufman Decl. ¶ 8.

If finally approved, the Settlement will bring an end to what has otherwise been, and likely would continue to be, hard-fought litigation centered on unsettled legal questions. The proposed Settlement is fair, reasonable, and adequate, and, notwithstanding the substantial, approximately 65% claims rate, the anticipated Settlement Class Member payments, which are estimated to be around \$1,000 if this motion is granted, will far exceed the payments in similar “wrong number” TCPA

cases across the country. Kaufman Decl. ¶ 9; *see, e.g., Williams v. Bluestem Brands, Inc.*, No. 8:17-cv-1971-T-27AAS, 2019 U.S. Dist. LEXIS 56655, at *3 (M.D. Fla. Apr. 2, 2019) (preliminary approving \$1,269,500 settlement for an approximately 280,000 person class in a TCPA “wrong number” case); *James v. JPMorgan Chase Bank, N.A.*, No. 8:15-cv-2424-T-23JSS, 2017 U.S. Dist. LEXIS 91448, at *3 (M.D. Fla. June 5, 2017) (“Chase established a \$3.75 million fund for the 675,000-member class, and 24,156 class members submitted a valid claim [resulting in a claims rate of less than 4%]. Each claimant will receive approximately \$81, which equals or exceeds the recovery in a typical TCPA class action.”).

Accordingly, given the extraordinary result from Class Counsel’s diligent efforts to litigate, settle, and structure and administer the settlement of this Litigation in a manner directly aimed at maximizing the benefit to the Settlement Class, Plaintiff respectfully requests that the Court grant Class Counsel attorneys’ fees in the amount of one third of the common fund and their reasonable costs totaling \$21,637.62.

II. BACKGROUND

A. Procedural History

On January 10, 2023, Plaintiff Alexandra Stark filed a complaint against Blue Cross and Blue Shield of North Carolina Foundation and Change Healthcare Inc. in this action asserting that defendants violated the TCPA by making pre-recorded calls

to consumers without consent and for failing to stop the calls when consumers expressly request to not be called. More specifically, arising primarily from robocalls calls made by Change Healthcare that were intended for BCBSNC insureds but, due to the transient nature of cellular telephone numbers, were in fact made to consumers who were not BCBSNC insureds – *i.e.*, “wrong number” calls. On March 9, 2023, Change Healthcare answered the complaint. ECF 16. Also on March 9, 2023, defendant Blue Cross filed a motion to dismiss. ECF 17. In response to the motion to dismiss and Change’s averment, Plaintiff filed an amended complaint, correcting defendants’ corporate entities, against Defendants BCBSNC and Change Healthcare. ECF 22.

On May 1, 2023, Change Healthcare answered the amended complaint. On June 6, 2023, BCBSNC moved to dismiss the amended complaint. ECF 32. The parties fully briefed the motion, centering on the sufficiency of Plaintiff’s vicarious liability claims, and on July 17, 2023, the Court denied BCBSNC’s motion to dismiss. ECF 41. Thereafter, on August 2, 2023, BCBSNC answered the amended complaint.

Based on discovery taken from Change Healthcare, on September 28, 2023, Plaintiff filed a second amended complaint, seeking to expand the claims against Change Healthcare to encompass calls made on behalf of its other clients other than BCBSNC. ECF 48. On October 12, 2023, BCBSNC answered the second amended

complaint, ECF 51, and Change Healthcare moved to dismiss, based on the expanded scope of the claims, ECF 52. The parties fully briefed the motion, and it was granted on December 15, 2023, limiting the class to recipients of calls made only on BCBSNC's behalf. ECF 57. Thereafter, on January 5, 2024, Change Healthcare answered the second amended complaint. ECF 59.

Since inception, the case has involved extensive discovery. On July 11, 2023, Plaintiff served written discovery requests on Defendants respectively. Defendants responded to discovery, and the parties engaged in lengthy meet and confers which resulted in both Defendants supplementing their responses. There have been thousands of pages of documents exchanged in discovery. Plaintiff worked closely with an expert to analyze the voluminous call records produced by Change Healthcare, preparing Plaintiff to resolve this action for the benefit of the Settlement Class. Plaintiff also responded to separate sets of discovery requests from each defendant. On November 27, 2023, Plaintiff served notices for Defendants' corporate representative depositions, and began a lengthy conferral process with Defendants regarding deposition topics. Plaintiff ultimately took the corporate representative depositions on topics central to the Litigation prior to the settlement of this action on a class basis. Kaufman Decl. ¶ 13.

On January 29, 2024, the parties participated in an all-day mediation with Judge Jones's assistance. The parties did not reach a settlement. However, over the

course of the following week, with Judge Jones's further assistance, the parties continued to engage in negotiations aimed at resolving the case on a class basis, and, on February 5, 2024, the parties reached agreement as to the monetary amount of the Settlement.

The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendants through trial and appeals. Class Counsel also has taken into account the difficulties in obtaining class certification and proving liability in "wrong number" cases, the uncertain outcome and risk of the Litigation, especially in complex actions such as this one, and the inherent delays in such litigation. *See, e.g., Davis*, 2023 U.S. Dist. LEXIS 189255, at *34-36.

Class Counsel believes that the proposed Settlement is an excellent result for the Settlement Class, far exceeding the per class member and per claim monetary amounts and claims rates of similar class action settlements in "wrong number" cases. Kaufman Decl. ¶ 15; *see, e.g., James*, 2017 U.S. Dist. LEXIS 91448, at *3 (approving settlement in TCPA "wrong number" case with less than a 4% claims rate and an approximately \$81 payout per claimant); *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1044 (S.D. Cal. 2015) (approving settlement in TCPA "wrong number" case and finding: "Here, there were 308,026 claims out of 3,982,645 potential class members, resulting in a higher than average claims rate of 7.7%.

Although Class Members are only expected to recover approximately \$13.75, the Court finds that in light of the large number of Class Member claimants and high claims rate, the amount of the Settlement Fund weighs in favor of approving the Settlement.”).

Based on their evaluation of all of these factors, Plaintiff and Class Counsel have determined that the Settlement is in the best interests of Plaintiff and the Settlement Class. Kaufman Decl. ¶ 15.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

The proposed Settlement Class includes: All regular users or subscribers to numbers assigned to wireless carriers which Change Healthcare, on behalf of BCBSNC, called during the Settlement Class Period using an artificial or pre-recorded voice who were not members or subscribers of BCBSNC or that opted out of receiving calls from Change Healthcare. Excluded from the Settlement Class are: (1) the Judges presiding over this action and members of their families; (2) the Defendants, Defendants’ respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the

legal representatives, successors or assigns of any such excluded person(s).
Agreement at § 1.1.33.

B. Settlement Relief

The Settlement provides meaningful monetary relief. Pursuant to the Agreement, Defendants created a non-reversionary Settlement Fund in the amount of \$1,670,000.00 for the purpose of making all required payments under this Settlement. Agreement at § 4.

C. Class Counsel Fees and Expenses

Pursuant to the Agreement, Class Counsel is entitled to request that the Court approve an award of attorneys' fees and reimbursement of documented and reasonable costs and expenses. Agreement at § 5.1. The Parties agree that the Court's failure to approve, in whole or in part, any award of attorneys' fees and expenses shall not prevent the Settlement from becoming effective, nor shall it be grounds for termination. Agreement at § 5.2.

IV. CLASS COUNSEL'S APPLICATION FOR FEES AND EXPENSES IS FAIR, REASONABLE, AND JUSTIFIED, AND SHOULD BE APPROVED

Given the unprecedented monetary relief obtained as a result of the vigorous litigation of this action and the noteworthy claims rate achieved through the meticulous structuring and administration of the Settlement, Class Counsel seeks an

award of attorneys' fees in an amount of one third of the Settlement Fund, or \$556,666.67, and reimbursement of documented costs and expenses, as permitted by the Agreement and as expressly indicated in the class notice.

Rule 23 permits a court to award "reasonable attorney's fees... that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *United States v. Tobias*, 935 F.2d 666, 667 (4th Cir. 1991) (explaining equitable basis of the "common fund" doctrine).

Although the Fourth Circuit has not required a particular method for calculating attorney's fees in common fund cases, "[w]ithin this Circuit, the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney's fees." *Savani v. URS Prof'l Sols. LLC*, 121 F. Supp. 3d 564, 568 (D.S.C. 2015) (citing cases); see *Jones v. Dominion Resource Services, Inc.*, 601 F. Supp. 2d 756, 759 (S.D.W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."). The Fourth Circuit Court of Appeals has acknowledged the propriety of the holding in *Savani*, which involved a fee award of nearly 40% of the common fund. See *Brundle v. Wilmington Tr., N.A.*, 919 F.3d 763, 788 & n.14 (4th

Cir. 2019) (citing *Savani* and explaining: “Had Brundle pursued class certification and prevailed, B&G could have secured attorneys’ fees from the class as a whole. Although a properly certified class might not have agreed to the same one-third contingency fee that Brundle did, the district court might well have awarded a fee significantly higher.”).

“The percentage-of-the-fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney’s fees on an hourly basis.” *DeWitt v. Darlington Cty.*, No. 4:11-cv-00740-RBH, 2013 U.S. Dist. LEXIS 172624, at *19 (D.S.C. Dec. 6, 2013). Moreover, the percentage of fund approach eliminates the burden on the court to engage in a detailed review and calculation of attorneys’ hours and rates. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). “It is also viewed as the preferable method in cases such as this one, where the Plaintiffs agreed to pay counsel on a contingency fee basis.” *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 09-0054, 2012 WL 5430841, at *2 (D.S.C. Nov. 7, 2012).

An award of attorney’s fees in a class action must be “reasonable.” Fed. R. Civ. P. 23(h). Although the Fourth Circuit has not yet identified factors for district courts to apply when assessing the reasonableness of a proposed percentage award,

the Circuit has, in at least one case, utilized a set of factors identified and employed by the Fifth Circuit. *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 & n.28 (4th Cir. 1978). Accordingly, many district courts employ these *Barber* factors, an approach the Fourth Circuit has affirmed. *In re MRRM, P.A.*, 404 F.3d 863, 867-68 (4th Cir. 2005) (holding that the district court reasonably applied the *Barber* factors when assessing a common fund fee award). The *Barber* factors include:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber, 577 F.2d at 226 & n.28; *see, e.g., Reynolds v. Fid. Invs. Institutional Operations Co.*, No. 1:18-CV-423, 2020 U.S. Dist. LEXIS 2718, at *7 (M.D.N.C. Jan. 7, 2020) (applying the *Barber* factors in a common fund settlement case). At bottom, the twelve *Barber* factors focus the Court's analysis on a few main issues: the value of counsel's work and the results obtained (factors 3, 8, and 9); the risks and obstacles counsel faced (factors 2, 4, 6, 7, and 10); and quantitative inputs like

time and labor expended, the customary fee for like work, and other awards in similar cases. (factors 1, 5, 7, and 12).²

All of these factors weigh in favor of approving the requested attorneys' fees.

A. Class Counsel Achieved Exceptional Results for the Class

In determining whether a fee award is reasonable, the most critical factor is the results achieved, *i.e.*, the benefit to the class from the litigation. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992); *Doe v. Chao*, 435 F.3d 492, 506 (4th Cir. 2006). Here, the results achieved through the Settlement, resulting from the vigorous litigation of the Settlement Class's claims and the diligent structuring and administration of the Settlement, alone support the requested fee.

As described above, the Settlement makes \$1,670,000 available for the benefit of the Settlement Class. This amounts to more than \$1,190 for each of the 1,401 potential Identifiable Settlement Class Members and around \$1,000 per claimant with a 65% claims rate, which vastly exceeds the per class member and per claimant amounts in similar settlements notwithstanding the extraordinary claims rate. *See, e.g., Williams*, 2019 U.S. Dist. LEXIS 56655, at *3 (M.D. Fla. Apr. 2, 2019) (\$4.53 per class member); *James*, 2017 U.S. Dist. LEXIS 91448, at *3 (\$5.55 per class

² Class Counsel had no prior relationship with Plaintiff Stark, therefore factor 11 also supports the requested Fee Award, but is not further addressed below. *See, e.g., Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 U.S. Dist. LEXIS 105696, at *11 (M.D.N.C. June 24, 2019) (finding that the absence of a prior relationship supported approval of the requested fee award).

member and \$81 per claimant with a less than 4% claims rate); *Couser*, 125 F. Supp. 3d at 1044 (\$2.13 per class member and \$13.75 per claimant with a 7.7% claims rate).

This result arises from the quality of Class Counsel’s representation in this case, which also supports the requested Fee Award. “[P]rosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). The quality of Class Counsel’s legal work is evidenced by the substantial benefit conferred to the Settlement Class in the face of significant litigation obstacles typically faced in “wrong number” TCPA cases. *See, e.g., Davis*, 2023 U.S. Dist. LEXIS 189255, at *34-36 (collecting cases).

Class Counsel’s analysis of the issues in this action, litigation strategy, and diligence in prosecuting this action support the requested award. Class Counsel vigorously litigated this matter. *See generally* Kaufman Decl. Class Counsel’s work was necessary to resolve this action and structure the Settlement to obtain significant monetary relief for the Settlement Class. Plaintiff and the Settlement Class benefited from the high caliber representation of Class Counsel, including Class Counsel’s extensive TCPA class action experience, including their experience in structuring and administering past class action settlements. *See id.* ¶¶ 20-25; Declaration of Stefan Coleman, attached as Exhibit 2, ¶¶ 3-4. Indeed, Class Counsel have achieved

class-wide TCPA settlements totaling more than \$100 million, including prior settlements that have resulted in automatic payments to identifiable class members without their being required to file claim forms. Kaufman Decl. ¶ 21.

The results here are extraordinary given the monetary benefit to the Settlement Class, especially in light of the risks inherent in litigation and, more specifically, in the litigation of “wrong number” TCPA cases.

B. The Risks of Litigation and the Novelty and Complexity of the Issues Justify the Requested Fees

Courts have long recognized that, “particularly in class action suits, there is an overriding public interest in favor of settlement,’ ... because ... ‘class action suits have a well-deserved reputation as being most complex.’” *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). “Settlement ‘has special importance in class actions with their notable uncertainty, difficulties of proof, and length.’” *Montoyav. PNC Bank, N.A.*, No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016).

“The importance of ensuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); see *Berry v. Wells Fargo & Co.*, No. 3:17-cv-00304-JFA, 2020

U.S. Dist. LEXIS 143893, at *35 (D.S.C. July 29, 2020)(“[C]lass counsel undertook to prosecute this action without any assurance of payment for their services. Counsel’s entitlement to payment was entirely dependent upon achieving a good result for Plaintiff and the class. Contingency fee arrangements are customary in class action cases and such arrangements are usually one-third or higher. Therefore, this factor supports the reasonableness of the requested fee award.” (internal citation omitted)). Because Class Counsel were working entirely on a contingency basis, only a successful result – at trial or by settlement – would result in any fees and recovery of costs. Kaufman Decl. at ¶¶ 43-44. Nevertheless, Class Counsel invested significant resources into this case – over a year of hard-fought litigation and over 20 thousand dollars in costs to zealously promote the Class’s interests. *Id.* The contingent nature of Class Counsel’s representation strongly favors approval of the requested fee.

In addition to the risks posed by virtue of proceeding with a contingency class action, “[t]he risk that further litigation might result in Plaintiffs not recovering at all, particularly in a case involving complicated legal issues, is a significant factor in the award of fees.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-7 (internal citation omitted). The risk of no recovery here—and in complex cases of this type more generally—is real. In numerous hard-fought lawsuits, plaintiff’s attorneys (including the undersigned) have received little or no fee—despite *years*

of excellent, professional work—due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or a decision of a judge, jury, or court of appeals. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming district court’s ruling overturning jury verdict in favor of plaintiff class); *In re Oracle Corp. Secs. Litig.*, No. 01- cv-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010) (affirming summary judgment for defendants after eight years of litigation). In fact, Class Counsel have had motions for class certification denied and motions to deny class certification granted in other TCPA cases, including “wrong number” cases, in which thousands of attorney hours and hundreds thousand dollars have been invested. Kaufman Decl. ¶ 18; *see, e.g., Sandoe v. Bos. Sci. Corp.*, 333 F.R.D. 4 (D. Mass. 2019) (denying class certification in TCPA “wrong number” case in which the plaintiff was represented by Class Counsel in this case).

And here, major hurdles remain in this “wrong number” case, including class certification and summary judgment. *Cf. Davis*, 2023 U.S. Dist. LEXIS 189255, at *34-36. The uncertainty created by the risks makes the certainty created by the Settlement achieved by Plaintiff’s counsel—which provides immediate and significant monetary relief for a large proportion of Class Members—even more valuable and prudent for the Class.

C. Awards in Similar Cases Demonstrate the Requested Fees are Reasonable

Class Counsel’s request for an award of attorneys’ fees totaling one-third of the Settlement Fund is typical of fee awards in TCPA cases across the country, including specifically in “wrong number” cases. *See, e.g., Boger v. Citrix Sys., Inc.*, No. 19-cv-01234-LKG, 2023 U.S. Dist. LEXIS 96379, at *34 (D. Md. June 1, 2023) (awarding one-third of the settlement fund in fees for a settlement equating to \$5.22 per settlement class member and \$44.14 per claimant with a 6% claims rate, citing *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2019 U.S. Dist. LEXIS 220380, 2019 WL 7066834, at *7 (M.D.N.C. Dec. 23, 2019)); *Sheean v. Convergent Outsourcing, Inc.*, No. 2:18-cv-11532-GCS-RSW, 2019 U.S. Dist. LEXIS 197446, at *10-11 (E.D. Mich. Nov. 14, 2019) (awarding one-third of the settlement fund in fees in a TCPA “wrong number” case); *Allen v. JP Morgan Chase Bank, N.A.*, No. 13 CV 8285, 2015 U.S. Dist. LEXIS 202112, at *9 (N.D. Ill. Nov. 3, 2015) (awarding 33.33% of the settlement fund in fees in a TCPA “wrong number” case); *see also Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App’x 880, 883–84 (3d Cir. 2016) (affirming fees of one-third of the settlement fund); *Elzen v. Educator Grp. Plans, Ins. Servs.*, No. 1:18-cv-01373-WCG, 2019 U.S. Dist. LEXIS 170798, at *6 (E.D. Wis. Oct. 2, 2019) (awarding fees of one third of the settlement fund); *Gergetz v. Telenav, Inc.*, No. 16-cv-04261-BLF, 2018 U.S. Dist. LEXIS 167206, at *21 (N.D. Cal. Sep. 27, 2018) (awarding fees of 30% of the settlement

fund in a case which settled after briefing of and prior to ruling on a motion to dismiss and motion to stay); *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (awarding fees of one third of the settlement fund); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of one third of the settlement fund).

Class Counsel is requesting attorneys' fees of one third of the Settlement Fund, which is justified in light of the excellent outcome, and particularly when compared to the risks attendant to this Litigation and the fees awarded in similar class actions. Kaufman Decl. ¶ 19.

D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees

As stated earlier, the percentage-of-fund method is the “preferred” approach in the Fourth Circuit, and comports with class action practice nationwide, where the “vast majority” of courts of appeal now direct or permit district courts to award a percentage from the common fund. *Manual for Complex Litig.*, § 14.121 (4th ed. 2004). The percentage method provides “appropriate financial incentives” necessary to “attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so.” *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005). In addition, “from a public policy standpoint, the [percentage] method of calculating fees more appropriately aligns the interests of the class with the interests of class counsel—the larger the value of

the settlement, the larger the value of the fee award.” *Bussie v. Allmerica Financial Corp.*, No. 97-40204, 1999 WL 342042, at *2 (D. Mass. May 19, 1999) (internal quotation marks and citations omitted).

Despite the advantages and popularity of the percentage-of-fund method, however, some courts employ what is known as a lodestar crosscheck—analyzing the value of counsel’s work in relation to their hours and hourly billing rates—to confirm the reasonableness of the percentage award. Although such analysis is unnecessary and, in some respects, problematic,³ a lodestar crosscheck in this case provides further support for Class Counsel’s requested fee.

“To determine the lodestar, courts multiply the reasonable hourly rate for each attorney by the number of hours reasonably expended. When the lodestar method is used only as a cross-check, however, courts need not exhaustively scrutinize the hours documented by counsel and the reasonableness of the claimed lodestar can be

³ In many respects, the lodestar crosscheck reintroduces the same bad policy and perverse incentives that the increasingly popular percentage-of-fund method has overcome. If class counsel believe that courts will limit their fee to some multiple of their lodestar, then they will have the same undesirable incentives they would if courts used the lodestar method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff work in order to run up their lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n. 5 (9th Cir. 2002) (“The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee . . .”). The lodestar crosscheck also caps the amount of compensation class counsel can receive from a settlement, thereby misaligning their incentives from those of class members, and blunting their incentive to achieve the largest possible award for the class. For example: suppose a class action lawyer had incurred a lodestar of \$1 million in a class action case. If that counsel believed that a court would not award him a one-third fee if it exceeded twice his lodestar, then he would be rationally indifferent between settling the case for \$6 million or \$60 million.

tested by the court's familiarity with the case. A reasonable rate is usually calculated by looking at the local market, but a national market rate is appropriate for matters involving complex issues requiring specialized expertise” *Clark*, 2019 U.S. Dist. LEXIS 105696, at *8-9 (internal quotation marks and citations omitted).

“Courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.” *Vizcaino*, 290 F.3d at 1051 (internal citation omitted).

Class Counsel invested over 300 hours in this action over the course of a year of contentious litigation, subsequent settlement negotiations, and settlement administration to date, which included direct discovery to Defendants and third party subpoenas to telephone carriers resulting in protracted discovery disputes, expert analysis, and the briefing of multiple dispositive and other motions. Kaufman Decl. ¶¶ 30-39. More specifically, the tasks engaged in by Class Counsel include, but are not limited to:

- Investigation of BCBSNC and its vendors, including Change Healthcare, communications with Plaintiff, preparing the pleadings and amendments thereto;
- Discovery matters, including continued meet and confers concerning discovery issues between the parties and telephone carriers, preparation of discovery to Defendants, responding to separate sets of discovery from Defendants, preparation of notices for Defendants' corporate representative depositions and lengthy conferrals with Defendants regarding deposition topics, and conducting corporate representative depositions;
- Collaboration with a telephony and database expert to analyze the voluminous call records produced by Change Healthcare;
- Motion practice, including but not limited to responding to BCBSNC and Change Healthcare's motions to dismiss and drafting settlement related motions; and
- Settlement, including preparing for and attending mediation, continuing negotiations, drafting and revising the class action settlement agreement and notices, addressing class member inquiries, and overseeing the settlement administration.

Kaufman Decl. ¶ 34-39; Coleman Decl. ¶¶ 9-15.

Counsel provides the above summary of some of the significant work done in this matter in order to “identify the general subject matter of [their] time expenditures.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (“a summary of the time spent on a broad category of tasks such as pleadings and pretrial motions” satisfies the “basic requirement”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005) (The lodestar cross-check is used to assess the reasonableness of the percentage

method, and district courts “need not review actual billing records” and are free to rely on time summaries submitted by attorneys.).

Applying an hourly rate of \$800 for Avi Kaufman and \$730 for Kaufman P.A. partner Rachel Kaufman and Stefan Coleman,⁴ the lodestar crosscheck would result in an approximately 2.1 lodestar multiplier based on the request for one third of the fund. Kaufman Decl. ¶ 32; *see Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 U.S. Dist. LEXIS 203725, at *14 (M.D.N.C. Dec. 3, 2018) (finding rates of up to \$760 per hour for partners reasonable in a TCPA case because they were “consistent with the rates used by Class Counsel in other TCPA cases” and “comparable to local rates for complex litigation”, with the “contingent nature of the case also support[ing] a higher hourly rate than might apply in ordinary complex litigation in this district”).

“Courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee.” *Krakauer*, 2018 U.S. Dist. LEXIS 203725, at *13-14 (internal quotations omitted). Here, there is a reasonable lodestar

⁴ Class Counsel have been awarded attorneys’ fees in TCPA class actions based on lodestar cross-checks using the same hourly rates of \$730-\$800. *See, e.g.*, Kaufman Decl. ¶ 31 (citing *Lomas v. Health Ins. Assocs. LLC*, No. 6:22-CV-00679-PGB-DCI, 2023 U.S. Dist. LEXIS 148415, at *5 (M.D. Fla. June 23, 2023); *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022); *Wright, et al. v. eXp Realty, LLC*, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct. 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11, 2021); *Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020)).

multiplier based on Class Counsel's significant investment of attorney time, warranting award of the full amount of fees requested. Courts in this Circuit have approved greater multipliers for Class Counsel in TCPA cases. *See, e.g., id.* at *16 (awarding a lodestar multiplier of approximately 4.39 on attorney time incurred through the date of the fee award).

E. Class Counsel's Request for Expenses Is Reasonable

Rule 23(h) also permits the Court to “award . . . nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Generally, courts permit recovery of costs advanced for litigation expenses, including document production, consulting with experts, and court and mediation costs.” *Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA, 2019 U.S. Dist. LEXIS 103831, at *49 (D.S.C. June 21, 2019) (granting full reimbursement of expenses where “Class Counsel’s expenses were incidental and necessary to the representation of Plaintiff and the Class and are in line with costs charged to individual clients who pay out of pocket.”). The Settlement also permits Class Counsel to seek reimbursement of their reasonable expenses.

Class Counsel have incurred expenses in the prosecution of this action totaling \$21,637.62 for filing fees, service of process, telephone carrier subpoena compliance

fees,⁵ expert fees, court reporting, travel, mediation fees, and pro hac vice costs. Kaufman Decl. ¶ 41. These expenses were reasonable and necessary for the prosecution of this action and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. *Id.*

V. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court grant this Motion and award the requested reasonable fees and costs for Class Counsel.

⁵ The costs request includes the total amount quoted by AT&T for subpoena compliance (\$25 per telephone number for subscriber research for 263 telephone numbers), however, to date, Class Counsel has not received an invoice from or paid AT&T this cost. Class Counsel will provide an update to the Court regarding the status of the AT&T invoice and payment at or before the Final Approval Hearing, which, if anything, will result in a reduction of the amount that is ultimately requested to be approved in costs.

CERTIFICATE OF COMPLIANCE WITH LR 7.3(d)(1)

Pursuant to Local Rule 7.3(d)(1) of the Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina, Plaintiff's counsel, certifies that the foregoing brief, which was prepared using Times New Roman 14-point proportional font, is less than 6,250 words.

Dated: November 29, 2024

Respectfully submitted,

/s/ Avi R. Kaufman

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*Attorneys for Plaintiff and the Settlement
Class*

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD
OF NORTH CAROLINA, a North
Carolina not for profit corporation, and
CHANGE HEALTHCARE
RESOURCES, LLC, a Delaware
registered company,

Defendants.

Case No. 1:23-cv-00022-CCE-LPA

**DECLARATION OF AVI R. KAUFMAN
IN SUPPORT OF PLAINTIFF’S MOTION FOR
CLASS COUNSEL FEES AND COSTS**

Avi R. Kaufman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendants.¹ I submit this declaration in support of Plaintiff’s Motion for Class Counsel Fees and Costs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

2. Plaintiff Alexandra Stark (“Plaintiff”) and Defendants Blue Cross and Blue Shield of North Carolina (“BCBSNC”) and Change Healthcare Resources, LLC (“Change Healthcare”) have reached a Class Action Settlement Agreement and Release in this proposed class action brought under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 (the “Agreement” or “Settlement”) arising primarily from robocalls calls made by Change Healthcare that were intended for BCBSNC insureds but, due to the transient nature of cellular telephone numbers, were in fact made to consumers who were not BCBSNC insureds – *i.e.*, “wrong number” calls.

3. The Agreement, which is subject to this Court’s final approval, creates a non-reversionary common fund of \$1,670,000.00 for the benefit of Plaintiff and proposed class members who received pre-recorded or artificial voice calls from Change Healthcare on BCBSNC’s behalf despite (1) not being BCBSNC insureds or (2) having opted out of such calls.

4. This amounts to more than \$1,190 for each of the 1,401 potential Identifiable Settlement Class Members who Plaintiff’s database and telephony expert Aaron Woolfson has identified through a SQL analysis of call records produced by Change Healthcare as (1) having received a pre-recorded or artificial interactive voice response (IVR) call during the class period, (2) to a telephone number that was assigned to a wireless carrier that had not been ported from a wireline service for more than 15 days, (3) that resulted in the call recipient indicating through the IVR system (a) that they were not a Blue Cross Blue Shield of North Carolina insured or (b) that they were opting out of further calls. *See, e.g.*,

Moore v. Club Exploria, LLC, No. 19 C 2504, 2023 U.S. Dist. LEXIS 144183, at *15 (N.D. Ill. Aug. 17, 2023) (certifying class and relying on the analysis of Plaintiff's same expert in this case, Mr. Woolfson, to identify class members that received TCPA violative prerecorded calls to their cellular telephone numbers).

5. Notably, all Identifiable Settlement Class Members who do not opt out and for whom all mailed notices are not returned as undeliverable will automatically receive a payment without being required to file a claim. To date, mailed notice has been successfully delivered to more than 900 Identifiable Settlement Class Members, resulting in a 65% effective claims rate. And not a single class member has opted out of or objected to the Settlement.

6. The parties reached the Settlement after more than a year of contentious litigation, which included multiple dispositive motions, significant written fact discovery, expert analysis, and Defendants' corporate representatives' depositions.

7. By the time the parties finalized an agreement, they were well aware of the strengths and weaknesses of their respective positions and the risks associated with pursuing TCPA "wrong number" cases through class certification and trial.

8. In addition, to discuss settlement, the parties engaged in a full-day mediation session and subsequent negotiations with the able assistance of a retired federal court magistrate judge, Hon. David E. Jones (Ret).

9. If finally approved, the Settlement will bring an end to what has otherwise been, and likely would continue to be, hard-fought litigation centered on unsettled legal questions. The proposed Settlement is fair, reasonable, and adequate,

and, notwithstanding the substantial, approximately 65% claims rate, the anticipated Settlement Class Member payments, which are estimated to be around \$1,000 if this motion is granted, will far exceed the payments in similar “wrong number” TCPA cases across the country.

10. On January 10, 2023, Plaintiff Alexandra Stark filed a complaint against Blue Cross and Blue Shield of North Carolina Foundation and Change Healthcare Inc. in this action asserting that defendants violated the TCPA by making pre-recorded calls to consumers without consent and for failing to stop the calls when consumers expressly request to not be called. More specifically, arising primarily from robocalls calls made by Change Healthcare that were intended for BCBSNC insureds but, due to the transient nature of cellular telephone numbers, were in fact made to consumers who were not BCBSNC insureds – *i.e.*, “wrong number” calls. On March 9, 2023, Change Healthcare answered the complaint. ECF 16. Also on March 9, 2023, defendant Blue Cross filed a motion to dismiss. ECF 17. In response to the motion to dismiss and Change’s averment, Plaintiff filed an amended complaint, correcting defendants’ corporate entities, against Defendants BCBSNC and Change Healthcare. ECF 22.

11. On May 1, 2023, Change Healthcare answered the amended complaint. On June 6, 2023, BCBSNC moved to dismiss the amended complaint. ECF 32. The parties fully briefed the motion, centering on the sufficiency of Plaintiff’s vicarious liability claims, and on July 17, 2023, the Court denied BCBSNC’s motion to dismiss. ECF 41. Thereafter, on August 2, 2023, BCBSNC answered the amended complaint.

12. Based on discovery taken from Change Healthcare, on September 28, 2023, Plaintiff filed a second amended complaint, seeking to expand the claims against Change Healthcare to encompass calls made on behalf of its other clients other than BCBSNC. ECF 48. On October 12, 2023, BCBSNC answered the second amended complaint, ECF 51, and Change Healthcare moved to dismiss, based on the expanded scope of the claims, ECF 52. The parties fully briefed the motion, and it was granted on December 15, 2023, limiting the class to recipients of calls made only on BCBSNC's behalf. ECF 57. Thereafter, on January 5, 2024, Change Healthcare answered the second amended complaint. ECF 59.

13. Since inception, the case has involved extensive discovery. On July 11, 2023, Plaintiff served written discovery requests on Defendants respectively. Defendants responded to discovery, and the parties engaged in lengthy meet and confers which resulted in both Defendants supplementing their responses. There have been thousands of pages of documents exchanged in discovery. Plaintiff worked closely with an expert to analyze the voluminous call records produced by Change Healthcare, preparing Plaintiff to resolve this action for the benefit of the Settlement Class. Plaintiff also responded to separate sets of discovery requests from each defendant. On November 27, 2023, Plaintiff served notices for Defendants' corporate representative depositions, and began a lengthy conferral process with Defendants regarding deposition topics. Plaintiff ultimately took the corporate representative depositions on topics central to the Litigation prior to the settlement of this action on a class basis.

14. On January 29, 2024, the parties participated in an all-day mediation

with Judge Jones's assistance. The parties did not reach a settlement. However, over the course of the following week, with Judge Jones's further assistance, the parties continued to engage in negotiations aimed at resolving the case on a class basis, and, on February 5, 2024, the parties reached agreement as to the monetary amount of the Settlement.

15. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendants through trial and appeals. Class Counsel also has taken into account the difficulties in obtaining class certification and proving liability in "wrong number" cases, the uncertain outcome and risk of the Litigation, especially in complex actions such as this one, and the inherent delays in such litigation. Class Counsel believes that the proposed Settlement is an excellent result for the Settlement Class, far exceeding the per class member and per claim monetary amounts and claims rates of similar class action settlements in "wrong number" cases. Based on their evaluation of all of these factors, Plaintiff and Class Counsel have determined that the Settlement is in the best interests of Plaintiff and the Settlement Class.

16. Plaintiff's counsel steadfastly advocated for substantial settlement relief and a streamlined process for distributing payments to the maximum possible number of Settlement Class Members. Plaintiff and Plaintiff's counsel also were well aware of the risks they faced if they continued to litigate, particularly the risks inherent in seeking to certify and prevail at trial in "wrong number" cases.

17. Plaintiff and Class Counsel believe that the claims asserted are meritorious and that Plaintiff would prevail if this matter proceeded to class

certification and then trial. Defendants deny any liability and are willing to litigate vigorously. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendants through trial and potentially appeals.

18. Plaintiff's counsel also has taken into account the risks associated with pursuing TCPA "wrong number" cases through class certification and trial, the uncertain outcome and risk of the litigation, especially in complex actions such as this one, and the inherent delays in such litigation. In fact, Class Counsel have had motions for class certification denied and motions to deny class certification granted in other TCPA cases, including "wrong number" cases, in which thousands of attorney hours and hundreds thousand dollars have been invested. Based on their evaluation of all of these factors, Plaintiff and Plaintiff's counsel have determined that the Settlement is in the best interests of Plaintiff and the Settlement Class, who otherwise may have received nothing.

19. Class Counsel is requesting attorneys' fees of one third of the Settlement Fund, which is justified in light of the excellent outcome, and particularly when compared to the risks attendant to this Litigation and the fees awarded in similar class actions.

20. Class Counsel have extensive experience and expertise prosecuting complex class actions, and are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

21. Since 2008, the attorneys of Kaufman P.A. have worked on consumer class action cases. To date, not including this Settlement, Class Counsel have

achieved class-wide TCPA settlements totaling more than \$100 million, including prior settlements that have resulted in automatic payments to identifiable class members without their being required to file claim forms. Kaufman P.A.'s attorneys have also successfully recovered millions of dollars in settlements and judgments for plaintiffs in breach of contract actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

22. I have a degree in government from Harvard University and a JD from Georgetown University Law Center, and have been practicing law for over ten years. For more than five years after graduation, I was a litigation associate at the law firm of Carlton Fields in its national class action and commercial litigation practice groups. During that time, I represented plaintiffs and defendants in various types of individual and class litigation, including securities and TCPA class actions. In 2016, I joined the law firm of Kopelowitz Ostrow Ferguson Weiselberg Gilbert as a partner to work exclusively on consumer class actions. From 2016 until January 2018, when I departed KOFWG to start my own law firm, I represented plaintiffs in class actions arising from products defects, false advertising, and TCPA violations, including as lead counsel in a TCPA class action against CITGO Petroleum Corp. that settled for \$8.3 million in 2017.

23. I am a member of the Florida bar, and am admitted to practice in all federal district courts in Florida and in the Eleventh Circuit. I am also admitted to practice in the Third Circuit, Eastern District of Wisconsin, Eastern District of Michigan, Northern District of Illinois, District of Colorado, Western District of Arkansas, Central District of Illinois, Western District of Michigan, District of

Nebraska, and the Third Circuit.

24. Kaufman P.A partner Rachel E. Kaufman, Esq. has degrees in communications and philosophy from Northwestern University and a JD from Boston University School of Law. Prior to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its commercial litigation practice and Epstein, Becker & Green in its class action, commercial litigation, and healthcare practices. Rachel is a member of the California, Florida, and Washington, D.C. bars. Rachel is also admitted to practice in all federal district courts in California, the Southern and Middle Districts of Florida, the Eleventh Circuit and the Ninth Circuit.

25. Since starting Kaufman P.A., I have focused almost exclusively on TCPA class actions, litigating in various jurisdictions across the country. Among other cases, our firm has been appointed class counsel in the following TCPA cases:

- *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida Telephone Consumer Protection Act class action resulting in a \$925,110 class wide settlement.
- *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.4 million class wide settlement.
- *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$2.2 million class wide settlement.
- *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone Consumer Protection Act class action resulting in a \$492,250 class wide settlement.

- *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$9.7 million class wide settlement.
- *Donde v. Freedom Franchise Systems, LLC, et al.* (S.D. Fla. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$948,475.50 class wide settlement.
- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action making \$5.16 million available to the settlement class.
- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Beiswinger v. West Shore Home LLC* (M.D. Fla. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,347,500 class wide settlement.
- *Bumpus, et al. v. Realty Brokerage Group LLC* (N.D. Cal. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act

class action, ultimately resulting in a \$26.91 million class wide settlement.

- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$738,375 class wide settlement.
- *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,950,000 class wide settlement.
- *DeShay v. Keller Williams Realty, Inc.* (Fla. Cir. Ct. 2023), a nationwide Telephone Consumer Protection Act class action resulting in a \$40 million class wide settlement.
- *Taylor v. Cardinal Financial Company, LP* (M.D. Fla. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$7,200,000 class wide settlement.
- *Lomas et al. v. Health Insurance Associates LLC* (M.D. Fla. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$990,000 class wide settlement.
- *Chapman et al. v. America's Lift Chairs, LLC* (S.D. Ga. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,700,000 class wide settlement.
- *Dumas v. Paradise Exteriors, LLC* (Fla. Cir. Ct. 2024), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,400,000 class wide settlement.

26. Class Counsel has vigorously litigated this action and will continue to do so through completion.

27. Plaintiff's and the Class's claims demanded considerable time and labor, precluding other employment by Class Counsel, and making the requested fee fair, reasonable, and justified. Below, I set forth the nature of the work performed and time expended by Kaufman P.A. in this action to demonstrate why

Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

28. I was involved in all major aspects of litigating this action. Those efforts generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-filing investigation and discovery; (c) motion practice; and (d) settlement and settlement management.

29. I am the attorney who oversaw the day-to-day activities in this action and have reviewed the firm's time in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time, as well as the necessity for, and reasonableness of, the time and expenses committed to this action. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the action. In addition, I believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

30. In total, Class Counsel devoted 352 hours to this litigation, as of November 29, 2024.² A breakdown of the Kaufman P.A. hours devoted to this matter per attorney is provided below.

31. Class Counsel has been awarded attorneys' fees as a percentage of the fund in TCPA class actions based on lodestar cross-checks using Mr. Kaufman's hourly rate of \$800 and Ms. Kaufman's hourly rate of \$730. *See Lomas v. Health Ins. Assocs. LLC*, No. 6:22-CV-00679-PGB-DCI, 2023 U.S. Dist. LEXIS 148415,

² Detailed billing records are available for the Court's in camera inspection on request.

at *5 (M.D. Fla. June 23, 2023); *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022); *Wright, et al. v. eXp Realty, LLC*, Case No. 6:18-cv-01851-PGB-EJK, ECF 230 (M.D. Fla. Oct. 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11, 2021); *Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v. Western Dental Services Inc.*, No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020).

32. Based on the hourly rates of \$730 for Ms. Kaufman and Mr. Coleman and \$800 for Mr. Kaufman, the total lodestar amount for Class Counsel's time expended to date in this action is \$268,370. Accordingly, the lodestar amount is a 2.1 times multiplier of the requested fee—a multiplier below the typical range approved in similar cases.³

33. Moreover, the estimated lodestar does not include additional time that will be expended by Kaufman P.A. Based on my experience in prior class-wide litigation, I conservatively anticipate that Kaufman P.A. will expend more than 30 additional hours, on top of the below-itemized time, in preparing the motion for final approval, preparing for and attending the final fairness hearing, continuing to oversee the notice program, overseeing the claims process for the settlement, and responding to Class members' inquiries.

³ In an Eastern District of North Carolina TCPA class settlement, Kaufman P.A. attorneys based their lodestar calculation on a conservative hourly rate of \$550, while noting the customary rate of \$800 for Mr. Kaufman. See *Abramson v. Safe Sts. United States LLC*, No. 5:19-CV-394-BO, Dkts. 114-1 and 117 (E.D.N.C. Jan. 12, 2022) (awarding class counsel their requested fee of one third the settlement fund). Notably, even if a billing rate of \$550 was used for all attorneys in this action, the lodestar multiplier would only be 2.9, still well within the reasonable multiplier range.

Pre-filing Investigation and Pleadings

34. Before filing the action, Kaufman P.A. assisted with conducting a thorough investigation into the facts of the cases, including by investigating plaintiff's relationship and experiences with Defendants, if any, extensively investigating the calls, Defendants and their business practices, as well as researching the potential claims plaintiff and the Class had against the Defendants. This phase also included reviewing plaintiff's records related to the calls and evaluating necessary discovery to pursue the action. This phase also involved revising the Complaint and other initiating documents. After the initial pleading, this phase also involved preparing and revising the Amended Complaint and the Second Amended Complaint.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	3	\$2,400
Rachel E. Kaufman	\$730	5	\$3,650
	Total	8	\$6,050

Post-filing Investigation and Discovery

35. In this phase of litigation the work performed by Kaufman P.A. included, but was not limited to, communicating with Plaintiff regarding the progress of the case; preparing Plaintiff's initial disclosures and revising responses to Defendants' discovery requests; and reviewing and producing documents.

36. This category also includes the time spent strategizing regarding affirmative discovery; preparing and revising discovery requests to Defendants; investigating Defendants’ practices and procedures; meeting and conferring with Defendants regarding discovery responses and corporate representative deposition topics; strategizing and preparing for Defendants’ depositions; analyzing and reviewing Defendants’ discovery responses; reviewing and analyzing documents produced by Defendant; preparing third party carrier subpoenas; analyzing and reviewing third party subpoena responses and extensive conferrals with carriers.

37. This category also includes extensive call log analysis including analyzing the need for an expert and areas of expertise; selecting and retaining plaintiff’s expert; and collaboration with a telephony and database expert to analyze the voluminous call records produced by Change Healthcare.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	84	\$67,200
Rachel E. Kaufman	\$730	46	\$33,580
	Total	130	\$100,780

Law and Motion Practice

38. During this phase of the litigation, Kaufman P.A. analyzed, researched, and fully briefed multiple substantive motions—Defendant BCBSNC’s motion to dismiss, Defendant Change Healthcare’s motion to dismiss, and settlement related motions. Kaufman P.A.’s work during this phase also included analyzing

Defendant’s pleadings and defenses; and preparing and revising the parties’ joint report.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	37	\$29,600
Rachel E. Kaufman	\$730	39	\$28,470
	Total	76	\$58,070

Settlement

39. During this phase of the litigation, Kaufman P.A. engaged in all aspects of settlement, including, but not limited to, engaging in negotiations with opposing counsel at various times over the course of litigation; preparing for and participating in mediation; negotiating with opposing counsel with the assistance of the mediator following mediation; participating in settlement calls with plaintiff; and drafting and revising various iterations of the settlement agreement and associated documents.

40. This phase also includes case and settlement management, including requesting and evaluating bids for settlement administration; analyzing data necessary to administrate the Settlement; revising the claim form and notices; coordinating with and overseeing the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website, reviewing claims, addressing questions as they arose; addressing class member inquiries; and evaluating the notice program.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	39	\$31,200

Rachel E. Kaufman	\$730	12	\$8,760
	Total	51	\$39,960

Reasonable Expenses

41. The costs incurred by Class Counsel for which reimbursement is sought total \$21,637.62, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Filing Fees	\$455
Expert	\$7,386.30
Mediation	\$1,407.80
Service of Process	\$661.20
Payments associated with Third Party Carrier Productions ⁴	\$9,645
Deposition Costs	\$866
Travel	\$1,216.32

⁴ The costs request includes the total amount quoted by AT&T for subpoena compliance (\$25 per telephone number for subscriber research for 263 telephone numbers), however, to date, Class Counsel has not received an invoice from or paid AT&T this cost. Class Counsel will provide an update to the Court regarding the status of the AT&T invoice and payment at or before the Final Approval Hearing, which, if anything, will result in a reduction of the amount that is ultimately requested to be approved in costs.

Total	\$21,637.62
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42. The expenses incurred in this action are reflected in the books and records of Class Counsel. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

43. Class Counsel spent 352 hours and over \$20,000 to zealously promote the Class's interests. Class Counsel represented Plaintiff and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out of pocket expenses invested into this contentious case. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

44. The time and resources devoted to this action readily justify the requested fee. Moreover, Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved and Defendants' vigorous defense of Plaintiff's and the Class's claims. Despite Class Counsel's effort in litigating, Class Counsel remain completely uncompensated for the time invested in the action, in addition to the expenses we advanced.

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

Dated: November 29, 2024

/s/ Avi R. Kaufman
Avi R. Kaufman

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD
OF NORTH CAROLINA, a North
Carolina not for profit corporation, and
CHANGE HEALTHCARE
RESOURCES, LLC, a Delaware
registered company,

Defendants.

Case No. 1:23-cv-00022-CCE-LPA

**DECLARATION OF STEFAN COLEMAN
IN SUPPORT OF PLAINTIFF’S MOTION FOR
CLASS COUNSEL FEES AND COSTS**

Stefan Coleman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendants.¹ I submit this declaration in support of Plaintiff’s Motion for Class Counsel Fees and Costs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

2. In this Action, my office co-counseled with Kaufman P.A. Both my firm and the Kaufman firm have dedicated substantial resources to the Action's prosecution, and we intend to continue doing so through the duration of the Action.

3. Class Counsel are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

4. I am a graduate of the University of Virginia and the University of Miami School of Law. I have practiced law for over ten years in which time I have participated in a number of significant class actions on behalf of consumers. The following is a brief list of some of the class actions in which I have participated:

- *Pimental v. Google Inc.*, a Telephone Consumer Protection Act case that resulted in a \$6 million settlement for consumers who received a text message from Google's Slide app.
- *Woodman v. ADP Dealer Services, Inc., et al.*, a Telephone Consumer Protection Act case that resulted in a \$7.5 million settlement for consumers who received unsolicited text messages promoting car sales.
- *Lanza v. Palm Beach Holdings., et al.*, a Telephone Consumer Protection Act case that resulted in a \$6.5 million settlement for consumers who received unsolicited text messages.
- *Kolinek v Walgreen, Co.* a Telephone Consumer Protection Act case that resulted in an \$11 million settlement for consumers who received unsolicited calls to their cell phone.
- *Hopwood v. Nuance Communications., et al.*, a Telephone Consumer Protection Act case that resulted in a \$9.24 million settlement for

consumers who received unsolicited calls.

- *Kran v. Hearst* a Telephone Consumer Protection Act case that resulted in a \$2.1 million settlement for consumers who received unsolicited calls.
- *Schlossberg v. Gannett Co., Inc.* a Telephone Consumer Protection Act case that resulted in a \$13.4 million settlement for consumers who received unsolicited calls.
- *Newby v. Rita's Water Ice Franchise.,* a Telephone Consumer Protection Act case that resulted in a \$3 million settlement for consumers who received unsolicited text messages.
- *Flanigan v. The Warranty Group, Inc. and American Protection Plans LLC d/b/a American Residential Warranty.,* a Telephone Consumer Protection Act case that resulted in a \$16 million settlement for consumers who received unsolicited calls.
- *Martin v. Global Marketing Research Services,* a Telephone Consumer Protection Act case that resulted in a \$10 million fund for consumers who received unsolicited calls.
- *Stone & Co. v. LKQ Corporation,* a Telephone Consumer Protection Act case that resulted in a \$3.26 million fund for consumers who received a fax from the defendant.
- *Dobkin v. NRG,* a Telephone Consumer Protection Act case that resulted in a \$7 million fund for consumers who received an unwanted calls from the defendant.
- *Gergetz v. Telenav,* a Telephone Consumer Protection Act case that resulted in a \$3.5 million fund for consumers who received a text

message from the Defendant.

- *Bowman v. Art Van Furniture*, a Telephone Consumer Protection Act case that resulted in a \$5.87 million fund for consumers who received unwanted phone calls from the Defendant.
- *Wright, et al. v. eXp Realty, LLC*, appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million class wide settlement.

5. Class Counsel zealously represented Plaintiff and the Settlement Class Members' interests throughout the litigation and will continue to do so.

6. Below, I set forth the nature of the work I performed in the Action to demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

7. I was involved in all major aspects of litigating this Action. Those efforts generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-filing investigation and discovery; (c) motion practice; and (d) settlement and case and settlement management.

8. I am the attorney who performed the activities categorized below and have reviewed my time in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time, as well as the necessity for, and reasonableness of, the time and expenses committed to this Action. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I

believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

Pre-filing Investigation and Pleadings

9. Before filing the action, I conducted a thorough investigation into the facts of the cases, including by investigating plaintiff’s relationship and experiences with Defendants, if any, extensively investigating the calls, Defendants and their business practices, as well as researching the potential claims plaintiff and the Class had against the Defendants. This phase also included reviewing plaintiff’s records related to the calls and evaluating necessary discovery to pursue the action. This phase also involved preparing the Complaint and other initiating documents. After the initial pleading, this phase also involved revising the Amended Complaint and the Second Amended Complaint.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	16	\$11,680

Post-filing Investigation and Discovery

10. In this phase of litigation the work performed by my firm included, but was not limited to, communicating with Plaintiff regarding the progress of the case; revising Plaintiff’s initial disclosures and preparing responses to Defendants’ discovery requests; and gathering, reviewing and producing documents.

11. This category also includes the time spent strategizing regarding affirmative discovery; revising discovery requests to Defendants; investigating

Defendants’ practices and procedures; strategizing and preparing for Defendants’ depositions; analyzing and reviewing Defendants’ discovery responses; reviewing and analyzing documents produced by Defendant; analyzing and reviewing third party subpoena responses.

12. This category also includes extensive call log analysis including working with the expert to analyze the calling records.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	43	\$31,390

Law and Motion Practice

13. During this phase of the litigation, my firm assisted in briefing multiple substantive motions—Defendant BCBSNC’s motion to dismiss, Defendant Change Healthcare’s motion to dismiss, and the motions associated with approval of the class settlement. My work during this phase also included analyzing Defendant’s pleadings and defenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	13	\$9,490

Settlement

14. During this phase of the litigation, my firm engaged in all aspects of settlement, including, but not limited to, communicating with plaintiff regarding negotiations; preparing for mediation; and revising various iterations of the settlement agreement and associated documents.

15. This phase also includes case and settlement management, including evaluating bids for settlement administration; analyzing data necessary to administrate the Settlement; overseeing the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website, reviewing claims, and addressing questions as they arose.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	15	\$10,950

16. The time and resources devoted to this action readily justify the requested fee. Moreover, Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved and Defendants' vigorous defense of Plaintiff's and the Class's claims. Despite Class Counsel's effort in litigating, Class Counsel remain completely uncompensated for the time invested in the action, in addition to the expenses we advanced.

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

Dated: November 29, 2024

/s/ Stefan Coleman
Stefan Coleman