

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  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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 final approval of the Class Action Settlement and entering final judgment. 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 is attached hereto.

Dated: January 2, 2025

Respectfully submitted,

/s/ Avi R. Kaufman

Avi R. Kaufman

**KAUFMAN P.A**  
237 South Dixie Highway, Floor 4  
Coral Gables, Florida 33133  
kaufman@kaufmanpa.com  
Telephone: (305) 469-5881

*/s/ Ryan Duffy*  
Ryan Duffy  
**The Law Office of Ryan P. Duffy, PLLC**  
1213 W. Morehead Street  
Suit 500, Unit #450  
Charlotte, North Carolina 28208  
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Stefan Coleman  
**Coleman PLLC**  
66 West Flagler Street  
Suite 900  
Miami, Florida 33130  
law@stefancoleman.com  
Telephone: (877) 333-9427

*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

**PROPOSED ORDER**

On January 30, 2025, this Court heard the motions for Final Approval of the Class Action Settlement and for Class Counsel fees and costs.<sup>1</sup> This Court reviewed: (a) the motions and the supporting papers, including the Class Action Settlement Agreement and Release ( Settlement Agreement ) (b) any objections filed with or presented to the Court (c) the Parties responses to any objections and (d) counsel s arguments. Based on this review and the findings below, the Court finds good cause to grant the motions.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and therefore approves it.

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<sup>1</sup> Capitalized terms in this Final Approval Order ( Order ), unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

Among other matters considered, the Court took into account: (a) the complexity of Plaintiff's theory of liability and the risks involved in wrong number cases (b) delays in any award to the Settlement Class that would occur due to further litigation and appellate proceedings (c) the amount of discovery that has occurred in the Action (d) the relief provided to the Settlement Class (e) the recommendation of the Settlement Agreement by counsel for the Parties and (f) the absence of objectors to the Settlement Agreement, demonstrating that the Settlement Class has a positive reaction to the proposed settlement.

2. The Court also finds that extensive arm's-length negotiations have taken place, in good faith, between Settlement Class Counsel and Defense Counsel resulting in the Settlement Agreement. These negotiations were presided over by an experienced mediator.

3. The Settlement Agreement provides substantial value to the Settlement Class in the form of cash payments.

4. Notice was provided to Settlement Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (a) fully and accurately informed Settlement Class Members about the action and Settlement Agreement (b) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement (c) provided procedures for Settlement Class Members to submit written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement and (d) provided the time, date, and place of the Final Approval Hearing.

5. A copy of the notice provided by Defendants pursuant to 28 U.S.C. 1715(b) has been filed, and the notice complies with the requirements of 28 U.S.C. 1715(b).

6. Plaintiff and Class Counsel have fairly and adequately protected the Settlement Class's interests, and the Parties have adequately performed their obligations under the Settlement Agreement.

7. For the reasons stated in the Preliminary Approval Order, and having found nothing that would disturb these previous findings, this Court finds and determines that the proposed Settlement Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Federal Rule of Civil Procedure 23(a) and (b)(3).

8. Under the Settlement Agreement, Class Counsel is permitted to seek Court approval of an award of attorneys' fees and reimbursement of documented and reasonable expenses and costs. Having considered the motion and considering the percentage of the fund, lodestar cross-check, the quality of representation provided and the results obtained, as well as a number of other factors, Class Counsel is awarded attorneys' fees of \_\_\_\_\_, and reimbursement of costs and expenses of \_\_\_\_\_, representing fair and reasonable compensation and reimbursement for Class Counsel's efforts in investigating, litigating, and settling this action.

9. All payments of attorneys' fees and reimbursement of expenses to Class Counsel in this action shall be made from the Settlement Fund, and the Released Parties shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or expenses.

10. Reimbursement of up to \_\_\_\_\_ to the Settlement Administrator is fair and reasonable to compensate it for the provision of notice to the Settlement Class and administering the settlement.

IT IS ORDERED THAT:

Settlement Class Members. The Settlement Class is certified as a class of:

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).

Binding Effect of Order. This Order applies to all claims or causes of action settled under the Settlement Agreement and binds all Settlement Class Members, including those who did not properly request exclusion under the Preliminary Approval Order. This Order does not bind persons or entities who submitted timely and valid requests for exclusion.

Release. Plaintiff and all Settlement Class Members who did not properly request exclusion are deemed to have completely released and forever discharged the Released Parties for the Released Claims. The full terms of the release described in this paragraph

are set forth in the Settlement Agreement and are specifically incorporated herein by this reference.

Class Relief. The Settlement Administrator is further directed to issue payments, including automatically to the Identifiable Settlement Class Members whose summary notices were not returned and who did not opt out of the Settlement and to each Identifiable Settlement Class Member whose mailed Summary Notices were returned as undeliverable and Unidentifiable Settlement Class Members, according to the terms and timeline stated in the Settlement Agreement.

Miscellaneous. No person or entity shall have any claim against Defendants, Defense Counsel, the Released Parties, Plaintiff, the Settlement Class Members, Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with the Settlement Agreement.

Court s Jurisdiction. Pursuant to the Parties re uest, the Court will retain jurisdiction over the action and the Parties for all purposes related to this settlement.

DONE and ORDERED this        day of        , 2025.

Honorable Catherine C. Eagles  
UNITED STATES DISTRICT JUDGE

CC: All Counsel

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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

Plaintiff,

vs.

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

Defendant.

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

CLASS ACTION

**DECLARATION OF GIO  
SANTIAGO RE: NOTICE  
PROCEDURES**



1 I, Gio Santiago, declare and state as follows:

2  
3 1. I am a Senior Project Manager with Verita, which was formerly known  
4 as KCC. Pursuant to the Preliminary Approval Order, the Court appointed Verita as  
5 the Claims Administrator in connection with the proposed Settlement of the above-  
6 captioned Action.<sup>1</sup> I have personal knowledge of the matters stated herein and, if  
7 called upon, could and would testify thereto.

8 **CAFA NOTIFICATION**

9  
10 2. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C.  
11 Section 1715, Verita Global compiled a CD-ROM containing the following  
12 documents: Class Action Complaint, Answer to Class Action Complaint, Amended  
13 Class Action Complaint, Answer to Amended Class Action Complaint (Blue Cross  
14 Blue Shield), Answer to Amended Class Action Complaint (Change Healthcare),  
15 Second Amended Class Action Complaint, Answer to Second Amended Class Action  
16 Complaint, Motion for Preliminary Approval, Proposed Order re Preliminary  
17 Approval Hearing, Memorandum in Support of Motion for Preliminary Approval,  
18 Declaration of Avi R. Kaufman, Long Form Notice, Publication Notice, Claim Form,  
19 and Settlement Agreement, which accompanied a cover letter (collectively, the  
20 “CAFA Notice Packet”). A copy of the cover letter is attached hereto as Exhibit A  
21

22  
23 3. Starting on June 7, 2024, Verita caused fifty-eight (58) CAFA Notice  
24 Packets to be mailed via Priority Mail from the U.S. Post Office in Memphis,  
25 Tennessee to the parties listed on Exhibit B, i.e., the U.S. Attorney General, the  
26 Attorneys General of the various states and the 5 recognized U.S. Territories, as well  
27

28 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement and/or the Preliminary Approval Order.

1 as parties of interest to this Action.

2  
3 4. As of January 9, 2025, Verita has not received any responses to the  
4 CAFA Notice Packet.

5 **MAILING OF THE POSTCARD NOTICE**

6 5. Starting on September 11, 2024, Verita received from counsel a series  
7 of lists containing 1,290 records identified as Class Members. Verita formatted the  
8 lists for mailing purposes, removed 373 records missing names and mailing  
9 addresses, and processed the remaining names and addresses through the National  
10 Change of Address Database (“NCOA”) to update any addresses on file with the  
11 United States Postal Service (“USPS”). A total of 41 addresses were found and  
12 updated via NCOA.  
13

14 6. Starting on September 30, 2024, Verita caused the Postcard Notice to be  
15 printed and mailed to the 917 entries in the Class Members lists with names and  
16 mailing addresses. A copy of the Postcard Notice is attached hereto as Exhibit C.  
17

18 7. As of January 9, 2025, Verita has received 9 Postcard Notices returned  
19 by the USPS with undeliverable addresses. Through credit bureau and/or other  
20 public source databases, Verita performed address searches for these and was able to  
21 find updated addresses for 3 Class Members. Verita promptly re-mailed the Postcard  
22 Notice to the found new addresses.  
23

24 **PUBLICATION OF THE DIGITAL NOTICES**

25 8. Starting on September 30, 2024, Verita caused 7,917,495 digital  
26 impressions to be distributed programmatically via various websites and mobile apps,  
27 including Facebook. The impressions were targeted to adults 18 years of age and  
28

1 older in North Carolina. Copies of the digital notices as they appeared on a variety of  
2 websites and on Facebook are attached hereto as Exhibit D.

3  
4 9. As of January 9, 2025, notice of the Settlement, including the Postcard  
5 Notice and the digital notice, has reached approximately 72.5% of likely Class  
6 Members. This reach percentage falls within the 70% to 95% guideline  
7 recommended by the Federal Judicial Center.<sup>2</sup>

### 8 **SETTLEMENT WEBSITE**

9  
10 10. Starting on September 30, 2024, Verita established a website  
11 [www.myadvocatesettlement.com] dedicated to this matter to provide information to  
12 the Class Members and to answer frequently asked questions. The website URL was  
13 set forth in the Notice, Postcard Notice, and Claim Form. Visitors of the website can  
14 download copies of the Notice, Claim Form, and other case-related documents.  
15 Visitors can also submit claims online.

16  
17 11. As of January 2, 2025, the website has received 755,566 visits.

### 18 **TELEPHONE HOTLINE**

19 12. Starting on September 30, 2024, Verita established a toll-free telephone  
20 number (1-866-507-0483) for potential Class Members to call, obtain information  
21 about the Settlement, and request a Notice Packet.

22  
23 13. As of January 2, 2025, Verita has received a total of 36 calls to the  
24 telephone hotline.

### 25 **CLAIM FORMS**

26 14. As of January 2, 2025, Verita has received 394,600 timely-filed claim  
27

28 <sup>2</sup> See, e.g., Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide,  
available at <http://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

1 forms.<sup>3</sup> Of these 394,600, Verita has identified 662 valid claims associated with  
2 telephone numbers to which calls were reflected in Defendants' records during the  
3 class period.  
4

5 **REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE**

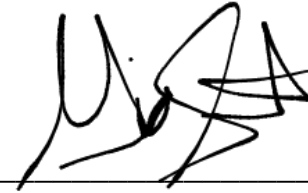
6 15. As of January 2, 2025, Verita has not received any requests for  
7 exclusion.  
8

9 **OBJECTIONS TO THE SETTLEMENT**

10 16. As of January 2, 2025, Verita has not received any objections to the  
11 Settlement.

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

14 Executed on January 2, 2025.



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Gio Santiago

<sup>3</sup> Verita originally estimated approximately 100 claims to be filed.

# EXHIBIT

# A

June 7, 2024

VIA PRIORITY MAIL

Merrick Garland  
Attorney General of the United States  
950 Pennsylvania Avenue, NW  
United States Department of Justice  
Washington, DC 20530-0001

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear Merrick Garland:

We write on behalf of Blue Cross and Blue Shield of North Carolina and Change Healthcare Resources, LLC (“Defendants”) regarding *Alexandra Stark v. Blue Cross and Blue Shield of North Carolina and Change Healthcare Resources, LLC*, Case No. 1:23-cv-00022-CCE-LPA. The lawsuit is pending before the Honorable Catherine C. Eagles in the United States District Court for the Middle District of North Carolina. This letter is to advise you that Alexandra Stark (“Plaintiff”) filed a Motion for Preliminary Approval of Class Action Settlement in connection with this class action lawsuit on May 31, 2024.

**Case Name:** *Alexandra Stark v. Blue Cross and Blue Shield of North Carolina and Change Healthcare Resources, LLC*

**Case Number:** 1:23-cv-00022-CCE-LPA

**Jurisdiction:** United States District Court,  
Middle District of North Carolina

**Date Settlement  
Filed with Court:** May 31, 2024

Defendants deny any wrongdoing or liability whatsoever, but have settled this action solely to eliminate the burden, expense, and uncertainties of further litigation. In compliance with 28 U.S.C. § 1715(b), the documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Copies of the *Class Action Complaint*, *Answer to Class Action Complaint*, *Amended Class Action Complaint*, *Blue Cross Blue Shield and Change Healthcare's respective Answers to Amended Class Action Complaint*, and the *Second Amended Class Action Complaint* are included on the enclosed CD.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** As of June 7, 2024, the Court has not yet scheduled a final fairness hearing in this matter. Plaintiff filed a *Motion for Preliminary Approval* requesting that the Honorable Catherine C. Eagles preliminarily approve the proposed Settlement. Copies of the *Motion for Preliminary Approval*, *Proposed Order re Preliminary Approval Hearing*, *Memorandum in Support of Motion for Preliminary Approval*, and the *Declaration of Avi R. Kaufman* are included on the enclosed CD.
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Long Form Notice*, *Publication Notice*, and the *Claim Form* to be provided to the class are included on the enclosed CD.
4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** A copy of the *Settlement Agreement* is included on the enclosed CD.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** As of June 7, 2024, no other settlement or agreement has been entered into by the Parties to this Action with each other, either directly or by and through their respective counsel.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** No Final Judgment has been reached as of June 7, 2024, nor have any Notices of Dismissal been granted at this time.
7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** While Defendants and KCC Class Action Services, LLC are in the process of gathering information on this issue, pursuant to 28 U.S.C. § 1715(b)(7)(A), at this time a complete list of names of class members as well as each State of residence is not available, because the parties do not presently know the names or current addresses of all the proposed settlement class members and will not learn this information until the Settlement is preliminarily approved and the Court authorizes dissemination of information about the Settlement through the Class Notice. Pursuant to 28 U.S.C. § 1715(b)(7)(B), it is estimated that there are approximately 1401 individuals in the class.

Merrick Garland  
June 7, 2024  
Page 3

8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** As the proposed Settlement is still pending final approval by the Court, there are no other opinions available at this time. As of June 7, 2024, there has been no written judicial opinion related to the settlement.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Defendants can address any concerns or questions you may have.

Sincerely,

s/

---

Carolyn A. DeLone  
Hogan Lovells US LLP  
555 Thirteenth Street NW  
Washington, DC 20004  
202-637-4860  
carrie.delone@hoganlovells.com

s/

---

David B. Carpenter  
Alston & Bird  
1201 West Peachtree Street  
Atlanta, GA 30309  
404-881-7881  
David.Carpenter@alston.com

Enclosure – CD ROM



# EXHIBIT

# B

Last	First	Company	Address 1	Address 2	City	State	Zip
Garland	Merrick	Attorney General of the United States	United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Taylor	Treg	Office of the Alaska Attorney General	1031 W. 4th Avenue, Suite 200		Anchorage	AK	99501-1994
Marshall	Steve	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Griffin	Tim	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Maves	Kris	Office of the Arizona Attorney General	2005 N. Central Avenue		Phoenix	AZ	85004
CAFA Coordinator		Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Tong	William	State of Connecticut Attorney General	165 Capitol Avenue		Hartford	CT	06106
Schwalb	Brian	District of Columbia Attorney General	400 6th St., NW		Washington	DC	20001
Jennings	Kathy	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Lopez	Anne E.	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Bird	Brenna	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Labrador	Raúl	State of Idaho Attorney General's Office	700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-1000
Raoul	Kwame	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Rokita	Todd	Indiana Attorney General's Office	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Kobach	Kris	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Coleman	Russell	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601-3449
Murrill	Liz	Office of the Louisiana Attorney General	1885 North Third Street		Baton Rouge	LA	70802
Campbell	Andrea	Attorney General of Massachusetts	1 Ashburton Place	20th Floor	Boston	MA	02108-1698
Brown	Anthony G.	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Frey	Aaron	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Nessel	Dana	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Keith Ellison	Attorney General	Attention: CAFA Coordinator	445 Minnesota Street	Suite 1400	St. Paul	MN	55101-2131
Bailey	Andrew	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Fitch	Lynn	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Knudsen	Austin	Office of the Montana Attorney General	Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Stein	Josh	North Carolina Attorney General	Department of Justice	P.O. Box 629	Raleigh	NC	27602-0629
Hilgers	Mike	Office of the Nebraska Attorney General	State Capitol P.O. Box 98920		Lincoln	NE	68509-8920
Ford	Aaron	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson St.	Carson City	NV	89701
Formella	John	New Hampshire Attorney General	New Hampshire Department of Justice	33 Capitol St.	Concord	NH	03301-6397
Platkin	Matthew J.	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market St., P.O. Box 080	Trenton	NJ	08625-0080
Torrez	Raul	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
James	Letitia	Office of the New York Attorney General	Dept. of Law - The Capitol	2nd Floor	Albany	NY	12224-0341
Wrigley	Drew H.	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Ave., Dept. 125	Bismarck	ND	58505-0040
Yost	Dave	Ohio Attorney General	Rhodes State Office Tower	30 E. Broad St., 14th Flr.	Columbus	OH	43215
Drummond	Gentner	Oklahoma Office of the Attorney General	313 NE 21st St.		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court St., NE	Salem	OR	97301-4096
Henry	Michelle A.	Pennsylvania Office of the Attorney General	16th Flr., Strawberry Square		Harrisburg	PA	17120
Neronha	Peter	Rhode Island Office of the Attorney General	150 South Main St.		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211
Jackley	Marty	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Skrmetti	Jonathan	Tennessee Attorney General and Reporter	425 5th Avenue North		Nashville	TN	37243
Paxton	Ken	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reves	Sean	Utah Office of the Attorney General	P.O. Box 142320		Salt Lake City	UT	84114-2320
Clark	Charity R.	Office of the Attorney General of Vermont	109 State St.		Montpelier	VT	05609-1001
Mivares	Jason	Office of the Virginia Attorney General	202 North Ninth St.		Richmond	VA	23219
Ferguson	Bob	Washington State Attorney General	1125 Washington St., SE	P.O. Box 40100	Olympia	WA	98504-0100
Morrissey	Patrick	West Virginia Attorney General	State Capitol Complex, Bldg. 1, Rm. E-26	1900 Kanawha Blvd. E.	Charleston	WV	25305
Kaul	Josh	Office of the Wisconsin Attorney General	Dept. of Justice, State Capitol	Rm. 114 East, P.O. Box 7857	Madison	WI	53707-7857
Hill	Bridget	Office of the Wyoming Attorney General	109 State Capitol		Cheyenne	WY	82002
Ala'iima-Utu	Fainu'ulelei Falefatu	American Samoa Gov't	Dept. of Legal Affairs, c/o Attorney General	P.O. Box 7	Utulei	AS	96799
Movlan	Douglas	Office of the Attorney General, ITC Building	590 S. Marine Corps Dr.	Suite 706	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General	Administration Building	P.O. Box 10007	Saipan	MP	96950-8907
Hernández	Domingo Emanuelli	Puerto Rico Attorney General	Torre Chardón, Suite 1201	350 Carlos Chardón Ave.	San Juan	PR	00918
Clement	Ian S.A.	Virgin Islands Acting Atty. General, DOJ	3438 Kronprindsens Gade	GERs Complex, 2nd Floor	St. Thomas	VI	00802
Kaufman	Avi R.	Kaufman P.A.	237 S. Dixie Hwy.	4th Floor	Coral Gables	FL	33133

# **EXHIBIT C**

*Stark v. BCBSNC*  
Settlement Administrator  
P.O. Box 301132  
Los Angeles, CA 90030-1132

PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE  
**PAID**  
COMMUNICATION  
SERVICES

## LEGAL NOTICE

See other side for details.

<<Bar Code>>

Postal Service: Please Do Not Mark Barcode

BCST: ClaimID: <<Claim8>>-<<CkDig>>

PIN: «PIN»

«FirstNAME» «LastNAME»

«Addr1» «Addr2»

«City», «State»«FProv» «Zip»«FZip»

«FCountry»



VISIT THE  
SETTLEMENT  
WEBSITE BY  
SCANNING  
THE PROVIDED  
QR CODE

# BCST

**If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement.**

***A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.***

A Settlement with a \$1,670,000 cash fund has been reached in a class action lawsuit claiming that Change Healthcare Resources, LLC, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina (“BCBSNC Defendants”) made artificial or prerecorded voice calls to wireless telephone numbers without consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendants deny the allegations in the lawsuit and the Court has not decided who is right.

**Who’s Included?** You received this postcard because Defendants’ records show that you may be a Settlement Class Member. The Settlement includes all regular users or subscribers to numbers assigned to wireless carriers which Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, called using an artificial or prerecorded voice who were not members or subscribers of BCBSNC or that opted out of receiving calls from Change Healthcare from January 10, 2019 to July 17, 2024.

**What Are the Settlement Terms?** Defendants have agreed to pay \$1,670,000 to create a fund that will be used to (1) automatically pay individuals who have been identified from Defendants’ records and who do not opt out of the Settlement, (2) pay individuals who are Settlement Class Members who have not been identified from Defendants’ records but who submit valid claims, (3) pay the costs of providing notice and administering the Settlement, and (4) pay Class Counsel’s attorneys’ fees, costs, and expenses incurred in the litigation.

**How can I get a Payment?** You will automatically receive a payment from the Settlement if you do not opt out and the Court grants Final Approval. If you wish to receive the payment electronically, as opposed to by check at the address to which this notice was mailed, please visit [www.myadvocatesettlement.com](http://www.myadvocatesettlement.com) to make that election.

**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **January 2, 2025**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by **January 2, 2025** by timely complying with the objection procedures detailed in the Preliminary Approval Order. The Long Form-Notice available on the website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on **January 30, 2025 at 11 a.m.** to consider whether to approve the Settlement and a request for attorneys’ fees of up to one-third of the Settlement Fund as well as reasonable costs and expenses incurred in the litigation. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. For more information, call or visit the website. [www.myadvocatesettlement.com](http://www.myadvocatesettlement.com).

*Stark v. BCBSNC*  
Settlement Administrator  
P.O. Box 301132  
Los Angeles, CA 90030-1132  
1-866-507-0483

# EXHIBIT D

# Digital Media PoP

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*Stark v. Blue Cross Blue Shield of NC*  
Settlement Notice



Best of WNC Eats & Drinks Field Guide Current Issue Member Login Login Register

# MOUNTAIN Xpress

Asheville, NC

If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement. [LEARN MORE](#)

MyAdvocateSettlement.com

CALENDAR CLASSIFIEDS Arts News Food Living Opinion Contact Support Xpress Search Xpress

COMMUNITY NEWS



## FEMA

### FEMA disaster assistance

If you were impacted by Hurricane Helene, you may be eligible to receive disaster assistance from FEMA.

by Community Bulletin · 19 mins ago 78 VIEWS

COMMUNITY NEWS



### City of Asheville announces water distribution site

by Community Bulletin 180 VIEWS

COMMUNITY NEWS



### Asheville, Buncombe County announce water distribution sites

by Greg Parlier 300 VIEWS

HUMOR



### Tight fit

by Molton 954 VIEWS

HUMOR



### Skeleton crew

by Brent Brown 523 VIEWS



The screenshot shows the NC Spin website with a blue header. The header includes the NC Spin logo, navigation links (ABOUT NC SPIN, PANELISTS, AIRTIMES, UNDERWRITING, CONTACT), and a search bar with the text "ENHANCED BY Google".

**Democrats got post-debate bounce**  
If the Robinson candidacy ends in a Josh Stein blowout, Republicans may be significantly hampered in their ability to compete for other statewide offices. [Read More](#)  
by [John Hood](#) | 3:33 p.m. Thursday

**The hate that hate produced**  
All of us can agree that things aren't perfect, and much needs to be fixed. But the answer isn't dividing ourselves into warring factions to do it. [Read More](#)  
by [Cash Michaels](#) | 3:13 p.m. Thursday

**With North Carolina absentee by mail ballots being distributed, partisan differences evident on when mail-in ballots should be returned**  
Republicans have made efforts this year to encourage early voting, including mail-in voting, however a quarter of Republican respondents have the coldest feelings to that vote method. [Read More](#)  
by [Catawba college](#) | 3:03 p.m. Thursday

**NC's economy depends on strong public schools**  
North Carolina's elementary and secondary public school current expenditures


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Subscribe to the NC Spin Audio Podcast on Podomatic.  
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**Featured Videos**  
After SPIN!-John Hood discusses his predictions for the year 2021.  
December 31, 2020  
After SPIN!-Chris Fitzsimon discusses his predictions for the year 2021.  
December 30, 2020  
After SPIN!-Joe Mavretic discusses his predictions for 2021.  
December 29, 2020  
After SPIN!-Becki Gray discusses her predictions for North Carolina for the year 2021.  
December 28, 2020  
After SPIN!-Chris Fitzsimon discusses the NC Legislature.  
December 24, 2020

**Advertisement:** If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement. [LEARN MORE](#) MyAdvocateSettlement.com

The screenshot shows the top portion of the North State Journal website. At the top left is a 'SUBSCRIBE' button, and at the top right are social media icons for Facebook, Twitter, and Instagram. The main title 'NORTH STATE JOURNAL' is displayed in a large, dark blue serif font. Below the title is a dark blue navigation bar with white text for 'NEWS', 'SPORTS', 'OPINION', 'FEATURES', 'BUSINESS', and 'ABOUT'. Underneath the navigation bar, the date 'SEPTEMBER 30, 2024' is on the left and a search bar with the text 'SEARCH ...' is on the right. The main content area features a large photograph of a man in a dark suit and red tie, looking down. To the right of this photo is a promotional box with a grey background and white text: 'If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement.' Below this text is the website 'MyAdvocateSettlement.com' and a purple 'LEARN MORE' button. Underneath the promotional box is a section titled 'THE LATEST' with a horizontal line, followed by a photograph of a large stadium filled with people.

HOME NEWS OPINION ARTS OUTDOORS LIFESTYLE EVENTS CLASSIFIEDS REAL ESTATE BACK ISSUES ARCHIVES NEWSLETTER



LATEST

## PHOTO GALLERY: Tropical Storm Helene Hits Western North Carolina

Tropical Storm Helene was predicted to bring significant flooding to Western North Carolina, but it's

If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement.

MyAdvocateSettlement.com

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The screenshot displays the website's navigation bar with categories: Faith, News, Sports, Entertainment, Opinion, Obituaries, Multimedia, Announcements, e-Edition, Special Sections, Classifieds, Legal Notices, and Contests. Below the navigation is a 'To Submit' section. The main content area features a large article titled 'What's Happening: Davidson County asphalt plant sells for \$8.4 million; Edward Jones office moves' by Jill Doss-Raines. To the right, there are sections for 'Public Records' and 'Helene lashes South with wind and floods'. A 'Click Here' link is present. Below the main article is a 'Recipe Of The Day' for 'Southern Country Biscuits With Sawmill Gravy' by June B. in Cullman, AL. On the right side, there is a 'North Carolina Public Notices' advertisement and a 'Sign Up For Newsletters' section with checkboxes for 'Daily Headlines' and 'The Dispatch e-Edition'.

**More than 100 percent in the last decade. In the Triad, local programs are helping families with down payments.**

BY GALE MELCHER  
SEPTEMBER 27TH, 2024

For many Americans, the prospect of buying a home can seem insurmountable. But in the Triad, a variety of programs are working to help those looking to buy a home. One of the ways in which this is done is through down payment assistance programs.

**News**  
**Triad City Beat to host slate of non-partisan, election-related events for the community**

BY SAYAKA MATSUOKA  
SEPTEMBER 26TH, 2024

**News**  
**The art of expanding Latine educational opportunity in North Carolina**

BY DERICK LEE (EDUCATION NC)  
SEPTEMBER 26TH, 2024

**SUPPORT OUR WORK** **NEWSLETTER SIGNUP**

If You Received an Artificial or Prerecorded Voice Call from Change Healthcare, under the brand My Advocate, calling on behalf of Blue Cross Blue Shield of North Carolina, You May Be Entitled to a Payment from a Class Action Settlement.

MyAdvocateSettlement.com

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**Events**

CREATE AN EVENT

**Murdered to Death**

High Point Community Theatre  
October 4-6, 2024

# Facebook Feed | Desktop



# Facebook Feed | Mobile



# Facebook | Stories Ad





# Thank you

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Settlement Administration | Legal Notification



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  
FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

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.<sup>1</sup> I submit this declaration in support of Plaintiff s Motion for Final Approval. 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.

---

<sup>1</sup> All capitali ed 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. This amounts to more than 1,190 for each of the 1,401 potential Identifiable Settlement Class Members, and more than 550 for each of the 3,000 potential Settlement Class Member, including Unidentifiable Settlement Class Members.

4. Given Defendants calling practices during the class period and the average rate of reassignment of telephone numbers, the parties estimate that there are approximately 3,000 total Settlement Class Members, including Unidentifiable Settlement Class Members.

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. Additionally, nearly 8 million digital notice impressions have been distributed to adults 18 years or older in North Carolina, resulting in more than 600 additional valid claims from Unidentifiable Settlement Class Members, and a total effective claims rate of more than 50% for the Settlement Class as a whole. 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, more than 50% claims rate, the anticipated

Settlement Class Member payments, which are estimated to be more than 600 if final approval and Class Counsel's motion for fees are 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 re uests 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 re uests 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. At all times the negotiations were at arms' length and free from collusion.

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. The Notice Program constitutes the best notice practicable under the circumstances, provides sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Rule 23.

17. The circumstances surrounding the negotiation of the Settlement demonstrate, that the negotiations were wholly in good faith and without collusion. The Settlement here is the result of extensive, arm's-length negotiations between

experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this action.

18. Plaintiff s counsel steadfastly advocated for substantial settlement relief. Plaintiff and Plaintiff s counsel also were well aware of the risks they faced if they continued to litigate, particularly the risks inherent in class certification and the difficulties involved in wrong number cases.

19. The settlement was not conditioned on any award of attorneys fees and Defendants retained the right to object to Class Counsel s fee application. Additionally, Plaintiff is not seeking a service award. And, finally, attorneys fees and Plaintiff s claim will be paid on a similar timeline to other class member payments.

20. Given the unprecedented monetary relief obtained as a result of the vigorous litigation of this action, especially in light of the risks inherent in litigation and, more specifically, in the litigation of wrong number TCPA cases, and the noteworthy claims rate achieved through the meticulous structuring and administration of the Settlement, the Settlement should be finally approved.

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

Dated: January 2, 2025

/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

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**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,<sup>1</sup> 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, and more than 550 for each of the 3,000 potential Settlement Class Member, including Unidentifiable Settlement Class Members.<sup>2</sup>

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 for Identifiable Settlement Class Members. *d.* 5. Additionally, nearly 8 million digital notice impressions have been distributed to adults 18 years or older in North Carolina, resulting in more than 600 additional valid claims from Unidentifiable Settlement Class Members, and a total

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<sup>1</sup> 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.

<sup>2</sup> Given Defendants' calling practices during the class period and the average rate of reassignment of telephone numbers, the parties estimate that there are approximately 3,000 total Settlement Class Members, including Unidentifiable Settlement Class Members. Kaufman Decl. 4 *see also* *n the Matter of Advanced Methods to Eliminate Unlawful Robocalls*, CG Docket No 14-59, Second Notice of Inquiry, at 5, 23 (FCC July 13, 2017) (according to one source 100,000 numbers are reassigned by wireless carriers every day).

effective claims rate of more than 50% for the Settlement Class as a whole. *d.* 5. And not a single class member has opted out of or objected to the Settlement. *d.* 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. *d.* 6. 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. *d.* 7 *see e.g., Davis v. Capital One, 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, more than 50 claims rate, the anticipated Settlement Class Member payments, which are estimated to be more than \$600 if final approval and Class Counsel's motion for fees are granted, will far exceed the payments in similar wrong number TCPA cases across the country. Kaufman Decl. 9 *see e.g., Williams v. Westermans*, 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) *Ames v. Morgan Chase & Co.*, 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 significant monetary relief that will actually be delivered to the majority of Settlement Class Members by the Settlement, resulting from the 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 final approval to the Settlement, find that the class notice program satisfies due process and Rule 23, find the Settlement Agreement to be fair, reasonable, and adequate to the Class, and dismiss the claims against Defendants with prejudice, retaining jurisdiction of matters only relating to enforcement of the Settlement Agreement.

## II. ACK ROUND

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., Ames*, 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.

#### **. 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. Notice Program

Rule 23(c)(2) requires the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2). The best practicable notice is that which is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Cent. Hanover Am. Trust Co.*, 339 U.S. 306, 314 (1950).

The Settlement provided for direct mailed notice to Identifiable Settlement Class Members, a settlement website, and internet media campaign. The settlement administrator has completed all notice obligations to date and is continuing to administrate the notice and claims process.

To date, direct mailed notice has been successfully delivered to more than 65% of Identifiable Settlement Class Members, and nearly 8 million digital notice impressions have been distributed to adults 18 years of age or older in North Carolina, resulting in an effective reach rate of over 70% for the Notice Plan as a whole. Declaration of Gio Santiago, Exhibit 2, at 9. And based on the implementation of the Notice Plan, there have been over 700,000 visits to the Class Settlement Website, and nearly 400,000 timely claims filed.

As a result, the notice accomplished in this case 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* *Shiff v. Direct Industry, 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. ).

All in all, the Notice Program constitutes the best notice practicable under the circumstances, provides sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Rule 23. Kaufman Decl. 16.

#### **D. Claim**

The Settlement Administrator shall issue payment by check or electronic payment from the Settlement Fund to each Identifiable Settlement Class Member who does not opt out of the Settlement and for whom all mailed notices are not returned as undeliverable, each Identifiable Settlement Class Member for whom all mailed notices are returned as undeliverable who timely submits a valid claim, and each Unidentifiable Settlement Class Member who timely submits a valid claim. The deadline to submit a claim, request exclusion from the Settlement, or to object to the Settlement is January 2, 2025.

As of January 2, 2025, mailed notice has been successfully delivered to more than 65 of Identifiable Settlement Class Members and more than 600 valid claims have been filed by Unidentifiable Settlement Class Members, resulting in a claims rate of more than 50 of the total Settlement Class. Additionally, no Settlement Class Members have objected to or opted out of the Settlement. Santiago Decl. 15-16. Given these results, there can be no doubt that Settlement Class Members have reacted positively to the settlement.

#### **IV. THE SETTLEMENT MERITS FINAL APPROVAL**

##### **A. The Settlement Class Should be Certified**

In granting preliminary approval, the Court provisionally certified the Settlement Class for settlement purposes. For all the same reasons contained in Plaintiff's preliminary approval memorandum (ECF 63), the Settlement Class meets the requirements of Rule 23, and should be certified for settlement purposes.

##### **B. The Settlement Is Fair, Reasonable And Adequate**

The settlement of a class action requires approval by a district court. Fed. R. Civ. P. 23(e) *Sardelletti v. De Arr*, 43 F. App x. 525, 528 (4th Cir. 2002) *in re Iffy v. e Se . iti .*, 927 F.2d 155, 158 (4th Cir. 1991). A court may do so only after a hearing and on finding that the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(C). The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement. *in re Iffy v. e Se . iti .*, 927 F.2d at 158 *see* Fed. R. Civ. P. 23(e) (identifying relevant factors for settlement approval: (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 and (D) the proposal treats class members equitably relative to each other. ).

At this final approval stage, the Fourth Circuit has adopted a bifurcated analysis involving inquiries into the fairness and adequacy of the settlement. *Sardelletti*, 43 F. App x. at 528 *in re Iffy v. e Se . iti .*, 927 F.2d at 158.

A class settlement is fair when it is reached as a result of good faith

bargaining at arm's length, without collusion. *In re Jeffrey M. Seidman*, 927 F.2d at 159. The Court should be satisfied that the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval. *Smith v. Res Care Inc.*, C 3:13-5211, 2015 WL 461529, at 3 (S.D.W. Va. Feb. 3, 2015) (citing Manual for Complex Litigation, ¶ 30.44 (1985)). Absent evidence to the contrary, the court may presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion. *Kirven v. Central States Health Life Co. of Omaha*, No. 3:11-2149-MBS, 2015 WL 1314086, at 5 (D.S.C. Mar. 23, 2015); *eissler v. Stirlin*, No. 4:17-cv-01746-MBS, 2019 U.S. Dist. LEXIS 131110, at 14-15 (D.S.C. Aug. 5, 2019).

In evaluating the fairness of a proposed settlement, the Court should consider these factors: (1) the posture of the case at the time the settlement is proposed (2) the extent of discovery conducted (3) the circumstances surrounding the negotiations (4) the experience of counsel in the relevant area of class action litigation and (5) whether the plaintiff and class counsel have adequately represented the class. *Sardelletti*, 43 F. App'x at 528; *In re Jeffrey M. Seidman*, 927 F.2d at 159; Fed. R. Civ. P. 23(e)(2)(A)-(B). A proposed class action settlement is considered presumptively fair where there is no evidence of collusion and the parties, through capable counsel, have engaged in arm's length negotiations. *eissler*, 2019 U.S. Dist. LEXIS 131110, at 9 (internal citation omitted).

In determining adequacy, the relevant considerations include: (1) the relative strength of the plaintiff's case on the merits (2) the existence of any difficulties of proof or strong defenses plaintiff is likely to encounter if the case proceeds to trial (3) the anticipated duration and expense of additional litigation (4) the solvency of the defendant and likelihood of recovery of a litigated judgment (5) the degree of opposition to the settlement (6) the terms of any proposed award of attorney's fees (7) the plan for distributing settlement funds to class members and (8) whether the proposal treats class members equitably relative to each other. *Sardelletti*, 43 F. App'x. at 528 *in re Jeffrey M. Seidman*, 927 F.2d at 159 Fed. R. Civ. P. 23(e)(2)(C)-(D).

All of these factors weigh strongly in favor of final approval.

***1. The Posture of the Case and the Discovery Conducted By The Time Of Settlement Support Approval***

This factor requires the court to determine whether the case was well-enough developed for the parties to appreciate the full landscape of their case. *Kirven* 2015 U.S. Dist. LEXIS 36393, at 11-12 (internal citation omitted). Here, the parties reached a settlement after more than a year of contentious litigation, including multiple dispositive motions, significant written fact discovery, expert analysis, and Defendants' corporate representatives' depositions. Kaufman Decl. 6-13.

Class Counsel's review of the discovery and attendant issues enabled them to gain an understanding of the evidence related to central questions in the action and prepared them for well-informed settlement negotiations based on a thorough analysis of the issues, including the difficulties in obtaining class certification and

proving liability in wrong number TCPA cases. As a result, both the parties and the Court have sufficient information to appraise the significant risks in continued litigation, including but not limited to class certification prospects and the likelihood of establishing liability for the calls, and the fairness of settlement terms. That knowledge base, coupled with the parties' respective assessments of the relative strengths and weaknesses of their legal positions, all weigh in favor of granting final approval, because they ensure that the parties and the Court are able to fairly evaluate the case.

***2. The Negotiation Process Was At All Times Arm's Length And Was Overseen By An Experienced Mediator***

The circumstances surrounding the negotiations also favor approval. An experienced mediator assisted the parties, and there is no evidence of coercion or collusion that would cast doubt on the fairness of these negotiations. *Reynolds v. id. nvs. nstitutional erations Co. n .*, No. 1:18-C -423, 2020 U.S. Dist. LEXIS 2710, at 13-14 (M.D.N.C. Jan. 7, 2020). Here, the circumstances surrounding the negotiation of the Settlement demonstrate, that the negotiations were wholly in good faith and without collusion. The Settlement here is the result of extensive, arm s-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this action. Kaufman Decl. 17. Furthermore, Class Counsel are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases. *See* Class Counsel Declarations filed in support of Motion for Class Counsel Fees (ECF 70-1 and 70-2).

The parties reached agreement only after a full day mediation with Hon. David

E. Jones (Ret.), an experienced mediator, and his continued assistance with subsequent negotiations. Kaufman Decl. 14. At all times the negotiations were at arms length and free from collusion. *d.* Plaintiff's counsel steadfastly advocated for substantial settlement relief. Plaintiff and Plaintiff's counsel also were well aware of the risks they faced if they continued to litigate, particularly the risks inherent in class certification and the difficulties involved in wrong number cases. *d.* 18. Plaintiff relied on the judgment of counsel, who have extensive experience litigating, settling, and trying TCPA, and other class actions. In such circumstances, it may be presumed that a settlement is fair. *See Hood v. . a. Am. ater Co.*, No. 14-1374, 2017 WL 2884535 (S.D.W. a. July 6, 2017) (finding no evidence of chicanery in the circumstances surrounding the settlement and noting counsel's abundance of experience and the advanced stage of the litigation).

***3. Class Counsel Are Experienced TCPA Litigators and Plaintiff and Class Counsel Have Adequately Represented the Class***

The inquiry into the adequacy of legal counsel focuses on whether counsel is competent, dedicated, qualified, and experienced enough to conduct the litigation and whether there is an assurance of vigorous prosecution. *Kirven*, 2015 U.S. Dist. LEXIS 36393, at 13. And the inquiry into a plaintiff's adequacy focuses on whether their claims are sufficiently interrelated with and not antagonistic to the class claims as to ensure fair and adequate representation. *Pott v. estin house Savannah River Co.*, 200 F.R.D. 539, 561 (D.S.C. 2000).

Here, Class Counsel diligently litigated the class's claims. Consistent with that, Class Counsel are experienced class action attorneys who are skilled in

litigating and resolving class actions in general, and TCPA class actions in particular, and are extremely familiar with all of the factual and legal issues of this case. Specifically, Class Counsel focus their practices on litigating consumer class action claims and have particularly broad experience in the litigation of TCPA class actions. *See* Class Counsel Declarations filed in support of Motion for Class Counsel Fees (ECF 70-1 at 20-25 and 70-2 at 3-4). Given the breadth of Class Counsel's experience, and the diligence with which they pursued the class's claims, their opinion should weigh strongly in favor of approval of the Settlement.

Additionally, Plaintiff's claims and interests in this litigation are aligned with those of the class. Plaintiff and all class members seek the same recovery for the same type of unlawful calls pursuant to the TCPA. And, notwithstanding the significant benefit that will be conferred on the class through her efforts, Plaintiff is not seeking a service award.

And the conclusion that Class Counsel and Plaintiff have adequately represented the class is supported by the terms of the proposed award of attorneys' fees, the plan for distributing settlement funds to class members, and the manner in which the settlement treats class members relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(C)-(D).

Specifically, the settlement provides an efficient and fair manner for distributing settlement funds to the maximum possible number of Settlement Class Members. Identifiable Settlement Class Members who received mailed notice will automatically be sent payments without having to submit a claim. Other Settlement Class Members had the ability to submit claims for payment by submitting online a



simple claim form that included their name, address, and telephone number at which they certified they received calls subject to the settlement. And all Settlement Class Members receiving automatic payments or who submit valid claims will receive the same amounts from the settlement. Consistent with that, the effective claims rate exceeds 50%, and all valid claimants will receive more than \$600.

Moreover, the settlement was not conditioned on any award of attorneys' fees and Defendants retained the right to object to Class Counsel's fee application. Additionally, Plaintiff is not seeking a service award. And, finally, attorneys' fees and Plaintiff's claim will be paid on a similar timeline to other class member payments. Kaufman Decl. 19.

As a result, each of these factors weighs in favor of final approval.

***4. The Relative Strength Of The Plaintiff's Case On The Merits And The Existence Of Any Difficulties Of Proof Or Strong Defenses The Plaintiff Is Likely To Encounter If The Case Goes To Trial***

While Plaintiff and the Class believe they would prevail on class certification and at trial, Defendants strongly argued otherwise. The risk of no recovery here and in complex cases of this type more generally is real.

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. *See e.g., Davis v. Capital One, 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. ) *Sandoe v. Jos. S. i. Cor.*, 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).

Class certification is also far from automatic in TCPA cases generally. *Comareomeo v. Citiroun*, No. 13 C 4046, 2018 WL 4627386, at 1 (N.D. Ill. Sept. 27, 2018) (denying class certification in TCPA case after nearly five years of hard-fought discovery and litigation), *Amison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action), and *Alshmiter v. D Auto in. C*, 303 F.R.D. 508, 527 (E.D. Wis. 2014) (same) *ith Safardnt l v. an uard ner y Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized), and *irhmeier v. Cari ean Cruise ine n*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same).

In evaluating a settlement, the trial court should not decide the merits, or proceed from the assumption that victory is one hundred percent assured and that all claimed damages are properly recoverable. As one court has observed, a settlement is by nature a compromise between the maximum possible recovery and the inherent risks of litigation. The test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable. *Muhammad v. at l*

*City Mort . n .*, Civil Action No. 2:07-0423, 2008 U.S. Dist. LEXIS 103534, at 13 (S.D.W. a. Dec. 19, 2008) (internal citations omitted). The risks of the litigation and the complexity of the issues involved weigh in favor of granting final approval to the Settlement.

***5. The Anticipated Duration And Expense Of Additional Litigation***

The complexity, expense, and duration of litigation are factors that support approval of a settlement. *n re Cor . iti .*, 264 F.3d 201, 231, 233 (3d Cir. 2001) *irsh v. e son*, 521 F.3d 153, 157 (3d Cir. 1975) (identifying complexity, expense, and duration as one of nine factors in determining the fairness of settlement). Here, major hurdles remain in this litigation, including class certification and summary judgment. Kaufman Decl. 15. The parties ultimately elected to forgo the expense of continued litigation in reaching a settlement that took the significant risks of further litigation into account while still providing remarkable monetary relief.

***6. The Solvency Of The Defendants And Likelihood Of Recovery On A Litigated Judgment***

While the solvency of the Defendants and the ability to recover if Plaintiff were to proceed to trial is not of particular concern here, there is benefit to avoiding delay in payment and the uncertainty involved in continued litigation. As one court acknowledged in approving a TCPA settlement funded by a large company:

Individual class members receive less than the maximum value of their TCPA claims, but they receive a payout without having suffered anything beyond a few unwanted calls or texts, they receive it (reasonably) uickly, and they receive it without the time, expense, and uncertainty of litigation....

*ehri h v. Chase an SA .A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016). The certainty created by the Settlement achieved by Plaintiff's counsel is valuable and prudent for the Class, particularly given the monetary relief obtained on a per Settlement Class Member and per claimant basis.

**7. *Other Factors: The Settlement Amount Is Significant And The Lack Of Objections Indicates The Class's Support***

Notwithstanding the robust claims rate, the anticipated Settlement Class Member payments, which are estimated to be more than 600, will far exceed the payments in similar wrong number TCPA cases across the country. Kaufman Decl. 9 *see e. . See e. . Williams*, 2019 U.S. Dist. LEXIS 56655, at 3 (M.D. Fla. Apr. 2, 2019) ( 4.53 per class member) *ames*, 2017 U.S. Dist. LEXIS 91448, at 3 ( 5.55 per class 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).

The reaction of the class members to the settlement supports final approval as well. An absence of objections and a small number of opt-outs weighs significantly in favor of a settlement's adequacy. *Kirven*, 2015 U.S. Dist. LEXIS 36393, at 14. The reaction of the class to the settlement has been positive, with *no objections no opt outs*, and a *more than effective claims rate*. Kaufman Decl. 5.

Given the unprecedented monetary relief obtained as a result of the vigorous litigation of this action, especially in light of the risks inherent in litigation and, more specifically, in the litigation of wrong number TCPA cases, and the noteworthy

claims rate achieved through the meticulous structuring and administration of the Settlement, the Settlement should be finally approved.

**CERTIFICATE OF COMPLIANCE IT LR . d**

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: January 2, 2025

Respectfully submitted,

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