UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:20-cv-24279-UU

PET PARADE, INC., on behalf of itself and all others similarly situated,

Plaintiff,

vs.

STOKES HEALTHCARE, INC., a foreign company, doing business as EPICUR PHARMA,

Defendant.
_____/

PLAINTIFF'S *UNOPPOSED* RENEWED[1] MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, Pet Parade, Inc. ("Plaintiff"), individually and on behalf of all others similarly situated (identified herein as the "Settlement Class"), respectfully requests, pursuant to Fed. R. Civ. P. 23(e), that the Court enter an order (1) preliminarily approving the Parties' proposed Class Action Settlement Agreement and Release (the "Agreement"), attached hereto as **Exhibit 1**, certifying the Settlement Class, appointing Plaintiff Pet Parade, Inc. as the class representative and Edwards Pottinger, LLC and Eggnatz Pascucci, P.A. as Class Counsel, (2) approving the form of the Class Notice attached as **Exhibit C** to the Agreement and its dissemination to the Settlement Class by U.S. mail, e-mail (where applicable) and website, and (3) setting dates for opt-outs, objections, and a final fairness hearing.

I. INTRODUCTION

Plaintiff brought this class action to redress business practices that violate the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, et seq. (TCPA) and the and Junk Fax Prevention Act of 2005 ("JFPA"). Plaintiff sought to enforce these laws, seeking damages and

[1]. Pursuant to the Court's Order D.E. 45, Plaintiff is filing this Renewed Motion for Preliminary Approval of Class Action Settlement and accompanying Amended Notice.

injunctive relief, resulting from the alleged unlawful actions of Defendant, Stokes Healthcare, Inc., doing business as Epicur Pharma ("Defendant" or "Epicur") in sending unsolicited facsimile advertisements.

Through this litigation, Plaintiff has secured a class-wide settlement Agreement that provides significant financial and injunctive benefits to 11,205 individuals and entities identified on Epicur's Master Fax List who, according to Epicur's records, were sent a telephone facsimile advertisement from or on behalf of Epicur ("Settlement Class"). *See* Joint Decl. of Co-Lead Interim Class Counsel ¶ 7, attached hereto as **Exhibit 2.**

The Agreement was negotiated over the course of more than two-months, including two full day mediations conducted by mediator Jeffrey Grubman of JAMS, as well as several post-mediation negotiations with and withtout the assistance of Mr. Grubman. *Id*. ¶ 10. Plaintiff and Class Counsel have investigated the facts and law underlying the claims asserted in the Action. Plaintiff's Counsel engaged in numerous discussions with Defendant's counsel regarding the claims. Defendant continues to deny all material allegations and claims asserted in the Action, and it denies all allegations of wrongdoing and liability. Defendant further contends that the Action is not amenable to class certification and that Plaintiff and the class that it seeks to represent are not entitled to any form of damages or relief. In addition, Defendant maintains that it has meritorious defenses to all claims alleged in the Action and it is prepared to defend the Action. Only because of the risks, uncertainties, burden and expense of continued litigation, Defendant desires to settle the Action on the terms set forth in the Agreement.

Plaintiff and Class Counsel believe that the claims asserted in the Action have merit. However, considering the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation and any subsequent appeal, Plaintiff and Class Counsel believe that it is desirable that the Action be fully and finally compromised, settled, and terminated with prejudice, and forever barred pursuant to the terms and conditions set forth in the Agreement. Plaintiff and Class Counsel have concluded that the terms and conditions of the Agreement are fair, reasonable, and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action. Class Counsel Decl. ¶ 9. The Agreement is the result of extensive negotiations and mediation.

The Agreement provides, *inter alia*, for a Settlement Fund in the amount of $1,650,00.00, from which Defendant is required to pay all Settlement Class Member Benefits, including a cash

payment of up to $500.00 to Settlement Class members who submit a valid Claim, notice and administration costs, and potential awards of attorneys' fees and costs and a Service Award to the named Plaintiff, as well as injunctive relief. The Administrator will create a website to promote the settlement to Settlement Class Members, and direct notice will be sent by U.S. mail (and by e-mail when available). The Agreement provides for a release of claims as set forth therein.

A proposed Preliminary Approval Order is attached as **Exhibit E** to the Agreement and will be submitted to the Court electronically as directed. If approved, the Agreement will produce an efficient resolution to an otherwise anticipated hard-fought and protracted litigation. Through this unopposed motion, Plaintiff seeks entry of an order providing for the following:

1. Preliminary approval of the Agreement;
2. Preliminary certification of the Settlement Class, and appointment of Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
3. Approval of Angeion Group as the Settlement Administrator;
4. Approval of the Settlement Class Notice Program;
5. Approval of the Claims process set forth in the Agreement; and
6. The scheduling of a Fairness Hearing.

Plaintiff submits that the proposed Agreement is fair and within the range of other TCPA class action settlements, particularly given the uncertainty of future Federal Communications Commission ("FCC") Orders and judicial opinions relating to facsimile advertisement opt-out notice requirements, the various class certification issues asserted by Defendant in its opposition to Plaintiff's Motion for Conditional Certification, and Defendant's limited financial circumstances, as outlined below. The Agreement provides relief to the Settlement Class where their recovery, if any, would otherwise be uncertain, especially given Defendant's demonstrated willingness to vigorously defend of the case on threshold issues that may bar relief entirely for a significant portion, if not all, of the Settlement Class. The Agreement was reached only after exchange of formal discovery, additional informal confirmatory discovery, including financial disclosures, and extensive arms-length negotiations. For these reasons, and as further discussed below, Plaintiff requests the Court's preliminary approval of the Agreement.

II. BACKGROUND

A. Legal Claims and Ultimate Facts

The TCPA, Pub. L. 102-243, § 3(a), added Section 227 to Title 47 of the United States Code, 47 U.S.C. § 227. In pertinent part, 47 U.S.C. § 227(b) provides "[i]t shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine[.]"

A business may not send an unsolicited fax advertisement to a recipient unless the business has an (1) Existing business relationship (EBR) with recipient, and (2) obtained the recipients fax number from a directory, advertisement, or site on the internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. 47 U.S.C § 227(b)(1)(C)(iii).

In 2005, Congress amended the facsimile advertising provisions of the TCPA in the JFPA, Pub. L. No. 109-21, 119 Stat 359 (2005) by creating a substantive right for recipients of fax advertisements to receive specific information in a required "opt-out" notice. 47 U.S.C § 227(b)(1)(C)(iii). The opt-out notice is required to, among other things, clearly and conspicuously state that "the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph [47 C.F.R.§64.1200] (a)(3)(v) of this section is unlawful." *See* 47 C.F.R. § 64.1200(a)(3)(iii)(B).

Defendant is an FDA registered 503B outsourcing facility that formulates, manufacturers, and provides custom prescription veterinary medicines to veterinarians and veterinary hospitals. Class Counsel Decl. ¶ 18. Plaintiff, an animal clinic, alleges that Defendant sent it and Class Members repeated and unwanted unsolicited facsimile advertisements promoting Defendant's business without the required opt-out notice. Defendant's business records show that it, through its vendor and fax broadcaster, Westfax, Inc., sent fax advertisements to 11,205 specific recipients that are identified on Defendant's Master Fax List. *See* Master Fax List (Redacted) [D.E. 21-6]; *Id*. ¶ 7. Plaintiff was the recipient of at least ten (10) of these faxes. *See* Sample Demonstrative Faxes [D.E. 1-1]; *Id*. ¶ 7.

B. Procedural History

On October 19, 2020, Plaintiff filed its original Complaint. [DE 1]. The Parties promptly conducted their scheduling conference and filed their Joint Planning and Scheduling Report on

December 2, 2020 [DE 12]. Written discovery and document requests were served and responded to thereafter.

Plaintiff filed its Motion for Conditional Class Certification on January 8, 2021 [DE 19]. Defendant filed its Opposition to Conditional Certification on January 22, 2021 [DE 20]. Plaintiff's Reply was filed on January 29, 2021 [DE 21].

On February 19, 2021, with the assistance of mediator Jeffrey Grubman of JAMS, counsel for the Parties mediated and engaged in intensive arm's-length negotiations and an all-day mediation. Although the case did not settle, significant progress was made, and the Parties agreed to attend a second mediation conference. Class Counsel Decl. ¶ 11

The Parties attended a second mediation on March 15, 2021 with Jeffrey Grubman. While a final class-wide settlement was still not reached that day, more progress was made, so the Parties engaged in on-going settlement negotiations while continuing to litigate the case. Class Counsel Decl. ¶ 12. Plaintiff served additional rounds of written discovery, including supplemental discovery following the parties' mediation conferences. *Id.*

On March 18, 2021 Plaintiff filed its Motion to Appoint Counsel as Co-lead Interim Class Counsel [DE 34]. On April 6, 2021, the Court appointed Edwards Pottinger, LLC and Eggnatz Pascucci, P.A. as co-lead interim class counsel [DE 38]. That day, the Parties finally reached a class-wide settlement in principal and filed their Joint Notice of Settlement [DE 39].

A settlement was reached in principle and the Parties drafted a term sheet memorializing the basic settlement terms. Class Counsel Decl. ¶ 13. The other essential terms of the Agreement were negotiated over the course of month following the Parties Notice of Settlement. *Id*. Discovery revealed that all 11,205 facsimile numbers that Defendant sent facsimile advertisements to are identified on Defendant's Master Fax List. *Id*. ¶ 7. Accordingly, the clearly defined class definition based on the facts discovered is defined as:

> All persons identified on Defendant's Master Fax List who (1) during the four-year period prior to the filing of this action through the date of preliminary approval, (2) were sent a telephone facsimile message advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendant, (3) that did not display an opt-out notice on the first page stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, would be unlawful. (hereinafter the "Settlement Class").

C. Settlement Negotiations

The Agreement was negotiated over the course of months, including two full day mediations, as well as several post-mediation negotiations with and without the assistance of Mr. Grubman. Class Counsel Decl. ¶ 10. At the same time, the litigation remained contested and adversarial as the Parties maintained their respective litigation positions. Three weeks after the Parties second mediation, the Parties finally reached an agreement in principle to settle the litigated claims on a class-wide basis, subject to Court approval. The Parties have worked diligently, with the assistance of an experience claims administrator, to draft and finalize a written settlement Agreement and to prepare a motion seeking preliminary approval from the Court of the class-wide settlement. Class Counsel Decl. ¶ 14.

D. Plaintiff's Risks of Continued Litigation

Defendant maintains that it did not violate the TCPA and that Plaintiff and the Settlement Class are not entitled to any relief. If this Action proceeds, Defendant will vigorously defend class certification based on several individualized issues, and it contends that it will obtain summary judgment on the substantive merits of the Plaintiff's claims, including the existence of an existing business relationship.

Specifically, Defendant contends that it did not transmit any *unsolicited* facsimile advertisements. Class Counsel Decl. ¶ 16. Defendant contends that Plaintiff and certain Class Members attended various veterinary conferences where Plaintiff and Class Members provided contact information to Defendant, thereby inviting contact by Defendant, thus rendering the faxes *solicited* and not subject to the TCPA. *Id*. Defendant also contends that the JFPA of the TCPA only applies to faxes which are solely received on a traditional fax machine (as opposed to a digital fax machine), thereby rendering the Class unascertainable and defeating class certification. *Id*. Defendant further contends that many individualized inquiries predominate over the claims and that almost 90% of the recipients identified on its Master Fax List are existing customers. Defendant asserts that because faxes were sent to both its customers and potential customers that allegedly provided it with contact information, that all the faxes were "solicited," and that 11th Circuit case law supports an argument that a "solicited" fax does not require an opt-out notice. *See Gorss Motels, Inc. v. Safemark Systems, Inc.* 931 F.3d 1094 (11th Cir. 2019). *Id*. Last, Defendant asserts that even if a fax is deemed unsolicited (within the ambit of the TCPA), it is an open legal

question whether the opt-out notice at issue is valid and that fact, combined with an established business relationship as well as the Plaintiff's publication of its fax number renders Epicur to have no liability to Plaintiff or the Settlement Class under the TCPA.

E. Defendant's Financial Circumstances

Although Defendant denies any liability or wrongdoing related to this Action, Defendant sought to engage class-wide settlement discussions because of its litigation risks and, in large part, its limited financial resources in relation to the litigation exposure presented. Class Counsel Decl. ¶¶ 17-19.

Epicur's settlement position is further informed by the financial constraints it currently faces. *Id*. ¶ 17. There is no available insurance coverage. *Id*. Epicur does not have the financial capability to fund a settlement, let alone pay a contested judgment, in an amount greater than the settlement reached. *Id*. Its business operations consist of an office and an outsourcing facility. *Id*. ¶ 18. Veterinary outsourcing facilities are subject to stringent standards and occupy narrow market positions. *Id*. Outsourcing facilities, unlike larger pharmaceutical manufacturers, are prohibited from selling products through wholesalers further limiting available profits. *Id*. Put simply, there are financial constraints on Epicur's ability to pay a larger out of pocket settlement – or judgment. *Id*.

Defendant has produced to interim co-lead class counsel confidential business records, including profit/loss statements, to substantiate its limited financial position. Class Counsel Decl. ¶ 19. Defendant would sustain tens of millions of dollars in damages if it were exposed to the full statutory damages alleged by Plaintiff for the Class under the TCPA. *Id*. The Settlement Fund is significant given Defendant's limited financial resources. *Id*.

Defendant's willingness to make such a significant amount available to the Settlement Class, despite its limited financial resources, supports a finding that the Agreement is a just and fair resolution of the claims in this litigation.

III. SUMMARY OF THE SETTLEMENT

If approved by the Court after notice to the Settlement Class, the Parties' Agreement would resolve this action and the controversy for all Settlement Class Members.

Some of the material terms of the Agreement are as follows:

A. The Settlement Class: Pursuant to Fed. R. Civ. P. 23, the Parties agree to certification, for purposes of the settlement and the Agreement only, of the

following Settlement Class: All persons identified on Defendant's Master Fax List who (1) during the four-year period prior to the filing of this action through the date of preliminary approval, (2) were sent a telephone facsimile message advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendant, (3) that did not display an opt-out notice on the first page stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, would be unlawful. Agreement, I.GG.

B. Injunctive Relief: Defendant agrees to the entry of an injunction. Specifically, Epicur confirms that it has altered its business practices to bring itself into compliance with the TCPA. To the extent that Epicur continues to send telephone facsimile advertisements to customers, Epicur will ensure that its policies and procedures comply with the TCPA, including, but not limited to, ensuring that Epicur obtains and maintains adequate consent from individuals and businesses that it has an existing business relationship with, and will ensure than an such facsimile advertisements contain all required opt-out notice language, before sending facsimile advertisements to those individuals. Agreement, II.B.2.

C. The Class Representative and Class Counsel: The parties have agreed that Plaintiff is the Class Representative and that Edwards Pottinger LLC and Eggnatz Pascucci, P.A. are Class Counsel for the Settlement Class. Agreement, I.J.

D. Settlement Fund: Defendant has agreed to the total maximum amount of $1,650,000.00 that it will make available to cover all Settlement Class Member benefits, including all Claim Settlement Payments, administration and notice costs, attorneys' fees, and Service Award, to be paid by Defendant from the Settlement Fund, as settlement in full of this Action. Agreement, I.JJ. *Id*., I.H, I.JJ, and II(B)(1).

E. Monetary Relief to the Members of the Settlement Class: Settlement Class Members who submit a valid and timely Claim Form, shall receive a Claim Settlement Payment in the amount of $500.00, subject to a pro rata distribution. *Id*. Any money that has not been distributed due to uncashed checks or unclaimed funds shall remain with Defendant. *Id*.

F. Class Notice: The parties have agreed to notify the Settlement Class about the settlement by sending the notice and claim form by U.S. mail, and by e-mail, if provided by a Settlement Class Member. *Id*., I.K and III(B). The notice includes instructions about opting out, objecting, or submitting a claim form to the Settlement Administrator by mail. *Id.* The parties have agreed to provide notice in a manner that satisfies due process. *Id.* Finally, the parties will cause to be created a settlement website to promote the settlement to Settlement Class Members, including information and relevant documents related to the Settlement, and a downloadable Claim Form that must be submitted by U.S. Mail or submitted online via the settlement website. *Id.* The notice program is designed to provide the Settlement Class with important information regarding the settlement and their rights thereunder, including a description of the material terms of the settlement; a date by which Settlement Class members may exclude themselves from or "opt-out" of the Settlement Class; a date by which they may object to the Agreement, Class Counsel's fee application and/or the request for an Service Award; the date of the Fairness Hearing; information regarding the Settlement Website where Settlement Class members may access the Agreement, and other important documents. *Id.* A copy of the proposed Class Notice is attached as **Exhibit C** to the Agreement.

G. Claims:

1. The class notice includes a simple Claim Form for submitting claims for cash Awards. The Claim Form is attached to the Settlement Agreement as **Exhibit A**. A claiming class member must provide the following information: (a) Claimant's name, current address, telephone number, and email address; (b) Claimant's facsimile telephone number(s) that it received a facsimile advertisement from Defendant; and (c) an affirmation that 1) the facsimile number at issue was theirs during the Class Period; 2) the facsimile was received on a telephone or digital facsimile machine and not solely at an electronic mail (E-Mail) address; and 3) the facsimile machine was one they controlled and paid to maintain and operate. Once a Settlement Class member submits a timely Claim Form that is approved by

the Settlement Administrator, the Settlement Class Member will receive a cash payment. If Settlement Class members fail to timely opt-out, they will remain in the Settlement Class and their claims will be released. Settlement Class Claimants will be sent their Settlement Fund Payments to the address they submitted on their Claim Form.

2. Settlement Administrator. The Parties, subject to approval of the Court, have selected Angeion Group ("Angeion") as the Settlement Administrator. To locate Class Members, Angeion will use a combination of Defendant's Settlement Class List and conduct a historical reverse lookup of telephone numbers and other customary practices to determine the mailing addresses associated with each of the Settlement Class Members identified on the Settlement Class List. *See* Agreement at III(B)(2). If a Class Member has provided Defendant his or her e-mail address, notice will be provided by e-mail as well. Once the Class Members are identified, Angeion will be responsible for, among other things:

    a. The CAFA Notice as required by statute;
    b. The Settlement Class Notice Program as set forth in the Agreement;
    c. The Settlement Website; and
    d. The claims' process set forth in Section III(B)(C) of the Agreement and subject to the Court's supervision and direction as circumstances may require.

    Agreement, III.

H. Release: In consideration of the relief provided by the Settlement, the Settlement Class will release all claims that were brought or could have been brought, as defined in the Agreement, in this action against Defendant and the released parties. Agreement, V.

I. Attorneys' Fees and Costs and Class Representative Incentive Payment: Class Counsel will petition the Court for an award of reasonable attorneys' fees not to exceed thirty percent (30%) of the Settlement Fund, plus expenses not to exceed Fifteen Thousand Dollars ($15,000.00), which shall be paid from, and reduce the

amount of Settlement Class Member Benefits available to be distributed to Class Members in, the Settlement Fund. Agreement, II.D.1. This award shall be Class Counsel's total recovery for attorneys' fees, costs, and/or adequately supported expenses of any kind. In addition, Class Counsel will request approval of a Service Award not to exceed $5,000 to be paid to the Class Representative, subject to the 11th Circuit's *en banc* ruling in *Johnson v. NPAS Sols., LLC*, or another 11th Circuit decision that overrules *NPAS*. Agreement, II.D.2.

IV. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

A. Legal Standard

As a matter of public policy, courts favor settlements of class actions for their earlier resolution of complex claims and issues, which promotes the efficient use of judicial and private resources. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) ("There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.") (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also 4 Newberg on Class Actions* § 11.41 (4th ed. 2002) (citing cases).

Approval of a class action settlement is a two-step process. *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *4 (S.D. Fla. 2007). Preliminary approval is the first step, requiring the Court to "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Id*. (citations omitted). In the second step, after notice to settlement class members and time and opportunity for them to object or otherwise be heard, the court considers whether to grant final approval of the settlement as fair and reasonable under Rule 23. *Id*.

The standard for granting preliminary approval is low — a proposed settlement will be preliminarily approved if it falls "within the range of possible approval" or, otherwise stated, if there is "probable cause" to notify the class of the proposed settlement and "to hold a full-scale hearing on its fairness[.]" *In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983) (quoting MANUAL FOR COMPLEX LITIGATION § 1.46 at 62, 64-65 (1982)); *see also* NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2016) ("Bearing in mind that the primary

goal at the preliminary review stage is to ascertain whether notice of the proposed settlement should be sent to the class, courts sometimes define the preliminary approval standard as determining whether there is 'probable cause' to submit the [settlement] to class members and [to] hold a full-scale hearing as to its fairness."). Thus, "[p]reliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are not obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661-62 (S.D. Fla. 2011).

Plaintiff, Defendant, and Counsel respectfully request that the Court take the first step in the process and grant preliminary approval. The Agreement is clearly within the range of reasonableness, and satisfies all standards for preliminary approval.

B. Recovery for Class Members

As indicated above, Defendant has agreed to create a Settlement Fund in the amount of $1,650,000.00 to cover all Settlement Class Member benefits, including a $500 cash payment to each Claimant who submits a timely a valid claim, all costs of settlement administration, including all costs of notice, and attorney fees, costs, and Service Award.

Additionally, Defendant has agreed to change its business practices to ensure compliance with the TCPA. These changes include policies and practices to ensure that Epicur obtains and maintains adequate consent from individuals and businesses that it has an existing business relationship with and will ensure that any such facsimile advertisements contain all required opt-out language, before sending facsimile advertisements to those individuals. Agreement, II.B.2.

C. The Criteria for Preliminary Approval Have Been Satisfied

Each of the relevant factors weighs heavily in favor of preliminary approval of the Agreement. First, the Agreement is the product of good-faith, informed and arm's length negotiations by competent counsel and through the assistance of an experienced mediator, with the absence of collusion. Furthermore, a preliminary review of the factors related to the fairness, adequacy and reasonableness of the Agreement demonstrate that it fits well within the range of reasonableness, such that approval is appropriate.

Any settlement requires the Parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiff and Class Counsel believe that the claims asserted are meritorious and that Plaintiff would prevail if this matter proceeded to trial. However, Defendant contends that Plaintiff's claims are unfounded, denies any liability, and

has shown a willingness to litigate vigorously, including its fully briefed opposition to conditional certification. *See* Def. Opp. To Pltf.'s Mot. for Conditional Class Certification [DE 20]. After months of negotiations, including two full days of mediation without reaching a settlement, the Parties concluded that the benefits of the Agreement outweigh the risks and uncertainties attendant to continued litigation that include, but are not limited to, the risks, time and expenses associated with completing trial and any appellate review, and potentially no recovery at all.

D. The Agreement is the Product of Good Faith, Arms-Length Negotiations

A class action settlement should be approved so long as a district court finds that "the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton*, 559 F.2d at 1330; *see also Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 318-19 (S.D. Fla. 2005) (approving class settlement where the "benefits conferred upon the Class are substantial, and are the result of informed, arms-length negotiations by experienced Class Counsel"). The Agreement here is the result of significant, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues presented in this Action.

Class Counsel effectively represented Plaintiff throughout the litigation and conducted a thorough analysis of Plaintiff's claims based upon their investigation and information produced by Defendant. Class Counsel Decl. ¶ 20. Accordingly, Class Counsel possesses all of the information necessary to evaluate the case and reach a fair and reasonable compromise.

Likewise, the Parties enlisted the services of an experienced court-approved neutral mediator, Jeffrey Grubman of JAMS mediation, to facilitate the negotiations and ensure that the settlement was fair, reasonable and adequate.

E. The Facts Support a Preliminary Determination that the Settlement is Fair, Adequate, and Reasonable

While Class Counsel are confident in the strength of Plaintiff's case, they are also pragmatic in their awareness of the various defenses available to Defendant, and the risks inherent in trial and post-judgment appeal. The success of Plaintiff's claims turns on questions that would arise at summary judgment, trial, and during an inevitable post-judgment appeal. Further, it still remains unclear whether Plaintiff would be able to certify a class for resolution of the asserted claims at trial. Under the circumstances, Class Counsel appropriately determined that the Agreement outweighs the risks of continued litigation. Even if Plaintiff and the Settlement Class

prevailed at trial, any recovery could be delayed for years by an appeal. *Lipuma*, 406 F. Supp. 2d at 1322 (likelihood that appellate proceedings could delay class recovery "strongly favor[s]" approval of a settlement). The Agreement provides substantial relief to Settlement Class Members, without further delay.

When evaluating "the terms of the compromise in relation to the likely benefits of a successful trial . . . the trial court is entitled to rely upon the judgment of experienced counsel for the parties." *Cotton*, 559 F.2d at 1330. "Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Id.* Courts have determined that settlements may be reasonable even where plaintiffs recover only part of their actual losses. *See Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate"). "The existence of strong defenses to the claims presented makes the possibility of a low recovery quite reasonable." *Lipuma*, 406 F. Supp. 2d at 1323.

The cash recovery in this case is more than reasonable given the fluid and uncertain TCPA legal landscape and Defendant's financial circumstances as discussed above, the complexity of the litigation, and the significant risks and barriers that loom in the absence of settlement including, but not limited to, class certification, summary judgment, *Daubert* motions, trial, and appellate review following a final judgment. There can be no doubt that the Agreement is a fair and reasonable recovery for the considering Defendant's defenses, and the challenging and unpredictable path of litigation that Plaintiff and all Settlement Class members would face absent a settlement.

F. Certification of the Settlement Class is Appropriate

For settlement purposes, Plaintiff and Class Counsel respectfully request that the Court certify the Settlement Class as defined above. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Certification of the proposed Settlement Class will allow notice to inform Settlement Class members of the existence and terms of the Agreement, of their right to object and be heard on its fairness, of their right to opt-out, and of the date, time and place of the Final Approval Hearing. *See Manual for Compl. Lit.*, at §§ 21.632, 21.633. For the reasons set forth below, certification is appropriate under Rule 23(a) and (b)(3).

Certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Under Rule 23(b)(3), certification is appropriate if the questions of law or fact common to the members of the class predominate over individual issues of law or fact and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

1. Numerosity

The numerosity requirement of Rule 23(a) is satisfied because the Settlement Class consists of approximately 11,205 businesses and individuals, and joinder of all such persons is impracticable. *See* Fed. R. Civ. P. 23(a)(1); *Kilgo v. Bowman Trans.*, 789 F.2d 859, 878 (11th Cir. 1986) (numerosity satisfied where plaintiffs identified at least 31 class members "from a wide geographical area"). Because all 11,205 Class Members meeting Settlement Class definition are identified on Defendant's Master Class List, the proposed class is "adequately defined and clearly ascertainable," and can be identified by "objective criteria." *See Little*, 691 F.3d at 1304; *John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007); *Physicians Healthsource, Inc. v. Doctor Diabetic Supply, LLC*, 2014 WL 7366255,*4 (S.D. Fla. Dec. 24, 2014) (quoting *Newberg on Class Actions*, § 3.3, p. 164 (5th ed. 2012))

2. Commonality

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" and the plaintiff's common contention "must be of such a nature that it is capable of class wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). Here, the commonality requirement is readily satisfied. There are multiple questions of law and fact – centering on Defendant's alleged common course of conduct in its transmission of facsimile advertisements – that are common to the Settlement Class, that are alleged to have injured all Settlement Class members in the same way, and that would generate common answers.

3. Typicality

For similar reasons, Plaintiff's claims are reasonably coextensive with those of the absent class members, such that the Rule 23(a)(3) typicality requirement is satisfied. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory"); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they "possess the same interest and suffer the same injury as the class members"). Plaintiff is typical of absent Settlement Class members because it received unsolicited facsimile advertisements without the required opt-out language from Defendant and claims to have suffered the same injuries. *See* Combined Demonstrative Fax Transmission Log [D.E. 21-8].

4. Adequacy

Plaintiff and Class Counsel also satisfy the adequacy of representation requirement. Indeed, the Court has already appointed Class Counsel as co-lead interim Class Counsel. *See* Order Appointing Edwards Pottinger, LLC and Eggnatz Pascucci, P.A. [DE 38].

Adequacy under Rule 23(a)(4) relates to (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake this litigation. *Fabricant*, 202 F.R.D. at 314. The determinative factor "is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class." *Lyons v. Georgia-Pacific Corp. Salaried Employees Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (internal quotation marks omitted). Plaintiff's interests are coextensive with, not antagonistic to, the interests of the Settlement Class, because Plaintiff and the absent Settlement Class Members have the same interest in the relief afforded by the Settlement, and the absent Settlement Class Members have no diverging interests.

Further, Plaintiff and the Settlement Class are represented by qualified and competent Class Counsel who are well-respected members of the legal community, and who have experience in the areas of consumer rights and class action litigation. They have litigated, and are presently litigating, multiple cases nationally, and have the resources necessary to conduct litigation of this nature. They have been appointed lead or co-lead Class Counsel on numerous successful class cases and complex civil lawsuits around the country that have led to multimillion-dollar recoveries and significant victories. *See* Class Counsel Decl.¶ 5, 6. In all, Class Counsel have diligently investigated and dedicated substantial time and financial resources to the investigation and

prosecution of the claims at issue. Likewise, Plaintiff suffered the same harm as Class Members and understands his role and obligations as Class Representative, and has demonstrated his efforts, and continued efforts, to full his duties in the best interest of the Class. *See* Decl. of Clifford Sens, principal of Pet Parade, Inc. [D.E. 19-1]. Accordingly, the adequacy requirement of Rule 23(a)(4) is satisfied with respect to Plaintiff and Class Counsel.

5. Predominance

Rule 23(b)(3) requires that "[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member's effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc*., 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). Plaintiff readily satisfies the Rule 23(b)(3) predominance requirement because liability questions common to all Settlement Class members substantially outweigh any possible issues that are individual to each Settlement Class member. Further, resolution of thousands of claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). For these reasons, the Court should certify the Settlement Class.

G. The Proposed Notice Plan Should be Preliminarily Approved

"Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3)." *Manual for Compl. Lit*. § 21.312 (internal quotation marks omitted). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950). To satisfy this standard, "[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt-out of the action." *Twigg v. Sears, Roebuck & Co*., 153 F.3d 1222, 1227 (11th Cir. 1998) (internal quotation marks omitted); *see also* Manual for Compl. Lit., § 21.312 (listing relevant information).

The Notice program satisfies all of these criteria. As recited in the Agreement and above, the proposed notice plan will inform Settlement Class members of the substantive terms of the Agreement. It will advise Settlement Class members of their options for remaining part of the

Settlement Class, for objecting to the Agreement, Class Counsel's Attorneys' fee application and/or request for Service Award, or for opting-out of the Agreement, and how to obtain additional information about the Agreement. The notice plan is designed to reach a high percentage of Settlement Class members, and exceeds the requirements of Constitutional Due Process. Therefore, the Court should approve the Notice Program and the form and content of the Notices.

H. Proposed Scheduling of Events

In connection with preliminary approval of the Agreement, Plaintiff respectfully submits that the Court should also set a date and time for the Fairness Hearing. Plaintiff proposes the following other dates:

Event	Date
Deadline for Settlement Administrator to initiate Class Notice Program. Agreement at I.L; III(B)(2).	No later than 42 days after the Preliminary Approval Order has been entered by the Court and received by counsel for the Parties (the "Class Notice Date")
Deadline for filing papers in support of Class Counsel's and application for an award of attorneys' fees and expenses, and Service Award. Agreement at II(C)	No later than 14 days prior to the Objection Deadline
Deadline for opting-out of Settlement and submission of objections. Agreement at I(Z); I(Y).	35 days after Class Notice
The last day that Settlement Class Members may submit a Claim Forms. Agreement at I(D).	35 days after Class Notice
Deadline for filing papers in support of Final Approval of the Settlement and responding to any Objections filed. Agreement at II(C)	60 days after Class Notice
The Fairness Hearing	Approximately 110 days after the Preliminary Approval Date

V. CONCLUSION

Based on the foregoing, Plaintiff, Class Counsel, respectfully request that the Court: (1) grant preliminary approval of the Agreement; (2) certify for settlement purposes only the proposed Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3)

approve the Settlement Class Notice Program set forth in the Agreement and approve the form and content of the notices and Claim Form, attached to the Agreement; (4) approve and order the opt-out and objection procedures set forth in the Agreement; (5) appoint Plaintiff Pet Parade, Inc. as Class Representative; (6) appoint as Class Counsel the undersigned counsel; and (7) schedule a Fairness Hearing. A Proposed Preliminary Approval Order is attached as **Exhibit E** to the Settlement Agreement.

WHEREFORE, Plaintiff, respectfully requests an order granting the instant motion and for such other relief the Court deems appropriate under the circumstances.

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1, I hereby certify that counsel for Defendant does not oppose the instant motion or relief requested herein.

Dated: May 27, 2021

Respectfully submitted,

/s/ Joshua H. Eggnatz
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Counsel for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Joshua H. Eggnatz
Joshua H. Eggnatz

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Attorneys for Defendant

EXHIBIT

2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:20-cv-24279-UU

PET PARADE, INC., on behalf of itself and all others similarly situated,

Plaintiff,

vs.

STOKES HEALTHCARE, INC., a foreign company, doing business as EPICUR PHARMA,

Defendant.
_____/

JOINT DECLARATION OF CO-LEAD INTERIM CLASS COUNSEL IN SUPPORT OF PLAINTIFF'S *UNOPPOSED* MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

We, Seth M. Lehrman and Joshua H. Eggnatz, pursuant to 28 U.S.C. Sec. 1746, declare under perjury that the following is true and correct:

Introduction and Firm Backgrounds:

1. We are the Court appointed co-lead interim class counsel representing Plaintiff, Pet Parade, Inc., and the Settlement Class Members in this case.

2. We respectfully submit this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, which is being filed concurrently herewith. Except as otherwise noted, we have personal knowledge of the facts set forth in this Declaration and will competently testify to them if called upon to do so.

3. We are partners at our respective firms and are both members in good standing with the State Bar of Florida. Class Counsel has adequately represented the interests of Plaintiff and the Settlement Class at all stages of this litigation and prior to litigation.

4. Our firms, individually and collectively, regularly engage in major complex litigation and other consumer class litigation in both federal and state courts. Courts around the country have appointed our firms to represent litigation and settlement classes. Our firms' collectively experience in representing consumers in other similar class actions has facilitated the successful prosecution of this action and the adequate representation of the Settlement Class.

5. The backgrounds and qualifications of Eggnatz Pascucci, P.A. are set forth in the firm resume attached hereto as *Exhibit A*.

6. The backgrounds and qualifications of Edwards Pottinger LLC are set forth in the declaration attached hereto as *Exhibit B*.

Summary of the Settlement Agreement:

7. Through this litigation, Plaintiff has secured a class-wide settlement Agreement that provides significant financial and injunctive benefits to 11,205 individuals and entities identified on Epicur's Master Fax List who, according to Epicur's records, were sent a telephone facsimile advertisement from or on behalf of Epicur, through its vendor and fax broadcaster, Westfax, Inc. Plaintiff was the recipient of at least ten (10) of these faxes.

8. Defendant has agreed to establish a Settlement Fund in the amount of $1,650,000.00 to cover all Settlement Class Member benefits, including all Claim Settlement Payments, administration and notice costs, attorneys' fees, and Service Award, to be paid by Defendant from the Settlement Fund, as settlement in full of this Action.

9. Based on our experience as a consumer class action practitioner, we believe the Settlement to be fair, reasonable, and adequate when weighed against the risks of continued litigation.

The Settlement Negotiations

10. The Agreement was negotiated over the course of more than two-months, including two full day mediations conducted by mediator Jeffrey Grubman of JAMS, as well as several post-mediation negotiations with and without the assistance of Mr. Grubman.

11. On February 19, 2021, the Parties engaged in intensive arm's-length negotiations at an all-day mediation. Although the case did not settle, significant progress was made, and the Parties agreed to attend a second mediation conference.

12. The Parties attended a second mediation on March 15, 2021. While a final class-wide settlement was still not reached that day, more progress was made. The Parties continued on-going settlement negotiations while continuing to litigate the case. Plaintiff served additional rounds of written discovery, including supplemental discovery following the parties' mediation conferences.

13. On April 6, 2021, the Parties finally reached a class-wide settlement in principal and filed their Joint Notice of Settlement [DE 39]. The Parties drafted a term sheet memorializing the basic settlement terms. The other essential terms of the Agreement were negotiated over the course of month following the Parties' Notice of Settlement.

14. The Parties have worked diligently, with the assistance of an experienced claims administrator, to draft and finalize a written settlement Agreement and to prepare a motion seeking preliminary approval from the Court of the class-wide settlement.

Plaintiff and the Settlement Class Members' Risk of Continued Litigation

15. Defendant maintains that it did not violate the TCPA and that Plaintiff and the Settlement Class are not entitled to any relief. Although Defendant denies any liability or wrongdoing related to this Action, Defendant sought to engage class-wide settlement discussions because of litigation risks and limited financial resources in relation to the litigation exposure presented.

16. Specifically, Defendant contends that it did not transmit any *unsolicited* facsimile advertisements. Defendant contends that Plaintiff and Class Members attended various veterinary conferences where Plaintiff and Class Members provided contact information to Defendant, thereby inviting contact by Defendant, thus rendering the faxes solicited and not subject to the TCPA. Defendant also contends that the JFPA of the TCPA only applies to faxes which are solely received on a traditional fax machine (as opposed to a digital fax machine), thereby defeating class certification, and rendering the Class unascertainable. Moreover, Defendant further contends that many individualized inquiries predominate over the claims and that almost 90% of the recipients identified on its Master Fax List are existing customers. Defendant asserts that because faxes were sent to both its customers and potential customers that allegedly provided it with contact information, that the faxes were "solicited," and that 11th Circuit case law supports an argument that a "solicited" fax does not require an opt-out notice.

Defendant's Financial Circumstances

17. Epicur's settlement position is informed by the financial constraints it currently faces. There is no available insurance coverage. Epicur does not have the financial capability to fund a settlement, let alone pay a contested judgment, in an amount greater than the settlement reached.

18. Defendant is an FDA registered 503B outsourcing facility that formulates, manufacturers, and provides custom prescription veterinary medicines to veterinarians and veterinary hospitals. Its business operations consist of an office and an outsourcing facility. Veterinary outsourcing facilities are subject to stringent standards and occupy narrow market positions. Outsourcing facilities, unlike larger pharmaceutical manufacturers, are prohibited from selling products through wholesalers, further limiting available profits. Put simply, there are financial constraints on Epicur's ability to pay a larger out of pocket settlement – or judgment.

19. Defendant has produced to interim co-lead class counsel confidential business records, including profit/loss statements, to substantiate its limited financial position. Defendant would sustain tens of millions of dollars in damages if it were exposed to the full statutory damages alleged by Plaintiff for the Class under the TCPA. Defendant cannot realistically afford the full potential class wide judgment in this matter, thus prompting the Agreement reached. The Settlement Fund is significant given Defendant's limited financial resources.

Class Counsel was Informed with the Information Necessary to Reach a Fair Settlement

20. The Agreement here is the result of significant, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues presented in this Action. Class Counsel effectively represented Plaintiff throughout the litigation and conducted a thorough analysis of Plaintiff's claims based upon their investigation and information produced by Defendant. Accordingly, Class Counsel possesses all of the information necessary to evaluate the case and reach a fair and reasonable compromise.

21. For example, Co-Lead Interim Class Counsel has performed the following work thus far:

a) Investigated the potential legal claims and Defendant's business practices pre-suit

and investigated the adequacy of the named Plaintiff to represent the putative class;

b) Drafted and filed the Complaint in this action on October 19, 2020;

c) Served the Complaint in this action;

d) Cooperated with defense counsel on early extensions to allow for defense investigation of Plaintiff's claims and to coordinate other case management and scheduling matters, including filing a joint case management report and discovery plan;

e) Filed and fully briefed Plaintiff's Motion for Conditional Certification and Plaintiff's Reply in Support of Conditional Certification [ECF No.'s 18, 21];

f) Continued to monitor the legal landscape and provide supplemental authority in support of conditional certification;

g) Served three rounds of written discovery, including supplemental discovery served following the parties' March 15, 2021 mediation conference;

h) Responded to Defendant's written discovery;

i) Worked cooperatively with Defendant in the issuance of third-party subpoenas to secure relevant third-party discovery, and cooperatively working with Defendant to resolve discovery disputed without unnecessary motion practice;

j) Reviewed and analyzed voluminous documents produced by Defendant through discovery, including Defendant's fax records, billing records, financial data and other documents;

k) Attended 2 full days of mediation with an experienced mediator, Jeffrey Grubman, Esq. of JAMS on February 19, 2021 and March 15, 2021, respectively, and continued to engage in on-going settlement discussions and exchange of information to

facilitate settlement;

l) Continued to diligently prosecute this action while continuing settlement discussions;

m) Negotiated, almost daily, with Counsel for Epicur regarding various contested settlement terms, resulting in the settlement Agreement ultimately reached; and

n) Worked with Counsel for Epicur and the Claims Administrator to develop the appropriate settlement notice plan to provide the best practicable notice to Settlement Class Members.

22. In a span of only several months, despite Covid-19 related challenges, due to the Parties' continued diligence and mutual cooperation, the Parties advanced the litigation at a fast pace and made more progress than is typically accomplished in complex nationwide class actions like this one in such a short period of time.

23. The Parties have worked diligently to draft and finalize the written settlement Agreement and to prepare a motion seeking preliminary approval from the Court of the class-wide settlement.

24. The Settlement Fund of $1,650,000 is significant given Defendant's limited financial resources. The $500 Claim Settlement Payment to Settlement Class Members is likewise significant, particularly when compared to other similar TCPA settlements.

Co-Lead Interim Class Counsel's Work is Not Done

25. The Parties, subject to approval of the Court, have selected Angeion Group as the Settlement Administrator. Co-lead Interim Class Counsel will continue to work diligently with the claims administrator to monitor the settlement notice and administration to ensure the best practicable notice under the circumstances and fairness to Settlement Class Members.

26. Co-lead Interim Class Counsel is fully prepared to commit all necessary resources, financial, professional, and otherwise, to oversee the adequate administration of the instant case, as well as to protect the best interests of the class.

27. Co-lead Interim Class Counsel likewise prepared to commit the necessary resources through final approval of the settlement, include all appeals as may be required.

Executed on: May 18, 2021, in Fort Lauderdale, Florida.

/s/ Joshua H. Eggnatz
Joshua H. Eggnatz

Executed on: May 18, 2021, in Fort Lauderdale, Florida.

/s/ Seth M. Lehrman
Seth M. Lehrman

EXHIBIT A

EGGNATZ | PASCUCCI
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Eggnatz Pascucci, P.A. is a multi-jurisdictional law firm located in Davie, Florida. Eggnatz | Pascucci's civil justice practice is concentrated on consumer class actions in both federal and state courts. The firm has successfully achieved changes to corporate business practices, including to the labeling and marketing of various popular consumer products. The lawyers at Eggnatz | Pascucci have successfully negotiated settlements in a variety of class action matters, with a focus on food and dietary supplement, and consumer privacy litigation.

Some of the firm's nationwide class action experience and court appointment leadership positions include: *Moore, et al. v. GNC Holdings, Inc.*, 0:12-cv-61703-WPD (S.D. Fla.) (Class Counsel in a contested Nationwide class action involving creatine dietary supplement labeling); *Teufel v. Karlin Foods Corp.*, 1:14-cv-23100 (S.D. Fla.) (Class Counsel in Nationwide class action involving "All Natural" food labeling); *Barron, et al. v. Snyder's-Lance*, 0:13-cv-62496 (S.D. Fla.) (Class Counsel in Nationwide class action involving "All Natural" food labeling); *Markley v. Whole Foods Marketing, Inc.*, 8:14-cv-01892 (M.D. Fla.) (Centralized in W.D. of Texas, In re: Whole Foods Market, Inc., plaintiffs' executive committee) (class action involving sugar content mislabeling); *Riveron v. Home Depot USA, Inc.*, 9:14-cv-81175 (S.D. Fla.) (Centralized in the N.D. Georgia, In re: Home Depot, Inc. Customer Data Security Breach Litigation, plaintiff's class representative vetting committee) (data breach of consumer's personal identifiable information); *Dudley v. Premera Blue Cross*, 8:15-cv-01139-JSM-AEP (M.D. Fla.) (Centralized in the District of Oregon, In re: Premera Blue Cross Customer Data Security Breach Litigation, plaintiff's class representative vetting committee) (data breach of insured's personal identifiable information); *Brattain v. Santa Fe Natural Tobacco Company, Inc., et al.*, 15-cv-4705 (N.D. Cal.) (Centralized in the District of New Mexico, In re: Sante Fe Natural Tobacco Company Marketing & Sales Practices Litigation, plaintiff's expert committee) (class action involving "natural" cigarette labeling); *Bandell, et al. v. Massage Envy Franchising, LLC*, 3:16-cv-.01236 (S.D. Cal.) (Class Counsel in Nationwide class action involving unfair and unconscionable consumer services contracts); *Holliday v. Vitacost.com, Inc.* 2015-CA-010160 (AA) (15th Judicial Circuit, Palm Beach County, FL) (Class Counsel in Nationwide class action involving magnesium dietary supplement labeling); *Vincent, et al. v. Method Products, PBC* (7:16-cv-06936-NSR (S.D.N.Y.) (Class Counsel in Nationwide class action involving mislabeled cleaning and household products); *Hughley, et al. v. University of Central Florida Board of Trustees*, 6:16-cv-204 (M.D. Fla.) (Class Counsel in Nationwide class action involving data breach of student and employee private information); *In Re: Apple Inc. Device Performance Litigation*, 5:18-md-02827 (Centralized in the N.D. Cal., Plaintiffs' Steering Committee) (nationwide class action involving defective Apple devices); *George, at al. v. Keurig Dr. Pepper, Inc., et al.*, 1822-CC11811 (Cir. Ct. City of St. Louis, Missouri) (Class Counsel in Nationwide class action involving beverage labeling); *Medgebow v.*

Checkers Drive-In Restaurants, Inc., 19-cv-80090 (S.D. Fla.) (Class Counsel in Nationwide class action involving TCPA violations); (*Pet Parade, Inc. v. Stokes Healthcare, Inc*, 20-cv-24279 (S.D. Fla.) (Co-lead interim Class Counsel in Nationwide TCPA class action).

The firm has also been involved with other various multi-district litigations and notable consumer class actions throughout the country, including but not limited to: *Altman v. Frito-Lay North America, Inc.*, 1:12-cv-06105-RRM-RLM (S.D. Fla.) (Centralized in the E.D. NY, In re: Frito-Lay North America, Inc. All-Natural Litigation, MDL No.: 2413) (nationwide class action involving "All Natural" food labeling); *Feiner v. Innovation Ventures, LLC*, 0:12-cv-62495 (S.D. Fla.) (Centralized in the C.D. CA, In re: 5-Hour Energy® Marketing and Sales Practices Litigation, MDL No.: 2438) (proposed class action involving energy drink supplement labeling); *Mackenzie v. The Blue Buffalo Company, Inc.*, 9:14-cv-80634 (S.D. Fla.) (Centralized in the E.D. of Missouri, In re: Blue Buffalo Company LTD Litigation, MDL No.: 2562) (Plaintiff's counsel in nationwide class action involving pet food mislabeling); *Birken-Sikora, et al. v. 21st Century Oncology Holdings, Inc.*, 2:16-cv-334 (M.D. Fla.) (Centralized in the M.D. of Florida, In re: 21st Century Oncology Customer Data Security Breach Litigation) (class action involving data breach of medical records and other private information); *Cordover, et al. v. BMW, et al.*, 17:-cv-61528-DPG (S.D. Fla.) (Centralized in the N.D. of California, In re: German Automotive Manufacturers Antitrust Litigation) (antitrust class action involving collusion between German automobile manufacturers); *Eppy v. Equifax*, 17-cv-61833-BB (S.D. Fla.) (class action involving data breach of consumers' personal identifiable information); *Leo v. Pepperidge Farm, Inc.*, 13-cv-2866 (Dist. Colorado) (formerly S.D. Fla. 9:13-cv-80598-KLR (proposed Florida class action involving improper "All Natural" food labeling); *Mirabella v. Vital Pharmaceuticals, Inc.*, 0:12-cv-62086-WJZ (S.D. Fla.) (proposed nationwide class action involving energy drink supplement labeling); *Cruz v. Tropicana Products, Inc. et al.*, No.: 10-62926 CA 08, Circuit Court, Miami-Dade County, Florida (proposed class action involving improper food labeling; appeal to be filed); *Kloszewski v. Bank of America, N.A.* No.: 12-35513 CACE 14, Circuit Court, Broward County, Florida (individual banking action brought under the Fair Credit Reporting Act and common law claims); *Griffith, et al. v. Gruma Corporation*, 14-cv-00833-YRG (N.D. Cal.) (formerly S.D. Fla. 9:13-cv-80791) (proposed class action involving "All Natural" food labeling) *Mazzeo v. USPLabs, LLC.*, 13-62639 (S.D. Fla) (proposed Florida class action involving dietary supplement labeling); *Foster v. Chattem, Inc.*, 6:14-cv-00346 (M.D. Fla.) (proposed Florida class action involving cosmetic mouthwash labeling); *Batalla v. The Hain Celestial Group, Inc.*, 14-80246-CV (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Bohlke v. The Hain Celstial Group, Inc.*, 14-80300 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Erye v. T. Marzetti Co.*, 9:14-cv-80626 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Dye v. Bodacious Food Co.*, 9:14-cv-80627 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Epstein v. Aidells Sausage Company, Inc.*, 9:14-cv-80916 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Monka v. JAG Specialty Foods, LLC.*, 9:14-cv-80764 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Sturdivant v. Bob's Red Mill Natural Foods*, 9:14-cv-80765 (S.D. Fla) (proposed class action involving "All Natural" food labeling); *Vandenberg v. Medora Snacks, LLC*, 9:14-cv-81010 (S.D. Fla) (proposed class action involving "All Natural" food labeling; *Laboon v. Unilever United States, Inc.* and *Pepsico, Inc.*, 0:15-cv-60914 (S.D. Fla.) (proposed class action involving "All Natural" food labeling); *Hulse v. Wal Mart Stores, Inc.*, 2015 CA 000274 (7th Judicial Circuit, In and For Flagler County, FL) (proposed class action involving deceptive juice labeling); *Romero, et al. v. General Nutrition Corporation, Inc.*, 15-019703 (17th Judicial Circuit, Broward County, FL) (proposed class action involving dietary supplement labeling); and *Jones v. Waffle House, Inc., et al.*, 6:15-cv-01637 (M.D. Fla.).

Joshua H. Eggnatz handles a variety of actions in civil litigation with an emphasis on consumer protection and personal injury. Josh's Class Action practice focuses on obtaining justice for consumers who have suffered financial harm due to unfair, false, deceptive, and/or misleading business practices. He represents consumers nationwide in a variety of fields, including but not limited to food and dietary supplement litigation, actions brought pursuant to the Telephone Consumer Protection Act, data breaches, and other consumer protection related matters. Josh has been appointed as Class Counsel by several Courts throughout the country in a number of high-profile nationwide actions and has helped consumers recover millions of dollars. Josh obtained his law degree from Nova Southeastern University, Shepard Broad Law Center, *Magna Cum Laude*, and a bachelor of science in legal studies from The University of Central Florida, *Magna Cum Laude*. He is licensed to practice law in the State of Florida, and is admitted to practice before the following federal courts: Supreme Court of the United States; Eleventh Circuit Court of Appeals; United States District Court, Southern District of Florida; United States District Court, Northern District of Florida; United States District Court, Middle District of Florida; United States District Court, District of Colorado; United States District Court, Western District of New York; and United States District Court, Northern District of Illinois. He has also litigated consumer class actions throughout the United States as part of coordinated multi-district litigations, and on a *pro hac vice* basis. He has been named to the *Florida Super Lawyers, Rising Stars* list for the past nine years (2013-2021) and he was a finalist for the *Lifestyle Media Group's* Leaders in Law award in 2014.

Michael J. Pascucci is a trial lawyer with a strong background in consumer advocacy, personal injury and insurance claims including homeowner's insurance claims, automobile accidents, premises liability, products liability and other bodily injury claims. Mike's Class Action practice focuses on obtaining justice for consumers who have suffered financial harm as a result of deceptive or unfair corporate behavior. He represents consumers in a variety of matters including false advertisement, improper product labeling, employment matters, violations of the Fair Credit Reporting Act (FCRA), violations of the Telephone Consumer Protection Act (FTCPA), violations of the Fair and Accurate Credit Transactions Act (FACTA), violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), data breaches, and other consumer protection related matters. Mike has been appointed as Class Counsel by several Courts throughout the country in a number of high profile, nationwide Class Actions and has helped consumers recover millions of dollars. He obtained his law degree from Nova Southeastern University, Shepard Broad Law Center, and a bachelor of science in finance from The University of Central Florida. Prior to co-founding EP, Mr. Pascucci worked for a large Plaintiff's law firm where he handled hundreds of cases at various stages from pre-suit through trial. Prior to that, Mr. Pascucci also worked as a defense litigation attorney where he represented several insurance companies and some of the largest retail corporations in the country. Mr. Pascucci is licensed to practice law in the State of Florida, and is admitted to practice before the following federal courts: Supreme Court of the United States; United States District Court, Southern District of Florida; United States District Court, Middle District of Florida; and the Eleventh Circuit Court of Appeals. He was named to the National Trial Lawyers Top 40 under 40 list in 2017 and was named to the *Florida Super Lawyers, Rising Star* list in 2018 - 2021.

EXHIBIT B

EDWARDS POTTINGER LLC

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J. Stanley Pottinger ‡

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ł Board Certified Civil Trial Lawyer

Summary of Class Action and Complex Litigation Experience

1. Seth Lehrman is a member of the American Association for Justice, Florida Justice Association, and Broward County Justice Association.

2. Mr. Lehrman is a graduate of Cornell University, Bachelor of Science and Brooklyn Law School, Juris Doctor.

3. For more than twenty years, he has litigated complex civil litigation matters, including class actions, in state and federal courts in Florida, California, and across the United States. Mr. Lehrman represent individuals and businesses in class actions to hold corporate wrongdoers accountable.

4. Mr. Lehrman was class counsel and trial counsel, along with his law partner Brad Edwards and other counsel, in a class action against Jupiter Golf Club, LLC which does business as Trump National Golf Club – Jupiter. *See Hirsch, et al. v. Jupiter Golf Club, LLC*, 2017 WL 448952 (S.D.Fla. Feb. 1, 2017). In *Hirsch*, Mr. Lehrman and his co-counsel avoided dismissal, obtained class certification and defeated Defendant's summary judgment challenge. Mr. Lehrman deposed Donald J. Trump, Eric Trump, and other witnesses and, along with Brad Edwards, tried the case to verdict on behalf of plaintiffs and the class. The Court awarded a full judgment of $5.7M for plaintiffs and the class, the full relief that was requested at trial, plus prejudgment interest. Following Trump National's appeal of the judgment, a settlement was reached on behalf of the class that resulted in Trump National paying $5.4M, representing more than 94% of the judgment.

5. For several years, Mr. Lehrman has served as class-counsel in class action cases involving hidden fees, unfair insurance practices, dangerous or defective products, consumer fraud, false and deceptive advertising, credit reporting issues, and violations of consumer protection statutes. Mr. Lehrman has successfully handled many of these class action cases, producing significant results for class members.

6. In *Soto v. Gallup Organization, Inc.,* Case No. 13-cv-61747 (S.D. Fla.), Mr. Lehrman was co-lead counsel in a nationwide class action which produced a $12 million common fund settlement of claims brought under Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), on behalf of class of 6.9 million consumers who allegedly received auto-dialed survey calls to their cellular phones from Gallup without prior express consent.

7. In *Matute and McDonald v. Main Street Acquisitions Corp*., Case No. 11-cv-62375-KMW (S.D.Fla.), Mr. Lehrman was co-lead counsel on behalf of a class of consumers who alleged that they were subjected to collection activity from a debt collector that had failed to maintain the statutorily required registration with the State of Florida. A class action settlement was reached on behalf of the class of 969 Florida consumers that provided a common fund and more than $5 million in debt relief.

8. Mr. Lehrman has litigated, obtained class certification, settled and won court approval of class action settlements in numerous other cases, including the following:

a. *Barr v. The Harvard Drug Group, LLC,* No. 13-cv-62019 (S.D.Fla.) Co-lead counsel in statewide class action producing $415,500 settlement fund. TCPA claims brought on behalf of class of 354 dentists to whom Defendant, allegedly sent fax advertisements without permission;

b. *Caterpillar Inc. C13 and C15 Engine Products Liability Litigation*. Caterpillar, Inc. agreed to pay $60 million to settle a class action brought by dozens of trucking companies and truck owners in 18 states that had purchased or leased vehicles powered by heavy-duty on-highway diesel engines (C13 and C15). Mr. Lehrman was a member of the plaintiff's counsel team that prosecuted the litigation and produced the class settlement.

c. *Barr v. IDS,* No. 13-cv-61981 (S.D.Fla.) Co-lead counsel in statewide class action producing $450,000 settlement fund. TCPA claims brought on behalf of class of 854 Florida dentists to whom Defendant, a dental supply company, allegedly sent fax advertisements without permission.

d. *Mowatt v Stern, DJSP Ent., et al.* Case No. 10-cv-62302 (S.D.Fla.)--Co-lead counsel in mass layoff class action filed under the WARN Act, alleging over 700 employees were terminated without the required statutory notice. Court finally approved a settlement fund of $500,000, affording automatic payments to class members with no claims process.

e. *Fraser v. Asus Computer International,* Case No. 12-00652 (N.D.Cal.) Class Counsel. Class action settlement reached on behalf of purchasers of Asus Transformer Prime EE TF201 tablet computer. Plaintiff had alleged that the Asus tablet was defective because the GPS did not operate. The settlement afforded every purchaser the right to claim $17 and a piece of hardware that enabled the GPS to work properly.

f. *Villaflor and Brice v. Equifax Information Services LLC*, No. 09-cv-00329-MMC (N.D. Cal.) Co-lead counsel in class action lawsuit claiming that Equifax violated FCRA by failing to accurately and clearly report mortgage and car loans that had been paid and closed. Nationwide class action settlement valued at more than $10M that provided 60,000 class members with twelve months of credit monitoring service and required Equifax to change its file disclosure format and website to ensure clear and accurate reporting of accounts that have been paid and closed.

g. *Mohamed v. Off Lease Only, Inc*. *See* No. 15-cv-23352, 2017 U.S. Dist. LEXIS 89031 (S.D. Fla. June 8, 2017). Class counsel in case that was extensively litigated, including winning class certification, effectively opposing defense summary judgment motions on vicarious liability and agency, and winning summary judgment on issue of consent. Class action settlement reached on behalf of consumers who were sent text messages allegedly on behalf of online car dealership. Settlement made $1.6M available to class members and required defendant to pay up to $50 per text message.

h. *Medgebow v. Checkers Drive-In Restaurants Inc.*, No. 9:9-cv-80090-BB, (S.D. Fla. September 9, 2019). Co-lead counsel in nationwide class action requiring defendant to make available up to $3.4M for class members. TCPA claims brought on behalf of consumers who allegedly received text messages from defendant, a restaurant chain, after revoking consent to receive messages.

i. *Spencer-Ruper v. Alliancemed, LLC*, No. 8:18-cv-01670-JWH, (C.D. Ca. February 18, 2021). Co-lead counsel in nationwide class action in which plaintiff won a contested class certification motion and defeated defendant's summary judgment motion. Produced common fund settlement for persons who received facsimile advertisements from defendant omitting required opt-out notice, permitting class members opportunity to submit claim and receive up to $500.

9. Mr. Lehrman has litigated other class action cases and complex civil actions, including the following:

a. *U.S. v. Rothstein,* No. 09-cr-60331 (S.D.Fla.) As pro bono counsel, I represented thirty-seven innocent victims of the largest Ponzi scheme in South Florida. Scott Rothstein betrayed the trust of his law firm's clients and violated the Florida Bar's Rules of Professional Responsibility when he stole client settlement monies that were being held in the law firm's trust account. I pursued a series of forfeiture, restitution and bankruptcy claims, on behalf of his clients and obtained a 100% recovery of more than $1 million.

b. *Regal, et al. v. Butler & Hosch, P.A.* Case No. 15-cv-61081-BB (S.D.Fla.) Lead counsel in mass layoff class action filed under the WARN Act and asserting breach of contract claims, alleging over 600 employees were terminated without the notice required by statute and without being paid wages and benefits that were due and owing by contract. Obtained judgment for $7M on behalf of plaintiffs and class. I am representing plaintiffs and class in related assignment for the benefit of creditors action to collect on the judgment and recover monies for plaintiffs and the class.

10. Mr. Lehrman is rated AV by professional peers through the Martindale-Hubbell© Peer Review Rating system. According to Martindale-Hubbell, the "AV" rating of "Very High to Preeminent" legal ability is a testament from peer legal professionals of the highest level of professional excellence and of unquestionable ethics. Mr. Lehrman has also been selected as a Top Rated Lawyer by ALM & Martindale-Hubbell.