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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 **JODI JUDSON**, individually and on
13 behalf of all others similarly situated,

14 *Plaintiff,*

15 v.

16 **GOLDCO DIRECT, LLC**, a
17 Delaware limited liability company,

18 *Defendant.*

Case No. 2:19-cv-06798-PSG-PLA

19 **CLASS COUNSEL’S NOTICE OF**
20 **MOTION, MOTION FOR**
21 **SERVICE AWARD AND CLASS**
22 **COUNSEL FEES AND COSTS,**
23 **AND INCORPORATED**
24 **MEMORANDUM OF LAW**

Date: Monday, June 7, 2021

Time: 1:30 p.m.

Courtroom: 6A – 6th Floor

Judge: Hon. Philip S. Gutierrez

25 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
26 **ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that on June 7, 2021, at 1:30 p.m., or as soon
28 thereafter as this matter may be heard, in Courtroom 6A, of the United States
District Court for the Central District of California, located at the First Street
Courthouse, 350 West 1st St., Los Angeles, CA 90012, before the Honorable Judge

Philip S. Gutierrez, Plaintiff Jodi Judson, on behalf of herself and a class of similarly situated persons will and hereby does move the Court, by and through her counsel, for entry of an order granting a service award to Plaintiff and Class Counsel's attorneys' fees and costs. The basis for this Motion is that the requested service award, attorneys' fees, and costs reimbursement are reasonable based on the circumstances of the case and the recovery for the Settlement Class.¹ This Motion is supported by this Notice of Motion, the following Memorandum of Points and Authorities, the Declaration of Avi R. Kaufman, the Declaration of Plaintiff Jodi Judson, all pleadings, records and papers on file, and such other matters that may be presented to the Court.

Dated: February 23, 2021

Respectfully submitted,

/s/ Rachel E. Kaufman

Rachel E. Kaufman

Avi R. Kaufman

KAUFMAN P.A.

¹ The Class Action Settlement Agreement was filed with the Court as ECF number 52-1 on November 23, 2020 (referred to herein as the "Agreement" or "Settlement Agreement"). All capitalized terms used herein have the same definitions as those defined in the Agreement.

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5	Dist. LEXIS 91636 (C.D. Cal. June 28, 2013).....20
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Settlement Agreement establishes a non-reversionary Settlement Fund in the amount of \$1,500,000 for the benefit of the Settlement Class. This equates to nearly \$115 per Settlement Class Member; a truly exceptional result. Moreover, although the exact amount of each claimant's share of the Settlement Fund is unknown at this time, the parties expect that, even with normal participation rates, each claimant's share will be between \$400 and \$600. Declaration of Avi Kaufman ¶¶ 3, 15, attached hereto as Exhibit 1. Defendant has also agreed to effectively stop telemarketing to Settlement Class Members for at least two years. Class Counsel now seek approval of a service award for Plaintiff Jodi Judson, a fee award for Class Counsel that is reasonable and in line with the awards issued by courts faced with similar settlements throughout this Circuit, and reimbursement of Class Counsel's reasonable expenses as provided in the Agreement.

Specifically, for the reasons set forth in this memorandum and in the papers previously submitted in support of Settlement approval, pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel respectfully request that the Court enter an order approving an award of \$5,000 to Plaintiff for her service as the Class Representative and approving Class Counsel's requested attorneys' fees of \$500,000, equal to one third of the Settlement Fund, and reimbursement of \$27,005.14 in out-of-pocket litigation costs. These requests are in line with amounts approved in similar Telephone Consumer Protection Act class action settlements in this Circuit. The amounts also reflect the risk and exceptional results corresponding to this case, and were specifically included in the Notice documents

1 to the Class.² Accordingly, Class Counsel respectfully request that the Court
 2 approve the requested service award, fees, and costs, and enter the proposed order,
 3 attached as Exhibit 2 to this Motion, at or after the fairness hearing.

4 **II. BACKGROUND**

5 **a. Facts**

6 The Telephone Consumer Protection Act, 47 U.S.C. § 227, and its
 7 implementing regulations were enacted by Congress and the Federal
 8 Communications Commission to “offer consumers greater protection from intrusive
 9 telemarketing calls....”³ The TCPA’s sponsor described unwanted robocalls as “the
 10 scourge of modern civilization. They wake us up in the morning; they interrupt our
 11 dinner at night; they force the sick and elderly out of bed; they hound us until we
 12 want to rip the telephone right out of the wall.” 137 Cong. Rec. 30,821 (1991)
 13 (statement of Sen. Hollings). As a remedial statute that was passed to protect
 14 consumers from unwanted automated telephone calls, the TCPA is construed
 15 broadly to benefit consumers. *Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 271
 16 (3d Cir. 2013).

17 **b. Procedural History**

18 On August 6, 2019, Plaintiff filed the Complaint against Goldco in this action
 19 asserting claims under the TCPA’s autodialer and DNC provisions. (ECF No. 1).
 20

21 ² The Court-approved Notice documents advise class members that Class Counsel
 22 intend to request fees in an amount not to exceed one third of the Settlement Fund,
 23 reimbursement of out-of-pocket expenses incurred in the litigation, and a service
 24 award not to exceed \$5,000 for the Class Representative’s service as representative
 25 on behalf of the Class. *See* ECF No. 52-1 at Exhibits B and C.

26 ³ FCC, Small Entity Compliance Guide for the TCPA (dated May 13, 2013),
 27 https://apps.fcc.gov/edocs_public/attachmatch/DA-13-1086A1.pdf.

1 On September 12, 2019, Goldco answered the Complaint (ECF No. 13). The parties
2 then participated in a Rule 26 conference and prepared a joint scheduling report and
3 discovery plan (ECF No. 17).

4 Thereafter, the parties engaged in extensive written discovery involving,
5 among other things, Plaintiff serving and responding to written discovery, multiple,
6 extended meet and confers through which the parties were able to resolve their
7 discovery disputes without the need for motion practice, and Plaintiff's review of
8 tens of thousands of pages ultimately produced by Defendant. Kaufman Decl. ¶ 7.
9 Plaintiff also engaged in extensive third party discovery, resulting in, among other
10 things, the filing of a subpoena enforcement action and the production of tens of
11 thousands of additional pages of electronic documents relevant to this action,
12 including the text messaging logs and CRM records used to identify Settlement
13 Class Members. *Id.* Additionally, Plaintiff took the depositions of Defendant's
14 Chief Marketing Officer and Defendant's corporate representative.

15 This discovery established that Defendant licensed from a company called
16 Call Loop a software platform to send out automated text messages marketing
17 Defendant's services and products as part of a sales push to reengage with leads that
18 Defendant had collected through various websites over the years but had never
19 transacted with. *Id.* These leads were loaded to and stored in the Call Loop platform
20 and text messaged automatically as part of scheduled campaigns. *Id.* In total, using
21 Call Loop's platform Defendant (1) sent three marketing text messages to Plaintiff
22 whose cell phone number was registered on the national Do Not Call registry
23 ("DNC"), and (2) sent the identical three text messages to more than 13,000 other
24 consumers whose cell phone numbers were also registered on the DNC. *Id.*

1 On May 6, 2020, the Parties engaged in a full-day, contentious mediation
2 with JAMS mediator Bruce A. Friedman. *Id.* at ¶ 8. The mediation did not result in
3 settlement, but did, among other things, involve the initial exchange of information
4 concerning Goldco's financial condition. *Id.*

5 On August 18, 2020, Plaintiff served his expert witness disclosures, including
6 the expert report of Aaron Woolfson, centering on analysis of the text message logs
7 and CRM records to identify putative class members and whether the Call Loop
8 platform used to send text messages to Settlement Class Members was an autodialer
9 under the TCPA. Kaufman Decl. ¶ 9. On October 6, 2020, Defendant took Mr.
10 Woolfson's deposition.

11 On August 19, 2020, Defendant filed a motion to stay this action pending the
12 Supreme Court's ruling in *Facebook, Inc. v. Duguid*, No. 19-511, regarding what
13 constitutes an automatic telephone dialing system under the TCPA (ECF No. 32).
14 Plaintiff responded in opposition to the motion on October 5, 2020 (ECF No. 42),
15 and Defendant filed its reply on October 12, 2020 (ECF No. 43).

16 On August 25, 2020, Plaintiff first filed her motion for class certification.
17 Defendant responded on October 12, 2020 (ECF No. 49). (The parties reached an
18 agreement to settle the action the business day prior to Plaintiff's reply being due.)

19 In advance of the November 2, 2020 final pretrial conference, the parties
20 began trial preparation. On October 12, 2020, the parties filed a joint exhibit list and
21 their respective witness lists and memoranda of contentions of law and fact (ECF
22 No. 44-48). The next day, Plaintiff served Defendant with a proposed verdict form
23 and jury instructions.

24 In parallel to the more than five months of additional adversarial litigation
25 after mediation, the parties engaged in further settlement negotiations with the
26

1 assistance of Mr. Friedman and ultimately reached an agreement in principle as to
2 a class wide resolution, culminating in the Settlement Agreement. Kaufman Decl.
3 ¶ 12.

4 The Parties recognize and acknowledge the expense and length of continued
5 proceedings that would be necessary to prosecute the litigation against Defendant
6 through trial and potentially appeals. Kaufman Decl. ¶ 13. Plaintiff's counsel has
7 taken into account the strength of Defendant's defenses, the limitations of
8 Defendant's financial ability to pay a potential final judgment, difficulties in
9 obtaining class certification and proving liability, the uncertain outcome and risk of
10 the litigation, especially in complex actions such as this one, the inherent delays in
11 such litigation, and, in particular, the risk that a change in the law, including a ruling
12 by this Court concerning the constitutionality of the TCPA or a ruling by the
13 Supreme Court or FCC regarding what constitutes an autodialer under the TCPA,
14 could nullify Plaintiff's claims. *Id.*; see *Facebook*, No. 19-511; *Creasy v. Charter*
15 *Communs., Inc.*, No. 20-1199, 2020 U.S. Dist. LEXIS 177798 (E.D. La. Sep. 28,
16 2020) (finding that TCPA claims based on calls preceding the Supreme Court's
17 ruling in *Barr v. Am. Assn. of Political Consultants, Inc.*, 591 U.S. ___, (July 6,
18 2020), are not actionable because the TCPA was unconstitutional until a 2015
19 amendment was severed in *Barr*). Plaintiff's counsel believe that the proposed
20 Settlement confers substantial and immediate benefits upon the Settlement Class
21 whereas continued and protracted litigation, even if successful, may have ultimately
22 delivered none. *Id.* Based on their evaluation of all these factors, Plaintiff and
23 Plaintiff's counsel have determined that the Settlement is in the best interests of
24 Plaintiff and the Settlement Class. *Id.*

The Settlement Agreement establishes a Settlement Class of:

All persons within the United States who (a) received one or more text messages sent by or on behalf of Defendant with the following content: (i) “URGENT Your retirement savings is at risk from \$9 TRILLION ponzi scheme. Learn how to protect yourself today. Call Now: 855-957-2233 Text STOP 2 stop,” (ii) “\$9 TRILLION ponzi scheme going after retirement accounts. Call to find out if your retirement savings is at risk! Call Now: 855-957-2233 Text STOP 2 stop,” and (iii) “US/China tariff war could bankrupt your retirement savings. Find out if you’re at risk! Call Now: 855-957-2233 Text STOP 2 stop”; (b) on their cellular telephone numbers; (c) that were registered on the National Do Not Call Registry more than 30 days before receiving any of the text messages; and (e) who are on the class list.

Agreement at ¶ 1.1.36. The Settlement Class is limited to the putative class members of the proposed class in Plaintiff’s motion for class certification (ECF No. 38).

The Settlement confers substantial and immediate benefits upon the Settlement Class whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Defendant’s defenses, the uncertainties of contested litigation, and the everchanging TCPA landscape, including district courts’ ongoing scrutiny of the constitutionality of the TCPA, and the Supreme Court’s and FCC’s pending decisions regarding the TCPA’s autodialer provision. *See* Kaufman Decl. ¶ 13.

III. THE REQUESTED SERVICE AWARD FOR THE CLASS REPRESENTATIVE IS REASONABLE AND SHOULD BE APPROVED

Class Counsel respectfully request a Service Award for the Class Representative in the amount of \$5,000. “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at

1 *25 (C.D. Cal. Apr. 24, 2017) (citing *Rodriguez*). “Because a named plaintiff is an
2 essential ingredient of any class action, an incentive award is appropriate if it is
3 necessary to induce an individual to participate in the suit.” *Cook v. Niedert*, 142
4 F.3d 1004, 1016 (7th Cir. 1998). “[A] class representative is entitled to some
5 compensation for the expense he or she incurred on behalf of the class lest
6 individuals find insufficient inducement to lend their names and services to the class
7 action.” *In re Oracle Sec. Litig.*, No. C-90-0931-VRW, 1994 U.S. Dist. LEXIS
8 21593, at *2 (N.D. Cal. June 18, 1994).

9 Ms. Judson’s participation led to a \$1.5 million recovery for the Class, and
10 Defendant has agreed to effectively stop telemarketing to Settlement Class
11 Members for at least two years. Plaintiff invested her time into this litigation. *See*
12 Declaration of Jodi Judson, attached hereto as Exhibit 3; Kaufman Decl. ¶ 17. She
13 took personal time to seek out and speak with Class Counsel, search for relevant
14 evidence, review and approve the complaint for filing, respond to discovery
15 including regarding her personal finances and investments, prepare for her
16 deposition (twice, as she was in a car accident the day of her originally scheduled
17 deposition resulting in the need to reschedule her deposition), keep apprised of the
18 progress of the litigation, participate in the settlement negotiations, and, ultimately,
19 provided her input and approval for the class action settlement of the case presented
20 to the Court for approval. It is Ms. Judson’s opinion that the settlement achieves a
21 result which is fair and reasonable for the Class which she seeks to represent. *Id.*
22 This sacrifice was made to support a case in which she had a relatively modest
23 personal interest, but that has and will continue to provide benefits to thousands of
24 Settlement Class Members and the general public, warranting the Court’s approval
25 of the requested service award.
26

1 “Generally, in the Ninth Circuit, a \$5,000 incentive award is presumed
 2 reasonable.” *Lee v. Glob. Tel*Link Corp.*, No. 2:15-cv-02495-ODW (PLA), 2018
 3 U.S. Dist. LEXIS 163410, at *34 (C.D. Cal. Sep. 24, 2018) (internal citation
 4 omitted) (awarding an incentive award of \$6,250 to plaintiff in a TCPA class
 5 action). The requested incentive payment represents .3 percent of the Settlement
 6 Fund, is reasonable, and is within the range of incentive payments often awarded in
 7 class actions in this District. *Brown*, 2017 U.S. Dist. LEXIS 182309, at *28
 8 (awarding \$10,000 to named Plaintiff, representing .3 percent of the settlement
 9 fund, and noting that “as a result of his initiating the case and his efforts throughout,
 10 Class Members will receive financial benefits they otherwise would never have
 11 received”); *Ahmed v. HSBC Bank USA*, No. ED CV 15-2057 FMO (SPx), 2019
 12 U.S. Dist. LEXIS 104401, at *34 (C.D. Cal. June 21, 2019) (stating that in TCPA
 13 actions “\$5,000 incentive award to each named plaintiff is presumptively
 14 reasonable”); *see In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.
 15 2000) (affirming incentive awards of \$5,000 each to the two class representatives).

16
 17 Given Plaintiff’s personal contribution to the successful prosecution of this
 18 action, Plaintiff should be granted a service award in the amount of \$5,000.

19 **IV. CLASS COUNSEL’S APPLICATION FOR FEES AND EXPENSES**
 20 **IS FAIR, REASONABLE, AND JUSTIFIED, AND SHOULD BE**
 21 **APPROVED**

22 The Settlement permits Class Counsel to apply to the Court for attorneys’
 23 fees and expenses. Given the outstanding outcome, Class Counsel request approval
 24 of attorneys’ fees totaling \$500,000, which represents one third of the Settlement
 25 Fund, and \$27,005.14 for documented reasonable out-of-pocket expenses.

26 Rule 23 permits a court to award “reasonable attorney’s fees... that
 27 are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Where
 28

1 a settlement produces a common fund for the benefit of the entire class, courts have
 2 discretion to employ either the lodestar method or the percentage-of-recovery
 3 method.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir.
 4 2011). Here, where the “benefit to the class is easily quantified” in a common-fund
 5 settlement, the court can employ the percentage-of-recovery method. *Id.* Moreover,
 6 where contingency fee litigation results in a common-fund settlement, as in the
 7 instant action, the percentage-of-the-fund method is the most appropriate way to
 8 calculate a reasonable attorneys’ fee award. *Vizcaino v. Microsoft Corp.*, 290 F.3d
 9 1043, 1047 (9th Cir. 2002). This is because “percentage of the fund better ‘align[s]
 10 the interest of lawyer and client. The lawyer gains only to the extent his client
 11 gains.’” *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1454 (N.D. Cal. 1994) (citation
 12 omitted). “A lodestar cross-check is not required in this circuit, and in some cases
 13 is not a useful reference point.” *Ahmed v. HSBC Bank United States*, No. ED CV
 14 15-2057 FMO (SPx), 2019 U.S. Dist. LEXIS 222750, at *20 (C.D. Cal. Dec. 30,
 15 2019) (internal citation omitted) (awarding \$600,000 to class counsel in a TCPA
 16 action, equating to 25% of the Settlement Fund, without a lodestar cross-check,
 17 where class members were anticipated to receive \$92).

18
 19 In the Ninth Circuit, the benchmark for attorneys’ fees based on the
 20 percentage of the fund method is 25% of the common fund. *In re Online DVD-
 21 Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015); *Paul, Johnson, Alston &
 22 Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). The benchmark is regularly
 23 adjusted upward in circumstances such as this where an exceptional result is
 24 achieved as a result of a significant investment of time and resources by class
 25 counsel. *See, e.g., Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB
 26 (JCx), 2020 U.S. Dist. LEXIS 177056, at *9 (C.D. Cal. Sep. 18, 2020) (awarding

1 class counsel attorneys' fee of one third the settlement fund where an "exceptional
 2 result" was achieved); *Lusby v. Gamestop Inc.*, No. C12-03783 HRL, 2015 U.S.
 3 Dist. LEXIS 42637, at *11 (N.D. Cal. Mar. 31, 2015) (awarding class counsel one
 4 third of the common fund in fees); *cf. Lo v. Oxnard European Motors, LLC*, No.
 5 11CV1009 JLS (MDD), 2012 U.S. Dist. LEXIS 73983 (S.D. Cal. May 29, 2012)
 6 (awarding 25% of settlement fund where class action settled two months after
 7 commencement of lawsuit). The Ninth Circuit has held that, when employing the
 8 percentage of the fund method for non-reversionary common fund settlements, the
 9 court may, but is not required to, compare the lodestar and the percentage
 10 benchmark to determine if the requested attorneys' fees are inappropriately high or
 11 low. *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th
 12 Cir. 2002).

13 Overall, the goal is to produce a fair and reasonable result. *In re Bluetooth*
 14 *Headset Prod. Liab. Litig.*, 654 F.3d at 942. Regardless of the method chosen,
 15 courts award attorneys' fees based on an evaluation of "all the circumstances of the
 16 case." *Vizcaino*, 290 F.3d at 1048. The Ninth Circuit has identified several factors
 17 a court should consider to determine whether to adjust a fee award from the
 18 benchmark: (1) the results achieved for the class; (2) the quality of representation;
 19 (3) the novelty and complexity of the issues; (4) the risks of the litigation; and (5)
 20 awards in similar cases. *See id.* at 1048-51. All of these factors weigh in favor of
 21 approving the requested attorneys' fees.

22
 23 **a. Class Counsel Achieved Exceptional Results for the Class**

24 In determining whether a fee award is reasonable, the most critical factor is
 25 the results achieved; *i.e.*, the overall result and benefit to the class from the
 26 litigation. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992); *Destefano v. Zynga, Inc.*,

No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *58 (N.D. Cal. Feb. 11, 2016). As described above, the Settlement establishes a \$1.5 million non-reversionary fund for the Settlement Class, which is likely to result in a per claimant payout of between \$400 and \$600, and is at the upper end of TCPA settlements. *See* Notice (ECF No. 52-1) at p. 49; *compare with, e.g.*, approved TCPA settlements in: *Ahmed*, 2019 U.S. Dist. LEXIS 222750, at *6 (granting final approval to settlement where each claimant was anticipated to receive \$92.39); *Bayat v. Bank of the W.*, No. C-13-2376 EMC, 2015 U.S. Dist. LEXIS 50416, at *12-14 (N.D. Cal. Apr. 15, 2015) (granting final approval to settlement providing a \$2.85 recovery for each of the 871,836 class members and where, based on the low claims rate, each claimant would receive approximately \$151) (collecting cases); *Manouchehri v. Styles for Less, Inc.*, No. 14cv2521 NLS, 2016 U.S. Dist. LEXIS 80038 (S.D. Cal. June 20, 2016) (preliminarily approving settlement where class members could choose to receive \$10 cash or \$15 voucher); *Franklin v. Wells Fargo Bank, N.A.*, No. 14cv2349-MMA (BGS), 2016 U.S. Dist. LEXIS 13696 (S.D. Cal. Jan. 29, 2016) (approving settlement where class members received \$71.16); *Estrada v. iYogi, Inc.*, No. 2:13-01989 WBS CKD, 2015 U.S. Dist. LEXIS 137299 (E.D. Cal. Oct. 6, 2015) (preliminarily approving TCPA settlement where class members estimated to receive \$40). Here the significant monetary result alone warrants an upward adjustment from the twenty five percent benchmark. *See Marshall*, 2020 U.S. Dist. LEXIS 177056, at *9 (awarding class counsel an attorney fee of one third the settlement fund where an “exceptional result” was achieved); *Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *25 (N.D. Cal. Dec. 21, 2020) (recognizing that the same class counsel as in this case obtained significant results for the class, where each TCPA claimant will likely receive a pro

1 rata distribution of nearly \$400 and awarding class counsel fees amounting to 30%
2 of the settlement fund).

3 Moreover, the Settlement provides meaningful injunctive relief. Defendant
4 has agreed to effectively stop telemarketing to Settlement Class Members for at
5 least two years.

6 Given the monetary and injunctive benefit to the Settlement Class, the
7 inherent risks of litigation, the ever-changing TCPA landscape, and the likelihood
8 that Goldco's TCPA violative calls would have continued absent this litigation,
9 Class Counsel obtained an exceptional result.

10 **b. Class Counsel Exhibited Outstanding Skill and Diligence**

11 The quality of Class Counsel's representation in this case supports an award
12 of one third of the Settlement Fund. "A fee award of one third of the settlement fund
13 is justified where class counsel has significant experience in the particular type of
14 litigation at issue. ... Moreover, a one-third fee is appropriate where counsel
15 litigated effectively, and their experience was essential for obtaining the result."
16 *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *11 (internal citation omitted); *Boyd*
17 *v. Bank of Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS
18 162880, at *27 (C.D. Cal. Nov. 18, 2014) ("skill and work of counsel merits an
19 upward adjustment from the [25%] benchmark").
20

21 Plaintiff and the Settlement Class benefited from the high caliber
22 representation of Class Counsel, including Class Counsel's extensive TCPA class
23 action experience. Kaufman Decl. ¶¶ 18-24.

24 Class Counsel's analysis of the issues in this action, litigation strategy, and
25 diligence in prosecuting this action support the requested award. Class Counsel
26 vigorously litigated this matter. Kaufman Decl. ¶ 25. Class Counsel's work was
27

necessary to stop the complained of practice, resolve this action, and obtain significant monetary relief for the Settlement Class.

Of further testament to Class Counsel's skill is the quality of opposing counsel in this action. Goldco is represented by Larson LLP a renowned national defense litigation firm with significant experience in defending all types of consumer class actions, including TCPA actions. Kaufman Decl. ¶ 19.

c. The Risks of Litigation and the Novelty and Complexity of the Issues Justify the Requested Fees

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly in a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-7 (N.D. Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048). Likewise, "the importance of ensuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *Id.* at 1047; *see also Morales v. Conopco, Inc.*, No. 2:13-2213 WBS EFB, 2016 U.S. Dist. LEXIS 144349, at *21 (E.D. Cal. Oct. 18, 2016) ("Since class counsel took this case on a contingency basis, their risk of recovery was the same as the class members.").

As the Ninth Circuit has explained:

It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. Contingent fees that may far exceed the market value of the services if rendered on a noncontingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose. As the court observed [], if this 'bonus' methodology did not exist, very few lawyers

could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

In re: Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994) (internal citation omitted); *see also Birch v. Office Depot Inc.*, No. 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747, at *7 (S.D. Cal. Sep. 28, 2007) (“Class Counsel has proceeded on a contingency basis despite the uncertainty of any fee award. Class Counsel risked that it would not obtain any relief on behalf of Plaintiff or the Class, and so no recovery of fees. In addition, Class Counsel was precluded from pursuing other potential sources of revenue due to its prosecution of the claims in this action.”).

Because Class Counsel were working entirely on a contingency basis, only a successful result – at trial or by settlement – would result in any fees and recovery of out of pocket litigation costs. Kaufman Decl. ¶ 38. Nevertheless, Class Counsel spent over six hundred hours and more than twenty five thousand dollars to zealously promote the Class’s interests, and were preparing to take the case to trial at the time a settlement was reached. Kaufman Decl. ¶¶ 27-36. The contingent nature of Class Counsel’s representation strongly favors approval of the requested fee.

In addition to the risks posed by virtue of proceeding with a contingency class action, Class Counsel accepted substantial risk in taking this case given the possibility that this Court, the Supreme Court, or FCC could take action that might extinguish Plaintiff’s claims. Kaufman Decl. ¶ 13; *see* Supreme Court docket for *Barr*, Case No. 19-631 (Cert. Granted January 10, 2020); *Duguid v. Facebook, Inc.*, 926 F. 3d 1146, 1149 (9th Cir. 2019) (Cert. Granted July 9, 2020, No. 19-511); *Creasy*, 2020 U.S. Dist. LEXIS 177798. Moreover, with the filing of Defendant’s

1 motion to stay pending a decision in *Duguid* (ECF No. 32), Class Counsel faced the
 2 risk that they would lose the motion to stay causing a significant delay and/or a
 3 potential change in law impacting Plaintiff's TCPA claims. With the Supreme Court
 4 and district courts reviewing the constitutionality of the TCPA, and the definition
 5 of an "automatic telephone dialing system" under the TCPA being in flux
 6 throughout the pendency of the litigation, Class Counsel faced substantial risk of
 7 non-recovery. The risks of the litigation, including the ever-changing TCPA
 8 landscape, the complexity of the issues involved, and the contingent nature of Class
 9 Counsel's representation justify the requested fees. *See Deaver v. Compass Bank*,
 10 No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, at *19 and *35 (N.D. Cal.
 11 Dec. 11, 2015) (awarding class counsel fees of one third of common fund based in
 12 part on the significant risks of litigation, including specifically potential
 13 unfavorable changes in law).

14
 15 **d. Awards in Similar Cases Demonstrate the Requested Fees Are**
 16 **Reasonable**

17 "The Ninth Circuit has repeatedly held that 25% of the gross settlement
 18 amount is the benchmark for attorneys' fees awarded under the percentage method
 19 and that if the Court departs from that benchmark, the record must indicate the
 20 Court's reasons for doing so." *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007
 21 U.S. Dist. LEXIS 8476, at *44 (N.D. Cal. Jan. 26, 2007) (approving an \$11,250,000
 22 fee, representing 25% of fund, noting that the relevant court dockets "show no
 23 litigation activity of substance other than the filing of the complaints," but "the early
 24 settlement... resulted in significant benefit to the class," and citing *Powers v.*
 25 *Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000)). The benchmark has been adjusted
 26 upward in circumstances such as this where an exceptional result was achieved

1 based on counsel's expertise and significant investment of time and resources. *See*,
 2 *e.g.*, *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *9 (awarding class counsel an
 3 attorney fee of one third the settlement fund where an "exceptional result" was
 4 achieved); *Lusby*, 2015 U.S. Dist. LEXIS 42637, at *11 (awarding class counsel
 5 one third of the common fund); *Boyd*, 2014 U.S. Dist. LEXIS 162880, at *27 ("skill
 6 and work of counsel merits an upward adjustment from the [25%] benchmark");
 7 *Izor*, 2020 U.S. Dist. LEXIS 239999, at *25 (N.D. Cal. Dec. 21, 2020) (recognizing
 8 that the same class counsel as in this case obtained significant results for the class,
 9 where each TCPA claimant will likely receive a pro rata distribution of nearly \$400
 10 and awarding class counsel fees amounting to 30% of the settlement fund).

11 Class Counsel is requesting attorneys' fees in the amount of one third of the
 12 Settlement Fund, which is justified in light of the excellent outcome when compared
 13 to the risks attendant to this Action, the procedural posture of the case, and the fees
 14 awarded in similar class actions. Kaufman Decl. ¶¶ 3, 13.

15
 16 **e. A Lodestar Cross-Check Confirms**
the Reasonableness of the Requested Fees

17 To calculate the lodestar, the Court "multipl[ies] the number of hours the
 18 prevailing party reasonably expended on the litigation ... by a reasonable hourly
 19 rate for the region and for the experience of the lawyer." *In re Bluetooth Headset*
 20 *Prod. Liab. Litig.*, 654 F.3d at 941. This base "unadorned" lodestar figure is
 21 "presumptively reasonable." *Id.* "Courts have routinely enhanced the lodestar to
 22 reflect the risk of non-payment in common fund cases. This mirrors the established
 23 practice in the private legal market of rewarding attorneys for taking the risk of
 24 nonpayment by paying them a premium over their normal hourly rates for winning
 25 contingency cases. In common fund cases, attorneys whose compensation depends
 26

1 on their winning the case must make up in compensation in the cases they win for
 2 the lack of compensation in the cases they lose.” *Vizcaino*, 290 F.3d at 1051
 3 (internal citation omitted).

4 Class Counsel have invested approximately 621 hours prosecuting Plaintiff’s
 5 and the Class’s claims through February 23, 2021. Additionally, Class Counsel
 6 conservatively expect to invest at least another 25 hours communicating with
 7 Settlement Class Members, preparing for and attending the Final Fairness Hearing,
 8 including drafting a motion for final approval, managing the claims process, and
 9 tending to any claims-administration issues that arise. Kaufman Decl. ¶ 35. To date,
 10 Class Counsel have a lodestar of \$474,610. Kaufman Decl. ¶¶ 29-34. Counsel have
 11 provided itemized descriptions and summaries of their work in order to “identify
 12 the general subject matter of [their] time expenditures.” *Hensley v. Eckerhart*, 461
 13 U.S. 424, 437 n.12 (1983); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir.
 14 2000) (“a summary of the time spent on a broad category of tasks such as pleadings
 15 and pretrial motions” satisfies the “basic requirement”)..

16 Class Counsel’s requested attorneys’ fee award here is \$500,000, which
 17 represents application of a multiplier of approximately 1.05 to Class Counsel’s
 18 lodestar. Multipliers in the range of one to four times the lodestar are common.
 19 *Vizcaino*, 290 F.3d at 1051, n.6 (finding a range of 0.6 to 19.6 in a survey of 24
 20 cases, with 83% in the range of 1.0 to 4.0, and affirming a multiplier of 3.65);
 21 *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming
 22 attorneys’ fees based on a multiplier of approximately 6.85 as “well within the range
 23 of multipliers that courts have allowed”); *Abante Rooter & Plumbing v. Pivotal*
 24 *Payments*, No. 3:16-cv-05486-JCS, 2018 U.S. Dist. LEXIS 232054, at *19 (N.D.
 25 Cal. Oct. 15, 2018) (awarding fees equating to 2.7 times lodestar in a TCPA class
 26
 27

1 settlement); *Gergetz*, 2018 U.S. Dist. LEXIS 167206, at *21 (approving a 2.625
 2 multiplier in TCPA class settlement and awarding fees of 30% of the common
 3 fund). The requested multiplier is appropriate when comparing the benefits of the
 4 Settlement to the risk of non-payment for Class Counsel's significant investment of
 5 attorney time and out of pocket costs.

6 **i. The Hours Class Counsel Have Expended Are Reasonable**

7 Class Counsel have devoted 621 hours to this litigation, and conservatively
 8 anticipate investing an additional 25 hours between drafting a final approval
 9 motion, preparing for the final fairness hearing, and continuing to oversee the case
 10 and settlement administration process. Kaufman Decl. ¶¶ 29, 35. The Ninth Circuit
 11 has found that courts should defer to successful counsel's judgment as to how much
 12 work was needed to succeed. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
 13 (9th Cir. 2008) ("By and large, the court should defer to the winning lawyer's
 14 professional judgment as to how much time he was required to spend on the case;
 15 after all, he won, and might not have, had he been more of a slacker."). Class
 16 Counsel's hours are not excessive or otherwise unnecessary. Kaufman Decl. ¶ 28.

17 Class Counsel have exerted significant effort to achieve the excellent results
 18 reflected in the Settlement. This case has gone the distance, from investigation and
 19 initial pleadings, to extensive first and third party discovery, including filing a third
 20 party subpoena enforcement action, a full-day contentious mediation, preparation
 21 of expert reports on two subject areas, multiple depositions, briefing multiple
 22 significant motions, including Plaintiff's motion for class certification and
 23 Defendant's motion to stay (which was potentially dispositive), and all the way to
 24 trial preparation, ultimately resulting in settlement notice administration on a class
 25 action basis. Kaufman Decl. ¶¶ 6-12, 27-34.

ii. Class Counsel's Rates Are Reasonable

1 *Kearney v. Hyundai Motor America*, No. SACV 09-1298-JST (MLGx), 2013 U.S.
 2 Dist. LEXIS 91636, at *25 (C.D. Cal. June 28, 2013) (approving hourly rates
 3 between \$650 and \$800 for class counsel in a consumer class action); *Moore v.*
 4 *Verizon Commc'ns Inc.*, No. C 09-1823 SBA, 2014 U.S. Dist. LEXIS 19145, at *15
 5 n.9 (N.D. Cal. Feb. 14, 2014) (approving class counsel attorney rates ranging from
 6 \$550 to \$825 as “reasonable given the geographic location and experience of
 7 counsel”); *see also* *Zubia v. Shamrock Foods Co.*, No. CV 16-03128-AB (AGRx),
 8 2017 U.S. Dist. LEXIS 223446, at *52 (C.D. Cal. Dec. 21, 2017) (finding
 9 reasonable Class Counsel partner rates of \$875 and \$800 in a wage and hour class
 10 action).

11 Given the experience and competence of Class Counsel, as evidenced by the
 12 substantial work done to litigate this case and the exceptional result for the
 13 Settlement Class, the geographic location of this action, and the significant risks
 14 involved, Class Counsel’s hourly rates are justified and appropriate.

15
 16 **f. Class Counsel’s Request for Expenses Is Reasonable**

17 Rule 23(h) also permits the Court to “award . . . nontaxable costs that are
 18 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The
 19 Settlement permits Class Counsel to seek reimbursement of their reasonable
 20 expenses. “Attorneys may recover their reasonable expenses that would typically
 21 be billed to paying clients in non-contingency matters.” *In re Omnivision Techs.,*
 22 *Inc.*, 559 F. Supp. 2d at 1048 (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
 23 1994)). Class Counsel have incurred expenses in the prosecution of this action
 24 totaling \$27,005.14 for filing fees, process server costs, *pro hac vice* fee, expert
 25 fees, deposition costs, postage and courtesy copy costs, and mediation fees.
 26 Kaufman Decl. ¶¶ 36-37. These expenses were reasonable and necessary for the

1 prosecution of this action and are the types of expenses that would typically be
 2 billed to clients in non-contingency matters, and therefore should be approved. *Id.*

3 **V. CONCLUSION**

4 The Settlement securing a \$1,500,000 non-reversionary common fund, which
 5 is likely to result in cash payments to Settlement Class Members between \$400 and
 6 \$600, together with meaningful injunctive relief represents an excellent result for
 7 the Settlement Class given the risks and obstacles in this Action. Class Counsel's
 8 request for a Service Award for the Class Representative and attorneys' fees and
 9 expenses are reasonable under all the circumstances. Accordingly, Class Counsel
 10 respectfully request that this Court (1) approve the requested Service Award for the
 11 Class Representative; and (2) award Class Counsel the requested attorneys' fees
 12 and expenses.

13
 14
 15 Dated: February 23, 2021

Respectfully submitted,

/s/ Rachel E. Kaufman

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22
 23 *Counsel for Plaintiff Judson and all others*
 24 *similarly situated*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JODI JUDSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GOLDCO DIRECT, LLC, a
Delaware limited liability company,

Defendant.

Case No. 2:19-cv-06798-PSG-PLA

**DECLARATION OF AVI R.
KAUFMAN IN SUPPORT OF
CLASS COUNSEL’S MOTION
FOR SERVICE AWARD AND
CLASS COUNSEL FEES AND
COSTS**

Avi R. Kaufman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Goldco Direct, LLC.¹ I submit this declaration in support of Class Counsel’s Motion for Service Award and Class Counsel Fees and Costs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. The Parties’ Settlement achieves exceptional results for the Class.

3. The Settlement provides significant and immediate monetary and injunctive relief for Settlement Class Members where their recovery, if any, would

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

1 otherwise be uncertain, especially given Defendant's willingness to continue their
2 vigorous defense of the case and the risk that the District Court or the Supreme
3 Court could find that the Telephone Consumer Protection Act, 47 U.S.C. § 227, is
4 unconstitutional in whole or in part, or the Supreme Court or FCC could interpret
5 the term automatic telephone dialing system in a manner that excludes the system
6 used to send text messages on Defendant's behalf. Indeed, the monetary relief is
7 expected to total between \$400 and \$600 per claiming Settlement Class Member.
8

9
10 4. The Settlement was reached only after effectively completing
11 discovery, including informal discovery concerning Defendant's financial
12 condition, moving for class certification, engaging in extensive arm's-length
13 negotiations, including a full-day mediation before mediator Bruce A. Friedman
14 with JAMS in Los Angeles and continued negotiations over the course of more than
15 five months after with Mr. Friedman's assistance, and preparing for trial.
16

17 5. The Settlement was not conditioned on any amount of attorneys' fees
18 for Class Counsel or Service Award for Plaintiff, underscoring the fairness of the
19 process.
20

21 6. On August 6, 2019, Plaintiff filed the Complaint against Goldco in this
22 action asserting claims under the TCPA's autodialer and DNC provisions. On
23 September 12, 2019, Goldco answered the Complaint. The parties then participated
24 in a Rule 26 conference and prepared a joint scheduling report and discovery plan.
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1 7. Thereafter, the parties engaged in extensive written discovery
2 involving, among other things, Plaintiff serving and responding to written
3 discovery, multiple, extended meet and confers through which the parties were able
4 to resolve their discovery disputes without the need for motion practice, and
5 Plaintiff's review of tens of thousands of pages ultimately produced by Defendant.
6 Plaintiff also engaged in extensive third party discovery, resulting in, among other
7 things, the filing of a subpoena enforcement action and the production of tens of
8 thousands of additional pages of electronic documents relevant to this action,
9 including the text messaging logs and CRM records used to identify Settlement
10 Class Members. Additionally, Plaintiff took the depositions of Defendant's Chief
11 Marketing Officer and Defendant's corporate representative. This discovery
12 established that Defendant licensed from a company called Call Loop a software
13 platform to send out automated text messages marketing Defendant's services and
14 products as part of a sales push to reengage with leads that Defendant had collected
15 through various websites over the years but had never transacted with. These leads
16 were loaded to and stored in the Call Loop platform and text messaged
17 automatically as part of scheduled campaigns. In total, using Call Loop's platform
18 Defendant (1) sent three marketing text messages to Plaintiff whose cell phone
19 number was registered on the national Do Not Call registry ("DNC"), and (2) sent
20 the identical three text messages to more than 13,000 other consumers whose cell
21 phone numbers were also registered on the DNC.
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1 8. On May 6, 2020, the Parties engaged in a full-day, contentious
2 mediation with JAMS mediator Bruce A. Friedman. The mediation did not result
3 in settlement, but did, among other things, involve the initial exchange of
4 information concerning Goldco's financial condition.
5

6 9. On August 18, 2020, Plaintiff served his expert witness disclosures,
7 including the expert report of Aaron Woolfson, centering on analysis of the text
8 message logs and CRM records to identify putative class members and whether the
9 system used to send text messages to Settlement Class Members was an autodialer
10 under the TCPA. On October 6, 2020, Defendant took Mr. Woolfson's deposition.
11

12 10. On August 19, 2020, Defendant filed a motion to stay this action
13 pending the Supreme Court's ruling in *Facebook v. Duguid* regarding what
14 constitutes an automatic telephone dialing system under the TCPA (ECF No. 32).
15 Plaintiff responded in opposition to the motion on October 5, 2020 (ECF No. 42),
16 and Defendant filed its reply on October 12, 2020 (ECF No. 43). On August 25,
17 2020, Plaintiff first filed her motion for class certification. Defendant responded on
18 October 12, 2020 (ECF No. 49). (The parties reached an agreement to settle the
19 action the business day prior to Plaintiff's reply being due.)
20
21

22 11. In advance of the November 2, 2020 final pretrial conference, the
23 parties began trial preparation. On October 12, 2020, the parties filed a joint exhibit
24 list and their respective witness lists and memoranda of contentions of law and fact
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1 (ECF No. 44-48). The next day, Plaintiff served Defendant with a proposed verdict
2 form and jury instructions.

3
4 12. In parallel to the more than five months of additional adversarial
5 litigation after mediation, the parties engaged in further settlement negotiations with
6 the assistance of Mr. Friedman and ultimately reached an agreement in principle as
7 to a class wide resolution, culminating in the Settlement Agreement.

8
9 13. The Parties recognize and acknowledge the expense and length of
10 continued proceedings that would be necessary to prosecute the litigation against
11 Defendant through trial and potentially appeals. Plaintiff's counsel has taken into
12 account the strength of Defendant's defenses, the limitations of Defendant's
13 financial ability to pay a potential final judgment, difficulties in obtaining class
14 certification and proving liability, the uncertain outcome and risk of the litigation,
15 especially in complex actions such as this one, the inherent delays in such litigation,
16 and, in particular, the risk that a change in the law, including a ruling by this Court
17 concerning the constitutionality of the TCPA or a ruling by the Supreme Court or
18 FCC regarding what constitutes an autodialer under the TCPA, could nullify
19 Plaintiff's claims. Plaintiff's counsel believe that the proposed Settlement confers
20 substantial and immediate benefits upon the Settlement Class whereas continued
21 and protracted litigation, even if successful, may have ultimately delivered none.
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23 Based on their evaluation of all of these factors, Plaintiff and Plaintiff's counsel
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1 have determined that the Settlement is in the best interests of Plaintiff and the
2 Settlement Class.

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4 14. Discovery was complete when the Parties reached Settlement, except
5 for Plaintiff's deposition which, as a result of a car accident on the day her
6 deposition was originally scheduled, was rescheduled to take place two days after
7 settlement in principle was reached. Class Counsel conducted a thorough
8 investigation and analysis of Plaintiff's claims, including by engaging and obtaining
9 testimony from a telecommunications systems expert, and engaged in extensive
10 discovery. Class Counsel's understanding of the key issues driving the litigation,
11 including the likelihood of class certification, the strength of Defendant's consent
12 and other defenses, and the ever-shifting TCPA law landscape, prepared them for
13 well-informed settlement negotiations. The Settlement here is the result of
14 extensive, arm's-length negotiations between experienced attorneys who are
15 familiar with class action litigation and with the legal and factual issues of this
16 Action.
17

18
19 15. Plaintiff's counsel believe that the litigation and proposed Settlement
20 confer substantial benefits upon the Settlement Class, including a substantial
21 monetary result and meaningful injunctive relief. The Settlement Fund totals
22 approximately \$115 per Settlement Class Member, and, given the anticipated
23 Settlement Class Member participation rate, the per claiming Settlement Class
24 Member recovery is likely to be between \$400 and \$600.
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1 16. To date, Class Members' response to the Settlement has been
2 overwhelmingly positive. In fact at this point, none of the settlement class members
3 have elected to opt-out or object to the Settlement.
4

5 17. Ms. Judson's participation led to a \$1.5 million recovery for the Class,
6 and Defendant has agreed to effectively stop telemarketing to Settlement Class
7 Members for at least two years. Plaintiff invested her time into this litigation. She
8 took personal time to seek out and speak with Class Counsel, search for relevant
9 evidence, review and approve the complaint for filing, respond to discovery
10 including regarding her personal finances and investments, prepare for her
11 deposition (twice, as she was in a car accident the day of her originally scheduled
12 deposition resulting in the need to reschedule her deposition), keep apprised of the
13 progress of the litigation, participate in the settlement negotiations, and, ultimately,
14 provided her input and approval for the class action settlement of the case presented
15 to the Court for approval. This sacrifice was made to support a case in which she
16 had a relatively modest personal interest, but that has and will continue to provide
17 benefits to thousands of Settlement Class Members and the general public,
18 warranting the Court's approval of the requested service award.
19
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21

22 18. In this Action, the attorneys who worked on this case include myself,
23 Rachel E. Kaufman, and Stefan Coleman, who has an Of Counsel relationship with
24 my firm. My firm has dedicated substantial resources to the Action's prosecution,
25 and we intend to continue doing so through the duration of the Action.
26
27
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1 19. Class Counsel are particularly experienced in the litigation,
2 certification, and settlement of nationwide TCPA class action cases. Of further
3 testament to Class Counsel's skill is the quality of opposing counsel in this action.
4 Goldco is represented by Larson LLP a renowned national defense litigation firm
5 with significant experience in defending all types of consumer class actions,
6 including TCPA actions.
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8 20. Since 2008, the attorneys of Kaufman P.A. have worked on consumer
9 class action cases that have ended in class-wide settlements totaling more than \$100
10 million. Kaufman P.A.'s attorneys have also successfully recovered millions of
11 dollars in settlements and judgments for plaintiffs in breach of contract actions in
12 the media, real estate, fashion, healthcare, telecommunications, and banking
13 industries.
14

15 21. I have a degree in government from Harvard University and a JD from
16 Georgetown University Law Center. Prior to founding Kaufman P.A., I worked at
17 Kopelowitz Ostrow Ferguson Weiselberg Gilbert and Carlton Fields Jorden Burt in
18 their national class action and commercial litigation practice groups. I am a member
19 of the Florida bar, and am admitted to practice in all federal district courts in Florida
20 and in the Eleventh Circuit. I am also admitted to practice in the Eastern District of
21 Wisconsin, Eastern District of Michigan, Northern District of Illinois, District of
22 Colorado, and Western District of Arkansas.
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- 1 • *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide
2 Telephone Consumer Protection Act class action resulting in a \$1.4
3 million class wide settlement.
- 4 • *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone
5 Consumer Protection Act class action resulting in a \$2.2 million class
6 wide settlement.
- 7 • *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone
8 Consumer Protection Act class action resulting in a \$492,250 class wide
9 settlement.
- 10 • *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone
11 Consumer Protection Act class action resulting in a \$9.7 million class
12 wide settlement.
- 13 • *Donde v. Freedom Franchise Systems, LLC, et al.* (S.D. Fla. 2020), a
14 nationwide Telephone Consumer Protection Act class action settlement
15 resulting in a \$948,475.50 class wide settlement.
- 16 • *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide
17 Telephone Consumer Protection Act class action settlement resulting in a
18 \$1.95 million class wide settlement.
- 19 • *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a
20 nationwide Telephone Consumer Protection Act class action making
21 \$5.16 million available to the settlement class. (Final fairness hearing is
22 scheduled for March 1, 2021).
- 23 • *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide
24 Telephone Consumer Protection Act class action settlement resulting in a
25 \$375,000 class wide settlement. (Final fairness hearing is scheduled for
26 June 2, 2021).

27 25. Class Counsel zealously represented Plaintiff and the Settlement
28 Class's best interests throughout this litigation, and will continue to do so.

26 26. Below, I set forth the nature of the work Kaufman P.A. performed in

1 the Action to demonstrate why Class Counsel's request for attorneys' fees and
2 expenses is reasonable and should be approved by the Court.

3 27. I was involved in all major aspects of litigating this Action. Those
4 efforts generally fell into the following categories: (a) pre-filing investigation and
5 pleadings; (b) post-filing investigation and discovery; (c) motion practice; (d)
6 settlement; and (e) case and settlement management.
7

8 28. I am the attorney who oversaw the day-to-day activities in this Action
9 and have reviewed the firm's time records in connection with the preparation of this
10 Declaration. The purpose of this review was to confirm the accuracy of the time
11 entries, as well as the necessity for, and reasonableness of, the time and expenses
12 committed to this Action. As a result of this review, I believe the time reflected
13 herein and the expenses for which payment is sought are reasonable and were
14 necessary for the effective and efficient prosecution and resolution of the Action.
15 In addition, I believe that the expenses are all of a type that would be typically
16 charged to an hourly fee-paying client in the private legal market.
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19 29. In total, I devoted 304 hours to this litigation, Rachel E. Kaufman
20 devoted 246.2 hours to this litigation, and Stefan Coleman devoted 70.8 hours to
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1 this litigation, as of February 23, 2021.² A breakdown of the lodestar per attorney
2 is provided below. The total lodestar amount is based on my hourly rate of \$800
3 and Ms. Kaufman's and Mr. Coleman's hourly rate of \$730.
4

5 **Pre-filing Investigation and Pleadings**

6 30. Before filing the Action, Kaufman P.A. conducted a thorough
7 investigation into the facts of the case, including by investigating Plaintiff's
8 relationship and experiences with Goldco as well as researching the potential claims
9 Plaintiff and the Class had against Goldco. This phase also involved drafting and
10 revising the Complaint and other initiating documents.
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<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	8.4	\$6,720
Rachel E. Kaufman	\$730	2.5	\$1,825
Stefan Coleman	\$730	18	\$13,140
	Total	28.9	\$21,685

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25 ² Due to concerns regarding the disclosure of work product and other privileged
26 matters, detailed billing records are being submitted for the Court's in camera
27 inspection and further instructions regarding redaction of privileged matters.

Post-filing Investigation and Discovery

31. In this phase of litigation the work performed by Kaufman P.A. included, but was not limited to, communicating regularly with Plaintiff regarding the facts pertinent to her claims and the progress of the case; preparing a discovery plan; preparing discovery requests to Goldco; preparing written third party discovery; extensively investigating Defendant, the claims, and the contours of the putative classes; preparing responses to discovery requests; engaging in extensive meet and confers with opposing counsel regarding Defendant's discovery responses; working with Plaintiff's expert to prepare expert report; meeting and conferring with third parties concerning subpoena responses; preparing notices of deposition; reviewing and analyzing Defendant's and third party discovery responses and productions; preparing for, attending, defending and taking depositions; and extensively preparing for trial.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	148.7	\$118,960
Rachel E. Kaufman	\$730	91.5	\$66,795
Stefan Coleman	\$730	33.7	\$24,601
	Total	273.9	\$210,356

Law and Motion Practice

32. During this phase of the litigation, the work performed by Kaufman P.A. included, but was not limited to, analyzing Goldco's Answer to the Complaint; pursuing a third party enforcement action concerning CallLoop's production of documents; analyzing, researching, and briefing Plaintiff's motion for class certification; analyzing, researching, and briefing Defendant's motion to stay; analyzing, researching, and preparing pretrial submissions, including the parties' exhibit list, Plaintiff's witness list, Plaintiff's memorandum of fact and law, and Plaintiff's proposed verdict form and jury instructions; and researching and briefing the motion for preliminary approval and the motion for a service award and Class Counsel attorneys' fees and costs.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	87.3	\$69,840
Rachel E. Kaufman	\$730	139.4	\$101,762
Stefan Coleman	\$730	13.3	\$9,709
	Total	240	\$181,311

1 **Settlement**

2 33. During this phase of the litigation, Kaufman P.A. was engaged in all
3 aspects of settlement negotiations with opposing counsel and the mediator,
4 including, but not limited to, drafting a mediation statement; engaging in pre-
5 mediation negotiations with opposing counsel; participating in pre-mediation calls
6 with Plaintiff and the mediator; attending mediation; continuing settlement
7 negotiations with opposing counsel and the mediator after the mediation did not
8 result in settlement; and drafting and revising various iterations of the settlement
9 agreement and associated documents.
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<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	48.2	\$38,560
Rachel E. Kaufman	\$730	7.9	\$5,767
Stefan Coleman	\$730	5.3	\$3,869
	Total	61.4	\$48,196

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21 **Case and Settlement Management**

22 34. During this phase of the litigation, Kaufman P.A.'s work included
23 negotiating, drafting, and editing various stipulations and notices; and coordinating
24 with the settlement administrator regarding the implementation of the notice plan
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1 and claims process, including by reviewing and testing all aspects of the Settlement
2 Website.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	11.4	\$9,120
Rachel E. Kaufman	\$730	4.9	\$3,577
Stefan Coleman	\$730	.5	\$365
	Total	16.8	\$13,062

11 **Additional Time**

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13 35. Based on my experience in prior class-wide litigation, I conservatively
14 anticipate that Kaufman P.A. will expend an additional 25 hours, on top of the
15 above-itemized time, in drafting a motion for final approval, preparing for and
16 attending the final fairness hearing, continuing to oversee the notice program,
17 overseeing the claims process for the settlement, and responding to Class Members'
18 inquiries.
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21 **Reasonable Expenses**

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23 36. The costs incurred by Kaufman P.A. total \$27,005.14 to date, which
24 were reasonable and necessary to the effective litigation of this case. Class Counsel
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incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action are categorized as follows:

<i>Expenses</i>	<i>Amount</i>
Filing Fees	\$447.00
Process Server Costs	\$165.00
<i>Pro Hac Vice</i> Fee	\$400.00
Deposition transcripts	\$2,903.49
Expert Fee	\$16,608.15
Mediation	\$6,450.00
Postage and Courtesy Copies	\$31.50
Total	\$27,005.14

37. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

38. Class Counsel represented Plaintiff and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out of pocket litigation expenses invested into this

1 contentious case. This risk of nonpayment incentivized counsel to work efficiently,
2 to prevent duplication of effort, and to advance expenses responsibly.

3 39. Class Counsel assumed significant risk of nonpayment in initiating and
4 expending attorney hours in this case given the complex legal issues involved, ever
5 changing TCPA legal landscape, and Defendant's vigorous defense of Plaintiff's
6 and the Class's claims.
7

8 * * *

9 I declare under penalty of perjury of the laws of the United States that the
10 foregoing is true and correct.
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12 Dated: February 23, 2021

13 /s/ Avi R. Kaufman

14 Avi R. Kaufman
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JODI JUDSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GOLDCO DIRECT, LLC, a
Delaware limited liability company,

Defendant.

Case No. 2:19-cv-06798-PSG-PLA

**[PROPOSED] ORDER GRANTING
SERVICE AWARD AND CLASS
COUNSEL FEES AND COSTS**

Judge: Hon. Philip S. Gutierrez

In connection with granting preliminary approval of the parties' class-wide Settlement of this Litigation, the Court scheduled a Final Fairness Hearing for June 7, 2021.¹ Also pursuant to the Court's Preliminary Approval Order, Plaintiff Jodi Judson timely moved for attorneys' fees and expenses and a service award to Class

¹ As used herein, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.

1 Representative, both of which also came for hearing before the Court. Having read
2 all of the papers filed in connection therewith, as well as all of the evidence and
3 argument submitted with respect to the proposed Settlement, the Court FINDS AS
4
5 FOLLOWS:

6 1. Having considered the motion for a service award, a class
7
8 representative service award in the amount of \$_____ payable to Plaintiff is
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10 approved as fair and reasonable, in light of the results that were obtained under the
11 Settlement Agreement, and the risks that she incurred in prosecuting the Action.
12 The Court further finds that \$_____ is a fair and reasonable incentive award
13
14 because it comports with incentive awards made in other TCPA class-action
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16 settlements in cases involving similar contributions and involvement as the
17 Plaintiff. Accordingly, the Court approves that amount as the Service Award and
18 directs that it be paid pursuant to the terms of the Settlement Agreement.

19 2. Under the Settlement Agreement, Class Counsel is permitted to seek
20
21 Court approval of attorneys' fees and documented and reasonable expenses and
22
23 costs. Having considered Class Counsel's Motion for an Award of Attorneys' Fees
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25 and Expenses and considering the percentage of the fund, the quality of
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27 representation provided and the results obtained, as well as a number of other
28 factors, Class Counsel is awarded attorneys' fees of \$_____, reimbursement

1 of costs and expenses of \$_____, representing fair and reasonable
2 compensation and reimbursement for Class Counsel's efforts in investigating,
3 litigating and settling this action.
4

5 3. All payments of attorneys' fees and reimbursement of expenses to
6 Class Counsel in this Action shall be made from the Settlement Fund, and the
7 Released Parties shall have no liability or responsibility for the payment of Class
8 Counsel's attorneys' fees or expenses except as provided in the Settlement
9 Agreement.
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12 SO ORDERED this ____ day of _____, 2021.
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15 _____
16 HONORABLE PHILIP S. GUTIERREZ
17 UNITED STATES DISTRICT COURT
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2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA

4 **JODI JUDSON**, individually and on
5 behalf of all others similarly situated,

6 *Plaintiff,*

7 v.

8 **GOLDCO DIRECT, LLC**, a
9 Delaware limited liability company,

10 *Defendant.*
11

Case No. 2:19-cv-06798-PSG-PLA

**DECLARATION OF JODI
JUDSON**

12 I, Jodi Judson, declare under penalty of perjury that the following statements
13 are true:

14 1. I have the personal knowledge required to execute this Declaration,
15 and can confirm the accuracy of the information set forth herein. If sworn as a
16 witness, I could competently testify to the facts contained herein.

17 2. I retained attorney Avi R. Kaufman and the law firm of Kaufman P.A.
18 to bring a consumer class action lawsuit on my behalf against Defendant Goldco
19 Direct, LLC arising from my receipt of text messages from or on behalf of
20 Defendant. I never consented to receive text messages from Defendant.
21

22 3. I brought this case on behalf of myself and on behalf of other
23 recipients of similar text messages. I invested my time into this case. Prior to filing
24 this class case, I engaged in a comprehensive investigation and analysis of my
25 options with my counsel. I sent the text messages that form the basis of the
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1 Complaint to my counsel and thereafter engaged in a pre-suit investigation with the
2 assistance of counsel. I was sent a draft of the complaint and personally reviewed
3 and approved it before it was filed in the case.
4

5 4. My counsel kept me informed of the progress of this case by emails,
6 and telephone calls. I reviewed all material filings. I participated in the extensive
7 discovery process, including locating and forwarding responsive documents and
8 information in response to Defendant's formal discovery requests, including
9 formal discovery requests requesting personal investment information.
10

11 5. I prepared with my counsel to be deposed and was prepared to have
12 my deposition taken on a rescheduled date, as a result of getting into a car accident
13 on the day that my deposition was originally scheduled. I was also prepared to
14 testify at trial, if necessary.
15

16 6. I participated in the settlement negotiations, providing my input and
17 approval at each step, and, ultimately, provided my input and approval for the class
18 action settlement of the case presented to the Court for approval. It is my opinion
19 that the settlement achieves a result which is fair and reasonable for the Class
20 which I seek to represent.
21

22 7. At no time did I put my interests above the interest of the Class. I
23 always have remained focused on protecting the important privacy interests of the
24 entire Class and in seeking money damages to compensate all members of the
25 Class for the injuries we have sustained because of Defendants' conduct.
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1 8. All matters stated herein are true and correct to the best of my
2 knowledge and belief.
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4 Dated: **Feb 18, 2021**
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Jodi M. Judson

6 Jodi Judson
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