

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION**

CHRISTOPHER LEGG, individually	)	
and on behalf of all others similarly situated,	)	
	)	Case No. 1:14-cv-10043
Plaintiff,	)	
	)	Judge Robert Gettleman
v.	)	
	)	Magistrate Judge Young B. Kim
PTZ INSURANCE AGENCY, LTD.	)	
an Illinois Corporation, and	)	
PETHEALTH, INC.	)	
a Delaware Corporation,	)	
	)	
Defendants.	)	

**MOTION FOR AND MEMORANDUM IN SUPPORT OF  
ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

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## I. INTRODUCTION

On May 15, 2019, this Court preliminarily approved a proposed class action settlement between Plaintiff Legg (“Plaintiff” or “Legg”) and Defendants PTZ Insurance Agency, LTD (“PTZ”) and Pethealth, Inc. (“Pethealth,” jointly as “Defendants”). This Settlement creates a \$5,500,000, non-reversionary common fund for the benefit of approximately 731,173 persons Defendants, or their subsidiaries, called using an artificial or prerecorded voice to play a “Day 2” or “Day 6” message, from October 16, 2013 through November 30, 2016 in alleged violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

Class Counsel zealously prosecuted Plaintiff’s claims for over four and half years, achieving the settlement only after extensive first and third-party discovery; contested motion practice, and years of arms-length negotiations that involved two mediations at JAMS.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move the Court for an award of attorneys’ fees of \$1,911,960 which represents 36% of the settlement fund net administration costs, plus \$21,000.31 for counsel’s out-of-pocket costs<sup>1</sup>. *See Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 796-97 (7th Cir. 2018) (affirming attorney fees in TCPA class action of 36% of the first \$10 million, 30% of the next \$10 million, and 24% of the next \$34 million.)

This request should be approved because (1) it represents the market rate for this type of settlement and (2) represents a reasonable and appropriate amount in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case. Class Counsel also respectfully move the Court for a service award of \$20,000 to Plaintiff

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<sup>1</sup> Expenses do not include any internal costs such as copying, legal research or telephone costs. *Keogh Decl.* at ¶ 14.

Legg for his work on behalf of the Class, which includes traveling from Florida to Chicago for his deposition, written discovery, and settlement efforts. Such an award is routine and proper.

## **II. BACKGROUND AND SETTLEMENT**

### **A. Procedural Background**

On December 15, 2014, Legg filed a Complaint alleging that PTZ and Pethealth violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by making prerecorded calls to cell phones without the prior express consent of Legg or the putative class members.

On September 16, 2015, Plaintiff filed his amended motion for Class Certification (Dkt 114), which was ultimately denied by this Court on September 21, 2016 after briefing. (Dkt. 223).

While class certification was pending, Pethealth filed a Motion for Summary Judgment on January 8, 2016. (Dkt. 128). On September 14, 2016, the Court denied Pethealth’s Motion for Summary Judgment after full briefing (Dkt. 218).

On October 5, 2016, Plaintiff filed a Motion to Reconsider the Court’s Order denying class certification (Dkt. 226). On November 21, 2016, the Court denied Plaintiff’s Motion for Reconsideration and granted Plaintiff leave to file a Second Amended Complaint (Dkt. 235)

On December 12, 2016, Plaintiff filed his Second Amended Complaint (Dkt. 236.) On January 17, 2017, Defendants answered the Second Amended Complaint, and on January 18, 2017 filed a Motion to Strike the Class Allegations in the Second Amended Complaint (Dkt 247)

On February 10, 2017, Plaintiff filed his Second Amended Motion for Class Certification (Dkt. 252). After briefing, the Court denied Plaintiff’s Motion for Class Certification and Granted Defendants’ Motion to Strike Class Allegations on August 15, 2017 (Dkt. 287).

On August 31, 2017 Plaintiff filed a Rule 23f Petition for Permission to Appeal with the United States Court of Appeals for the Seventh Circuit (7th Cir. Case No. 17-8018). After briefing, the Court of Appeals denied Plaintiff’s petition on October 10, 2017 (Dkt. 289).

On November 33, 2017, Defendant Fairfax Financial Holdings, LTD filed a motion to dismiss for lack of jurisdiction (Dkt. 293).

On December 22, 2017, Plaintiff filed a Motion for Summary Judgment (Dkt 304). After briefing, Plaintiff filed a Motion for leave to file a Third Amended Complaint and to withdraw this pending Motion for Summary Judgment (Dkt 406). On August 15, 2018, the Court Granted Plaintiff's Motion for Summary Judgment against PTZ (Dkt. # 408), Denied Plaintiff's Motion for Summary Judgment regarding Pethealth, and Granted Plaintiff leave to file a Third Amended Complaint and Third Amended Motion for Class Certification (Dkt 409).

On August 30, 2018, Plaintiff filed his Third Amended Motion for Class Certification. (Dkt 414). Settlement was reached between the parties after the Third Motion for Class Certification was briefed, but before the Court ruled on the Motion.

**B. Discovery**

The Parties engaged in extensive discovery and conducted numerous hearings with the focus on discovery. *See* Dkt. Nos. 45, 51, 65, 78, 87, 88, 90, 101, 102, 103, 107, 108, 109, 110, 116, 117, 118, 119, 173, 181, 368, 403, and 436. In addition, Plaintiff filed motions to compel production of discovery against both Defendants (Dkt. Nos. 76, 162, 314, 322, and 416).

Throughout the discovery process, Counsel held numerous discovery conferences with counsel as well as with third party counsel. The discussions were thorough and, at many points, contentious, as the parties addressed all facets of discovery as well as their respective views on class certification and of Plaintiff's class TCPA claims. *See* Declarations of Keith J. Keogh ("Keogh Decl.") attached as *Exhibit 1*, ¶ 3.

**C. The Parties' Mediation**

The parties mediated before the Honorable James Holderman (ret.) of JAMS on December 3, 2015, and again on July 18, 2016. The parties followed-up with in person meetings and

negotiations between Counsel before reaching a resolution in principle. Prior to each mediation, the parties submitted detailed mediation briefs setting forth their respective views on the case. *Id.* At mediation, the parties discussed their relative views of the law and the facts and potential relief for the proposed Class. *Id.* Counsel exchanged counterproposals on key aspects of the Settlement. At all times, the settlement negotiations were non-collusive and arm's length. *Id.* ¶ 9.

**D. The Settlement**

The Settlement provides that Defendants will pay \$5,500,000 into a common fund for the Settlement Class, which is defined as follows:

All persons in the United States who were called on their cell phone using an artificial or prerecorded voice to play a "Day 2" or "Day 6" message, from October 16, 2013 through November 30, 2016.

*See* Agreement § 2.25.<sup>2</sup>

The Settlement is completely non-reversionary—all unclaimed or undistributed amounts remaining in the Settlement Fund after all payments under the Settlement Agreement will, to the extent administratively feasible, be redistributed to the Settlement Class or, if not administratively feasible, to a Court-approved *cy pres* recipient. Notice and administration costs through Kurtzman Carson Consultants LLC ("KCC") are projected at \$189,000 assuming a 5% - 10% claim filing rate. Settlement Class Members who submit a valid Claim are expected to receive Settlement Awards of \$92 assuming a 5% claim rate and \$46 assuming a 10% claim rate. *Ex.* 1 at ¶ 8. This is a terrific outcome given that the non-fee-shifting TCPA generally provides for \$500 in damages per violation. 47 U.S.C. § 227(b)(3). It is also a great outcome in light of the fact this Court twice denied class certification as well as the fact Defendants have consistently claimed inability to pay.

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<sup>2</sup> Excluded from the Settlement Class are the Judge to whom the Action is assigned and any member of the Court's staff and immediate family and all persons who have opted-out of the Settlement Class. *Id.*



Plaintiff respectfully requests that the Court approve attorneys' fees of \$1,911,960 which represents 36% of the settlement fund net expenses, plus \$21,000.31 of counsel's out-of-pocket costs, and a \$20,000 service award for Plaintiff Legg. As explained below, the requested fee award is in line with the market rate for similar attorney services in this jurisdiction, and fairly reflects the result achieved. Similarly, the requested service award is comparable to other TCPA cases.

### **III. LEGAL STANDARD FOR ATTORNEYS' FEE DECISIONS**

Courts have long recognized when counsel's efforts result in the creation of a common fund that benefits class members, counsel has a right to be compensated from that fund for their successful efforts in creating it. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("lawyer who recovers a common fund ... is entitled to a reasonable attorneys' fee from the fund as a whole"); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) ("the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit").

In common fund cases, courts have discretion to use: (1) percentage of the fund; or (2) lodestar. *Americana Art China, Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014). However, "the approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 379 (N.D. Ill. 2011); *see also Birchmeier supra* (affirming attorney fees in TCPA class action of 36% of the first \$10 million.)

### **IV. ARGUMENT**

#### **A. The Court Should Calculate Fees as a Percentage of the Fund**

The Court should use the percentage of the fund approach to determine fees in this case. Courts look to *In re Synthroid Marketing Litig.* ("*Synthroid II*"), 325 F.3d 974, 980 (7th Cir. 2003), to assist in determining fees, and have nearly uniformly held that the percentage of the fund reflects

the “market rate” for consumer class actions because “given the opportunity ... class members and Plaintiff’s counsel would have bargained for” such. *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-4462, 2015 WL 1399367, at \*5 (N.D. Ill. Mar. 23, 2015); *In re Capital One Tel. Consumer Prot. Act Litig.* (“*In re Capital One*”), 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (percentage of the fund method is “more likely to yield an accurate approximation of the market rate” in TCPA case, and that, “had an arm’s length negotiation been feasible, the court believes that the class would have negotiated a fee arrangement based on a percentage of the recovery, consistent with the normal practice in consumer class actions”).

One of the advantages that the percentage of the fund has over lodestar, and a substantial reason why percentage of the fund more accurately represents the “market rate,” is that “the lodestar method [would] require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a class of nine million lightly-injured plaintiffs likely would not be interested in doing.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015)(Discussing fee award in TCPA class action). Indeed, “there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration.” *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994). As one seminal case found:

The percentage method is bereft of largely judgmental and time-wasting computations of lodestars and multipliers. These latter computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They do not guarantee a more fair result or a more expeditious disposition of litigation.

*In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also Matter of Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to establish market based contingency fee percentages than to “hassle over every item or category of hours and expense and what multiple to fix and so forth”); *Gaskill v. Gordon*, 942 F.

Supp. 382, 386 (N.D. Ill. 1996) (percentage of fund method “provides a more effective way of determining whether the hours expended were reasonable.”), *aff’d*, 160 F.3d 361 (7th Cir. 1998).

**B. Counsel’s Request Is Within the Market Rate**

The Court is also tasked with determining what percentage of the settlement fund is appropriately allocated as attorney’s fees. The Seventh Circuit has held “attorneys’ fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services.” *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7<sup>th</sup> Cir. 2013). Further, the court held that there should be a “presumption” that fees in any given settlement should not “exceed a third or at most a *half* of the total amount of money going to class members and their counsel.” *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014) (emphasis added). Although *Pearson* establishes that courts must also consider the value of the settlement exclusive of administrative costs, it does not purport to alter the “market rate” analysis or lower the market rate for attorneys’ fees in consumer class actions.

Here, Plaintiff’s request falls squarely within the *Pearson* presumption. Plaintiff respectfully requests that the Court approve \$1,911,960 in attorney’s fees, which is 36% of the Settlement Fund net administration costs. This is in line with the latest TCPA fee decision from the Seventh Circuit where it affirmed attorney fees in TCPA class action of 36% of the first \$10 million. *Birchmeier supra* at 796-797.

The Seventh Circuit has elucidated ‘benchmarks’ that can assist courts in estimating the market rate, including “the fee contract between the plaintiff and counsel, data from similar cases, and information from class-counsel auctions,” *Kolinek*, 311 F.R.D. at 501 (citing *In re Synthroid Mkt. Litig.* (“*Synthroid I*”), 264 F.3d 712, 719 (7th Cir. 2001)). Other factors are relevant, as well,

including the risk counsel undertook in accepting the case, the quality of performance and the stakes of the case. *Synthroid I*, 264 F.3d at 721. Each of these factors supports the requested fee.

1. The Requested Fee Comports with the Contracts Between Plaintiff and Counsel.

The requested fee award is supported by the fee awards deemed reasonable in similar class cases and it is in line with representation agreements commonly entered into in this District, including the one in this case. In addition to analyzing the market price for legal services from analogous cases, courts also may examine “actual fee contracts that were negotiated for private litigation.” *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005).

The customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40% and affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that “40% is the customary fee in tort litigation” and noting, with approval, contract providing for one-third contingent fee if litigation settled prior to trial); *Retsky Family Ltd. P’ship v. Price Waterhouse, LLP*, Case No. 97-7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) (recognizing that a customary contingent fee is “between 33 1/3% and 40%” and awarding counsel one-third of the common fund).

Here, Plaintiff’s agreement with Counsel reflects this fee range, as is normal in consumer TCPA cases in this District. *See Ex. I* at ¶ 4. Such evidence supports a finding the requested fee reflects the amount Class Counsel would have received had they negotiated their fee *ex ante*.

2. The Requested Fee Reflects the Fees Awarded in Other Settlements.

Awards of one-third of the entire settlement fund were commonplace in TCPA litigation before *Pearson*. *See Martin v. Dun & Bradstreet, Inc.*, 12-215 (N.D. Ill. Jan. 16, 2014) (Dkt. No. 63) (one-third of total payout); *Hanley v. Fifth Third Bank*, No. 12-1612 (N.D. Ill.) (Dkt. No. 87)

(awarding attorneys' fees of one-third of total settlement fund). The 36% fee, based on the fund net administration costs, represents the post-*Pearson* market price, and is therefore reasonable. Several courts have approved similar or greater fees in this District in TCPA cases since *Pearson* support this rate. *In re Capital One*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (36% of the first \$10 million of the settlement) (Holderman, J.); *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Shah, J.) (38% of total fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.) (36% of the fund net admin costs). Once again, the Seventh Circuit in *Birchmeier* has confirmed this market rate when it affirmed the attorney fees of 36% of the first \$10 million. *Birchmeier* at 896 F.3d at 796-797.

3. Other Factors Support the Requested Fee.

Beyond comparisons to similar fee awards and agreements, the market price for legal fees “depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.” *Sutton*, 504 F.3d at 693 (quotation and internal marks omitted). Given the outstanding result achieved for the benefit of the Settlement Class in this case, considering the risk of nonpayment to Class Counsel, and extensive resources expended over the years this litigation has been pending, Class Counsel respectfully submit that their requested fee is reasonable and appropriate under the totality of circumstances, and should be approved.

a. Risk of Nonpayment

“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, 958 (7th Cir. 2013) (citing *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)). Thus, the risk of non-payment is a key consideration in

assessing the reasonableness of a requested fee, and must be incorporated into any ultimate fee award. *See Florin*, 34 F.3d at 565 (“[A] risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel had no sure source of compensation for their services.... [T]he need for such an adjustment is particularly acute in class action suits. The lawyers for the class receive no fee if the suit fails, so their entitlement to fees is inescapably contingent.”) (quotations and citations omitted); *Sutton*, 504 F.3d at 694 (finding abuse of discretion where court refused to account for the risk of loss on basis that “class actions rarely go to trial and that they all settle[,]” noting that “there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit[;] ... [b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel ... was undercompensated”).

Success, especially at the outset of this action, was by no means assured. The Court must “estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed).” *Synthroid I*, 264 F.3d at 718. That is so because “[t]he best time to determine this rate is the beginning of the case, not the end (when hindsight alters of the perception of the suit’s riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets.” *Id.* Thus, because this case was filed on in May 2015, the Court must look at the risks associated with the case on that date.

Class Counsel agreed to pursue this action on a contingent fee basis without the benefit of discovery regarding the size or ascertainability of the asserted class. Class Counsel accepted the case despite knowing that extensive class discovery would likely be required.

Moreover, even assuming sufficient discovery would be obtained, Class Counsel accepted the risk that the Court might ultimately deny certification again or grant certification along with summary judgment for Defendants. *Compare Jamison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action) with *Saf-T-Gard Int'l v. Vanguard Energy Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized). In addition, it is not uncommon for Defendants to go out of business or declare bankruptcy as recently happened to another class action Class Counsel was litigating for years. *See Kinnamon v Ditech Financial, LLC.*, 16-646 JAR, ECF 211 (E.D. Mo. February 26, 2019)(staying case due to bankruptcy proceeding where class certification and summary judgment were fully briefed and awaiting ruling).

Class Counsel accepted that litigating these and other issues risked recovering nothing for the class, Plaintiff, or counsel, and would have required significant expenditure of time, money, and resources — including potentially substantial expert expenses — for which Class Counsel would receive absolutely no compensation upon losing at summary judgment, class certification, or trial. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1035-35 (N.D. Ill. 2011) (finding significant risk of nonpayment where, among other reasons, counsel would have to overcome case dispositive defenses and certify a class).

The risk was real as evidenced by what transpired in this case. One of the primary battles in every TCPA action involves class plaintiffs' attempts to determine the size and scope of the class. Those facts are not (and cannot be) known by plaintiff's counsel *ex ante*, and typically require contentious discovery and litigation before ever becoming known. This case is no different; the Parties engaged in extensive discovery and conducted numerous status conferences

with the focus on discovery. *See* Dkt. Nos. 45, 51, 65, 78, 87, 88, 90, 101, 102, 103, 107, 108, 109, 110, 116, 117, 118, 119, 173, 181, 368, 403, and 436. In addition, Plaintiff filed motions to compel production of discovery against both Defendants (Dkt. Nos. 76, 162, 314, 322, and 416).

Litigating these issues risked recovering nothing for the class, and required significant additional expenditure of time, money, and resources — for which Class Counsel would not be compensated should they lose on summary judgment or fail to certify a class.

In light of the considerable risk undertaken by Class Counsel in prosecuting this action on a purely contingent fee basis, the requested fee award is reasonable. *In re Capital One*, 80 F. Supp. 3d at 805 (awarding 6% risk premium on top of 30% in TCPA class settlement).

*b.* Quality of Performance and Work Invested

The quality of Class Counsel's performance and time invested in fighting through years of contested motion practice, substantial discovery, and adversarial negotiations to achieve a \$5,500,000, non-reversionary settlement fund for the benefit of the Settlement Class further supports the requested fee award. *Sutton*, 504 F.3d at 693. Class Counsel successfully overcame numerous hurdles, from adversarial motion practice to contentious discovery requiring multiple motions to compel. *See* Dkt. Nos. 45, 51, 65, 78, 87, 88, 90, 101, 102, 103, 107, 108, 109, 110, 116, 117, 118, 119, 173, 181, 368, 403, and 436 (Status hearings on discovery) and motions to compel production of discovery against both Defendants (Dkt. Nos. 76, 162, 314, 322, and 416).

In addition to their substantial litigation efforts, Class Counsel devoted numerous hours to negotiating the settlement, as well, which included preparing their clients' mediation submissions, attending two separate mediation sessions, and months of continued negotiations including face to face meetings with Defendants' Counsel. (Keogh Decl. ¶ 3, 9). Class Counsel spent substantial time preparing the settlement papers and notice documents, working with the independent notice



provider, and drafting the motion for preliminary approval.

Class Counsel are experienced in consumer and class action litigation, including under the TCPA. (Keogh Decl. ¶¶ 23-52)(Owens Dec. ¶¶15-26) Moreover, because they were proceeding on a contingent fee basis, Class Counsel “had a strong incentive to keep expenses at a reasonable level[.]” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)). Class Counsel respectfully submit that their experience and the quality and amount of work invested in this action for the benefit of the class supports the requested fee award.

*c.* Stakes of the Case

The stakes of the case further support the requested fee award. This case involves hundreds of thousands of Settlement Class Members who allegedly received unsolicited robocalls from Defendants. The amount each Settlement Class Member is individually eligible to recover is low (between \$500 and \$1,500 per call), and thus individuals are unlikely to file individual lawsuits, especially as here each class member only received a small number – usually one or two– of these calls. Indeed, individual litigants likely would have to provide proof of calls well beyond what is required here to submit a claim and call records may not be available going back to when the class period begins, making it even less likely that people would file individual lawsuits. A class action is realistically the only way that many individuals would receive any relief. In light of the number of Settlement Class Members and the fact that they likely would not have received any relief without the assistance of Class Counsel, the requested fee is reasonable and should be granted.

**C. The Requested Service Award for Mr. Legg Should Be Approved.**

Class Counsel also respectfully request that the Court grant a service award of \$20,000 to Plaintiff Christopher Legg for his efforts on behalf of the class. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards

encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *Synthroid I*, 264 F.3d at 722 (“Incentive awards are justified when necessary to induce individuals to become named representatives.”).

Plaintiff answered discovery, was deposed in Chicago requiring travel from Florida, and fully participated in this litigation. Mr. Legg also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement. (Keogh Decl. ¶ 5.)

Moreover, the amount requested here, \$20,000, is comparable to or less than other awards approved by federal courts in Illinois and elsewhere. *See, e.g., Allen v. JPMorgan Chase Bank, NA*, No. 13-8285 (N.D. Ill. Oct. 21, 2015) (Dkt. No. 93 at 6) (Approving \$25,000 service award in TCPA class settlement); *Desai v. ADT Security Servs., Inc.*, No. 11-1925, DE 243 ¶ 20 (N.D. Ill. Feb. 27, 2013) (awarding \$30,000 service awards in TCPA class settlement); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08CV3610 CLW, 2015 WL 2383358, at \*9 (D.N.J. May 18, 2015), *aff’d*, 639 F. App’x 880 (3d Cir. 2016) (awarding \$10,000 to class representative in junk fax case); *Lees v. Anthem Ins. Companies Inc.*, No. 4:13CV1411 SNLJ, 2015 WL 3645208, at \*4 (E.D. Mo. June 10, 2015) (awarding \$10,000 to class representative in case involving nonconsensual calls to cell phones); *Am. Copper & Brass, Inc. v. Lake City Indus. Prod., Inc.*, No. 1:09-CV-1162, 2016 WL 6272094, at \*3 (W.D. Mich. Mar. 1, 2016) (approving a \$10,000 service award where Plaintiff was deposed, reviewed documents, and assisted counsel); *Ikuseghan v. Multicare Health Sys.*, No. C14-5539 BHS, 2016 WL 4363198, at \*3 (W.D. Wash. Aug. 16, 2016) (finding an service award of \$15,000 to be reasonable); *Hageman v. AT & T Mobility LLC*, No.

CV 13-50-BLG-RWA, 2015 WL 9855925, at \*4 (D. Mont. Feb. 11, 2015) (approving \$20,000 service award in TCPA class settlement); *Cook*, 142 F.3d at 1016 (affirming \$25,000 service award to plaintiff); *Heekin v. Anthem, Inc.*, No. 05-01908, 2012 WL 5878032, \*1 (S.D. Ind. Nov. 20, 2012) (approving \$25,000 service award to lead class plaintiff over objection); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, \*4 (S.D. Ill. Nov. 22, 2010) (awarding \$25,000 each to three named plaintiffs); *Benzion v. Vivint, Inc.*, No. 12-61826, DE 201 (S.D. Fla. Feb. 23, 2015) (awarding \$20,000 service award in TCPA class settlement). The requested service award of \$20,000 for Plaintiff is reasonable and should be approved.

**V. CONCLUSION**

WHEREFORE, Class Counsel respectfully request that the Court grant this motion and award Class Counsel \$1,911,960 which represents 36% of the settlement fund net administration costs, plus \$21,000.31 of counsel's out-of-pocket costs. Class Counsel further requests that the Court approve a service award to Plaintiff Legg in the amount of \$20,000.

Dated: June 26, 2019

Respectfully Submitted,

By: s/Keith J. Keogh

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*Attorneys for Plaintiff and the Proposed Class*

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION**

CHRISTOPHER LEGG, individually	)	
and on behalf of all others similarly situated,	)	
	)	Case No. 1:14-cv-10043
Plaintiff,	)	
	)	Judge Robert Gettleman
v.	)	
	)	Magistrate Judge Young B. Kim
PTZ INSURANCE AGENCY, LTD.	)	
an Illinois Corporation, and	)	
PETHEALTH, INC.	)	
a Delaware Corporation,	)	
	)	
Defendants.	)	

**DECLARATION OF KEITH J. KEOGH**

Keith J. Keogh declares under penalty of perjury, that the following statements are true:

1. I am over the age of eighteen and am fully competent to make this declaration. This declaration is based upon my personal knowledge and if called upon to testify to the matters stated herein, I could and would do so competently.

2. As shown below, my firm has regularly engaged in major complex litigation involving the Telephone Consumer Protection Act, 47 U.S.C. § 227, and other consumer issues. My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

3. This class action was filed on December 15, 2014. ECF No. 1. This Settlement was not reached until after extensive discovery, three rounds of class certification briefing, both sides filing motions for summary judgment, and two mediations, held a year apart, with the

second mediation occurring in July 2016. Even then, it took several years of negotiations and continued litigation to work out the terms of the class settlement.

4. Mr. Legg entered into a retainer agreement with Class Counsel wherein attorney's fees and costs would reflect a percentage of and class settlement or judgment achieved in the case, as is normal in consumer TCPA cases in this District.

5. Plaintiff answered discovery, was deposed in Chicago requiring travel from Florida, and fully participated in this litigation. Mr. Legg also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement

6. Under the Agreement, Defendants will pay Five Million, Five Hundred Thousand Dollars (\$5,500,000.00) into a non-reversionary Settlement Fund. The Settlement Fund will be divided pro rata among all Settlement Class Members who submit a timely claim, after payment of the costs of notice and administration and the court-approved attorneys' fee and class representative incentive award. None of the Settlement Fund will revert back to Defendants.

7. Based on Plaintiff's expert's analysis, the approximate class size is no more than 731,173 persons. I estimate the pro rata share for each class member who submits a valid claim would equal \$92 at a five percent claim rate and \$46 at a ten percent claim rate.

8. The estimate is based on administration costs at \$189,000 assuming a 5% claim rate, requested attorney fees of 36% of the fund net administration expenses (\$1,911,960) and expenses of \$21,000 and the requested incentive award of \$20,000, which would leave a Settlement Fund balance of \$3,347,040 to be distributed to the claimants.

9. The settlement was based upon the extensive information obtained in discovery, expert analysis, and otherwise and at all times, the settlement negotiations were highly

adversarial, non-collusive, and at arm’s length as evidenced by the two separate mediations a year apart.

10. I am confident in the strength of the claims alleged in this case and that Plaintiff would ultimately prevail at trial. Notwithstanding the foregoing, litigation is inherently unpredictable and the outcome of a trial is never guaranteed. Indeed, Plaintiffs faced significant risk in pursuing this matter further.

11. The Court has twice denied class certification in this case, and it is possible that the Court would deny class certification again, or that the result would be reversed by the Seventh Circuit in Defendants’ favor. *See e.g. Warnick v. Dish Network, LLC*, 304 F.R.D. 303 (D. Colo. 2014) (denying class certification in a TCPA case); *see also Jamison v First Credit Services, Inc.*, 2013 U.S. Dist. LEXIS 105352 (N.D. Ill. 2013) (denying class certification in a TCPA case).

12. Based on my experience doing Plaintiff’s consumer protection work, including the TCPA, I believe the settlement to be fair and reasonable and in the best interest of the classes. The settlements provide real monetary recovery and will act as a deterrent to future conduct by other actors considering activities proscribed by the TCPA.

13. In litigating this case, my firm and my co-counsels effectively divided up tasks so as not to unduly incur duplicative expenses.

14. My firm has incurred and paid the following expenses for the sole purpose of effectively litigating this case:

Date	Description	Amount
12/15/2014	Filing Fee	\$ 400.00
12/17/2014	Brandywine Invoice for Pethealth Service	\$ 59.00
2/11/2015	Invoice from Court Reporter for 1.28 Transcript	\$ 25.50



8/4/2015	Certified Mail to Bullseye	\$ 6.48
8/24/2015	Dep of Scriban	\$ 761.55
9/30/2015	Transcript of Legg Dep	\$ 460.20
10/22/2015	JAMS Invoice	\$ 3,025.00
11/20/2015	Hotel for Lozano Dep	\$ 116.44
11/20/2015	Parking at Airport for Lozano Dep	\$ 59.00
11/19/2015	Cab in San Antonio for Lozano Dep	\$ 32.62
11/19/2015	Flight to San Antonio for Lozano Dep	\$ 1,141.19
11/30/2015	JAMS Invoice	\$ 1,608.44
12/11/2015	Invoice for Lozano Dep	\$ 224.10
12/30/2015	JAMS Invoice	\$ 1,700.00
4/19/2016	Invoice for 4.22.15 and 7.14.15 Hearing Transcripts	\$ 145.50
4/19/2016	Invoice for 4.2.15 Hearing Transcript	\$ 11.70
4/19/2016	Invoice for 7.21.15 Hearing Transcript	\$ 24.30
4/19/2016	Incvoie for 8.24.15 and 8.31.15 Hearing Transcripts	\$ 218.25
4/19/2016	Refund for Overpayment for Transcript	\$ (21.75)
7/5/2016	Invoice from JAMS for 7.18 Mediation	\$ 4,875.00
7/29/2016	JAMS invoice	\$ 675.00
9/29/2016	Invoice for Transcript of 9.21 Hearing	\$ 33.95
10/31/2016	Invoice for Transcript of 10.11 Hearing	\$ 24.25
2/17/2017	Invoice for Transcript of 1.25 hearing	\$ 33.95
4/18/2018	MRK Expenses for Toronto Dep (No Food)	\$ 1,234.14
5/29/2018	Transcript of 3.12 Court Hearing	\$ 19.20
4/24/2018	Transcript for Lockett Dep	\$ 2,415.59
10/17/2018	Invoice for 8.16 Hearing Transcript	\$ 8.40
	Total Keogh Expenses	\$19,317.00

15. As can be seen, “overhead” expenses, such as those for photocopies, legal research, and meals have been excluded.

16. Given the strength of this settlement, the undersigned does not expect significant opposition to the settlement by any class members.

### **Class Counsel’s Experience**

17. Keogh Law, Ltd. consists of five attorneys and focuses on consumer protection class actions. I am a shareholder of the firm and member of the bars of the United States Court of Appeals for the First, Second, Third, Seventh, Ninth and Eleventh Circuits, Eastern District of Wisconsin, Northern District of Illinois, Central District of Illinois, Southern District of Indiana, District of Colorado, Middle District of Florida, Southern District of Florida, the Illinois State Bar, and the Florida State Bar, as well as several bar associations and the National Association of Consumer Advocates.

18. The TCPA is a technologically focused statute. In my experience, I have learned that in order to successfully litigate TCPA class actions, attorneys must understand the mechanics of automatic telephone dialing systems and must understand how computer databases store and organize call records.

19. In addition, attorneys must closely track pending petitions before the FCC on TCPA issues, as the FCC is very active on TCPA issues and continues to clarify its regulations.

20. In 2015, the National Association of Consumer Advocates honored me as the Consumer Attorney of the Year for my work in courts and with the FCC insuring the safeguards of the TCPA were maintained.

21. I am class counsel in some of the largest Telephone Consumer Protection Act (“TCPA”) settlements in the country. *See Hageman v. AT&T Mobility LLC, et al.*, Case 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) (Final Approval Granted February 11, 2015 providing for a \$45 million settlement for a class of 16,000 persons) and *Capital One Telephone Consumer Protection Act Litigation, et al.*, 12-cv-10064 (N.D. Ill. Judge Holderman) (Liaison Counsel and additional Class Counsel)(Final Approval Granted February 12, 2015 for a \$75 million settlement).

22. My firm was also class counsel in the four largest all cash FACTA class action settlements. *Flaum v Doctors Associates*, 16-CV-61198-CMA (S.D. Fla.)(\$30.9 million dollars); *Legg v. Laboratory Corporation of America Holdings*, No. 14-cv-61543-RLR (S.D. Fla., filed July 6, 2014) (\$11 million dollars); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC (S.D. Fla., filed Aug. 29, 2014) (\$7.5 million dollars) and *Muransky v. Godiva Chocolatier, Inc.*, 15-cv-60716-WPD (S.D. Fla., filed Apr. 6, 2015) (\$6.3 million dollars)(on appeal).

23. In addition to the above, I was lead or class counsel in the following class settlements, many of which involve claims under the TCPA: *See Leung v XPO Logistics, Inc.*, 15 CV 03877, (N.D. Ill. 2018) (TCPA); *Martinez v Mediacredit*, 4:16CV01138 ERW (E.D. Mo. 2018) (TCPA); *Martin v. Wells Fargo Bank, N.A.*, 16-cv-09483 (N.D. Ill. 2018)(FCRA); *Town & Country Jewelers, LLC v. Meadowbrook Insurance Group, Inc., et al*, 15-CV-02419-PGS-LHG (D. NJ. 2018)(TCPA); *Legg v AEO*, 14-cv-02440-VEC (TCPA)(on appeal after final approval from professional objector); *Markos v Wells Fargo*, 15-cv-01156-LMM (N.D. Ga. (TCPA); *Ossola v Amex* 1:13-cv-04836 (N.D. Ill. 2016)(TCPA); *Luster v. Wells Fargo*, 15-

1058-TWT (N.D. Ga.)(TCPA); *Prather v Wells Fargo*, 15-CV-04231-SCJ (ND. Ga)(TCPA); *Joseph et al. v. TrueBlue, Inc. et al.*, Case No. 3:14-cv-05963 (D. Wa.) (TCPA case pending final approval for \$5 million for 1,948 class members); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS; *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *De Los Santos v Millword Brown, Inc.*, 9:13-cv-80670-DPG (S.D. Fl) (TCPA); *Allen v. JPMorgan Chase Bank, N.A.* 13-cv-08285 (N.D. Ill. Judge Pallmeyer) (TCPA); *Cooper v NelNet*, 6:14-cv-314-Orl-37DAB (M.D. Fl.) (TCPA); *Thomas v Bacgroundchecks.com*, 3:13-CV-029-REP (E.D. Va.)(additional class counsel); *Carrero v. LVNV Funding, LLC*, 11-CV-62439-KMW (S.D. Fl. 2016)(Unlicensed debt collector under Fl. law); *Lopera v RMS*, 12-c-9649 (N.D. Ill. Judge Wood), *Kubacki v Peapod*, 13-cv-729 (N.D. Ill. Judge Mason); *Wojcik v. Buffalo Bills, Inc.*, 8:12 CV 2414-SDM-TBM (M.D. Fl. Judge Merryday) (TCPA); *Curnal v LVNV Funding, LLC.*, 10 CV 1667 (Wyandotte County, KS 2014) (Unlicensed debt collector under KS law); *Cummings v Sallie Mae*, 12 C-9984 (N.D. Ill. Judge Gottschall) (TCPA) (co-lead); *Brian J. Wanca, J.D., P.C. v. L.A. Fitness International, LLC*, Case No. 11-CV-4131 (Lake County, Il. Judge Berrones) (TCPA); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, L.L.C., et al*, 12-cv-3671 (N.D. Ill. 2013 Judge Gottschall) (TCPA); *Saf-T-Gard v TSI*, 10-c-7671, (N.D. Ill. Judge Rowland) (TCPA); *Cain v Consumer Portfolio Services, Inc.* 10-cv-02697 (N.D. Ill. Judge Keys) (TCPA); *Iverson v Rick Levin & Associates*, 08 CH 42955 Circuit Court Cook County (Judge Cohen) (TCPA); *Saf-T-Gard v Seiko*, 09 C 776 (N.D. Ill. Judge Bucklo) (TCPA); *Jones v. Furniture Bargains, LLC*, 09 C 1070 (N.D. Ill) (FLSA collective action); *Saf-T-Gard v Metrolift*,

07 CH 1266 Circuit Court Cook County (Judge Rochford) (Co-Lead) (TCPA); *Bilek v Countrywide*, 08 C 498 (N.D. Ill. Judge Gottschell); *Pacer v Rothenback*, 07 C 5173 (N.D. Ill. Judge Cole); *Overlord Enterprises v. Wheaton Winfield Dental Associates*, 04 CH 01613, Circuit Court Cook County (Judge McGann) (TCPA); *Whiting v SunGard*, 03 CH 21135, Circuit Court Cook County (Judge McGann) (TCPA); *Whiting v. GoIndustry*, 03 CH 21136, Circuit Court Cook County (Judge McGann) (TCPA).

24. I was the attorney primarily responsible for the following class settlements: *Wollert v. Client Services*, 2000 U.S. Dist. LEXIS 6485 (N.D. Ill. 2000); *Rentas v. Vacation Break USA*, 98 CH 2782, Circuit Court of Cook County (Judge Billik); *McDonald v. Washington Mutual Bank*, supra; *Wright v. Bank One Credit Corp.*, 99 C 7124 (N.D. Ill. Judge Guzman); *Arriaga v. Columbia Mortgage*, 01 C 2509 (N.D. Ill. Judge Lindberg); *Frazier v. Provident Mortgage*, 00 C 5464 (N.D. Ill. Judge Coar); *Largosa v. Universal Lenders*, 99 C 5049 (N.D. Ill. Judge Leinenweber); *Arriaga v. GNMortgage*, (N.D. Ill. Judge Holderman); *Williams v. Mercantile Mortgage*, 00 C 6441 (N.D. Ill. Judge Pallmeyer); *Reid v. First American Title*, 00 C 4000 (N.D. Ill. Magistrate Judge Ashman); *Fabricant v. Old Kent*, 99 C 6846 (N.D. Ill. Magistrate Judge Bobrick); *Mendelovits v. Sears*, 99 C 4730 (N.D. Ill. Magistrate Judge Brown); *Leon v. Washington Mutual*, 01 C 1645 (N.D. Ill. Judge Alesia).

25. The individual class members' recovery in some of these settlements was substantial. For example, in one of the cases against a major bank the class members' recovery was 100% of their actual damages resulting in a payout of \$1,000 to \$9,000 per class member. In another case against a major lender regarding mortgage servicing responses, each class member who submitted a claim form received \$1,431. *McDonald v. Washington Mutual Bank*.

26. In addition, to the above settlements, I was appointed class counsel in *Keim v. ADF MidAtlantic, LLC*, 2018 U.S. Dist. LEXIS 204548 (S.D. Fla., Dec. 3, 2018)(TCPA); *Braver v. Northstar Alarm Services, LLC*, No. 5:17-cv-00383-F (W.D. Ok 2018)(TCPA); *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *Galvan v. NCO Fin. Sys.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Pesce v First Credit Services*, 11-cv-01379 (N.D. Ill. December 19 2011) (TCPA Class); *Smith v Greystone Alliance*, 09 CV 5585 (N.D. Ill. 2010); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D.Ill. 2008)(Co-Lead Counsel for FACTA class); *Harris v. Best Buy Co.*, 07 C 2559,2008 U.S. Dist. LEXIS 22166 (N.D.Ill. March 20, 2008)( FACTA class); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D.Ill. 2008)( FACTA class); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D.Ill. 2008)( FACTA class); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596,2008 WL 400862 (N.D. Ill. 2008)( FACTA class); *Pacer v Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008)( FACTA class).

27. Some reported cases of mine involving consumer protection include: *Franklin v. Parking Revenue Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016);*Galvan v. NCO Portfolio Mgmt. Inc.*, 794 F.3d 716, 721 (7th Cir. 2015); *Leeb v. Nationwide Credit Corp.*, 806 F.3d 895 (7th Cir. 2015); *Smith v Greystone*, 772 F.3d 448 (7<sup>th</sup> Cir. 2014); *Clark v Absolute Collection Agency*, 741 F.3d 487 (4<sup>th</sup> 2014); *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012)*Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v. GMAC Mortgage Corp.*, No. 09-2182 (7th Cir. 2011) ; *Gburek v Litton Loan*, 614 F.3d 380 (7th Cir. 2010); *Sawyer v. Ensurance Insurance Services* consolidated with *Killingsworth v. HSBC Bank Nev., NA.*, 507 F3d 614, 617 (7th Cir.

2007), *Echevarria et al. v. Chicago Title and Trust Co.*, 256 F3d 623 (7th Cir. 2001); *Demitro v. GMAC*, 388 Ill. App. 3d 15, 16 (1st Dist. 2009); *Hill v. St. Paul Bank*, 329 Ill. App. 3d 7051, 1768 N.E.2d 322 (1st Dist. 2002); *In re Mercedes-Benz Tele Aid Contract Litig.*, 2009 U.S. Dist. LEXIS 35595 (D.N.J. 2009); *Catalan v. RBC Mortg. Co.*, 2009 U.S. Dist. LEXIS 26963 (N.D. Ill. 2009); *Elkins v. Equifax, Inc.*, 2009 U.S. Dist. LEXIS 18522 (N.D. Ill. 2009); *Harris v. DirecTV Group, Inc.*, 2008 U.S. Dist. LEXIS 8240 (N.D. Ill. 2008); *In re TJX Cos., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 2008 U.S. Dist. LEXIS 38258 (D. Kan. 2008); *Martin v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 89715 (N.D. Ill. 2007); *Elkins v. Ocwen Fed. Sav. Bank Experian Info. Solutions, Inc.*, 2007 U.S. Dist. LEXIS 84556 (N.D. Ill. 2007); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. 2007); *Stegvilas v. Evergreen Motors, Inc.*, 2007 U.S. Dist. LEXIS 35303 (N.D. Ill. 2007); *Cook v. River Oaks Hyundai, Inc.*, 2006 U.S. Dist. LEXIS 21646 (N. D. Ill. 2006); *Gonzalez v. W. Suburban Imps., Inc.*, 411 F. Supp. 2d 970 (N.D. Ill. 2006); *Eromon v. GrandAuto Sales, Inc.*, 333 F. Supp. 2d 702 (N.D. Ill. 2004); *Williams v. Precision Recovery, Inc.*, 2004 U.S. Dist. LEXIS 6190 (N.D. Ill. 2004); *Doe v. Templeton*, 2003 U.S. Dist. LEXIS 24471 (N.D. Ill. 2003); *Ayala v. Sonnenschein Fin. Servs.*, 2003 U.S. Dist. LEXIS 20148 (N.D. Ill. 2003); *Gallegos v. Rizza Chevrolet, Inc.*, 2003 U.S. Dist. LEXIS 18060 (N.D. Ill. 2003); *Szwebel v. Pap's Auto Sales, Inc.*, 2003 U.S. Dist. LEXIS 13044 (N.D. Ill. 2003); *Johnstone v. Bank of America*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon v. Washington Mutual Bank*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Ploog v. HomeSide Lending*, 2001 WL 987889 (N.D. Ill. 2001); *Christakos v. Intercountry Title*, 196 F.R.D. 496 (N.D. Ill. 2000); *Batten v. Bank One*, 2000 WL 1364408 (N.D. Ill. 2000); *McDonald v. Washington Mutual Bank*, 2000 WL 875416 (N.D. Ill. 2000); and *Williamson v. Advanta Mtge Corp.*, 1999 U.S. Dist. LEXIS 16374 (N.D. Ill. 1999). The *Christakos* case

significantly broadened title and mortgage companies' liability under Real Estate Settlement Procedures Act ("RESPA") and *McDonald* is the first reported decision to certify a class regarding mortgage servicing issues under the Cranston-Gonzales Amendment of RESPA.

28. I have argued before the Seventh Circuit, the First District of Illinois and the MultiLitigation Panel in *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v GMACM* (7th Cir. 2010); *Gburek v Litton Loan Servicing* (7th Cir. 2009); *Sawyer v Esurance* (7th Cir. 2007), *Echevarria, et al. v. Chicago Title and Trust Co.* (7th Cir. 2001); *Morris v Bob Watson*, (1st. Dist. 2009); *Iverson v Gold Coast Motors Inc.*, (1st. Dist. 2009); *Demitro v. GMAC* (1st Dist. 2008), *Hill v. St. Paul Bank* (1st Dist. 2002), and *In Re: Sears, Roebuck & Company Debt Redemption Agreements Litigation* (MDL Docket No. 1389.) *Echevarria* was part of a group of several cases that resulted in a nine million dollar settlement with Chicago Title.

29. My published works include co-authoring and co-editing the 1997 supplement to *Lane's Goldstein Trial Practice Guide* and *Lane's Medical Litigation Guide*.

30. I have lectured extensively on consumer litigation, including extensively on class actions and the TCPA. For example, I:

- a. Presented at the National Consumer Law Center 2018 annual conference on the TCPA.
- b. Presented at the 2018 Fair Debt Collection Training Conference for two sessions on the TCPA.
- c. Presented at the National Consumer Law Center 2017 annual conference on the TCPA.
- d. Presented at the National Consumer Law Center 2016 annual conference on the TCPA.
- e. Presented at the 2016 Fair Debt Collection Training Conference for a session on TCPA Developments.



- f. Presented for the National Association of Consumer Advocates November 2015 webinar titled Developments and Anticipated Impact of Recent FCC TCPA Rules.
- g. Presented at the National Consumer Law Center 2015 annual conference in San Antonio, Tx. on the TCPA.
- h. Presented at the 2015 Fair Debt Collection Training Conference for three sessions on the TCPA.
- i. Presented at the National Consumer Law Center 2014 annual conference in Tampa Fl. for two sessions on the TCPA.
- j. Panelist for the December 2013 Strafford CLE Webinar titled TCPA Class Actions: Pursuing or Defending Claims Over Phone, Text and Fax Solicitations.
- k. Panelist for the December 2014 Chicago Bar Association Class Action Seminar titled “Class Action Settlements in the Seventh Circuit: Navigating Turbulent Waters.”
- l. Presented at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- m. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPI lectured at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- n. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology.
- o. Presented for the National Association of Consumer Advocates November 2013 webinar titled Current Telephone Consumer Protection Act Issues Regarding Cell Phones.

- p. Presenter for the November 2013 Chicago Bar Association Class Action Committee presentation titled Future of TCPA Class Actions.
- q. Speaker at the Social Security Administration's Chicago office in August 2013 on a presentation on identity theft, which included consumers' rights under the Fair Credit Reporting Act.
- r. Panelist for the May 14, 2013 Chicago Bar Association Class Action Seminar titled "The Shifting Landscape of Class Litigation" as well as for the March 20, 2013 Strafford CLE webinar titled "Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology."
- s. Lectured at the June 6, 2013 Consumer Law Committee of the Chicago Bar Association on the topic "Employment Background Reports under the Fair Credit Reporting Act: Improper consent forms to failure to provide background report prior to adverse action."
- t. Lectured at the 2013 Fair Debt Collection Training Conference for three sessions on the TCPA.
- u. Presented at the 2012 National Consumer Law Center annual conference for a session on the TCPA.
- v. Presented at the 2012 Fair Debt Collection Training Conference for a session on the TCPA.
- w. Panelist for Solutions for Employee Classification & Wage/Hour Issues at the 2011 Annual Employment Law Conference hosted by Law Bulletin Seminars.
- x. Lectured at the 2011 National Consumer Law Center conference for a session titled Telephone Consumer Protection Act: Claims, Scope, Remedies as well as lectured at the

same 2011 National Consumer Law Center conference for a double session titled ABC's of Class Actions.

- y. Taught *Defenses to Foreclosures* for Lorman Education Services, which was approved for CLE credit, in 2008 and 2010.
- z. Guest lecturer on privacy issues at University of Illinois at Urbana-Champaign School of Law. In March 2010.
- aa. Guest speaker for the Legal Services Office of The Graduate School and Kellogg MBA Program at Northwestern University for its seminar titled: "Financial Survival Guide: Legal Strategies for Graduate Students During A Period of Economic Uncertainty."

31. I was selected as an Illinois Super Lawyer in 2018-2014 and an Illinois Super Lawyer Rising Star each year from 2008 through 2013 and my cases have been featured in local newspapers such as the Chicago Tribune, Chicago Sun-Times, The Naperville Sun, Daily Herald and RedEye.

32. Timothy J. Sostrin is a partner in the firm joining in 2011. He is a member in good standing of the Illinois bar, the U.S. District Court District of Colorado, U.S. District Court Northern District of Illinois, U.S. District Court Northern and Southern Districts of Indiana, U.S. District Court Eastern and Western Districts of Michigan, U.S. District Court Eastern District of Missouri, U.S. District Court Southern District of Texas and U.S. District Court Eastern and Western Districts of Wisconsin.

33. Timothy J. Sostrin has zealously represented consumers in Illinois and in federal litigation nationwide against creditors, debt collectors, retailers, and other businesses engaging in unlawful practices. Tim has extensive experience with consumer claims brought under the Fair Debt Collection Practices Act, The Telephone Consumer Protection Act, the Fair Credit Reporting

Act, the Electronic Fund Transfer Act, and Illinois law. Some of Tim's representative cases include: *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (granting class certification); *Galvan v. NCO Financial Systems, Inc.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012)(granting class certification); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, LLC*, (2012 U.S. Dist. LEXIS 174222 (N.D. Ill. December 6, 2012)(granting class certification); *Jelinek v. The Kroger Co.*, 2013 U.S. Dist. LEXIS 53389 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Hanson v. Experian Information Solutions, Inc.*, 2012 U.S. Dist. LEXIS 11450 (N.D. Ill. January 27, 2012)(denying defendant's motion for summary judgment); *Warnick v. DISH Network, LLC*, 2013 U.S. Dist. LEXIS 38549 (D. Colo. 2013)(denying defendant's motion to dismiss); *Torres v. Nat'l Enter. Sys.*, 2013 U.S. Dist. LEXIS 31238 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Griffith v. Consumer Portfolio Serv.*, 838 F. Supp. 2d 723 (N.D. Ill. 2011)(denying defendant's motion for summary judgment); *Frydman et al v. Portfolio Recovery Associates, LLC*, 2011 U.S. Dist. LEXIS 69502 (N.D. Ill 2011)(denying defendant's motion to dismiss); *Rosen Family Chiropractic S.C. v. Chi-Town Pizza*, 2013 U.S. Dist. LEXIS 6385 (N.D. Ill. 2013)(denying defendant's motion to dismiss); *Sengenberger v. Credit Control Services, Inc.*, 2010 U.S. Dist. LEXIS 43874 (N.D. Ill. May 5, 2010) (granting summary judgment on TCPA claim);

34. Tim is a member of the National Association of Consumer Advocates and ISBA. He received his Juris Doctorate, *cum laude*, from Tulane University Law School in 2006.

35. In 2014, Michael Hilicki joined the firm. He has spent nearly all of his approximately 20-year legal career helping consumers and workers subjected to unfair and deceptive business practices, and unpaid wage practices. He is experienced in a variety of consumer and wage-related areas including, but not limited to, the Fair Debt Collection Practices

Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud & Deceptive Business Practices Act, Telephone Consumer Protection Act, Fair Labor Standards Act and the Illinois Wage & Hour Law. He is experienced in all aspects of consumer and wage litigation, including arbitrations, trials and appeals.

36. Examples of the numerous certified class actions in which Michael has represented consumers or workers include: *Legg v. Spirit Airlines, Inc.*, No. 14-61978-Civ (S.D. Fla.); *Eibert v. Jaburg & Wilk, P.C.*, 13-cv-301 (D. Minn.); *Brinkley v. Zwicker & Associates, P.C.*, 13 C 1555 (N.D. Ill.); *Kraskey v. Shapiro & Zielke, LLP*, 11-cv-3307 (D. Minn.); *Short v. Anastasi & Associates, P.A.*, 11-cv-1612 SRN/JSM (D. Minn.); *Kimball v. Frederick J. Hanna & Associates, P.C.*, 10-cv-130 MJD/JJG (D. Minn.); *Murphy v. Capital One Bank*, 08 C 801 (N.D. Ill.); *In re American Family Mut. Ins. Co. Overtime Pay Litig.*, 06-cv-17430 WYD/CBS (D. Colo.); *Nettles v. Allstate Ins. Co.*, 02 CH 14426 (Cir. Ct. Cook Cty.); *Sanders v. OSI Educ. Servs., Inc.*, 01 C 2081 (N.D. Ill.); *Kort v. Diversified Collection Servs., Inc.*, 01 C 0689 (N.D. Ill.); *Hamid v. Blatt Hasenmiller, et al.*, 00 C 4511 (N.D. Ill.); *Durkin v. Equifax Check Servs., Inc.*, 00 C 4832 (N.D. Ill.); *Torres v. Diversified Collection Services, et al.*, 99-cv-00535 (RL-APR) (N.D. Ind.); *Morris v. Trauner Cohen & Thomas*, 98 C 3428 (N.D. Ill.); *Mitchell v. Schumann*, 97 C 240 (N.D. Ill.); *Pandolfi, et al. v. Viking Office Prods., Inc.*, 97 CH 8875 (Cir. Ct. Cook Cty.); *Trull v. Microsoft Corp.*, 97 CH 3140 (Cir. Ct. Cook Cty.); *Deatherage v. Steven T. Rosso, P.A.*, 97 C 0024 (N.D. Ill.); *Young v. Meyer & Njus, P.A.*, 96 C 4809 (N.D. Ill.); *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 96 C 3233 (N.D. Ill.); *Holman v. Red River Collections, Inc.*, 96 C 2302 (N.D. Ill.); *Farrell v. Frederick J. Hanna*, 96 C 2268 (N.D. Ill.); *Blum v. Fisher and Fisher*, 96 C 2194 (N.D. Ill.); *Riter v. Moss & Bloomberg, Ltd.*, 96 C 2001 (N.D. Ill.); *Clayton v. Cr Sciences Inc.*, 96 C 1401 (N.D. Ill.); *Thomas v. MAC/TCS Inc., Ltd.*, 96 C 1519 (N.D. Ill.); *Young v. Bowman, et al.*, 96 C

1767 (N.D. Ill.); *Depcik v. Mid-Continent Agencies, Inc.*, 96 C 8627 (N.D. Ill.); and *Dumetz v. Alkade, Inc.*, 96 C 4002 (N.D. Ill.)

37. Michael has lectured on consumer law issues at Upper Iowa University and the Chicago Bar Association. He is a member of the Trial Bar of the United States District Court for the Northern District of Illinois, and he has represented consumers in state and federal courts around the country on a *pro hac vice* basis.

38. Michael's published work includes "*AND THE SURVEY SAYS...*" *When Is Evidence of Actual Consumer Confusion Required to Win a Case Under Section 1692g of the Fair Debt Collection Practices Act in the Seventh Circuit?*, 13 Loy. Consumer L. Rev. 224 (2001).

39. In 2015, Amy Wells joined the firm. Amy brings a wealth of consumer litigation experience. In 2014, Amy Wells was installed as the President of the Miami Valley Trial Lawyers Association. The Miami Valley Trial Lawyers Association (MVTLA) is an association of attorneys throughout Ohio's Miami Valley (Montgomery, Miami, Darke, Preble, Clark, Greene, Warren, Champaign, and Butler Counties). Their members are dedicated to the advancement of fair trials and free access of individuals to the courts of this state. Their members represent injured persons, criminal defendants, consumers and families in the areas of negligence, criminal law, consumer protection, workers' compensation, professional malpractice, products liability, family law, insurance law, employment, and civil rights law.

40. The Ohio Association for Justice named Ms. Wells as recipient of the 2012 President's Award. Ms. Wells was honored by Ohio Association for Justice at the Annual Convention, where she received her award from President Denise Houston at the Association's flagship President's Dinner on May 3, 2012. The dinner was attended by over 400 attorneys and their guests at the Hilton at Easton Town Center in Columbus, Ohio.

41. Ms. Wells received the highest possible Attorney rating (Superb) by Avvo, Inc., which ranks attorneys according to a variety of criteria, including feedback from clients and peers.

42. In 2011, Ms. Wells was selected to serve on Ohio Attorney General Mike DeWine's Advisory Committee. This panel was assembled by the OAG to review Ohio's primary consumer protection law, the Consumer Sales Practices Act (R.C. 1345 et seq.). Ms. Wells is the only consumer protection attorney in private practice selected for this committee. Ms. Wells has repeatedly been named by Super Lawyers Magazine as a Rising Star. Only 2.5 percent of the attorneys in the state are selected to the Rising Stars list. Super Lawyers, a Thomson Reuters business, is a rating service of attorneys from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The annual selections are made using a statewide survey of attorneys, independent research evaluation of candidates, and peer reviews by practice area. The Super Lawyers lists are published nationwide in Super Lawyers magazines and in leading city and regional magazines across the country.

### **Education**

43. Ms. Wells graduated from the University of Dayton School of Law joint-degree program, earning a Juris Doctorate and Masters of Business Administration. She was the only student in her graduating class to receive this dual degree. During law school, Ms. Wells was a member of the Moot Court Team and Moot Court Board. Ms. Wells was Vice President of the UDSL Women's Caucus and also served as a teaching assistant in the legal research and writing program. Amy was a summer associate at a Dayton law firm in the litigation section. She also clerked in-house at NCR's world headquarters throughout law school, acting as the lead intern during her final year. Amy earned her undergraduate degree in business administration from Ohio University in Athens.

44. Some of Ms. Wells published work include:
- a. 2008 article - The Price of Identity Theft for Ohio Consumers was published in Ohio Trial Magazine, Volume 18, Issue 1.
  - b. In April 2009 her article Protecting Consumers from a “New Breed” of Debt Collector was published in the Dayton Bar Association’s Bar Briefs magazine.
  - c. In 2011, the article titled Proposed Deconstruction of Ohio’s UDAP Law, a National Trend? was published by the National Association of Consumer Advocate’s publication, The Consumer Advocate, Volume 17, No. 4.
  - d. Ms. Wells wrote Ohio’s Consumer Protection Law, which was published in the October 2011 issue of the Advisory.
  - e. In November 2011 “HB 275 – The Undoing of Ohio’s Consumer Protection Law” was published in the Dayton Bar Briefs, Vol. 61, No.3.
  - f. Ms. Wells is a featured blogger on Neighborhood Housing Services Consumer Law Center Blog
  - g. Ms. Wells authored a chapter in the Consumer Law Basics book while serving as faculty of the Practicing Law Institute.
  - h. Ms. Wells is a contributing freelance author for NOLO.com (2015- present)
45. Speaking Engagements for Ms. Wells include:
- a. Ms. Wells is regularly invited to speak to attorneys and consumers on a state and national basis regarding consumer advocacy issues and laws. Recent presentations include:
  - b. 2010 National Consumer Law Center Fair Debt Collection Training Conference, Jacksonville, FL, “FDCP Fundamentals: The Care and Feeding of Your FDCP Case.”



c. CORT Consumer Law Training 2010, Ann Arbor, MI, “Bringing Claims Under the FCRA and FACTA.”

d. 2010 Ohio Association for Justice Annual Convention, Columbus, OH, “Appraisal Litigation: Critical Evidence in an Inflated Appraisal Case & Eminent Domain: Friend or Foe?”

e. 2011 Ohio Association for Justice Insurance Law CLE, Columbus & Dayton, OH, “Protect Thy Consumer, Today’s Consumer Law Issues.”

f. 2011 Ohio Association for Justice Annual Convention, Columbus, OH, Moderator for the Consumer Law Continuing Legal Education panel.

g. 2012 Ohio Association for Justice Annual Convention, Columbus, OH, “How to Practice Under the New Ohio Consumer Law.”

h. 2012 American Bankruptcy Law Forum, Dayton, OH, “Consumer Law for Bankruptcy Attorneys”

i. 2013 Served as faculty for CLE about Representing the Pro Bono Client, Consumer Law Basics in San Francisco, CA. My presentation was entitled “Introduction to the Fair Credit Reporting Act.”

j. 2015 Ohio State Bar Association Consumer Law CLE, Columbus, OH, “The Basics of the FCRA Including Recent Changes/Oversight from the CFPB”

46. Ms. Wells has been featured in the following media:

a. Ms. Wells has been interviewed by various media outlets, including the following pieces.

b. ALEC Leads the Legal War Against Consumers, A Lawyers.com Series, Posted May 3, 2012.

c. Right-to-cure bill seen powering its way to approval, Business First, Dec. 16, 2011.

d. 2012, Guest on Americas Workforce Radio, topic: consumer credit reporting.

47. Finally, Ms. Wells served on the Board of Trustees of the Ohio Association for Justice and chaired the Consumer Law Section from 2009-2014. She also served on the Association's Legislative Committee. Ms. Wells is an active member of the National Association of Consumer Advocates and is currently a state chair for the organization. Ms. Wells currently sits on the board of the Miami Valley Trial Lawyers Association, and will served as the Association's President from 2014-2015. Ms. Wells is a member of the American Association for Justice, Illinois Bar Association, Lake County Bar Association, Ohio State Bar Association, and the Dayton Bar Association, Carl D. Kessler Inn of Court, and serves on the DBA Certified Grievance Committee.

48. In March 2018, Theodore H. Kuyper joined the firm. Ted is currently a member in good standing of the Illinois State Bar, the United States District Court for the Northern District of Illinois, and the Seventh Circuit Court of Appeals, and has been admitted to practice *pro hac vice* in several additional United States District Courts.


49. Ted has diverse experience prosecuting and defending class action and other large-scale litigation in trial and appellate courts under a variety of substantive laws, including without limitation the Telephone Consumer Protection Act, the Racketeer Influenced & Corrupt Organizations Act (RICO), the Fair Credit Reporting Act, the Illinois Consumer Fraud & Deceptive Business Practices Act, and the Real Estate Settlement Procedures Act, as well as Illinois and other state statutory and common law.

50. Since joining the firm, Ted has represented consumers as counsel of record or otherwise in the following putative class actions: *Cranor v. Skyline Metrics, LLC*, No. 4:18-cv-00621-DGK (W.D. Mo.); *Cranor v. The Zack Group, Inc.*, No. 4:18-cv-00628-FJG (W.D. Mo.); *Cranor v. Classified Advertising Ventures, LLC, et al.*, No. 4:18-cv-00651-HFS (W.D. Mo.); *Morgan v. Orlando Health, Inc., et al.*, No. 6:17-cv-01972-CEM-GJK (M.D. Fla.); *Morgan v. Adventist Health System/Sunbelt, Inc.*, No. 6:18-cv-01342-PGB-DCI (M.D. Fla.); *Burke v. Credit One Bank, N.A., et al.*, No. 8:18-cv-00728-EAK-TGW (M.D. Fla.); *Motiwala v. Mark D. Guidubaldi & Associates, LLC*, No. 1:17-cv-02445 (N.D. Ill.); *Buja v. Novation Capital, LLC*, No. 9:15-cv-81002-KAM (S.D. Fla.); and *Detter v. Keybank, N.A.*, No. 1616-CV10036 (Circuit Ct. of Jackson County, Missouri).

51. Immediately prior to joining Keogh Law, Ted worked at a boutique Chicago law firm where he represented clients in a range of complex commercial and other litigation, including contract, tort, professional liability, premises and products liability, bad faith and class action. Previously, he was an associate at a nationally-renowned class action law firm, where he focused on complex commercial, consumer, class action and other large-scale, high-stakes litigation.

52. Ted earned his Juris Doctorate from Washington University School of Law in St. Louis in 2007. During law school, he worked as a Summer Extern for Magistrate Judge Morton Denlow (Ret.) of the United States District Court for the Northern District of Illinois, served as primary editor and executive board member of the Global Studies Law Review, and authored a student note that was published in 2007. Ted also earned a number of scholarships and other academic accolades, including the Honors Scholar Award (top 10% for academic year) and repeated appearances on the Dean's List.

Executed at Chicago, Illinois, on June 26, 2019.



Keith J. Keogh

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHRISTOPHER LEGG, individually	)	
and on behalf of others similarly situated,	)	
	)	Case No. 1:14-cv-10043
Plaintiff,	)	
	)	Judge Robert Gettleman
v.	)	Magistrate Judge Young B. Kim
	)	
PTZ INSURANCE AGENCY, LTD., an	)	
Illinois corporation, and PETHEALTH,	)	
INC., a Delaware corporation,	)	
	)	
Defendants.	)	

**DECLARATION OF SCOTT D. OWENS**

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

1. I am an attorney and the owner of a law firm which operates under the name Scott D. Owens, P.A. I am one of the attorneys representing Plaintiff, Christopher Legg, in this action.

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

Court	Date Admitted
State of Florida	October 2, 2002
United States District Court Southern District of Florida	October 10, 2008
United States District Court Middle District of Florida	June 23, 2009
Eleventh Circuit Court of Appeals	April 30, 2012
United States District Court Eastern District of Michigan	January 9, 2014
Sixth Circuit Court of Appeals	May 20, 2015
United States District Court Northern District of Florida	February 12, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*National Consumer Law Center 23rd Annual Consumer Rights Litigation Conference (2014)<sup>1</sup>*

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

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<sup>1</sup> I also served as the co-chairperson for the aforementioned conference.



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

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

*National Consumer Law Center 25th Annual Consumer Rights Litigation Conference (2016)*

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

*National Consumer Law Center 26th Annual Consumer Rights Litigation Conference (2017)*

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

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

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

15. I am generally regarded by my peers as one of the leading authorities in the State of Florida with respect to the Fair and Accurate Credit Transactions Act (FACTA), the Fair Debt Collection Practices Act, and the Telephone Consumer Protection Act.

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

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

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

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

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

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

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

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

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

*Bank of America v. Evans,*  
948 So.2d 998 (Fla. 3d DCA 2007)

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

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

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

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

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

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

*Deuel v. Santander Consumer USA, Inc.,*  
700 F.Supp.2d 1306, 2010 WL 1253035, \*3 (S.D. Fla. Apr. 1, 2010)

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

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

*Breslow v. Wells Fargo Bank, N.A.*,  
857 F.Supp.2d 1316, 2012 WL 1448444 (S.D. Fla. April 26, 2012)

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

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

*Legg v. Voice Media Group, Inc.*,  
990 F.Supp.2d 1351, 2014 WL 29594 (S.D. Fla. January 03, 2014)

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

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

18. I served as co-lead counsel in the following successful FACTA class actions: *Legg v. E Z Rent-A-Car*, No. 14–cv–01716–PGB–DAB (M.D. Fla. Filed Oct. 22, 2014); *Legg v. Laboratory Corporation of America Holdings*, No. 14–61543–CIV (S.D. Fla. Filed July 6, 2014); *Legg v. Spirit Airlines, Inc.*, No. 14–cv–61978 (S.D. Fla. Filed August 29, 2014).

19. I was appointed as class counsel in the matter of *McMullen v. Jennings & Valancy, P.A.*, Case No. 10-CV-60050. In certifying me for class counsel, Judge Adalberto Jordan stated, “I find that Mr. Owens can fairly and adequately represent the interests of the class...” and “Mr. Owens has the requisite mastery in these types of claims.” I also served as class counsel in the case of *Lithgow v. Eisinger, Brown, Lewis, Frankel, Chaiet & Krut, P.A.* Case No. 0-10-cv-61185-WJZ [See Order dated Dec. 9, 2010]. In March 2012, I was appointed class counsel in *Lee v. Greenspoon Marder*, Case No. 10-cv-61184-Lenard/O’Sullivan and I also served as class counsel in *Bummolo v. The Law Offices of Charles W. McKinnon, P.L.*, No. 2:11- cv-14408-KMM and served as class counsel in *Collins v. Erin Capital Management, LLC*, No. 1:12–cv–22839–CMA; *Rigney v. Livingston Financial, LLC*, No. 6:12-cv-00617-RBD-

TBS; *Walker v. Greenspoon Marder, P.A.*, No. 13-CV-14487, 2015 WL 233472 (S.D. Fla. Jan. 5, 2015); and *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC, ECF No. 64 (S.D. Fla. June 10, 2015).

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

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

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

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

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

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

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

27. I have always had confidence in strength of the claims alleged in this case. Regardless, I recognize that continued litigation is inherently unpredictable. The expense, duration and complexity of continued litigation in this matter would be substantial and, regardless the outcome would likely include an appeal. Considering the risks of continued litigation, along with the strength of this settlement, I did not expect significant opposition to the settlement by any class members.

28. The suit has been pending since December 5, 2014, and my firm has spent significant time and effort in this matter. The discovery acquired from Defendant was invaluable, as Plaintiff's counsel unearthed significant information upon which to evaluate the proposed settlement, and came into settlement negotiations armed with the necessary information to evaluate the strengths and weaknesses of the case. The Parties were able to reach the present settlement only after extensive motion practice, discovery, multiple depositions, as well as arm's length mediation before a certified mediator.

29. Based on my experience in plaintiff's consumer protection work, including class action work involving the TCPA, I believe this settlement to be fair and reasonable and in the best interest of the class. The settlement provides a significant

monetary recovery for the class and will act as a strong deterrent to future violations of the TCPA.

30. I also certify that I have incurred the following out-of-pocket expenses in litigating this matter:

<b>Date</b>	<b>Description</b>	<b>Amount</b>
12/19/2014	<i>Pro Hac Vice</i> Fees – Scott Owens	\$ 50.00
12/19/2014	<i>Pro Hac Vice</i> Fees – Patrick Crotty	50.00
01/05/2015	Certificate of Good Standing	7.00
12/02/2015	R/T Airfare FLL/ORD   Mediation in Chicago	770.20
12/02/2015	Hotel Expenses   Mediation in Chicago	679.78
01/09/2017	Ancillary Airport Expenses	17.95
01/09/2017	Mediation-related expenses (food, beverages, etc.)	108.38
	<b>TOTAL</b>	<b>\$ 1,683.31</b>

Executed at Hollywood, Florida, on Wednesday, June 26, 2019.

/s/ Scott D. Owens  
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