UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 19-22212-CIV-BLOOM/LOUIS

STUART SAWYER, individually and on behalf of others similarly situated,

Plaintiff,

v.

INTERMEX WIRE TRANSFER, LLC,

Defendant.
_____/

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD AND INCORPORATED MEMORANDUM IN SUPPORT

The Court has preliminarily approved a proposed class action settlement ("Settlement") between Plaintiff, on behalf of himself and others similarly situated, and Defendant Intermex Wire Transfer, LLC ("Intermex").[1] The Settlement is an excellent result; it requires Intermex to pay $3,250,000 into a non-reversionary, common fund for the benefit of a Settlement Class of non-customers, like Plaintiff, to whom Intermex sent text messages using the same texting platform between May 30, 2015 and October 7, 2019. Valid claimants are expected to receive at least $400, but likely substantially more.

The Settlement is the result of the dedicated efforts of experienced and knowledgeable attorneys, who negotiated the proposed Settlement after mediation with a well-respected, third-party neutral. The Settlement was achieved only after Plaintiff's counsel had received substantive discovery as to the size and nature of the proposed class, which guaranteed informed and effective

[1] A true and correct copy of the Settlement Agreement ("Agr.") was filed as Dkt. 29-2.

negotiations.

Class Counsel respectfully seek a fee award of $1,083,333.33, which is one-third of the common fund and is consistent with fees awarded in other TCPA class litigation in this Circuit. Counsel also request that the Court reimburse their out-of-pocket expenses totaling $9,254.22, and grant an incentive award of $15,000 to Plaintiff Stuart Sawyer for his services to the Class as its Class Representative. The requested attorneys' fees and incentive award are reasonable and in line with the Eleventh Circuit's guidelines. For these reasons, and as set forth herein, Plaintiff respectfully requests that the Court grant this motion.

I. SUMMARY OF THE LITIGATION

A. The TCPA.

The Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, was enacted in response to widespread public outrage over the proliferation of intrusive, nuisance calling practices. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012). Indeed, "[m]onth after month, unwanted robocalls and texts … top the list of consumer complaints received by the [FCC]."[2] As relates to this case, the TCPA generally prohibits making *any* non-emergency call (including text message calls) using an automatic telephone dialing system or an artificial or prerecorded voice to a cell phone without prior express consent. 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA functions as a congressionally created incentive for private individuals to enforce the law. *Alea London Ltd. v. Am. Home Svcs., Inc.*, 638 F. 3d 768, 778-79 (11th Cir. 2011).

B. Summary of Case Proceedings.

After receiving a series of wrong-number text messages on his cell phone from Intermex, on May 30, 2019, Plaintiff Sawyer filed his class action complaint, alleging that Intermex caused

[2] *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, ¶ 1 (2015).

autodialed, nonconsensual text message calls to be made to the cell phone numbers of himself and others without prior express consent, in violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

The Parties engaged in thorough first- and third-party discovery. This discovery included Defendant's production of details about the scope of the putative class as well as information about the nature and cause of the alleged TCPA violations at issue. Exhibit A, Burke Decl. ¶ 13.

In August 2019, the Parties elected to pursue private mediation with Rodney A Max, Esq., a well-known mediator with experience in resolving class actions, including under the TCPA. Dkt. 18. In advance of this mediation, Class Counsel insisted that Intermex produce its class data and information for the wrong-number text messages at issue. Exhibit A, Burke Decl. ¶ 14. The Parties conducted extensive settlement discussions, with counsel preparing and serving a detailed mediation brief on Defendant and the mediator prior to successfully mediating this matter on October 7, 2019. *Id*. Although a general term sheet was agreed to at the mediation, for several months thereafter, the Parties negotiated numerous specific terms of the Settlement and for which the final product is now before the Court. *Id*. Plaintiff ultimately moved for preliminary approval March 18, 2020, which this Court subsequently granted on March 20, 2020. Dkt. 29, 30.

C. The Settlement.

The Settlement calls for Defendant to create a non-reversionary cash Settlement Fund of $3,250,000, *see* Dkt. 29-2, Agr. ¶ 2.37, to compensate the following Settlement Class:

> All noncustomers successfully contacted by Intermex by text message, through use of the same texting platform that was used to contact Plaintiff, between May 30, 2015 and October 7, 2019.

Id. ¶ 3.1. The settlement thus only affects persons who Intermex contacted in error. Customers of Intermex who received text messages are not included the settlement.

The Settlement's notice plan contemplated mailing notices to all Class Members whose

names and addresses are identifiable through a reverse lookup of the 30,260 cellular telephone numbers from which Intermex received a text message reply coded as a "Wrong Number" during the Class Period, as well as email notice to all such persons for whom such information was available, supplemented with further print and internet publication notice and a dedicated settlement website. *Id.* ¶¶ 2.8.1-2.8.2, 6.1-6.3.

To obtain a *pro rata* share of the Settlement Fund, less notice/administration costs and any award to Class Counsel or the Class Representative, Class Members must submit a claim to the Settlement Administrator by mail or through the settlement website no later than August 3, 2020. *Id.* ¶¶ 4,1.3, 7.1; Dkt. 30 at 11.[3] Class Members who do not exclude themselves will release claims tailored to the acts that gave rise to this case, i.e., "TCPA or state court analog claims … arising out of Intermex's use of the texting platform used to text Plaintiff, to text the Class members." Dkt. 29-2, Agr. ¶ 10.2 (further clarifying that the release "does not include for example claims concerning the substance of such texts or transfers of money").

D. The Notice Informs Class Members About this Fee Request.

Consistent with Eleventh Circuit law and Fed. R. Civ. P. 23(h), the Class Notice advises Class Members of the proposed attorneys' fee award as both a percentage and the exact dollar amount sought. Specifically, the notice informs Class Members that Class Counsel seek an award of "up to one-third of the Settlement Fund, or $1,083,333.33, plus costs." Dkt. 29-2 at 28 (Mail Notice); *see also* 29-2 at 30 (Email Notice); Dkt. 29-2 at 40 (Long Form Notice). The Notice also directs Class Members to a website that repeats this information, and provides a toll-free telephone number for questions. *See* www.intermextcpasettlement.com. Once filed, this motion will also be

[3] Money remaining after the initial distribution to valid claimants will be redistributed *pro rata* to those claimants who cashed their initial checks, to the extent administratively feasible, and ultimately to a Court-approved *cy pres* recipient. *Id.* ¶ 4.1.5.

posted to the Settlement Website.

To date, neither the U.S. Attorney General nor any state attorney general has contacted Plaintiff's counsel or otherwise objected to the proposed fee award, and there has been no objection by any Class Member. Exhibit A, Burke Decl. ¶ 16. In short, counsel is currently aware of no opposition to the proposed award. Plaintiff will update the Court if there are any objections (as the Class has until August 3, 2020 to object), and accordingly respond to them. Yet whether the number of objectors remains zero or a small number, a "low percentage of objections points to the reasonableness of a proposed settlement and supports its approval." *Lipuma v. Am. Express Co.*, 406 F.Supp.2d 1298, 1324 (S.D. Fla. 2005).

This Settlement meets those standards that have been historically approved in other TCPA class cases. Given the excellent financial result for the Class, the reasonableness of the request when compared to approved awards in similar cases, and the risk and effort expended, Class Counsel's requested fee award should, respectfully, be granted.

II. THE PROPOSED FEE, COST, AND SERVICE AWARDS ARE REASONABLE.

In the Eleventh Circuit, "[i]t is well established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to an allowance of attorneys' fees based upon the benefit obtained." *In re Checking Acct. Overdraft Litig.*, 830 F.Supp.2d 1330, 1358 (S.D. Fla. 2011) (awarding about $123 million in fees in a common fund settlement) (citing *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991), and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

Here, the reasonableness of the fee award is confirmed by examining it as a percentage of the Settlement Fund, as well as under the various factors established for evaluating fee requests in the Eleventh Circuit (the *Johnson*/*Camden I* factors).

A. The Fee Amount Is Reasonable as a Percentage of the Total Settlement Fund.

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). Indeed, Class Counsel's request for a one-third percentage award is supported by case law both in and outside of the Eleventh Circuit, with respect to class actions under the TCPA and generally.

The requested fee of one-third of the fund easily falls within the range of reasonableness, which can be as high as 50% in this Circuit. *See Wolff v. Cash 4 Titles*, No. 03-22778, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012) ("One-third of the recovery is considered standard in a contingency fee agreement.") (citing Conte, *Attorneys Fee Awards* § 2.07 at 48 (2d ed. 1995)); *Seghroughni v. Advantus Rest., Inc.*, No. 12-2000, 2015 WL 2255278, at *1 (M.D. Fla. May 13, 2015) ("An attorney's fee ... which is one-third of the settlement fund ... is fair and reasonable[.]"); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999) (affirming fee award of 33 1/3% of a $40 million settlement); *Camden I*, 946 F.2d at 774-75 ("[A]n upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.").

Indeed, a one-third percentage award has been approved in multiple recent TCPA and other cases in this Circuit. *See Hanley v. Tampa Bay Sports & Entm't LLC*, No. 19-550, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding slightly more than one-third attorneys' fees plus costs in TCPA class action); *Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 18- 20048, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (awarding one-third fees plus costs to class counsel in TCPA settlement); *Schwyhart v. AmSher Collection Servs., Inc.*, No. 15-1175, 2017 WL 1034201, at *3 (N.D. Ala. Mar. 16, 2017) (awarding fees of one-third of settlement fund, plus expenses, in TCPA class action, finding such an award to be "fair and reasonable"); *Wreyford v.*

Citizens for Transportation Mobility, Inc., No. 12-2524, 2014 WL 11860700, at *2 (N.D. Ga. Oct. 16, 2014) (awarding 33 1/3% fees plus costs in TCPA class action settlement); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 13-21016, 2015 WL 13650934, at *4 (S.D. Fla. June 24, 2015) (approving one-third fee award plus costs in TCPA class action settlement); *see also Lees v. Anthem Ins. Cos.*, No. 13-1411, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (awarding 34% of common fund as fees in TCPA class action); *Wolff*, 2012 WL 5290155, at *5 ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one third."); *Dear v. Q Club Hotel, LLC*, No. 15-60474, 2018 WL 1830793, at *4 (S.D. Fla. Mar. 14, 2018) ("A review of the case law reveals that a 33.3% fee award is a consistent award in class action common fund cases."); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2012 WL 12540344, at *4 (N.D. Ga. Oct. 26, 2012) (awarding one-third of $25 million settlement fund in fees, noting that "a fee of one-third of the common fund (or more) has been awarded in a number of other antitrust class actions no more complicated than this one, most of which settled at earlier stages of litigation"); *Vinson v. Fleetcor Techs., Inc.*, No. 14-1939 (N.D. Ga. Jan. 9, 2017) (Dkt. 60, awarding one-third fees in FCRA class settlement, plus costs).

Additionally, the percentage sought is appropriate when compared to large common fund settlements generally: "Indeed, district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund." *Hanley*, 2020 WL 2517766, at *6 (citing cases); *see also Cabot E. Broward 2 LLC v. Cabot*, No. 16-61218, 2018 WL 5905415, at *7 (S.D. Fla. Nov. 9, 2018) (citing "19 cases from this Circuit in which attorneys' fees amounting to 33% or more of a settlement fund were awarded"); *see also Waters*, 190 F.3d at 1295-296 (Eleventh Circuit affirmed a 33.33% fee award ($13.33 million) in a $40 million settlement that, unlike here, required unclaimed funds to be paid back to the defendant).

Finally, a one-third contingent fee is the gold standard for attorney fee agreements in general non-fee shifting tort litigation involving personal injury and other consumer damage cases. *See Schlesinger v. Wallace*, No. 68-461, 1973 WL 413, at *12 (N.D. Ala. Apr. 16, 1973) ("It is commonplace, in personal injury actions, for the attorney and his client to agree upon a contingent fee ranging from one-third to one-half whatever recovery is obtained."). "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7th Cir. 2013).

In short, Plaintiff's fee request as a percentage is reasonable and in line with percentages approved in similar TCPA and other class action settlements.

B. The Proposed Fee Award Is Also Reasonable Under *Johnson/Camden I*.

In cases in which the fees sought exceed 25% of the fund, the Eleventh Circuit endorses using the factors articulated in *Johnson v. Georgia Highway Expr., Inc*., 488 F.2d 714 (5th Cir. 1974), to confirm the reasonableness of the award. *Camden I*, 946 F.2d at 775. The *Johnson*/*Camden I* factors are (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is contingent; (7) time limitations imposed by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*, 946 F.2d at 772, n.3. These factors confirm the reasonableness of the proposed fee award here.

1. This Case Presented Novel and Difficult Issues.

The second, tenth, and eleventh *Johnson/Camden I* factors look to the length, novelty, and

undesirability or difficulty of the case, and support approval of Class Counsel's fee request.

Plaintiff's allegations in this case—based on wrong-number text messages—present unique difficulties at class certification, with defendants at times being successful at arguing that poor quality or purported inconsistencies in their own records from which the class may be identified, or the purported inability to ascertain unknown class members from their phone numbers alone, precludes a finding of predominance. *E.g., Luster v. Green Tree Servicing, LLC*, No. 14-1763 (N.D. Ga. Sept. 5, 2018) (accepting general assertions by defendant that it obtains consent in a variety of manners in finding lack of predominance, despite fact that defendant's data admittedly lacked flags it used to track consent to place the calls at issue); *Sherman v. Yahoo! Inc.*, No. 13-41, 2015 WL 5604400, at *6 (S.D. Cal. Sept. 23, 2015) (declining to certify class where plaintiff proposed identifying class members through a reverse-lookup process like was used here, finding that "Plaintiff has not met her burden of demonstrating that there is an administratively feasible method of identifying the putative class members"); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 280 (M.D. Fla. 2019) (denying motion to certify wrong-number TCPA case, finding that "determining whether Defendants called a class member after designating that number as a 'wrong number' will require a case-by-case analysis of the facts"); *cf. Wilson v. Badcock Home Furniture*, 329 F.R.D. 454 (M.D. Fla. 2018).

Not only that, but the law governing the TCPA has been in a state of extreme flux. For example, in 2018, the D.C. Circuit vacated part of an FCC declaratory ruling, including as to its interpretation of what constitutes an automatic telephone dialing system ("ATDS" or "autodialer") under the TCPA, directly applicable to Plaintiff's claims here under 47 U.S.C. § 227(b)(1)(A)(iii). *ACA Int'l v. FCC*, 885 F.3d 687, 703 (D.C. Cir. 2018). A Circuit split on the definition has since developed, with some courts—including now the Eleventh Circuit—imposing a restrictive

interpretation that could arguably exclude nearly all equipment that has been considered to be an autodialer for the past decade or more. *See Glasser v. Hilton Grand Vacations Co.*, 948 F.3d 1301, 1306 (11th Cir. 2020) (acknowledging that "[c]larity ... does not leap off this page of the U.S. Code", but ultimately holding that an ATDS is defined to require use of equipment capable of storing or producing numbers using a random or sequential number generator).[4] If the Court here were to have found that Intermex's dialing system wasn't an ATDS, then Plaintiff and the Class would recover nothing. Given the uncertainty surrounding this area of the TCPA, the class-related question underlying this matter—i.e., whether this Court should certify Plaintiff's proposed class—was both novel and difficult.

This risk was real. Plaintiff lawyers – undersigned counsel included – sometimes lose cases, both through dispositive motions, summary judgment and through denial of class certification. *See, e.g., Tomeo v. CitiGroup, Inc.*, No. 13-4046, 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); *Luster v. Green Tree Servicing, LLC*, No. 14-1763 (N.D. Ga. Sept. 5, 2018) (denying class certification in TCPA case after four years of litigation); *Tillman v. Ally Fin. Inc.*, No. 16-313, 2017 WL 7194275, at *7 (M.D. Fla. Sept. 29, 2017) (denying motion to certify adversarial TCPA wrong-number class); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 282 (M.D. Fla. 2019) (same); *Wilson v. Badcock Home Furniture*, 329 F.R.D. 454, 460 (M.D. Fla. 2018) (same).

As a further illustration of the risks presented, the constitutionality of the TCPA is currently

[4] *But see, e.g., Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th Cir. 2018), *cert. dismissed*, 139 S. Ct. 1289 (2019) (defining ATDS to include "equipment which has the capacity … to store numbers to be called … and to dial such numbers"); *see also Duran v. La Boom Disco, Inc.*, 955 F.3d 279, 287 (2d Cir. 2020) (similarly holding that "an ATDS may call numbers from stored lists").

pending in the United States Supreme Court, a decision on which could possibly directly affect the claims here. *Barr v. Am. Ass'n of Political Consultants*, No. 19-631, 140 S. Ct. 812 (2020) (granting *certiorari*).And assuming Plaintiff prevailed on certification and the merits, the resulting damage award itself presents a novel issue. Some courts view awards of aggregate, statutory damages with skepticism and consider reducing such awards—even after a plaintiff has prevailed on the merits—on due process grounds. *See, e.g., Aliano v. Joe Caputo & Sons - Algonquin, Inc.*, No. 09-910, 2011 WL 1706061, at *4 (N.D. Ill. May 5, 2011) ("Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature."); *but see Phillips Randolph Enters., LLC v. Rice Fields*, No. 06-4968, 2007 WL 129052, at *3 (N.D. Ill. Jan. 11, 2007) ("Contrary to [Defendants'] implicit position, the Due Process clause of the 5th Amendment does not impose upon Congress an obligation to make illegal behavior affordable, particularly for multiple violations.").

Class Counsel assumed the risk of this litigation, including not only the allotment of time for each of the two firms, but also the advancement of financial costs and expenses necessary to ultimately prosecute this matter zealously on behalf of Plaintiff and the class, on a fully contingent basis. As a result, the risk Class Counsel assumed in litigating this matter given the novelty and nature of this action, while at the same time keeping expenditure of judicial resources to a minimum through effective, efficient advocacy, was significant. These factors thus support the fee award.

2. Class Counsel Achieved an Excellent Result for the Class.

The eighth *Johnson/Camden I* factor looks to the amount involved in the litigation "with particular emphasis on the 'monetary results achieved'" by class counsel. *Allapattah Servs., Inc.,* 454 F.Supp.2d at 1202; *see also Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir.

1993) ("In common fund cases … the monetary amount of the victory is often the true measure of success[.]").

Here, the Parties' negotiated agreement provides a Settlement Fund of $3,250,000, with an expected individual claimant recovery of approximately $400 or more. Dkt. 29-2, Agr. ¶ 2.37; Dkt. 29-2 at 37. This is an exceptional result: Indeed, outside of willful conduct, $400 per violation is 80% of the *maximum* class members could potentially obtain under the TCPA in statutory damages for a violation, 47 U.S.C. § 227(b)(3).[5] This expected net amount to each class member far exceeds what has been approved in many other TCPA class action settlements.[6] Accordingly, this factor weighs strongly in favor of the proposed fee award.

3. The Time and Labor Required, Preclusion from Other Employment, and the Time Limits Imposed Justify the Cost and Fee Amount.

The first, fourth, and seventh *Johnson/Camden I* factors – the time and labor, preclusion of other employment, and time limitations imposed, respectively – are also interrelated inquires that support the reasonableness of the fee request.

Counsel pursued this case on an entirely contingent-fee basis, devoting time and resources without any guarantee of payment. In advance of mediation, Plaintiff's counsel insisted that Intermex produce data for the text messages at issue, and spent time processing and analyzing these records—an analysis that was ultimately used in effectuating class notice. Exhibit A, Burke Decl. ¶ 14. Counsel's work on the case and emphasis on obtaining meaningful discovery on the

[5] Indeed, it costs $400 to *file* a lawsuit in federal court, just $100 more than the TCPA's base statutory damages provides. 47 U.S.C. § 227(b)(3).

[6] *E.g., Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) (approving $24 per claimant in a TCPA class action); *Wright v. Nationstar Mortgage LLC*, No. 14-10457, 2016 WL 4505169, at *2 (N.D. Ill. Aug. 29, 2016) (granting final approval to TCPA class settlement where anticipated claimant recovery was $45); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015) ($34.60); *Kolinek v. Walgreen Co.*, No. 13-4806, 2015 WL 7450759, at *19 (N.D. Ill. Nov. 23, 2015) (approximately $30).

scope and nature of the class in advance of mediation—later prefaced by the parties' exchange of adversarial mediation briefs—ensured fair, adequate, and informed negotiations. *Id*. And while the temporal length of proceedings to date extends only roughly a year, that Plaintiff's counsel here were able to work effectively and efficiently to achieve this exceptional settlement of claims that now, in light of *Glasser*, might not have legs on the merits, further supports the fee requested. *E.g., In re M.D.C. Holdings Sec. Litig.*, No. 89-0090, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("Class counsel obtained this result in a very short period of time for a complex securities fraud suit.... [T]he early distribution of the class settlement fund in this case is a substantial benefit in and of itself. The substantial risk of no recovery in the absence of a settlement has been avoided."); *see also Salcedo v. Hanna*, 936 F.3d 1162, 1166 (11th Cir. 2019).

The work Class counsel were required to expend in their zealous advocacy here diverted time and resources from other matters. *See Yates v. Mobile Cnty. Pers. Bd*., 719 F.2d 1530, 1535 (11th Cir. 1983) (expenditure of time "necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award"); *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 708 (D. Colo. 2007) ("[T]he *Johnson* court concluded that priority work that delays a lawyer's other work is entitled to a premium.").

The Settlement also reflects Class Counsel's experience in handling large TCPA cases. *See* Exhibit A, Burke Decl. ¶¶ 2-11; Exhibit B, Howard Decl. ¶¶ 2-13. This experience ensured that Class Counsel were adequate to the task, willing to do what it took to achieve an excellent result, and genuinely understood what the case was worth given the law, facts, and risks (for both sides), after thorough discovery. Exhibit A, Burke Decl. ¶ 15. Even then, the case did not settle until after Plaintiff secured crucial information pertaining the size and nature of the class and the Parties attended an all-day mediation with an experienced third-party neutral, further evidencing the hard-

fought effort expended by Class Counsel to achieve this excellent result. *Id.*

Furthermore, Class Counsels' firms are relatively small. *E.g.,* Exhibit A, Burke Decl. ¶ 11. The amount of work Class Counsel can handle at any given time is accordingly limited, and their efforts in connection with, and commitment to, this matter, curtailed an ability to accept other work. The above factors thus support the proposed award.

4. The Requested Fee Is Consistent with Other Consumer Class Settlements.

The fifth and twelfth *Johnson*/*Camden I* factors, the customary fee and awards in similar cases, also support approval. As discussed above, plenty of consumer class actions – including many TCPA cases in this Circuit – have granted one-third percentage-of-the-fund fee awards. *E.g., Cook v. Palmer Riefler & Assocs., P.A.*, No. 3:16-cv-00673 (M.D. Fla. May 29, 2020) (granting fee request of 33⅓% of $3.5 million TCPA settlement fund); *Hanley*, 2020 WL 2517766, at *6 (finding, in TCPA class case, that "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund[,]" and finding that fee award that "represents a slight increase from the one-third benchmark, is reasonable"); *Gonzalez*, 2019 WL 2249941, at *6 (awarding fees of one-third of fund in TCPA class settlement); *Schwyhart v. AmSher Collection Servs., Inc.*, No. 15-1175, 2017 WL 1034201, at *3 (N.D. Ala. Mar. 16, 2017) (same); *Gottlieb v. CITGO Petroleum Corp.*, No. 16-81911 [Dkt. 67 at pp. 5-6] (S.D. Fla. Nov. 29, 2017) (awarding attorneys' fees of 33.33% of settlement fund in TCPA class action, plus costs); *Chimeno-Buzzi v. Hollister Co.,* No. 14-23120 [Dkt. 155 at p. 8] (S.D. Fla. Apr. 11, 2016) (granting one-third fee award in TCPA class action settlement, finding it to be "consistent with the trend in this Circuit"); *Guarisma*, 2015 WL 13650934, at *4 (approving 33% fee award); *Legg v. Lab. Corp. of Am.*, No. 14-61543, 2016 WL 3944069, at *3 (S.D. Fla. Feb. 18, 2016) (FACTA case awarding one-third of recovery for attorneys' fees, plus expenses, finding it "consistent with other fee awards in this

Circuit") (citing *Waters*, 190 F.3d at 1295-96, for having affirmed class attorneys' award of 33.3%); *Atkinson v. Wal-Mart Stores, Inc.*, No. 08-691, 2011 WL 6846747, at *7 (M.D. Fla. Dec. 29, 2011) ("[T]he Court finds that Class Counsel's fee agreements with clients usually provide for a fee of between 33⅓% to 40% to trial, and 40% to 45% on appeal. The customary fee for the clients and the class is at least 33⅓%."); *Wolff*, 2012 WL 5290155, at *5 (citing cases supporting one-third as market rate); *Dear*, 2018 WL 1830793, at *4 (same). Thus, this factor also favors the proposed fee award.

5. This Case Required a High Level of Skill and Experience.

The third and ninth *Johnson/Camden I* factors – the skill required to perform the legal services properly, and the experience, reputation, and ability of the attorneys – also confirm that the fees and expenses sought are reasonable. As shown, Class Counsel achieved a settlement that confers substantial benefits on the Class despite litigating against a sophisticated and well-financed defendant represented by top-tier counsel. *See In re Sunbeam Sec. Litig.,* 176 F.Supp.2d at 1334 ("[I]n assessing the quality of representation, courts have also looked to the quality of the opposition the plaintiffs' attorneys faced.").

This outcome was made possible by Class Counsel's extensive experience in litigating class actions of similar size, scope and complexity. Class Counsel were able to steer this case to a substantial TCPA recovery per class member, while avoiding the risk that contested class certification or summary judgment rulings, or trial, might fall in Defendant's favor. Class Counsel regularly engage in complex litigation involving consumer issues, including under the TCPA, and they have been appointed class counsel in numerous cases. *See* Exhibit A, Burke Decl. ¶¶ 2-11; Exhibit B, Howard Decl. ¶¶ 2-13. And Class Counsel achieved this result without extensive discovery battles that could have drained the Parties' and Court's resources. *See Snead v. Interim*

HealthCare of Rochester, Inc., 286 F. Supp. 3d 546, 560 (W.D.N.Y. 2018) (citing fact that favorable settlement was achieved "without great exertion of Court resources" as "a positive reflection of counsel's experience and the quality of the representation").

Thus, the skill required, and experience of Class Counsel support the reasonableness of the proposed fee award, and it should, respectfully, be approved.

6. The Class Representative and His Counsel Entered into a Contingent Attorneys' Fee Agreement.

The sixth *Johnson/Camden I* factor – whether the fee is contingent – also supports Class Counsel's fee request. Here, Plaintiff's agreement with his counsel provides that the fee for their services is contingent upon effecting a recovery or successful result and that, should this case proceed as a class action, Plaintiff's counsel compensation will be determined by the Court, payable solely from the parties against whom Plaintiff's claims are brought. *See* Exhibit A, Burke Decl. ¶ 19. Thus, that the attorneys' fee arrangement in this case was contingent "weighs in favor of the requested attorneys' fees award; "'[s]uch a large investment of money [and time] place[s] incredible burdens upon … law practices and should be appropriately considered.'" *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012).

All of the *Johnson/Camden I* factors support Class Counsel's requested fee award, and the Court should grant this motion.

C. The Expenses Incurred Are Reasonable and Should Be Approved.

"It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses, which include such things as expert witness costs, mediation costs, computerized research, court reports, travel expenses, and copy, telephone, and facsimile expenses." *Krueger*, 2015 WL 4246879, at *3 (citation omitted).

The Settlement permits Class Counsel to seek recovery of expenses incurred on behalf of

the Class. Dkt. 29-2, Agr. ¶ 15.1. This figure totals $9,254.22, largely consisting of expenses related to mediation and case-related travel. *See* Exhibit A, Burke Decl. ¶ 17; Exhibit B, Howard Decl. ¶ 14. None are for overhead-type items such as photocopying, research, telephone, etc. Thus, counsel's expenses also should be approved. *E.g.*, *Legg*, 2016 WL 3944069, at *3 (granting 1/3 percentage fee award, plus expenses); *Wolff*, 2012 WL 5290155, at *7 (awarding fees plus expenses); *Dear*, 2018 WL 1830793, at *4 (same).

D. The Class Representative's Incentive Award Request Is Fair, Reasonable, and Supported by Law.

"Incentive awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *see also Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (explaining that "[i]ncentive awards are typically awards to class representatives for their often extensive involvement with a lawsuit," and noting that "[n]umerous courts have authorized incentive awards"). These awards "are not uncommon and can serve an important function in promoting class action settlements." *Sheppard v. Consol. Edison Co.*, No. 94-403, 2002 WL 2003206, at *5 (E.D.N.Y. Aug. 1, 2002).

Similarly, without Plaintiff serving as class representative, the Class would not have been able to recover anything. *See In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. 10-4038, 2011 WL 5547159, at *5 (N.D. Iowa Nov. 9, 2011) ("[E]ach … plaintiff has provided invaluable assistance and demonstrated an ongoing commitment to protecting the interests of class members. The requested incentive award for each named plaintiff recognizes this commitment and the benefits secured for other class members, and is thus reasonable under the circumstances of this case.").

The class representative here, Stuart Sawyer, spent considerable time pursuing Class Members' claims. In particular, Mr. Sawyer communicated with counsel to keep apprised of this

matter, participated in the pre-suit investigation and discovery process, including producing documents and responding to information requests, and ultimately approved and executed the Settlement Agreement. Exhibit A, Burke Decl. ¶ 18. The Settlement Agreement specifically contemplates him seeking an incentive award for his efforts. *See* Dkt. 29-2, Agr. ¶ 15.2.

Given all of the foregoing, the requested incentive award of $15,000 is fair and reasonable, especially when compared to other approved awards. *E.g., Cook v. Palmer Riefler & Assocs., P.A.*, No. 3:16-cv-00673 (M.D. Fla. May 29, 2020) (awarding $20,000 incentive award to TCPA class representative); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61218, 2018 WL 5905415, at *11 (S.D. Fla. Nov. 9, 2018) (awarding each representative award of $50,000, citing cases); *Jones v. I.Q. Data Int'l, Inc.*, No. 14-00130, 2015 WL 5704016, at *2 (D.N.M. Sept. 23, 2015) (approving $20,000 incentive award in TCPA case); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015) (approving $25,000 incentive awards for each named plaintiff). Accordingly, the incentive award of $15,000 to Mr. Sawyer should be approved. *See Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, 2017 WL 416425, at *3 (N.D. Ga. Jan. 30, 2017) (awarding $20,000 incentive award to each named plaintiff in TCPA class settlement); *Prather v. Wells Fargo Bank, N.A.*, No. 15-4231 (N.D. Ga. Aug. 31, 2017) (Dkt. 54, awarding $15,000 to each named plaintiff in TCPA class settlement); *Luster v. Wells Fargo Dealer Servs., Inc.*, No. 15:1058 (N.D. Ga. Nov. 8, 2017) (Dkt. 80, awarding $20,000 incentive award in TCPA class settlement).

III. CONCLUSION

Class Counsel's proposed fee award is a reasonable percentage of the Settlement Fund under Eleventh Circuit law, and satisfies the *Johnson/Camden I* factors. Accordingly, for the foregoing reasons, Plaintiff respectfully requests that the Court award Class Counsel

$1,083,333.33 in attorneys' fees and $9,254.22 in costs and expenses, as well as an incentive award of $15,000 to Plaintiff Sawyer for his service as Class Representative.

Respectfully submitted,

STUART SAWYER, individually and
on behalf of others similarly situated

Dated: June 3, 2020

By: */s/ William "Billy" Peerce Howard*

William "Billy" Peerce Howard
(FBN 103330)
THE CONSUMER PROTECTION FIRM, PLLC
4030 Henderson Blvd.
Tampa, FL 33629
Telephone: (813) 500-1500
billy@theconsumerprotectionfirm.com

Alexander H. Burke (*pro hac vice*)
BURKE LAW OFFICES, LLC
155 N. Michigan Ave., Suite 9020
Chicago, IL 60601
Telephone: (312) 729-5288
aburke@burkelawllc.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on June 3, 2020, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ William "Billy" Peerce Howard

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 19-22212-CIV-BLOOM/LOUIS

STUART SAWYER, individually and on behalf of others similarly situated,

Plaintiff,

v.

INTERMEX WIRE TRANSFER, LLC,

Defendant.
_____/

DECLARATION OF ALEXANDER H. BURKE

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

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

2. I opened Burke Law Offices, LLC in September 2008. The firm concentrates on consumer class action and consumer work on the plaintiff side. Since the firm began, it has focused on prosecuting cases pursuant to the Telephone Consumer Protection Act, although the firm accepts the occasional action pursuant to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, Electronic Funds Transfer Act, Illinois Consumer Fraud Act, Truth in Lending Act and the Fair Labor Standards Act, among others. The firm also

sometimes accepts mortgage foreclosure defense or credit card defense case. Except for debt collection defense cases, the firm works almost exclusively on a contingency basis.

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

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

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

6. Some notable TCPA class actions and other cases that my firm has worked on include: *Kyle v. Charter Commc'ns, Inc.*, 2020 WL 2028269 (W.D. Mo. Apr. 27, 2020) (motion to dismiss or stay TCPA case denied); *Gurzi v. Penn Credit, Corp.*, 2020 WL 1501893 (M.D. Fla. Mar. 30, 2020) (finding VoApps calls to be covered by the TCPA); *Hoagland v. Axos Bank*, 2020 WL 583974 (S.D. Cal. Feb. 6, 2020) (motion to dismiss or stay TCPA case denied); *Charvat v. Valente*, 2019 WL 5576932 (N.D. Ill. Oct. 28, 2019) ($12.5M TCPA settlement finally approved); *Brown v. DirecTV, LLC*, 2019 WL 6604879 (C.D. Cal. Aug. 5, 2019) (certifying TCPA litigation class); *Leeb v. Charter Commc'ns, Inc.*, 2019 WL 1472587 (E.D. Mo. Apr. 3, 2019) (appointing Burke Law Offices as Fed.R.Civ.P. 23(g) interim lead class counsel), *earlier decision* 2019 WL 144132 (Jan. 19, 2019) (compelling class data in TCPA case); *Brown v. DirecTV, LLC*, 2019 WL 1434669, at *1 (C.D. Cal. Mar. 29, 2019) (granting class certification in TCPA case, appointing Burke Law Offices as class counsel); *Rodriguez v. Premier Bankcard, LLC*, No. 3:16-cv-02541, 2018 WL 4184742 (N.D. Ohio Aug. 31, 2018) (defense summary judgment motion denied); *Saunders v. Dyck O'Neal, Inc.*, No. 1:17-cv-00335, 2018 WL 3453967 (W.D. Mich. July 16, 2018) (as a matter of first impression, holding that "direct drop" voice mails are covered by the TCPA), *Postle v. Allstate Ins. Co.*, No. 17-CV-07179, 2018 WL 1811331, at *1 (N.D. Ill. Apr. 17, 2018) (denying motion to dismiss on statutory standing grounds); *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 573 (N.D. Ill. 2018) (certifying contested telemarketing TCPA class); *Cross v. Wells Fargo, N.A.*, 1:15-cv-1270, Docket Entry 103 (Feb. 10, 2017 N.D.Ga.) (final approval granted for $30M class settlement where I was lead counsel); *Lowe v. CVS Pharmacy, Inc.*, No. 14 C 3687, 2017 WL 528379 (N.D. Ill. Feb. 9, 2017) (personal jurisdiction motion denied in large TCPA case); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-1156-LMM, 2017 WL 416425 (Jan. 30, 2017, N.D.Ga.)

(final approval granted for $16M class settlement where I was lead counsel); *Tillman v. The Hertz Corp.*, No. 16 C 4242, 2016 WL 5934094 (N.D. Ill. Oct. 11, 2016) (motion to compel TCPA class case into arbitration denied); *Hurst v. Monitronics Int'l, Inc.*, No. 1:15-CV-1844-TWT, 2016 WL 523385 (N.D. Ga. Feb. 10, 2016); (motion to compel arbitration denied); *Smith v. Royal Bahamas Cruise Line*, No. 14-CV-03462, 2016 WL 232425 (N.D. Ill. Jan. 20, 2016) (personal jurisdiction motion denied); *Bell v. PNC Bank, Nat'. Ass'n*., 800 F.3d 360 (7th Cir. 2015) (class certification affirmed in wage and hour case); *Charvat v. Travel Services*, 2015 WL 3917046 (N.D. Ill. June 24, 2015) (determining proper scope of class representative discovery in TCPA case), and 2015 WL 3575636 (N.D. Ill. June 8, 2015) (granting plaintiff's motion to compel vicarious liability/agency discovery in TCPA case); *Lees v. Anthem Ins. Cos. Inc*., 2015 WL 3645208 (E.D. Mo. June 10, 2015) (finally approving TCPA class settlement where I was class counsel); *Hofer v. Synchrony Bank*, 2015 WL 2374696 (E.D. Mo. May 18, 2015) (denying motion to stay TCPA case on primary jurisdiction grounds); *In re Capital One TCPA Litig*., No. 11-5886, 2015 WL 605203 (N.D. Ill. Feb. 12, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015) (granting final approval to TCPA class settlement where I was class counsel); *Hossfeld v. Government Employees Ins. Co.*, 88 F. Supp. 3d 504 (D. Md. 2015) (denying motion to dismiss in TCPA class action); *Legg v. Quicken Loans, Inc*., 2015 WL 897476 (S.D. Fla. Feb. 25, 2015) (denying motion to dismiss in TCPA case); *Hanley v. Fifth Third Bank*, No. 1:12-cv-1612 (N.D. Ill. Dec. 27, 2013) (final approval for $4.5 million nonreversionary TCPA settlement); *Smith v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 228892, (N.D.Ill. Jan. 21, 2014) (designating me as pursuant to Fed.R.Civ.P. 23(g) interim liaison counsel pursuant to contested motion in large TCPA class case), 2014 WL 3906923 (Aug 11, 2014)

(motion to dismiss denied in cutting edge TCPA vicarious liability case); *Markovic v. Appriss, Inc*., 2013 WL 6887972 (S.D. Ind. Dec. 31, 2013) (motion to dismiss denied in TCPA class case); *Martin v. Comcast Corp.*, 2013 WL 6229934 (N.D. Ill. Nov. 26, 2013) (motion to dismiss denied in TCPA class case); *Gold v. YouMail, Inc*., 2013 WL 652549 (S.D. Ind. Feb. 21, 2013) (contested motion for leave to amend granted to permit cutting-edge vicarious liability theory allegations); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215 (N.D. Ill. Aug. 21, 2012) (Denlow, J.) (certifying litigation class and appointing me as class counsel) (final approval granted for $7.5 million class settlement granted January 16, 2014); *Desai v. ADT, Inc.*, No. 1:11-cv-1925 (N.D. Ill. June 21, 2013) (final approval for $15 million TCPA class settlement granted); *Martin v. CCH, Inc*., No. 1:10-cv-3494 (N.D. Ill. Mar. 20, 2013) (final approval granted for $2 million class settlement in TCPA autodialer case); *Swope v. Credit Mgmt., LP*, 2013 WL 607830 (E.D. Mo. Feb. 19, 2013) (denying motion to dismiss in "wrong number" TCPA case); *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838 (N.D. Ill. Aug. 10, 2012) (denying motion to dismiss TCPA case on constitutional grounds); *Soppet v. Enhanced Recovery Co*., 2011 WL 3704681(N.D. Ill. Aug 21, 2011), *aff'd*, 679 F.3d 637 (7th Cir. 2012) (TCPA defendant's summary judgment motion denied. My participation was limited to litigation in the lower court); *D.G. ex rel. Tang v. William W. Siegel & Assocs., Attorneys at Law, LLC*, 2011 WL 2356390 (N.D. Ill. Jun 14, 2011); *Martin v. Bureau of Collection Recovery*, 2011WL2311869 (N.D. Ill. June 13, 2011) (motion to compel TCPA class discovery granted); *Powell v. West Asset Mgmt., Inc.*, 773 F. Supp. 2d 898 (N.D. Ill. 2011) (debt collector TCPA defendant's "failure to mitigate" defense stricken for failure to state a defense upon which relief may be granted); *Fike v. The Bureaus, Inc.*, 09-cv-2558 (N.D. Ill. Dec. 3, 2010) (final approval granted for $800,000 TCPA settlement in autodialer case against debt collection agency);

Donnelly v. NCO Fin. Sys., Inc., 263 F.R.D. 500 (N.D. Ill. Dec. 16, 2009) (Fed. R. Civ. P. 72 objections overruled in toto), 2010 WL 308975 (N.D. Ill. Jan 13, 2010) (novel class action and TCPA discovery issues decided favorably to class).

7. Before I opened Burke Law Offices, LLC, I worked at two different plaintiff boutique law firms doing mostly class action work, almost exclusively for consumers. Some decisions that I was actively involved in obtaining while at those law firms include: *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D. Ill. 2008) (FCRA class certification granted); 542 F. Supp. 2d 842 (N.D. Ill. 2008) (plaintiffs' motion for judgment on pleadings granted); *Harris v. Best Buy Co.*, No. 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008) (Class certification granted); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FCRA class certification granted); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FCRA class certification granted); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. Feb. 7, 2008) (FCRA class certification granted); *aff'd upon objection* (Mar. 28, 2008); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. Oct. 10, 2007) (motion to dismiss in putative class action denied); *Barnes v. FleetBoston Fin. Corp., C.A.* No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072 (D. Mass. Aug. 22, 2006) (appeal bond required for potentially frivolous objection to large class action settlement, and resulting in a $12.5 million settlement for Massachusetts consumers); *Longo v. Law Offices of Gerald E. Moore & Assocs., P.C.*, No. 04 C 5759, 2006 U.S. Dist. LEXIS 19624 (N.D. Ill. March 30, 2006) (class certification granted); *Nichols v. Northland Groups, Inc.*, Nos. 05 C 2701, 05 C 5523, 06 C 43, 2006 U.S. Dist. LEXIS 15037 (N.D. Ill. March 31, 2006) (class certification granted for concurrent classes against same defendant for ongoing violations); *Lucas v. GC Services, L.P.*, No. 2:03 cv 498, 226 F.R.D. 328 (N.D. Ind. 2004) (compelling

discovery), 226 F.R.D. 337 (N.D. Ind. 2005) (granting class certification); *Murry v. America's Mortg. Banc, Inc.*, Nos. 03 C 5811, 03 C 6186, 2005 WL 1323364 (N.D. Ill. May 5, 2006) (Report and Recommendation granting class certification), *aff'd*, 2006 WL 1647531 (June 5, 2006); *Rawson v. Credigy Receivables, Inc*., No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying motion to dismiss in class case against debt collector for suing on time-barred debts).

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

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

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

Association, the Chicago Bar Association, the Seventh Circuit Bar Association, and the American Bar Association, as well as the National Association of Consumer Advocates

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

12. Co-counsel and I pursued this case on an entirely contingent-fee basis, devoting time and resources without any guarantee of payment.

13. The attorneys at Burke Law Offices, LLC have zealously advocated on behalf of Plaintiff and the class in this case. We have invested substantial time and resources preparing this case, including through investigating Plaintiff's individual and class claims, conducting substantial discovery that included Defendant's production of details about the scope of the putative class as well as information about the nature and cause of the alleged TCPA violations at issue, and working to negotiate the Settlement. My firm and I have devoted, and will continue to devote, the experience and resources necessary to protect the class members' interests.

14. In August 2019, the Parties elected to pursue private mediation with Rodney A Max, Esq., a well-known mediator with experience in resolving class actions, including under the TCPA. In advance of mediation, we insisted that Intermex produce data for the text messages at issue, and spent time processing and analyzing these records—an analysis that was ultimately used in effectuating class notice. The Parties conducted extensive settlement discussions, with counsel preparing and serving a detailed mediation brief on Defendant and the mediator prior to successfully mediating this matter on October 7, 2019. Although a general term sheet was agreed to at the mediation, for several months thereafter, the Parties negotiated

numerous specific terms of the Settlement until reaching a final product. Our work on the case and emphasis on obtaining meaningful discovery on the scope and nature of the class in advance of mediation—later prefaced by the parties' exchange of adversarial mediation briefs—ensured fair, adequate, and informed negotiations

15. The Settlement also reflects Class Counsel's experience in handling large TCPA cases. This experience ensured that Class Counsel were adequate to the task, willing to do what it took to achieve an excellent result, and genuinely understood what the case was worth given the law, facts, and risks (for both sides), after thorough discovery. The case did not settle until after Plaintiff secured crucial information pertaining the size and nature of the class and the Parties attended an all-day mediation with an experienced third-party neutral, further evidencing the hard-fought effort expended by Class Counsel to achieve this excellent result

16. To date, neither the U.S. Attorney General nor any state attorney general has contacted Plaintiff's counsel or otherwise objected to the proposed fee award, and there has been no objection by any Class Member

17. Burke Law Offices, LLC has $8,291.62 in out-of-pocket costs for the class's benefit for which we seek reimbursement, including costs for mediation ($5,812.50) and case-related travel ($2,479.12).

18. The class representative here, Stuart Sawyer, spent considerable time pursuing Class Members' claims. In particular, Mr. Sawyer communicated with counsel to keep apprised of this matter, participated in the pre-suit investigation and discovery process, including producing documents and responding to information requests, and ultimately approved and executed the Settlement Agreement.

19. Plaintiff's agreement with his counsel provides that the fee for their services is contingent upon effecting a recovery or successful result and that, should this case proceed as a class action, Plaintiff's counsel compensation will be determined by the Court, payable solely from the parties against whom Plaintiff's claims are brought.

20. Given the meaningful recovery for the class that results from the parties' settlement—which is well in line with other TCPA class action settlements—and considering the risks associated with continuing to litigate this matter, my co-counsel and I firmly believe that the settlement is fair, reasonable, and adequate, and that it far outweighs the delay and considerable risk attendant to proceeding with this matter in a contested fashion.

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

Executed on June 3, 2020.

s/ Alexander H. Burke

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:19-cv-22212-BB

STUART SAWYER, individually and on behalf of others similarly situated,

Plaintiff,

v.

INTERMEX WIRE TRANSFER, LLC,

Defendant.
_____/

DECLARATION OF WILLIAM "BILLY" PEERCE HOWARD

I, William "Billy" Peerce Howard, hereby declares as follows:

1. My name is William "Billy" Peerce Howard and I am over the age of 18.

2. I am an attorney duly admitted to practice law in the state of Florida. I practice in the area of consumer class action and individual consumer rights cases and have practiced in this area for the past 23 years.

3. I am the managing partner of The Consumer Protection Firm, PLLC, and we help individuals nationwide who are victims of harassing and abusive collection tactics specializing in holding banks, debt collectors and other financial institutions accountable for illegal "robo-dialing" campaigns, in violation of the Telephone Consumer Protection Act ("TCPA"). I also litigated hundreds of other consumer rights lawsuits including: Fair Debt Collection Practice Act ("FDCPA"), Fair Credit Reporting Act ("FCRA"), Unfair and Deceptive Trade Practices, Illegal Tape Recordings, Civil Theft, Fraud, Florida Consumer Collection Practices Act ("FCCPA") and Intentional Infliction of Emotional Distress claims.

4. I have testified in Tallahassee before an Insurance and Banking Subcommittee to help defeat a proposed change to Florida's consumer protection law from the banking industry.

5. I was asked by the Federal Trade Committee ("FTC") to round-table in D.C. concerning the use of social media, including Facebook, to collect debts and locate consumers.

6. I obtained a punitive damages verdict against a national debt collection company and have gone to trial numerous times in consumer cases against large companies and debt collectors.

7. I am regarded as an expert in consumer rights cases and have frequently appeared on national news stations including: Inside Edition, World News Tonight with Dianne Sawyer, 60 Minutes, CNN, ABC Nightly News, Nightline, Fox, Fox and Friends, CBS and NBC. I have also been the subject of hundreds of on-line articles world-wide concerning some of my high-profile consumer rights cases.

8. I have lectured at colleges and given seminars concerning consumer rights and recently did a webinar on the TCPA.

9. I regularly lecture at the National Consumer Law Center's (NCLC) conference on the TCPA.

10. As a law student, I clerked for The Honorable Edward Rodgers and tried numerous cases as a Certified Legal Intern for the Palm Beach State Attorney's Office.

11. I also worked for numerous nationwide insurance companies and obtained a million-dollar verdict in a civil theft trial.

12. Some of my notable rulings include:

i) *Zyburo v. NCSPLUS, Inc.,* United States District Court, Southern District of New York, 1:12-cv-06677-JSR, Lead Counsel in a certified TCPA class action where defendant called plaintiff concerning someone else's debt and continued to do so after Plaintiff asked for calls to stop. Case settled two days before a bench trial was set in front of the Honorable Jed Rakoff. Plaintiff's counsel was also awarded sanctions in the amount of $38,041.63 for fees and costs due to defendant's misconduct. (Doc. 18) (Doc. 57) (Doc. 62) (Doc. 88)

ii) *McCaskill v. Navient Solutions Inc. No. 8:2015-cv-01559,* Lead counsel in obtaining largest TCPA summary judgment in an individual case in the country.

iii) *Jaquita Lyons v. Dish Network, LLC*, M.D. Florida, 3:12-cv-199-J-32MCR, Lead counsel in one of the only Orders standing for the proposition that punitive damages are available in TCPA cases.

iv) *Page v. Regions Bank*, 2012 WL 6913593 (N.D. Ala. 2012), Lead counsel in the first opinion in the Eleventh Circuit to rule that the "called party" has standing to bring a TCPA claim.

v) *Fini v. Dish Network, LLC,* United States District Court, Middle District of Florida, 6:12-cv-00690-ACC-TBS, Lead Counsel in TCPA case standing for the proposition that the regular user of the phone has standing to bring a case.

vi) *Kathy Clements v. DSM Supply LLC*, 2014 WL 560561 (M.D. Fla. 2014) and *Brian Gambon v. Regent Asset Management Solutions, Inc.*, 2015 WL 64561 (M.D. Fla. 2015), both TCPA cases ruling that after notice of incorrect calls, each subsequent violation was considered willful and knowing and thus worth $1,500.00.

vii) *Coniglio v. Bank of America, N.A.*, 2014 WL 5366248 (M.D. Fla. 2014), final default TCPA judgment issued in the amount of $1,051,000.00 asserting that each call placed after verbally requesting for the calls to stop were worth $1,500.00 each, reversed on different issue.

viii) *Heather Howard v. MBNA America Bank, N.A.*, Thirteenth Judicial Circuit of Florida, Hillsborough County, 06-CA-01942 and *Heather Howard v. Wolpoff & Abramson, LLP*, Thirteenth Judicial Circuit of Florida, Hillsborough County, 06-CA-001045, allowing punitive damages for alleged false credit reporting and violations of the FCCPA.

ix) *Deleon v. Bank of America, N.A.,* United States District Court, Middle District of Florida, 6:09-cv-0125-CEM-KRS, Lead Counsel in a certified class action where defendant charged plaintiffs with late fees for on-time payments.

13. I am currently Plaintiff's counsel in the following TCPA class actions:

a. *Swaney v Regions Bank*, United States District Court Northern District of Alabama, Southern Division, Case No. 2:13-cv-00544; (settled)

b. *Cook and Bermudez v. Palmer Riefler & Associates, P.A.,* United States District Court, Middle District of Florida, Jacksonville Division, Case No.: 3:16-cv-673; (settled)

c. *Glasser v. Hilton Grand Vacations,* United States District Court, Middle District of Florida, Tampa Division, Case No. 8:16-cv-00952. (appeal)

d. *Clark v. Macy's Credit and Customer Services, Inc.,* United States District Court, Middle District of Florida, Orlando Division, Case No: 6:17-cv-692; (settled)

e. *Sawyer v Intermex*, United States District Court, Southern District of Florida, Miami Division, Case No. 1:19-cv-22212; (settled)

f. *Morgan v. Orlando Health, Inc.,* United States District Court, Middle District of Florida, Orlando Division, Case No. 6:17-cv-1972;

g. *Murray v Gatestone & Co.,* United States District Court, District of Arizona, Phoenix Division, Case No. 2:19-cv-05674; (PHV);

h. *Mey v John Doe, et al,* United States District Court, Northern District of West Virginia, Wheeling Division, Case No. 5:19-cv-00237;

i. *Stephens v Availity LLC,* United States District Court, Middle District of Florida, Ocala Division, Case No. 5:19-cv-00236;

j. *Ahmed v Comenity Bank,* United States District Court, Central District of California, Southern Division, 8:20-cv-00453; (PHV pending);

k. *Corinti v Asset Plus Corporation*, United States District Court, Northern District of Florida, Tallahassee Division, Case No. 4:20-cv-00173;

l. *Mitchell v Nursecon,* United States District Court, Southern District of Florida, Miami Division, Case No. 1:20-cv-21503.

m. *Perna v American Campus Communities,* United States District Court, Middle District of Florida, Jacksonville Division, Case No. 1:20-cv-0391.

14. My firm's unreimbursed costs and expenses in this case totaled $962.60, encompassing filing fees ($400), service of process charge ($55), and case-related transportation costs ($507.60).

15. I believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interest of the Settlement Class.

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

Executed on June 3, 2020.

/s/ William "Billy" Peerce Howard