UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TIMOTHY MILES, on behalf of himself and others similarly situated, Plaintiff, vs. MEDICREDIT, INC., Defendant.	Case No.: 4:20-cv-1186-JAR

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, LITIGATION EXPENSES, AND A SERVICE AWARD

Introduction

Timothy Miles and his counsel achieved an excellent result in this Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, class action. Because of their efforts, and despite numerous risks and potential obstacles in the way, Medicredit, Inc. ("Medicredit") will create an all-cash, non-reversionary, $1.95 million common fund to compensate members of the settlement class ("Settlement Class Members"). The end result—after two years of hard-fought litigation—is expected payments to participating Settlement Class Members of between $50 and $100 each.

In line with the class notice, Court-appointed Class Counsel—Greenwald Davidson Radbil PLLC ("GDR")—seeks an award of attorneys' fees equal to one-third of the common fund, or $650,000. As well, GDR respectfully requests reimbursement of its costs and litigation expenses totaling $10,477.62. Additionally, Mr. Miles seeks a service award in the amount of $10,000.

These requests are reasonable, justified, and in line with awards approved in analogous TCPA class actions. Moreover, following notice to Settlement Class Members, to date, no Settlement Class Member has objected to any part of the settlement or to the requests for attorneys' fees, costs, expenses, and a service award. The deadline for objections is December 6, 2022.

Argument

I. GDR's request for attorneys' fees in the amount of one-third of the common fund is reasonable and justified.

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).[1] In the Eighth Circuit, and in common fund cases like this one, "where attorney fees and class

[1] Internal citations and quotations are omitted, and emphasis is added, unless otherwise noted.

members' benefits are distributed from one fund, a percentage-of-the-benefit method" is the preferred method to determine an appropriate award of attorneys' fees. *See West v. PSS World Medical, Inc.*, No. 4:13-CV-574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014) (awarding attorneys' fees of 33 percent of common fund) (citing *Johnston v. Comerica Mortg. Co.*, 83 F.3d 241, 244-46 (8th Cir. 1996); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming district court's award of 36 percent of settlement fund as attorneys' fees)).

GDR seeks an award of attorneys' fees equal to one-third of the $1.95 million fund. GDR's request is supported by applicable case law both within, and outside of, the Eighth Circuit, and with respect to class actions generally, as well as those under the TCPA specifically.

A. The Eighth Circuit utilizes the percentage-of-the-benefit method to calculate attorneys' fees awards in common fund cases like this one.

Historically, "[c]ourts utilize two main approaches to analyzing a request for attorney fees. Under the 'lodestar' methodology, the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action." *Johnston*, 83 F.3d at 244. "Another method, the 'percentage of the benefit' approach, permits an award of fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation." *Id*. at 244-45.

These two methods for calculating an appropriate award of attorneys' fees "have distinct attributes which make them suitable for particular types of cases." *Id.* at 245. The lodestar approach is best suited for cases involving statutory fee-shifting claims. *Id*. Awards of attorneys' fees in cases like this one, however, which do not involve any statutory fee-shifting claims,[2] should be

[2] Unlike some other consumer protection statutes, such as the Fair Debt Collection Practices Act, the TCPA does not provide for an award of attorneys' fees to a prevailing plaintiff.

determined by the percentage-of-the-benefit method. *Id.*; *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) ("It is well established in this circuit that a district court may use the 'percentage of the fund' methodology to evaluate attorney fees in a common-fund settlement"); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) ("In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'") (quoting *Petrovic*, 200 F.3d at 1157).

The Eighth Circuit bases this preference on the well-documented deficiencies in the lodestar process, as it explained in *Johnston*:

> First, calculation of the lodestar increases the workload of an already over-taxed judicial system. Second, the elements of the lodestar process are insufficiently objective and produce results that are far from homogenous. Third, the lodestar process creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law. Fourth, the lodestar is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount. Fifth, although designed to curb certain abuses, the lodestar approach has led to others. Sixth, the lodestar creates a disincentive for the early settlement of cases. The report in this area added '... there appears to be a conscious, or perhaps, unconscious, desire to keep the litigation alive despite a reasonable prospect of settlement, to maximize the number of hours to be included in computing the lodestar.' Seventh, the lodestar does not provide the district court with enough flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered. Eighth, the lodestar process works to the particular disadvantage of the public interest bar. Ninth, despite the apparent simplicity of the lodestar formulation, considerable confusion and lack of predictability remain in its administration.

Johnston, 83 F.3d at 245 n.8 (citing Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D. 237, 246-49 (1985)).

B. An award of attorneys' fees of one-third of the common fund is in line with awards in class actions in this circuit.

The requested fee of one-third of the common fund is consistent with awards in the Eighth Circuit. *See, e.g.*, *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming award of attorneys' fees of one-third of common fund); *In re U.S. Bancorp Litig.*, 291 F.3d at 1038

(affirming district court's award of 36 percent of common fund in attorneys' fees); *In re Pork Antitrust Litig.*, No. 18-1776 (JRT/JFD), 2022 WL 4238416, at *8 (D. Minn. Sept. 14, 2022) ("Here, Counsel has requested 33 percent of the settlement funds to cover attorney fees, which is in line with other cases. In this district, courts routinely approve attorney fees of at least one third of the common fund."); *Schultz v. Edward D. Jones & Co., L.P.*, No 4:16-cv-1346-JAR, 2019 WL 7833682, at *2 (E.D. Mo. April 22, 2019) (Ross, J.) (awarding fees of one-third of common fund, plus expenses, and noting that "Class Counsel's requested fee is consistent with other fee awards in the Eighth Circuit."); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 (SRN/JSM), 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (awarding fees of one-third of common fund, plus separate reimbursement of litigation expenses); *Lees v. Anthem Ins. Cos., Inc.*, No. 4:13CV1411 SNLJ, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (awarding 34 percent of common fund as attorneys' fees in TCPA class action); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-cv-4321NKL, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) (awarding fees of one-third of common fund); *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litig.*, No. 4:04-md-1907-ERW, ECF No. 355 (E.D. Mo. Feb. 26, 2013) (awarding fees equal to one-third of common fund, plus separate reimbursement of expenses); *In re Iowa Ready–Mix Concrete Antitrust Litig.*, No. C 10–4038–MWB, 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011) (awarding fees of 36.04% of $18.5 million common fund, plus separate reimbursement from settlement fund of over $900,000 in expenses).[3]

[3] *See also West*, 2014 WL 1648741, at *1 ("In this case, the court believes that 33 percent is a reasonable percentage for attorney's fees. It is appropriate to apply a reasonable percentage to the gross settlement fund."); *Wiles v. Southwestern Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *10–11 (W.D. Mo. June 9, 2011) (awarding one-third of common fund in attorneys' fees); *Ray v. Lundstrom*, No. 8:10CV199, 4:10CV3177, 8:10CV332, 2012 WL 5458425, at *4-5 (D. Neb. Nov. 8, 2012) (awarding one-third of common fund in fees, plus separate reimbursement of $77,900 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571

In light of the foregoing precedent, GDR's requested fee award of one-third of the common fund is reasonable and should be approved.

C. An award of attorneys' fees of one-third of the common fund is consistent with awards of attorneys' fees in similar TCPA class actions.

In the TCPA class action context, the customary fee—one-third of the economic benefit bestowed on the class—is supported by significant empirical evidence. For instance, the Northern District of Illinois performed an in-depth analysis of the risks associated with TCPA litigation to determine proper awards of attorneys' fees in TCPA class actions. *See In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 805-807 (N.D. Ill. Feb. 12, 2015). And in assessing the risks associated with TCPA class actions, Judge Holderman explained:

> Class Counsel in this case faced a variety of serious obstacles to success in bringing the lawsuit, and faced the real prospect of recovering nothing. First, it was quite possible that the discovery may have revealed that many class members acquiesced to receiving calls on their cell phones when they agreed to their cardholder agreements with Capital One. Some customers provided Capital One with their cell phone numbers as their primary contact numbers, arguably waiving any right not to receive debt-collection calls on their cell phone from Capital One. Second, at the outset of the litigation there was a serious question whether the Plaintiffs' claims could meet Rule 23's manageability requirement given that Capital One would have to review its records to determine which class members provided consent through cardholder agreements, which class members actually provided their cell phone numbers to Capital One, and whether each class member actually owned their cell phone number at the time Capital One called it using an autodialer. Third, as Capital One has noted throughout this litigation, there are presently petitions before the FCC urging the FCC to (1) revise the TCPA's definition of "automatic telephone dialing system" to exclude dialers like those used by Capital One, and (2) provide a safe harbor for all calls that Capital One inadvertently made to wrong numbers. Consequently, the longer this litigation were to continue, the longer Plaintiffs would be exposed to the possibility that the FCC would take action that might extinguish Plaintiffs' claims.

(S.D. Iowa 2011) (awarding 33% of the settlement award in fees); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061, 1067–68 (D. Minn. 2010) (awarding one-third of $16 million settlement fund, plus separate reimbursement from the fund of $245,000 in expenses); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 286 (D. Minn. 1997) (awarding class counsel one-third of $86 million settlement common fund).

Id. at 805. Many of these risks, such as potential FCC action and evolving court interpretations of the TCPA, remain true today.

After analyzing these serious risks inherent with TCPA litigation, the court determined that an appropriate risk-adjusted fee for TCPA class settlements is an award of 36 percent of the common fund—up to the first $10 million in recovery. *Id*. at 807. Because the one-third of the settlement fund sought here is less than the risk-adjusted fee found to be appropriate when determining awards of attorneys' fees in TCPA class action settlements under $10 million, GDR's request is reasonable and this Court should approve it. *See Martinez v. Medicredit, Inc.*, No. 4:16-cv-01138-ERW, 2018 WL 2223681, at *5 (E.D. Mo. May 15, 2018) (awarding fees of one-third of $5 million TCPA common fund); *Prater v. Medicredit, Inc.*, No. 4:14-cv-00159-ERW, 2015 WL 8331602, at *4 (E.D. Mo. Dec. 7, 2015) ("Class Counsel's request for an award of attorneys' fees of one-third of the Settlement Fund, or $2,250,000.00, is approved.").[4]

D. The *Johnson* factors strongly support a fee award of one-third of the fund.

When evaluating fee awards, the Eighth Circuit has approved consideration of the twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974). *See Barfield*, 2015 WL 3460346, at *5. The *Johnson* factors are:

[4] *Accord Hanley v. Tampa Bay Sports & Entm't LLC*, No. 819CV00550CEHCPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding "a slight increase from the one-third benchmark"); *Sheean v. Convergent Outsourcing, Inc.*, No. 218CV11532GCSRSW, 2019 WL 6039921, at *4 (E.D. Mich. Nov. 14, 2019) (awarding one-third of the TCPA and FDCPA common funds); *Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at *11 (N.D. Ill. Oct. 28, 2019) (awarding attorney's fees of 33.99% of the common fund); *Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 1:18-CV-20048-DPG, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (awarding one-third of the common fund); *Todd S. Elwert, Inc., DC v. All. Healthcare Servs., Inc.*, No. 3:15-CV-2673, 2018 WL 4539287, at *4 (N.D. Ohio Sept. 21, 2018) (awarding one-third of the common fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding 36% of the common fund); *Hageman v. AT&T Mobility LLC, et al.*, No. 1:13-cv-50, ECF No. 68 (D. Mont. Feb. 11, 2015) (awarding 33% of the common fund); *Vendervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund).

> (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the 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.

Id. (citing *Allen v. Tobacco Superstore, Inc.*, 475 F.3d 931, 944 n.3 (8th Cir. 2007) (citing *Johnson*, 488 F.2d at 717–19)).

Here, the *Johnson* factors overwhelmingly support an award of attorneys' fees equal to one-third of the common fund.

1. The time and labor required to resolve this matter were significant.

As outlined in the Declaration of Michael L. Greenwald ("Greenwald Dec."), attached as Exhibit A, GDR has devoted two years to litigating this case without any payment. During that time, GDR has expended significant time and resources, including: (a) conducting an investigation into the underlying facts regarding Mr. Miles's claims and Settlement Class Members' claims; (b) preparing a class action complaint; (c) researching the law pertinent to Settlement Class Members' claims and Medicredit's defenses; (d) negotiating a protective order; (e) preparing and serving written discovery requests on Medicredit; (f) reviewing documents produced by Medicredit; (g) researching and preparing Mr. Miles's opposition to Medicredit's motion to dismiss; (h) researching and preparing Mr. Miles's opposition to Medicredit's motion for partial judgment on the pleadings; (i) serving a subpoena on Mr. Miles's wireless carrier and reviewing the resulting document production; (j) serving a third-party subpoena on Noble Systems Corporation and negotiating with its counsel; (k) preparing for and taking the corporate representative deposition of Medicredit pursuant to Rule 30(b)(6); (l) preparing for and attending the deposition of Patricia Hall, a third-party witness; (m) preparing for and defending Mr. Miles's deposition; (n) preparing

for and attending mediation with Judge Diane Welsh (Ret.) of JAMS, including preparing a detailed mediation brief; (o) preparing the parties' class action settlement agreement, along with the proposed class notices and claim form; (p) negotiating with class administration companies to secure the best notice plan practicable; (q) researching and preparing Mr. Miles's motion for preliminary approval of the class action settlement, and counsel's declaration in support; (r) closely monitoring evolving TCPA case law and its potential impacts on this case; (s) closely monitoring decisions from the FCC and their potential impacts on this case; (t) conferring with the class administrator to oversee the notice, claims, and administration process; (u) repeatedly conferring with Mr. Miles throughout this case; and (v) conferring with Settlement Class Members to answer questions about the claims process. Greenwald Dec., ¶¶ 40-72, 79.

Because this action required a substantial investment of time and resources over a two-year period, the requested attorneys' fee award is reasonable and should be approved.

2. The ultimate class-related question underlying this matter is difficult.

Mr. Miles faced a number of significant hurdles in this case, some of which were difficult and novel. For example, Medicredit strongly disputed that a class could be certified for litigation purposes. Worth mentioning, several district courts have refused to certify TCPA matters. *See, e.g., Revitch v. Citibank, N.A.*, No. C 17-06907 WHA, 2019 WL 1903247, at *2 (C.D. Cal. Apr. 28, 2019) (denying class certification and noting that "an evasive customer may reply with 'wrong number' when he answers a call regarding his delinquent account"); *Davis v. AT&T Corp.*, No. 15-cv-2342-DMS, 2017 WL 1155350, at *5 (S.D. Cal. Mar. 28, 2017) ("[d]efendant has come forward with evidence that a call with a 'wrong number' notation proves nothing because many customers tell callers they have reached the wrong number, though the customer's number was dialed, as a 'procrastination tool' to avoid speaking on the phone"); *Tomeo v. CitiGroup, Inc.*, No.

13 C 4046, 2018 WL 4627386, at *10 (N.D. Ill. Sept. 27, 2018) (following *Davis*); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 271–72 (M.D. Fla. 2019) ("[I]n the debt collection industry 'wrong number' oftentimes does not mean non-consent because many customers tell agents they have reached the wrong number, though the correct number was called, as a way to avoid further debt collection.").

In addition, there was no guarantee that Mr. Miles would prevail on the merits. To that end, Medicredit asserted seven separate defenses. *See* ECF No. 59 at 11-12. It also argued that this Court lacked jurisdiction over Mr. Miles's claims in light of *Barr v. Am. Ass'n of Political Consultants*, 140 S.Ct. 2335 (2020). *See* ECF No. 23. While this Court disagreed, *see* ECF No. 28, it is likely that Medicredit would appeal should Mr. Miles have ultimately succeeded on the merits. At bottom, the result here was far from certain.

3. GDR relied on particular skill and experience to properly perform the legal services required.

Where "Class Counsel's knowledge and experience . . . significantly contributed to a fair and reasonable settlement, this factor supports a request for a large amount of attorneys' fees." *Lane v. Page*, 862 F. Supp. 2d 1182, 1254 (D.N.M. 2012). Here, GDR's knowledge of, and experience with, TCPA class actions, *see infra*, Argument, Section I.D.7, helped to bring about the common fund established in this matter.

In fact, multiple district courts have commented on GDR's knowledge and experience. *See* Greenwald Dec., ¶¶ 12-21. As one recent example, the District of Arizona recently noted in appointing GDR as class counsel in a TCPA class action:

> Moreover, the quality of Plaintiff's filings to this point, as well as the declarations submitted by the proposed class counsel, Michael Greenwald (Doc. 120-6) . . . persuade the Court that Head, Greenwald, and Wilson will continue to vigorously prosecute this action on behalf of the class.

* * *

> Significantly, class counsel have provided a list of well over a dozen class actions Greenwald, Wilson, and their respective firms have each litigated, including several under the TCPA. (Doc. 120-6 at 5-6; Doc. 120-7 at 2-7). These showings demonstrate counsel's experience in handling class actions, complex litigation, and the types of claims asserted in this action. *See* Fed. R. Civ. P. 23(g)(1)(A)(ii).

Head v. Citibank, N.A., 340 F.R.D. 145, 152 (D. Ariz. 2022).

4. Acceptance of this matter limited GDR's capacity to accept other employment.

GDR is a relatively small firm that includes four partners and one of-counsel attorney. GDR's efforts in connection with, and commitment to, this matter, consequently curtailed an ability to accept other work. *See, e.g.*, *Reynolds v. Fid. Invs. Institutional Operations Co., Inc.*, No. 1:18-CV-423, 2020 WL 92092, at *3 (M.D.N.C. Jan. 8, 2020) ("Class Counsel's law firms are small enough that the choice to take one case over another affects the firm's ability to accept other paying work, and the work involved in this case was extensive."); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2008 WL 11234103, at *2 (N.D. Ga. Mar. 4, 2008) ("[S]ubstantial and concentrated time investment by plaintiffs' counsel would tend to preclude other lucrative opportunities, thus warranting a higher percentage of the fund.").

5. A customary fee in a common fund case is approximately one-third of the economic benefit bestowed on the class.

As noted above, the requested fee is consistent with fees awarded in class actions in the Eighth Circuit generally, as well as with respect to TCPA class actions in particular. *See supra*, Argument, Section I.B-C. The requested fee is also less than the judicially endorsed "risk-adjusted fee structure" for TCPA class actions. *See In re Capital One*, 80 F. Supp. 3d at 807.

6. Mr. Miles and his counsel entered into a contingent attorneys' fee agreement.

Mr. Miles entered into a contingent attorneys' fee agreement with his counsel. Greenwald Dec., ¶ 81. The agreement permitted Class Counsel to apply to this Court for an award of attorneys' fees in the event that a common fund was established for the benefit of the class.

That the attorneys' fee arrangement in this case was contingent "weighs in favor of the requested attorneys' fees award, because '[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); *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1215 (S.D. Fla. 2006) ("This factor weighs heavily in favor of a 31 and 1/3% percentage fee for Class Counsel because the fee in this action has been completely contingent.").

Indeed, even in ordinary cases "uncertain is the outcome," and the corresponding risk taken by counsel in connection with contingent fee arrangements—no assurance of payment—warrants a higher percentage of the fund. *Columbus Drywall & Insulation, Inc.*, 2008 WL 11234103, at *3. And in the context of class actions, the inherent risk is multiplied:

> In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants an appropriate fee. The risks are inherent in financing and prosecuting complex litigation of this type, but Class Counsel undertook representation with the knowledge that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. Only the most experienced plaintiffs' litigation firms would risk the time and expense involved in bringing this Action in light of the possibility of a recovery at an uncertain date, or of no recovery at all.

Simpson v. Citizens Bank, No. 212CV10267DPHRSW, 2014 WL 12738263, at *7 (E.D. Mich. Jan. 31, 2014).

7. GDR has significant experience and a hard-earned, positive reputation.

GDR has extensive experience litigating class actions filed under federal consumer protection statutes, having recovered over $120 million for class members in TCPA class actions alone. *See* Greenwald Dec., ¶¶ 9-11. GDR's vast experience further supports the reasonableness of the requested fee.

8. GDR obtained an excellent result for the Settlement Class.

In the face of significant legal hurdles, GDR and Mr. Miles obtained an excellent result for Settlement Class Members. To be sure, the settlement is, on a per-potential class member basis, on par with similar and recently approved TCPA class action settlements. More particularly, the raw, per-class member value of the settlement is similar to, if not higher than, many analogous TCPA class action settlements. *See* ECF No. 70 at 10-11 (collecting cases).

As well, the settlement is expected to align, on a per-claimant recovery basis, with similar and recently approved TCPA class action settlements. Indeed, GDR estimates—based on the likely number of *bona fide* Settlement Class Members[5]—that after deducting the requested attorneys' fees, costs, litigation expenses, and service award, participating Settlement Class Members will receive between $50 and $100 each. *See id*. at 11 (collecting cases).

Additionally significant, the court in *Markos v. Wells Fargo Bank, N.A.* characterized a $24 per-claimant recovery in a TCPA class action—less than the expected recovery here—as "an excellent result when compared to the issues Plaintiffs would face if they had to litigate the matter." No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017).

Also important, the settlement provides Settlement Class Members with real monetary relief, despite the purely statutory damages at issue—damages that courts have deemed too small to incentivize individual actions. *See, e.g., St. Louis Heart Cntr., Inc. v. Vein Cntrs. for Excellence, Inc.*, No. 12-174, 2013 WL 6498245, at *11 (E.D. Mo. Dec. 11, 2013) (explaining that because the statutory damages available to each individual class member are small, it is unlikely that the

[5] Because this case involves calls to alleged wrong numbers, the true number of Settlement Class Members who received calls from Medicredit despite not having an account in collections is unknown. For this reason, Settlement Class Members must submit a short, straightforward claim form to participate in any recovery.

class members have interest in individually controlling the prosecution of separate actions). Therefore, because of the settlement, Settlement Class Members will receive money they otherwise would have likely never pursued on their own.

At bottom, the settlement constitutes an objectively favorable result for Settlement Class Members, given the real risks involved, and amply supports an award of attorneys' fees in the amount of one-third of the common fund.

II. Mr. Miles's request for a service award in the amount of $10,000 is fair, reasonable, and supported by law.

As the Eighth Circuit recently reiterated, "[c]ourts often grant service awards to named plaintiffs in class action suits to promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Caligiuri*, 855 F.3d at 867 (affirming service awards of $10,000 to each named plaintiff); *accord Huyer v. Njema*, 847 F.3d 934, 941 (8th Cir. 2017) (affirming approval of settlement that included $10,000 service awards to named plaintiffs); *Fellows v. Am. Campus Communities Servs., Inc.*, No. 4:16-cv-01611-JAR, 2018 WL 3056046, at *7 (E.D. Mo. June 20, 2018) (Ross, J.) ("Courts routinely grant service awards in connection with class action settlements to promote the public policy underlying class action litigation by encouraging individuals to vindicate rights on behalf of a others similarly situated.").

To determine whether a service award is warranted, courts evaluate "(1) actions the plaintiffs took to protect the class's interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation." *Caligiuri*, 855 F.3d at 867. Here, Mr. Miles took exceptional steps to protect the interests of Settlement Class Members, and spent considerable time pursuing their claims. From the outset, Mr. Miles was dedicated to pursuing this matter as a class action rather than an individual case. The end result—two years later—is the recovery of $1.95 million for Settlement Class Members.

What's more, as there neither is, nor ever was, another class representative, without Mr. Miles the common fund established in this matter would never have existed. *See In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 WL 5547159, at *5 ("I find that each named 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.").

As well, Mr. Miles, who is legally blind and serves as an advocate for the rights of people with disabilities in his community of Chapel Hill, North Carolina, spent considerable time prosecuting this case. *See* Greenwald Dec., ¶¶ 84-88. In particular, Mr. Miles frequently communicated with his counsel. *Id.*, ¶ 85. He actively participated in the discovery process, including producing documents and answering interrogatories. *Id.*, ¶ 86. Mr. Miles had his deposition taken by Medicredit. *Id.*, ¶ 87. And he participated in the parties' mediation. *Id.*, ¶ 88. Moreover, like other class representatives, he was subjected to public scrutiny.

Given all of the foregoing, the requested service award of $10,000 is fair and reasonable. Indeed, Mr. Miles' request for a service award is in line with service awards approved in comparable matters and affirmed by the Eighth Circuit. *See, e.g.*, *Caligiuri*, 855 F.3d at 868; *Schultz*, 2019 WL 7833682, at *2 ($10,000 awards to each named plaintiff); *Prater*, 2015 WL 8331602, at *3 ($20,000 service award in TCPA class action); *Krueger*, 2015 WL 4246879, at *3 (approving $25,000 awards for each named plaintiff); *In re Aquila ERISA Litig.*, No. 04-00865-CV-DW, 2007 WL 4244994, at *3 (W.D. Mo. Nov. 29, 2007) (awarding service awards between $5,000 and $25,000 for named plaintiffs who "rendered valuable service to the Plan and all Plan Participants. Without this participation, there would have been no case and no settlement.").

III. This Court should award the reimbursement of costs and litigation expenses in the amount of $10,477.62.

"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 (citing *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1066–67 (E.D. Mo. 2002)).

Here, GDR seeks the reimbursement of $10,477.62 in reasonable costs and litigation expenses in connection with this matter.[6] *See* Greenwald Dec., ¶¶ 91-95 (documenting costs and litigation expenses). Importantly, the categories of expenses for which counsel seeks reimbursement are the type of expenses routinely charged to paying clients in the marketplace and, therefore, are properly reimbursed under Rule 23. *See Krueger*, 2015 WL4246879, at *3 (approving reimbursement for depositions, experts and consultants, transcripts and filing fees, mediation, copies, telephone and fax, data development, research and investigation, and travel, and noting that "[g]iven that Class Counsel represented Plaintiffs on a contingent-fee basis, they had a strong incentive to keep these expenses at a reasonable level.").

Conclusion

Mr. Miles and his counsel respectfully request that this Court grant their applications for (1) an award of attorneys' fees of one-third of the common fund established in this matter, (2) an award of costs and litigation expenses in the amount of $10,477.62, and (3) a service award for Mr. Miles in the amount of $10,000.

[6] The requested reimbursement of costs and litigation expenses is substantially less than the $15,000 in potential costs and litigation expenses reflected in the class notice, and to which no Settlement Class Members have objected to date.

Dated: November 1, 2022

/s/ Michael L. Greenwald

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